



**CORPORATE TAX REVIEW
PUBLIC CONSULTATION
PRELIMINARY FEEDBACK**

Fiscal and Economic Policy Group¹

02 November 2010

¹ The Fiscal and Economic Policy Group, chaired by the Chief Minister, is a political sub group of the Policy Council and is responsible for the development of long term fiscal and economic strategy for Guernsey.

1. Introduction

1.1. On 21 June 2010, the Fiscal and Economic Policy Group ('FEPG'), following the States resolution of October 2009 (Billet XXIX) to commit to a review of Guernsey's corporate tax regime, published the Corporate Tax Review Consultation Document. Jersey and the Isle of Man ('IOM') have also undertaken public consultations on their corporate tax regimes during 2010. The IOM published the results of its consultation on 30th July, 2010.

1.2. The States commitment to reviewing its corporate tax regime was a result of receipt of communications from Her Majesty's Treasury ('HMT') that certain members of the European Union Code of Conduct Group on Business Taxation ('CCG') no longer deemed the zero/10 regimes of the Crown Dependencies to be compliant with the 'spirit' of the Code of Conduct on Business Taxation (the 'Code').

1.3. The consultation document made it clear that Guernsey will not place its economy at a competitive disadvantage to other jurisdictions through the review process. It also explained that it was the view of the FEPG that it would be preferable to be able to provide clarity and certainty over the 'direction of travel' as soon as is practical and feasible.

1.4. As was laid out in the consultation document, the CCG is presently reviewing the zero/10 regimes of Jersey and the IOM. This review process commenced in September when officials of both Jersey and the IOM separately represented their jurisdictions at the CCG's meeting of 23rd September. This review process has not been completed and is expected to continue at the CCG's next scheduled meeting of 19th November. The CCG has no plans to review Guernsey's zero/10 regime.

1.5. Clearly Guernsey cannot properly make any decisions regarding its corporate tax regimes until such time as the CCG review process of the zero/10 regimes of Jersey and the IOM are concluded.

1.6. At this present juncture it would be premature to attempt to fully analyse or respond to the submissions to the consultation held during the summer. However, the FEPG gave a commitment to publicly feedback on the consultation submissions during the autumn of this year. In that spirit this preliminary report provides a brief overview of the submissions received in response to the consultation.

1.7. This report does not seek to provide any analysis or response to the public submissions. It does not provide any indication therefore of any likely 'direction of travel' of the States as that is impossible to determine at this present juncture. Whilst it had been previously communicated that it was the preference of the FEPG to be able to provide an indication of a likely 'direction of travel' during the December budget meeting of the States, as the CCG review of the regimes of JSY and the IOM have yet to be concluded, it is highly unlikely that the Treasury Minister will be in a position to provide such an indication at that stage. However, it is still the intention to provide an update on the review process.

1.8. There were 50 formal submissions to the consultation: 12 were responses of industry associations, 9 were from individuals (including two States' Deputies) and the remaining 29 responses were individual institutional responses (banks, fiduciaries and professional services firms). Respondents are listed in Appendix 1. Presentations were requested (and provided) by several industry organisations and follow up discussions, instigated by the FEPG, have taken place with various respondents as a result of specific points made in submissions.

2. General

2.1. There was overwhelming support for the suggested principles to underpin Guernsey's corporate tax regime as set out in the consultation document. Particularly the view that income should, as far as is practical, be taxed only once and also that tax regimes should not act as a disincentive to, nor distort, economic activity. The view that taxation on savings and investment, by raising the marginal cost of capital, are generally distortionary and thus reduce investment and long run economic growth and that financial products should therefore be tax neutral to encourage investment and capital market efficiency and liquidity, was overwhelmingly endorsed.

2.2. There was also overwhelming support for the objectives set out in the review, (that any revised regime must be: competitive; internationally acceptable; promote a sustainable Guernsey economy; be simple; and give rise to reciprocal benefits), particularly the need for Guernsey to maintain or enhance its internationally competitive fiscal position. However, there were some submissions that deliberately made the point that simplicity should not be sought at the expense of either other principles or objectives.

2.3. In the particular context of financial products, the prevailing view set out in submissions received was that the existing exempt regime for funds was not seen as under threat (which was positively endorsed) but many submissions suggested whether similar regimes for other types of financial products should not also be adopted.

