

# **CORPORATE SERVICES SCRUTINY PANEL**

## **ZERO/TEN DESIGN SUB PANEL HEARING**

### **Review of Zero/Ten Design Proposals**

**Friday, 4th August 2006**

#### **Panel**

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

#### **Witnesses**

Mr. G. Grime (Jersey Finance)  
Ms. W. Dorman (Jersey Finance)  
Advocate A. Ohlsson (Jersey Finance)  
Ms. J. Stubbs (Jersey Finance)  
Mr. D. Wild (Jersey Finance)

#### **Senator J.L. Perchard:**

Well, good morning everybody. Thank you for attending - the representatives of Jersey Finance. I wonder for the transcript, as this is being recorded, whether you would be so kind as to introduce yourselves, perhaps from my left, just so that the reporter knows exactly who we have got present.

#### **Mr. G. Grime (Chairman, Fiscal Strategy Group, Jersey Finance):**

Can I just say how we are comprised?

#### **Senator J.L. Perchard:**

Yes.

#### **Mr. G. Grime:**

Well, I am Geoffrey Grime. I am the Chairman of the Fiscal Strategy Group of Jersey Finance. David Wild is the Technical Director of Jersey Finance, and he has done a lot of the drafting here - all of the drafting. We have got 3 members of the industry - experts from the industry - Alex Ohlsson, Wendy Dorman, and Jane Stubbs.

**Senator J.L. Perchard:**

Okay, thanks for that. As you know, this is an official scrutiny hearing, so I am about to read you a witness statement, if you could bear with me. It is important that you fully understand the conditions on which you are appearing at this hearing. You will find a printed copy in front of you of the statements which I am about to read. The proceedings of the panel are covered by Parliamentary privilege through Article 34 of the States of Jersey Law 2005 and the States of Jersey Powers, Privileges and Immunities, Scrutiny Panels PAC, PPC, Jersey Regulations 2006, and witnesses are protected from being sued or prosecuted for anything said during hearings, unless they say something that they know to be untrue. This protection is given to 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 obviously not be abused by making unsubstantiated statements about third parties who have no right of reply. The panel would like you to bear this in mind when answering questions. The proceedings, as I have said, are being recorded and transcriptions will be made available on the scrutiny website. Good. Thank you for that. Yes, I beg your pardon. Geoffrey Southern; Deputy Geoffrey Southern, Mr. Richard Teather, who is advising the panel, myself, James Perchard, Deputy Ryan, Brian Curtis, who is advising the panel as well, Senator Shenton and Sam Power, our Scrutiny Officer. Well, thank you for your submission which has come via, just recently, the Treasury and directly to us. It is quite a comprehensive and well-constructed submission, and it really answers a lot of the questions that we will be posing this morning, but hopefully we can expand on a few of the issues that you highlight. Could I start, very simply, at the beginning: what are the essential ingredients for a tax system in Jersey? Well, what do you consider are the essential ingredients?

**Mr. D. Wild (Technical Director, Jersey Finance):**

Yes, well, I think those are outlined at section 3.1 of the response, and really when the group was trying to assess the Zero/Ten proposals it had in mind, I think, the criteria that are outlined there. So, first of all, obviously there is an overriding requirement that the proposal should comply with Jersey's international commitments, and particularly the commitments it has given to the EU Code of Conduct Group. Secondly, that it should protect the Island's economic prosperity, and, of course, fundamental to that, in our view, is the need to preserve Jersey as a competitive jurisdiction for the delivery of international financial services. Then there are also 5 criteria listed, which we think are generally recognised to be good design principles for any taxation system i.e. it should be simple; it should be efficient; it should provide for certainty of treatment; it should be equitable; and it should be sustainable. We have just included some brief commentary on each of those points in the submission.

**Senator J.L. Perchard:**

Very nicely too. The reforms are being presented as having been designed for and with the

finance industry in mind, would you agree with that? The Zero/Ten proposal.

**Mr. D. Wild:**

Yes. A starting point I guess, is to preserve Jersey's competitiveness as an international finance centre and that really is a driving factor behind the Zero/Ten - the move to Zero/Ten.

**Senator J.L. Perchard:**

As an overall package -- we will be into the details shortly, but what are your views on the proposals?

**Mr. D. Wild:**

I think, on behalf of FSG, I would say there is broad support and I think we commend Treasury and Resources for, you know, putting some flesh on the bones in terms of the Zero/Ten Design Proposal and the proposals that have been put forward. Clearly, there are some specific points of detail where the group does have concerns, and, as you say, we will come on to those, I am sure, during the course of the discussion, but generally I think the group feels that, you know, the proposals are welcome and are a good step forward.

**Senator J.L. Perchard:**

Could we perhaps list the specific areas of concern you have, and then we will address those one at a time, as we go through?

**Mr. D. Wild:**

Yes. I think the areas that we highlighted, and, you know, I hope that the response that you have received - the submission - clearly focuses on the areas where the group did have concern, but there is a lot of good work in the Zero/Ten proposals that we have not commented on specifically, but the areas that are highlighted in the response, are the RUDL charge; the proposals for shareholder taxation; and specifically the deemed and deferred distribution charges, and possible alternative approaches for those charges. I think another area we would like to pick up on today is the determination of special rate companies, so the basis on which companies are identified as being 10 per cent companies versus zero per cent companies. I guess the other areas are kind of ancillary to those main areas so, you know, the LTP (Limited Trading Partnership) debate, for example, I guess is, to a certain extent, contingent upon the approach that is taken in respect of deemed and deferred distribution.

**Senator J.L. Perchard:**

Okay, on that perhaps if we kick off on the deemed distribution proposal which you are, as a group, not united on to say the least. Perhaps, Jane, you could comment firstly on your -- [Laughter] sorry, on your wriggly worm award or increased appetite. I think what you were

quoted as saying is that it could be an increased appetite for tax planning.

**Ms. J. Stubbs (Jersey Finance):**

Well, that comment was really borne out of our experience in other jurisdictions, which is broadly that the more focused your anti-avoidance legislation becomes the greater the incentive for businesses and their advisers to try to find ways around those rules, and it seems to us that many, many years ago, Jersey took the view that a general anti-avoidance rule, coupled with a principles-based tax system, and a good cooperative relationship between the Comptroller and industry, was in the Island's best interests. It seems to me that by moving into this rather Byzantine system of deemed and deferred distribution rules, we are moving away from that principle, and I think we should not do so lightly. I would guess that that was the reason behind the observation.

**Senator J.L. Perchard:**

But the quote of increased appetite and tax planning means that you think that with a deemed distribution proposal you could see avenues or opportunities --

**Ms. J. Stubbs:**

Absolutely. I mean, I remember talking recently to a colleague of mine in the UK who was a district inspector in the Inland Revenue during the 1970s and 1980s when the close companies apportionment rules were in place, and he said that in all his time with the Revenue, he and his department never saw a single successful apportionment under the rules, because accountancy firms missed -- they either made sure that their clients paid minimum distributions, or found other ways to get around the rules. I think that is just a fact of commercial life that if you introduce a rule people are suddenly inspired to think around it. To try to put that in context, if we take the 3 year guillotine, which, I think, as envisaged in the rules, does not quite work as it maybe was intended, it is often argued that we should move to a sort of FIFO (First In First Out) basis for that rule so that you genuinely have a 3 year opportunity to roll up. The danger there is that in giving the companies the 3 year roll up, you encourage them to roll up and reconsider their distribution policy. So it is that sort of behavioural issue that I think we are faced with.

**Deputy G.P. Southern:**

Does this come back to the fundamental basic structure where we had 20 per cent tax in the past, we now have got 3 bands of taxation: 0, 10 and 20, and whether as an individual, or as a company, there is automatically built in a motivation to look at ways to tax plan?

