

**STATES OF JERSEY**  
**CORPORATE SERVICES SCRUTINY PANEL**  
**ZERO/TEN DESIGN SUB PANEL**  
**SUB-PANEL ON ZERO TEN DESIGN PROPOSAL**

**Friday, 1st September 2006**

**Panel**

Senator J.L. Perchard (Chairman)  
Senator B.E. Shenton  
Deputy P.J.D. Ryan of St. Helier

**Witnesses**

Mr. S. Radford (Chairman of Institute of Directors)  
Mr. G. Drinkwater  
Mr. J. Laity

**Senator J.L. Perchard:**

Thank you very much for coming to see the corporate services scrutiny panel's sub-panel, looking specifically at the zero/ten design proposal. Just for the purpose of the - we are recording this, which I am bound to read you a little document in a minute but just before we start off, would you introduce yourselves just so that we know who is speaking? There is Jason Laity on my left, Simon Radford and Gary Drinkwater on my right. Thank you, gentlemen. As I say, I have just got to read a standard little document to you if you will allow me; it is important that you fully understand the conditions under which you are appearing at this hearing. You will find a printed copy of the statement I am about to read on the table in front of you. Proceedings of the panel are covered by parliamentary privilege under Article 34 of the States of Jersey Law 2005 and the States of Jersey Powers, Privilege and Immunity Scrutiny Panels PSE and PPC (Jersey) Regulations 2006. Witnesses are protected from being sued or prosecuted for anything said during hearings, unless they say something they know to be untrue. This protection is given to witnesses to ensure that they can speak freely and openly to the panel when giving evidence, without fear of legal action, although the immunity should not obviously be abused by making unsubstantiated statements about third parties who have no right of reply. The panel would like you to bear this in mind when answering questions. As I said earlier, the proceedings are being recorded and transcriptions will be made available on the scrutiny website. Thank you for bearing with me with that. Thank you, as I say, for coming to see us. We have had a written submission from yourselves, and perhaps I could start by asking is there anything, now that the consultation period has been extended, that you would wish to add to that written submission or any areas that you feel that you would like to highlight?

**Mr. S. Radford (Chairman of Institute of Directors):**

We have had the advantage, I suppose, of reading some of the other transcripts and taking note now of the other submissions. I think the key for us really is one where we have to stand back and say, in the wider scheme of things, what are we trying to achieve here? I think for Jersey's future prosperity it is absolutely key that it remains competitive as a jurisdiction, and to have the right tax structure is a fundamental plank for that going forward. I think that is really at the hub of our comments on complexity and what we seem to have here is a very complex structure, particularly for local residents and local businesses. But we are still trying to maintain a clarity and simplicity for international business, such that the finance industry continues to prosper. Our concern is I do not think you can have the 2, in that I think there will be a perception of Jersey as complex, and when you compare it with other jurisdictions you will see that Jersey by perception therefore is not an easy jurisdiction to deal with. I think the danger then is that you could have finance business that would otherwise flow here potentially go elsewhere. That is the kind of fundamental concern that we have behind what we are saying, and there is clearly a number of specifics that we give mention to and clearly you have heard a lot of the same sorts of things: the RUDL (Regulation of Undertakings and Development) charge, the issues of look through and deemed distribution, the deferred distribution charge. Without probably trying to say too much all in this first opening, I think one of the other main areas where we have got concerns, again with the competitiveness issue at its heart, is the anti-avoidance provisions, where they are seeking to try and obtain a full disclosure of capital transactions. This infers that if beneficial capital taxes structure, in that there are not any capital taxes, is under threat? Again, I think that might be quite considerable if we brought those provisions in, in making the very wealthy hesitate in either coming here or putting their businesses here.

**Senator J.L. Perchard:**

Perhaps we could start on the area that you highlighted just now and in your submission to the Treasury about the complexity of the proposals, and there is recognition that Jersey's finance industry has benefited from being uncomplicated in the past; the tax structure being uncomplicated, that is. That is why we are a little bit surprised, and perhaps you could confirm whether I have interpreted your submission properly, that the IOD (Institute of Directors) is calling for a full look through on trading profits rather than - if you have got your submission there?

**Mr. J. Laity:**

Yes, I am fully aware of what it says.

**Senator J.L. Perchard:**

You have actually taken a different stance to most of the submissions that have been received.

**Mr. J. Laity:**

But not all. I mean, Jersey Finance did put it across as one of the options, so I do not think we are alone

in making that point. Let me make our position absolutely clear on this. We fully support the zero rate; we fully support the discriminatory rate at 10 per cent; we fully support 20 per cent on the non-mobile utilities; so we are agreed on that. We are left with the issue of what we do with the local profits and the local trading companies. There are only 3 ways to deal with them, as I said, which is we tax on a distribution policy, so we essentially go the route of Guernsey, and the Minister appears unhappy with that on the basis he cannot budget for his receipts. We look for a middle ground or we go into some form of full attribution. Now, essentially, what we have in the proposal is full attribution, but with a number of bells and whistles. Principally, there is a 3-year deferral and our point is, is it really worth it to achieve that 3-year deferral to go through all the hoops which you would need to jump through to make that deemed distribution system work? Could we not just have a straightforward look through on trading profits? The document sets out quite eloquently why you cannot do that. It sets out a number of reasons, although it does not explain the rationale behind the reasons; it just sets out in very short, bullet point form you cannot do it, you cannot do it, you cannot do it, but then proceeds to do it anyway for investment companies, so there is an inequity issue there. Why do it for one and not for the other? Our position is very straightforward; at the moment most companies are paying tax in Jersey at 20 per cent on their trading profits. What we are seeking to do is to replace the person who pays the tax, so instead of the company, ultimately it is borne by the shareholder, and that is basically it. We see merit in the distribution policy idea but the reason, principally, for putting forward the attribution and trading profits idea in our document was one of simplicity, and also we would want to see it fully explored rather than just being put down in the too difficult category.

