

Corporate Services Scrutiny Sub-Panel Zero-Ten Review

THURSDAY, 16th AUGUST 2007

Panel:

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

Witnesses:

Senator T.A. Le Sueur (Minister for Treasury and Resources)
Mr. M. Campbell (Comptroller of Income Tax)

Senator J.L. Perchard (Chairman):

Welcome, Minister and Malcolm. Thank you for coming.

Senator T.A. Le Sueur (Minister for Treasury and Resources):

We normally come more handed but being holiday time we are the only ones left working.

Senator J.L. Perchard:

The meeting has been hastily arranged as a result of the GST (Goods and Services Tax) hearing not taking place so I thank you for that, being prepared to come, and discuss the 2 areas really. The area of the second tranche of legislation that will enable shareholder taxation as a result of the Zero/Ten, which is an amendment to the Income Tax law, and what Scrutiny and the Treasury are now calling the, sort of, deemed rent property proposal. I think probably we know that we have an hour and a half with you. Those are areas which dominate this morning's hearing. If we have a little bit of time perhaps we could move on to related issues to do with Zero/Ten before we close at 11.30 a.m. Without further ado, welcome members of the public, and I will fire away, if I may. We have made an agreement via our UK family to remove all discriminatory tax practices. Jersey has taken a route which is commonly known as Zero/Ten. We understand the Gibraltar, Guernsey and the Isle of Man have taken a slightly different route with regards to removal of harmful tax practices. Could you tell us briefly, Terry, why we have taken the route we have and where, in your view, the other islands are with regard to their removal of discriminatory practices?

Senator T.A. Le Sueur:

I do not know that we have diverged into being much in terms of the principle of living to some sort of Zero/Ten regime or some sort of regime which treats the majority of companies as having taxed at zero rate with certain exemptions. There are differences in those exceptions from territory to territory but they are a matter of degree and a matter of how much one wants to comply with the letter and the spirit of the EU (European Union) arrangements. So, for example, we have said that the 10 per cent will relate primarily to finance-based companies but that everything else is at a zero rate. Now some people define finance companies very differently, whether you bring trust companies into the neck or not. I do not think they are fundamental differences to the approach that all the territories have taken.

Senator J.L. Perchard:

Well, could I remind you that Guernsey will not be taxing anybody at shareholder level. It is an actual distribution. There will be no deemed distribution, it will be actual only, and that is a fundamental difference.

Senator T.A. Le Sueur:

That is the fundamental difference of approach to the continent tax that was neglected and I accept that there is a variation in that respect, that we are coming and proposing 60 per cent, the Isle of Man is looking at 55 per cent, Guernsey are on an actual distribution basis which may or may not be beneficial. That is a judgment call but I am also concerned that the Island has to generate revenues and in many cases not to make the distribution could be a difficulty. I am confident that the way Jersey has approached this is sound commercially and fiscally and it meets our obligations.

Senator J.L. Perchard:

Of course, the Isle of Man are proposing that the company acts an agent for the shareholder. Have you any idea where that application is at the moment or where that -- it has gone to Privy Council?

Senator T.A. Le Sueur:

That is giving me - not concern - but it is causing me to rethink my timetable, and we will come back to that in a moment. Because that has certainly been approved by the Isle of Man Government, it has been approved by the Privy Council. It has gone to the EU and it has been sitting in the EU now for the best part of 12 months and I think the latest indication I have, but Malcolm can probably update me on that one, is they are going to look at it in something like September or October of this year now, which is some time later than I had originally anticipated. Clearly, the Isle of Man approach of the company acting as agent has significant attraction of simplicity and so I cannot dismiss the notion completely because if that were to be acceptable to the EU authorities as complying with the principles of the Code of Conduct then I would have to do a fairly substantial rethink of that approach. Now, I still am of the view that if the EU accepts the Isle of Man's approach then they have not achieved very much at all. But nonetheless I cannot be certain which way the EU will judge it. If I were a betting man I would say

they ought to throw it but I am not that much of a betting man so I would prefer to wait until I have greater clarity of the way the EU are thinking. That may mean that I have to defer or delay implementing some of these regulations because clearly I do not want to introduce them one day and then say: "Oh, the Isle of Man has got away with it" metaphorically, and have to rethink and start again. So, I am almost hedging my bets and saying on the assumption that the Isle of Man solution does not get accepted we want the law in the way it is being drafted at the current time, but if the unexpected happened then we would take a different approach, similar to the Isle of Man's.

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

Why would you say that the EU has not achieved much, Terry? You just said if the Isle of Man approach is accepted.

Senator T.A. Le Sueur:

Because effectively they are going back to companies being taxed at the corporate rate of tax. Because they would be acting as agent for shareholder then you are back, effectively, to - or potentially - a 20 per cent tax rate for those companies.

Deputy P.J.D. Ryan:

Instead of the zero which is intended.

Senator T.A. Le Sueur:

Yes. So logic tells me that they should not do it. But logic is not always ...

Senator J.L. Perchard:

It goes without saying, if the Isle of Man's proposals are deemed acceptable they are very attractive. How does that affect the implementation -- the States' debate on the Income Tax amendment is due to take place on 20th November; will you delay that?

Senator T.A. Le Sueur:

I would have to delay that, yes. At least, I have not made up my mind about that one but I think it would be not to the best use of States' Members' time to debate that on 20th November and then withdraw it in January and put in a subsequent law.

Senator J.L. Perchard:

So, Terry, effectively we would be moving to Zero/Ten without any shareholder legislation in place for 2009?

Senator T.A. Le Sueur:

No, we would have to do it -- I am assuming that the EU would make up their mind one way or the other.

Mr. M. Campbell (Comptroller of Income Tax):

If I could just give some clarity on the timetable for the Isle of Man legislation that has gone to ECOFIN (Council of Economic and Finance Ministers). My understanding is that in September ECOFIN will look at the Isle of Man DPC (Distributable Profits Charge), the legislation. They will then make a report but it will not be until October that a decision is made by another part of ECOFIN as to whether this legislation is compliant with the commitment the Isle of Man gave. So we know what ECOFIN is like, timescales slip. So we think it will be October when a decision is made. It may very well be November. It may be December. But if ECOFIN do accept this Isle of Man legislation I think the Minister is quite correct. It will drive a cart and horses through the zero rate because they are still assessing a corporate.

Senator J.L. Perchard:

Can we then, Malcolm, understand from what you are telling us, that the States will not debate the Income Tax amendment until ECOFIN have made a ruling on the Isle of Man?

Senator T.A. Le Sueur:

No, I do not think necessarily that is the case because ECOFIN, in theory, could twiddle their thumbs for years. We have to have some certainty. I might well take the view that I would lodge and debate the law, as presently drafted now being consulted upon, in the knowledge that if ECOFIN rejects the Isle of Man situation our law is ready to go. If ECOFIN were to accept the Isle of Man situation I would then come back to the States reluctantly with a - not reluctantly, in fact, quite happily - with a revised and suitified law which I think would then be acceptable by the States relatively quickly and would not need, in effect, Scrutiny because it would be a considerable simplification of the current arrangements. Now what I was reluctant to do was to do that if there was a certainty that we would get an answer one way or the other but if I cannot get certainly the answer one way or the other by November, say, then I think I am obliged to lodge that law to have something to work on to support the corporate side and try to the introduction and implementation of Zero/Ten from effectively starting in June 2008.

Senator B.E. Shenton:

If you cannot get an answer from ECOFIN would it not be more prudent to delay Zero/Ten until 2010?

Senator T.A. Le Sueur:

No. One of the things which I need to remind myself and States' Members of is the benefit we have got from the certainty of the Zero/Ten approach. An approach in which the principle has been agreed by everybody, and in the Isle of Man, not considering delaying the implementation of it, as far as they are

concerned they are going ahead and doing what the law has already been in the past, until they are told otherwise.

Deputy P.J.D. Ryan:

If a particular country does not like a decision that is made by ECOFIN could you, if you are aware of the process, let us know? Is it appealable by an individual member state if they do not like an ECOFIN rule?

Mr. M. Campbell:

Can I just clarify what I understand the procedure at ECOFIN to be? ECOFIN discusses things in private. I understand there are no minutes taken. It is a political forum so if there are minutes taken -- decisions are made but no minutes are taken, and --

Senator J.L. Perchard:

Bit like a corporate management board.

Mr. M. Campbell:

Pardon, I did not hear that comment. But ECOFIN may decide they do like this or do not like this from the Isle of Man but if they do not like it I think it will be a matter for the Isle of Man then to decide how to proceed. There may not be any guidance at all from ECOFIN on the matter.

