

2.8 Deputy G.P. Southern of the Minister for Treasury and Resources regarding the removal of deemed distribution for locally-owned companies:

I look forward to a mass of detail. Following the E.U. (European Union) Code Group's decision that Jersey's deemed distribution system for Zero/Ten is in conflict with the E.U. code on business taxation, what consideration, if any, has the Minister given to the removal of deemed distribution for locally-owned companies? What is the estimated tax loss for each year? How is business tax avoidance to be stopped and how will any loss of revenue, resulting from this change, be made good?

Senator P.F.C. Ozouf (The Minister for Treasury and Resources):

At this stage there is nothing more - or little more - that I can add to the press release issued on 23rd November. We have been informed that on 19th November the Code Group reached a consensus that our present business tax regime gives rise to harmful effects. This is based on the E.U. Commission view that our deemed distribution provision is business and not personal taxation and it is discriminatory, a view that we have contested. However, we have also been informed that there has not yet been a formal assessment by the Code Group and there is a further process to go through before a final conclusion is reached. Apparently, the Code Group is to recommend that an E.U. Council high level working group be asked to review what is covered exactly by business taxation. The next step is for the Code Group to report on its activities to the Council of Finance Ministers, or ECOFIN (The Council of Economics and Finance Ministers of the European Union), and for the Council to consider that report at its next meeting next month. We understand that the reference to our regime will be by way of short statement and this will be the only document on the public record. The views expressed to the Code Group by the Commission are confidential and cannot be made public without the approval of the Group and the Commission. If ECOFIN agrees that the high level working group should undertake the review recommended by the Code Group, it is expected that the results of that review will be available for the Code Group to consider at its next meeting in February. Only then will it be possible, for certain, to say what action, if any, we need to take in respect of the deemed distribution provision or what the implications of that action might be.

2.8.1 Deputy G.P. Southern:

The answer to the question is no; no consideration has been given. Does the Minister accept that in the light of the continuing controversy over Zero/Ten - the introduction of Zero/Ten after a mere 10 months - far from producing stability and certainty to business taxation matters, has brought exactly the opposite.

Senator P.F.C. Ozouf:

No, and no.

The Bailiff:

Sorry, Deputy, you have had your 2, you can come back later but there are others who want to ask questions.

[10:30]

2.8.2 Deputy T.M. Pitman:

Deputy Southern has already hit the Minister with my question. However, given what the Minister has told us about the meeting of the Code Group when does he expect to

have a definitive answer, because there is real uncertainty and undermining of confidence within the businesses that I speak to?

Senator P.F.C. Ozouf:

Obviously the Deputy is talking to different businesses than I am. All the businesses, and the people within Jersey, are entirely confident of the position taken by Jersey and are content with the explanations that we have given in relation to the specific concern that has been raised by the Code Group, which is about the deemed distribution provision. It is difficult to say, with a degree of certainty, when we will be certain of the outcome of the Code... As I said in my answer a few moments ago, we have been informed that there has not yet been a formal assessment of that and we will look forward to confirmation of when that formal assessment is made.

2.8.3 Deputy D.J. De Sousa of St. Helier:

Bearing in mind the Minister's answers to the previous 2 questions, why is it that his department is not willing to look into Zero/Ten as our neighbours, Guernsey, are doing?

Senator P.F.C. Ozouf:

I would remind the Deputy that I published a consultation paper on alternatives to Zero/Ten a number of months ago and we will be publishing a conclusion to that. We are in the process of confirming what the concern is with Zero/Ten. When we know that concern and if it is, indeed, the deemed distribution arrangement and as the Deputy said earlier, whether or not we have given consideration ... we have given consideration to those issues but we want to find out what the specific concern is before making any announcements on a change for deemed distribution, for example.

2.8.4 Deputy M.R. Higgins:

For the sake of clarity could the Minister confirm that under Zero/Ten all companies - other than financial service companies who pay 10 per cent and utility companies who pay 20 per cent - pay no business taxes and that the deemed distribution arrangement is simply a means to try and claw-back those profits that they have actually made. Therefore this is what the E.U. Code Group sees as the problem, that, basically, on the face of it you have got a sham; you have got business taxes for local companies but not for foreign companies.

Senator P.F.C. Ozouf:

Not for the first time, I disagree with the Deputy. The Deputy is absolutely wrong. The issue around deemed distribution was that it was an avoidance mechanism. That is why it was brought in. I was in the Assembly when it was proposed and indeed I am very clear about the purpose of it. We will make representations. We contest the issue that deemed distribution is business tax. There is going to be the high-level working group that hopefully will give some detail on what the definition of business versus personal tax is. I have to say that I am clear that that is the issue which the Code Group, from all the information I have, is concerned about and we will be making representations that deemed distribution is a personal tax measure not a business tax measure but we await the outcome of their conclusions.

