Tax Research UK

Briefing

Plan B for Jersey

Summary

Jersey is in a profound mess. Its finance industry is failing, with funds under management rapidly leaving the island and the profits of its finance sector falling by fifty per cent in 2009. Worse still, it faces a government spending deficit of at least £100 million a year representing 18% of its total annual government income unless radical reforms take place soon. To compound matters its corporate tax system faces being ruled unacceptable by the European Union, threatening another £120 million of its state income.

In the face of this crisis the government of Jersey has begun a fiscal strategy review. It has suggested increases in personal taxes amounting to £50 million a year and cutting government spending by the same amount will solve its problems, whilst adopting a new corporate tax system and planning for growth will keep the economy in balance.

There is however a fundamental problem at the heart of this plan: it does not address the fact that Jersey's one and only major business – offshore finance – is failing in its current form. As such making choices on raising taxes are largely irrelevant because there may be little to tax if urgent action is not taken by Jersey to transform its future.

This Briefing does therefore propose Plan B for Jersey - the alternative industrial strategy it has never had. This is a radical plan, but one which builds on Jersey's two competitive advantages, the first of which is its ability to legislate and the second of which is its ability to arrange and administer financial structures. It exploits those strengths by turning the entire logic of the past history of Jersey as a finance centre on its head. Instead of basing that offshore activity on secrecy – as historically Jersey has always done – it suggests that Jersey should base its future activity on radical transparency.

This transparency would be total: everything about finance in Jersey would be on public record and automatic information exchange would be offered to all who wanted it unless human rights were threatened as a result. Far from being a secrecy jurisdiction as Jersey is now it would trade on the exact opposite – as being the most transparent place to do business in the world.

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The economic reasoning for this is easy to explain: transparency reduces risk. Many people appear to need the tax neutrality (or no tax) structures Jersey offers because of the complexity of the interaction of tax laws of other, more populous, countries, but the secrecy Jersey offers at present attaches risk to those structures, and this increases their cost for users. If this risk, and so cost, were removed by total transparency people using Jersey would as a result be willing to pay Jersey itself more in fees because transparency was offered and more in fees to companies based in Jersey who would manage these structures if, uniquely, those structures were completely transparent.

As a result of offering total transparency Jersey would move away from being tainted as tax haven. This would be of enormous advantage to it.

And Jersey would as result secure new business because there are large numbers of companies who want to use offshore but do not want questions asked about why they do so: they can justify the use openly and legitimately, they say, and would appreciate the transparency Jersey would then have on offer to let them answer all questions that might be put to them.

And this in turn would ensure new profits were available in Jersey to be subject to corporate income taxes charged on a territorial basis that would meet the requirements of the European Union. There would in addition be a plentiful supply of new employees wanting to work offshore in Jersey untainted by the stigma of secrecy who would be willing to pay higher social security and income tax charges for the benefit of having an easy conscience.

This then is Plan B for Jersey – a truly new opportunity for it to create a market that would be all its own from which it could profit and which could provide it with long term sustainability.

Jersey may not opt for Plan B but if it does not then we will know two things. The first is it will surely fail as an independent jurisdiction: no place can run deficits forever, least of all if it expects the UK to bail it out – as the UK must, constitutionally. The second is that we will know secrecy is too important to Jersey to give up and that in turn will tell us that the secrecy is actually the bedrock of what it does (whatever it may now claim) and it will automatically follow that we will know that illicit transactions are the real foundation of its finance industry, again, whatever it may say to the contrary.

So this is a time for real choice: Jersey can turn its back on its past, hold its head high, and even ask for international financial assistance to transform its finance industry and so secure for itself an ongoing income stream that should last well into the future where transparency becomes the foundation of all it does and legitimacy is the guarantor of its well being.

Or it can carry on with secrecy and face a desperate future.

Those are Plan B and Plan A respectfully. The Jersey government has only presented the people of the island with Plan A as part of its fiscal strategy review. But Plan B is now on the table.

Jersey has to decide, is it A or is it B? It may be the most important decision it's made for a long time.