Senator J.L. Perchard:

We will just wind up here. Just a final question then; if we have heard nothing from ECOFIN with regards to the Isle of Man's proposals we will be proceeding to debate the Income Tax (Amendment No. 29) before Christmas this year?

Senator T.A. Le Sueur:

I will certainly lodge and it will be debateable whether we would be debating it last sitting in November or the first sitting in January. From the industry's point of view I was anxious to give them certainty but they are satisfied knowing the uncertainty with the Isle of Man situation to wait until early 2008 if they have to, to get that certainty. I just do not want to waste Members' time with 2 debates on one subject.

Senator J.L. Perchard:

Okay. Well, we spent a bit longer on that area than I expected but I think that has been useful.

Mr. M. Campbell:

Can we just clarify one point in the Guernsey proposals? It is not quite true to say that it is purely actual distributions year by year. That is correct in a way, but if the individual sells his shares in the Guernsey

corporate then the whole charge crystallises and the whole charge is then brought into charge on the individual. So it is not just pure actual distributions forever, there is a crystallisation factor as well which I think is very important to point out.

Senator J.L. Perchard:

But considerably simpler than the Jersey proposals?

Senator T.A. Le Sueur:

Simpler certainly. Maybe just pick up on one point Ben made about Zero/Ten. Zero/Ten is not just there to comply with the EU, it is also there to remain competitive in other jurisdictions.

Deputy P.J.D. Ryan:

What do you think will be the effect of the Guernsey proposals then, now that you have clarified that point about crystallisation under a sale? I mean presumably that is there to stop or to make it less attractive to roll profits up within the Guernsey corporate, is it?

Mr. M. Campbell:

Of course we cannot see the future but I imagine that companies will distribute some of their profits to their shareholders but I suspect it will not be as high as the 60 per cent we are looking at. It could go on for some time. An obvious consequence of that is if they do not distribute and they are not taxed then tax cash flows will suffer, but that is a matter of Guernsey, it is not a matter for Jersey. As the Minister pointed out earlier, he is concerned with the cash, the tax being paid in Jersey year by year.

Deputy P.J.D. Ryan:

You mean revenue, not company cash flow?

Mr. M. Campbell:

Just tax revenue flows.

Senator J.L. Perchard:

Let us move on to our proposals and the details of it. How confident are you, Minister, that your proposals to collect tax at shareholder level will work?

Senator T.A. Le Sueur:

Very confident. We have been working through how this can be done in a way which is not totally bureaucratic and, in my view, the disclosure provisions that we have got, or we will have, in the new Income Tax Returns for individuals puts the onus very firmly on the individual in respect of compliance. Now there will always be an element of non-compliance as there is at the current time. But

that current element of non-compliance, I would say, is relatively low and I am confident that it will remain at a relatively low level.

Senator J.L. Perchard:

Because the accusation has been levelled that sophisticated businesses, their shareholders will be able to avoid being taxed on the company profits at shareholder level and it will just be the hard pressed, small business and businessmen and women and employees that will be paying tax.

Senator T.A. Le Sueur:

I think this is certainly a danger that we are well aware of that you could set up short trusts and divest the ownership and manipulate your way around that one, and certainly to the extent that those structures may already be in place and have been in place for several years, yes, there is not much you can do about that, but current tax planning to try to avoid shareholder tax obligations by moving your assets into a trust can be and will be attacked and doing so will not avoid your Jersey tax liability.

Senator J.L. Perchard:

“Can be and will be”; how do you mean?

Senator T.A. Le Sueur:

In that the transfer of assets into a trust will still render the Jersey resident shareholder liable in all circumstances to the tax on the income arising from the entity being put into that trust.

Mr. M. Campbell:

Can I just point out to you, in the draft law you have in front of you, if you look at Article 82(a), under ownership of shares, on page 17, and also 82(b) which is payment of tax by trustees, on page 45, I think that might address the issue.

Senator J.L. Perchard:

Just take us through that.

Mr. M. Campbell:

The ownership of shares is very widely drawn. So it does not matter how sophisticated you are going to be this catches you. If you put your shares into a trust structure, 82(b) will catch you. So sophistication maybe, but the draft law will catch that kind of tax planning.

Senator J.L. Perchard:

How do you propose to access this information if the company is held in another jurisdiction?

Mr. M. Campbell:

Well, if the company is held in another jurisdiction -- presumably you are talking about a Jersey trading company, are you? Is there a permanent establishment here?

Senator J.L. Perchard:

In an effort to avoid paying company tax at shareholder level a company may wish to relocate its ownership elsewhere, how will you access that information?

Mr. M. Campbell:

The tax return sent to the personal taxpayer will have on the front of the Income Tax Return a statement which that individual must either tick yes or no to and it is about ownership of companies, corporates, trusts, and other vehicles, either in Jersey or outside Jersey. Now if they tell the truth, which the vast majority of Jersey taxpayers do, that will then be disclosed in his own personal tax return.

Senator B.E. Shenton:

But he might tell you that he owns a Guernsey company but how do you get beyond that? Because that might be a company he just rolls up by the year.

Mr. M. Campbell:

If the individual in Jersey owns the shares in that Guernsey company, if you look at 82(a) it is very widely drawn. It does not necessarily have to own the shares directly. It could be an indirect benefit, an indirect ownership.

Senator J.L. Perchard:

But if he does not choose to tick the box how can you --

Mr. M. Campbell:

That is different.

Senator J.L. Perchard:

How can you access?

Mr. M. Campbell:

Then that is fraud. That is tax fraud, that is tax evasion, and in those cases when someone deliberately manipulates and deliberately conceals and deliberately evades tax that is a whole new ballgame, but not many Jersey taxpayers do that.

Senator J.L. Perchard:

Do you not think you would be encouraging it, Malcolm? Because you cannot disprove them. You will not have the power to disprove them.

Senator T.A. Le Sueur:

In fact, I think you are in the same sort of situation now, if you like. If you have bank deposit interest -- if you stick your money in a bank in Guernsey and do not declare the interest then Malcolm is none the wiser until he finds that you have been living the life of Riley and driving a Rolls Royce down to your yacht in the south of France, declaring income of £5,000 a year and he is: "I wonder how he is living?" and asks some questions of the taxpayer. Given that sort of situation, and the investigative powers the Comptroller has, the majority of taxpayers would sooner comply and pay at Jersey's better rate of tax, which may be quite low, rather than risk the --

Senator B.E. Shenton:

But that is slightly different, that is interest. We are talking about shareholdings which is capital.

Senator T.A. Le Sueur:

But the principle is exactly the same, Ben. If you have got someone whose way of life indicates that they may have assets elsewhere or they may have other sources of income undisclosed the Comptroller still has the opportunity to pursue that taxpayer to the ultimate.

Senator B.E. Shenton:

I will try again. If you have got shares in a company that distributes then that is taxable?

Senator T.A. Le Sueur:

Whether it is distributing or not. The fact that he has that shareholding, he is obliged to disclose it on his tax return.

Mr. M. Campbell:

Yes, that is correct. The new tax return form on the front page will oblige all Jersey personal taxpayers to disclose all corporates, trusts, whether in Jersey or offshore.

Senator T.A. Le Sueur:

Whether generating income or not.

Mr. M. Campbell:

Whether generating income or not.

Senator T.A. Le Sueur:

That, I think, is the important distinction between the current situation. If you stick your money in an offshore bank account which is a current account --

Senator B.E. Shenton:

What is the minimum shareholding percentage that you would have to declare?

Mr. M. Campbell:

You have to declare all of them, unless you are under 5 per cent which is the *de minimis* --

Senator B.E. Shenton:

Under 5 per cent?

Mr. M. Campbell:

The *de minimis* in the legislation. Can I just say, we do have an Investigations Division in Income Tax. We regularly investigate over 300 taxpayers a year. This year already, in 2007, we have collected, I think, over £2 million in back taxes, penalties and interest. The Attorney General on our behalf prosecutes tax fraud cases. In the last 12 years I think we have prosecuted for tax fraud 8 cases so if people are found out they run the risk of being prosecuted in the Royal Court for tax fraud, tax evasion, and we have done it and we will continue to do it.

Senator J.L. Perchard:

So there will be amendments to the income tax form that facilitates this obvious opportunity.

Mr. M. Campbell:

Yes. And the Minister has seen that form, and it is in draft form currently, and when it is finalised, if the Minister agrees, I am quite happy to show it to you.

Senator J.L. Perchard:

I am sure you will. I will get it in the post.

Senator T.A. Le Sueur:

It can be hand-delivered if you like.