**Ms. J. Stubbs:**

Well, I think, certainly, if we move to zero tax we have to consider the impact that that has on

shareholders, and whether or not that sort of stimulates them to abuse the tax system. I guess the point I would make is that they are far more likely to be looking to achieve that through the use of investment structures than they are through their trading companies. If you look at the way that other jurisdictions tend to tackle this problem, they focus on passive investment structures like offshore funds, like companies caught within the CFC (Controlled Foreign Company) rules, like closely held investment companies, they tend to focus on the investment area as being the one that, I guess, is the route for taxpayer avoidance. It all just becomes much more difficult when you move away from investment vehicles and into the arena of trading companies which have much more stringent working capital requirements. It becomes much harder for taxpayers to abuse that, and it becomes much harder for government, I believe, to intervene and try and support some sort of deemed distribution on the company as well.

**Senator J.L. Perchard:**

You mentioned earlier that FIFO would be better than the proposals now than LIFO (Last In First Out), to what extent would the switch to FIFO solve the problems of deemed distribution? Would it solve them at all?

**Ms. J. Stubbs:**

Well, as I said -- and I am not sure I think that it is the right route, so I guess I had better start by prefacing my remarks with that, I am not sure that it is better because I think it, as I say, encourages companies to look at 3 years as a period within which they can roll up. I think if you look at most Jersey trading companies they currently extract dividends in line with shareholder cash requirements. The Comptroller has pretty good ideas of the history of their distribution policy and he would fairly easily be able to spot if a company started to abuse that. I am not sure that introducing FIFO, and giving them a 3 year incentive, makes your tax yield any better as a result, because I think you just encourage them to abuse something, whereas if we just go for distribution only we can rely on the Comptroller and our general anti-avoidance rule to spot the instances where the abuse happens.

**Senator B.E. Shenton:**

Can I just ask -- I mean, yourself, Alex and Wendy, you were all involved in the consultation process --

**Ms. J. Stubbs:**

Yes.

**Senator B.E. Shenton:**

-- how much input did you have on the consultation, and were these concerns raised through the consultation process?

**Ms. J. Stubbs:**

The concerns were certainly raised, but I think the point has been made that not everybody in the group agreed on the issue, so --

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

Are Jersey Finance as one on the general distribution as opposed to deemed distribution?

**Mr. G. Grime:**

Well, I think we have made it clear that different views are held. What we tried to produce was the consensus view, and I know that PricewaterhouseCoopers have submitted their own submission on distribution. I mean, I think, generally speaking, the view of the group is it should be kept simple, and that goes back to this whole question of avoidance, because the more complex it becomes I guess the easier it is to start avoiding. I think the general view of the group is that a deferred distribution and a deemed distribution is something that is not a good thing, and that we should just rely on normal distribution with anti-avoidance provisions in there, for example, directors taking loans and that sort of thing. If that was a way to get around the distribution, then that would be possible.

**Mr. D. Wild:**

I think there is a feeling that the deemed and deferred distribution proposals were put forward as a potential compromise between the 2 broad camps: on the one hand you have got actual distribution only; on the other extreme, if you like, you have got full annual look through and, you know, clearly within that there are a range of opinions. Some favour an actual distribution; some favour full annual look through, and we have not been able to reconcile those 2 positions, if you like, and I think the proposals, as originally outlined, were an attempt to produce a compromise position, and, you know, like any compromise, it does not wholly suit anybody.

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

Are you familiar with the Guernsey opinion on this which is advised by PricewaterhouseCoopers anyway, am I right in that?

**Ms. J. Stubbs:**

We are not ongoing advisers to the States of Guernsey. They asked us to produce a report assimilating the responses to their consultation document, and in that we -- obviously one of the things we had to do was to assimilate the views on deemed distributions. But I believe the Guernsey approach is to exclude trading companies from deemed distribution or look through provisions.

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

Right, do Jersey Finance have a comment on the Isle of Man 55 per cent?

**Mr. D. Wild:**

We do, and there is a comment in the submission that you have received.

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

Yes, there is.

**Mr. D. Wild:**

I think, you know, on balance we see there is some potential attractiveness to that solution. I am not sure...

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

It is simple; simplicity.

**Ms. W. Dorman (Jersey Finance):**

I do not think it is simple. I think the Isle of Man rules come with a very big guidance note, which has already been advised once, because it is a complex scenario. Whether we support it or not, as a way forward, I think the general majority of the group felt that it was too complex and possibly not code compliant.

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

Just that part of it -- sorry, can I just finish this through, Geoff?

**Deputy G.P. Southern:**

Yes, sure.

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

Because the Minister this morning gave us to understand that he saw some attractions in the Isle of Man model. Not so much the company agency thing, which I think is what you are referring to on the non-code compliance, which, I think, you know, a lot of people -- he seemed to think that it had some attractions, and I think your position is that that still in itself does not fulfil the simplicity criteria that you are referring to.

**Ms. J. Stubbs:**

I think, if I may, the way that I would express this is that we have 2 extremes: we have full look through for all companies, whatever their activity, which, my personal view would be, is pretty unpalatable. We have the opposite extreme which is distribution only. Then within the spectrum we have a whole variety of methods which are designed to achieve some sort of minimising of the tax leakage, but do it by possibly coming up with something which appears to be kinder to trading companies. I have included in that the 55 per cent profit scheme that the Isle of Man are introducing, and also the 3 year roll up, because I think they are broadly attempting to do the same thing, which is make working capital interest

easier. Now, it seems to me that whatever alternative one picks, if it is not one of the extremes then taxpayers are faced with a whole raft of tracking measures that they have to take to track the actual distribution policy of the company, and what shareholders receive in terms of their cash with what they have been taxed on. Then they have to basically reflect that appropriately in company accounts, and that is why the Isle of Man system is so complicated. I mean, as I understand it, in the Isle of Man the accounting issues have not even yet been resolved about how one accounts for tax when it is all in company accounts, but sort of belongs to shareholders. So you end up with what you believe is, on the face of it, quite a seductive and attractive compromise making life easier for companies, but then when you peer beyond it you get into this -- well, we have opened up a can of worms. You can get into all this complexity of tracking and what profits relate to capital, and what has been taxed at 20 per cent as property income and so on, and so on. So it is not as attractive as it seems.

**Deputy G.P. Southern:**

Can I --

**Senator J.L. Perchard:**

The proposals -- sorry, Geoff. The proposals for deemed distribution put forward by the Minister are there to discourage avoidance, but you are suggesting it does the reverse.

**Ms. J. Stubbs:**

Well, I think it certainly could do the reverse, and as I think we said in our own firm's submission, we think that is not the only reason that these rules have been put forward; we think there are 2 motives here: one is to reduce avoidance, and, in my personal view, that is a little bit misguided; and the second reason is to try to get back the 20 per cent tax on company profits, in some magical, mysterious way.

**Senator J.L. Perchard:**

Geoff.

**Deputy G.P. Southern:**

Yes. Can I ask a fundamental question? If you go through that spread from complete look through to deemed distribution to actual distribution, there is a loss in tax take to the revenue, is that the case? I mean, we started with complete look through, my naïve, simple assumption would say that because that is the best way to get as much money as we can, and that we have compromised with that. Is there a tax take? Are we losing tax through going to either of the components?

**Ms. J. Stubbs:**

Well, I would say that the long-term tax take is best supported by a growth in the economy, so I guess the first point I would make is that if we bring in a tax system which is actually in any way going to constrain us from growing, then that is counterproductive. So, I guess that is the first fundamental job.



**Deputy G.P. Southern:**

Sure.

**Ms. J. Stubbs:**

Then I think that the second part of your question, if I may, is sort of around: if we have zero for companies, will that encourage owners of trading companies to keep their profits in the company and reinvest them instead of taking them out and getting taxed on them? Well, yes it would. I think what is not clear is the extent to which that would result in a cash flow cost to the Treasury, or a real ongoing annual cost, and I would also just remind the panel that the States have voted for zero tax for trading companies outside the finance sector. So I think one would have to be very sure that it was necessary to do anything which then achieved a different answer in practice.

