

STATES OF JERSEY

Corporate Services Zero-Ten Sub-Panel

WEDNESDAY, 15th NOVEMBER 2006

Panel:

Senator J.L. Perchard (Chairman)
Deputy P.J.D. Ryan of St. Helier
Senator B.E. Shenton
Miss S. Power (Scrutiny Officer)
Mr. R. Teather (Panel Adviser)

Witnesses:

Mr. J. Shenton (Ernst & Young)
Mr. J. Riva (KPMG)
Mr. G. Drinkwater (HSBC)

Senator J.L. Perchard (Chairman):

Welcome, gentlemen. Thank you very much for coming again to see us to discuss the Zero-Ten design proposals 2, which was lodged, and I believe you have had copies of, on 10th October. I will just draw your attention to this little sheet in front of you. It is just making reference to the immunity that you enjoy during these proceedings. The proceedings are being recorded, and they will be conducted in a very similar fashion to the last time you were here. That said, just to kick off, have you any initial comments on the mark 2 design proposals that you wish to share, particularly any concerns? John?

Mr. J. Riva:

I think the proposal raises a number of queries which are additional to the queries which I think we raised in the original proposal. Now, we have had -- the fiscal statutory working group has met but not specifically to discuss this. It was more of a fact gathering meeting which we held in the presence of Senator Le Sueur, but unfortunately had to go part way through the meeting, but there was John Harris and Malcolm Campbell, and we did raise a number of issues with them which I am more than happy to share with you on these. I think principally we found the proposals rather lacking in information and detail, and we were unsure as to whether we should read these proposals in conjunction with the original document because there are a number of aspects on which the revised proposals are silent. And we were unsure that where they were silent we should read through to the original document or consider those proposals as being scrapped. We have been told that we are meant to read these revised proposals in conjunction with the original ones, but that in itself does bring out a few anomalies which we still

struggle to understand. On the points which give us the major concerns, I suppose, is we are unsure as to whether the look through provisions and those for the investment companies and the trading companies are specific to Jersey-resident companies or whether they apply to companies both resident in Jersey and outside. We feel that if they apply solely to Jersey-resident companies then this gives an opportunity for taxpayers to arrange their affairs in such a way that would minimise their tax liabilities to such an extent that it could be quite detrimental to the Exchequer. These are points which we have raised with the Minister. We are still unclear as to the policy drivers for not extending the deemed distribution rules for trading companies to Jersey-owned financial service companies. It seems rather an oddity that if I were a shareholder of a Jersey trading company and that Jersey trading company is a zero-rated company, then my effective rate of tax on those profits is 12 per cent, while if I were a shareholder in a company which pays tax at 10 per cent, then my effective rate is 10 per cent. So I find that quite unusual.

Senator J.L. Perchard:

Does everybody understand that because I did not?

Mr. J. Riva:

Well, let us use a real example. My firm, KPMG, is a company, and it is not regulated under the Jersey Financial Services Commission. Therefore, it will fall to be taxed at 0 per cent. The deemed distribution provisions say that if I do not distribute my profits then there will be a deemed distribution of 60 per cent, so my effective rate on those profits are 12 per cent. However, if my company were to enter into some trust -- were to take some trust business, then it would be regulated and, therefore, all of its profits would be subject to 10 per cent. That being the case, then the deemed distribution would not apply and that just seems an oddity.

Senator J.L. Perchard:

Yes, I understand completely. It is just for some reason I was on a different avenue, trying to work something far more suspicious.

Mr. J. Shenton:

No, no. It is obviously only cash flow because obviously at some point in time you will end up with a distribution coming out of it, but there is initially a 2 per cent charge between the 2 types of company. And obviously -- the other thing is that we obviously discriminate, I think which all of us do not agree with, is if you are looking at a trading entity, not only do you have a difference between a regulated and an unregulated company, you also have a difference between a company and a partnership or a company and a sole trader. So, my sole trader is subject to tax, and the income tax rate is 20 per cent on all his income earned, not only on 60 per cent of his income earned. So, therefore, there is a clear differential between someone acting as a sole trader and somebody acting as a corporate. If you move to

partnerships, they are the same, and it is 20 percent. And yes, you could turn around and say, yes, the guy can incorporate, but under Law Society rules, a firm of lawyers cannot incorporate; therefore, they have to trade as a partnership. The same, I would suggest, about certain architects and certain other professions. So you end up with a differential which I do not think was the intention of the Zero-Ten.

Senator J.L. Perchard:

No, it was not.

Mr. J. Riva:

No, it is the policy drivers which we do not particularly understand on nearly a 60 per cent distribution. And also we do not -- we have not been given any figures as to how this will affect (...inaudible) being paid to the Exchequer or whether these changes from effectively 100 per cent, which the original proposal was 60 per cent, whether those changes have been reflected in the budget forecasts for tax.

Senator B.E. Shenton:

So, would a 50 per cent distribution solve part of that problem?

Mr. J. Riva:

It would solve the equity issue.

Mr. J. Shenton:

But only between the different types of corporate.

Mr. J. Riva:

Yes, but not, as John was saying, the sole trader and partnership and the company.

Mr. J. Shenton:

I must admit I was -- the first document which came out, and I think we all said it when we met you last time, was quite a detailed document. It did not have all the detailing we would have liked, but it had quite a sufficient amount of detail in it. I think the second one is quite limited in its presentation and in its content. As we said, there was no real guidance as to what you read it with, and there are certain leaps of faith you have to make with it. A case in point seems to be the 60 per cent because nowhere in front of the scrutiny panel, in reading all your copious notes -- I did not read them all, I must admit.

Mr. J. Riva:

I would like to point out I did and I thoroughly enjoyed it. **[Laughter]**

Senator J.L. Perchard:

Thank you very much.

Mr. J. Shenton:

Besides, John is obviously very sad. The -- I did not read it all, but the summary and everything else, I do not know, 60 percent was not mentioned anywhere.

Senator J.L. Perchard:

No.

Mr. J. Shenton:

It just seems to be someone has cut something.