**Senator J.L. Perchard:**

You do not think it would be prudent for Jersey to follow the Guernsey line of distribution only for a year or so and watch carefully the reaction to the Isle of Man's proposal now that they have gone to Europe and evolve a system, rather than come in with a complex deemed distribution and attribution and try to - it is going to be a nightmare at the Treasury, is it not?

**Mr. J. Laity:**

That certainly is a possibility and, you know, if that was the preferred way forward that would be certainly something we could support over and above the current position, which seems to us to be an over-complex way of getting to full attribution, and indeed the Treasury describe it as full attribution but just a very sophisticated way of doing it.

**Deputy P.J.D. Ryan of St. Helier:**

I am pretty clear on what you are saying, I think, but for absolute clarity so that there is no woolly edges to it, is my understanding correct that you are saying that one end is okay because it is simple, the other end would be okay because it is simple but nothing in the middle there, because it is complex? Is that what you are saying?

**Mr. J. Laity:**

I think it is important to recognise that the proposal at the moment is actually quite towards one end, which is full attribution. There seems to be a perception that our proposal is at the other end of the spectrum and this is somehow in the middle. We do not believe it is. I mean, our proposal is actually quite similar to this in that we are trying to tax Jersey residents on the profits in the company. We just want it done simply. The proposal here seems to be more complex. The reason given - and I think the advisor actually gave the reason in one of his earlier transcripts here - was so there would be more opportunity for reinvestment in the company as opposed to anything else.

**Mr. S. Radford:**

One point that has come through in many of the other submissions, is the issue of full look through and distribution having an effect on the ability of the entity to then grow. I think if you take the minority interest position out of this debate for the moment, essentially I do not think you have got any constraint on economic growth where you have full look through, because the business makes the distribution, the individuals pay the tax and then they can place the money back into the company by way of shareholder loan or capital contribution, such that the capital base of the company is then no different than if you had taxed the company. You have got a slightly different shape of balance sheet, possibly, but I think the bankers will be able to look at that in pragmatic terms, for lending purposes. I think the issue that clearly makes look through and this whole question of distribution complex is minority interest, and I do not know just how many businesses we have got where there is a minority interest present. I mean, from my experience as an audit partner for many years, minority interests in trading companies; non-public ones are actually quite rare. I do not know whether again this is an example of us just overcomplicating the thing and getting tied up with something that is not that prevalent.

**Senator J.L. Perchard:**

But they do exist, Simon; minority interests do exist.

**Mr. S. Radford:**

They do exist, but what I am saying is, how many?

**Senator J.L. Perchard:**

The objective for abuse is there - it is there, it is a fact - so because there are not so many, as you are suggesting, you are saying it possibly is okay?

**Mr. S. Radford:**

I am saying let us not have something that is overly complicated just for the few minority interest businesses that might exist, or we may be able to overcome it by putting the threshold reasonably high so that say, a minority interest shareholder of below 10 per cent do not get caught up in this.

**Senator J.L. Perchard:**

If the Isle of Man proposals for the company acting as an agent were seen or thought to be acceptable to the new conduct group, of course that problem would disappear, and that would be the ideal route for Jersey, would it not?

**Mr. J. Laity:**

Well, there are 2 options, and that is only one of them. The other option is the statutory right of reimbursement option, which is the option that the UK typically tend to employ. I rarely go anywhere without a copy of the relevant piece of legislation with me, but there are a number of rights of reimbursement in the UK tax legislation, and the one which most of the witnesses appear to be referring to is the one that relates to capital gains tax. But it is very straightforward. It says, broadly, when there is tax chargeable in respect of gains - it would be very easy to change the words to suit our circumstances - the person shall be entitled to recover the amount of the tax from any person who is a trustee - again would need changing - of the settlement. "For the purposes of recovering that amount, the person shall also be entitled to require an inspector to give them a certificate specifying the amount of the gains and the amount of tax paid." And that is how the UK deal with the situation where you have a transparent offshore vehicle and someone in the UK is paying tax in respect of it. But there is at least 2 ways of looking at it.

**Senator J.L. Perchard:**

So who would? That is, again, who is collecting the money on behalf of the shareholders? It is not the company?

**Mr. J. Laity:**

All that happens is the shareholder pays the tax, gets a certificate saying how much tax he has paid and then goes back to the company as a statutory right, so that is neither a distribution then again taxable on the shareholder or any other way. It is I understand quite similar to the Isle of Man proposition; it is merely the company funding somebody else's liability.