Senator J.L. Perchard:

Let us ignore the opportunity that there may be for blatant evasion and look at the honest investor. If an honest investor puts money into a Jersey company he will be taxed on deemed dividends at 60 per cent. If he puts money into a zero tax Guernsey company he will be taxed when he receives his dividend only, that is fine. Is it therefore likely that Jersey investment will be driven out of the Island and Jersey

investors will be looking to invest elsewhere other than Jersey?

Senator T.A. Le Sueur:

I think you could say that that could happen at the present time. A person who has some capital might invest a lot of it in zero coupons, bonds or -- non-income bearing but capital appreciating assets with a view to minimising his tax liabilities.

Senator J.L. Perchard:

What about businessmen?

Senator T.A. Le Sueur:

Businessmen are the same. There are established procedures and guidelines set out by the Comptroller as to what he will admit as a reasonable amount of capital on interest bearing and what is an unreasonable amount. That has been tested and Malcolm may want to elaborate on the number of rulings a year he gives on that.

Mr. M. Campbell:

Typically in a year I think we judge capital transaction values of, I think, it is over £60 million a year and literally hundreds upon hundreds of rulings because professionals seek clearance from me as 134(a) it is a general anti-avoidance provision and it is very powerful. Professionals acting for clients will typically write into me and ask me for my view on a particular transaction. The reason they do that is that if they do not and I find out about it then the professional himself is going to be in great difficulty with his client, so the professional writes into me, asks my view, I make a ruling and we are all happy. Because the idea that a professional would not write into me to get clearance under 134(a), that is quite a risky thing to do, because if it goes belly-up and I attack it the client will then say to his professional accountant or lawyer: "Well, why did you not clear this with the Comptroller?" So professionals in Jersey will typically come to me and sound me out, and I see that continuing under Zero/Ten under shareholder taxation. I do not see any major change there.

Senator J.L. Perchard:

No. I am sure you are probably right but the question is, will we be attracting or encouraging local business to be owned outside the Island and local investors to invest outside the Island as a result of the shareholder taxation. That is the point. You may well be right about the integrity and honesty of the taxpayer but are we driving Jersey business and Jersey investment from the Island?

Mr. M. Campbell:

I do not think it is simply a tax issue. There are many reasons why people come and invest in Jersey businesses. There is the infrastructure which is first class, there are telecommunication links, Jersey is a

lovely place to live and bring up children. Tax is only a secondary issue. They will not come here just for tax. There are other issues that will bring them here, such as the profits that the local business will generate.

Deputy P.J.D. Ryan:

But surely, Malcolm, if we are looking at 2 people. One is a Jersey investor and one is a UK investor, for the sake of argument.

Senator T.A. Le Sueur:

Living in the UK?

Deputy P.J.D. Ryan:

Living in the UK. Are we not, with this legislation, putting the Jersey investor at a disadvantage over the UK investor in a Jersey company?

Mr. M. Campbell:

In what sense?

Deputy P.J.D. Ryan:

Well, the Jersey guy will be paying tax.

Mr. M. Campbell:

So will the UK one, at a higher rate in the UK.

Deputy P.J.D. Ryan:

Only if he receives a dividend.

Mr. M. Campbell:

I think there is a slight misconception that UK residents will never pay tax on a profit situation in Jersey, they will.

Deputy P.J.D. Ryan:

That is not what I am saying. What I am saying is that relative one to the other. One is going to be on a deemed look through, on a deemed 60 per cent, the UK guy is it going to be on distribution only?

Senator T.A. Le Sueur:

The UK guy -- well, I think we have got 2 different issues. You have got the UK owner of his private company --

Deputy P.J.D. Ryan:

Jersey trading company.

Mr. M. Campbell:

Yes.

Senator T.A. Le Sueur:

Yes. If we are talking about the ownership of trading companies in Jersey plus the ownership of trading companies in the UK the Jersey shareholder of a Jersey trading company will pay tax on 60 per cent or whatever dividend is distributed by that company. The UK shareholder with his UK trading company will have his company assessed for corporation tax on the whole of his profits.

Deputy P.J.D. Ryan:

Yes, I am talking about a private investor. That is not what I am talking about.

Senator T.A. Le Sueur:

If you are talking about the investor who has shares in Marks and Spencers --

Deputy P.J.D. Ryan:

No, I am not. I am talking about a Jersey company.

Senator J.L. Perchard:

CR Traders, will that do, Patrick?

Deputy P.J.D. Ryan:

Yes, if you like.

Senator J.L. Perchard:

A Jersey trading company owned outside the Island.

Deputy P.J.D. Ryan:

Well, no, that is not quite what I am saying. I am talking about 2 different -- I am talking about a Jersey resident and a non-Jersey resident.

Mr. M. Campbell:

Are they investors in the company or are they owners of the company?

Deputy P.J.D. Ryan:

They are both ...

Mr. M. Campbell:

Do they hold shares in it or do they own it?

Deputy P.J.D. Ryan:

Probably they would invest their own capital so they presumably own shares.

Senator T.A. Le Sueur:

More than 5 per cent?

Mr. M. Campbell:

More than 5 per cent?

Deputy P.J.D. Ryan:

More than 5 per cent. So what happens to the non-Jersey person? So let us say typically a UK resident would only pay tax in the UK based on any distributions made by the Jersey company, whereas the same person, were he to be resident in Jersey, would pay Jersey tax based on 60 per cent of the profits of the company.

Mr. M. Campbell:

Based on his proportion of the ownership?

Deputy P.J.D. Ryan:

Proportion of the ownership. But let us assume it is the same guy owning the same proportion.

Mr. M. Campbell:

Yes.

Deputy P.J.D. Ryan:

That is right. So, do you not accept that that is placing the Jersey investor in a Jersey business at a disadvantage over a non-Jersey person, a UK resident?

Mr. M. Campbell:

I imagine that the UK investor, if he owns 10 per cent of the company, he will want a distribution basis that will give him a return on the capital he has invested in that company. So he will get substantial distributions from the Jersey company anyway which will be taxed in the UK.

Deputy P.J.D. Ryan:

Not necessarily because he could be quite happy to have capital only and not -- he does not want income maybe.

Senator T.A. Le Sueur:

Ultimately he will get a capital appreciation when he or his estate disposes of the shares in the Jersey company.

Deputy P.J.D. Ryan:

Yes, and there are a lots -- which will be taxed at?

Senator J.L. Perchard:

Ten per cent.

Deputy P.J.D. Ryan:

Ten per cent. And there are others -- I am sure there are circumstances whereby he will not be taxed at all under certain circumstances.

Mr. M. Campbell:

He would be taxed in the UK on the capital gain he makes.

Mr. R. Teather:

Only at 10 per cent if it is a trading company. If he waits until he dies the estates do not pay capital gains tax. If it is a corporate investor the capital gain may be tax free.

Senator T.A. Le Sueur:

Will that not be a trading company situation in that case? If you are sitting on an investment for years and not generating any income from it, is it a trading company?

Mr. R. Teather:

It depends on what it does for the accumulated funds.

Senator T.A. Le Sueur:

It depends on the facts of the case. I think that in summary you are probably right, it is marginally worse but I cannot see it being significant in the overall scheme of things.

Deputy P.J.D. Ryan:

I suppose that is the crux of it, I mean -- perhaps you are going to - I do not want to put words in your mouth - but you are saying nothing is ever perfect and this is one of the down sides.

Mr. M. Campbell:

Quite.

Senator T.A. Le Sueur:

It is not, in my view, a significant down side.

Senator B.E. Shenton:

Do you think you are forcing companies to distribute? Say, for example, you got 2 potato companies, one is Jersey owned and one is UK owned, the UK company may decide to reinvest all its profits into the business whereas the Jersey company, the shareholders, will be taxed on 60 per cent distributions and therefore would expect, I would assume, the company to distribute.

Mr. M. Campbell:

One of the reasons the Minister agreed the 60 per cent deemed distribution basis is to allow the other balance to be reinvested in the company. One of the factors behind that was to allow reinvestment.

Senator B.E. Shenton:

But the rival can reinvest 100 per cent of profits whereas the Jersey company can only reinvest 40 per cent per se.

Senator T.A. Le Sueur:

You are an investment manager, what do companies realistically do in terms of their distribution?

Senator B.E. Shenton:

It depends on the business cycle of the company and where the company is.

Senator T.A. Le Sueur:

It does, but the majority of investors expect to get a dividend from the company and the dividends may be covered, say, twice out of the profits or something, there are sort of yardsticks in different industries and different investments. Investors do not just invest their money in a company for the good of their health.

Senator B.E. Shenton:

No, but certainly fledgling companies you would not be looking to disroute 60 per cent of your profit if you started off a company which is quite capital intensive.

