

2. Urgent Oral Question - Deputy G.P. Southern of St. Helier of the Chief Minister regarding Zero/Ten and the Island's compliance with the EU Code of Conduct on Business Taxation:

10th December 2010

2.1 Deputy G.P. Southern:

In the light of the assurance from the Minister for Treasury and Resources that Jersey only had a minor issue with deemed distribution in relation to the Island's compliance with the E.U. code on business taxation and that the E.U. decision awaited a further meeting in February, what responsible does the Chief Minister have to the statement from H.M. Treasury following a meeting with ECOFIN Ministers that states that ECOFIN noted the view of the Business Taxation Group that Jersey's Zero/Ten corporate tax regime gave rise to harmful effects and was not compliant with the code, and that the U.K. Government therefore expects Jersey to abide by commitments to comply with the code and implement the abolition of the harmful measures?

Senator T.A. Le Sueur (The Chief Minister):

The position remains as set out in the press release which we issued earlier this week. This is based on our understanding from the information that we have been able to obtain to date that the Code Group, while agreeing that our Zero/Ten corporate tax regime gives rise to harmful effects, recommended that this be reviewed in due course on the basis of the conclusions of a E.U. Council High Level Working Party work on examining the scope of the code.

[11:00]

In the light of this, it is clear to us that we should await the outcome of the review by the High Level Working Party before we are able to determine what steps to take to remove any harmful effects on our present corporate tax regime. Our present understanding is that the harmful effect is the interaction of the deemed distribution rules and the Zero/Ten regime. We have seen nothing that would suggest that the tax rate in itself is a matter that falls within the scope of the code.

2.1.1 Deputy G.P. Southern:

Does the Chief Minister accept that our Zero/Ten measures, as currently constituted, offer advantages according to only non-residents in respect of transactions carried out with non-residents; is that the case? Does it break Article 1 of the E.U. Code of Conduct?

Senator T.A. Le Sueur:

Our view is that deemed distribution is a personal tax measure. The E.U. Code of Conduct Group is concerned with business taxation.

2.1.2 Deputy G.P. Southern:

If I may, then I will move on to Article 2 of the E.U. Code of Conduct, which says one of the tests is whether advantages are ring-fenced from the domestic market so they do not affect the national tax base. Is that the case with our measures on Zero/Ten?

Senator T.A. Le Sueur:

That is a question which I would be better placed to answer once I have read the response of the High Level Working Group. At this stage the answer is: who knows?

2.1.3 Deputy M.R. Higgins:

First of all, Lord McNally was in the gallery earlier and obviously was in the Island, as the Minister who is responsible for the Channel Islands, is the Chief Minister trying to tell us he had no discussions with Lord McNally about the British Government's position last night at the dinner? Or are we expected to believe the topic did not even come up in conversation?

Senator T.A. Le Sueur:

Members may appreciate I have been in discussions with Lord McNally for the last three-quarters of an hour and I had to leave those discussions to come up here to answer questions. We have been discussing a variety of things, and we have not come round to that one yet, but no doubt we will in due course.

2.1.4 Senator P.F. Routier:

Would the Chief Minister give us any indication whether he has had any official written communication from the U.K. Government which highlights any of the issues which have been talked about?

Senator T.A. Le Sueur:

I have had no written communication whatsoever from H.M. Treasury in recent weeks.

2.1.5 Deputy P.J. Rondel of St. John:

Have you received a statement from Her Majesty's Treasury now that we have a second-hand email from Guernsey press report?

Senator T.A. Le Sueur:

No, I have had no such statement. I have seen the press report in the Guernsey press and I treat that with the respect I think it is due. **[Laughter]**

2.1.6 The Deputy of St. Mary:

Has the Chief Minister not seen the statement from the U.K. Treasury which says the E.U. Commission considered that taken as a whole the systems were designed to offer nought per cent tax rate to foreign investors, although some sectors are not taxed at nought per cent rate, while avoiding residents benefiting from the nought per cent tax rate? Does the Chief Minister agree that that is what the statement from the U.K. Treasury says?

Senator T.A. Le Sueur:

A statement from the U.K. Treasury says that the Commission was looking at the deemed distribution and attributions provisions in isolation. One has to look at this in the round, and that is why, as I have said, I am awaiting the outcome of the High Level Working Group findings.

