

What does Jersey know?

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I have been sent the full report in the Jersey Evening Post from last Wednesday on the withdrawal of UK support for the zero-ten tax systems of Jersey and Guernsey at the EU Code of Conduct Group meetings — guaranteeing that approval will not be granted.

I note with interest some of the comments, such as this from Treasury Minister Philip Ozouf:

We believe that zero-ten meets the spirit of the code

The trouble is that the Code is not statutory — it is a set of principles, and it was always obvious (if not to Jersey) that zero-ten, which is based on a deceit because the abusive ring fence is moved out of business taxation and into personal taxation, was never going to meet the standard for approval. The fact that companies were required to act as payment agents in some circumstances did, of course, just guarantee non-compliance with the letter as well. But it's useful to see just where Jersey's thinking has been, and still is.

And he also said:

The whole global crisis is going to result in different norms in taxation. It makes sense for us to be doing it jointly with the UK and doing some research in Europe ourselves.

I have to say I think this is an excuse: a convenient excuse but not the truth. The reality is zero-ten as enacted did not comply with the Code, and that was always obvious — or I could not have said so. There is however another dimension to this that needs to be explored. The implication seems to be that Jersey has never approached Europe itself on this issue but has always relied on access through the UK. Now, whilst access through the UK is the only official channel, and certainly the only way zero-ten could be formally presented, back in 2006 the Commission were quite willing to meet John Christensen and myself representing the Tax Justice Network to discuss this issue. The assurances they gave us then were that:

a) Zero-ten as proposed at that time did not, in their opinion, comply with the Code;

b) No approval would be given until any law implementing zero-ten was enacted;

c) There was no ‘prior approval’ regime, however unjust that might be (and I admit, it does seem very strange that this could not be given — so much time and effort could have been saved);

d) The UK could express opinion to whomsoever it liked on a proposal but ECOFIN gave approval. The fact that the Code Group was chaired by Dawn Primarolo for a decade did not change that;

e) They were aware that the UK thought moving a ring fence from the corporate tax code to the personal income tax code might ensure Code compliance. It was very clear they did not agree and that they felt the Code Group would not agree.

It is on the basis of these assurances that John Christensen and I have been confident that not only, based on my work, were we sure that the zero-ten proposals did not work, but also that they had not been approved by Europe. As now seems clear, the assurances we were given were right: no approval was ever given by ECOFIN, whatever was said in Jersey.

But this leads to serious questions and comment:

1) As I have said before, if an approval was given by ECOFIN it needs to be published now.

2) If the UK said an agreement had been issued by ECOFIN that letter needs to be published now.

3) If neither can be published question needs to be raised about why such assurances were given.

4) If no one from Jersey did go to Brussels to check this out — and that seems extraordinary if true — questions need to be asked as to why.

5) If the PWC report of 2004 was the only written opinion secured as to compliance that too surely needs to be questioned. My 2005 report said the Code was not complied with — and there’s no doubt it as right as Jersey sought to redesign as a result. What checking was done thereafter to check compliance. Shouldn’t any such opinion also be published?

6) Ministers need to be held to account, surely, for having committed so many resources to this on such a flimsy belief as that which Philip Ozouf notes ‘that the letter of the Code was complied with’.

And I’d join with the Crown Dependencies in asking questions of London on this:

a) Why did London let this continue for so long?

b) Why did London think the move out of corporate tax into personal income tax was adequate compliance with the Code — as I think it did, for a while at least?

c) What was said by London to the Crown Dependencies? There does seem to be a question of accountability to deal with here.

Nothing changes my opinion that the assurances given that the zero-ten systems had been approved by ECOFIN were wrong. Only documentation can do that — and if it is produced I will, of course, have to issue apologies (and will). Their absence so far — and the absence of any hint that they exist is, however, telling. But that hardly seems to be the end of the matter. This issue has to be resolved with a much higher degree of assurance provided and in a much shorter time frame now zero-ten has failed. And that means better thinking and communication is key to going forward.

I hope it happens.