Senator T.A. Le Sueur:

In that case we are talking about whether we should be talking about 60 or 50 or 40 or 75. Frankly, I am looking at getting some revenue for the Island.

Senator B.E. Shenton:

But it does basically force Jersey's shareholder and companies to distribute.

Mr. M. Campbell:

I think you will find that many, many Jersey companies will distribute a lot more than 50 or 60 per cent anyway because the shareholders of many Jersey companies, and they are quite small Jersey companies, they will need to distribute those profits as either fees or as dividends to live because --

Deputy P.J.D. Ryan:

If that is the case, Malcolm, are you not arguing for the Guernsey system because it would give a lot more flexibility?

Mr. M. Campbell:

No, certainly not, I would never argue for the Guernsey system.

Deputy P.J.D. Ryan:

Because are you not saying that they are going to distribute anyway?

Mr. M. Campbell:

Some of them will distribute, yes.

Deputy P.J.D. Ryan:

So if the market forces are going to force them to distribute anyway --

Mr. M. Campbell:

But some of them will not.

Deputy P.J.D. Ryan:

-- would we not have more flexibility and allow for the cases -- allow the market to really almost find its own level using the Guernsey system of distribution only?

Mr. M. Campbell:

Well, the ones who will distribute -- the ones who will not distribute are the ones who do not need to

distribute to their shareholders and they will tend to be the ones who have lots of profits which they do not need to distribute to meet the lifestyle of the individual shareholder. I would certainly not argue for the Guernsey system because I think the Guernsey system will have a severe effect on tax revenue flows. I think we have to accept that no new system of taxation like this is going to be absolutely perfect. I think we have to take that as read. I think it goes a long, long way to doing what we need to do but it is not by any means absolutely pristine perfect.

Senator J.L. Perchard:

Where do you think it is deficient, Malcolm?

Mr. M. Campbell:

Well, it cannot address all the issues about non-resident and resident shareholders. There is a slight discrepancy there. It cannot address those things. The thing is, if you are going to draft a law that addresses all that it is going to be highly complex and if they are highly complex laws, as the UK have found out, clever professionals will find a way around it.

Deputy P.J.D. Ryan:

Or you accept a reduced revenue stream and you go with the more flexible Guernsey way.

Mr. M. Campbell:

Indeed.

Senator T.A. Le Sueur:

At the moment, on our last figures, Jersey resident non-finance companies generate about £30 to £35 million a year in tax at 100 per cent.

Deputy P.J.D. Ryan:

Have you done any --

Senator T.A. Le Sueur:

If I pursue that argument at the moment, on our 60 per cent based minimum distribution basis we can expect to get something like £20 million a year revenue from those shareholders of those trading companies. In other words, we will lose £10 or £15 million.

Deputy P.J.D. Ryan:

What do you think the Guernsey --

Senator T.A. Le Sueur:

If you go for actual distribution it can be anything between the zero and the £30 million. So that is the sort of ballpark figures that we are talking about. It is unlikely to be zero but it will not necessarily be 20 or 30. Now it really depends on my judgment, if you like, as to how much of that £35 million a year revenue I might or might not collect on any given year. It makes it quite difficult from a government point of view to budget for the future, particularly in the early years, not knowing how much you may or may not get. I know if I look for a minimum of 60 per cent then I should be able to get £18 to £21 million a year.

Senator J.L. Perchard:

But how long for, Terry, before we continue the trend of Jersey businesses being owned overseas? You know, we are seeing them weekly almost. Jersey's major businesses being transferred to overseas ownership.

Senator T.A. Le Sueur:

I think you are exaggerating when you are talking about weekly, I mean that has been happening since the 1940s when Noland Porters(?) got sold. That is a natural course of life, businesses change hands.

Senator J.L. Perchard:

Only because it is advantageous to own them overseas. If it was advantageous to own them on Island I do not expect we would see the movement.

Senator T.A. Le Sueur:

Why do you think someone will have bought Noland Porters in 1947? Not because of tax reasons, but because they said: "Well, there is a good opportunity. There is a rundown store there, we can do it up and make a bomb."

Senator J.L. Perchard:

You do not accept that these --

Senator T.A. Le Sueur:

I say that taxation is only one of a number of reasons why people will take a particular investment. It may ultimately influence the position between 2 identical cases but primarily I, as an investor, would look at a deal because I think it has got money in it, it has profit in it, it has got appreciation, it has got growth in it for the future. The tax issue is almost secondary to that because zero per cent tax of no profits is no use to anybody. Twenty per cent of zero is zero, so you are looking primarily at an investor for appreciation, for benefit, for improvement.

Senator J.L. Perchard:

Again, I am conscious of the time and we have got plenty of business to get on to. So you think the yield from resident shareholders will be £18 to £20 million per annum?

Senator T.A. Le Sueur:

Yes.

Senator J.L. Perchard:

In Jersey businesses?

Senator T.A. Le Sueur:

It is not what I think. On the basis of the investigations we did a couple of years ago showing the current yield from those companies is £30 to £35 million a year. If your tax is calculated at the minimum of 60 per cent or what is distributed, which may be more, then you should get mathematically at least £18 to £21 million, possibly more.

Deputy P.J.D. Ryan:

Will you be looking at the actual yield Guernsey gets to see whether you might want to review it?

Senator T.A. Le Sueur:

I rather doubt it. Certainly not in the early years. I think what I would like to do is let this law settle down and see if there are any basic difficulties. I think there is a grave danger of chopping and changing the tax law every particular year just to cope with the current fad or current trend which may or may not continue. It may well be that Guernsey are looking over their shoulder and seeing what Jersey are doing and saying: "Well, maybe we will bring in what Jersey is doing." We swap to theirs at the same time as they swap to ours.

Deputy P.J.D. Ryan:

You are trading off the certainty of the revenue you are going to get for the advantages that Guernsey sees in more simplicity and less hassle generally all around the businesses.

Senator T.A. Le Sueur:

Yes. But I do not think that what we are doing here is over complicating the issue.

Senator J.L. Perchard:

Let us move on. Because I am conscious of the time and the Minister has to be away at 11.30 a.m. I would like to move on, Terry, to discuss the opportunity and the recognition by the Treasury that there is not a level playing field and that there is a requirement to try and extract some contribution from companies that are trading in Jersey but are owned outside the Island. You have demonstrated that there

is an inequity by trying to -- well, considering RUDL (Regulation of Undertakings Development Law) and looking at what we have now called the Blampied proposal. Could you tell us, I understand you have been taking advice on the Blampied proposal and how it could work, where are you now with that?

Senator T.A. Le Sueur:

I am more comfortable, if you like, now that Blampied or these variations is a partial solution and is effectively the only solution I can see on the table which has anything going for it at all. So, if you like, it is the least worst option -- it is the only option I can see, in effect. So I am minded to explore that further, and I would be happy to explore that further with the Scrutiny Panel because I was re-reading what Jurat Blampied said in his recommendations and I think we need to be quite clear about some of the implications of this lot. The panel, I think, has also seen the OXERA (Oxford Economic Research Associates) analysis and possibly the Dougie Peedle analysis of the economic consequences and perhaps disbenefits of doing this in terms of competition and so on, which have to be balanced against the equity of taxation and so on between Jersey resident and non-Jersey resident shareholders. So it is not a clear cut yes or not but I am moving much more towards the Blampied proposals.

Deputy P.J.D. Ryan:

Is this regardless of whether it is double tax creditable in the UK?

Senator T.A. Le Sueur:

I think the answer is to get it tax creditable in the UK you have got to do a bit of restructuring. Now whether companies will choose to restructure or not is a matter for them. I cannot legislate for the companies to restructure. So I think that is going to be one of the reasons why Blampied may not be a perfect solution but some companies may choose to restructure. A company with a head office in London and 200 branches around the country is not necessarily going to want to restructure Jersey just to comply with Jersey's --

Senator J.L. Perchard:

By restructuring, Terry, you mean a sort of parallel property company?

Senator T.A. Le Sueur:

To the extent there is a parallel property company. But looking at the Blampied proposals, in the original form they were effectively to apply to every owner/occupier, which included private households.

Senator J.L. Perchard:

That is the Blampied proposal?

Senator T.A. Le Sueur:

Yes. So when we talk about Blampied proposals I would not want to extend this to private households and I presume that the panel is of the same view.

Deputy P.J.D. Ryan:

At this stage or ...?

Senator T.A. Le Sueur:

At this -- well, because we are dealing with a particular issue here. We are dealing with the issue of the non-resident shareholder companies. Now, in dealing with that issue the chap who owes his farm(?) at Attac(?) is neither here nor there in terms of the non-resident shareholder issue. So if we are focussing on that issue we do not look at Schedule A owner/occupiers for domestic properties. We are talking purely commercial properties. We are agreed on that. I say that because one of the comments in the early submission is in terms of yield, I think that yield was driven on the basis of all owner/occupier properties perhaps rather than just commercial properties.