**Deputy G.P. Southern:**

Yes.

**Ms. W. Dorman:**

Could I just say that, in my view, a compromise between the 2 extremes that Jane has outlined is worth considering, and I would say that although that does inevitably raise issues around complexity, again, I think Jane might be overstating how simple it would be to have distribution only with anti-avoidance rules to counter any roll up of profits in the company, because I do not think you could just use the general anti-avoidance provision that we have now without very clear guidelines as to what is accepted and what is not. So you will therefore be into a potentially complex situation, you know, protracted disputes between the tax office and the taxpayer, or his advisors. So I do not think it is necessarily a lot more complex to have very specific rules about how much you can roll up before there has to be a distribution or a tax (...overspeaking)

**Deputy G.P. Southern:**

So you see it as inefficient in terms of the tax comptroller's time and effort?

**Ms. W. Dorman:**

Potentially, yes.

**Deputy G.P. Southern:**

Potentially.

**Mr. D. Wild:**

But I think that there is an unknown; the starting point really has to be an economic one because at the moment it is difficult, you know, in the absence of any economic data, to say what is the effect of an

actual distribution only policy? What is the effect of deemed or what is the effect of look through and --

**Deputy G.P. Southern:**

We are apparently still waiting on updated figures which may or may not appear in the next fortnight.

**Advocate A. Ohlsson (Jersey Finance):**

One of the difficulties is with the proposed deemed distribution charge; it only applied to Jersey companies, so presumably the comptroller is going to rely upon anti-avoidance provisions anyway. If you look at non-Jersey trading companies owned by Jersey residents, what we do not want to do is to encourage Jersey residents to set up their trading businesses in jurisdictions other than Jersey. We want to do the opposite; we want to encourage business to come to Jersey.

**Senator J.L. Perchard:**

This is a very interesting point. We have had a discussion with the comptroller this morning because he was of the opinion that he would be able to look through into a Cayman company that owns a Jersey business in trust and he would be able to look through to see who the beneficial shareholders were. Is that right? Is that what he told us, Richard?

**Mr. R. Teather:**

Certainly, from an investment point of view, that is what he is planning on doing.

**Advocate A. Ohlsson:**

Yes, I mean, I think we have to distinguish between investor and trading companies, but certainly the proposals at the moment on trading companies do not envisage deemed distribution charges applying to non-Jersey companies.

**Ms. J. Stubbs:**

I think it is clear that we do not all agree. I guess I would just repeat the view that we need to establish what the true tax leakage is going to be and in answer to your question, we do not know what the leakage is, we --

**Deputy G.P. Southern:**

The assumption made by the Treasury Minister and his advisors is that leakage will be relatively small and not particularly factored into the equation.

**Ms. J. Stubbs:**

That seems perfectly plausible to me and I would just remind the panel as well that we currently have no capital gains tax but we seem to have managed, without having shed loads of UK style anti-avoidance rules, to force taxpayers to comply and not convert income into capital. Jersey has a pretty good track

record of being quite successful in terms of controlling abuse and in having a very compliant tax paying culture, in fact a great deal of reliance is often placed on that so if we start to chip away at the compliant culture, we will not just have tax leakage in relation to zero tax for trading companies. My view is we will start to see tax leakage elsewhere because we are starting to change the culture.

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

Could I ask the other members of Jersey Finance - I mean, there is a divergence of opinion - do you believe that it would be practical to start on a distribution only basis? Have the deemed distribution legislation ready as a sword of Damocles. Do you think that is a practical way forward?

**Mr. G. Grime:**

Well, I think what we have said is that an incremental approach is probably the right way to go. I mean, when all is said and done a lot of local trading companies have got people who need dividends and they have a reasonable distribution policy and that would continue and I think what we said was that again, emphasis on the simplicity, let us start with real distributions and if it is being abused and the comptroller does not already have, in his anti-avoidance armoury, methods of dealing with that, then at a later stage introduce more complex legislation. Because one of the things that has been said already, we do not know what the numbers are; £40 million in tax was suggested but we struggle with that because it that means taxable profits of £200 million and perhaps a turnover of £1 billion, have we really got that sort of magnitude in our economy?

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

In the non-trading sector, yes. Sorry, in the trading sector, yes.

**Mr. G. Grime:**

Yes. So, yes, to answer your question, I think simplicity is important and yes, let us start with normal distributions and see how it goes and I think, if it is a cash flow problem, that the States ought to be able to manage that and they should not sacrifice simplicity purely from a cash flow point of view.

**Senator J.L. Perchard:**

How important is simplicity in the proposals, as far as the industry is concerned? I know you say that is one of your 5 key points, but how important is it?

**Mr. G. Grime:**

Well, the Jersey tax system has always been simple in the past; it has been respected for that and, I mean, I personally believe that there is significant pressure in the tax department at the moment from the introduction of ITIS and I have got real examples of some fairly chaotic things happening at the moment. The more and more complexity that is introduced, the more staff that will be needed, the higher costs of collection. So I think simplicity is a basic tenet and one that we would very much --

**Senator J.L. Perchard:**

But also for promoting and marketing the Jersey Finance industry, how important is it, that we have a simple tax system?

**Mr. G. Grime:**

From an external point of view, of course, the majority of clients will not be paying tax anyway; they have had exempt companies in the past and they will have zero companies in the future. That is vital that we are able to give them that comfort. It is more the trading area where we get into these sort of complexities.

**Advocate A. Ohlsson:**

I think simplicity is fundamental and I think being able to say to a client that wishes to set up in Jersey, our corporate tax rate is zero per cent full stop, practically, is what you want to be able to say. Not to say it is zero per cent, but if you have Jersey resident shareholders you have to look at these provisions et cetera, et cetera. In terms of this sword of Damocles approach, I think possibly a practical and simple way of dealing with it is if we are having a system of look through for investment companies and actual distribution for trading companies, then the onus should be on the company to demonstrate to the comptroller's satisfaction, that it is a trading company and if the comptroller has concerns about that, he will not allow it to be treated as a trading company and therefore the look through provisions apply to it. Without any complexity, you could build it into the system in a relatively straightforward manner.

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

Would there be much difference in the professional cost on the average small and medium size trading company, notably, between actual distribution and deemed distribution, are we going to find local trading companies with larger professional advice charges as a result of deemed distribution or is it not significant?

**Ms. J. Stubbs:**

If we move to actual distribution instead of deemed distribution, then I would anticipate that compliance costs would drop for trading companies, because they would no longer be required to perform, I guess, for the theory of a tax return, although we may or may not wish the government to consider some form of disclosure requirement, which enables the comptroller to perhaps scrutinise in the way that Alex was suggesting but it would be difficult to see how taxing on a distribution only basis could increase the costs of compliance. If we move to some of these deemed distribution provisions, then I think we are in danger of significantly increasing the costs.

**Advocate A. Ohlsson:**

The proposal to deal with that; to make the system simpler, is that these trading companies should

convert to limited trading partnerships and we support the concept of the LTP and we will come back to that, but I think the real issue will be the conversion costs. No matter how straightforward we make it, in law and commercially, it is going to be expensive for someone to convert themselves from a limited company to a limited trading partnership.

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

That is the sort of RUDL driven?

**Advocate A. Ohlsson:**

Well, it is also deemed distribution driven, in that it enables a local trading company to disregard those rules to be taxed effectively on an absolute look through basis as if it were a partnership and as if the individual principals, shareholders were carrying on the business themselves, which is similar to structures which are used in the US, particularly. The common trading vehicle in the US is the LLC (Limited Liability Company) which is a tax transparent vehicle where the members are taxed on the profits as if they enjoyed the profits themselves. That is the concept of the LTP.

