

5.4 Deputy P.V.F. Le Claire of the Minister for Treasury and Resources Minister regarding Zero/Ten:

I think it is going to be a painful answer for me and a good opportunity for the Minister for Treasury and Resources, but I think it is only fair given my flippant remark earlier that I take a pounding on this one. Will the Minister for Treasury and Resources accept that his assurances to States Members over Zero/Ten have now been disproved and the Island's position on this matter is clearly unsound?

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

No, on the contrary. I think that Jersey has an exciting prosperous future and I look forward to confirming after the further processes in the E.U. that our zero rate, our 10 per cent rate and our 20 per cent utilities rate is here to stay. So I continue to believe our deemed distribution rules are technically compliant with the Code of Conduct and Members will recall that it was based on previous assurances by the United Kingdom and reported to this Assembly. The Code Group in the high level working party has, as the Chief Minister has explained, come to a different view in respect of deemed distribution, but of course they have not commented on tax rates. We have to accept that this is a political process, not a judicial one, and sometimes differences of opinion will be reached. So, I wholly endorse the statement of the Chief Minister made this morning and I look forward as a result of the actions to the Code Group taking Jersey's tax regime off the agenda for the reasons they have cited.

5.4.1 Deputy P.V.F. Le Claire:

The Minister for Treasury and Resources and I spoke briefly this morning and he did raise the issue that I do give him a hard time in here. I certainly would like to work more constructively with the Council of Ministers in general, but unfortunately I spend most of my time asking questions about self-evident facts and getting into trouble for it. Can I ask the Minister for Treasury and Resources, would he not accept that the zero rate of tax identified under the Code of Conduct represents a significantly lower form of tax than most Member States and the wording in the Code of Conduct states quite clearly that a zero rate or a generally lower rate of tax in other Member States is defined as a harmful tax, and unless we move back to our 20 per cent tax we are going to be continually in a position of arguing whether or not we agree with them?

Senator P.F.C. Ozouf:

Sometimes the tougher questions are the best ones and the easiest ones to answer. The issue before the Code of Conduct Group has been the interaction between deemed distribution and attribution and the Zero/Ten regime. That is the issue which has been raised as the focus of attention and that is the issue which we have responded to. The Deputy asked about tax rates. I fully accept that there is a debate within Europe about tax rates, and some day there may well be an issue of tax harmonisation within Europe, but there are 2 points in relation to this. First of all, there is an international competitiveness of tax rates that would need to be taken apart, even if Europe decided to have minimum rates of tax, and as I said previously, Jersey competes in an international global marketplace where there are other jurisdictions in the Caribbean, in the United Arab Emirates, in Hong Kong, in Singapore, which compete and that is the marketplace in which we compete.

Deputy P.V.F. Le Claire:

Can I press further, Sir?

The Bailiff:

Can I come back to you as a final question, Deputy? The Constable of St. Lawrence.

5.4.2 Connétable D.W. Mezbourian:

The Minister just told us that he fully endorsed the words of the Chief Minister in his statement earlier. When he was speaking the Chief Minister had told us that the deferred deficit payment of £10 million could be addressed quite easily by the Minister for Treasury and Resources. Will he now explain what the Chief Minister meant by “resolving the issue quite easily”?

Senator P.F.C. Ozouf:

The Constable’s question is a very important and good one. The conclusion that we have reached at the Treasury, having looked at the impact of removing deemed distributors and attribution, is that there will not be a permanent recurring deficit as a result of these measures, but rather, effectively, a deferred income, and the explanation for that I am happy to develop in one-to-one questions with Members if they want an explanation of deemed distribution, attribution and how that works. But effectively dividends will need to be paid. We will no longer have the certainty of the consistency of the deemed distribution and attribution, but money will need to be withdrawn from companies in order for Islanders to enjoy the benefits of their companies and we will tax on the actual dividends paid. So, therefore there will be a £10 million cash flow, we think, in 2014 maximum effect and a total cash flow of £650 million. It is not an issue that the Treasury is worried about in terms of cash flow.

5.4.3 Senator S.C. Ferguson:

In terms of competition, mention was made of the Isle of Man taking the same approach and no comment was made about whether Guernsey will be modifying their approach. Will the 3 Islands be working properly together on this in order to present a united front to what does appear from the outside to be a certain amount of bullying from the E.U. and the U.K.?