**Deputy P.J.D. Ryan:**

Is the only difference there that the shareholder pays it first, sorry, that the minority shareholder pays it first, gets the certificate, takes it to the company, whereas the Isle of Man one is the company pays it first?

**Mr. J. Laity:**

Yes.

**Mr. S. Radford:**

So there may be a cash flow issue for the individual, yes.

**Deputy P.J.D. Ryan:**

There is a cash flow thing?

**Mr. J. Laity:**

Yes, as drawn up in the UK legislation that is the case, but obviously, you know, we could do whatever we wanted to do in that respect, and we need not create that problem if we perceive it to be a problem.

**Deputy P.J.D. Ryan:**

You could almost have a tax certificate proforma, could you not, given to an individual, to get over the cash flow problem?

**Mr. J. Laity:**

There are company law aspects in respect of both issues, and what we would have liked to have seen in the document, because the document's proposals itself correctly identifies the minority interest issues, is some exploration of the possible solutions to that, of which there are at least 2, but the document does not deal with minority interests really at all, other than to say it is a problem for trading companies so we will not do it.

**Senator J.L. Perchard:**

But you do not favour that as an option? You still prefer the executive to look through?

**Mr. J. Laity:**

Well, in the sense of if we went down the deemed distribution road, because we would still need, if we had a full look through, you would still need to think about who funded the tax, potentially, because it is only a deemed look through, so you would still need to cross the same hurdles in respect of the majority interest as to how they fund tax on income which they have never actually received, because it is only a deemed attribution, so the issues are still there.

**Deputy P.J.D. Ryan:**

So all of these concerns that we are getting from several other areas on "Oh, it is going to stop investment in trading companies," et cetera, et cetera, you do not think hold water? Is that where you are? Because we are getting several people saying: "Oh, deemed distributions or look throughs," and all of this is going to inhibit investment.

**Mr. J. Laity:**

Well, it seems to me that they are possibly trying to improve upon the position we have already, which is that those companies, those profits are being charged to tax at 20 per cent.

**Mr. S. Radford:**

I think it comes down to competitiveness again. If they are investing in Guernsey, and Guernsey had zero per cent and distribution only, then you would probably invest there because you have got an immediate 20 per cent better return or a 20 per cent uplift, just by investing there compared to the current position. But I think they are failing to see the fact that all look through is doing is replacing the payer of that broad 20 per cent tax; it is not giving them less of a return.

**Deputy P.J.D. Ryan:**

Right, so it is not worsening the current situation?

**Mr. S. Radford:**

I do not think it is worsening the current position. It is a slightly more complicated and a muddier route to have that tax paid, but it is difficult to assess the impact that might have.

**Deputy P.J.D. Ryan:**

So if we had full look through, as you are suggesting, and Guernsey had what they appear to be doing, going for all out growth, what do you think will happen? Is it sustainable for Guernsey? What do you think?

**Mr. G. Drinkwater:**

That is a very difficult question to answer. I mean, clearly what you have got is business communities will be sitting back looking for both islands to try and be as close as it can. If there is a real gap between the 2, there is a danger. Some businesses looking mischievously, perhaps, with their revenue and with their tax advisors, to reposition themselves and in some ways --

**Deputy P.J.D. Ryan:**

Physically? Do you mean geographically?

**Mr. G. Drinkwater:**

Potentially, yes. Now whether that is a reason for not doing what we have to do is always a difficult question, so whenever you make a major change like this after - 30, 40 years of current policy. There will be some companies who say: "I cannot work with that, because there is a greater opportunity somewhere else." I worry that we place too much focus on one company or one announcement. That might happen, and I think we have to live with that. What we cannot have happen is that really, the 2 islands are so fundamentally different and that is a real area of mischief that is going on. I guess, between the 2 islands' communities at the moment, in seeking - one going for growth and one trying to put a new tax policy in place. It is hugely difficult for them and it has been difficult for us. I think one of the things that I have said on various committees, we need to look at the actual tax numbers raised and the numbers that make each particular part of this stick together. We have seen one overall number,

more or less, but what we have not seen is the individual constituent parts that make that up, and I think that would have been extremely helpful for a number of us.

**Senator J.L. Perchard:**

A lack of real hard data.

**Mr. G. Drinkwater:**

Well, there is data in there and I am sure people in government will say we have provided. What we have not seen is the split of each tax. In business all of us have to make decisions every day of the week and sometimes we want clarity as quickly as possible. We need to see in front of us the summary document that says if you do this, you get that much tax. Now I realise this may be too simplistic, because for the government that is quite difficult to prepare. I still think we have not made as full an attempt at giving that information out to some people like us sitting here trying to give you that sort of feedback.. Now, I do not know how we get to this and whether we can spend any more time producing those numbers. I do not even know whether we can obtain a number and then, say, stress test it to within 10 or 15 per cent and then say: "What does that do?" Maybe some of our decision making would have been easier in giving Government advice back as to how we do it.

**Senator J.L. Perchard:**

Well, the Treasury are struggling with the implications of deemed distribution or attribution because they just do not know - well, they do know if there was an attribution annually, the first year there would be a significant reduction in their income.