2.4. Options

2.4.1. The general consensus was that a territorial type regime was the most preferable candidate to form the basis of any alternative regime. The general view was that a well designed territorial based regime could preserve Guernsey's competitive position. However, this view was provided with the caveat that at present there remained insufficient detail as to how a regime may work in practice for this view to be anything more than provisional. Respondents were clear that they would wish to see further consultation as to defining various concepts referred to by the consultation document such as permanent establishment and source of income.

2.4.2. There was no clear consensus as to whether a 'treatment as transparent' type regime would likely be considered internationally acceptable although the majority of submissions that referred to a technical considerations suggested similar issues arise as for the territorial system regarding determination of source of income.

2.4.3. A clear majority of those expressing an opinion suggested that a 'flat rate/residence' regime does not safeguard tax neutrality; therefore without significant exemption such a regime was unlikely to maintain Guernsey's internationally competitive position. There also existed a general consensus that abolishment of corporation tax was unlikely to be the basis of an internationally acceptable regime of taxation for the future.

2.4.4. The majority view was also that a repayable tax credit system was likely to be administratively complex and unlikely to be internationally acceptable in the long term, despite currently being operated by Malta.

2.4.5. In addition to requesting comments on the candidate options for a foundation of any revised corporate tax regime, the consultation also invited submissions on potential alternatives not presented in the document. In response to this invitation, a minority of submissions made the suggestion to amend the zero/10 regime in response to any rulings made by the CCG regarding the technical non-compliance of the zero/10 regimes of Jersey and the IOM.

2.5. A sizable minority of respondents expressed concerns over the administrative complexity of the deemed distribution regime and requested that it should be reviewed to achieve a greater degree of simplicity. There were several responses suggesting that Guernsey should adopt an advance ruling regime (these suggestions related as much to the current zero/10 regime, as any potential revised regime).

2.6. The majority of submissions expressed concern and dissatisfaction with the clarity publicly provided by HMT and the EU as to the concerns regarding zero/10 and an explanation of the rationale behind the belief that the zero/10 regimes have been deemed to be against the 'spirit' of the Code. The States of Jersey press release of 24th September, 2010, reporting back on the outcome of the CCG meeting of the 23rd September stated that CCG questions 'were limited to details of the deemed distribution and attribution rules.' Similarly, discussions between Guernsey and various EU Member State officials suggest that the concerns of the CCG relate to the practical implications of the deemed distribution and attributions rules. However, at this juncture this remains speculation and clearly the outcome of the CCG will inform Guernsey on the EU's position regarding zero/10.

2.7. Concerns were expressed regarding the unwelcome uncertainty that the review had created surrounding the corporate tax regime and the desire for certainty for business in particular as soon as is practical. It was also made very clear that a further review of the corporate tax regimes of Guernsey and the other Crown Dependencies would be extremely harmful economically and that any replacement regime (if required) to zero/10 must be sustainable in the long run.

2.8. Concerns were also expressed regarding the current competitive position of Guernsey and the other Crown Dependencies. As the consultation document stated, the existing zero/10 regime remains until such time as a decision, if any, is made to change. This is a common position across all three Crown Dependencies. On the matter of competitiveness, industry in particular welcomed and was reassured that the key objective of the review was to ensure that Guernsey retained and maintained an internationally competitive corporate tax regime.

2.9. There was a minority view expressed that the corporate tax review should not have taken place unless it was as part of a wider review of general taxation. In a similar vein, many made the suggestion that, whilst it was not an express objective of the review to raise additional revenues, if this turned out to be the case, their belief was this should catalyse a review of 'regressive' taxation measures implemented as part of the transition to zero/10. Responses from industry cited concerns about the rises of TRP in particular, post zero/10.

2.10. There was also a sizeable minority of locally owned businesses that expressed their displeasure of having to face an effective income tax liability of 20% on their profits whilst actively trading companies with a non-Guernsey parent (eg UK retailers) were subject to a rate of zero percent.

2.11. A general consensus emerged from the submissions was that provided tax neutral products can be offered to international clients active businesses that can serve those clients ought to be able to bear a non-zero rate of tax. However, it was made very clear that this rate would need to be competitive and that it would be preferable if the rate and scope of such a charge was consistent across the Crown Dependencies.

2.12. Other suggestions included the view that Guernsey should develop an Intellectual Property ("IP") regime to attract new structures to locate in Guernsey.