2.1.7 The Deputy of St. Mary:

May I ask a supplementary and point out to the Chief Minister and ask for his comment on the fact that the U.K. Treasury is not waiting for the High Level Group and what they say is that: "Following a discussion of the Commissioner's evaluation the Group agrees that Jersey's Zero/Ten corporate tax regime and the Isle of Man's new tax legislation give rise to harmful effects." Zero/Ten corporate tax regime, not the deemed distribution, little bit on the side, the whole regime. Could the Chief Minister explain to the House why he seems to be obdurate in not accepting that this is what the U.K. Treasury have said.

Senator T.A. Le Sueur:

I think the Deputy of St. Mary has summed up what the U.K. Treasury have said very well. It gives rise to harmful effects. Once we see what precisely those harmful effects are and how we can counter them, we can deal with them. If they are harmful effects which we need to adjust in order to maintain a normal internationally acceptable business regime then we will do so.

2.1.8 Senator S.C. Ferguson:

Originally the Chief Minister told Members that the Zero/Ten regime was accepted in principle by the Code Group. Why did the Chief Minister say that and does he maintain his stance?

Senator T.A. Le Sueur:

Absolutely. I took the precaution of bringing with me a copy of the ECOFIN statement from June 2003, where it notes that the Code Group of Business Taxation has considered the proposed, revised or replacement measures of Member States and of dependent and associated territories for those listed in annex C of SN4101/99, and as set out in annex B, and has found that none of these, which included Zero/Ten, are harmful within the meaning of the Code. It did not at that stage talk about things like deemed distribution because at that stage the details of the Zero/Ten arrangements had not been thought out. But the Zero/Ten principle was deemed not to be harmful within the meaning of the code, and that was June 2003.

2.1.9 Deputy P.V.F. Le Claire:

Would the Chief Minister not accept that the E.U. Code of Conduct provides that Member States with dependent or associated territories will commit those in their constitutional frameworks to adopt the principles and therefore the real problem is that our Member State is the United Kingdom and it is our Member State that has not understood or is not understanding our position, and it is our Member State that is committed to ensure that we apply these principles. That is the real issue; does he not agree?

Senator T.A. Le Sueur:

We have 2 problems here. Firstly, the U.K. has a constitutional framework but Jersey has a constitutional framework as well and we have to abide by the constitutional framework within which Jersey operates. Secondly, the E.U. has a code of conduct arrangement: it is, to that extent, an informal group in which one can hardly apply constitutional

principles, particularly constitutional principles of a place like Jersey, which is not a Member of that consultative group.

2.1.10 Senator J.L. Perchard:

Zero/Ten is extremely complex and people's misunderstanding of the policy is evident, particularly when one reads the press. The Chief Minister has confirmed that Zero/Ten has been formally assessed and approved and it is only a partial detail of the policy, the deemed distribution detail, that brings about harmful measures, and that is the area of the Zero/Ten policy that is under some criticism, and that is the area that Jersey Government could quite easily amend.

Senator T.A. Le Sueur:

Certainly, if that is all the problem then that is something Jersey can quite easily amend. I am satisfied with my answers, because in the presentation that we made to the Code of Conduct Group back in September the focus then was entirely on the impact of deemed distribution, and the attribution of profits. No other aspects were discussed at that time. No report has been made on it in an informed way on anything other than deemed distribution, and that is why I am focusing on that aspect of the matter.

2.1.11 Deputy M. Tadier:

The Chief Minister said a moment ago that in 2003 when the proposal, as it was put, was found to be unproblematic. He said that the deemed distribution had not been thought out. Is he in the habit of making proposals which go before the E.U., which have not been thought out properly, only to change them later to introduce a very controversial aspect, which is the deemed distribution, which only then goes to get kicked out? Does he think that this introduces the much needed stability for our finance industry?

Senator T.A. Le Sueur:

Absolutely. You firstly ensure that the principle on which you are working is a sound principle; having agreed that the principle of Zero/Ten was a sound principle you then fill in the details in order to deliver that. Deemed distribution was one of those details which we believed at the time was certainly the way to deliver part of that solution. If now it turns out that that is not an acceptable part of a solution then we will find other ways of dealing with the solution in order to deliver Zero/Ten in a different form.

2.1.12 Senator T.J. Le Main:

Does the Chief Minister and his Ministers take seriously the information and views of Richard Murphy and the Tax Justice Network, which is often being passed to Deputy Southern and Tadier and others, and does he believe this is credible and trustworthy?