**Mr. J. Laity:**

Attribution only or distribution only?

**Senator J.L. Perchard:**

Distribution only, I beg your pardon, yes. There would be a significant drop in their first year of income; it will just hold over paying out the dividend. Tell me, with a distribution only system, would it be likely that local businesses would move the ownership of their businesses off shore so the very thing that we thrive on will come back and bite us? So the ownership would be offshore, held by a trust for a local owner, so the attribution of profits to the offshore. Would that be a likelihood? Is that possible? Do you expect that to be?

**Mr. J. Laity:**

Well, anything is possible, and you might take the view that if such activities were to occur, they are more likely to occur at the moment, where the tax rate is 20 per cent, and it would be quite feasible for someone perhaps that way minded to do so already. I think if you move to a distribution only basis, then perhaps where the paying company is located is not so much an issue because the person who is



receiving the dividend is here.

**Senator J.L. Perchard:**

But his interests will be offshore, that is the point I am saying. That person's interest in that company would be held offshore.

**Mr. J. Laity:**

Yes, but if you are only taxing him on a receipt of dividend basis then, assuming everything is declared, then it should not make any difference in terms of the tax take received for the Jersey resident. The more difficult issue is how you police that and then if you went to a full attribution basis, where essentially the guy is being taxed on something not held on Island.

**Deputy P.J.D. Ryan:**

Let us just compare full attribution against actual distribution only; that is the 2 ends of the scale. If Guernsey had distribution only and we had full attribution, there is a danger in what you are talking about.

**Senator J.L. Perchard:**

Well, there is an opportunity.

**Deputy P.J.D. Ryan:**

There is an opportunity to do that. That is the geographical relocation of a business?

**Senator J.L. Perchard:**

Yes, an individual's share of a business would be held in trust offshore, so the dividend of that business would get paid into that --

**Deputy P.J.D. Ryan:**

That is the geographical movement I am talking about, that would go --

**Mr. J. Laity:**

Somehow those profits or that cash needs to get back into the Island, otherwise what is the point of a local resident having the interest offshore?

**Mr. S. Radford:**

I think Richard and Jason were saying it is not that easy if you are in the UK, if possible at all, to export your business and gain the advantages that you are talking about without in some way having been taxed on them in the UK.

**Deputy P.J.D. Ryan:**

The opposite side to that, or rather the foil to that, would be the Article 124(a) anti-avoidance provisions, and I think that you are equally concerned about that, so the 2 seem to be in conflict. On the one hand there is a danger - full attribution here, distribution only in other places, so there is a distinct danger that we get migration, and the foil to it is anti-avoidance provisions, which again, you are not happy with and neither am I, not to say many other people.

**Mr. J. Laity:**

It is not the anti-avoidance provisions. The anti-avoidance provision is there already, Article 134(a)- if you do anything to avoid Jersey tax then we will strike it out. It is the disclosure provisions which give us cause for concern, which will impact not just those seeking to evade tax but everyone else.

**Deputy P.J.D. Ryan:**

The information exchange.

**Mr. J. Laity:**

Yes. Now a person who is hell bent on evading tax is not going to be put off by a disclosure regime. He is just not going to disclose it, otherwise life would be very simple. So I think you are absolutely right in addressing that, the medicine, if you like, they would like to introduce to cure that particular illness, but I do not believe that it will have the desired effect, because if someone does want to do that to avoid paying Jersey tax, the disclosure regime is not the way that it is going to be picked up; it is going to be picked up by doing all the normal things which the Comptroller of income tax and his team do when risk assessing tax returns and looking at profit margins in businesses. That is the way tax evasion of that nature will be picked up.

**Deputy P.J.D. Ryan:**

And there is sufficient legislation already there?

**Mr. J. Laity:**

Well, what we have is a general anti-avoidance rule at the moment. Now, whether or not that might need refining or extending to sufficiently give them power to capture that type of income is something which warrants looking at. What we would possibly suggest, and this is something which was in our submission, is for a person who does have an interest in an offshore entity of some description, a tick the box approach, so at least we are giving those who wish to disclose it the opportunity to do so, and the Comptroller and his team can make the necessary risk assessment based on that information.

**Mr. S. Radford:**

Just going back to your question on whether Guernsey would be getting an advantage, I think if they were having a large influx of new businesses, those being located offshore, but they are not getting any

tax revenue from it, then they are welcome to that, are they not? Because they are then having all the problems associated with the absorption of staff and the facilities, the infrastructure and such costs, without any of the benefit of getting much of a tax revenue from them, so that does not strike me as being very sensible economic growth.

**Senator J.L. Perchard:**

That, with respect, Simon, would apply to real relocation, but, you know, one could manage a lot more business that is not physically on the Island as a result of their stance.

**Deputy J.P.D. Ryan:**

What you are saying is not physical location of trading?

**Senator J.L. Perchard:**

It is Guernsey holding the deposits and handling all the cash because of the simplicity of them without the necessity for the infrastructure.

**Mr. S. Radford:**

That is a different point, is it not? That is finance business, which is being taxed, and clearly that is important and vitally important to Jersey as well.