Background

Jersey is a in a financial mess: a mess that was wholly predictable and was actually predicted by some[i].

The cause of the deficit is not the current world recession. The deficit arose because of the adoption of the 0/10 tax regime.

It so happens that just as the 0/10 tax regime – planned since 2002 and implemented in 2009 – came into place when the world in which Jersey operates was falling apart, rather noisily.

In 2009 the world turned on tax havens. Jersey may not be on the current black list of such places, but the risk to Jersey by association when the world over thinks it a tax haven is clear. And that perception, right or wrong, was behind the opinion offered by the European Union in September 2009 that Jersey's 0/10 corporate tax laws did not comply with the requirements of the EU Code of Conduct on Business Taxation – again, an event accurately foretold in 2005[ii].

To add to the woes securitisation, the foundation of much of Jersey's financial services sector collapsed in 2008 when the market for debt securitisation collapsed. In addition funds under management in Jersey have fallen away rapidly as the recession has advanced. There is no reason to think they will be flowing back at any time in the near future[iii].

The reality is, therefore, that Jersey is in a mess; a mess of its own making; a mess that was foretold; a mess it turned a blind eye to. And now it has a deficit of at least £100 million a year in its public finances: a deficit that was foretold, and which Jersey claimed would be closed by now by introducing GST, introducing PAYE for income tax, making the 20% tax rate mean 20%, by cutting government spending and from economic growth. Unfortunately, whilst PAYE and GST have arrived, income tax reform has not, government spending has grown and the economy has collapsed.

The government of Jersey got most of its forecasts wrong. That's the explanation for the mess Jersey is in. And now it is asking the people of Jersey to put faith in new plans. One is for personal taxation[iv], the other is for business taxation[v]. They are meant to solve the crisis in Jersey's finances. As this Briefing shows, they won't.

Jersey's plan

Jersey has plans to deal with this situation.

It is going to cut £50 million from public spending (about 8% of the total[vi]).

It is going to raise £50 million in new taxes on people living in Jersey.

It is going to introduce new taxes on companies to seek to maintain its income from that source of in excess of £100 million a year[vii] – but no more.

And it is assuming growth will pay for its increasing cost of care for the elderly.

That's it in a nutshell: this is the way Jersey is going to get out of the hole its public finances have put it in.

The weaknesses in the plan

There are about 90,000 people in Jersey. That is likely, based on UK data, to equate to about 37,500 households.

Each of those households will, if all other parts of the plan noted above are successful, be asked to absorb cuts in government spending costing them in foregone services about £1,333 a year whilst settling tax increases at the same time of similar amount i.e. £2,666.

That is a massive contribution to ask each household in Jersey to make, especially when business is going to be making none. Two key questions arise:

1. Is that viable?

2. Will people vote for it?

If they do not then this plan is fundamentally flawed.

There are the other real questions inherent in the plan as well:

1. Jersey has said time and again it will cut government spending but never has. Why will it do so this time? What has really changed? Willpower and desire is not enough. What has actually happened?

   And where will those (inevitably) made unemployed work? What will they do? Or will they simply boost claims for benefits or create discord in society? In that case will savings be achieved? Or is it assumed the will emigrate? But where would they go when unemployment is universally high in Europe?

   Without details of what the cuts are this plan is just wishful thinking – and potentially as undeliverable as many past similar plans have been because there still will be children, the old, the sick, the homeless, the unemployed and unemployable, waste, harbours, roads, waterlines, airports, and government itself, all of whose needs will need servicing.

   Until it can be said what spending will be cut, when, how and with what consequence this plan is not a plan at all.

2. The plan assumes growth in exports of financial services. But the plan does not say why that should happen when all market indicators are that the services Jersey is supplying are not in

demand, and are unlikely to be so. Previous plans were also based on growth. It has not been delivered.

3. Jersey does not address the problem that will arise if a scheme to tax companies raising £100 million a year cannot be found. What then? It was announced in July 2010 that financial sector profits in Jersey halved in 2009. This creates the very real prospect that a figure considerably less than £10 million can be raised from business – but no consideration of this seems to be included in jersey's planning, which instead talks of growth[viii].

