

The Crown Dependencies do not comply with the EU Code of

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I have written extensively about the fact that the Crown Dependencies do not comply with the requirements of the [EU Code of Conduct on Business Taxation](#). For those not familiar with my history on this issue — I was actually engaged by the States of Jersey to advise on it in 2005 — and got sacked for my efforts having caused a minor constitutional crisis along the way before being so. My report to them is [available, here](#).

My advice was simple then: what Jersey planned did not comply. The same was true of the Isle of Man, I argued. Guernsey, maybe less so. And I have been consistently proved right for one good reason. The Code was designed to prevent the existence of tax ring fences which meant beneficial tax arrangements were offered to non-residents denied to residents.

Jersey and the Isle of Man, in particular, thought (using the abusive logic so well known to their local lawyers and accountants) that they'd just avoid this requirement by moving the location of the ring fence. Instead of offering two rates of tax on companies — zero per cent for offshore companies and 20% at the time for locally owned ones they claimed they introduced just one rate of zero per cent, for all but some banks who would (and the EU agreed this was acceptable) pay 10%.

That may have been acceptable to Europe bar one small point: as both governments realised this would mean that everyone on the islands would incorporate and payment of tax would become entirely voluntary. And, like all governments, the administrations in the Crown Dependencies really don't like their own taxes being avoided. So they introduced a new scheme whereby locally owned companies have to either distribute at least 60% of their income as dividends, forcing local owners to then pay tax on the dividend — or if they refuse to do so then they are deemed to have done so and the company must pay the tax due by the local owner whether they like it or not.

To anyone but a tax abusing lawyer it is abundantly clear that this is a tax on the profits of locally owned companies which does not apply to those companies owned by people elsewhere — and is therefore a ring fence of exactly the same type as that which the

EU Code sought to abolish. I told them so, loud and clear. I told the Isle of Man that as well, loud and clear. But Jersey didn't like what I said so they recruited a flat tax supporting, libertarian hater of government of all sorts and friend of the Cato Institute in the USA called [Richard Teather](#) — who works part time as a senior lecturer in tax at Bournemouth University to the undoubted misfortune of its students — to replace me. And no doubt he told them that all was fine with what was proposed, for they went ahead.

Except all was not fine. I have this morning been sent a copy of a letter dated today issued by Terry Le Sueur — Chief Minister of Jersey. In it he says:

On the back of the annual Crown Dependencies dinner hosted by Lord Bach from the Ministry of Justice, the Chief Minister of Guernsey and myself met yesterday with Stephen Timms at HM treasury. We discussed how the economic crisis is rapidly changing international and European norms for business taxation, much of which has been widely reported in the press. The views of the EU Member States seem to be evolving, and the UK felt that other Member States are increasingly unlikely to accept their stance that the fiscal regimes in the Crown Dependencies are fully compliant with the EU Code of Conduct on Business taxation. We have worked well with the UK's support in implementing zero-ten corporation tax system, and the meeting also provided a useful opportunity to update the UK on plans to review our fiscal strategy. It is clear that we will need to continue to work in partnership with the UK on engagement with EU Member States so we can maintain a viable and competitive tax system supported by our European neighbours.

Let me decode that. First, the UK has withdrawn its support for Jersey is what I think that says. The reality is that if the UK is not willing to support the Crown Dependencies in the Code of Conduct Group then they can't make the claim they are compliant to that Group because the UK is the only spokesperson they have to go there, and I think this is what has actually happened. I think you can safely assume the same is true for the other Crown Dependencies. And of course the reason for the UK doing this is obvious: it is no longer willing to promote Jersey to the EU when Jersey is willingly and with open arms welcoming to its shores companies claiming to be leaving the UK for tax reasons, as most of those who have claimed to have left the UK this year have done. Why should it?

Second, this throws the whole fiscal regimes of Jersey and Guernsey into the same nightmare scenario that I forecast yesterday is about to [erupt over the Isle of Man](#) — again as foretold by me several years ago. All those governments had more than adequate warning — albeit, as far as I can see from me alone with support from my Tax Justice Network colleagues — that they were heading for the nightmare of running illegal and unsustainable tax systems, and we have been proven right.

Third, this means Jersey has put itself in the position of running [an enormous fiscal deficit](#) to pursue a tax haven policy only to find that the policy is illegal, must be altered

— and cannot be changed to maintain what Senator le Sueur calls a
“competitive tax system” — by which he means one where non-residents pay
nothing — without making that deficit much, much worse.

Which means we now face the prospect of all three of the Crown Dependencies going
bankrupt rather sooner than I expected, about which I will try to blog later.

For now though, I do wonder whether Jersey should be taking issue with Teather.

And given I was right all along, if they'd like to call I'm still available to offer advice — if
the fee is right.