**Mr. G. Drinkwater:**

e just interesting - the banking industry has generally accepted this. They are the ones that majorly pay significant amounts of the contribution towards the tax bill, and they have accepted this more or less fairly across the board, so your major taxpayers have accepted this.

**Deputy P.J.D. Ryan:**

Have accepted?

**Mr. G. Drinkwater:**

The change from the International Companies Tax Scheme to the new taxation will have had little difference in overall amount..

**Mr J. Laity:**

I think this also goes back to Gary's point about lacking the numbers, I mean, we are having a discussion about tax, we are ignoring the big question about zero and 10, we are having a discussion about the tax of Jersey profits. Now, it would be useful, I submit, to know what those numbers are, and I would further submit that in those numbers there will be a certain percentage which is just not going to move. I mean, the plumber, the baker, the candlestick maker is going to be here and it not going to be going to Guernsey.

**Deputy P.J.D. Ryan:**

The resilience of the tax, basically. Do you think it is fairly high?

**Mr. J. Laity:**

Well, certain types of businesses are just not going to be able to move, so what you are really talking about is those which are neither finance, neither stuck to the Island and there are not an enormous amount of those, that has to be said. What we do not know -- we can say, looking at them down the High Street and looking in the businesses that we deal with, we think we know the numbers in terms of how many there are, but we do not know what the tax take is in respect of this Island.

**Deputy P.J.D. Ryan:**

So it is a sort of a pragmatic position that you are taking, in that there are dangers with all that full attribution, but the advantages of the then lack of complexity outweigh them. Is that what you are saying?

**Mr. J. Laity:**

I think broadly it is.

**Mr. S. Radford:**

Broadly, yes, the lack of complexity and maintaining our competitiveness with certainly Guernsey and other jurisdictions, might outweigh our original preference of full attribution.

**Senator J.L. Perchard:**

One area that concerns me is the opportunity for avoidance. I think one of our submissions from one of the big 4 said that this looks like there is an opportunity to drive coaches and horses through this lot and Richard Tether(?), our advisor here, probably concurs, I think. Whether it is attribution, distribution, this is going to be a great opportunity and what will happen eventually, would you agree with this? What could well happen, the not so sophisticated business will be caught up in the tax take, the sophisticated business will avoid it because --

**Mr. J. Laity:**

I certainly do agree with that, and I think you need to look at the current relationship between the taxpayer, the advisor and the revenue authorities over here, which on the whole is very strong, because there is a certain degree of trust between all 3 parties as to what goes on and a certain level of voluntary disclosure. Now, the more complex and costly and difficult to administer a tax system gets, the more strained that relationship gets, and I think the advisor would confirm that the relationship with the UK Inland Revenue at the moment is probably as low as it could ever have been, and the danger is the more bells and whistles we add on to this for a perceived unquantified risk, the more dangers we create, the

more loopholes, however you wish to describe them, those who are minded to exploit that will do so.

**Senator J.L. Perchard:**

It has been suggested to the panel, and I would ask your opinion on this, that - well, 2 suggestions on the extreme side; one, that there would be a 10 per cent rate of a tax as proposed, 20 for utilities and zero income tax and start the low GST. What are your views on that?

**Mr. G. Drinkwater:**

Balancing the number, I guess is fairly emotive. You are bringing in another part of the discussion. We had it before we came here this morning. We are here for a discussion on 0/10, but inevitably you get to widening of the scope, because it is all the tax take. I think in government you do end up putting those 2 together, and it is a balancing act. We have looked at other jurisdictions and I think that is an interesting thought process - the simplicity of tax returns in Hong Kong, for example. If you have ever had to do a tax return, on a personal basis, either in Hong Kong or here, Hong Kong is about one page, because there are no exemptions, it is a straightforward tax; it is straight through. Here, we are moving from a less complicated to a more complicated system and I do not know this is right.. You have got this dichotomy of trying to be fairer within Jersey, Simon has mentioned it before, but on an international stage you are getting more complex and you will never address those 2 easily. It is a really difficult --

**Senator J.L. Perchard:**

The integrity issue is really going to be exposed shortly, with 20 means 20, because the middle earners, as you know, will start to pay more tax than they have ever paid, and what has inspired me to ask this question is the opportunity for avoidance for the more sophisticated shareholder under the proposals. There is a concern. Alternatively, another suggestion would be to go for an attribution only and lean - another per cent or so - but use the flexibility of GST. How do you think about that? That is distribution only, I beg your pardon, and use the flexibility of GST to balance the books.

**Mr. S. Radford:**

We have not really considered it. It was only at one stage when the 20 means 20 position was being discussed, that the IOD did make a response that there should have been consideration as to whether in the place of changes in 20 means 20, that a higher rate of GST might have been a preferable route to go, inasmuch as one was trying to widen the overall tax base so that more individuals or all individuals to an appropriate level were caught, and at least everyone is paying something, as long as there was sufficient protection for those who cannot afford hardly anything. We did not debate whether that kind of broad philosophy could be taken over to zero/ten but I suspect there is room for thought on that.

**Senator J.L. Perchard:**

There certainly is, the zero/ten document is quite political. We have not touched on RUDL but that is nothing to do with zero/ten, is it? If it is sort of thrown in there as, you know, scraps.