Deputy P.J.D. Ryan:

Surely the only way to cure that difference between a partnership and a limited company would be to have full look through?

Mr. J. Shenton:

Yes.

Senator B.E. Shenton:

But would it not have been calculated on the basis that companies normally distribute two-thirds? I mean, it is simplistic so two-thirds/one-third split and you end up with 60?

Mr. J. Shenton:

It is simplistic. We have the same problem in relation to minority shareholders and false distribution and everything else. How do you actually get the money to the people whom you are raising the assessment on if you have full look through? You run into a different set of problems.

Deputy P.J.D. Ryan:

If you have full look through, then you come to a place where -- ignoring all of the other things but going back to your point, John, about the difference between a financial services company and a normal trading company with full look through, then you have a difference between 10 and 20 then.

Mr. J. Riva:

Well, I think if you have full look through, a Jersey resident that owns shares in a financial services company, those profits will be imputed to him, and presumably he will be entitled to a tax credit for the tax paid by that company. So the effective way to tax would continue to be 20 per cent, albeit the individual will pay 10 and the company will pay 10.

Deputy P.J.D. Ryan:

Right.

Mr. J. Riva:

I think all this seems to revolve around the issue of minority shareholders and the fact that we have not yet been able to resolve that matter. I think when we were last here I spoke about the Isle of Man's proposal of the company acting as agent or the proposal of a right of recovery, which I understand was a bit like IoD's (Institute of Directors) preference. Now, the Isle of Man -- I believe their proposal was to have been looked at by the EU Code of Conduct Group, but, as yet, I do not believe that anybody has articulated the outcome of that agreement or that meeting.

Senator J.L. Perchard:

That is where we are at as well. We have heard nothing more on it.

Deputy P.J.D. Ryan:

Just going back to what you said before about the tax credit company, financial services, the 10 per cent company, 10 per cent because you get a tax credit on what the company paid; are you reading this latest mark 2 version, then, to mean that the 60 per cent deemed distribution means that any tax credits from the financial services fall away, that that does not happen anymore?

Mr. J. Riva:

No, I read it as the 60 per cent deemed distribution does not apply to the 10 per cent companies and the subsequent sale of shares of a financial service company will not be subject to tax, unlike the sale of shares of a 0 per cent company.

Deputy P.J.D. Ryan:

This is the sort of undistributed profits tax on sale or liquidation of the company?

Mr. J. Riva:

Exactly.

Deputy P.J.D. Ryan:

So, that will not apply to a financial --

Mr. J. Riva:

It certainly does not seem to be. As I say, it is not thoroughly clear, but the 3.6.1, second paragraph, says: "In terms of distribution policy, it is proposed that Jersey resident shareholders of 0 rate companies

have special provisions apply to them.” So that does not apply to the 10 per cent, and then shareholders could avoid paying personal tax on dividends arising in a 0 rate corporate by taking the loans. So, once again, the loans provisions do not apply to 10 per centers, and: “Only when a trading company is liquidated or the shares are sold wholly or partly will the as yet untaxed 40 per cent of the shares generated be subject to tax.” So, once again, that implies that it only applies to a 0 rate company, so the 10 per cent --

Senator B.E. Shenton:

So technically I have got an investment company so I could just leave the money in there?

Mr. J. Shenton:

Well, if you are thinking of selling, what you need to do is you need to tag on -- say you have got a 5-year sale plan with your company. Then technically what you want to do is you want to get it regulated because effectively --

Senator B.E. Shenton:

Well, my company is regulated.

Mr. J. Shenton:

That means that you save tax on one half of your profits for those 5 years, compared to somebody selling widgets.

Senator J.L. Perchard:

I think it is a good idea.

[Aside] [Laughter]

Senator B.E. Shenton:

No, I just wanted to make it clear that they are now treating finance companies differently, and deemed distribution -- is that different? Deemed distribution does not apply to finance?

Mr. J. Shenton:

Under the proposals in number 2, the deemed distribution does not appear to apply. And it is also very unclear about loans because they have written copious amounts, and in speaking to the tax office they were very much: “Oh, people are going to borrow funds out.” That seems to be not covered by the Zero-Ten as well.

[Aside] [Laughter]

Senator J.L. Perchard:

Yes. Okay. Quite difficult, is it not?

Mr. J. Shenton:

We have not -- as I said, we have not studied it in any great depth, the actual law, but the way the proposals are written, which is what we are here to comment on, they do not seem to apply.

Senator B.E. Shenton:

So, looking from a very macro point of view, they are all -- Jersey is an offshore financial centre. Now, I used to work for the Swiss, and the Swiss will use any possibility to run Jersey down to get business. Now, the whole concept of they can look through your companies, do you not think this is going to do damage to the finance industry?

Mr. J. Riva:

I think since it is limited to Jersey resident individuals, I think it is containable.

Senator B.E. Shenton:

It is containable, but is that the word that is going to get around? Or is it just going to be now in Jersey they can look through your company?

Mr. J. Riva:

No. I accept your point. I think it is one of PR (public relations), and these provisions are very much aimed at the domestic market, and I believe that needs to be shouted from the rooftops. You know, in effect, from an offshore Jersey point of view, the Zero-Ten proposals should not impinge on any current arrangements, that an individual investing through Jersey or in Jersey should not be prejudiced by these proposals. I think that does come out in this document, but I agree with your point. I think it is one of PR. I think that is a matter for the States and Jersey Finance together to ensure that message is articulated to all and sundry.

Mr. J. Shenton:

I think if you look at it and you put the right spin on it, the non-resident is clearly better off under the Zero-Ten proposals because effectively what we are moving is we are moving a lot of the burden of taxation, of paying for the schools and everything else, from the non-resident to the resident through GST, 20 means 20, Zero-Ten and all this, that and the other. So, I think your non-resident is probably better off.

Senator J.L. Perchard:

In what way, John? Obviously the financial service companies will not be paying 20 per cent tax.

Mr. J. Shenton:

They will be paying 10 per cent tax.

