

**WRITTEN QUESTION TO THE PRESIDENT OF THE FINANCE AND ECONOMICS  
COMMITTEE BY DEPUTY G.P. SOUTHERN OF ST. HELIER**

**ANSWER TO BE TABLED ON TUESDAY 19th JULY 2005**

**Question**

The statement made to Parliament by Dawn Primarolo, Paymaster General of the U.K. government as detailed in a local media release by the Finance and Economics Committee dated 6th July 2005, includes the words –

*‘The proposed introduction of a zero-ten rate in Jersey is a result of a program of modernisation of the Jersey tax system designed to be in compliance with international standards, including those set up by the OECD and by the EU Code of Conduct for business taxation.’*

- (a) Is the Committee satisfied that the words *‘designed to be in compliance’* are no different from the President’s media statement on the matter dated 6th July 2005, that *‘my Committee has ensured that its proposals comply’*?
- (b) The Paymaster General goes on to say *‘The States of Jersey have kept H.M. Government informed of developments in relation to the reform of its tax system’*. Will the President inform members of the dates on which the States have so communicated with H.M. Government on this issue, and release to members the content of these communications, and if not, the reasons why?
- (c) Will the President inform members whether the Committee has sought formal acceptance from the U.K. and E.U. that its detailed proposals for tax reform including ‘look through’ provisions for company shareholders are compliant with articles B1, B2, B3, and B5 of the E.U. Code of Conduct on Business Taxation, and if not, the reasons why? and,
- (d) Would the President inform members when the Committee intends that the mechanisms for the zero-ten proposals will be fully detailed and available not only to this Assembly, but to assessment by HM Government and other member states in the EU? If it is not intended to do this, would the President explain why?

**Answer**

- (a) Yes the Committee is of the view that these two descriptions mean the same thing.
- (b) The dates on which the States of Jersey have communicated with the U.K. Government on this issue are as follows –

10th May 2002  
 14th June 2002  
 9th July 2002  
 24th September 2002  
 15th October 2002  
 4th December 2002  
 17th June 2003  
 8th March 2004  
 15th April 2004  
 23rd June 2004  
 8th March 2005.

These communications with the U.K. Government either consisted of meetings between Jersey and U.K. officials; meetings between Jersey political representatives accompanied by their officials and their

equivalents in the U.K. or, in the case of 15th October 2002 communication, in the form of a letter from the then Senator Pierre Horsfall to Dawn Primarolo, U.K. Paymaster General. There has also been a written exchange of correspondence between the Government of the States of Guernsey and the U.K. Government in April 2004, where Jersey Government representatives were joined in both the drafting of the letter and in the representations made on a particular technical issue on the proposals to comply with the EU Code of Conduct on Business Taxation.

The meeting on 14th June 2002, was between Senator Horsfall, accompanied by the then Chief Executive of Policy and Resources, and the U.K. Prime Minister, the Right Honourable Tony Blair.

Apart from the aforementioned letter of 15th October 2002, which has already been released to the States Shadow Scrutiny Panel on GST, there will be no release of the content of any of these communications for the reasons already explained at item 6 of the letter dated 13th June 2005, from Senator Frank Walker President of the Policy and Resources Committee to the President of the Shadow Scrutiny Panel. This summarises the reasons why such communications are not for release and these reasons are further strengthened by additional discussions with the U.K. Government on the issue which has established that, from their view point, all of this material relates to communications between Governments in matters of national interest. As such, from a U.K. perspective it is exempt from disclosure under the U.K. Freedom of Information Act. U.K. Government Representatives have indicated that they would expect an equivalent standard and equivalent treatment in Jersey to apply.

- (c) The Committee will not seek formal acceptance from the U.K. and the EU that its detailed proposals for tax reform are compliant with the quoted articles of the EU Code of Conduct on business taxation for several reasons. Chief amongst these are the following –

Jersey is a tax autonomous jurisdiction and for the purposes of tax is akin to a nation state. The Island, therefore, sees no purpose or reason to seek the approval of either the EU or the U.K. in respect of any aspect of its system of taxation, other than voluntarily. In consequence, it also sees no reason why Jersey should be expected to seek line by line sign off, noting in addition that even EU member states themselves are not required to seek such sign off within the Code of Conduct process on a formal legal basis. If we were to take such a course ourselves we would be diminishing our domestic autonomy at a time when we are seeking to increase our International personality.

The Code of Conduct on business taxation is a political process to which Jersey has joined itself voluntarily. It does not work on the principle of certification or a statement of legal compliance either amongst the member states themselves or in its outreach application to third parties. As with much of the EU process, conclusions reached are matters of political judgement. The Island takes the same approach in this respect. It should be stressed again that the Island's interface with the Code process is a voluntary matter without legal compulsion as Jersey is not a European Union Member State nor bound by EU processes whether legal or informal.

Notwithstanding that Jersey's participation in this exercise is voluntary, the Committee is of the view that the endorsement obtained from the EU and U.K. signals a firm acceptance from those bodies in respect of the Island's proposed tax changes and their effect relative to the Code criteria. The 'look through' provisions pertain to personal tax measures and are intended primarily to ensure that various tax avoidance possibilities which might in their absence otherwise be available to Jersey resident shareholders of Jersey companies can be minimised. As these proposals relate to personal tax measures they are the sole province of 'the nation state' and are therefore within Jersey's domestic competence, an approach which is universally adopted throughout the EU itself. For reference, this principle is enshrined in a document entitled 'A Communication from the Commission to the Council of the European Parliament and the Economic and Social Committee' dated 23rd May 2001 - with a separate sub-title of "Tax Policy in the European Union Priorities for the years ahead". In this document the following policy statement appears at Article 3.2.3 –

*'as pointed out in section 2.3, personal income taxes fall in their entirety under the sole responsibility of member states'.*

It follows that if the EU member states amongst themselves do not have the right to intervene in, nor mandate the intervention of the European Commission in, each others' personal taxation measures then this inhibition, also extends to third parties outside the EU such as Jersey or fellow Crown Dependencies which have voluntarily joined themselves to the EU Code of Conduct process. On this basis the Committee takes the view that the 'look through' provisions element of our fiscal re-structuring proposals is not a matter which falls within those voluntary arrangements.

What may also be of interest is a recent European Court of Justice (ECJ) position. Europe's highest Court has recently ruled in favour of the Dutch Government in a landmark case concerning the free movement of capital. The ECJ said that the way the Dutch Government discriminated between residents and non-residents in its levying of a wealth tax did not breach European law. The decision, say tax experts, could mark another significant milestone in the approach taken by the ECJ towards national tax rules.

The Committee sees no need for further formal contact with the EU on this issue beyond the contents of the ECOFIN endorsement documented on 3rd June 2003, and in terms of its ongoing discussions with the U.K. Government. It should be noted that the latter also holds the chair of the EU Code of Conduct on Business Taxation Group.

- (d) Some detail regarding the proposed mechanisms for the implementation of the Zero / Ten proposals agreed by the States already exists, either in the form of various Propositions put to the Assembly, notably P.106/2004 and P.44/2005, and various other documents in the public domain. The concrete legislative proposals will be brought to the States in 2007. The response in respect of any intention for there to be further assessment by the U.K. Government and its fellow member States in the EU in this respect is documented in c) above).