Senator P.F.C. Ozouf:

I would say 2 things about that. First of all, I do think that there is certainly a political process within Europe, and if France and Germany or different Member States are having discussions about their respective competitive position then that is part of the normal political process within Europe and certainly we seek, as the Chief Minister has said in his statement, an appropriate way of representing the Island’s interests at a voluntary participation of the Code Group in the future. The process has not been perhaps ideal but certainly we will seek to improve that process in future. We are a good neighbour within Europe and will remain so. As far as the other Crown Dependencies are concerned, I am not going to stand in this Assembly and speak for the Isle of Man or Guernsey. I understand that an announcement is being made also this morning in the Isle of Man, and I will certainly engage with my counterpart in Guernsey in order to continue to work on the thing that we agree on, which is the Islands providing tax neutrality, providing competitive offerings for financial services.

5.4.4 Senator S.C. Ferguson:

Supplementary, Sir. Given the fact that France and Germany are now leaning upon the Irish Republic to increase their 12.5 per cent corporation tax rate, what measures, what consideration has the Minister for Treasury and Resources given to an extension of this approach trying to make people increase their corporate tax rates to be in line with the average in Europe?

[11:45]

Senator P.F.C. Ozouf:

There are 2 points about that. Of course there have been calls for as long as I have been interested in politics for a unified approach on corporation tax within Europe. Personally, I do not think that is going to happen within the foreseeable future. There are competitive issues between the nations of Europe and tax is a sovereign matter and tax is a sovereign matter for this Assembly. We make decisions in this Assembly on tax, long may that be the case in future, and we will continue to defend the Island's interests and make decisions in the best interests of Jersey.

5.4.5 Deputy G.P. Southern:

Can the Minister inform Members whether the Comptroller of Income Tax has the powers to prevent the cash flow problem becoming a capital gains problem, i.e. a company rolls-up the dividends in the company and then sells the company on. Does the Comptroller of Income Tax have powers to prevent that? Otherwise, it is not just a cash flow problem, it is a loss of tax problem.

Senator P.F.C. Ozouf:

I am very grateful that the Assembly has given the Comptroller of Income Tax more resources in order to deal with his team to ensure that there is appropriate resources in order to deal with abuses where he finds them, and I am confident that both the legislation that he has, and the additional resources that he has, will deal with any issues which he wants to deal with in terms of tax evasion within the Island or non-compliance of tax law, and of course the Treasury will keep under review any issues that emerge as a result of the removal of deemed distribution and attribution. We will deal with measures in subsequent budgets if we see that there is a need to deal with further anti-avoidance mechanisms of which he has the general anti-avoidance, which has been a platform of our avoidance mechanisms and works very well.

5.4.6 Deputy G.P. Southern:

If I may, is the Minister confident that the Comptroller of Income Tax does have those powers and that it can be used to prevent such activity in these companies?

Senator P.F.C. Ozouf:

Yes, and no doubt he will advise me, with the Head of Tax Policy, if any changes and further strengthening are required.

5.4.7 Deputy M. Tadier:

We have heard suggestions within the Chamber that seem to imply that an option for Jersey is simply to ignore the E.U. and to ignore the pressure coming from the U.K. Will the Minister explain whether he thinks this is a dangerous position, and if so what are the dangers of doing that?

Senator P.F.C. Ozouf:

I think engagement is always the right approach. I think that some of the problems within Europe come out of misunderstandings of what Jersey does and the high level of quality financial services that we provide. Certainly the opening of the office in Brussels is designed to raise awareness of what we do to make representations, explain what we do to a much greater extent than in the past, and that will deal with no doubt some of the concerns of the E.U. Member States on their misunderstanding. In terms of the Code of Conduct, we do not agree with the conclusion that the high level working party and the Code of Conduct has come to in relation to what deemed distribution, attribution is. We believe it is an anti-avoidance personal tax measure, but as a good neighbour we have looked at it and we can remove it. We can remove the problem and I think in demonstrating that willingness to listen we are demonstrating good neighbourliness and good relations with our partners in the E.U.

5.4.8 Deputy M. Tadier:

Supplementary if I may. I appreciate that being a good neighbour is important. When we are dealing with noisy neighbours certainly things can get disrupted. How far does that goodwill extend? If Europe and the U.K. come back and say that it is the zero rate which they have a problem with, to what extent will that neighbourly goodwill remain?

Senator P.F.C. Ozouf:

I am sure that there are some E.U. nations that would want to see the lower tax nations and territories within the E.U. not have those lower tax rates. I believe in tax competition. I believe that tax is a sovereign matter for democratically-elected parliaments across Europe, and indeed in this Island, and when there is an international standard on tax Jersey will adopt it, just as we have done with all international regulations. There is not one. I am not expecting one, but if one happens then this Assembly will deal with it.