**Senator J.L. Perchard:**

Yes, I notice in your submission, regardless of what happens with RUDL that you suggest that an amendment to the existing partnership laws would suffice and it would be a useful vehicle. Do you think it would be widely taken up, regardless of RUDL, even if RUDL is binned?

**Advocate A. Ohlsson:**

I suppose it does fall within your scrutiny area. The LLP (Limited Liability Partnership) in the UK has been widely used as not just an entity through which accountancy firms can incorporate, which was the original concept, but it is now the preferred model through which hedge fund managers, private equity managers establish themselves and it is unfortunate that we do not have that available in Jersey where that is the nature of business that we are seeking to attract at the moment and we are frequently requested whether we can establish Jersey based LLPs.

**Senator J.L. Perchard:**

Why are they attractive to those types of relatively new businesses?

**Advocate A. Ohlsson:**

Because they are bodies corporate and therefore they limit the liability exposure to the members of the body or the shareholders but equally they are taxed on a transparent basis so that members are taxed on the profits that the partnership makes.

**Senator J.L. Perchard:**

So you would hope that, albeit it is outside the 0/10 Design Proposal really if RUDL is scrapped, that we

would proceed with updating, through an LTP, our existing legislation?

**Advocate A. Ohlsson:**

I think the LLP amendment is finally in the legislative programme for about 2 years time.

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

I am still not quite clear on why a current limited company trading in Jersey would find it advantageous to move to a limited trading partnership. Okay, I concede that it would be taxed in a different way but where is the advantage? Saving on compliance cost and legal fees? Is that what you think?

**Advocate A. Ohlsson:**

I think that is what the idea was; the simplicity of treatment so you're taxed as a sole trader or as a partnership.

**Ms. J. Stubbs:**

You do not like all this complexity when you can get round it by just being taxed on a look through basis.

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

But surely you are going to be taxed more and faster from a cash flow point of view?

**Ms. J. Stubbs:**

Yes.

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

So it would limit the amount of money you would have to invest in your own company.

**Ms. J. Stubbs:**

I think the idea is that it would reduce the administrative burden of coping with the deemed distribution rules, which takes us straight back to this point as to whether you can adopt something in the middle, in which case we are adopting the thing in the middle with the deemed distribution and then providing a vehicle for people to go to the extreme, it is all a bit ...

**Senator J.L. Perchard:**

Well, that is right; the tax has already been paid and you are deemed a bit later, or taxed on a dividend, it is going to be complex for the Treasurer, is it not?

**Mr. D. Wild:**

I think if I have understood correctly for a zero per cent company in Jersey the RUDL charge would be

an absolute charge to that business (...overspeaking), yes.

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

But, coming back to --

**Deputy G.P. Southern:**

Then we are informed this morning it is 90 per cent certain it will be binned this time.

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

Just to make sure it is absolutely clear in my mind, so a hedge fund manager would want to be an LTP because it is more open and from their own marketing point of view, is that the only reason?

**Ms. W. Dorman:**

There are business tax advantages in the UK, because it looks through the income that flows through it, it does not change its nature and therefore they can receive capital gains rather than taxable income.

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

Right, okay, now I understand, thank you.

**Mr. W. Dorman:**

Just going back to your question on compliance costs, I think I agree with Jane that if you have tax on dividends distribution only then that would reduce compliance costs for the local companies. If you have one of these, something like the Isle of Man have, I think the Isle of Man experience so far is that compliance costs are probably less than they were under the full taxation system but obviously more than if you went straight to distribution only, so I do not think the compliance costs are necessarily unmanageable. I do not think they would increase from where they are now.

**Ms. J. Stubbs:**

I think the point about the Isle of Man is that they have not yet worked out what the accounting treatment is of the system that they are proposing and it is a very new system, so currently, certainly when I talk to my colleagues in the Isle of Man, they say they hope it is going to be simple because they hope that their clients will simply distribute enough to avoid the deemed charge and that takes you straight back to government causing companies to make distributions and all you have done is picked a (...overspeaking)

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

Touché [Laughter].

**Ms. J. Stubbs:**

You can see that this is just an area fraught with difficulty.

**Senator J.L. Perchard:**

How interdependent are the Isle of Man proposals to have the company acting as an agent with the proposal to pay a minimum of 55 per cent through deemed distribution? Are they interdependent or can they survive without each other?

**Ms. W. Dorman:**

I think they are pretty interdependent, that would be my view. It is very difficult to enforce a distribution policy and not have some mechanism by which a company can claim on behalf of the shareholders, where the shareholders do not have any power to define distribution costs.

**Senator J.L. Perchard:**

So the advice is clearly, at this stage - and I am probably teaching you to suck eggs by saying this - is that it is unlikely that the Isle of Man proposals will be compliant with the EU code. Is that what you confirm?

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

Does that ability for a minority shareholder to force the company here or through law or through legislation to be able to get his money out, does that apply to deemed distribution as well as the Isle of Man 55 per cent rule?

**Ms. J. Stubbs:**

It does.

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

It does?

**Ms. J. Stubbs:**

Sorry, do you mean in the Jersey proposal?

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

Yes, in the Jersey proposal.

**Ms. J. Stubbs:**

Are we saying that shareholders will have a right of reimbursement against the company?

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

Yes, well the minority shareholder problem that you just talked about.



**Ms. J. Stubbs:**

Yes, I think there are a couple of ways round it that have been put forward. One is a sort of Isle of Man basis, where the company somehow magically bears the tax, even though it is the liability of the shareholder and I think the difficulty there is that you have got a tax which is computed on company profits paid by the company and we can dress that up as a shareholder liability but I think the concern is at what point does that push the line and become corporate tax? The second way round it is to give the shareholder a right of reimbursement against the company for his tax liability. That – I'm no lawyer and Alex might have a view, may be possible to create a charge which the company accounts for as an expense although I have very, very strong doubts about that because it seems to me that it is a shareholder liability being let by the company, so that feels to me like a distribution putting it forward. You still would not deal with the issue of minority shareholders and resident shareholders and all the other stuff, so you are back into, you know, you have constricted the problem because you have, in the Isle of Man, gone down to this 55 per cent, but you are still left with the other problems that exist with any sort of --

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

One of the ways round it that has been suggested that you would obviously have to write into the memorandum and articles of association of a limited company, to protect a minority shareholder. It could be done that way, probably presumably not much cop for those that are already there, but ...

**Advocate A. Ohlsson:**

Well, (a) that and (b) again, we are only talking about Jersey companies and we are in a jurisdiction where residents carry on business all over the world. So, if it only applies to Jersey companies, I query what the effect will be of that.

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

People will not have Jersey companies.

**Advocate A. Ohlsson:**

Possibly and we certainly cannot write that into the law for an English company or a French company.

**Senator J.L. Perchard:**

Can we go back to the discussion over distribution only? You mentioned, Jane, about the proposals for deemed distribution. As I said earlier, giving an opportunity for an appetite for tax planning, with the distribution only can you see opportunities for avoidance with the distribution only as you are suggesting we should go down? Does your wriggly worm get excited over that?

**Ms. J. Stubbs:**

Well, the system, it is not a can of worms because it does what it says it does so I do not think you have the same issue of Jersey saying that it has got zero tax and then here is the 28 pages of detail that shows you that it is not really zero tax. I think that problem gets in the way. I think it almost comes back to Deputy Southern's point of what is the tax leakage that we are going to get if we just have zero and at the moment we simply do not know what that is. Geoffrey has mentioned a figure of £40 million, that was quoted at one point but we have subsequently found out that the £40 million would include non-locally owned trading companies, like some of the larger retailers in the Island, and it would also include the local financial services companies which would in fact be paying tax at 10 per cent. So the £40 million does seem to be overstated but we do not know what the extent of the problem is and I suppose the point I would make is that without knowing what the size of the problem is it is quite difficult to come up with an answer that is proportionate to that.

