

STATES OF JERSEY



DRAFT BUDGET STATEMENT 2018 (P.90/2017): SEVENTH AMENDMENT (P.90/2017 Amd.(7)) – COMMENTS

**Presented to the States on 27th November 2017
by the Council of Ministers**

STATES GREFFE

COMMENTS

The Council of Ministers does not support this amendment, purely on the basis that it strictly pre-determines the outcome of the review by requiring legislation to be brought forward in the 2019 Budget irrespective of the findings of the review.

However, the Council of Ministers does support the completion of a review into the principle that a person cannot trade with themselves; that review to be completed within a reasonable timeframe considering the number of commitments facing the Treasury.

Taxation of mutual traders

It is a longstanding principle of Jersey taxation law¹ that no taxable profits arise, and hence no tax is payable, where a person trades with themselves. This principle is described in *Simon Taxes* (a leading tax reference material) as follows –

“If the persons carrying on a trade do so in such a way that they and the customers are the same persons, no profits or gains are yielded by the trade for tax purposes and therefore no assessment in respect of the trade can be made.”

Trading activities by a mutual organisation with its members has long been regarded as a person trading with themselves for tax purposes, and hence outside the scope of income tax.

The principle is both rational and well-established; however, it is acknowledged that this principle has not been the subject of a specific review in Jersey to determine whether its continued application in the context of the modern economy is appropriate, nor has it been recently reviewed in the UK. Therefore consistent with Senator P.F.C. Ozouf’s amendment ([P.90/2017 Amd.\(7\)](#)), the Treasury will seek to undertake a review of the principle, to determine whether it should be retained and, if it is found that it should be changed/removed, consider the appropriate tax treatment of specific transactions entered into by mutual traders (e.g. member discounts, returns of contributions).

This is a deeply complex issue and there is no guarantee that the finding of the review will be that the principle that a person cannot trade with themselves should be changed/removed. Therefore the Council of Ministers recommends that legislative changes should be made contingent on the findings of the review – as worded, Senator Ozouf’s amendment strictly indicates that legislative change should be introduced irrespective of the findings of the review.

In light of the number of commitments facing the Treasury and the complexity of the issues involved, the review will report such that any recommended legislative changes arising from the review can be included in Budget 2020.

¹ The principle also applies in a number of jurisdictions which have an income tax system based upon the UK tax system – including the UK and Ireland.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

These comments were submitted to the States Greffe later than the noon deadline on Thursday 23rd November, specified in Standing Order 37A, as final internal review processes had not been completed in the time available from the lodging of all the amendments to the 2018 Budget.