

## Treasury and Resources Minister

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### To All States Members

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Our ref: TLES/CFSD/IC

Dear States Member

You will recall that following a question from Deputy Baudains at the last States sitting I promised to issue a letter regarding the zero/ 10 proposals, comparing the acceptability of Jersey's Deemed Distribution Proposals (DDP) with the Isle of Man's Distributable Profits Charge (DPC). Please find below the details describing in order the Isle of Man's DPC followed by the Jersey's DDP.

#### *Isle of Man DPC*

1. The critical point at issue with the DPC - as regards EU Code Compliance - was that of the DPC being paid by the companies on behalf of their Manx resident shareholders.
2. In the explanatory booklet issued by the Isle of Man Income Tax Office in 2006, under 'Scope of Charge', it read.....'...DPC applies to all corporate taxpayers and for the purposes of the DPC, a corporate taxpayer will be classified as either a distributing company or a non distributing company...'. It continues....' The DPC is only applicable to non distributing companies, which will be required to account for the charge only in respect of the amount of total distributable profits attributable to members resident in the Isle of Man'.
3. In other words, it is undeniable that the DPC was a charge to tax on companies.
4. In the words of the Isle of Man Tax Office when announcing the DPC had been withdrawn ...'....We understand that as the DPC is paid by companies on behalf of their Manx resident shareholders, it is viewed by the EU Code Group as differentiating between resident and non resident owned companies and therefore 'ring fencing' the latter group from parts of the tax system. Ring fencing is considered harmful in the context of the Code of Conduct...'.
5. We in Jersey have always thought that the DPC was almost certainly non-Code Compliant. We have never thought of going down that path. Events have proved that we were correct in our judgement.
6. The new regime that replaces the DPC will introduce a charging provision that will, in certain circumstances, attribute the profit of a company to its Isle of Man resident owners. This attributed profit will be taxed as the income of the owners. The working title for this new system is the Attribution Regime for Individuals (ARI). The ARI will

apply to Isle of Man resident individuals with an interest ( in effect a shareholding) in a relevant company. Such individuals will be taxed on their appropriate share of the distributable profits of the company. Distributable profits are in effect the company's profits adjusted for tax purposes. The Isle of Man also confirmed that they have '...worked with the authorities in the UK and with the EU Commission, and based on these discussions we are confident that the new system proposed does not relate to business taxation and is therefore outside the mandate of the EU Code Group...'.

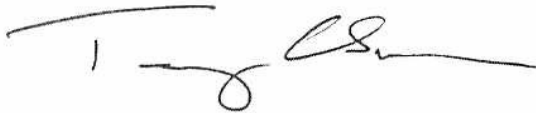
7. Jersey's DDP

8. In complete contrast to the Isle of Man DPC, Jersey's DDP is a personal tax charge on personal taxpayers. There is no charge whatsoever, under any circumstances, on the trading corporate, on any of the profits arising to it. Even the original provision that would allow the Comptroller of Income Tax to assess the trading company, and collect any tax due by the shareholder, from the company, when the shareholder defaults by leaving the Island, has been withdrawn in the latest draft which we are about to debate..
9. In simple terms, any actual dividends paid by the corporate to a Jersey resident shareholder will be assessed on the individual shareholder. If no actual dividends are paid, or if insufficient dividends are paid, allowing the company to become 'pregnant' and 'cash rich' with undistributed profits, there is a deemed distribution provision which ensures that the individual Jersey resident shareholder will be assessed on the shortfall, ensuring that he is paying tax overall on 60% of the profits applicable to him, via his shareholding, arising in the company.
10. This is a personal tax measure. It is not a company tax measure.
11. To echo the Isle of Man view on their revised ARI system, we in Jersey are confident that these proposals do not relate to business taxation and is therefore outside the mandate of the EU Code Group. A separate note will be prepared on this shortly, giving as much information as we are able, bearing in mind that the UK do not want the outcome of informal discussions with them, to be attributed to them.
12. Jersey residents who beneficially own private investment holding companies for the purposes of holding their personal bank accounts, personal shares, etc, rather than in their own personal names, and, companies which exist as a personal services company for the Jersey resident beneficial owner, where an employee / employer relationship would exist without the existence of the company, will be assessed in their own private name on full attribution on the full profits arising. To do otherwise, for such Jersey residents, would be a blatant tax avoidance scheme not available to those who held personal bank accounts, personal shares, etc, in their own private names, or, not available to those individuals who are in an actual employee / employer relationship.
13. We note the cautious and prudent 'medium risk' assessment on these proposals by the Corporate Affairs Scrutiny Panel. It is understood that they have reached that assessment based on three factors, the first being the provision for assessing the trading corporate when the shareholder has defaulted after leaving Jersey, the second being Human Rights concerns, and the third the tax adjusted profits point. The proposal to assess the trading corporate was removed completely for all trading companies at the last moment before the Law was lodged. On the Human Rights issue, Her Majesty's Attorney General has confirmed that the Law is Human Rights

compliant, and it is the case that any Government, including the States, has 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. On the tax adjusted point, the Isle of Man are also going down this route - see point 6 above – and clearly believe that this does not create any problem. In view of these points, and the comfort we have had during informal discussions with the UK, we consider that these proposals are not medium risk but, rather, low risk.

14. Legislation will be brought forward in next year's Budget – December 2008 – to address the perceived disparity in respect of Jersey trading companies owned by non-Jersey resident shareholders, by proposing a deemed rental charge on those non finance, non Jersey owned, zero rate companies, such as those seen on King Street, along the lines of the Blampied proposals. It is likely that these proposals will, to a certain degree, mirror the legislation that the Income Tax Law used to contain some 25 years ago under the then Schedule A charge. Again we foresee no difficulty whatsoever with the acceptability of such a measure.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Terry Le Sueur', with a long horizontal line extending to the right.

**Senator Terry Le Sueur**  
Treasury and Resources Minister

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