**Senator J.L. Perchard:**

Yes, that is fine having said what you just said - and I cannot but agree - however you are suggesting that if the scale of the [problem] is bigger than originally thought, that we would adopt a deemed distribution proposal even though you are not happy with it?

**Ms. J. Stubbs:**

No, I think I am coming back to Alex's point which is that you ensure that you have got the ability to tax a company on a look through basis, if it trips over your trading definition and becomes an investment company, because it is sitting on a huge pot of undistributed reserves, which it is investing in stocks.

**Advocate A. Ohlsson:**

The economic model is that you do not tax companies on their trading profits, but you tax employees, shareholders and also ultimate consumers as effectively the profits trickle down to those parties. Anything else seems to move away from that economic model. Now, to the extent that economic model is used to avoid an individual shareholder's personal tax obligations, that seems to me to be a different issue and entirely appropriate to be dealt with in anti-avoidance provisions. But I would be reluctant to see us move away from the basic economic model of not taxing corporates.

**Senator B.E. Shenton:**

You talk about the tax leakage, is this relative to a 100 per cent tax take? I mean, what is the tax leakage under the current system?

**Ms. J. Stubbs:**

Well, we do not know, but I guess we do have anecdotal evidence of our culture. We also know that currently the general anti-avoidance rule works as a sort of informal clearance procedure and we could tighten that up if we wished to but essentially at the moment larger transactions are cleared with the comptroller anyway in the normal course of events, so --

**Senator B.E. Shenton:**

The implication tends to be, sometimes, that leakage is something that is going to come in now, whereas we have got massive leakage at the moment. Going back to --

**Ms. J. Stubbs:**

I would not necessarily agree we have got massive leakage.

**Senator B.E. Shenton:**

Well, some leakage.

**Ms. J. Stubbs:**

Well, who knows?

**Senator B.E. Shenton:**

Who knows? Going back to that, I get the impression a lot of Treasury's figures were done on the back of a fag packet; I have not seen any detail. When they come up with the amounts that we need to raise and the amounts we will lose into the black hole, there is no detail there. You were part of the consultation process so I assume you saw more detail than we have certainly seen?

**Advocate A. Ohlsson:**

No, the comptroller of income tax's figures are subject to confidentiality obligations and none of us swore to any oaths of confidentiality so have not seen any of the numbers or any of the underlying data.

**Senator B.E. Shenton:**

Under your overriding design principles, my concept of taxes is that it is to raise money and to raise a certain amount of money, but you have not covered that in your paper?

**Mr. G. Grime:**

I do not understand the point, I mean, of course --

**Senator B.E. Shenton:**

Surely the whole point of 0/10 is to raise a certain amount of cash?

**Mr. G. Grime:**

I thought we were talking about taxation generally.

**Senator B.E. Shenton:**

No.

**Mr. G. Grime:**

I mean, as we move to Zero/Ten, we have got to move to zero to replicate the exempt company or else our finance industry would be in great difficulty. We are allowed, as I understand it, to tax a sector of our economy at 10 per cent, which of course is what we are proposing to do, which means there is the black hole and other means of taxation are going to fill that black hole. It is very difficult to establish the actual quantum of the black hole, but surely Zero/Ten creates that hole, and therefore other types of taxation, have to fill it.

**Senator B.E. Shenton:**

Yes, but you do not give any indication of whether you think the proposal will fill the black hole, or is that not your role?

**Ms. J. Stubbs:**

I do not think that is our role, no. We do not have the information to make that sort of assessment.

**Mr. G. Grime:**

I mean, we were asked to comment on the concept of Zero/Ten, which is what we are doing. It is a totally different exercise to recognise the hole and then decide how it should be filled in.

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

That is the rest of the fiscal strategy.

**Mr. G. Grime:**

Yes, I mean, GST which is the next thing we will be coming to, is one of the methods of filling that hole.

**Senator B.E. Shenton:**

Would you have liked to see more information from the Treasury?

**Mr. G. Grime:**

Certainly, it would have been helpful, as we have said already, to have a better handle on the numbers. I mean, the £40 million I mentioned already and the black hole, but I do not-- I mean, it is very difficult to estimate what the size of that black hole is and I do not know whether, I assume some work has been done on that. When it is done, we would certainly like to see it.

**Deputy G.P. Southern:**

Can I come in there at that pause? Under 12.1 you have got: "Company subject to the zero per cent rate for special cases" and you asked the question: "Will there be a voluntary election feature of these

arrangements for fund managers. Certain fund managers may wish to retain the same tax treatment as they currently enjoy.” Can you just, for the sake of my understanding, explain what that is about?

**Ms. W. Dorman:**

The fund managers, if they have no real footprint in the Island, so they are administered by a local company and have no real physical presence, will at the moment in many cases be taxed as exempt companies or potential IBCs (International Business Company). So the prospect of moving towards a 10 per cent rate, because they are within the definition of regulated financial services companies, could mean that the Island is less attractive to them. So we are asking the question as to whether we can specifically exempt them from the 10 per cent rate, given that most of the economic growth that we are seeing at the moment is really coming from that sector.

**Deputy G.P. Southern:**

So not paying tax to us but paying tax in the UK, say?

**Ms. W. Dorman:**

They generally do not have a lot of taxable profits because they do not have a lot of physical presence, but it is important that, I mean, you have to have a Jersey manager if you have a Jersey expert fund, for instance. So it needs to be there, if there is a tax there then it could be detrimental to the industry. But because they do not have employees, they do not generate a lot of profit under transfer pricing laws. Most of the profit will go back to the UK or elsewhere.

**Mr. G. Grime:**

But the local service provider will be taxed?

**Ms. J. Stubbs:**

Yes, it is a bit like other exempt companies, it is just that they get caught up in the definition of 10 per cent.

**Deputy G.P. Southern:**

Turning to 12.1.3: “In order to maintain the competitive position of the Island, it is proposed that fund managers, but not their functionaries, should not be classified as specified financial services companies, as discussed in 11.27 above.” So it seems to be saying that they will be exempt.

**Mr. D. Wild:**

Yes. Clearly, part of our role in producing the response was to collate comments and feedback from other sectors of the industry and, as the principal author behind the document, I know that that particular question was raised by someone who is not on FSG (Fiscal Strategy Group) but within the industry, an association of the industry, and I think the question is asking whether fund managers who will be taxed

at 0 per cent would have the option to elect to be taxed at 10 per cent. I think that is the point that they were driving at.

**Ms. J. Stubbs:**

There will be some instances where it is in the taxpayer's interests to pay tax and not be taxed to zero.

**Advocate A. Ohlsson:**

Yes, which is covered in 3.6 of our response: "Elective regime for 10 per cent companies."

**Senator B.E. Shenton:**

When we just went to IBCs what's your view on how it should be handled?

**Ms. J. Stubbs:**

Could you just clarify the question?

**Senator B.E. Shenton:**

UBS, for example, is a large IBC over here that pays less than 2 per cent tax, now they are not going to go to 10 per cent, are they, one assumes?

**Mr. D. Wild:**

I think there is a proposal in the document for tax capping, is there not? In respect of banks with very significant profits.

**Senator J.L. Perchard:**

Profits of £70 million or more, you highlighted as profits.

**Mr. D. Wild:**

Yes, under 4.1.2, I think that, as far as I am aware, is the only specific thinking that has been done on that particular point to date.

**Ms. W. Dorman:**

The only other option is if there is any way that they can hive off some of their business into a zero rated company, but that is getting beyond the grounds of general principles, I think.

**Senator B.E. Shenton:**

I think they have asked for tiered.

**Mr. D. Wild:**

A salami slicing approach to tax, yes?

**Senator B.E. Shenton:**

I'm not sure if there's any interest in that.

**Mr. D. Wild:**

I am not sure if it is something that was discussed.

**Ms. J. Stubbs:**

I am not sure that we should be discussing the position of an individual entity in a public meeting.