5.4.9 The Deputy of St. Mary:

My concern is with the Minister's statement which he has made twice now, that he continues to believe that Jersey's regulation was technically ... I say "was" I think he thinks "is" technically compliant but Jersey was advised in 2005 that it was not or would not be technically compliant, and we are now being told finally that it is not technically compliant. My question is, can the Minister please admit that he made a mistake, or that the Ministers made a mistake in not listening to this advice. They are still making a mistake, and will he acknowledge that it will be good to listen to views different from his own?

Senator P.F.C. Ozouf:

I think we need to be clear of where the criticism comes from. There are critics of London as an International Finance Centre. There are critics of international finance. There are criticisms of capitalism and the functioning of global markets. Those people who criticise the free market, who criticise tax competition, do not like offshore centres such as Jersey. That must not be confused with the rules and the Code of Conduct and the criteria which they are applying. Zero/Ten has not been found not compliant as a whole; there is an issue in relation to attribution and deemed distribution. That is the issue, which has been documented in the Code of Conduct's conclusions, and that is the issue, while we disagree we have, as a good neighbour, decided to respond proactively, positively, to that concern.

5.4.10 The Deputy of St. Mary:

With respect, it was not criticism, it was advice and I just asked the Minister, does he not think he might be damaging Jersey by adopting this sticking-head-in-sand approach rather than admitting and saying: "Okay, we will get on now and do what is necessary"?

Senator P.F.C. Ozouf:

To take that last point, we have done exactly what is deemed necessary. We have analysed and carefully examined the concerns of the Code of Conduct Group, at the issues raised by the high level working party, and we have responded to them. So, that is I think demonstrating a listening and a good neighbour policy, and indeed I am confident that Jersey has a strong and positive future in financial services, being well-regulated, transparent, and complying with the findings of our neighbours in Europe.

5.4.11 Deputy P.V.F. Le Claire:

Sometimes I ask complex questions and I think rather than standing back up and asking for the answer I would ask the Minister to review the question on Hansard and see if he can give us the answers, after having reviewed it, if he would be so kind. In the statement this morning the Chief Minister says: "Members will be aware of the ongoing review process concerning 2010. It is an ongoing review process. In addition [he states later on] the review did not allow for meaningful dialogue with members of the Code Group or engagement with the high level working party." I put it to the Minister that the reason that they are not listening to us is because the U.K., which might come as a surprise to some Members, is a full member of the European Union and it has committed, and these are important words, to ensure that these measures under the Code apply through the constitutional arrangements of Jersey, which Jersey has already accepted. Helpfully this morning the Chief Minister has circulated E.U. documents. Will the Minister please circulate for all Members the E.U. documents that set out the terms of the Code, where we will clearly see that they consider zero rate as harmful, and also tell us how many Member States in the E.U. have a zero rate of tax.

Senator P.F.C. Ozouf:

I am happy to circulate the Code of Conduct criteria and the issue in relation to rates. There is tax competition within Europe and the Deputy is wrong to repeatedly assert that it is Zero/Ten which is not Code compliant. The findings of the Code Group is that it is the interaction of deemed distribution and attribution with Zero/Ten that gave rise to potentially harmful effects. Removing the deemed distribution and attribution deals with all of the issues which have been documented in the document that we have seen in the Code of Conduct, and they respond to the written documentation that we have seen. That is all I can say on the matter.

5.4.12 Deputy P.V.F. Le Claire:

Could I have a supplementary? The answer came completely at variance to what I was suggesting. I am glad I mentioned the bit about Hansard. The information sets out clearly in the report that was given to us through Europe that this is an ongoing process and it is not a closed examination, these issues may widen and I am making the case, which is clearly stated within the Code of Conduct ...

The Bailiff:

I hope you are going to ask a question, Deputy, rather than make a case.

Deputy P.V.F. Le Claire:

The question will be, when it comes to answering my question, will he please ensure that the actual commitment that the U.K. Government has given in relation to Jersey is clearly outlined so that we can see that a zero rate is a harmful measure.

Senator P.F.C. Ozouf:

Zero is not harmful. Tax rates are not an issue that can legitimately be commented on by the Code of Conduct group. It is not tax rates and there is nothing in any of the conclusions of any of the documentation of this process that indicates that there is an issue in relation to the rate. It is the interaction of attribution and deemed distribution which is the problem, and we have made a pragmatic decision, a positive decision, to deal with it.