Senator J.L. Perchard:

Well, is that the only way?

Mr. J. Shenton:

Well, I think they are going to be excluded from GST, effectively, under the proposals. There will be a small GST pickup, but really their tax affairs are going to be at 0. So, they are also probably going to have probably decreased compliance costs. Anyone who is paying 0, if you have got your investment company currently paying at 20, that is down to 0. So, I think there is a good selling point to the non-resident, that the proposals are very good and the proposals are steadfast and that they are ready for the 21st century.

Senator J.L. Perchard:

Yes, which is important.

Mr. J. Shenton:

I do not think it will stop the Swiss and people from the Isle of Man and Guernsey from kicking us.

Mr. R. Teather:

What about the K category resident?

Mr. J. Riva:

Well, I think it goes back to what I have said before as to whether these proposals are aimed at Jersey-resident companies or all companies. If they are aimed merely at Jersey-resident companies, then a typical situation for a K individual is to hold shares in a Guernsey company which is managed and controlled outside of Jersey. Therefore, I do not believe that these proposals would affect them, and so as long as they continued paying a large amount of tax, as I understand they do, then a proportion of their income can be shielded from tax, and so I think that will still encourage a number of individuals to the Island.

Senator B.E. Shenton:

Existing Ks over here, they are not taxed on their worldwide income, are they?

Mr. J. Riva:

I believe everyone is taxed on their worldwide income.

Mr. J. Shenton:

What it is, is your worldwide income, so effectively what you have, going back to John's point about why you would use a Guernsey company managed and controlled in Guernsey, if they control the income distributions coming out of that company, then it is obviously clearly not the individual's income. Therefore, he has no tax liability on it. I think the K market is very important to us, and I think we should ensure we have significant provisions in there to protect that market. If there was any whiff whatsoever that we were going to go to worldwide income, then I think that you would have a number of them leaving. I do not think there is any doubt about that. Guernsey -- I do not know if they have passed it through Guernsey yet, but the Isle of Man has set a maximum of £100,000. But depending where you go in Switzerland, it can be significantly less than that.

Senator B.E. Shenton:

But will not deemed distribution hit the K market?

Mr. J. Riva:

It goes back to whether they invest in a Jersey or a Guernsey company.

Mr. J. Shenton:

And it also goes back to how they write the law because obviously there is special provision within the income tax law at the moment which taxes a K. Therefore, if the law is written in such a way as the deemed distribution applies to everyone except to who article whatever-it-is applies, then obviously the K is removed from the deemed distribution charge.

Senator J.L. Perchard:

So, you have genuine concerns about the 60 per cent deemed distribution. I remember in probably the submission you made to the Treasury and us, you preferred the straight distribution only, did you not, for opportunity?

Mr. J. Riva:

I think we were divided.

Senator J.L. Perchard:

A little bit divided, were you not?

Mr. J. Shenton:

I did not meet with the Financial Services Group last time, and I actually was in favour of the deferred

distribution charge, as long as it was on a FIFO (first in, first out) rather than a LIFO (last in, first out) basis. I thought that would solve the problem.

Senator J.L. Perchard:

The deferred? Well, that has been scrapped. So, where do we stand? If you are not happy with the proposals now, where should the Treasury be going? What are their options? They are becoming fewer.

Mr. J. Riva:

I think there is obviously an issue of how does one approach this matter, and I think there are 2 ways. There is either full distribution or there is distribution only. Now, I personally favour full distribution, and I fully accept I may be in the minority on this. But this seems to go a halfway house that does not satisfy either situation. The 60 per cent is an unusual figure; 50 per cent seems to be a better figure, mainly because it would show some equity between financial services companies and the zero-raters. But we still have this problem, which John said previously, of sole traders, and it is very much a political decision as to whether there should be fairness between corporates and partnerships. My view is there ought to be and, as such, I would favour 100 per cent distribution.

Senator B.E. Shenton:

Although a company would never distribute 100 per cent of its --

Mr. J. Riva:

No, it is a deemed --

Senator B.E. Shenton:

-- because it needs working capital and so on and so forth.

Mr. J. Riva:

I totally accept that, but this does not propose an actual 60 per cent distribution, it proposes a deemed distribution, and we are back where we were previously on minority shareholders and how to compensate them.

Senator J.L. Perchard:

Yes, huge issues there, as you well know, and different types of businesses as well. Maybe in the finance business one could envisage that type or level of distribution, but in more practical businesses where they have to invest profits --

Senator B.E. Shenton:

What do you mean by "more practical businesses?"

Senator J.L. Perchard:

Well, where they need money to purchase hardware, you know.

Mr. J. Shenton:

A tractor.

Senator J.L. Perchard:

Well, a tractor is an example where you have to buy things with your profit. Okay, he might upgrade his computer systems and pay a bit of rent, but that's about it, is it not? The rest is labour.

Mr. J. Riva:

But we seem to have accepted that a company acting as agent is permissible because, at the top of page 5, it does say that, okay, in extremis, where shareholders cannot pay a deemed distribution charge because distributions have not been received from the trading company - in other words who has a beneficial share - the company may not be assessed on the deemed distribution if a notice of assessment has been raised instead on the trading company itself as agent for that particular individual shareholder. So, it seems that the agent point has been accepted.

Senator J.L. Perchard:

Not in the Isle of Man context.

Mr. J. Riva:

No, the Isle of Man context is an automatic one in that the company will automatically be charged as agent. Here it seems that the Controller will need to take -- need to use his discretion as to whether the individual cannot make that payment and then raise that assessment on the company.

Senator J.L. Perchard:

Yes, the responsibility would then go on -- not the primary responsibility, as in the Isle of Man. I think there is a subtle difference there.

Mr. J. Riva:

Well, I feel with the -- even the Isle of Man's legislation is that the primary liability falls upon the individual, but the company pays it as agent, but very much as agent and not principal. It does seem to be very similar, with an extra step.