**Deputy G.P. Southern:**

Fair comment. Can I bring you to the reservations that PwC expressed about the Guernsey proposals, it seemed to me that you highlighted 3 areas: it said it does not look like it is going to be EU business taxation compliant; it may also not be human rights compliant and it may also offend certain aspects of normal business law. Would you care to expand on those 3 areas? The only thing I have seen is that you have, or PwC have doubts about these 3 areas and I do not specifically know exactly where the doubts are.

**Ms. J. Stubbs:**

Sorry, just so I can refresh my memory, this is when Guernsey was proposing full look through for trading companies?

**Deputy G.P. Southern:**

Yes, full look through.

**Ms. J. Stubbs:**

As I think I have explained, the purpose of our report was to summarise the points that have been made in the consultation process on those proposals. I think the point that was made about code compliance comes back to whether or not it is possible for the company to act in any way as agent for a shareholder, which is this point of tripping over the line.

**Deputy G.P. Southern:**

Yes, that point I do understand.

**Ms. J. Stubbs:**

The human rights point, I think, comes down to the extent to which one can discriminate between different types of taxpayer so that if you trade through a partnership or a branch or a company, you are subject to different forms of taxation and I think the view had been expressed that that might not be human rights compliant. I cannot remember who had expressed it but I think that was the view that had

come forward. Just remind me of the third one? The general legal one.

**Deputy G.P. Southern:**

General legal, company law.

**Ms. J. Stubbs:**

Yes, the company law issue is about potential oppression of minority interests where a company is paying tax or where individual shareholders are somehow reclaiming the tax that they paid from a company and what happens to the position of shareholders in a minority. Is their interest oppressed in any way? What happens to the position of non-resident shareholders? So, I think many of the issues that we have already covered.

**Deputy G.P. Southern:**

All right. Okay.

**Senator J.L. Perchard:**

Going back to Zero/Ten companies, is the distinction clear? I know in your submission you suggest it is not, between what is a zero and what is a 10 and there needs to be a clearer definition. Do you think going with your suggestion is sufficient?

**Advocate A. Ohlsson:**

I do not think we will get ultimate clarity, at least not clarity to satisfy a lawyer, until we see the draft legislation and then I hope we will. What is important though is for our clients who are setting up structures at the moment, to have as much clarity as possible and so the sooner that those proposals can be published in detail, the better.

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

There is the question of whether the Financial Services Commission is the suitable body to distinguish, I believe, is there not?

**Advocate A. Ohlsson:**

Well, it is not the commission that distinguishes, it is the Financial Services Law, as I understand it, which will be used and this legislation will point to particular paragraphs of the Financial Services Law that describes certain sectors. Now, admittedly that is complicated by the series of exemptions that are set out at the end of the Financial Services Law and I think it is the interaction of the principal provisions of the law and the exemptions that would need to be looked at to see how these proposals are affected.

**Mr. D. Wild:**



I do not think commission should be obliged or compelled in any way to design its regulatory laws, you know, with a view to the Island's tax system.

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

Yes, well they are an independent regulator.

**Mr. D. Wild:**

Absolutely, yes.

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

I think the concern is - just so that we are clear on this - from your side on this is that that is an independent regulator and as such should not be confused with the taxation?

**Advocate A. Ohlsson:**

Absolutely, but the regulator is there to apply the provisions of the Financial Services Law and if there are useful definitions within that law to determine the type of activity that we wish to tax at 10 per cent and the type which is taxed at zero per cent then it may be useful and it is recommended in the Zero/ten design proposal that that is used as the basis – as a determining factor.

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

That is by reference rather than using ...?

**Advocate A. Ohlsson:**

Correct and that is coupled, in our view, with the fiscal presence requirement.

**Senator J.L. Perchard:**

Is there a danger of partial tax avoidance by 10 per cent companies without this clarity, or is there a danger even with clarity of what a 10 per cent and a 0 is? Can we expect the wiggly worm to get active?

**Mr. G. Grime:**

I think our concern was rather the other way round, and this was a point made to us by the Law Society, that because of the lack of clarity in the definitions at the moment, that some vehicles might find themselves liable to 10 per cent. As Alex just mentioned, we are proposing here that there should be a dual test, that firstly the vehicle comes within the Financial Services Law definitions, that is fine, but it also must have a physical presence. That was to avoid some of the vehicles, some of the things that you are involved with, of suddenly finding themselves liable to 10 per cent which, obviously, would make Jersey an unattractive jurisdiction. So it is a question of clarity there but, I mean, I do not think we think this is too much of problem, do we?

**Advocate A. Ohlsson:**

No, I mean I think one point which I am sure Jane can expand upon is for many of these 10 per cent payers the 10 per cent is not a real cost; if they do not pay it in Jersey, they will be paying it somewhere else. So the extent to which they wish to wriggle will be limited by the fact that if they wriggle here they will simply be paying the same amount or more somewhere else.

**Ms. J. Stubbs:**

That is absolutely right, yes.

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

Because we are evidence gathering here and although we think that RUDL is going to be binned, we might want to just draw from you a few more pieces of evidence to help the process? First of all, the principle of the RUDL was for non-Jersey owned local trading companies to make a contribution to the tax take. Do you first of all agree with that as a principle?

**Ms. W. Dorman:**

I agree with it as a principle provided we can solve the issue that RUDL has and all the other alternatives that I see have, that it is non-creditable because I think that is important. I think it is an important principle.

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

Right, so the principle is okay but the operation and the practicalities of it are such that it becomes very, very difficult all round as it is currently proposed. Do you have any other alternatives to that particular charge? Other ways of putting a charge on non-locally - have you considered any other alternatives or have you just restricted your thoughts to RUDL?

**Advocate A. Ohlsson:**

The problem with RUDL is it is a new charge; it is an entirely new cost of doing business in Jersey. It is not creditable; it is not a tax, it is a charge. The idea, in order to effectively not to double tax Jersey taxpayers, if you like, is to make it creditable against 10 per cent taxpayers. On a zero per cent taxpayer it will not be creditable to the shareholder which is another idea behind conversion to an LTP. So it is a new tax, it is a fairly new charge, it is fairly blunt in its nature in that it is taxing businesses based upon their approved headcount, as I understand it. I understand that the original proposal does allow differentiation between different industry sectors; so that an agricultural worker or an employer of an agricultural worker may not be paying the same as an employer of a shop worker, for instance. I suppose what one should look at first before creating a new charge, if there is a need to create that new charge, is whether any of our existing taxes can collect the same amount or achieve the same effect. I think that a lot of work has been done on the Zero/Ten model to determine whether or not an alternative

is available as part of the Zero/Ten corporate tax proposal and I think the shared view is that we cannot find an alternative. So, then one has to look at other alternatives in the market that are currently in place and there have been suggestions, I understand they want to look at the rating system, for instance. We have not considered any of those in any detail.

**Ms. J. Stubbs:**

Just to clarify the point Alex made about 10 per cent companies, the document is a little confusing because it says it proposes that the rate of the RUDL charge be set at zero as any such charge would be creditable, which I think is a rather confusing ...

**Ms. W. Dorman:**

Yes, I think it envisages a zero per cent RUDL rate for 10 per cent companies, but the 20 per cent companies would pay the RUDL charge and have an offset.

**Ms. J. Stubbs:**

Yes.

**Senator J.L. Perchard:**

It is claimed by some that Jersey owned businesses would not be disadvantaged. That assumes that the profits of UK businesses will be taxed in the UK, so some people claim there is no need for a charge. But I want to ask you a question; is it realistic to assume that UK groups trading on the Island will pay 30 per cent, a third of their profits to the UK Exchequer? Is that realistic? Are they really going to do that?