Each of these issues poses real risk. Everything else in the plans Jersey presents is a fantasy if these questions cannot be answered.

The economic plan

The elephant in the room in this whole plan is that there is no option presented for an alternative future for Jersey. Jersey is an offshore finance centre, and that is what it will be according to the plan.

There is, therefore, no alternative strategy for diversification, new employment opportunities, growth or diversification in the plan. It is a plan without what might be called an industrial strategy at its heart addressing the fundamental issue that Jersey is serving a dying business activity. Offshore is discredited. It will not die yet, of course, but to assume that there is growth potential in a sector which is blamed (rightly or wrongly does not matter) for the recession is to play the ostrich on a grand scale: indeed on an utterly irresponsible scale.

The truth is as a result that there is no real plan at all. The published documents do not say how Jersey will develop, earn its income, diversify its products or make them saleable in a market which is very antagonistic to its offering now.

This means these plans have no strategy in them. And a place without a strategy in the face of a declining market is a place that is going to fail at some time. That is the hidden key message inside these documents.

As a result it is no wonder that there is no plan for any new contribution from business in the published plans: Jersey has no idea what its businesses will be doing, but it is clear it does have a strong suspicion is that the answer will be "not much". And given the strong alignment between the States of Jersey and the financial services sector this is a staggering omission.

Before addressing this issue it is, however, appropriate to consider the details of the published plans, the options they offer and their strengths and weaknesses.

The personal tax plan

The personal tax plan focuses on five options, four of which, it is claimed, could raise £30 million each. These are, together with their impact on fairness, summarised as follows[ix]:

Figure 2: Assessing the tax options against the criteria

Regressive = a lower proportion of tax paid as income rises,
Progressive = a higher proportion of tax paid as income rises

Measure	Revenue (per year)	Fairness	Economic efficiency	Competitiveness
GST Raise GST by 2%	£30m	Mildly Regressive	Positive	Positive
Social Security Raise ceiling to £115,000	£30m	Progressive	Negative	Negative
Domestic rates Up x3	£30m	Mildly Regressive	Positive	Positive
Income tax 30% rate on income over £100,000	£30m	Progressive	Negative	Negative

Red = does not score well
Green = scores well

Some of the claims made as to the regressiveness of taxes in this table published by the Sates of Jersey are wrong.

GST for example is not mildly regressive in Jersey: it is heavily regressive in Jersey since the disparity between rich and poor in the community is high due to the absence of a seriously progressive income tax. It is made more regressive by absurd allowances and reliefs: marine fuel being exempt for example, but medicines being subject to charge. This is a tax designed to subsidise the rich. To increase it would exacerbate the subsidy and make the lives of many in the island intolerable.

The same is true of domestic rates. In Jersey these are not mildly regressive; they are horribly regressive. In St Johns the population is rich, the demand on the parish low and the rates similarly low. The exact reverse applies in St Helier. So if rates were tripled the message would be sent out that the poorest should provide for themselves whilst the rich in the north of the island would prosper under this arrangement.

In contrast, the social security move would be welcome, and the use to which it would be put is important. This change makes sense, but question must be asked as to why a cap of £115,000 has been proposed bar the fact that this is £2,000 or so less than Guernsey proposes. Surely Jersey should take the lead on such an issue? This is a case where pain must be borne right across the community – including those who earn most. The social security cap should be removed if that is to be the case and it is hard to find any counter-argument.

The same is true of income tax. First, a great deal of income tax is not subject to social security so it is right it should also increase. Second, despite previous promises that 20% would mean 20% there has not been delivery by the Jersey government on this issue. Now is the time for delivery on that promise in two ways. The first is from raised rates, and a 30% top rate would remain very low compared to other finance centres, many of which are not so nearly attractive or well located as places to live. Second, some of the many unnecessary allowances (mortgages are mentioned in the report, but there are many more) should be eliminated from the tax system so that taxable income relates much more closely to real income earned. A review would undoubtedly suggest significant real opportunities for raising revenue.