Senator T.A. Le Sueur:

I think the difficulty is that we can be faced with a variety of information from sources of a more or less informed nature. I do not take particular note of the views of the Tax Justice Network, but I am aware of them, as I need to be aware of them, in order to understand the full ramifications of some people's thinking. The fact that I do not happen to share those views is my own personal choice.

2.1.13 Deputy R.G. Le Hérissier of St. Saviour:

Would the Chief Minister not acknowledge that this is a broader problem and that there is a broader thrust from the U.K. Government, for example, would he take the view seriously of Dr. Vince Cable who said that the fulfilment industry as structured was extraordinary and seriously unwise, or the views of George Osborne, the Shadow Chancellor, of the Conservative's intent to hold the Government to account for the effect on domestic business if nothing is done. In other words, is he monitoring all these alleged tax avoidance schemes in order that we will not incur further wrath from various people?

Senator T.A. Le Sueur:

Indeed, and that is why I am, as I say, awaiting the outcome of the High Level Working Group review. But I would mention that earlier this morning I was talking to Lord McNally about the fulfilment industry and demonstrating to him the responsible attitude which the Island has taken in dealing with what you might call sham fulfilment industries and discouraging them from setting up in Jersey. That is something which needs to be clearly understood, and which I have been at pains to explain to Lord McNally, although I am aware that H.M. Treasury and H.M. Customs and Excise is well aware of the good work that Jersey has done in putting its house very firmly in order and being seen to.

2.1.14 Deputy A.E. Jeune of St. Brelade:

I believe I have heard the Chief Minister now make reference twice to a High Level Working Party. Would the Chief Minister please inform the Assembly who is the High Level Working Party?

Senator T.A. Le Sueur:

The High Level Working Group has been set up by ECOFIN as a result of their meeting earlier this week, to look into the implications of the arrangements that there are. I am just trying to find the precise wording if I can, not to mislead the Deputy: "ECOFIN has accepted the Code Group's report which proposed a review by the High Level Working Group on tax issues. This working party will determine what the code means by "business taxation", whether the scope of the code goes beyond company tax to include shareholder taxation and whether, if so, this would impact on Jersey's regime."

The Deputy Bailiff:

I give notice to Members that this is an urgent question and a reasonable time needs to be allowed for supplementaries, so I have allowed 15 minutes. The main debate is coming up on the Deputy of Grouville's amendment shortly. I am going to allow 2 further questions: one from Deputy Trevor Pitman, one from Senator Shenton and then a final supplementary from Deputy Southern.

2.1.15 Deputy T.M. Pitman:

I must point out I do ask this question with due respect. We have seen the danger of giving categorical assurances recently; over the last 18 months the Chief Minister and his Minister for Treasury and Resources have again and again given assurances that this would be compliant. If it is not in February where does that leave the Chief Minister's position? Will he resign if he is not proven correct.

Senator T.A. Le Sueur:

That is a hypothetical question. I have no intention of resigning, I have every confidence in the way these matters are proceeding.

2.1.16 Senator B.E. Shenton:

The Chief Minister may be aware that the Isle of Man Government has issued a statement saying that they were seeking to clarify the origin of the purported U.K. Treasury statement which had appeared on the Channel Island website, and which was described as highly misleading and not accurately reflecting the outcome of the ECOFIN meeting. **[Approbation]** There seems to be a lot of ignorance among Members, the population and the media and some politicians with regard Zero/Ten. Will the Chief Minister endeavour to get a clear message across to the public of the Island exactly what Zero/Ten is and what the implications are?

[11:15]

Senator T.A. Le Sueur:

I will endeavour to do so at the earliest possible opportunity. This question is an urgent question but I am making arrangements to give a proper report and timetable of recent events to Members hopefully early next week.

2.1.17 Deputy G.P. Southern:

Finally, as they say, the Minister for Treasury and Resources has said that he will examine means to introduce a tax avoidance measure to replace deemed distribution. Does the Chief Minister not accept that whatever measure is brought in can only be applied to locally-owned companies and cannot be made to apply to non-locally owned companies, and therefore must inevitably extend the ring-fence around non-resident companies? In fact, is it not the case that we cannot, without extending that ring-fence, obtain revenue from non-locally owned companies?

Senator T.A. Le Sueur:

No, there are various ways in which this can be addressed, but I do think that the Deputy makes a very good point because he too is focusing simply on the distinction between local companies and non-local companies. In other words we are talking about corporate taxation, business taxation. **[Approbation]**