

The EU has moved quickly to kill zero / ten in the Crow...

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I admit that when the [EU said it would set up a High Level Working Party](#) to look at the scope of the EU Code of Conduct on Business Taxation when there was some failure to agree on this issue last November I thought that this would be a long drawn out and tortuous process.

I was wrong. The Working Party met - as I understand it on 31 January. In fact, it has not only met but it has delivered its findings which will now be considered by EcoFin - the committee of European finance ministers that can ratify its decision by no later than 17 February.

As I understand it the UK is driving the process of killing zero / ten. The Tories are following the line created by Labour on this issue, which is welcome news - although it caution must be exercised as it may just be that they're doing it to [promote the UK's tax haven activities instead](#).

And as I understand it [Jersey](#) and the Isle of Man have at least four friends in Europe - the Netherlands, Belgium, Ireland and Luxembourg (tax havens, all of them).

The Commission is quite clearly following the UK's line. The findings are that in principle the Code only applies to taxes on business profits but if other taxes are built into an arrangement which constitutes a scheme then they too have to be considered. In other words if, as is the case in Jersey and the Isle of Man's zero / ten schemes the income tax system is built into the business profits system by reason of deeming there to be distributions from companies which are not technically taxed so that as a result of the deemed distributions those profits are instead taxed as the personal income of shareholders with the net effect being that business profits of locally owned companies are compulsorily taxed, then those arrangements in the income tax regime of those places are covered by the EU Code of Conduct on Business Taxation.

This is exactly as I predicted on 2005, and subsequently as these places tried to wriggle round their obligations, of course.

Let me quote precisely what the Commission concluded as a result:

In the Commission's view, the above elements combined provide sufficient ground to justify the conclusion that in the specific cases of the Jersey zero/ten regime and the Isle of Man new tax legislation, the deemed distribution and attribution provisions are effectively designed to provide an alternative means of taxing domestic business profits and therefore are within the scope of the Code and must be included in an evaluation under the Code of Conduct for business taxation.

In that case the previous decisions, [reached last November](#), where it was unanimously agreed by Member States that the zero / ten regimes of Jersey and the Isle of Man are harmful and abuse the Code are confirmed as correct, as I again predicted.

If this is in turn confirmed by EcoFin - as seems likely - on 17 February then zero / ten is dead.

So what then? There seem to be three options. First the deemed distribution rules are scrapped - but then the prospect of raising revenue from locally owned business is remote and remember Jersey already has a £100 million fiscal black hole to tackle, with the Isle of Man little better off due its shortfall in VAT income.

Second, these islands could withdraw co-operation with the UK and the EU. This will trigger a constitutional crisis with the UK, but that can't be ruled out.

Third the search for an alternative begins. And as I have warned, [I don't see territorial tax as an easy option](#).