With regard to both social security and income tax there is one other issue to mention: people will not be leaving Jersey if these changes are made. The finance industry is an industry under the cudgel. It is shedding staff. It is under pressure to pay more tax. The logic that companies will move because of changes in personal tax is just wrong: employees are price takers and not price setters in this market now there is a downturn. In that case employees will pass on all these tax costs on to their employees; those employers will not have to bear these increases as a business cost. In that case the only question is whether employees leave, and with jobs hard to find and a likely mass of people applying for each vacancy that might arise in St Helier and around the world this is just not a problem: labour supply at current rates will be plentiful in St Helier for some time to come because taxes and conditions of service will be better than elsewhere, even with these new tax rates. There is no international threat in other words: this is a global problem, not a local problem and that gives Jersey the chance to tax.   And it should take that chance and deliver the fair option available to it.

Finally, there are the options not mentioned. These include, according to the document:

> *A package of the measures above - new stamp duty rates, increasing impôts by 10%, introducing a land development tax and reducing mortgage interest tax relief by 10% - would raise about £15 million in total.*

But where is the courage to raise a capital gains tax? Or inheritance tax? In a society based on wealth as much as income these would appropriately share the burden of the problem Jersey faces across all in society to reflect their ability to pay but they are not mentioned. The question has to be asked – why not? And real plan for Jersey has to include such alternatives.

The flaw at the heart of the business tax options

The plan for new taxes on business profits in Jersey starts with considerable huffing and puffing about how Jersey is internationally tax compliant, a good neighbour and more besides.

Regrettably the world has heard such huffing and puffing before and knows it for what it is: that is, huff and puff.

The reality is that Jersey, contrary to its claims:

1. Is not able to decide if it will comply with the requirements of the EU Code of Conduct on Business Taxation: the UK gives it no option but to do so.

2. Has not evidenced compliance with international tax standards by actually exchanging tax information with almost any partner it has signed a Tax Information Exchange Agreement with: indeed many have yet to come into operation.

3. Has not, having reached basic compliance with the OECD standards seemed to be making haste to sign more, compared to the panicked rush to sign twelve before the April 2009 deadline.

4. Has not ever had EU approval for its tax plans.

There is a more important issue though, which goes to the core of Jersey's plans and suggests why there will remain considerable doubt about the good faith of Jersey in offering any scheme to the EU. This is that Jersey has not ever really acted as a good neighbour to any other jurisdiction, anywhere, with regard to tax. That is because of the combination of a number of factors.

The first is that Jersey persists in the view that a company incorporated in Jersey is not resident in the island even if its directors are located there, its registered office is there and all its book-keeping and other administrative functions are located there. This practice is contrary to any normal state law on tax residence, a point which Jersey persistently ignores. But there is more to it than that. Jersey maintains this is possible because despite all these indicators of residence it claims that if the substance of the transactions of the company, which prima facie appears resident in Jersey, are actually elsewhere then it is really tax resident in that other place where that substance occurs. There are however two obvious conditions that must be satisfied for this to be true.

The first is that Jersey satisfies itself that the company is indeed declaring itself resident in that other place and is paying tax there. However, Jersey never asks that question. Jersey does not say as it should:

- This company claims not to be "here" so it must be "somewhere" else, so let's find out where that "somewhere" is and make sure they know about it before agreeing they're not "here".

Instead it says:

- This company claims not to be "here" so let's take their word for it and just assume they are "elsewhere" even though we have no clue where that "elsewhere" might be.

This is the first fundamental flaw at the heart of Jersey's corporate tax system.

The second is that Jersey makes sure that it is as hard as possible for the other place that is "elsewhere" but unknown to the Jersey authorities to secure the information they need to tax a

Jersey company that undertakes the substance of its transactions in their territory, meaning it should be taxed there.

