

Jersey, The Isle of Man and Guernsey

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The EU Code of Conduct on Business Taxation group met in Brussels this week to consider the measures Jersey and the Isle of Man are proposing to take to make their tax systems compliant with EU requirements following their being ruled unacceptable last year.

I will not relate the story of that unacceptability at length: suffice to say that the EU deemed that the corporation tax systems of the islands failed three of the five code requirements.

Removing what might be called the 'deemed distribution' requirements (ARI in the Isle of Man) was hoped by the islands to be enough to get round the problem although I had suggested a third problem remained.

Well, as it turned out the EU has accepted the abolition of these provisions subject to some pretty significant assurances, and with a sting in the tail (of which more in a moment). The condition is that deemed distribution is not reintroduced using general anti-avoidance legislation. It won't be, the islands say. Now I have seen documents presented to the meeting via my usual sources in Europe I note that Wendy Martin for Jersey said, for example:

In summary, the general anti-avoidance rule cannot in our view replicate the effects of the deemed distribution and attribution rules. It cannot apply in such a way as to result in the profits of a company being taxed in the hands of the shareholder in the absence of a properly taxable dividend. It also cannot apply in any circumstances other than in respect of highly artificial and non-commercial transactions.

Which curiously gives carte blanche licence to Jersey local people to use companies to avoid tax, something Colin Powell said they could not afford to do, which is why he was not worried about it:

Outside the finance industry many general traders are branches or subsidiaries of UK companies and so are not affected by the removal of these provisions. Local traders

face significant competition from external suppliers and even when their profits were subject to tax at 20% (prior to the introduction of zero/ten) the tax revenues generated were a relatively small proportion of the total. Even absent the low investment income climate that currently exists and which might otherwise provide an alternative source of income, many of the local traders rely on the income from their businesses as the main or sole source of funding. It is likely therefore that even if they did incorporate their businesses they would need to extract the profits in the form of a salary or a dividend.

It's an odd idea that Jersey says locals simply can't afford tax avoidance, and an indictment of the contempt that Jersey officials hold for the local economy that they can structure their argument in that way.

Despite which Wendy Martin recognised that if any could manage it the opportunities were now legion to do so:

Taking this example further, say the individual built up substantial profit in the company over a number of years and then decided he no longer wanted to run the business. He sells the company on an arms length basis for a profit. There is no capital gains tax in Jersey and so that disposal would be tax free. Effectively the profits that arose in that company would not be subject to tax.

This transaction could not be challenged under the general anti-avoidance provision on the basis that it is a commercial transaction. The main purpose of the transaction, that is the sale of the company, is for the individual to exit from the business and to make a profit — it is not for the avoidance of tax.

In other words, Jersey admits that there is a masive loophole in their tax system now because of the absence of a capital gains tax.

Which is where they and the Isle of Man are now to suffer the sting in the tail - which is that I am told that the EU will be demanding a capital gains tax of them - because its absence now makes their system on-standard in itself.

That should 'go down well' in St Helier and Douglas.

And candidly I really do hope they do this to Jersey and the Isle of Man - because remember they both remain out on a limb with these tax systems which have been, I think it fair to say, grudgingly approved. And Jersey remain out on a limb on other issues too - like automatic information exchange under the European Union Savings Tax Directive.

But EU attention might move elsewhere for a moment for what, I might hear you say, of St Peter Port? Well, the EU's now turning its eyes their way and is asking for evidence of what they're going to do, which so far seems to be 'not a lot'.