

CORPORATE SERVICES SCRUTINY PANEL

ZERO/TEN DESIGN SUB PANEL HEARING

Review of Zero/Ten Design Proposals

Friday, 4th August 2006

Panel

Senator J.L. Perchard (Chairman)
Senator B.E. Shenton
Deputy P.J.D. Ryan of St. Helier
Deputy G.P. Southern of St. Helier
Mr. B. Curtis (Advisor to the Panel)
Mr. R. Teather (Advisor to the Panel)
Miss. S. Power (Scrutiny Officer)

Witness

Mr. C. Spears (The Jersey Chamber of Commerce and Industry Inc)

Senator J.L. Perchard:

Good afternoon, Mr. Spears. Welcome to the sub-panel of the Corporate Services Jersey Panel. We are specifically looking at the Zero/Ten design proposals. I would like to thank you for your submission which you have sent to us; it is very detailed and enlightening. Firstly, before we start, I assume you know everybody? Deputy Southern, Mr. Richard Teather, professional advisor. Myself, Jim Perchard. Sam Power, one of our officers, Brian Curtis, who is advising us as well is temporarily out of the room and will be joining us sometime shortly.

Mr. C. Spears (Jersey Chamber of Commerce):

Very good.

Senator J.L. Perchard:

Before we start, I am obliged to read to you the following.

Mr. C. Spears:

Thank you

Senator J.L. Perchard:

It is important that you fully understand, Mr. Spears, the conditions on which you are appearing at this hearing. You will have a printed copy of the statement I am about to read on the table in front of you. The proceedings of the panel are covered by parliamentary privilege through Article 34 of the State of

Jersey Law 2005 and the State of Jersey Panel's provisions and immunities, Scrutiny Panels PAC, PPC Jersey Regulation 2006 and witnesses are being protected from being sued or prosecuted for anything said during hearings unless they say something that they know to be untrue. This protection is given to a witness to ensure that they can speak freely and openly to the panel when giving evidence without fear of legal action through the immunity; although the immunity should obviously not be abused by making unsubstantiated statements about third-parties who have no right of reply. The panel would like you to bear this mind when answering questions. The proceedings, Clive, are being recorded and transcriptions will be made available on the scrutiny website after they have been transcribed.

Mr. C. Spears:

That is fine. Thank you.

Senator J.L. Perchard:

Well, as I say, thank you for your submission; which is quite detailed. I will just kick off. If you could give us your overall opinion on the Zero/Ten Design Proposal?

Mr. C. Spears:

Yes, the core of the proposal, i.e. to achieve Zero/Ten, I believe, is absolutely vital to the finance industry to continue and have the continuity it does. So, that core proposal is absolutely correct. My concern, and I am not seeking to be facetious in any way, is the baggage around that small proposal because there are a number of subsidiary proposals in there that cause me concern.

Senator J.L. Perchard:

Could we highlight those perhaps?

Mr. C. Spears:

Yes, we could highlight those being principally the RUDL, look through procedures; although, I qualify that by saying we might be fortunate to end up with no look through procedures but it is a question of how complex and how difficult. We have had feedback on the 2 subsidiary issues; that of commercial property values in Jersey and also the question of the treatment of local PLCs (Public Limited Company) in particular. So, they are probably the key 4 issues we have in a sense on the content of the document. Above and beyond that, although they are not mechanical comments on the document; we do have something of a concern that the current public climate sees the government development programme as being rather tax-centric when we are reflecting on the strategic plan and where we are there. However proposals are accepted, the public is always more amenable if they can see equal concentration on the 3 pillars of the Strategic Plan; which are basically government expenditure, tax and economic development. There is a growing perception with a number of members that it is rather tax-centric. We can say to that: "Well, this is a very important leg of the plan and it has got to be done but equally, we do accept the feedback that maybe some of the other pillars in the plan are taking a bit of a

back seat. “ It is ever so important however that the Zero/Ten concept is accepted and goes through. But maybe it is not totally helped with too much emphasis at the moment on it in terms of implementing a whole plan for government. I know that is more an esoteric statement than a mechanical one in terms of the I think it is a fair point to make in terms of managing a programme as a government if you will accept it in that way. So, that is probably all I have got to say in general.

Senator J.L. Perchard:

Yes. Having said that, the Zero/Ten proposals have a lot to do with economic development.

Mr. C. Spears:

In a sense, yes and I accept that. But we do get a lot of feedback that says: “Well, that is all about tax but what about this law or that law to encourage more business?”

Senator J.L. Perchard:

Okay. Well, you highlighted a couple of peripheral parts that you suggested perhaps would have had another place outside the document but they are inclusive at this stage?

Mr. C. Spears:

Yes.

Senator J.L. Perchard:

So, obviously that is the RUDL you mentioned?

Mr. C. Spears:

Yes, indeed.

Senator J.L. Perchard:

The proposed RUDL charge. The Chamber had commented in some detail in your submission about the RUDL charge. Could you just give us a broad overview so that we have it on record?