Mr. J. Shenton:

Where does extremis come into it? You know, for companies with multiple shareholders you do not

want to distribute and do not want the hassle. They would probably be more than happy to accept paying it as agent. But then I think you fall foul of -- I do not expect Code of Conduct to agree with the Isle of Man.

Mr. J. Riva:

We are commenting in a data vacuum here because we do not know what has happened in the Isle of Man, and I just do not know when we will know, when the Isle of Man will tell us, or when the Code of Conduct Group will tell us.

Mr. J. Shenton:

I assume that Treasury has worked out the loss of revenue between 100 per cent deemed distribution charge and the 60 per cent in their proposal?

Senator J.L. Perchard:

I think there have been calculations done on that. Do you remember seeing the latest from Malcolm? This is the last one I have received, the 3rd or 10th of October.

[Aside] [Laughter]

Mr. G. Drinkwater:

I think the point John is making is somebody needs to be confident we know that number.

Mr. J. Shenton:

So, I will add that to my pile of pages of known numbers which I have got sitting here with all the other ones I do not know.

Senator J.L. Perchard:

Yes, when challenged, the Treasury said: "Well, at the end of the day, the decision is going to have to be made." I can supply all these people with numbers, but the numbers will vary depending on the options, we take it. We are getting to the point where a decision will have to be made. Even gentlemen in the same industry are not providing clarity or direction to the Treasury, so it is a tough one, is it not?

Mr. J. Riva:

It is a philosophical issue. It is both fiscal and philosophical as to whether it is appropriate for an individual to pay tax on income he has not yet received, or whether he should merely pay as and when he has those funds available to him.

Senator J.L. Perchard:

But that is why we assume the law will allow the company to act as an agent, in the Jersey scenario, if he has not received the dividend that he is being taxed on. The company then can be instructed to act as an agent to -- is that how I would anticipate --

Mr. J. Riva:

Only in extreme circumstances where the individual has insufficient funds to pay the tax.

Senator J.L. Perchard:

So, that is the way the Treasury may choose to circumvent this problem?

Mr. J. Riva:

Yes, but then the question is how much should that individual be or how much of the profits of the company should be deemed to be received by the shareholder? Then indeed the question is 50, 60 or 100. There are other issues, which John has mentioned, on equity and the equity between all types of taxpayers, whether you are a corporate vehicle, a partnership or a sole trader. At present, there is not that equity.

Senator J.L. Perchard:

Is there anything on this distribution that you want to clear up?

Senator B.E. Shenton:

Sorry, IBCs (international business companies), has anyone covered that one at all?

Mr. J. Riva:

IBCs went last year, new IBCs; current IBCs, their benefits are grandfathered depending upon the --

Senator B.E. Shenton:

Only until 2011.

Mr. J. Riva:

Well, it depends upon their agreements. If there is no generic agreement, it is on a case-by-case basis.

Senator B.E. Shenton:

So, they could overrun(?)?

Mr. J. Riva:

No, I think the -- as I understand that is, and I have not seen anything in writing, but as I understand that is the longest agreement is until 2011.

Mr. J. Shenton:

So, before this came around, an agreement had been reached by a certain entity that their IBC position was guaranteed until 31st December 2011, and it was felt that it would not be equitable if everyone else's IBC stopped at 31st December. So, a number of IBCs applied to extend until the end of 2011, but come 1st January 2012, then the IBC will be no more. And what is --

Senator B.E. Shenton:

Well, what is the solution to that?

Mr. J. Shenton:

The problem has not even been addressed, as far as I am aware. Have you seen anything, John?

Mr. J. Riva:

No, but always bearing in mind that when you have a 10 per cent rate and a 0 per cent rate, that there will be an arbitrage and, therefore, you can -- by the use of groups of companies, you can have an effective rate of between 0 and 10 per cent, which is not dissimilar to an IBC.

Mr. J. Shenton:

If I have got -- if I am making 100 now, and I am only paying 2 in tax, then obviously in order to get back down to my 2 in tax paying 10 per cent, I end up having to have profits of 20 rather than 100. So, I leave profits of 20 in my regulated entity, and I have profits of 80 in an unregulated entity which pays at 0 and, therefore, gives me the same total tax charge.

Senator B.E. Shenton:

So what you would do is open up things like private wealth offices which are unregulated?

Mr. J. Shenton:

It would depend upon the structure of the group you are looking at as to the mechanism and what they were using the IBC for and the context.

Senator J.L. Perchard:

Before we do move on to the opportunities for avoidance, because there is something there I would like to have a chat to you about, perhaps --

Mr. J. Shenton:

On or off the record? [Laughter]

Senator J.L. Perchard:

It is the whole proposal really. Before we go into that, there are a few other areas that are in the design proposal that may open a few doors in that direction. One of them is about the definition of the 10 per cent specified financial services companies. Is it going to be easy to define a financial services company that is eligible to be taxed at the 10 per cent?

Senator B.E. Shenton:

I think originally we said it was regulated by the JFSC (Jersey Financial Services Commission), which I think is what they will take on board.

Mr. J. Shenton:

I think what you will end up with is you will have it regulated by the JFSC under categories A, B, C, D, E and F, and I would expect the JFSC to work in conjunction with the rest of the civil servants to ensure that the companies which they want to pay tax at 10 per cent will fall in subcategories A to F.

Senator J.L. Perchard:

So you are not worried that the definition can be clear and the JFSC can come up with a definition that is watertight?

Senator B.E. Shenton:

I think they can. I think it is investment companies where the problem lies.

Senator J.L. Perchard:

Well, I have that here, trading and investment companies. Can you make a clarity of definition between those 2?

Mr. J. Shenton:

We have had a stab. There was -- let me see. A good 6 to 10 years ago, there was a definition of investment company for controlled foreign company purposes. It was rather a bland definition, but it was one which -- it was quite draconian insofar as a company which was on the verge of trading or investment was treated as an investment company, which is quite unusual. For tax purposes, a company generally seeks to be an investment company rather than a trader, but this one was aimed the other way around. It was only 2 or 3 lines, and I must admit I cannot see why we could not adopt the UK definition for controlled foreign companies, and that definition is now gone because a trading company and an investment company are treated the same for this specific part of the legislation. But there is sufficient case law that is sufficient guidance in the old law for this definition, and I feel that it should be used. I do not have it with me at present, but it is a very simple definition.