**Ms. J. Stubbs:**

At some point they probably will. I think the first point to make is that most of those groups will be subject to UK transfer pricing and CFC rules, which I suspect means that the margin that they make in Jersey is relatively low because if you think about a simple importer of toiletries or shoes or something, they are not really adding much in terms of value to the end product over here. There is very little goodwill being built up in the business here. The brand is probably owned somewhere else, so I guess the starting point would be that the margin is probably lower than you might suspect in some of those businesses. If they were to start to roll up aggressively then they would start to get caught by UK CFC laws. They could start to indulge in some of the more sort of *recherché* CFC planning ideas that one regularly sees at the top end of the tax planning industry coming out of various places. I guess that is a possibility. I am not sure that rolling up in Jersey is necessarily high on the agenda of some of these retailers but perhaps it could become so. But I guess the point there is that rolling up is as much of an issue for HM Revenue and Customs in the UK as it is for us, exactly.

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

I suppose it has been suggested that what they might do is continue to pay 10 per cent, as they currently are, so that the UK revenue is roughly in the same position as it currently is, but any excess to that would be rolled up and would be started to be reinvested either in property and back finance, sale and lease back of property in the UK to a Jersey subsidiary and those kinds of ...

**Ms. J. Stubbs:**

So we have a 10 per cent rate for non-residents and local non-financial services companies --

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

No, what I am saying is that whereas at the moment they are paying 20 per cent in Jersey and 10 per cent in the UK, they would continue to pay through dividends, 10 in the UK, in monetary terms, but the --

**Ms. J. Stubbs:**

They pay 30 per cent in the UK.

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

Sorry, what did I say?

**Ms. J. Stubbs:**

They currently pay 20 per cent here and 10 per cent in the UK.

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

That is what I am saying, yes.

**Ms. J. Stubbs:**

They will move to paying zero here and 30 in the UK

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

What I am really saying is that in fact they would devise schemes by reducing dividends.

**Ms. J. Stubbs:**

So they would roll up, in other words.

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

Yes, they would roll up, partial roll up. They would continue to pay in monetary terms, similar amounts that they are currently paying to the UK Exchequer, but they would roll up the balance that they would normally pay in Jersey at the moment and start investing in property in the UK or use the Jersey trading company as a sort of an entity to, you know, for other purposes.

**Ms. J. Stubbs:**

Well, at that point they would start to fall foul of UK control foreign companies provisions, because the majority of those businesses would currently be relying on the exempt activities test and the fact that they are generating good profits, good trading profits. The minute they start to become passive, they run into difficulty with UK CFC provisions.

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

So you do not see there is any scope there, under the new rules -- are existing Jersey owned Jersey trading companies going to become desirable entities from a UK predatory point of view, for the reasons that it is zero in Jersey: "We can use it, we can trade in Jersey and carry on and any profits that we make in Jersey through various ways, we can start using for other purposes, investing worldwide in property" you know, these could be big companies. I am not sure. Do you see this scope? Do you see this kind of principle that --

**Ms. J. Stubbs:**

That would be UK tax planning and I guess the only question I would then ask is at what point does that become offensive to HM Revenue and Customs? But they do have a battery of anti-avoidance legislation to use against those groups, so I suspect you would find that the tax planning for those groups would be at the margins but there certainly would be an opportunity for them.

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

There would be an opportunity? To what extent, is difficult to say.

**Ms. J. Stubbs:**

I think it is difficult to say. Yes, how much money are we talking about?

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

So it is a question of the size?

**Ms. J. Stubbs:**

It is UK tax and it is possibly at the margins and I would question whether there is the appetite to do that.

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

That is the point; is it the appetite? I mean I suppose ultimately I am asking a question here by a statement - and you can agree or not - ultimately it is that £15 million or so that the UK Exchequer is going to get extra as a result of Zero/Ten that could, in the end, be at risk in that it would not go, it would do other things, other things would happen with it.

**Ms. J. Stubbs:**

As I say, you have got transfer pricing, you have got control of foreign companies, you have got UK avoidance disclosures, you have got a huge (...overspeaking)

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

Trying to get to the bottom of how big a problem, potentially it might be, that is all.

**Mr. G. Grime:**

But it is a UK revenue problem, not a Jersey revenue problem.

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

Neutral to us, but what it does create and it may even create a situation or I am asking you whether you think it would create a situation where there would be an increased likelihood of Jersey owned businesses selling - ones that are currently paying Jersey tax, trading companies - that you would suddenly find it would become very advantageous to sell out to UK companies because of the extra advantage that they can sell and what have you, if you think that is a ...?

**Ms. J. Stubbs:**

I do not know the answer to that because we are all crystal ball gazing to some extent, but I think that there are a whole realm of reasons why a UK group or a VC might acquire a Jersey trading company and I suspect that rolling up would be right at the bottom, having established that the economic viability, the business plan, the DCF calculations, I think there are a whole realm of reasons.

**Deputy G.P. Southern:**

My reading says that Jersey Finance believes it is possible that Jersey shareholders will superimpose non-Jersey structures between themselves and their companies. Would you like to explore that with us now, because the Minister said: "Oh, I doubt it", effectively. Would you like to take that one on?

**Male Speaker:**

Trading companies?

**Deputy G.P. Southern:**

Yes. Yes, I think the Jersey shareholder is going to be paying tax at 20 per cent on his dividend or whatever and he will place some structures between him and the taxman.

**Advocate A. Ohlsson:**

I think what it does highlight, if you go for deemed distribution - we are moving really back to that topic - is it is no longer advantageous for a Jersey resident shareholder to trade through a Jersey company and

the extent to which he goes to lengths to avoid that, whether it is to set up businesses in Guernsey or outside of Jersey or to transfer existing Jersey operations to intervene against his, I am not sure, but clearly there is a reason why he may be so motivated.

**Deputy G.P. Southern:**

The Comptroller of Income Tax has the impression that he will have the powers to look through a company formed offshore, I mean, even to the extent of a Cayman trust and say, yes --

**Male Speaker:**

Trading on the Island?

**Deputy G.P. Southern:**

Yes, trading on the Island, yes even beneficially owned through a Cayman trust. He said: "I can go there, do not worry." I suggested to him that that was pretty draconian powers.

**Advocate A. Ohlsson:**

The comptroller is always fairly bullish as to the powers he has got available to him.

**Mr. G. Grime:**

But if a Jersey individual decides to form a BVI (British Virgin Islands) company owned by a Cayman trust to avoid them paying tax, then he would get jumped on. I have no doubt the comptroller has the ability to do that right now.

**Ms. J. Stubbs:**

The only issue is the extent to which those structures are disclosed, because the general anti-avoidance rule is already in place, so the question is, would he ever know about it?

**Mr. G. Grime:**

He would know about it if today there was a business that was being taxed in Jersey and next year there was not, unless there was a good reason why the guy had retired or sold it or whatever, but he watches these things very carefully.

**Advocate A. Ohlsson:**

But what we are talking about is using anti-avoidance powers, not using deemed distribution provisions.

**Male Speaker:**

But for new businesses, presumably, it is open to being exploited.

**Ms. J. Stubbs:**

There is, in the proposals, the suggestion that on your Jersey tax return a Jersey individual has to state all of the interests it has in any company or trust, anywhere in the world, in which case the comptroller would then have some information on which to decide whether to pursue the perceived abuse.

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

I presume at the moment someone wanting to trade in Jersey has a choice -- this is the question; does he have a choice at the moment as to whether he starts a Jersey company or a BVI company to run it and is it cheaper to have a BVI company?

**Advocate A. Ohlsson:**

Not materially.

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

Not materially? I am just wondering whether deemed distribution is another little reason as to why someone might choose a BVI company, for whatever reason? Do you think we are going to see a reduction in the number of Jersey businesses, trading businesses, being started as a result of any of this?