Mr. C. Spears:

Sure. The principle of the RUDL charge is well understood and not necessarily disputed. That you are seeking here to extract some contribution from foreign-owned companies who would not otherwise be contributing through tax anymore or taxation on their shareholders because they are just not here. The principle is understood but the feeling is that the complexity of the way in which we extract this charge is just too difficult; in the sense that we are effectively asking all of local business to convert to different legal structures. That will have a cost and we do not think a lot of them will because it will either be too difficult; they do not understand and some people do not like change and probably if you are coming down into the world of commerce, the acceptance of change is perhaps more difficult than it is in

finance. So, we think in the end - although it is not an intended consequence - that a number of local businesses will end up paying RUDL anyway, which I am sure was not the purpose of the suggestion. So, that is probably the biggest point. We have thought about that for a long time because I can remember when we went to one of Senator Le Sueur's presentations on Zero/Ten; Deputy Ryan was there and you started to ask us questions about that and you would have noticed at that time we were undecided.

Senator J.L. Perchard:

Yes, I was there too.

Mr. C. Spears:

You were there. Yes. So, we thought long and hard about that. Yes, the principle is a very good one but the mechanism recommended we do not think would work. So, I suppose that is it in a nutshell as far as RUDL is concerned.

Senator J.L. Perchard:

Alternatives, have you got any?

Mr. C. Spears:

A couple of thoughts that I have considered, at some considerable length, when John Harris was good enough to come along and support a Chamber presentation to educate members on the proposals in Zero/Ten. I can see his difficulty that trying to come up with something that meets this principle which is very, very difficult because you have got to try and get European acceptance of it as well through -- you will have to forgive me on this one, I think it is the Tax Coordination Committee or whatever -- ECOFIN -- that John has to go and deal with. So, trying to get their acceptance is quite difficult because you have got to be seen to treat people fairly in what you do. If you want zero tax for your local companies, then trying to do something a bit different for foreign-owned companies is not an easy thing to get over. I think we all understand that if there is a solution it is not an easy one and it is going to take some thought. But we have had some thoughts and I am not suggesting at this stage it would work or it would not work but we offer you our thoughts so far. The first thing is possibly using the local rating system as a mechanism for extracting an additional charge from foreign-owned companies that occupy properties. In a practical sense we could see this being done by the Parish authorities as part of their annual rates return and it should not be too difficult to get a statement on whether it is locally owned or not. Policing that might be different matter but at least you could get a statement and perhaps charging a premium for rates is a possibility. I can see that, at the fairness level, that may cause a problem with the EU but equally, if it is a local rates thing it may be a little bit lower down the tree. I am not pushing the issue on local rates today because it has been a hot enough topic with getting the Island rating and everything else agreed and I am sure you know all about that better than I do. But if we are looking maybe 3 years down the road when we next review the Island rate then maybe there is a possibility of

extracting it that way. But the other thing we had a think about and we have not really got to the mechanism for this but if we are talking in terms of fairness and taxation; one, should we say, trend that is fairly established with UK government with Jersey is this issue of transfer pricing. Transfer pricing being that if you have got a Jersey subsidiary and it uses a UK facility of some sort; so for instance, if the bank has a central treasury in London and it gets its pricing from London, nowadays Gordon Brown expects that there will be a charge by the UK company for the use of that service, ergo called transfer pricing. We had a think about that and we thought: “Well, what does Jersey give to foreign companies in terms of value that we could charge for?” and of course, it does provide these companies with an educated and trained workforce. We did think if you perhaps looked in the area of a levy for education and training for foreign companies, it was something you could reasonably represent to ECOFIN as being fair because it was a cost incurred by the Island that foreign companies did not pay for. Don’t get me wrong – actually sorting out a mechanism to collect that effectively would be something else. But we did think it was a principle that would fit quite well with the rules of taxation and transfer value if you are trying to draw comparisons between what on-shore governments do as well. We thought they were 2 possible areas that were worth looking at. But I suppose we did feel that trying to fulfil this principle should not really hold up the core issue of getting Zero/Ten agreed because there is a year or 2 or 3 to sort out what is required -- I suppose it is wrong to call it minor because it is a major point of principle, but maybe you are not collecting that much money, so it is not something that perhaps should not be over-cooked in terms of what we are trying to achieve immediately. I think getting Zero/Ten settled down with GST as the key component that goes with it, is probably the priority rather than something like RUDL. I think it said in our paper that: “Yes, we like the principle but is it something we could park for 3 years and look at the rates or look at something like an education levy. “

Senator J.L. Perchard:

Do you consider Jersey-owned businesses trading on the Island would be at a competitive disadvantage to UK-owned businesses trading on the Island?

Mr. C. Spears:

I think you could argue there is a minor difference but it is hard to see that there would be a major difference. I think we are talking more about principles here that you have got local people paying for local services where you have got companies, bar the rates, who are not. To say that it would make them economically less competitive, I think, is a more difficult point to argue ...

Senator J.L. Perchard:

(...several inaudible words) no corporate tax on the island, you are assuming they will be paying their income tax to UK Treasury?

Mr. C. Spears:

They would be in that sense. Yes. That is --

Senator J.L. Perchard:

You are satisfied that they would be?

Mr. C. Spears:

I assume under double-taxation arrangements that that is what would normally happen. From the few examples I have seen, I believe that that is what would happen with UK banks etc

Senator J.L. Perchard:

But there will be no need for double-taxation arrangements because it is a zero rate for corporate tax. So

--

Mr. C. Spears:

Absolutely. So, they disappear.

Senator J.L. Perchard:

So, you are satisfied they will be paying tax to the UK Treasury?

Mr. C. Spears:

In so far as I am aware, I am satisfied they will paying Gordon Brown a substantial amount more money than they have been latterly. I have to assume, of course, that other jurisdictions are following doing what we are doing and are not creating synthetic tax structures elsewhere that allow people to transport that removed value somewhere else.