**Mr. J. Laity:**

I mean, it is to do with zero, but you are right, it is not an essential part of zero/ten. I suspect we would say nothing new to you about RUDL than what you have heard already, but if I was going to make one point, I would take the political issue, which is that the people who are going to be encouraged to transfer to LTPs (Limited Trading Partnerships) to avoid the RUDL, the local traders, are presumably the very electorate that the politicians are worried about, so we are saying to them: "Well, hang on a minute, this going to be very fair. Non-locally owned businesses are going to pay some contribution, I think the number is £5 million, to our local economy. By the way, to get you out of that particular issue, you are going to have to convert to an LTP and this is going to cost you xyz." So, I think the political issue is perhaps a little bit more sophisticated than it has been portrayed.

**Senator J.L. Perchard:**

And can be extremely complex for some businesses, I suspect, who have got loans in the name of a company and suddenly they have got to renegotiate all that. LTPs; any other advantages besides the one you have just mentioned?

**Mr. J. Laity:**

The beauty of LTPs is it gets us back to what we want, which is essentially full attribution, but you take away one of the reasons for doing it, which is the RUDL, and if you perhaps follow the full attribution route, or an acceptable distribution policy route, then the need for it goes away. But as a vehicle in itself, as a transparent basis for taxation, it is very attractive. It is just a question of whether the need is actually there for it.

**Senator J.L. Perchard:**

Do the IOD agree that there is a requirement, if possible, to try and extract some tax revenue from non-locally owned Jersey trading businesses? Do you think it is right up there, a legitimate target, we need to get some?

**Mr. J. Laity:**

I agree that there is requirement to try but, you know, having tried - and greater minds than ours have exhausted many hours trying to think of a solution to this - perhaps the time is right to say the medicine does not warrant the illness, as it were, and it is a problem that we are not going to solve. There have been a number of imaginative solutions put forward in this room and they perhaps warrant exploring, but it is almost a side issue, I think, in terms of the bigger picture.

**Mr. S. Radford:**

It is hard to accept at one level, because it goes fully against equity as far as Jersey is concerned, but I think one needs to understand that it is not against equity in the wider sense as those businesses are still

being taxed; they are just not being taxed in Jersey. To that extent, if one has an equity issue, that does resolve it to a degree, but we certainly should not go down that equitable route if at the expense of it, it causes other much more important flows of business to go elsewhere.

**Senator J.L. Perchard:**

You would support any proposal that could extract some tax take from non-locally owned trading businesses that was not inflationary, it did not actually mean to force them, as RUDL will do, to put their prices up? Would you?

**Mr. J. Laity:**

If there was such a means, yes.

**Mr. S. Radford:**

I think it comes down to the fact that they are clearly absorbing costs including infrastructure costs here and that they ought to be contributing to that. We have read that there is a possible review of the rates system coming up, and there may be other things that over the course of time enable us to make it more equitable, but I do not think we should get drawn unnecessarily on it for the purpose of these zero/ten proposals.

**Mr. J. Laity:**

And we are in the most part talking about trading retail-type businesses who do contribute indirectly in the sense that their employees are receiving a taxable wage and they are paying rent.

**Mr. G. Drinkwater:**

The other way of doing it is also to make the statement that you introduce this without then , recognising that within a 2 or 3 or 4-year period you are going to bring something in to try and address it. You do not have to have the answer but you can threaten it, so at least you are not bound and get people looking to come in. If that warning is out there, even if it is just a threat, it might just stop a few doing anything and you can always redress it if someone comes up with a scheme that will work..

**Mr. S. Radford:**

One of the main advantages of a RUDL, which I like, is it does potentially act as an incentive for those businesses and particularly foreign owned ones, to elect to pay tax - if there was a rate that they could choose to pay, such as 10 or 20 per cent, and I think whilst I would like to see the RUDL removed, it is not beyond the bounds of possibility that there is some other type of incentive that would enable those entities to want to choose to elect to pay a tax locally.

**Senator J.L. Perchard:**

It is finding the right vehicle. RUDL they cannot take - they would not be able to use against their

profits in the UK, so it is finding something that ...

**Mr. S. Radford:**

It is finding something else that if they either pay some other charge that does not upset the rest and they elect to avoid that charge by choosing to pay a tax.

**Mr. J. Laity:**

The other point, just quickly, to follow up on the RUDL, is again we do not actually know what numbers we are talking about. All we know is the 500 is a median; it is going to be nothing for financial services, presumably tourism, agriculture, et cetera will lobby very hard for it to be a very low number. Now that does not leave an awful lot else.

**Deputy P.J.D. Ryan:**

If a UK-owned local trading company elects voluntarily to pay tax in Jersey, that is offsettable against still, against tax in the UK?

**Mr. S. Radford:**

If it was an appropriate tax, yes.

**Mr. J. Laity:**

I suspect if we got into an election issue, then we would have code issues, possibly. If we got into a situation where a company could elect for a particular tax rate, it would itself breach the code of conduct issues. That is one of the very things we are trying to get away from. So it needs to be looked at.

**Senator J.L. Perchard:**

We have got a zero rate at 10 per cent for financial services and 20 for utilities; where would they fit in?