3. Key Competitor jurisdictions and tax neutrality

3.1. The consultation asked for views on where businesses presently located in Guernsey may migrate to if tax neutrality of their product lines was not maintained. Responses did vary by industry but aside from the funds industry (where Luxembourg was a common response) the key message was that non-EU jurisdictions would be the likely beneficiaries: Bermuda and other Caribbean jurisdictions; Switzerland and Singapore being the most commonly mentioned.

4. Reciprocal benefits

4.1. The consultation also expressly requested suggestions for specific reciprocal benefits that Guernsey should seek to negotiate, if it were deemed necessary to revise the corporate tax regime. In addition to the oft cited point that Guernsey should, as a result of its current proven commitment to internationally agreed OECD standards, already be automatically removed from any so called "blacklists" held by any individual EU Member States and also be included on the white lists of any EU Member States, specific suggestions included:

- Full Double Tax Agreements with other EU Member States (France, Germany in particular); Switzerland and the USA and Australia².
- Access to EU Interest & Royalties Directive
- Access to EU Parent-Subsidiary Directive
- General market access to EU markets and recognition of the Guernsey regulatory regime.

5. Timetable

5.1. Whilst almost all submissions that referred to this question expressed a preference for an indication of likely direction of travel as soon as possible, it was also made very clear that a further review of the corporate tax regimes of Guernsey and the other Crown Dependencies would be extremely harmful economically and that any replacement regime (if required) to zero/10 must be sustainable in the long run. Concerns were expressed by certain companies, particularly those of that operated in more than one Crown Dependency, that there were risks involved in a unilateral change of corporate tax regime by Guernsey.

² Clearly countries such as the USA and Switzerland are outside the EU, naming of such countries by respondents as preferred candidates for attempted negotiation of DTAs was in response to the question of which countries should be approached on the basis that GSY had a 'normalised' international corporate tax regime.

6. Conclusion

6.1. This report provides preliminary feedback to the consultation that took place over the summer. It does not seek to provide any analysis or response to the public submission and does not provide any indication therefore of any likely direction of travel of the States' as that is impossible to determine at this present juncture. Once the outcome of the review process of the zero/10 regimes of Jersey and the IOM are known, detailed analysis of the ruling of the CCG will be required.

6.2. However, the consultation process gave rise to several constructive technical submissions being received. Numerous follow up technical discussions have subsequently taken place with expert practitioners which have provided valuable input into the technical development work of the FEPG that has been ongoing over the course of 2010.

6.3. Whilst it had been previously communicated that it was the preference of the FEPG to be able to provide an indication of a likely 'direction of travel' during the December budget meeting of the States, as the CCG review of the regimes of JSY and the IOM have yet to be concluded, it is highly unlikely that the Treasury Minister will be in a position to provide such an indication at that stage. However, it is still the intention to provide an update on progress at that time.

Any queries should, in the first instance, be directed to:

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Or via email: corporatetaxreview@gov.gg

Appendix One – List of Respondents

ABB Group
Apax Partners Guernsey Ltd
Association of Guernsey Banks
Bank Sarasin (CI) Ltd
Blanchford, G
Butterfield
Cenkos Channel Islands Ltd
Collas Day
Collenette Jones
Collins Stewart Wealth Management Ltd
Confederation of Guernsey Industry
Confiance Ltd
Creasey's Ltd
Deputy David De Lisle
Deputy Matt Fallaize
Deloitte LLP
Dorey, Rupert
Ernst & Young LLP
Garenne Group Ltd
Guernsey Association of Trustees
Guernsey Chamber of Commerce
Guernsey Independent Members Association
Guernsey International Business Association
Guernsey International Insurance Association
Guernsey Investment Fund Association
Guernsey Society of Chartered and Certified Accountants
Hendry, Ron
Heritage Group Ltd
Institute of Directors (Guernsey branch)
International Financial Centres Forum
Intertrust Reads Private Clients Ltd
KPMG Channel Islands Ltd
Lancaster, Henry
McKean, J M
Mourant Ozannes
Ogier
Ogier's Ltd
Neric Group
Nordben Life and Pension Insurance Co Ltd
PricewaterhouseCoopers CI LLP
Rawlinson & Hunter Ltd
Russell, Brian
Shaw, Christopher
Sovereign Trust (Channel Islands) Ltd
Specsavers Ltd
Sportingbet (Interactive Sports CI Ltd)
Society of Trust and Estate Practitioners (Guernsey branch)
TISEF Ltd
Trust Corporation of the Channel Islands Ltd
Valora Holding Finance Ltd