Senator J.L. Perchard:

It has been suggested that non-Jersey owned trading businesses on the Island may well not or find a mechanism to avoid paying their UK tax.

Mr. C. Spears:

All I can say is I have not yet come across one. If you were asking me specifically, the only experience I have is with the major UK banks. The major UK banks generally are paying their tax in the UK.

Deputy P.J.D. Ryan:

Well, they would have to have to (... several inaudible words).

Mr. C. Spears:

They will be 10 per cent. Yes.

Mr. C. Spears:

10 per cent anyway with a 10 per cent difference or whatever rate is negotiated

Senator J.L. Perchard:

We are talking about UK retailers trading in the Island group.

Mr. C. Spears:

Yes.

Senator J.L. Perchard:

Would they have the opportunity to roll out profits and not declare dividends from their Jersey subsidiaries?

Mr. C. Spears:

Yes. I can see what you are getting at. Yes. It is a question then of where the ownership of that business is based. If you are saying it is based in some sort of Swiss trust or whatever then I can see what you are getting at. Yes.

Senator J.L. Perchard:

Similarly, Jersey-owned businesses –

Mr. C. Spears:

That may go what way. Yes, I take your point.

Deputy G.P. Southern:

Yes, that is an issue and we are treating it rather lightly but it is an issue to be considered. As soon as you introduce a multiple rate of tax --

Mr. C. Spears:

I think you are absolutely right, Geoff, that the more complex you make a law the more the tax industry will work hard to create methods of mitigating that tax. I think experience shows, the more complex you become, the more combative that industry becomes. So, yes, it is inviting that risk, I would say.

Deputy G.P. Southern:

Yes, as long as 20 per cent whatever you are doing on whatever body or person you are, that is fine because there is no benefit, as you say, in finding ways, but as soon as you have got the Zero/Ten, 20, the mind is drawn, is it not?

Mr. C. Spears:

So, what you are saying is really that corporate personality could relocate to another offshore centre that

is tax neutral and the income is siphoned out?

Deputy G.P. Southern:

Yes.

Mr. C. Spears:

It then depends on how robust your look-through rules are but that said, it is not something you really want to encourage anyway. I guess the conversation is then drifting towards look through rules and how robust they are.

Senator J.L. Perchard:

We have it on pretty good authority, the Minister told us this morning, that he is accepting that RUDL is probably dead on its feet and he is 90 per cent sure that it will be dropped from the proposal. But there is a desire, not only from the Chamber, but from most of those that have submitted to the panel to find an alternative. So, we will be actively --

Mr. C. Spears:

Well, maybe the rates may be a way of doing it.

Senator J.L. Perchard:

Yes but the only appeal I would make is that you would let the dust settle on rates for a year or 2 because I think there is a --

Deputy G.P. Southern:

Yes. We are certainly about to go through a period of tremendous change, are we not? One after the other. Without much time to get up off our feet, I think.

Senator J.L. Perchard:

But it does conveniently shift us through to the problems with distribution and with look throughs. What practical problems do you see as being caused by the move with regards to distribution?

Mr. C. Spears:

I suppose the first thing is the structure of the scheme itself. You have got this 3-year deferral period and you have got the last in, first out principle. So, a combination of those 2 things, whether you like the system or not, presents you with computations and some complexity and management issues in terms working out what distributions are and what the 4 per cent levy might be. There is additional cost to business in terms of employing the expertise to make those computations. Also, there is an additional cost to government in employing the people to check them. So, there is the complexity and cost issue. Moving down, you then have the question of whether the 3 year period is really a rolling relief or not. I

suggest it is not because once you hit the 4 per cent payment barrier, if you want to avoid that 4 per cent cost effectively you have to distribute each year. It becomes an imposed distribution unless you want to pay a 4 per cent cost or sorry, the shareholder wants to pay a 4 per cent cost. So, if that is what they want, you have then got profitability problems in terms of: "What is the margin return on that business?" I might suggest to you, in a high-turnover, low-margin business perhaps like farming or something like that might not be very keen on an arrangement like that because I think a lot of farmers would be very happy with a 4 per cent margin on some of the things I have seen anyway. So, a charge would knock the stuffing out of profitability I think to some degree. Then we have to move on to the capital structure of a business and how does it influence that. Obviously, you have got shareholders and if the majority shareholders run the business and own it, they can decide who to pay. But if you have got minority shareholders involved who do not have a say, then you create a series of problems for them. The company might not pay because it cannot, so you have got the 4 per cent charge to consider. Then you have to consider there are some people who may not want to receive dividends because their tax position in another country may be such that they do not want to pay a lot of tax at the moment, they would sooner accumulate their profits. So, staying as a minority shareholder, let us say it is a family-owned business; there is Aunty Agnes in New Zealand and she is saying: "Well, I do not really need it this year and I do not want to pay more tax, so do not send it to me. " You start to get a situation where the minority shareholder can be prejudiced to a degree because they are either landed with this charge, because the company does not pay it, that is one side of the fence; or they are landed with this capital cost or tax cost because they are paid. Trying to judge what minority shareholders want on every occasion, is something we cannot do because we are all different. So, that is a problem for the minority shareholders. Then you have got to look at the working capital position - because we are talking about trading companies here obviously, I have got no issues with the investment vehicle principles - and say: "Well, I need to accumulate X to invest but on the other hand, I have got to look at my shareholder position 4 per cent charge. Can I retain enough in the business or not to pursue my investment programme to grow that business?" Because obviously, in times gone by, you could just pay the tax as a company but you could preserve the unpaid dividend and invest that in further infrastructure in the business. We see that as detracting from the ability to organically produce working capital and investing in business. You have got a series of issues there that revolve around minority shareholders; will they be put off investing or will they not? And will that influence go further if you have got the 4 per cent cost to pay and how fair a charge that is. Then you have got the complexity of calculation of the cost for the government and so forth. There are a whole raft of different issues there. We did think that at least if you might go down a FIFO route; first in, first out at least that is easier to calculate. Although, it does not resolve all the problems.