Jersey ensures that this near insurmountable obstacle, which will persist unchanged in the era of Tax Information Exchange Agreements because of the massive information hurdles they place in the path of an enquiring tax authority, still exists, and it does so deliberately. That is what makes Jersey a secrecy jurisdiction. Secrecy jurisdictions are places that intentionally create regulation for the primary benefit and use of those not resident in their geographical domain. That regulation is designed to undermine the legislation or regulation of another jurisdiction. To facilitate its use secrecy jurisdictions also create a deliberate, legally backed veil of secrecy that ensures that those from outside the jurisdiction making use of its regulation cannot be identified to be doing so.

In the case of Jersey the obstacles are:

1. The fact that company beneficial ownership is not on public record;
2. The real directors of the company who control its operations in that other place where it really undertakes its trades are almost never on public record;
3. The accounts of a Jersey company are not on public record;
4. Jersey has deliberately created a scenario where a non-resident company never has to submit its accounts to the Jersey authorities so no record of them is ever in its possession;
5. Because those accounts are never submitted to the Jersey authorities it never has to ask about them;
6. Indeed, it never has to check that the company has such accounts at all;
7. And finally, it has deliberately given up seeking information on beneficial ownership of companies, ever.

This means that Jersey is a perfect jurisdiction from which a trade may be pursued in another country by a Jersey registered company without that other country ever knowing about it and with Jersey denying all knowledge and responsibility for that fact.

This is the deliberate abuse which the Jersey corporate tax system is designed to facilitate and which none of the proposed changes overcome, and which many make worse. Unless this flaw is removed there remains real risk that Jersey will remain a pariah ion the international stage and will not attract new business.

The business tax options – and why they won't work

Jersey claims to offer five options for alternative business taxes if is feels the need to drop the 0/10 tax system (which it will feel if the EU rejects it, as is likely). They are:

1. Flat rate of corporate tax
2. Treatment of corporations as being tax transparent
3. A territorial system of tax
4. Repayable tax credits
5. Abolition of corporate tax

In truth some of these are straw men – options offered without any real intention that they be pursued to simply give a greater appearance of choice than actually exists.

The **abolition of corporate tax** is one such false option. Jersey simply cannot afford to abolish taxes on corporate profits. It can hardly survive with them so doing without them is not going to happen. This option can be safely put to one side bar noting that Jersey says this option could be viable if other taxes were put in place instead of corporate taxes, including payroll taxes on employers, increased or new business licence fees, a bank transaction tax on each transaction undertaken through a Jersey bank (which could be so easily avoided it is a patent non-option) and commercial property taxes levied on occupiers of property calculated by reference to the notional rental value of the property. Each of these, bar a transaction tax, may be needed as well as corporation tax if profits decline as they are at present, but the option of them replacing corporate taxes appears non-existent.

The flat rate corporation tax is another highly unlikely option to pursue, even if other states do so. There is good reason for this: put bluntly, if a flat tax were applied to all companies it could be easily avoided. This is because whilst a standard non-zero rate of corporate income tax could be imposed on the worldwide income of all Jersey resident companies and on the profits of Jersey branches of foreign companies subject to an exemption for dividends received from subsidiary companies and for many finance activities the reality is that:

a) Because Jersey has traditionally treated most activities of most companies as non-resident the yield may well be low;
b) Unless Jersey is willing to mount serious and sustained attacks on the transfer pricing activities of companies that are resident to ensure they do not shift profits into subsidiaries that are not taxed in Jersey and whose income is not taxed on return to Jersey under a flat tax system of dividend exemption Jersey will have no chance of making this charge stick.

The reality is that so called flat taxes are a tax avoiders paradise[1] and do not work for that reason, as Eastern European experience is proving[2]. Jersey cannot afford this option.

Many problems also exist with **transparent tax treatment**. First, this would require the Jersey tax authorities to know the real beneficial ownership of each and every Jersey company before it could determine tax due – and this is not something that on current performance it would seem likely they want to know. It would shatter a lot of the secrecy in Jersey. Certainly it would upset the existing Jersey client base. In addition, many Jersey companies would move into real or claimed foreign ownership – with Jersey then suffering all the same problems as any other tax authority in determining the real ownership of fraudulent offshore structures used by their residents to disguise tax liabilities owing. Tackling this would be costly whilst the current ethos of Jersey as a secrecy jurisdiction is maintained and this means this option unattractive. It is also worth noting this option very unpopular internationally, precisely because the US scheme is so abusive and as a result the

[1] http://www.accaglobal.com/pubs/general/activities/research/publications/tech-ft-001.pdf
[2] http://www.taxresearch.org.uk/Blog/2010/05/07/imf-and-romania-tackle-flat-tax-failure/

Dutch have had considerable difficult in getting approval for such a scheme under the EU Code of Conduct rules and Jersey might suffer similar problems.

