

What happens to Glencore if Jersey fails the EU Code of...

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[I've noted today](#) that I think Jersey will fail the EU Code of Conduct tests for acceptability on business taxation later this year. I may be wrong, of course: I have to recognise that risk. But to date I've been right on this issue, when the massed opinion of almost all in the Crown Dependencies was that I was wrong.

As I've also noted recently, Glencore, the world's largest trader in commodities, [has launched itself onto the world's](#) stock exchanges through a Jersey company. It has the right to do so, of course. But [as I noted, its prospectus said](#):

Jersey taxation legislation provides that the general basic rate of income tax on the profits of companies regarded as resident in Jersey or having a permanent establishment in Jersey will be zero per cent and that only a limited number of financial services companies shall be subject to income tax at a rate of 10 per cent. There is no capital gains tax in Jersey.

No doubt this was an extremely important factor in its decision to locate in the island. I would suggest it was fundamental.

The trouble is that indicates that [Jersey fails test 3 of the Code of Conduct](#), which says:

3. Whether advantages are granted even without any real economic activity and substantial economic presence within the Member State offering such tax advantages

Let's presume for these purposes that:

- a) Zero tax is considered an advantage;
- b) Glencore is not really moving to Jersey - there is no sign at all that it is: it is merely using the location as ahead office address;
- c) That means the economic substance of Glencore will remain, as now, in Switzerland;
- d) Glencore will not as a result have 'any real economic activity and substantial

economic presence' in Jersey. I think that's likely in terms of scale.

Now, I stress, Glencore is doing nothing wrong.

But Jersey has not yet proven it can offer these advantages: the EU has not ruled its tax system that does so is acceptable. Indeed, it has ruled to the contrary.

Of course, no doubt Glencore has been advised that the reforms announced by Jersey yesterday will keep the EU happy. The trouble is Jersey and its lawyers have always got these things wrong to date: they've called every shot incorrectly on the EU Code of Conduct.

And then what? What if Glencore finds it can't enjoy the benefits that it's been promised? That will be interesting. Firstly for Glencore. Second for its investors. Thirdly for Jersey.

Watch this space.