Senator J.L. Perchard:

Which problems does it solve (...several inaudible words)?

Mr. C. Spears:

Well, at least you do not get the count back. So, you do not get hit by the 4 per cent quite so early because you are counting back the other way.

Senator J.L. Perchard:

Yes.

Mr. C. Spears:

So, that is the principle thing and it --

Senator J.L. Perchard:

Would you be hit by the 4 per cent at all with FIFO?

Mr. C. Spears:

You would or you could be, it depends how much you distribute at all. Yes, you could. So, it only works if you do make some distributions. Equally, I accept the risk - and this has been made very clear to me by Senator Le Sueur and John Harris - that their worry is that when you get into the realm of trying to budget tax you are going to collect, you want to have some certainty about the tax stream you are going to have. Their concern is to have a set of rules that make sure the tax gets paid. I can understand why they want it but for me, the actual complexity of the mechanism is too complex. We did consider the concept of being an agent for the shareholder or the company being an agent so they could pay the 4 per cent on behalf of the shareholder. We understand that at ECOFIN level that doesn't find favour --

Senator J.L. Perchard:

It is being tested currently, of course, with the Isle of Man's submission.

Mr. C. Spears:

Yes, it is. But I suppose all we are saying at the moment is that -- can we try harder just for the moment. If it is a dead duck then it is a dead duck but we are not sure yet on that one... We then thought: "Well, are there other ways of looking at it beyond having deemed distribution?" We thought: "Well, we do see Senator Le Sueur's point of view in the sense that he has to be able to plan his income in some way because that is necessary for the good of the Island anyway. " But we are suggesting at the moment that the fund of knowledge to know where you need to set these rules and at what level you need to set them is not really there. Because we had said: "Have you run the figures on this? Have you looked at it?" and we have had some very approximate answers but there are no figures to really look at. Then we have said: "Well, look at it this way, if you have got finance paying 10 per cent and you have got the rest of commercial companies paying their dividends, not all companies are going to stop paying their shareholder's dividends overnight" and it is a question of who does and who does not and what the effect is. I think we need some experience or some predictions to get a much finer fix on how

much deemed distribution is really needed to give Senator Le Sueur the assurance he needs for his income stream. I sympathise with needing assurance but I am not convinced you need what, in effect, is 100 per cent distribution policy after 3 years if you want to avoid the cost. We had a look at the Isle of Man one then. The Isle of Man does answer some of the problems; not all of them but some of them. The 55 per cent deemed actual, so do not get deferral the calculation is relatively simple. But you do not have to distribute all your profit, so you can look at minority shareholders and decide what you might do with them. We thought that was more flexible but then we thought: "Well, it is still 55 per cent enforced and if you are looking at working capital and accumulating businesses, well, it is part-way but it may not be ideal. " It just struck us that unless ECO-FIN have got something else to say about it, that actually where this deemed distribution figure comes you have got to try and optimise that figure and say: "Well, where should it come so Senator Le Sueur gets what he needs but where can we take it down to so companies have got the optimum level of reinvestment and inconvenience?" Of course, we do not know the answer to that.

Senator J.L. Perchard:

The Chamber feels that co-operative that they want to --

Mr. C. Spears:

I am aware that there is a school of thought that says: "Let us just not do any look through at all" but we have to look at the ripple consequences of that and say: "Well, you can end up with companies being fattened up and sold off. " I think most people agree that probably is not right. But where are we going to get the extra tax from if Senator Le Sueur is right and he says: "Well, I am just not getting enough from here because I do not have the powers to enforce some distributions. " Looking at where we are already, unless you invent a new tax, it means GST goes up because that is your balancing item in the book. I think there are already too many issues around GST and where the rate is without putting further pressure on that debate and problem. As you know, Chamber's position is as low a rate as possible, spread as wide as possible. But I accept there are other views in this room, for perfectly valid reasons, that maybe the rate should be higher. There are social reasons and so forth why certain things should be exempt; it is not a point I agree with but I do understand the logic of the argument. I think the last thing we want to do, while that debate is going forward, is to put further pressure on the GST valve, should we say, to push that rate up higher because we are not getting enough from elsewhere. Now, I think we did say in our paper that we might try a Guernsey thing. Because I do not think Guernsey are as naive as to leave their current proposals where they are. I think what they have done here is to come up with some short-term proposals that will see them through a period; they are going to watch what other people do, then come in with what they really want to do. I find it hard to believe that there will be no deemed distribution in Guernsey ever; although that is how it seems at the moment. But I can see their strategy that they are trying to measure activity and what goes on and then maybe move to what we are saying; although they are not saying it.

Senator J.L. Perchard:

Would you prefer Jersey to take that more cautious route?