Malta has also had problems getting approval for its tax scheme of **repayable tax credits** on which Jersey is basing its option 4. So unpopular is this scheme internationally that Italy has recently listed Malta as a country likely to facilitate tax abuse precisely because of this arrangement. The chance that a new arrangement of this sort would get EU approval is low because it is basically a giant tax planning scheme and an abuse of the spirit of the EU Code of Conduct for Business Taxation, just as 0/10 is.

So lastly there is a **territorial tax system**. These are legal. This is beyond dispute. Other EU countries have such schemes. They work. But they don't work very well if you are a place like Jersey that wants to capture the world wide income of Jersey owned companies – as it has done to date, and which is key to keeping up its corporate tax income. A Jersey owned company has only to start playing games to ensure that its profits can be recorded "elsewhere" – maybe in another secrecy jurisdiction – and they fall out of tax in Jersey. This is all too easy to do without significant rules on transfer pricing and controlled foreign companies being in place, with considerable resources being allocated to policing them.

Put simply this one certain option that would get EU approval for Jersey would fail its requirement to raise revenue and be simple.

In other words, none of the five alternative options seems to offer a solution that works, meets the EU's requirements and raises revenue in simple fashion all at the same time. That's not a comfortable place to be when it comes to needing to raise £100 million a year in tax revenue.

What can Jersey do?

This brings this whole discussion back to the very thing that Jersey seems so reluctant to discuss, which is what its real alternative options are given the crisis it faces. This requires a candid appraisal of what Jersey can do now.

Jersey has, if cool analysis is allowed, just two competitive advantages, presuming tourism and agriculture are to be ignored for now because they make an immaterial contribution to its wellbeing. They are:

1. Its right to legislate;

2. Some experience in arranging and administering (as opposed to planning or managing) financial arrangements.

Jersey likes to claim these two, when combined in what it calls a tax neutral (but which the rest of the world calls a no tax) situations are the foundation of its financial services business. And maybe they are a basis for a part of it, that part being the part Jersey wishes to talk about.

Jersey has not, however, in reality forgotten its past. It cannot deny it was a centre where tax evasion, money laundering and other crime was rife not long ago. It is conceded that it is likely that the scale of that activity has declined as securitisation and other services have advanced. It would be churlish to say otherwise. It would also be completely wrong to deny they still exist, and in mainstream institutions. The secret filming of blatantly unacceptable tax advice appearing to turn a blind eye to tax evasion within a Lloyds TSB branch in 2009 shown on the BBC Panorama programme was clear evidence of this[x]. The incident in question was not isolated and there can be no doubt that the manger in question was not acting beyond his remit. Far too much of what happens in Jersey remains abusive and all denials ring hollow whilst Jersey maintains all the structures of a hard-core secrecy jurisdiction that deliberately allow such practices to continue.

But in this vey observation is the clue to the probable only viable option Jersey now has for pursuing an alternative path, a path that might save it from the almost certain failure as a jurisdiction that it now faces if it does not address the need for radical reform to rebalance its currently hopeless financial position.

There is, in other words, another option for Jersey: Plan B if you like. It will take considerable courage to follow it, but it does build on the only strengths that Jersey has in a way no one else has suggested might be done and it does provide Jersey with the possibility of competitive advantage that could secure its future.

That Plan B is premised on the claim Jersey makes that tax neutrality is vital to many of the transactions it wants to promote, and that secrecy is not. If that is true, and there is no doubt that some transactions that are demanded, rightly or wrongly, in the intensely complex modern world of finance would result in double taxation if not undertaken in a tax neutral (or no tax) environment of the type Jersey offers, then Jersey should now go out of its way to secure as much of that business as possible. It should say very loudly and very clearly that double taxation is unacceptable, and very few could argue with it. Double taxation is not tax justice.