2.8.5 The Deputy of St. Mary:

Leaving aside the debate about whether Zero/Ten will be deemed unacceptable or not, does the Minister not agree that there is a real possibility that deemed distribution will

be rejected and can he then answer the question that was in the original question, which was, what is the likely tax loss? He says he is already developing alternatives, can he tell us what the estimated tax loss is if we lose this particular battle?

Senator P.F.C. Ozouf:

If a decision is made by the Code Group in relation to the deemed distribution provisions that we have that they should be removed, then it is our intention to replace those with alternative provisions that meet the requirements of the Code Group but are revenue-neutral.

2.8.6 The Deputy of St. Mary:

Would the Minister not agree that it would be prudent to know roughly how much we stand to lose and therefore how much we will need to replace? I am astonished that he cannot give the House a figure as to how much tax we stand to lose.

Senator P.F.C. Ozouf:

I have been absolutely clear. The tax that we lose, we will bring in alternative anti-avoidance mechanisms which will be revenue-neutral. I cannot be clearer to the Deputy than that.

2.8.7 The Deputy of St. Mary:

How much was the question? Does the Minister for Treasury and Resources not know what the cost of this particular conflict with the E.U. might be? It is astonishing what he is telling us, that he cannot give us a figure.

Senator P.F.C. Ozouf:

Sometime people do not like to hear what they are being told, that is the difficulty. Let me be clear that if we are to change the deemed distribution arrangements then we will bring alternative arrangements if that is the problem with Zero/Ten that will be revenue neutral. There are appointment mechanisms in place with personal tax regimes across the world of which there are alternatives that we could consider.

Deputy M.R. Higgins:

G.S.T. (Goods and Services Tax) to 10 per cent?

The Bailiff:

No, it was not a question; I had not acknowledged the Deputy's last question. Deputy Le Claire.

2.8.8 Deputy P.V.F. Le Claire:

Looking into the future and learning from the past, can the Minister give us a categorical assurance that Zero/Ten will survive this problem because the Code of Conduct Group looks at the whole package, not just this one element? If it will survive, given that categorical assurance, does that mean we will not be moving to a territorial tax?

Senator P.F.C. Ozouf:

Experience shows that certainly as far as statements are concerned one should be very measured and careful in what one states. The world is a continually moving situation and in 10 or 20 years' time obviously the landscape in terms of international norms may well change so it would be unwise ... it was unwise for me to say previously in

relation to G.S.T... a categorical assurance should not be given. But what I will say is we that we continue to keep our options open, we continue to engage closely with our colleague Crown Dependencies in terms of their options and their responses to the particular issue and I know that territorial tax, which was an issue which we continue to do work on... it was in the consultation that I issued a number of months ago and we continue to look at it but we make decisions in the best national and economic interests of Jersey.

The Bailiff:

Final question, Deputy Southern?

2.8.9 Deputy G.P. Southern:

Perhaps I can phrase the question somewhat differently. Since the Minister is unaware of how much money he might lose if deemed distribution is rejected, can he state what his estimates are for 2010 that deemed distribution will bring in, because he must have an estimate for the 2010 tax take? Further, can he assure Members that we have got total stability and certainty until February of next year and there afterwards nobody knows?

Senator P.F.C. Ozouf:

The Deputy will be aware that Zero/Ten was brought in on 1st January 2009. That means that assessments will be made for that income for taxable year 2009, tax paid in 2010, but as far as the personal tax is concerned, it obviously will be paid next year and this year in relation to the way that the deemed distribution on personal tax ... I want to be absolutely clear with the Deputy that any alternative anti-avoidance mechanisms for personal tax will be revenue-neutral in terms of the personal tax assessments for Jersey owners of investment companies, *et cetera*, on their personal tax return. This is a personal tax measure not a business tax measure, any changes will be revenue-neutral. That is all the work that we have carried out. I want to be clear with the Deputy.

2.8.10 Deputy G.P. Southern:

Yet again the Minister has not addressed or answered the question which was what estimate does he have from the take from deemed distribution in 2010? He must have an estimate. He has got estimates for the overall tax take, which part of that belongs to deemed distribution and will he tell Members how much that brings in?

Senator P.F.C. Ozouf:

I refer the Deputy to my answer a few moments ago, and that is any changes in terms of an alternative ...

The Bailiff:

No, the question is what is the estimated tax next year from deemed distribution?

Senator P.F.C. Ozouf:

It is difficult to say that in terms of the [Laughter] ... it is difficult because of the timing issue, but what is clear is the construct of an anti-avoidance mechanism can be replaced by deemed distribution, so all the calculations that we have done is that it will be the same, whatever that number is.

Deputy G.P. Southern:

This is a magic number that no one else is allowed to ...

The Bailiff:

Thank you very much, Deputy, that was not a question. We will move then to a question which the Deputy of St. Martin will ask of the Chief Minister.