Mr. C. Spears:

You could call it “cautious” but it is cautious in one sense that you are looking for that threshold that you have got optimum efficiency from but it does have a cost. Because while you are not getting the tax and working out where it is, you have got to pay for it somewhere else. Now, the way Guernsey are dealing with that, of course, is paying something from their strategic reserve. Now, I know that that never goes down well when we say that but I think it is something we ought to think about though. Because if we can find out where this rate ought to be and build a fund of knowledge that apparently we do not really have, then in the longer term maybe investing a little bit terms of strategic reserve is worthwhile. Because I am not convinced that this is going to be a great big number because by the time, as I have said, you have dealt with finance industry, GST and other people who distribute dividends anyway, what is the remainder? How much would you really have to fund?

Senator J.L. Perchard:

So, Chamber will not be forced on this issue. I will repeat the question, would you recommend that we follow the Guernsey route as we embark on Zero/Ten?

Mr. C. Spears:

I like the Guernsey route as an interim measure because it will prove to us whether we need the deemed distribution rate or not. But I do accept there is a need to budget properly and if we find we do need to do that then we do.

Senator J.L. Perchard:

But you are not a lone voice in the submissions we have had expressing that. In fact, we have had some very positive submissions; start here at your distribution, watch it and evolve with it. That is the sort of submissions we have been getting.

Senator B.E. Shenton:

Do you think Guernsey have been more prudent than Jersey?

Mr. C. Spears:

Not necessarily. No. First of all, I do not like their social security plans to raise social security contributions; morally, I do not think that is right. Social security is not there to meet a tax gap, it is the public’s pension plan. When you are using the public’s pension plan as a tax stopper that just does not work for me. That is one point I do not like. Second point is that although there may be a hidden plan to have deemed distribution, so far as I can see, they are not saying anything about it. I think it is wrong to come along later and say: “Oops, chaps, it is now deemed distribution” and I think you should be a

little bit more thoughtful in how you approach that because that is going to cause more offence later. The other thing of course is they have quite specifically said: “Yes, we will take some strategic reserve and use this as a funding block, pending seeing how GST goes. “ I am not sure you should take large lumps of money like that and say: “I am going to spend it on this or the other. “ I can see that you could say: “Well, we will see how this runs and maybe we might use some of the reserves” but not to start identifying lumps and spending it. Then, the very last thing is, if you do all the arithmetic in the Guernsey plan I think I calculated they needed something north of 5 per cent annual growth to make it work for them, i.e.: not having to do anything. ^[1]

Senator J.L. Perchard:

They are calculating on a net annual growth of 5 per cent which is 7 or 9 percent.

Mr. C. Spears:

Yes. Now, that is a big number. I suggest that the inflationary pressures you are inviting with that sort of growth looks a bit dangerous to me. I like little bits of the Guernsey thing in terms of measuring what they are doing and working out where you are getting to but I do not like the totality of it. No.

Senator B.E. Shenton:

Do you have confidence in Treasury’s figures when they say how big the size of the black hole is? Do you think they have done some detailed calculations or done it on the back of a fag packet or ...?

Mr. C. Spears:

All I can say is that if they do not actually know this figure, i.e. what figure is required for deemed distribution because the current policy is: “Well, let us just do 100 per cent, chaps, to make sure” if you have got 100 per cent safety first policy, that sends me a message that says: “Well, do we know the figures at all?” I do not really know but you do get that sort of message, do you not?

Deputy G.P. Southern:

I certainly do.

Deputy P.J.D. Ryan:

What do you think the growth element will be of distribution only? Do you think there will be a big (...inaudible) to investment and increased growth locally? Would that be sustainable? You were just talking about Guernsey?

Mr. C. Spears:

In Guernsey, in their infrastructure?

Deputy P.J.D. Ryan:

No, I am talking about Jersey.

Mr. C. Spears:

Jersey, sorry. Could you repeat the question --

Deputy P.J.D. Ryan:

What effect would the distributions only policy rather than deemed -- so, actual distributions only may well lead to extra investment in trading companies.

Mr. C. Spears:

I suppose it certainly will not put people off.

Deputy P.J.D. Ryan:

Do you think it will be significant?

Mr. C. Spears:

I am not sure because if you are talking about large foreign companies coming to Jersey and/or finance industry business there is a tax anyway.

Deputy P.J.D. Ryan:

How much growth will there be as a result of that extra?

Mr. C. Spears:

It is a very difficult number. I suppose you can say that if you are looking at small business end and that is where inherent growth comes from --

Deputy P.J.D. Ryan:

Because that is where a lot of the competition comes from as well.

Mr. C. Spears:

True and that's how you keep prices down --,

Deputy P.J.D. Ryan:

So, that could keep prices down?

Mr. C. Spears:

It could have that effect. Yes. So, maybe we are not --

Deputy P.J.D. Ryan:

It could be beneficial.

Mr. C. Spears:

I am not suggesting it is the lion's share but I do agree with you; the competitive element is significant, I would think in the world of retail this could be healthy.

Deputy P.J.D. Ryan:

Would you agree that it is often the smaller businesses that provide the competitive anti-inflationary pressure on medium and larger businesses?

Mr. C. Spears:

I would say so in the world of commerce. Yes.

Deputy G.P. Southern:

I am glad you made that statement. [Laughter]

Deputy P.J.D. Ryan:

I will ask whether (...several inaudible words) would agree.