Senator J.L. Perchard:

Fancy coming out without it. **[Laughter]**

Mr. J. Shenton:

I think if you try and tie down the definition of investment company, I think things have been said that if more than 5 per cent of its income is derived from investments then it is an investment company, which is clearly nonsensical for a trader. You are obviously then getting into is it gross income? Because obviously if I have B&Q, which, say, makes a loss one year and has a pound's worth of bank interest, does that technically turn B&Q into an investment company? One would suggest not. We need to have a working definition which meets all the different criteria of company because certain companies may require different amounts of cash. You have also got other things as what determines investment income. If you have got somebody with a trade that has a stockpile of Jersey property in there where it is getting rent, then the rental income is clearly investment income, which does not impair(?) on the trade but could drag the trading company into an investment company situation. I think we need certain clarity when the law comes out, but I have not had --

Mr. J. Riva:

And we do not get too prescribed.

Mr. J. Shenton:

Yes. You need a little -- I think with all these things is I think the beauty about the Jersey income tax law as it stood was that it was relatively flexible. What you are getting now is I think we are getting a certain amount of inflexibility, which I think has been highlighted by some of the recent law changes we have had where they have actually gone the other way. They have tried to be too prescriptive and ended up making a complete mess of the legislation rather than actually leaving it to interpretation and Malcolm relying on his anti-avoidance provisions to pick you up when you are pushing the envelope a little bit far.

Senator J.L. Perchard:

But will there be an opportunity for avoidance in this area of the definition?

Mr. J. Shenton:

Well, the idea nobody probably wants -- under your current deemed -- under the rules of distribution and your 60 per cent, then you would want your investment company to be a trader, would you not? It goes without saying but, you know, I think it is probably fairly clear in most cases as to whether it is a trading company or it is an investment company.

Senator J.L. Perchard:

Would the JFSC have a role to play in definition defining here, unlike -- no.

Mr. J. Shenton:

No. You may not -- you know, depending on how your business is, you may not want to put your investments in with your trade because obviously it is slightly more risky.

Senator J.L. Perchard:

Because there will be some companies that do a bit of both, and it is really very hard to --

Mr. J. Shenton:

Well, say you have got a start-up business, a bona fide start-up business, and you have got fairly ambitious growth plans, so you let 5,000 square foot of office space, and you then have to sublet off 3,000 square foot. Now, it is a trading -- you have not bought an asset, but the rent you would get in, even though you would have a corresponding deduction going back out to the head landlord, would technically be investment income. If that, therefore, is greater than 5 per cent, then my new start-up business turns into an investment company, and I am into a different tax regime because of economic forces.

Senator J.L. Perchard:

Yes, interesting when you put it like that.

Mr. J. Shenton:

As soon as you put a -- as soon as you put a big, thick, black line into where you want the definition to be, then you are always going to end up with exceptions either side of the line, and you either accept it or you make the line not quite so thick and quite so black and you allow people to interpret it depending on the circumstances of their individual business.

Senator J.L. Perchard:

Reasonable enough. Not an insurmountable problem, then, you would suggest?

Mr. J. Riva:

I do not think so.

Senator J.L. Perchard:

Avoidance, Ben?

Senator B.E. Shenton:

No, I do not like the word avoidance.

Senator J.L. Perchard:

I know you do not. You keep ticking me off. What do you call it, a tax plan, then?

Senator B.E. Shenton:

A tax plan.

Senator J.L. Perchard:

Opportunities for -- it is obviously quite difficult because, you know, there are some pots and kettles in this room, is there not?

Mr. J. Shenton:

None whatsoever. [Laughing]

Senator J.L. Perchard:

Very difficult. You have seen the detail of the law. Is it going to give you gentlemen a real opportunity to improve your tax planning?

Mr. J. Riva:

I think we need to wait until we see the further work which will be undertaken on the use of trusts and non-Jersey corporates. There is obviously a reference in 3.7.2 on this further work, and I think without seeing the whole picture it is difficult to give any meaningful comment on this.

Senator J.L. Perchard:

Yes, of course it is.

Senator B.E. Shenton:

Do you think Malcolm might get a bit heavy-handed? He is looking for new powers to go in like a bull in a china shop, is he not?

Mr. J. Riva:

Well, that is actually quite -- I think that raises a really interesting question as to who is driving the fiscal policy in this area and, in fact, all areas. Is it Malcolm Campbell? Is it the Minister? Is it John Harris? My understanding is there is no one civil servant who has taken ownership of this aspect and is championing new proposals and new legislation, and I do feel that that is an issue. I know it is one which Gary shares in relation to GST and the Zero-Ten proposals.

Senator J.L. Perchard:

Well, yes, GST, I think, is slightly different in the sense there is a target figure of £45 million. This, I

suppose we have got a hole below the waterline and we are trying to plug it as best we can without doing any damage.

Mr. J. Shenton:

I think, coming back to the legislation and everything else and what they have done recently is the changes they put through the income tax law recently have been aimed, more or less, at specific nuisances which Malcolm has perceived that people are up to. I do not think there is any great evidence that anyone was up to very much at all, but all he has done is produce enormous amounts of not terribly well drafted legislation, if we take the interest provisions as an example. I think all you need to do is look at other western jurisdictions. The tax planning industry in the UK is enormous, an enormous business, and the UK has the second biggest tax legislation in the world. It is only the Indians have more. So, I think there is something to be taken from that whereby if you start putting in large amounts of legislation, then we will be obliged to try and find our way around it, and I think that the simple thing is when the legislation is relatively simple and Malcolm has relatively simple powers, very far reaching if the circumstances are right, then he can use those. I think if you want to get more and more complex, then, yes. Your original question is will there be opportunities for tax planning? I think the more complex you make the law, the more opportunities we will have.