Senator J.L. Perchard:

I think there is a general recognition by the Treasury that there is an inequity with regards to companies being owned on Island or off Island and the Treasury demonstrated that, as I said earlier, by suggesting that he introduce a RUDL charge. So at an early stage in this process you recognised that there was a problem and we concur with you. That is why the Blampied proposal with regard to commercial rents is attractive.

Senator T.A. Le Sueur:

Yes, but do not put too many words in my mouth though, Chairman, because one of the things which I think a lot of people are saying or alleging is that those companies will not pay tax in the UK on their Jersey profits, they will find some ways of getting around that. I, as far as I can, have investigated that allegation and have more or less drawn a blank. Now I know the panel, or some members of the panel, have made those comments so maybe, and I think I have asked the panel, you can give me some hard evidence rather than hearsay.

Deputy P.J.D. Ryan:

Asking a tax accountant to lay open his -- a currently practicing tax accountant to tell you the means by which he earns his money is probably quite a difficult thing for anybody to do. It may only be retired senior accountants with no further axe to grind other than the loyalty towards their Island that they live in, and hence someone like Jurat Blampied, that you would probably need to look to for the kinds of information, I would suggest.

Senator T.A. Le Sueur:

I do not think that Jurat Blampied has managed to come up with any hard and fast evidence in that respect.

Deputy P.J.D. Ryan:

Hard and fast evidence other than the experience of 50 or more years of acting in a very senior level advising on tax matters to Jersey corporations and non-Jersey corporations. So, I mean, his opinion is quite clear and unequivocal and the words he used are -- some of the words he uses are: "It is naïve to think that non-locally owned companies would not plan tax to avoid tax wherever possible."

Senator T.A. Le Sueur:

Yes, and I concur wholeheartedly with that statement. They will avoid tax or defer tax where possible. For example, the CFC (Controlled Foreign Company) regulations in the UK allow them as a trading company to defer 50 per cent of their trading profits, and they will take advantage of that. Ultimately the pigeons, as I say, come home to roost, so we are talking about tax planning, tax deferral. We are talking about timing issues here, but we are perhaps getting away from the main point.

Deputy P.J.D. Ryan:

Do you not accept though that timing things are absolutely crucial. I mean the access to capital and the amount of liquidity that a Jersey company might have in available funds because they are not distributed would give them an enormous advantage over the same company that does not have that kind of liquidity.

Senator T.A. Le Sueur:

No, without going into specific cases, I do not think that is a major issue. I think the major issue we are talking about here is the perceived inequity of the Jersey resident versus the non-Jersey resident. I think it is probably more perception than reality but I appreciate the political perception and that is why, as I say, I am leaning much more towards the Blampied idea on the grounds of equity. But I think one has to be careful; if one generates greater equity in one area does one create inequity or imbalance elsewhere?

Senator J.L. Perchard:

Where would you see a possible inequity or imbalance?

Senator T.A. Le Sueur:

Certainly I can see 2 areas. Firstly, that in subjecting companies to a tax which they can only get around by restructuring to have a dual property holding trading situation you place them potentially at a commercial disadvantage in that, from a timing point of view, yes, they may be able to defer their taxes in Jersey to some extent but ultimately they will be payable, but not offsetable. So we have got, in

theory at least, a commercial disbenefit which may or may not be a difficulty, but then we have got the situation that I wonder how many trading operations in Jersey own their premises? So it is nice in theory but how many of the sort of companies that we are talking about are owner occupied?

Senator J.L. Perchard:

We do not know. Has the Treasury done any work on that as to what the potential yield from this proposal would be?

Senator T.A. Le Sueur:

No, I have done some work on some of the major commercial properties in the Island which are generally owned by a third party, not by the trading companies themselves. In many cases by pension funds.

Deputy P.J.D. Ryan:

If a trading company that currently owns its own premises are non-Jersey owned, if it were to go into the structure that would move its ownership of its premises away from the trading company, if it sought to move that into a pension or charitable --

Senator T.A. Le Sueur:

Yes, we will say a pension fund.

Deputy P.J.D. Ryan:

Could you use 134(a) to attack that as avoidance?

Mr. M. Campbell:

No, UK pension schemes who invest in Jersey property and who have income arising from that Jersey property, that income is not taxable in Jersey. They are specifically exempt. So I would not --

Deputy P.J.D. Ryan:

At the moment you -- do you want to move on to ...?

Senator J.L. Perchard:

Well, I did not want to but I think it is appropriate. We are there now, go on, Patrick.

Senator T.A. Le Sueur:

I think the reality is that if you accept Blampied you might have to accept Blampied, warts and all. One of the warts which could appear is that issue of pension funds.

Senator J.L. Perchard:

Why do you want to exempt pension funds? That is the point that finds me scratching my head. Is why should they be exempt, and superannuation funds? Why would you want to exempt them?

Senator T.A. Le Sueur:

Partly because they are generally exempted in the UK and in Guernsey and, I think, Isle of Man legislation as well. Also I suppose, because in the past there had been tax support towards pension funds.

Senator B.E. Shenton:

But you did originally look to removing the exemption.

Senator T.A. Le Sueur:

We did look to removing them and we were --

Senator B.E. Shenton:

Persuaded by people with vested interests.

Senator T.A. Le Sueur:

Persuaded that the economic benefit to the Island could outweigh the tax yield which we would get from them. At the time I popped that in - not necessarily for today's scenario - because without looking at Blampied at the same time, the article 115(a) was not crucial to the Zero/Ten legislation. So I said that can wait. But if we are going to implement Blampied type proposals then I think it behoves me to have another look at 115(a).

Senator J.L. Perchard:

And abandon the proposal to exempt the funds?

Senator T.A. Le Sueur:

No, it is not a proposal to exempt. They are exempt at the moment. It would be to repeal that part of the law which would do that. Now if I am going to do that then realistically I have got to talk people like the Minister for Economic Development and the Chairman of WEB (Waterfront Enterprise Board) to see what effect that might have on property prices, on rental yields, on competition and so on.

Deputy P.J.D. Ryan:

So, one of the fundamentals here is how it might affect the value of land at the waterfront?

Senator T.A. Le Sueur:

Absolutely. I mean, I can see it could quite possibly devalue the capital value of some of that waterfront land.

Senator J.L. Perchard:

That would stop large areas of the waterfront being bought up by foreign funds?

Senator T.A. Le Sueur:

I have no idea.

Senator J.L. Perchard:

Is that what you are concerned that might happen because that sounds a very positive effect, Terry?

Senator T.A. Le Sueur:

Well, I am concerned that we do not want to implement legislation without acknowledging the potential consequences in a different area.

Senator J.L. Perchard:

Senator, you said that you would want to speak to the Minister for Economic Development. Well, I can tell you what his answer will be but I will tell you that most people in Jersey will completely disagree that the waterfront should be protected from large corporates coming in and buying huge blocks of it and then renting it back to Jersey people. I think if that is a consequence and there is a financial downturn as a result, it is one that is worth paying. I am sorry, I just had to get that off my chest. Do you not agree with that?

Senator T.A. Le Sueur:

Well, I think you have to say to what extent -- we are talking here about pension funds only. Large corporates who are large corporates will be unaffected by the repeal of Article 115(a). So their decision whether to invest in be it the waterfront or Columbia or anywhere else would be totally unaffected by this.

Senator B.E. Shenton:

We are a Scrutiny Panel and we have evidence from a number of tax advisers that they found that your decision not to tax the superannuation funds, whereas you would be taxing local landlords, was completely out of kilter.

Senator T.A. Le Sueur:

Yes.

Senator B.E. Shenton:

There was very little support for your stance of giving superannuation funds a tax free visit to Jersey.

Senator T.A. Le Sueur:

I think, in fact, the accountants were divided. I know one, whose name escapes me for the moment --

Deputy P.J.D. Ryan:

Property professionals were not divided at all though, Senator.

Senator T.A. Le Sueur:

Property professionals have a different point of view.

Deputy P.J.D. Ryan:

Surprisingly.

Senator T.A. Le Sueur:

I do not know whether they were entirely disinterested but, no, all I am saying at this stage is that we should not ignore the economic consequences of repealing Article 115(a). But equally one cannot easily look at Blampied without looking at the same time at 115(a).

Senator J.L. Perchard:

You do not accept then that you and your policies are selling Jersey to the highest bidder?