Deputy G.P. Southern:

Oh, come on, Patrick. [Laughter]

Mr. C. Spears:

Who is worst off with deemed distribution? It is a small business that has got to find capital to start up or grow. So, as I am thinking off the wall; probably the fair answer to the question is that by volume probably not but by price effect and the perception of an energetic economy where you want small businesses growing, then deemed distribution would have a poor effect there.

Deputy P.J.D. Ryan:

Because there is a - and we have statistics which show a slowing down in entrepreneurial activity locally. Do you think this would have a beneficial effect? In the economic growth plan there are various statements looking for an increase in entrepreneurial activity. Will this have an effect?

Mr. C. Spears:

I certainly think if you bring in the current policies it would have a detrimental effect on entrepreneurial activity, yes, because you have got an entrepreneur coming along and the businessman is there and he said: "I will give you 40 per cent of my business to put this in" and he says: "Well, will you pay me my dividend? Otherwise, I am going to get caught for another 4 per cent." I think the answer is that that is a big disincentive. So, I think you could at least say there would be a negative effect if you had an

imposed deemed distribution, yes.

Deputy P.J.D. Ryan:

With deemed distribution? Okay, thank you.

Senator J.L. Perchard:

What about the opportunity for avoidance, particularly with deemed distribution? Do you see an opportunity?

Mr. C. Spears:

There is. I say this in a measured way. I think trying to find that optimum level for investment that reacts to the economy is right. I am not pretending there will not be people who will try and avoid and/or if you found you did not need the deemed distribution level there probably would be people who would fatten up companies. So, I do think you need fairly robust look-through rules for the comptroller here in terms of whether or not that is a genuine trading company or it has become a capital asset on which a tax should be charged.

Deputy G.P. Southern:

Then you are into a position of making demands on the Comptroller of Income Tax.

Mr. C. Spears:

You are.

Deputy G.P. Southern:

You are increasing your workload, so you are looking at an inefficient way of (...overspeaking) taxes?

Mr. C. Spears:

I accept that it isn't the most efficient way, you're right.

Deputy G.P. Southern:

That is right. I mean, talking to him off the record, he is always talking about -- most of my time is spent chasing roll-up funds and seeing whether they fit my criteria and what I will allow and what I will not allow.

Mr. C. Spears:

I am sure he is quite right.

Deputy G.P. Southern:

If we were to see businesses doing that as well, we would be looking at that.

Mr. C. Spears:

That is a fair point. On the other hand, I think I would probably have to say with all the deemed distribution rules and the complexity of calculation, you could end up with more people anyway.

Deputy G.P. Southern:

Absolutely, yes.

Mr. C. Spears:

So, yes, it is not a solution without cost .

Senator J.L. Perchard:

Are you aware that the Institute of Directors, in their submission to the panel, have called for full look-through for trading companies, which is a departure from the mainstream, I must say, except --

Mr. C. Spears:

No, I had not. I had not heard that, no.

Senator J.L. Perchard:

What are your views on that? You know, full look-through for, you know --

Mr. C. Spears:

Full look-through? Full deemed distribution?

Senator J.L. Perchard:

Yes.

Mr. C. Spears:

I am certainly not keen on that at all.

Senator J.L. Perchard:

No. Well, we are surprised by the submissions.

Mr. C. Spears:

Was that rationalised in any way?

Senator J.L. Perchard:

Was it rationalised in any way? Has anyone got it to hand?

Deputy G.P. Southern:

No. I think it was broadly along the equality of treatment.

Senator J.L. Perchard:

The equality --

Deputy G.P. Southern:

In terms of if the investment companies are being subject to full look-through then --

Mr. C. Spears:

Yes. Well, I would tend to say if that is the way it was rationalised then that ignores the need for looking at entrepreneurial growth and how you generate working capital -- because most small businessmen use their capital growth to grow, do they not? I think, yes, it is totally fair but it is somewhat negative.

Senator J.L. Perchard:

Well, we found it surprising and it was unique in its request really in its suggestion of all the submissions we have received.

Mr. C. Spears:

I would think that is an anti-growth request, personally.

Deputy P.J.D. Ryan:

If we get to actual distribution only, if it is that way and we get alongside of that as is being suggested by Jersey Finance, the comptroller would have all of these extra powers to make sure that it was not abused. Do you have a view from the Chamber of Commerce's -- you know, are you worried about all of these extra draconian-type powers and what have you? Because that is the converse.

Mr. C. Spears:

Yes, I am concerned and certainly, we do get a lot of feedback about the delivery of details of personal assets and business assets to the comptroller. So, I think perhaps that is why we have come down saying: "Well, let us search for that optimum figure to guarantee or underwrite Senator Le Sueur's tax woes" rather than having to get into something that is too big or too irrational. Then as Deputy Southern suggested, you are spending loads and loads of time and loads and loads of people dealing with all this extra work.

Deputy P.J.D. Ryan:

Because we have had opinions from accountancy practices that are probably dealing with predominantly larger businesses and we have had opinions from accountants that are probably dealing with very small

trading companies; one-man businesses, sole traders and possibly partnerships of 2 or 3 people. The differences of opinion are there between the 2. The one that looks after the bigger businesses seems to be suggesting that the actual distribution thing with the powers that the comptroller might have should and have worked that way in Jersey for many years and have been successfully operated. You know, the sort of almost voluntary compliance opinion would work very well and they see no reason why it should not continue, even under a zero-tax situation. You know, whereas those that perhaps look after at the lower end are far more, sort of, sceptical and --

Mr. C. Spears:

Well, they are probably taking all their money out anyway, or many of them are doing that looking right down to the lower level.