But there is a price attached to this plan, and that is that Jersey must also say very loudly and very clearly that double non-taxation – or no taxation at all when tax is really due– is equally unacceptable. And in saying that it should put its money, and indeed the whole future of its financial services industry, on the line by saying it will not now tolerate double non-taxation - or no taxation at all when tax is due - just as much as it will proudly offer its legislation and its judicial space to ensure that single taxation, and single taxation alone takes place.

It would in pursuit of this policy, in other words, say that it is openly and candidly offering what it calls tax neutrality to all those who want it so long as they accept that such transactions – legitimate and beneficial as it is claimed they are – must be undertaken in the full glare of transparency.

And full would really mean full transparency. Jersey would set out to create for itself a unique market position: a place that offered tax neutrality where there could be no suspicion at all as to the motives of those involved. The structures created, it could be argued in this case, were simply using Jersey because the use of its company, taxation and trust law offered tax neutral structuring

opportunity for international transactions that could not be delivered in another way because of the complexity of the domestic legislation of so many larger states.

But that transparency would have to be absolute if the strategy was to work. So, the following would be needed:

1. All companies to be registered with full details of the following on public record:
    a. All beneficial owners, with nominee intermediaries also disclosed;
    b. All directors on public record and the full names of all those in accordance with whose instructions they act also on public record;
    c. All accounts on public record, and abbreviated accounts not allowed;
    d. The same for all protected cell companies and international cell companies with full details disclosed for each cell;
2. Similar details for all limited liability partnerships;
3. All trusts on public record with the following disclosed:
    a. The trust deed;
    b. All letters of wishes;
    c. The name and address of the settlor;
    d. The names and addresses of all trustees and the names and addresses of all those on whose instructions they act;
    e. The name of any enforcer and the instructions they hold;
    f. The annual accounts of the trust;
    g. Details of all trust distributions with names and addresses of beneficiaries on record;
4. Similar information for all foundations;
5. Similar information for all charities;
6. Trusts with reversion to settlor to be abolished;
7. Full details of all redomiciliation on public record;
8. Full cooperation with the European Union Savings Tax Directive with maximum cooperation in information exchange;
9. An offer of full information exchange in the form outlined by Tax Research LLP in a memorandum published in June 2009[xi] offered to any state that wants it, subject only to limitation in the case of potential human rights abuses (the same to be true for disclosures on public record – but with full information then being held by an international third party in the capacity as human rights registrar);
10. TIEAs and DTAs to be offered to whomsoever wants them, subject only to human rights limitations.

Jersey would then be transformed from the being the offshore location with a history as a secrecy jurisdiction to being the only offshore jurisdiction where all transactions would be beyond suspicion.

Jersey would then have the opportunity to say it was transformed. Far from being a secrecy jurisdiction its competitive advantage would be the fact that it was the place where you could trade tax neutrally but in total openness and therefore without suspicion.

This would provide Jersey with a massive competitive advantage. There must be ample such transactions in the world to ensure it would have more than enough business to keep it busy. And by taking first mover advantage it could create a whole new market for itself where growth might be a real possibility.

Will Plan B pay?

Plan B is an industrial strategy for Jersey, first and foremost.

The transparency Plan B proposes can pay for Jersey for a great many reasons:

1. It would be unique.

2. It exploits what Jersey already says is its unique selling point.

3. Jersey would not then be competing in a global morass where the trend to undercut profit margins is increasing – it would become market leader and price setter in a market all of its own.

4. Plan B lowers risk for those using Jersey. Reduced risk brings cost savings for users which means they will be willing to pay a higher price for using Jersey which will boost its finance industry and increase the licence ad other fees Jersey can charge for using its services.