Mr. G. Drinkwater:

One thing you might need to do is just look at other tax jurisdictions, Hong Kong being one of them, where simple is what clients like. We have arrived from the stage over the last 4 or 5 years of simplistic to quite complicated, and you are turning potential clients away. We know that. We have seen that clients just do not feel there is consistency. They feel there is a lot of change, and they go to somewhere where it is not quite so complicated. There is a history of being uncomplicated; Hong Kong is just one of them.

Senator B.E. Shenton:

I must admit that is my worry, that Jersey's reputation will become a place where things are not kept secret. There is no point to going to Jersey. You will end up with one court case where someone will take Malcolm to court for breach of human rights for jumping on too deeply, and I think then basically IBCs -- you know, if you are an IBC company and you talk about sort of reorganising your business, well, the easiest thing would be just to leave the Island.

Mr. G. Drinkwater:

And we have had examples of that.

Mr. J. Shenton:

I think, coming back to John's point about we would like some more clarification about what they are

going to do with foreign companies and trusts, but it is going to send out a very, very difficult message to the finance industry if we say: "Yes, trusts are very good planning tools and you can use them and they are not a look through, but in Jersey we actually completely disregard that there is a trust in place." It makes selling it ever so slightly difficult.

Senator B.E. Shenton:

But I think the trust fees are going up as well, are they not, of the trusts? Registration fees or whatever you call them?

Mr. J. Shenton:

Well, there was -- but did the registration of trusts go away, stay? I do not know where it is. It was in one of the proposal documents that they were going to levy a registration on each trust, but it has not been mentioned again.

Mr. J. Riva:

That is GST.

Mr. J. Shenton:

Was that GST?

Deputy P.J.D. Ryan:

Yes. We are verging on to GST, yes.

Mr. J. Shenton:

Sorry.

Mr. J. Riva:

But I do think -- you know, we seem to be slightly knocking Mr Campbell. It is his job to administer the trust tax law, and if he feels that there are insufficiencies in his powers, it is right for him to ask, but it is not right for government merely to give him those powers without fully considering them. This brings me back once again to who is championing these proposals? It is for them, in conjunction with Malcolm and in conjunction with the Minister, to consider any requests from the Controller of Income Tax. But I do feel it is right for the Controller, if he feels that he has insufficient powers, to ask but someone needs to take a considered approach as to whether they grant him those powers or not.

Senator J.L. Perchard:

Yes, I accept that. I think, in fairness to the Minister, he needs to take counsel from the Treasurer and the Controller because both will be affected if the legislation is too one-sided. Where do you want to go

now, Ben? Patrick?

Senator B.E. Shenton:

Superannuation I would like covered simply because we got mixed messages from people as to whether it was right or wrong to keep the playing field unlevel. I mean, do you think we should keep the playing field unlevel?

Mr. J. Riva:

Very briefly, no.

Mr. G. Drinkwater:

No.

Mr. J. Shenton:

I cannot possibly see any reason whatsoever for keeping the status quo.

Senator B.E. Shenton:

The argument would be that we need the superannuation funds to invest in Jersey, and without the investment there will not be the supply, and without the supply then Jersey will suffer, but does it not put them at an unfair advantage?

Mr. J. Riva:

Clearly it does.

Mr. J. Shenton:

But then it artificially inflates house prices. You have got people investing --

Deputy P.J.D. Ryan:

It is more on the commercial property side, is it not?

Mr. J. Shenton:

Okay, but even on the commercial, on my rents for my -- if (...inaudible) want to move buildings, then I am going to be paying a high rent because of the higher prices of the -- they are going to want a decent yield out of it. You have to remember that most of these commercial properties, if you take the hotel on the waterfront, no one is actually going to be contributing a single penny to the tax under Zero-Ten. So, what you will have down the waterfront is you will have a very large area owned by a pension fund which will not pay any tax, run by an international group of hotels which will not pay any tax.

Senator B.E. Shenton:

Staffed by East Europeans.

Mr. J. Shenton:

Staffed by Eastern European workers who also probably will not be paying very much tax, which will actually then have a knock-on effect to the local job market because if there is no tax being paid, there is an argument that they can offer higher wages. So, what are we actually achieving or what are we getting into the economy?

Senator B.E. Shenton:

Well, it will give the Council of Ministers somewhere to meet.

Senator J.L. Perchard:

Investment, attracting investment.

Mr. J. Shenton:

You are attracting investment, but the investment is not in --

Senator B.E. Shenton:

There is no benefit.

Mr. J. Shenton:

Only if we are getting additional people to the Island, because at the moment these people are spending their money somewhere else so you then have to attract additional people as well as the investment. But I cannot possibly see why the superannuation fund thing has not been amended.

Mr. J. Riva:

Just to try to add some balance to that. **[Laughter]**

Mr. J. Shenton:

Sorry. I am very, very anti, yes. **[Laughter]** All my own superannuation funds will now leave Ernst and Young.

Mr. J. Riva:

As I understand it, it has not been removed. It has merely been parked, and I do feel that that is an appropriate approach because there has been too many, not quite complaints, but comments on this, and it does need further research. I do share partly some of John's views, not all of them, but I do feel that it goes back to this issue of equity. I struggle to see why one certain person would not pay tax while

another will, and I feel that by removing that discrimination it would bring some equity into it. But we do need to look at other repercussions of that, and I think a proper study is the right way for it.

Senator J.L. Perchard:

Yes, I think your assessment is absolutely right. It has been parked because it is not, as you well know, an integral part of the Zero-Ten proposal. It was an addition to, and in order to drive through Zero-Ten, indeed, the detail of, it was thought: "Put that aside", along with the next subject I am going to bring up, because it is not an integral part. But this subject is the abandonment of RUDL and the personal desire, particularly on behalf of the public, to find a way of extracting a revenue from non-locally owned companies that are trading in Jersey. RUDL was a crude attempt at doing that, but it did mean it turned the rest of the world upside down, as you well know, in doing it. We have been promoting an idea that was put forward by --

Deputy P.J.D. Ryan:

Before that, are they happy that it has gone? You agree that it is --

Senator J.L. Perchard:

They wanted it gone. We have been promoting an idea of a deemed rent so that -- are you familiar with what we have come up with?