**Mr. S. Radford:**

I do not think we know, but I have heard news of the possibility that even choosing to pay a tax of your own volition, effectively, then you are not caught by the code.

**Deputy P.J.D. Ryan:**

That is my question; voluntarily. Is that a possibility? It is something I have never heard of before.

**Mr. S. Radford:**

It was mooted in Jersey finance's submission.

**Deputy P.J.D. Ryan:**

We have got a zero rate of corporate tax, so at what rate would they voluntarily pay?



**Mr. S. Radford:**

If you voluntarily pay more than that, then that does not breach the code, because you are choosing to pay more.

**Deputy P.J.D. Ryan:**

The only reason you would do that as a local trading company would be for marketing purposes. You would say to the local community: “We are voluntarily paying tax in Jersey instead of the UK at more than zero per cent. Are we not good! Come and buy goods from us.” That would be the only reason that I could think of, so long as that was then offsettable against any tax they were paying in the UK.

**Mr. J. Laity:**

We are entering into areas we have not fully explored here, and I have to say they would need a careful look at to see whether or not - even a voluntary tax – would be Code compliant.

**Deputy P.J.D. Ryan:**

I think that is what you were saying though, was it not?

**Mr. S. Radford:**

I think it needs to be explored.

**Senator B.E. Shenton:**

When we had income tax in here, they said that they would not need any more staff to administer this. I mean, is he just ...?

**Mr. J. Laity:**

That suggests they have quite a lot of spare capacity. [Laughter]

**Senator B.E. Shenton:**

Very good. It seems an unbelievable statement.

**Mr. J. Laity:**

There must be resource issues.

**Mr G. Drinkwater:**

The only thing they might be able to argue, you do more of this electronically, but I still doubt it.

**Senator B.E. Shenton:**

Yes, and also he said he was not too worried about increasing tax planning because people do not do

that over here.

**Mr. J. Laity:**

They do not at the moment, but this goes back to the point the Chairman made.

**Senator B.E. Shenton:**

Personally, I think that with 20 means 20 coming in, there is a lot more incentive to do a little bit of tax planning and there is nothing wrong with tax planning.

**Senator J.L. Perchard:**

Anything else that you want to ...? Anything else, gentlemen, that you still ...?

**Mr. S. Radford:**

There was just one other matter that we wanted to cover, which we have been asked to cover by some of our members, which is in respect of section 115, under payments of rent gross, I think...

**Senator B.E. Shenton:**

Did you attach your name to the submission?

**Mr. S. Radford:**

No, we did not. I think some from the surveying and property market have written separately to Senator Le Sueur and I believe it may be under review, but I think it is essentially one where, in trying to make a deduction of tax on the payment of rent to those UK institutions, often pension funds, that it would be a real cost to them and it would reduce the yields sufficient to prevent them from wanting to enter into land transactions and development transactions in Jersey, and that might have a catastrophic effect on the value of properties here if they follow it through to a position where I think it could result in increased costs for many businesses over here, because as the yields reduce on the property, it might mean that rents have to go up. It is one of those things that I suspect is probably outside of zero/ten, but if it does have detrimental effects to us locally, then it is probably one that ought to be removed.

**Senator B.E. Shenton:**

But why should the property companies not pay tax?

**Mr. S. Radford:**

Again, it comes down to a mixture of saying on an equitable basis, yes, they should, but if by levying that tax, the consequences for us all are worse, then should we be doing it?

**Senator B.E. Shenton:**

Most probably they can just adjust those perceived yield returns on the properties? I mean, I have

spoken to a couple of consultants about this and they have said it is just basically the estate agents and property developers whingeing and there is no actual reason why they should not pay the tax.

**Mr. J. Laity:**

Well, there is not, from a tax point of view, I mean, it is Jersey source income, so let us tax it, but if you look at the reverse situation, these of course are for the most part pension funds who receive an income, if you look at the reverse situation, Jersey invests heavily into the UK without paying tax on UK rent income because of the fairly benign regime which is available, approved almost, over there, for doing so, and the UK property market is buoyed by a mixture of gross rents and net rents. So on a pure tax principle you are absolutely right, it is Jersey source income, let us tax it. But looking at the bigger picture, certainly from the UK point of view, their model is having a mixture of both, which is what we have here at the moment.

**Deputy P.J.D. Ryan:**

Is the issue that it is basically pension funds that would be zero taxpaying in the UK? Is that right?

**Mr. J. Laity:**

That is the particular situation, yes.

**Deputy P.J.D. Ryan:**

That is the problem.

**Mr. J. Laity:**

Yes.

**Deputy P.J.D. Ryan:**

So it would only effect pensioners, or top pensions companies, whether it be local or the UK?

**Mr. J. Laity:**

Yes, some of this goes back to presumably the fact that Jersey pension schemes can no longer reclaim the tax credit on the UK dividend income any more because the UK stopped that for everybody, so there is the reverse of that, which is they cannot have our rents gross.