Senator T.A. Le Sueur:

No. People buy or sell investments in Jersey because of a variety of reasons. If you are talking about my fiscal policies, no, I do not believe that is the case at all. I am quite satisfied that people, for example, who bought Normans Limited bought that on the view that they could run that business well. They did not buy it on the basis that they were going to pay zero per cent tax in the future.

Deputy P.J.D. Ryan:

But they did not actually buy the property.

Senator T.A. Le Sueur:

They did not buy the property, they bought the business.

Mr. M. Campbell:

Can I just clarify one issue here? Pension funds have been exempt from Jersey tax for decades. They have always been exempt. Superannuation funds in the UK have always been exempt from paying

Jersey tax on any property they invest in. This is not a new thing. It has always been the case because the original rationale was it is good to exempt pension funds from tax because they are making investments, generating income to help pay people's pensions when they retire. So that was the original rationale for all this and, of course, Guernsey do the same thing.

Senator J.L. Perchard:

When Jersey was driving for economic growth you could understand why that was the policy, but would you agree that the Jersey economy now is on the verge of overheating with double digit house price rises and us attracting investment from all and sundry?

Senator T.A. Le Sueur:

No, but that is short term. Yes, the economy is rising strongly at the moment after 3 or 4 years of being absolutely flat. If you look over a 5 year period the average rate of growth is relatively small. You talk about investors coming in to buy a property, a number of investors who allegedly bought flats on a buy to let basis have had their fingers burnt and have lost on the investment.

Senator J.L. Perchard:

But we are giving the UK pension and superannuation funds a tax free ride whereas the Jersey investor will have to pay.

Senator T.A. Le Sueur:

Superannuation funds have what you might call a tax free ride whether they invest in Jersey and Guernsey, in the UK, or anywhere else. Superannuation funds have that exemption because superannuation funds are encouraged by governments worldwide as providing a valuable service.

Senator J.L. Perchard:

But you will, in the same breath, be looking - if we were to proceed with the Blampied proposal type tax on commercial property - to review this policy on tax exemption for funds.

Senator T.A. Le Sueur:

Well, I think on the grounds of equity, which is the argument you are putting forward for Blampied, you cannot have equity on the one hand and not on the other hand without being inconsistent. Now, I know it is not the first time that political issues have been inconsistent but I try to make decisions which hang together where possible. That is why, really, I wanted to look at the yield which I might get from Blampied proposals on owner occupied commercial properties and seeing what benefits financially they get from that compared with the potential disbenefit in terms of the economic down side. Bearing in mind that the entire revenue at the present time, on the last estimate, from those non-resident non-trading companies was in the region of £10 or £12 million a year, and we might get back part or all of that - I do

not know how much we will get back from the Blampied type proposals but it may only be a proportion of that, how does that compare against the general economic background? It is something which, as I say, I am more inclined to look sympathetically towards Blampied but not necessarily totally at this stage without looking at the wider picture.

Senator J.L. Perchard:

What would be the timescale for that, Minister? Obviously it is not intrinsically linked.

Senator T.A. Le Sueur:

It is not linked to that law. It would be a matter in the budget of amending the Income Tax Law to repeal Article 115(a) and also a lot more complicatedly, I suppose, to introduce some sort of selective schedule A.

Senator J.L. Perchard:

Are you happy that we have completed on the Blampied?

Deputy P.J.D. Ryan:

Yes. Other than to congratulate you for taking this line. I think it is appreciated.

Senator T.A. Le Sueur:

Well, I mean, there is not much point in elaborating but thank you for that but I am sensitive to the ...

Deputy P.J.D. Ryan:

And I think our joint thanks to Jurat Blampied would probably be in order for taking the time and effort that he has at this point.

Senator T.A. Le Sueur:

Absolutely. Even though we are not taking certain of the proposals on board to the extent we are not taking up owner occupied properties generally.

Senator J.L. Perchard:

Okay, we have got a little longer. I just want to move on to the improved information powers included in the Income Tax (Amendment No. 29). We realise that the Comptroller will require these improved -- wants more information powers under the Zero/Ten because zero per cent has, sort of, blown a hole in the way we collect tax. However, does this not risk seriously damaging the relationship, Comptroller, between you and the taxpayer now that you are going to need more powers? You have already described the amendments to the form but ...

Senator T.A. Le Sueur:

We are talking here primarily about shareholder taxpayers of Jersey corporate entities and the majority of corporate entities in the Island currently have their tax affairs dealt with by one of the professional firms. Consequently in producing this draft legislation we have been very sensitive to the views of the professional firms and how this can be worked in a way which effectively gives control of the information he needs, gives the Island the revenue it needs and, from the professional point of view, enables them to provide the clients with the service and the advice that they need. I do not think that we are very far apart between ourselves, as Comptroller of Income Tax and myself and the tax professionals, in the way we are approaching this.

Deputy P.J.D. Ryan:

I suppose what is underlying our thoughts here is the situation that applies in the UK where the powers that you would have, Malcolm, are effectively split into 2 sections. One section that one could describe as normal use powers and the more Draconian powers being reserved for those taxpayers that are under investigation. I do not know if you have looked at that as a possibility. Splitting those powers into 2 sections.

Senator T.A. Le Sueur:

I do not think you can split the powers into different --

Deputy P.J.D. Ryan:

Well, at least put them into 2 sections within the law so that one would apply across the board for normal day-to-day and the more --

Senator T.A. Le Sueur:

In terms of a power to require everyone to file their tax return or to --

Deputy P.J.D. Ryan:

Well, whatever you felt. Well, let us not go into too much detail.

Senator T.A. Le Sueur:

No, there are simple powers like that which I agree would apply across the board. I am not quite sure that I am with you in terms of drawing a line between what is a venial sin and what is a mortal sin.

Deputy P.J.D. Ryan:

Have you looked at the UK?

Mr. M. Campbell:

Yes, I have looked at the UK legislation and I have to tell you that the Isle of Man and Guernsey have both taken it on board, as I understand it, fully and completely into their domestic tax laws. Jersey has gone another way. We have not done that and my understanding is that there are Guernsey professionals who are now saying that Guernsey have gone too far in this area. Do not forget that the domestic tax law is to get information from domestic taxpayers. I have different powers outside the Income Tax law that are called regulations to get information under the Tax Information Exchange Agreements as the competent authority for Jersey. Those powers are outside this law and they are quite separate and they are much, much stronger than the powers I have in the domestic law. But that is purely for international tax compliance to comply with TIEAs (Tax Information Exchange Agreements) with the USA and the Netherlands and the other jurisdictions we are going to enter into TIEAs with. I do not think the powers in this law are Draconian in any way shape or form. I think they are sensible and, as the Minister has said, we have discussed those issues with professionals here in Jersey and my understanding is that the professionals, as the Minister has said, are comfortable with the powers of the Comptroller in this law.

Senator B.E. Shenton:

I mean, as we make the taxation system more complicated there will be people that try and get round it but there will also be people that make genuine mistakes. Will you treat everyone by the letter of law or will you ...? How will you distinguish between the 2?

Mr. M. Campbell:

I currently levy penalties. If it is a tax fraud case, for example, we interview people under caution and we interview them under Judge's Rules and under PACE (Police and Criminal Evidence Act) and we record the interviews. Those kind of cases get sent to the Attorney General and if he decides to prosecute he will and we have, as I have said earlier, prosecuted, I think, 8 cases in the last 12 years. Wilful default cases, we will levy some penalties because that is less serious than fraud. Neglect is a lack of reasonable care and that, again, is even less serious than wilful default. But I have a term called innocent error. If it is an innocent error, and I think that is what you are talking about, I do not levy penalties and I do not levy interest, I just collect the back taxes, if it is innocent error. If somebody comes to me voluntarily and discloses income that he has previously undisclosed it is very, very rare indeed for me to charge penalties on a voluntary disclosure. I just collect the back taxes because it is a voluntary disclosure to me by the taxpayer. So I take a very pragmatic and sensible line on this, in my view, and if the taxpayer disagrees with the levy of penalties he can go to the Royal Court. To my knowledge not one taxpayer over the last 25 years has appealed my decision on penalties to go to the Royal Court.

Deputy P.J.D. Ryan:

I think, from my previous question, you mentioned that there would be some changes to the regulations centring around the powers that you have.

Mr. M. Campbell:

Sorry, can I just clarify? The regulations for the TIEAs --

Deputy P.J.D. Ryan:

No, not TIEA. The TIEAs are going to form part of our investigation as a separate review from corporate services into the TIEAs and the powers that you have especially for TIEAs will form part of that. So I do not want to go into that side particularly. Thinking of domestic, the powers you have in domestic law, and I think you mentioned that there would be some changes to the regulations. Is that right?