Mr. J. Riva:

Yes.

Senator J.L. Perchard:

Basically it is a proposal that was put forward by Jurat Blampied that we are now developing. We are encouraging the Treasury to look closely at it. Have you got any views on this as a mechanism?

Mr. J. Riva:

Is it the key as to whether this is a credible tax or not?

Senator J.L. Perchard:

Yes.

Mr. J. Riva:

I am no expert on this and I have not really looked up the 2 major cases which -- CGA Investments and the Wimpey case, but my view was all -- and, as I said, I have not particularly looked at it, but I always thought that to ensure it is a credible tax there must be some symmetry in the measure of the income which would be taxed between one jurisdiction and the UK. That is where I kind of struggle to see how

it does become a credible tax. Then Hoffman came up with some amazing little term about using the same pools, and I thought the deemed income in Jersey would not be necessarily the same pool as the deemed income in the UK. But, as I say, I have not really looked at it in the greatest of --

Deputy P.J.D. Ryan:

We are advised that the UK used to have schedule A and it was stopped because it was replaced by, first of all, the poll tax, which was then dropped and became the council tax. So, that is what it is now, but there was schedule A tax there in the UK, and in fact we cut it from our income tax law roughly at the same time as they did. So there is precedence for deeming rents and --

Mr. J. Riva:

But there is no more of that pool of taxation in the UK at present. As I said, I think a proper study of those, the Wimpey case and the CGA Investment case, should be undertaken.

Deputy P.J.D. Ryan:

Because the UK council tax that effectively replaced that does pay for many things that are sort of --

Senator B.E. Shenton:

That is a charge, though, is it not?

Mr. J. Shenton:

Yes, it is not a tax; it is a charge. It is not a creditable -- it is council tax paid. It is effectively rates.

Senator J.L. Perchard:

They call it a community charge, do they not, or a council tax?

Mr. J. Shenton:

But it is not -- even in the UK, it is not a tax, it is not a creditable tax against your other income. You cannot recover your council tax paid if you have a loss in relation to any of your other trade. It is not a tax; it is a charge.

Mr. J. Riva:

But I do think it is a matter to pursue, but with the sub-concentration being placed on whether this is creditable tax.

Senator J.L. Perchard:

Tell me, could I give you an example and you can perhaps comment on whether it would be creditable. If in the event a premise is owned and operated by non-Jersey people on-Island, if they formed a

company that owned the property, they had their trading company, and they rented the property off their other company, surely then that would be creditable because it would be a rent. They are paying a rent.

Mr. J. Riva:

It is an actual rent, yes.

Senator J.L. Perchard:

Yes, an actual rent; company A would own the property and rent it to company B, which is the trading company. So, it would just be a little bit more work for you guys, but it would work, would it not?

Mr. J. Riva:

Where there is a specific rent then, yes, it ... well, at present we would tax it under schedule A and I think the proposal is to continue to tax it under schedule A. My only concern is where there is no rent and the legislation deems there to be one.

Mr. R. Teather:

But the companies could get around that by creating a situation where there would be a rent.

Mr. J. Shenton:

Yes. They could sell it to their pension scheme.

Mr. J. Shenton:

Tell me, how important, in your opinion, is it that we find a mechanism to get UK companies trading on the Island to contribute to our revenue? Do you consider it important?

Mr. G. Drinkwater:

I think you are in danger of wasting huge amounts of time for not a lot of revenue return, for good intentions in holding this up. It would be far better to progress on with it. Put this as a best endeavour to come back, review. If some mechanism could be worked on - going back to what John said - if we give it a bit more time, maybe something could come out of it. But I think too much focus has been placed on this in the best endeavours to try and do it, in holding up the race. This has got to start moving on.

Senator J.L. Perchard:

This has been parked, Gary, as has -- what was it that we were just discussing here before? Yes, superannuation, pension funds relief; we have parked that. It is not in the Zero-Ten --

Mr. G. Drinkwater:

I know, but what I am saying is in trying to bring it back and have a debate, it is far better to get on, probably to review this, and continue to review it, maybe annually. Is there something in there that is likely to come out of the woodwork? Who knows?

Senator B.E. Shenton:

I must admit I find it quite ironic that we have built up a finance industry over 30 years, based on tax planning for other nations --

Mr. G. Drinkwater:

That cannot work it out.

Senator B.E. Shenton:

-- and then as soon as we start getting hit by it ourselves, we start squealing. It is quite incredible, and I do not think it is a matter we --

Mr. G. Drinkwater:

No, it is not.

Mr. J. Shenton:

I think it is a political issue for you lot because I think it is actually showing inequality between the different -- between Boots and Lacairns(?) or whatever you have got. You know, I would imagine if you actually look at the foreign shareholders of the non-finance industry, the pot is probably slightly bigger than you think it is. But if we have not found a solution in 3 years, we are not going to find one in the next 5 minutes.

Senator J.L. Perchard:

No, okay.

Deputy P.J.D. Ryan:

There is some sort of extras, moving on to something else. The question of changing to a current year basis of assessment and all of those kinds of things that seem to be taking extra prominence everywhere, have you got any comments on that? What effect is it going to have?

Mr. J. Riva:

I think it is an unusual situation, and it is a win-win situation for both taxpayer and the Exchequer. For the taxpayer, who looks mainly at accounting profits, there will be effectively one year's worth of tax released as provision within the accounts. It is an advantage to Exchequer, who looks at cash flow and money in and would be paying tax on -- well, assuming that profits are rising, on a high amount of

taxable income at an earlier date. It is a one-off, never to be repeated again, but very much a win-win situation.

Deputy P.J.D. Ryan:

Are start-up businesses that need to retain as much capital as possible and avoid tax -- not avoid, the advantages you get in a --

Senator J.L. Perchard:

It is going to be zero anyway, Patrick.

Deputy P.J.D. Ryan:

Well ...