Deputy P.J.D. Ryan:

Well, at the lower level, they sort of feel that, you know -- at the very low level, they all are probably taking their money out anyway but when you start getting towards the medium size that you might get quite a lot of avoidance going on of one variety or another. Where would you picture yourself? Are you with the top 4 accountancy practices or are you with the ...

Mr. C. Spears:

I suppose I am more with the smaller businessman who wants to develop his business.

Deputy P.J.D. Ryan:

What we are talking about is avoidance here. You know, do you think there will be some avoidance? Is this why you are talking about 2 years and then you see that probably there will be a point in there --

Mr. C. Spears:

There could be. I think there will be an element of avoidance because that is human nature and I do not think it is going to be any different. It depends what the level of avoidance is versus what we need.

Deputy P.J.D. Ryan:

So, you sort of want to wait and see as to how bad it is before you pitch it at the right level?

Mr. C. Spears:

Yes.

Deputy G.P. Southern:

Is there a case for saying to the Treasury Minister -- "Pitch it where you think it is appropriate and pick your figure and work from there rather than -- "

Mr. C. Spears:

That does depend on having the data though, does it not? I am not sure whether the data is there.

Deputy G.P. Southern:

Again, the chicken and the egg; do we know what the picture is out there?

Mr. C. Spears:

Yes. So, at the moment, because I am not sure whether the data is there, I am suggesting you need this 2-year period to start with.

Deputy G.P. Southern:

When I say “appropriate”, I do not mean appropriate for you getting your required tax take because that is part of the argument, and the whole argument; appropriate as to what you think is right for properly run businesses to reinvest in, in their growth.

Mr. C. Spears:

I take your point, yes.

Deputy G.P. Southern:

Whether that is 70 per cent or 55 per cent Isle of Man, or whatever --

Mr. C. Spears:

If you just look at something such as the Isle of Man and said: “Well, 50/50 seems reasonable”, I mean, that is the sort of wet finger approach, which is one way of looking at it. I think the way we looked at it was: well, we would like the deemed distribution policy to be as low as possible to encourage as much reinvestment as possible but we are just not sure where that figure is.

Deputy G.P. Southern:

At the moment, in doing this deemed distribution with the 3-year plan, you are saying that it does not look like a goer?

Mr. C. Spears:

No. I suppose you can start in 1 of 2 ways, and you suggested earlier there that some people say: “Work your way down to where it should be” or you can take what might be the Guernsey route and say: “Start at zero and work your way up.” I think if you start at zero, you will probably flush out where some of these problems might be early on in terms of avoidance and that sort of thing and you are going to know where your problems are earlier on, then you can move to the figure and then you can think about whatever look-through rules you think you really need relative to the cost of what is going on.

Deputy P.J.D. Ryan:

The other thing to do with this was quite significant and -- well, no, more than that; great play emphasis was placed by the large accountancy practices on Jersey's traditional tax structure being very simple and that being very much the offshore culture and very much a contributory reason for our economic success in the past. Would you agree with that or not?

Mr. C. Spears:

Yes, I do agree with that and I suppose knowing at least the finance industry as well as I do, obviously tax lawyers sit in places such as London or wherever, they would have clients and they would be looking at where to open structures and the rest of it, sort of relocating somebody offshore. They will look at a choice of jurisdictions and simplicity will be one of the things that will be on their mind: "Now, how easy is this jurisdiction to understand and to work with?" (...overspeaking)

Deputy G.P. Southern:

But then if the Crown dependencies are all becoming increasingly complex because they are all following the same Zero 10 route and all the catch-up and patches that they are slapping on their tax system, then it will not make much difference, perhaps.

Deputy P.J.D. Ryan:

What was the question?

Mr. C. Spears:

However, if we sat here and if we just surmise for a moment; we have Zero/Ten and we have a GST and that is relatively simple. If we had no RUDL, well, that is that problem out of the way. If we had deemed distribution at a very low level, let us just say for argument's sake, 10 per cent - I am just plucking a figure out the air, but as a London tax adviser I'd say well the deemed distribution rate is pretty low, they don't have any other baggage and there is a GST rate there of X so easy enough. But if you are looking at 100 per cent deemed distribution rates with the other added complexities, then they will be saying: "Well, I might not recommend you to invest in any local companies or buy any, so let us go and have a look at Guernsey that does not have any deemed distribution because that might be an easier place for you to settle your affairs (...overspeaking)."

Deputy G.P. Southern:

Yes, it is relevant that we look at the whole spectrum of pros and cons of relocating to Jersey or whatever or doing business in Jersey.

Mr. C. Spears:

I think we do have to keep a weather eye on our competitors as this evolves because we have one position here that we are debating today and we have had 2 positions come out subsequently from the

other 2 Islands. I do not think we should be afraid of repositioning ourselves as we go through that process because I have often heard Guernsey politicians say: “Well, we do jolly good business off the mistakes of Jersey.” I have been to dinners, I have heard it and they say it.

Senator J.L. Perchard:

Do Jersey politicians not say that about Guernsey?

Mr. C. Spears:

I have never ever heard them say it, no.

Senator J.L. Perchard:

Really?

Mr. C. Spears:

Really, I have not, no. I have heard that said and Guernsey politicians have joked with me about that and said: “It is really good because Jersey forges ahead, does all the test work for us and we pop in behind and ...”