5. Reduced risk and a high degree of openness will attract new business from other locations. This business will come from those multinational corporations, banks and fund managers, in particular, who want to ensure their offshore activities are beyond reproach. That is probably most of them at present, and all of those who are of good repute and with high profitability. This will increase local profits in Jersey which is key to securing future business tax revenues, which will be enhanced as a result of Plan B.

6. Jersey will become an attractive place to work for those who want to work offshore but who do not wish to have the stigma currently attached to it attached to them. This will mean people will want to work there creating tow pressures. The first will be pressure for wage stability as there will be ample supply of job applicants. Secondly, because the risk of working in Jersey will be reduced for these employees they will accept higher taxes as a price worth paying for that reduced risk so allowing higher social security and income taxes to be charged to allow Jersey's budget to be rebalanced.

Plan B can pay.

It can restore the health of the finance industry in jersey.

It would let Jersey hold its head up high in the world as a trailblazer for reform for social good.

And it would let Jersey rebalance its budget.

Will Jersey adopt Plan B?

Jersey has a choice, but not much of a choice. It can slowly sink. This is inevitable if the existing pattern of trading in Jersey continues with finance suffering falling profits and falling funds under management with consequent lower tax revenues meaning the States will suffer ever larger deficits in the future, leading to its eventual failure to manage the island as an independent jurisdiction.

Or Jersey can take a risk on Plan B. This is, admittedly a big risk, but it is also one that Jersey can hardly afford not to take.

Of course Jersey will lose some business as a result of Plan B – but it is exactly the business it has said it has not wanted for many years i.e. the tax evasion, money laundering and illicit transactions that have hidden behind its deliberate veil of secrecy which is still very much in existence, whatever it says.

But it might by taking that risk of getting rid of this wholly unwelcome business win a great deal of new business; business that wants the lower risk and so lower cost that Jersey could then offer and which Jersey could actually charge more for – because transparency has a benefit.

Jersey may not opt for Plan B but if it does not then we will know two things. The first is it will surely fail as an independent jurisdiction: no place can run deficits forever, least of all if it expects the UK to bail it out – as the UK must, constitutionally. The second is that we will know secrecy is too important to Jersey to give up and that in turn will tell us that the secrecy is actually the bedrock of what it does (whatever it may now claim) and it will automatically follow that we will know that illicit transactions are the real foundation of its finance industry, again, whatever it may say to the contrary.

So Jersey can turn its back on its past, hold its head high, even possibly ask for international financial assistance to transform its finance industry, and secure for itself an ongoing income stream that should last well into the future where transparency becomes the foundation of all it does and legitimacy is the guarantor of its well being.

Or it can carry on with secrecy and face a desperate future.

Those are plans B and Plan A respectfully. Jersey has only presented Plan A as part of its fiscal strategy review. But Plan B is now on the table. Jersey has to decide, is it A or is it B? It may be the most important decision it has made for a long time.

[i] http://www.taxresearch.org.uk/Blog/2007/11/26/jerseys-black-hole/

[ii] http://www.taxresearch.org.uk/Documents/JerseyEUCodeReport15-6-05.PDF

[iii] http://www.taxresearch.org.uk/Blog/2010/03/01/its-game-over-for-jersey-as-funds-under-management-fall-by-more-than-40-in-a-year/

[iv] http://www.gov.je/SiteCollectionDocuments/Tax%20and%20your%20money/ID%20FSR%20GREEN%20PAPER%2020100621%20MM.pdf

[v] http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20ConsultationBusinessTaxReviewGreenPaper%2020100621%20SH.pdf

[vi] http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/FD%20BudgetStmt2010%2020100108%20TR.pdf

[vii] http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/FD%20BudgetStmt2010%2020100108%20TR.pdf

[viii] http://www.thisisjersey.com/2010/07/01/finance-profits-hit/

[ix] http://www.gov.je/SiteCollectionDocuments/Tax%20and%20your%20money/ID%20FSR%20GREEN%20PAPER%2020100621%20MM.pdf

[x] http://news.bbc.co.uk/panorama/hi/front_page/newsid_8261000/8261135.stm

[xi] http://www.taxresearch.org.uk/Documents/InfoEx0609.pdf