Senator T.A. Le Sueur:

I think I used regulations incorrectly when I should have been talking about amendment 29 to the law. I tend to think of amendments to the law coming as regulations but amendments to the Income Tax law are an amendment to the law itself.

Deputy P.J.D. Ryan:

I sort of understood from what you were saying that there might be some changes to the regulations which would govern your powers.

Senator T.A. Le Sueur:

We do not normally make regulations.

Mr. M. Campbell:

There are no regulations to the Income Tax law. The regulations are quite separate, they are the TIEA stuff. There is a slight strengthening of powers in this law, as I mentioned earlier. As the Minister confirmed, the professionals and the 2 of us, we are almost at one on this. I do not think there is an issue there at all as far as I am aware.

Senator T.A. Le Sueur:

No.

Senator J.L. Perchard:

It is the company secretary who is responsible for submitting accurate information to you.

Mr. M. Campbell:

In part. So will the shareholder be.

Senator J.L. Perchard:

It will be the company secretary that you would prosecute?

Senator T.A. Le Sueur:

I doubt it.

Mr. M. Campbell:

I do not think I would prosecute the company secretary.

Senator T.A. Le Sueur:

Can you be more specific?

Senator J.L. Perchard:

Well, the duty to provide information about shareholdings to collect tax on deemed dividends and fines is, if that the information is correct, fall on the company secretary. This may make it difficult to recruit good company secretaries, instead would it not be better for the company to be fined rather than the secretary?

Senator T.A. Le Sueur:

I am not with you. What are we talking about?

Mr. M. Campbell:

Are you talking about 20(b)? Employers have to make returns of employee's earnings to me now, I do not think I have ever prosecuted an employer. I mean, to be frank, I do not think I am ever going to prosecute a company secretary. That is not the way we do things in Jersey. We ring them up and we say: "Can you give us this information" or I write to them, and they send it into us. It is very unusual for employers or companies not to send in the information I requested. Of course, the shareholder himself has to make this return as well.

Senator J.L. Perchard:

Malcolm, just turn to page 32 of the ... have you got it there, number 6?

Mr. M. Campbell:

Yes. This is a standard compliance article. They currently exist in the law for employers. You are talking about Article 20(b)(vi). That is a standard compliance article. It is in the law now for employers and other people have to make returns to me. There is nothing unusual about this.

Deputy P.J.D. Ryan:

Is it the employer as the company or the company secretary as an individual?

Senator T.A. Le Sueur:

If you did prosecute a company you would normally prosecute a company through one of its officers.

Mr. M. Campbell:

Yes, there is no other way of doing it. This is just a standard compliance article. There is no big deal about this.

Senator J.L. Perchard:

It is just something Richard picked up and asked us to -- yes, it would be the way of prosecuting the company through one of its officers.

Senator T.A. Le Sueur:

I think there is the issue which the professionals raised, which we have resolved, and that is where the company has shares held in the name of a nominee. The secretary can disclose the nominee but he will not know the beneficial ownership and it will be up to the nominee then to take it a stage further.

Mr. M. Campbell:

Certainly none of the professionals have brought this point up to my knowledge. They have no concern with this at all.

Senator J.L. Perchard:

Would any fine then levied on the company via this company secretary or a member of the -- or the chairman, or whoever; would the fine not be -- could it not be set at 20 per cent of the company's profits. Would that not be sensible?

Mr. M. Campbell:

There is a standard set of fines laid down, I think, by Royal Court Rules and this law abides by those standard set fines. The Income Tax law does just conform to, for penalties, to the standard set of fines.

Senator J.L. Perchard:

Do you know how that is calculated, Malcolm?

Mr. M. Campbell:

I think the Law Officers' Department lay down what those fines should be. There is a standard scale.

Senator T.A. Le Sueur:

Any law, including a tax law, will go to the Law Officers' Department in terms of penalties and the Law Officers' Department recommend the appropriate penalties which the States may or may not adopt. I think we found in the GST law that there are one or 2 penalties they felt were inappropriate and amended.

Mr. M. Campbell:

This one says level 3 in the standard scale and that is already in the tax law, those kind of standard scale penalties. So they do not give me discretion as to what the penalty should be, it is laid out in the law what the penalty is rather than me deciding, as Comptroller, what the fine should be.

Senator J.L. Perchard:

Right, we will move on slightly. We have another 10 minutes. We notice that you have defined or changed the definition of a trading company or made it more precise. That is so that we can identify the difference between trading and investment, and there are a couple of questions that arise from that definition. A trading company is one that does not have a substantial - this is to quote the articles - investment activity without tying the Comptroller's hands. Could you give us, Terry, an indication of how that approach will mean -- what is the definition of substantial in your case then?

Senator T.A. Le Sueur:

I think 95 per cent of the cases will speak for themselves. If you have got a plumber who has got a bank account with £5,000 on deposit and his turnover is £500,000 and he generates interest on the money on the deposit account that is investment income. But you are not going to treat that company as an investment holding company. The majority of his activities are covered by his plumbing profits. Now, if in the fullness of time, and particularly if you took the Guernsey situation, that company builds up huge reserves of cash when the plumber retired it would cease to be primarily a trading company and become an investment company just sitting on that cash. There is going to be a crossover point at some stage which is a subjective situation, where the majority of the company's activities or profits are derived simply from investment holding. Now, I think, at the end of the day it is a matter of judgment for the Comptroller of Income Tax, a matter of commonsense. As I say, in the large capacity of cases people are pretty clear whether a company is a trading company or not. If there is any doubt then I am sure the accountants would happily ask the Comptroller for a ruling because on the same basis they are not going to want to advise their client he is a trading company and has to distribute 60 per cent, if it is perfectly clear to the accountant and the tax paying company that they are an investment holding company and they should be paying the 100 per cent rate.

Senator J.L. Perchard:

Will you be issuing guidelines?

Senator T.A. Le Sueur:

If it is necessary. I mean, it is a matter for commonsense. I mean, you have the situation now where you have trading companies with bank interest assessed in this case, case 3, but they are not treated as investment holding companies.

Senator J.L. Perchard:

I think you changed this after Scrutiny read your original definition.

Mr. M. Campbell:

Can I just give you some background? We did have a definition of an investment holding company in the original draft but that was complex and we spent a lot of time doing this. The Law Draughtsman and I spent a lot of time on this, but it was deemed to be too complicated and too complex so we have now introduced the trading company definition, please do not tell us to take this out because --

Deputy P.J.D. Ryan:

No, we are just trying to get --

Mr. M. Campbell:

The Minister is quite right. It is a commonsense issue and I and the professionals will work together in a commonsense and pragmatic way to ensure that, well, that is a trading company, that is 60 per cent deemed. No, that is an investment holding company that is 100 per cent attribution.

Senator J.L. Perchard:

I think your original definition was flawed and this is better.

Mr. M. Campbell:

Good. That is excellent news.

Senator J.L. Perchard:

Just another question. Deemed distribution - changing the subject again - only applies to a shareholder with more than 5 per cent of the shares. What is the rationale behind this? If you own one per cent of Tesco's or 10 per cent of my business we know which one is the wealthier. What is the rationale? I cannot grasp it.

Senator T.A. Le Sueur:

If I own one per cent of Tesco's I am unlikely to be sitting on the board of Tesco's or influencing their decisions very much. I am sitting there as an investor to collect my dividends from Tesco's and hopefully see my shares appreciate in value. I have no influence of the company's activities

whatsoever. If I have more than 5 per cent in Perchard Farms Limited then I might well have some controlling influence. Well, not controlling influence but some influence on the views and activities of the other board members. So it is an indicative figure, whether you stick to 5 per cent, 10 per cent, one per cent, you come down to commonsense, where do you draw the line?

Senator J.L. Perchard:

But you have drawn the line for the reason of deemed distribution at 5 per cent.

Mr. M. Campbell:

Yes, 5 per cent is the *de minimis* limit because, as the Minister has said, the person with, say, 2 per cent shareholding has no influence over the distribution policy or the management of the company in question and he may get dividends, he may not get dividends. If he gets actual dividends we will assess him but you cannot deem a proportion of the profits of two-one hundredths on to him because not only do we have to have a *de minimis* limit for the fact there is no control by the individual, administratively it is much simpler. If we are going to be chasing people with .5 per cent holdings in companies, I mean, I would need an extra 120 staff or something. Administratively we have to have this.

Senator J.L. Perchard:

Where did you arrive at the 5 per cent figure? How did you get there?

Senator T.A. Le Sueur:

Probably consistency with the other parts of law. Even if you only got the one per cent shareholding in the company, if that company pays a dividend then you will be assessed on that income. So we are only taking about minority shareholders of companies that do not distribute dividends. So it is a very small proportion of a very small proportion of a relatively small problem. You know, we try to keep the tax office simple.