**Mr. D. Wild:**

I think that was certainly suggested to us by one or 2 respondents, but if you look at the design proposal paper, I think it is section 7.3, it does talk about the comptroller having the power to invoke general anti-avoidance in those circumstances and clearly, he feels --

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

Notwithstanding that, I am just wondering if this would give impetus to the: "Well, I think I will have a BVI company"? Are we going to get any of that? I mean, we do obviously make money out of Jersey companies being registered here. What happens with annual fees between a Jersey company and a BVI company? Is there annual fee loss potential?

**Advocate A. Ohlsson:**

I may be wrong but I suspect people are not going to start using BVI companies to trade in Jersey; I think what we are more concerned about is the Jersey entrepreneur who may have come here from somewhere else and may be a worldly wise business person, who decides not to set up their new business in Jersey but decides to set it up somewhere else.

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

Right, so that is the whole business going somewhere else?

**Advocate A. Ohlsson:**

Yes, that is the material concern; that we would reduce economic activity in the Island, employment



opportunities and this is coming from Jersey Finance, in the kind of economy where we are seeking further diversity.

**Senator B.E. Shenton:**

Can I just change the subject very slightly? Common charities and superannuation funds, in the proposal it says about repealing article 115. You mentioned about possible grandfathering I would like to know why possible grandfathering, but I also get the impression Treasury are having second thoughts about the repeal of article 115. Can I just have your thoughts on that?

**Advocate A. Ohlsson:**

There are some significant UK based superannuation funds who are current investors and potential investors in Jersey. Most of those funds own their properties in Jersey, free of any borrowings. They will therefore, if that provision is amended, be paying 20 per cent tax on rental income that they achieve from those properties, on the full rental income. Most of those funds will look at their after tax return on those properties. If you see the yield from a property reducing from 5 per cent to 4 per cent you will, as the fund, look closely as to whether you are going to continue to invest in that jurisdiction or even to continue to retain that property. I think what we are saying is further research needs to be done as to the effect that that proposal will have on capital values of Jersey property, particularly from the States perspective as a potential seller of Jersey properties before that proposal is introduced.

**Senator B.E. Shenton:**

Because you do not say don't repeal, what you say is grandfathering . There are some people out there that are against the article being repealed but the Jersey Finance Paper does not say that.

**Ms. J. Stubbs:**

I think it is difficult for us to assess the economic impact of repealing it immediately or repealing it slowly. I mean, there is an argument that repealing it slowly is sort of death by a thousand cuts because people anticipate the repeal of it and therefore that starts to distort the market already. I know that there is a strong feeling in some quarters that it would be equitable for these schemes to be taxed in Jersey. Perhaps it is a bit like the man who went to Kings Cross Station and asked how to catch a train to Brighton. The only answer is I would not start from here. We would not if we were perhaps designing a tax system with a blank sheet of paper introduce that relief, but the difficulty is that we have it and it has created a sort of market equilibrium which you then tilt when you start to play around with it and I think, without being property consultants or economists, it is quite hard for us to go any further than that. But we did see grandfathering as one potential compromise.

**Senator J.L. Perchard:**

Deemed distribution, let us go back there, if ... We think that we are getting there with the RUDL and people are recognising the reaction to RUDL has not been a good one, to say the least. But this deemed

distribution, I think unless we get some consensus with the Treasury quite soon it will be imposed by default. I think the industry needs to provide clarity and certainly our panel here would have to be positive. **[Laughter]** Can you advance the debate on this issue?

**Mr. G. Grime:**

I am slightly puzzled because I thought that is what we had done. **[Laughter]**

**Senator J.L. Perchard:**

You have not provided clarity, Geoffrey. You are divided as an industry.

**Mr. G. Grime:**

Well, yes, we have got different tax experts and different firms can take different views but I think that we have emphasised the importance of simplicity and I think, as I said in answer to an earlier question, an incremental approach would be appropriate if the tax take falls dramatically and the States feels it has to do something about it - starting from actual distribution. I think our difficulty, I guess, is Jersey Finance, which is trying to speak for the industry. As I say, some of the industry take different views and they will write accordingly, and PricewaterhouseCoopers have already on this area. I think it is fair to say, that what we are trying to say is forget deemed distribution, deferred distribution and focus on actual distribution with the definition point that Alex made about having to show that you are a trader and then take it on on an incremental basis thereafter.

**Mr. D. Wild:**

Yes, I think once you have gone down the route of introducing complex proposals, it is very difficult to roll back from that position.

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

Shoot for the stars first and if you hit the moon, okay. (...overspeaking) First prize is to keep it simple and actual distribution and if that proves to be not attainable then you have no choice other than to go for second place.

**Advocate A. Ohlsson:**

Certainly in our presentation to Jersey Finance members on the Zero/Ten proposals, actual distribution was clearly the preferred approach and --

**Ms. J. Stubbs:**

I was just going to add as well, I think it would be very disappointing if Jersey entered into the wrong scheme faute de mieux because there was confusion or conflicting views. I think it is for experts to contribute but I think ultimately government has to take the decision and should not be afraid to take a difficult decision, if it is the right one for Jersey. I think it would be very disappointing if we just went

for something because we cannot arrive at a consensus.

**Senator J.L. Perchard:**

Well, I fear that, unless there is a positive consensus from the industry, that deemed distribution might be opposed by default because the views are not united.

**Ms. J. Stubbs:**

There is no consensus on deemed distribution either [**Laughter**].

**Ms. W. Dorman:**

There is consensus on the deferred distribution charge. We all agree on that one, that that should go.

**Senator J.L. Perchard:**

Yes, well I said this morning the Minister is having reservations about the whole --

**Advocate A. Ohlsson:**

I think those who may support or consider the introduction of look through or deemed distribution charges on trading companies are motivated by an issue as to what the cash flow cost is of not doing that and without that information I think it is very difficult to determine --

**Ms. W. Dorman:**

I think the other motivation - sorry, Alex - is that one of the fundamental principles is fairness and if you have a different tax system for partnerships and companies where essentially you are doing the same thing, then to me that is an issue as well.

**Deputy G.P. Southern:**

At the risk of drawing a sharp intake of breath but in support of actual distribution, is there a place for capital gains tax in the system?

**Mr. D. Wild:**

No.

**Ms. W. Dorman:**

No. [**Laughter**]

**Mr. G. Grime:**

I think there are 2 reasons, really; if you look at the UK - Jane and people are much better able to articulate this, I guess, in detail - the complexity on the one hand measured against the yield on the other. It is not worth going there.

**Ms. J. Stubbs:**

Capital gains tax is often argued in the UK as really an anti-avoidance tax and so it is quite difficult to measure it simply in terms of its collection costs and its yield. I think the point for Jersey is that is not the way that we have approached avoidance to date so it would be a very significant departure from our current --

**Deputy G.P. Southern:**

You will still be looking at general anti-avoidance?

**Ms. J. Stubbs:**

I think we would be making a wholesale change in our culture. Dare I say it, we would be tending towards a sort of onshore culture of a very adversarial relationship between the tax office and taxpayers and increasing costs of administration for business. It would become a completely different culture.

**Senator B.E. Shenton:**

What about going the other way and putting the burden more on to GST?

**Deputy G.P. Southern:**

It could be argued that CGT is less adversarial than general anti-avoidance.

**Ms. J. Stubbs:**

I can talk you through the capital gains tax legislation in the UK if you feel that to be the case, because it is certainly not drafted with taxpayer friendliness in mind in my view.

**Deputy G.P. Southern:**

Point made.

**Senator J.L. Perchard:**

These are the areas that we really wanted to highlight. Your submission, as I said earlier, is very detailed and excellent, and unless you think we have missed something that you wanted to touch on with us, I will wrap up. Is there anything?

**Witnesses:**

No.

**Senator J.L. Perchard:**

Without further ado, thank you very much for spending your time with us and for the submission. We wish you well and hope that you will be able to answer any queries that we may have when we look into

detail further. As I say, thank you very much for coming and I will declare our session closed.