

STATES OF JERSEY



CORPORATE SERVICES SCRUTINY PANEL FOURTH REPORT: REVIEW OF THE ZERO/TEN TAX PROPOSALS: DRAFT SHAREHOLDER LEGISLATION (S.R.20/2007): RESPONSE OF THE MINISTER FOR TREASURY AND RESOURCES

**Presented to the States on 16th November 2007
by the Minister for Treasury and Resources**

STATES GREFFE

REPORT

1. Introduction

My overall reaction to this Report is that it is a well-researched piece of work, with the investigations and interviews conducted in a professional and thoughtful manner.

2. Findings in the Report

- (a) **Deemed distribution** – I am pleased with the conclusion reached.
- (b) **Jersey's international obligations** – I note the prudent and cautious tone. However, all Governments, including the States, have a very wide degree of latitude to set taxation policies for their own particular social and economic circumstances where there is a well-founded, objective, legitimate and proportionate policy aim, so I believe the risk of the proposals being non-Human Rights compliant to be very low indeed. I have also received, of course, comfort from Her Majesty's Attorney General that the proposals are compatible with Convention Rights. I am also quietly confident, following informal discussions in the recent past with U.K. officials, and the success of the Isle of Man revised proposals, that my proposals fall outside the mandate of the E.U. Code Group and, once again, consider that non-compliance is a low risk.
- (c) **Tax evasion** – whilst I note the point made, the Comptroller of Income Tax is currently redesigning the personal Income Tax Return so that all Jersey resident taxpayers must declare on the face of the Tax Return, in a simple 'tick the box' style, any interests they have in any corporate, trust or similar vehicle, whether resident within or outside Jersey, so that he can ensure true and correct declarations are made by all such taxpayers. An incorrect declaration will be tantamount to tax fraud and, as the Comptroller has prepared 8 tax fraud prosecution files for Her Majesty's Attorney General in the last 14 years, all of which have been successfully prosecuted in the Royal Court, with consequent publicity, such an incorrect declaration by a taxpayer will be a very risky strategy indeed to indulge in. Even if no formal prosecution file is prepared, the Comptroller will levy penalties and interest, in addition to collecting the back taxes arising, from any neglect or default. He has already investigated 241 taxpayers this year, uncovering omitted income of some £11 million and collecting back taxes, penalties and interest of some £2.2 million.
- (d) **Tax avoidance** – if there is a bona fide commercial reason behind a transaction the Comptroller will allow it, and it may be the case that such a scenario can exist under zero/ten, as indeed, it can exist now. All dividends and other income received from such companies will, of course, suffer tax in Jersey. Honest and law-abiding citizens, as now, will seek clearance for schemes and transactions, and I do not think the zero/ten system will alter such behaviour. And see my comments on the previous section on tax evasion where there is deliberate and wilful non declaration.
- (e) **Investment distortion** – as the Panel points out, there are many reasons for choosing an investment and many matters to consider when making investment decisions, but I shall certainly keep a watching brief to see if what the Panel has identified actually materialises. The Panel say that non-finance trading companies may be employing large numbers of immigrant staff many of whom may also not be paying tax. This may not be a correct analysis. Under the ITIS system, all Jersey employers must deduct tax at either the 15% default rate or the actual effective rate supplied to the employer by the employee. This actual effective rate could, of course, even with proportional tax allowances for seasonal workers, be a nil effective rate, depending on the circumstances of the individual employee. But under no other circumstances, except in cases of fraudulent collusion between the employer and employee, will an employee evade tax deductions from his salary or wages.
- (f) **Taxing foreign owned trading companies** – I will be announcing details of what I propose to

legislate for in this area on 20th November when the shareholder taxation proposals are due to be debated in the States.

- (g) **Comptroller's powers** – I am pleased with the conclusion reached and have no doubt that the Comptroller will exercise these increased powers in the same sensible and even-handed manner in which he exercises his current powers.
- (h) **Exemption from deemed distribution for quoted companies** – I understand the point made and accept this recommendation.
- (i) **De minimis limit** – I understand the point made and accept this recommendation.
- (j) **Distinction between a trading company and an investment company** – I am pleased with the conclusion reached.
- (k) **Calculation of deemed distributions** – I am pleased with the conclusion reached and, in view of a similar basis being adopted by the Isle of Man for their new Attribution Regime for Individuals, with it being deemed acceptable by both the United Kingdom and the E.U. Commission, I believe this 'tax profits' basis to be a low risk in terms of E.U. and H.R. compliance.
- (l) **Shareholder loans** – I accept the point made and confirm there will be suitable compliance and monitoring in this area.

3. **Recommendations in the Report**

- 1. To remove the exemption from deemed distribution for quoted companies – I accept this recommendation.
- 2. To reduce the proposed *de minimis* from 5% to 2% – I accept this recommendation.

4. **Conclusion**

I am pleased with, and accept, many of the findings in this Report, and where I have some reservations, I have outlined them above. Overall, I would like to thank the Corporate Services Scrutiny Panel Report for the thoroughness of this Report and their excellent work on scrutinising the zero/ten proposals.