Mr. M. Campbell:

Which is why we call it a *de minimis* limit.

Deputy P.J.D. Ryan:

Have you given any thought to the amalgamation of related holdings so that you do not get a company split up into lots of 5 per cent shareholdings? Is that something you have given any thought to?

Mr. M. Campbell:

I have always got 134(a) to attack any avoidance of tax. I would regard it a deliberate structure or scheme to split a company up without a sense of reality behind that splitting up as an avoidance scheme and I would say: "Well, I am sorry, you still own 25 per cent of that company even though you have said

you have given 20 per cent away to your ...”

Deputy P.J.D. Ryan:

So you would use 134(a)?

Mr. M. Campbell:

I think I would use 134(a).

Senator T.A. Le Sueur:

If he owns 25 investment holding companies, each of which held 4 per cent of your aggregate company, again it is the same approach.

Mr. M. Campbell:

I do not think professionals and their clients would do that in Jersey.

Senator T.A. Le Sueur:

On the other hand it is 25 annual returns fees.

Deputy P.J.D. Ryan:

This may be only going to affect a relatively small number of shareholders, but you are exempting listed companies. Presumably that would mean paying listed companies, in the aim of the market. Do you think there is scope for avoidance?

Mr. M. Campbell:

Well, you cannot really deem the profits of listed companies on to individual shareholders. You just cannot do that. If you have a shareholder in Marks and Spencer or a shareholder in Boots, or a shareholder in BP --

Deputy P.J.D. Ryan:

I was thinking more of a smaller but still listed company.

Senator T.A. Le Sueur:

It is difficult to say. You sort of put it in terms. If you are a small company you would not --

Mr. M. Campbell:

You would not be listed.

Deputy P.J.D. Ryan:

Relatively. Smaller than Boots or --

Mr. M. Campbell:

But it is a public company?

Deputy P.J.D. Ryan:

Still a public company.

Mr. M. Campbell:

You cannot really deem the profits of a public company on to an individual shareholder resident in Jersey. I mean that does not seem to me to be ...

Senator T.A. Le Sueur:

In any case, if you are going to assess those taxpayers on dividends received, it is likely they are AIM (Alternative Investment Market) listed companies, will be paying a dividend.

Deputy P.J.D. Ryan:

You could not have a controlling shareholder in an AIM listed company? Someone with, I do not know, 30 per cent?

Senator T.A. Le Sueur:

Once you have got more than 30 per cent in a company you tend to have to make certain evidence(?) to your shareholders.

Deputy P.J.D. Ryan:

But they would avoid any kind of deemed ...

Senator T.A. Le Sueur:

I think we are getting into esoteric rules here. We are trying to look at --

Deputy P.J.D. Ryan:

Have you given this one any thought?

Mr. M. Campbell:

Well, we have given it thought. I mean, we knew we could not assess on an individual shareholder the profits arising in a public company. You assess that individual shareholder, as the Minister has said, on the dividends that person receives from the public company but to attribute a proportion of the profits of a public company to an individual shareholder, no matter what his shareholding really is, that does not

seem to me to be a sensible way to proceed. Where would you draw the line?

Deputy P.J.D. Ryan:

I can see the problem, I am just wondering whether you have got any solution.

Mr. M. Campbell:

The solution is not to include them.

Senator J.L. Perchard:

Richard has just raised a point, and I would like him to make a comment here, and perhaps you could comment on the comment he is about to make.

Mr. R. Teather:

It is just whether you need this given that you have already got a 5 per cent *de minimis*. It is just talking about not assessing people on their Tesco shares but if you have got 5 per cent of Tesco then that is quite a significant investment.

Senator T.A. Le Sueur:

Yes, let us not mix it with 2 situations. You are still going to be assessed on your dividend income in Tesco whether you have one per cent or 10 per cent of Tesco. The question you have to ask is: if that were a private company could you control dividend policy? As I say, the importance from an income tax point of view is that we are getting the revenue from the dividend.

Senator J.L. Perchard:

Patrick, bearing in mind the time, have you got any --

Deputy P.J.D. Ryan:

Well, the preference shareholders one that we had a little query about. They are going to be taxed as if they had received their full dividend but they may not have, and the company may not legally be able to pay a dividend because if its insolvent or has not made enough profit. It could mean, depending on the terms of the preference shares, that they will never be paid. Is there scope of flexibility there?

Mr. M. Campbell:

That was introduced to prevent people switching into preference shares because the original draft law did not mention preference shares so this is a kind of provision to stop people getting out of the distribution basis.

Deputy P.J.D. Ryan:

I understand that, but have you tipped the baby out with the bath water a little bit on the odd occasion if it goes the other way?

Mr. M. Campbell:

Well, again, we have discussed this with professionals and they seem reasonably content with this as far as I understand.

Deputy P.J.D. Ryan:

Do you have any scope for ... you know, if there are circumstances that are peculiar?

Mr. M. Campbell:

Yes, indeed. I mean, Article 6, I think it is, in the Income Tax law gives me the power and the sole authority and the administration of the tax law. As you probably know I issue practice notes, I issue concessions to clarify the law or to make things easier for the taxpayer.

Deputy P.J.D. Ryan:

So you could issue a concession in this kind of tax if you needed to?

Mr. M. Campbell:

If there was a problem, if there was an issue that needed to be addressed I could certainly do that.

Senator J.L. Perchard:

I am reasonably satisfied that we have covered everything that I wanted to. There are a couple of other little details but they are just that. Ben?

Senator B.E. Shenton:

No, nothing.

Deputy P.J.D. Ryan:

Just one last one which I think is important is this question of your deemed distributions. You seem to have switched back to tax profits basis and originally we were going with accounts profits.

Mr. M. Campbell:

Yes, GAAP (General Accepted Accounting Procedure), it has gone.

Deputy P.J.D. Ryan:

Can you tell us why it you have done that?

Mr. M. Campbell:

Because it was felt there were too many loopholes in the general accepted accounting principles route because clever accountants would, under the GAAP basis, put through provisions and put through other expenses that would reduce the profits chargeable under the distribution basis so it was decided, after consultation, that we go back to the traditional way of doing things under the tax adjusted profits.

Deputy P.J.D. Ryan:

Do you think that is tighter?

Mr. M. Campbell:

This is now tighter.

Senator J.L. Perchard:

Just one final question, Minister. Are there any revised figures on the black hole?

Senator T.A. Le Sueur:

Not yet but I have instructed Malcolm and his officers to update those figures. I doubt if there is going to be any significant variation. It may well be that because of increased economic activity at the moment taxable profits may be slightly higher and therefore the hole might be slightly larger when it comes. Equally there may be some changes already adopted so the hole may be slightly lower than it currently is. As we know the range is quite wide, sort of, £15 or £20 million into 2 extremes, and the whole fiscal policy was based on the assumption that there was a significant deficit of between £80 and £100 million which needed to be addressed. The solution addresses the problem, it does not address a specific number in that problem.

Senator J.L. Perchard:

When can we expect the updates?

Senator T.A. Le Sueur:

You can expect the updates by about September/October time, I think.

Senator J.L. Perchard:

I look forward to that.

Senator T.A. Le Sueur:

It is a constantly moving figure. We could spend hours or days revising the figure which, at the end of the day, is there to guide us. That does not necessarily change the policy.

Senator J.L. Perchard:

That concludes the immediate business that we have. Again, I thank you for coming up.

Senator T.A. Le Sueur:

As I get closer in my resolution of the Blampied issue I will let you know on that one. If we get any closer on the resolution of the Isle of Man ECOFIN issue we will let you know on that one.

Senator J.L. Perchard:

Thank you. Both of those issues are extremely important, are they not, really?

Senator T.A. Le Sueur:

Otherwise the draft law is in its - I do not know which iteration it is now, but we are coming to the end of those iterations and I think the next law will be the final version.

Senator J.L. Perchard:

There will be an update on this package?

Senator T.A. Le Sueur:

We are getting down to the i's and crossing of t's now rather than anything substantial.

Senator J.L. Perchard:

All going well you will lodge at the beginning of November?

Senator T.A. Le Sueur:

Beginning of October.

Senator J.L. Perchard:

So, when can we expect the new and probably final draft of the draft law?

Senator T.A. Le Sueur:

Holiday first. Some time towards the middle of September. I mean the Law Draughtsman is away at the moment as well so it depends on her timescale as well.

Mr. M. Campbell:

And I am away next week.

Senator J.L. Perchard:

Thank you very much for your attendance and I declare the hearing closed.