Senator J.L. Perchard:

Get it right?

Mr. C. Spears:

They have said that to me. So, I thought for a minute: “Well, let us just look at what they are doing as well as we unwind and” – over speaking.

Senator B.E. Shenton:

Sorry. Will it not be very difficult for small businesses to expand, if you have got one hundred percent deemed distribution?

Mr. C. Spears:

Oh, yes.

Senator B.E. Shenton:

I was just thinking personally now, it would absolutely put the breaks on.

Mr. C. Spears:

It would, yes.

Senator B.E. Shenton:

Because you would never have the capital to build up to --

Senator J.L. Perchard:

So, would that put Guernsey, for example, at a competitive advantage? Which, in the last paragraph of page 7, you are talking about (...overspeaking) --

Mr. C. Spears:

Well, it would do because they are not going for any deemed distribution at the moment but there may be a change later , but it remains to be seen --

Senator J.L. Perchard:

Yes. So, they would be attractive to new business?

Mr. C. Spears:

Yes.

Deputy P.J.D. Ryan:

Senator Le Sueur makes great play on the desirability -- because you are saying that Guernsey makes profit out of our mistakes because we have seen it --

Mr. C. Spears:

That is what they say and if I give you a specific example - or 2 examples - down the years and Senator Shenton will be just as aware of this, how our, should we say, slowness to bring in Captive Insurance Legislation, Guernsey is the third-largest jurisdiction in the world now in Captive Insurance and Jersey is normally much bigger than Guernsey in all activities, but if you look at the stats for that, Jersey has about 1 per cent of the world market and I think you will find Guernsey is more like 20 per cent. So, that shows in terms of looking at something, doing something, but Jersey did not want to do that business and Guernsey thought: "Well, we will do it." Then you have seen, although we are beginning to catch up now, the Expert Investor Fund laws and specialist funds and all of that where Guernsey have had that legislation in for some time and have been doing them quite well with building business that way. Now we have moved into line with them now and, if anything, we have moved a little bit ahead and of course, probably, that is where our greater growth is. But on both occasions --

Deputy P.J.D. Ryan:

Are you talking about Protected Cell Companies?

Mr. C. Spears:

Among other things, yes. On both occasions, they have seen that that is something we do not want to do or are not doing because institutions tend to come to Jersey first because we have got a much more

sophisticated infrastructure here than you have in Guernsey or the Isle of Man but when we do not do it, then they go somewhere else.

Deputy P.J.D. Ryan:

Now, Senators Le Sueur and Walker make great play on the opposite of what we are sort of talking about here. They make great play on the fact that by Jersey moving first, positively agreeing to GST and all of the other things that we are doing, we actually get a competitive advantage because we provide the certainty that these other jurisdiction do not.

Mr. C. Spears:

They are right in one sense, as long as you are keeping it simple when you are dealing with what I call the lower-risk issues. So, the lower-risk issues for us are the certainty of Zero/Ten, we know we have to have GST as a balancing item. After that, what else do you need? Because you are beginning to look at, should we say, issues that are relatively speaking smaller but they are much more complex, so they get much more airtime and they get more headlines. Tax advisors see that, hear that, and they forget about the core issues. But there is this, if you will excuse the expression, aggravation around the edges, so they do not like that. By comparison, Guernsey of course are sitting back so, yes, Senator Walker is right in one sense. You want certainty but you do not want to go so far as to make that certainty too difficult either. So, in principle he is right but the practice here is sort of moving away from that principle.

Senator J.L. Perchard:

Just as we are getting to that time, can I just ask you a question? If we, in the design proposal, move to the first in first out principle, drop the 4% charge as being proposed currently in the deferment charge - the 4 per cent interest rate - would Chamber then, given that scenario, be happy with a deemed distribution charge if it --

Mr. C. Spears:

What? 100 per cent?

Senator J.L. Perchard:

With the 3 year -- if the Treasurer felt we just needed --

Mr. C. Spears:

It is certainly better than what is proposed but I think we still would like to try and find that Holy Grail if we can, which is where is the optimum level? Because I still go back to the original point that if you have got 10 per cent for the finance industry, you have got GST, which is a fairly manageable figure, I mean, you know where you are and you fixed your rate, and you have got distributions going on anyway, how much is really left? What is the real worry here? I cannot get an answer to that other than

knowing that the sum total of those must be quite big, so what is left? I think it is wrong to say: “Well, there is a bit left there and we do not really know what it is but just make sure we do not have to worry about it, we will have full deemed distribution.”

Deputy P.J.D. Ryan:

Jump on it with a big size 10.

Mr. C. Spears:

Yes.

Male Speaker:

Complete madness. **[Laughter]** Madness.

Senator J.L. Perchard:

Gentlemen, is there anything else you want to add? Clive, is there anything that you feel that you --

Mr. C. Spears:

Other than thank you very much for the thorough questions today and it was great to have an opportunity to sit in front of you and tell us what we think. I appreciate that.

Senator J.L. Perchard:

Well, likewise. Thank you for your submission and the time you have spent with us today. As I said earlier, your submission is very thorough and will help us a lot and will feature, I am sure, quite prominently if it may, in our ultimate report.

Mr. C. Spears:

Thank you very much.

Senator J.L. Perchard:

With that, I will formally declare the meeting closed.

Mr. C. Spears:

Thank you.

^[1] This seems an incredibly high figure