Senator J.L. Perchard:

Is it? I could not quite work it out, what the relevance was, other than it was to try and get one more year out of them before we go to zero. I could not quite work it out.

Mr. J. Riva:

It is neither. It is actually something which people have kind of missed, but a number of your 10 per cent companies are structured as IBCs, and once the benefits of an IBC is removed, then, if it was not for these provisions, those companies would continue to be taxed -- would certainly turn from being taxed on an actual basis to a 5-year basis, which would mean that one set of profits would be subject to more than one year of assessment. Therefore, the effective rate of tax on those assessments would be greater than 10 per cent, and that would come as quite a shock to a few IBCs who will turn into 10 per cent companies. So, it is needed for that purpose. Having said that, to go back, it is still an advantage to both the taxpayer and to the Treasurer to introduce these in 2009. I understand there will be a transitional year in 2008.

Deputy P.J.D. Ryan:

Okay.

Senator B.E. Shenton:

Looking at the whole fiscal package, Zero-Ten, GST, what do you think the cost to business will be? I know it is a difficult one to answer, but is it acceptable, bearing in mind that we now have businesses that have got to get to grips with Zero-Ten and get to grips with GST? Will this not be quite onerous on small businesses, bearing in mind their accountant are not cheap?

Mr. J. Shenton:

I am sure it will be acceptable to me and John. **[Laughter]**

Senator B.E. Shenton:

That is why I said bearing in mind accountants are not cheap.

Mr. G. Drinkwater:

But, I mean, look at it from the business point of view. It clearly is a cost and a worry. You read the evening paper; there is bound to be some bleatings. Again, as it comes to fruition, they will get their heads around it because they have to and they will do that.

Senator B.E. Shenton:

They will, but they will pass the costs -- I am straying off the point a little bit, but they will pass the costs on to the consumer to a certain extent.

Mr. G. Drinkwater:

If they can.

Senator B.E. Shenton:

If they can, and coupled with that, we have a policy of increasing government expenditure by a ridiculous amount each year. Are we just all going to implode upon ourselves in 2011 or --

Mr. G. Drinkwater:

Oh, God, no. It is a very difficult one, very difficult.

Mr. J. Shenton:

It depends how much you 3 are spending.

Senator B.E. Shenton:

It is not us doing the spending. Us 3 are trying to cut it down.

Mr. G. Drinkwater:

I have made this comment before, and I made it to John before we came in. There is an acceptance of why we are looking at these, in the way Zero-Ten, GST are separate, and there is a process of reviewing them separately. But increasingly it is when you move bits from each I worry that at some stage there is not somebody putting this all together and finishing it all off as a complete package. So, you know, it was fine when we started, and there are little bits being removed. I hope someone is not turning around to us, when we get it all together and say, "Oh, well, hang on a minute. We are short again." I do not see anybody putting those numbers together. I do not see any complete numbers, and I do not know

whether it should be part of scrutiny. I do not know whether we should just generally be a bit more open about what the combined effect will be when we have it complete.

Senator B.E. Shenton:

Ideally there should be some economic modelling done somewhere as to the effects on the economy and so on and so forth.

Mr. G. Drinkwater:

Bringing it together, yes.

Senator B.E. Shenton:

Also there should be some flexibility on the timetable because what we are doing is we are saying: “It does not matter what the world economy is doing, but we are going to do this in 2011; we are going to do this in ...” I know it has been forced on us to a certain extent, but I am filled with great fear(?) to be honest with you.

Mr. J. Shenton:

I must admit I am a little bit concerned that under these new proposals RUDL is not in there, superannuation is not in there, deemed distribution, deemed distribution charge is not in there. We have taken things out which we were told were necessary in order to fill the black hole, and we have just taken bits out, and I do not see what else has gone in there to replace it, and I do not know if anyone is actually looking at it, as you say, from a sort of head-down position to say: “Well, we need a little bit more in here.”

Senator B.E. Shenton:

Do you not think that we have now got the lovely emergency cash that GST provides, which is readily available and very tempting to politicians?

Senator J.L. Perchard:

Yes, that is getting a little bit political, that one, is it not? But I do think the Treasury Minister, if he were here, would say: “Look, it is you guys that want clarity. It is you guys that are asking for certainty, and I want to give you certainty, and I am not going to delay the principle of Zero-Ten and the legislation for the sake of superannuation funds or RUDL. I want to give you what you want and you want to be able to provide certainty.” I think, in fairness, he is trying to deliver on a promised timescale, and that is why any superfluous possible stumbling blocks have been withdrawn.

Mr. G. Drinkwater:

Maybe if we came back to the draft statement. I could not go to the meeting because I was off the

Island, but somebody was saying there were a lot of questions asked on this particular topic. Now, how much of this was actually real numbers coming together? Is that the overall number, and is that taking account of where we are? I do not know, and probably through scrutiny or probably through our good selves, somebody has got to keep raising this question, that it is not just being lost in interpretation.

Senator J.L. Perchard:

Yes, I am not sure. In fairness, I do not think, when we pressed, they have got the answers either.

Mr. G. Drinkwater:

Well, even if it does -- if you look at it from the point of view of 50 million a year raised and it is 5 million either side; no one is expecting us to be that precise. But if we are 10, 15, 20 million either side, then there is a real problem, and that again just worries me that we are not being a little bit more open and honest with those numbers in Terry's desire to deliver this through.

Senator B.E. Shenton:

I do not have anything else to say without being political. **[Laughter]**

Senator J.L. Perchard:

Oh, sorry. Go on, be political, one last political broadside. No, it is not fair to ask them to comment on political issues. Anything further, gentlemen, you want to add? I think we have probably covered all the areas that the document dragged up. We look forward to seeing the law, the detail, and studying that, and perhaps if you have any comments on that, once you receive a copy, you would -- if you have anything adverse, you would let us know afterwards of your concerns.

Mr. J. Riva:

Certainly.

Senator J.L. Perchard:

Okay. Well, with that, I thank you very much for attending and declare our session closed.