**Mr. G. Drinkwater:**

I think there are a few property transactions that have been held off, one of the companies inwardly investing in Jersey, particularly down in the waterfront, buying big premises. Whether that is an argument, I do not know. You might say: "Well, they are just whingeing because they are not getting as big a return on their investment as they would have done." The problem is it is the uncertainty and Jersey does benefit by inward investment and do we need it? Yes, I think we do. I think it is important

that some UK pension schemes invest in Jersey because they come over here, they understand Jersey even if it is a small part of a fund, it is a 10 per cent investment. If they did not start investing, then we shall suffer. I went to a presentation with a couple of fairly large valuer businesses in the UK; and they said: "We perceive there is a problem in Jersey at the moment with all these changes going on, in which case we are holding off, we are asking some of our investors to wait." That is not to say they will not re-energise and reinvest in Jersey, but that concern seems to exist. - I am not supporting the entrepreneurs, I am saying that it is mind boggling that someone would perceive Jersey as not the right place to invest in. I think that would be a lost opportunity.

**Deputy P.J.D. Ryan:**

Is there not a false argument here, then? Does this question - ah, well if the pension companies have to pay tax on their regular income, the rents might have to go up. That is the argument, yes? But does it not ignore the fact that that assumes that the rental market will allow it go up? What happens if people just turn around and say: "No, I am not paying that"? The market will - that assumes that there is so much profitability in those companies that are occupying that they can afford to pay the extra rent.

**Mr. J. Laity:**

It assumes they buy the property in the first place, knowing that there is that uncertainty in the rental yield. I think that is the point we are making; it is the actual investment in the first place. People are now saying exactly that, that there is this uncertainty and will they pay the increased rents? Perhaps not, so let us not buy the building.

**Deputy P.J.D. Ryan:**

Okay, but then does that not mean that the price of the building will have to - the building will have to go to a non-pension company? The building value will drop.

**Mr. G. Drinkwater:**

Correct, it will, yes. That is the point.

**Deputy P.J.D. Ryan:**

But is that a bad thing?

**Mr. G. Drinkwater:**

It is not, depends if you are buyer or seller - we have got 2 sides of the fence here. I can see in certain parts, we are concerned about the inward investment in Jersey, and if valuers in London start talking to pension funds and saying: "Look, there is a problem here. The values have gone down. Don't invest," is that a good thing for Jersey?

**Senator B.E. Shenton:**

Yes, but once you have got the certainty and if you say: “Right, there is a 10 per cent tax on rental income,” you can adjust your yield and you can adjust your property values, no problem.

**Mr. S. Radford:**

If the result also is higher rents for Jersey business, then that is shooting ourselves in the foot because we are just causing our costs of the businesses operating here to go up simply to, effectively –obtain an equitable solution in this area of tax.

**Deputy P.J.D. Ryan:**

Would those businesses not have advisors that would say: “Well, has the market rent gone up? No. How can you increase the rent? This rent review is based on market values. Look at these other ones that are not owned by” --

**Mr. S. Radford:**

I think over time there will be a push for those rents to go up.

**Senator B.E. Shenton:**

But you are giving an advantage to non-resident landlords, which is exactly the opposite of what you are trying to achieve, your role, and here you are sitting down and saying: “We want non-residents to have an advantage over residents.”

**Mr. G. Drinkwater:**

We do not want them and I think we will have to stay where we are at the moment, where the investments are being made at the moment, there is no material change.

**Senator B.E. Shenton:**

Because it is only a minority that have been whingeing; the water finance advice board and the estate agents, particularly.

**Senator J.L. Perchard:**

We have had a submission from Mrs Breen at Mourants which is on our website, who claims that Morange is already losing business as a result of the suggestion that funds --

**Mr. J. Laity:**

To some extent I support that, and certainly at a client level, an investor level, they are aware of this issue and it is something they are flagging off and something they are asking us to comment on.

**Senator B.E. Shenton:**

Well, certainly you would not, at the moment, you would not buy a property unless there was certainty,

because you would not know how to value that property. So there needs to be some certainty. If it comes in, with it being taxable, you have got the certainty and there will be an adjustment in property value.

**Deputy P.J.D. Ryan:**

The issue of existing properties that are already bought at a level which are now suffering tax and there will be a pressure to increase that, but that would surely be counterbalanced by a new property on the market at a slightly lower value, where there is always the opportunity for a company at a rent review, I mean, you say over a period of time there will be pressure to increase the rents on those, but will it not be balanced equally over a period of time by a lower property value and people moving?

**Mr. S. Radford:**

Possibly, unless as Gary says, the whole appetite for investment in Jersey is at such a low ebb that the ability to have third party independent funding and investment in property largely disappears. There are a lot of uncertainties in it and I do not think we know many of the answers. I think all we are saying is that think it is an example in these proposals where, for the sake of, an unquantifiable and unknown amount of tax let us make sure we have looked at the consequence of a potential upset in the whole property market and on the inward investment market that might, with hindsight, in 5 years' time, cause us to say why on earth did we do that?

**Senator J.L. Perchard:**

Somebody used the word 'balance' earlier, and I think that is the scenario because the big political hot potato, as you know, that non-local businesses are coming and buying up blocks of accommodation and sites and when young local people are looking to buy their first - it is a tough one. Gentlemen, thank you for that. Is there anything else you want to say?

**Male Speakers:**

I do not think so.

**Senator J.L. Perchard:**

Great, well thank you very much for your time and I will promptly declare the hearing closed. Thanks for that.