XXIX
2009

BILLET D'ÉTAT

TUESDAY 27th OCTOBER 2009

POLICY COUNCIL – CORPORATE TAX RATES:
PROPOSED REVIEW

Printed by Image Group, Caslon Court, Pitronnerie Road, St Peter Port, Guernsey GY1 3NE

Price £2.50

B I L L E T   D ' É T A T

TO THE MEMBERS OF THE STATES OF

THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE, on TUESDAY, the 27th OCTOBER, 2009,** immediately before the meetings already convened for that day, to consider the item contained in this Billet d'État which has been submitted for debate.

G. R. ROWLAND
Bailiff and Presiding Officer

The Royal Court House
Guernsey
23 October 2009

POLICY COUNCIL

CORPORATE TAX RATES: PROPOSED REVIEW

1 Executive Summary

1.1 The last 12 months have seen unprecedented global economic upheaval. There has been a massive shift in the political, regulatory and economic landscape. Tax issues have dominated policy debates throughout the year, particularly in light of the enormous current (and projected) fiscal deficits throughout the Western economies.

1.2 It is in that context that, during a recent series of meetings between representatives of the States of Guernsey and Her Majesty's Treasury ('HMT'), it was communicated to the Crown Dependencies ('CDs') that it was believed that the EU Code of Conduct Group ('CCG') now consider the Zero-10 corporate tax regimes of the CDs to be non compliant with the 'spirit' of the EU Code of Conduct for business taxation.

1.3 HMT also indicated that it therefore felt it would not achieve a successful outcome in supporting the CDs in respect of achieving a positive ruling from the CCG. To that event, HMT advised that its belief was that the CDs will need to review their general corporate tax rates with a view to not only technically comply with the EU Code of Conduct but also to achieve compliance with what certain Member States now consider to be the 'spirit' of the Code.

1.4 To achieve this objective a movement from a limited to a general corporate tax rate of 10% is likely to be required. It is therefore recommended to the States that the current planned review of taxation ('Fiscal and Economic Plan, Billet XVIII, July 2009) proceeds on the presumption of a 10% general rate of corporate tax. It is also intended that Guernsey work in full partnership with the other CDs in the development of this revised corporate tax regime.

2 History

2.1 Guernsey's Zero-10 corporate tax regime was introduced on 1 January 2008, with Jersey and the Isle of Man following a broadly similar approach (albeit with slight timing differences). Officials from the HMT had prior sight of the new regimes and confirmed to the CDs that in their view this approach was compliant with international standards and the EU Code of Conduct. Zero-10 has been discussed at the CCG on several occasions (as recently as Spring 2009) and previous indications from the CCG was that Zero-10 would be deemed compliant.

2.2 The Zero-10 corporate tax system was developed over many years with full and lengthy discussion with the public and all stakeholders. The original catalyst was a CCG review of tax regimes which identified five 'harmful tax regimes' in Guernsey.

This figure needs to be provided in the context that this review identified 66 harmful measures across the (then 15) EU member states and associated territories.

2.3 Given the unprecedented global economic turbulence over the last 12-18 months and the significant worsening of the fiscal position of many European countries, it is believed that it is now the situation that several EU Member States no longer consider a Zero-10 corporate tax regime to be compliant with the 'spirit' of the Code. This view of non-compliance with the spirit of the Code needs to be viewed in the wider context of the EU's political direction of travel. The EU has made clear its pejorative view of zero corporate rates systems which is evident in stage II of the European Union Savings Directive ('EUSD') which imposes a heavier burden of compliance for zero rate corporate tax systems.

2.4 The EU has also in recent years deliberately sought to extend its global sphere of influence through the imposition of regulatory, competition, safety and consumer standards. Over the most recent past the EU has become more confident and assertive in dealing with third party countries (ie non EU) states in a host of areas. There is an increasing tendency for the EU to require 'equivalence' for third party countries as a prerequisite for non-discriminatory access to the EU market.

3 Current situation

3.1 In order to maintain its position in the global economy, Guernsey must provide certainty for its investors and maintain the respect of the international community. It is also of fundamental importance that Guernsey ensures the outcome of the next stage of the corporate tax strategy be fully sustainable in the long term, and mitigate any negative economic effects on our economy.

3.2 With the current lack of support within the CCG it is clear that Zero-10 will not achieve Code compliance. It is clear that any alternative corporate tax arrangements will require UK support to achieve CCG compliance. It is therefore reasonable to conclude that these alternative arrangements ought to be developed and agreed as soon as is practicable and that as much certainty of support from the UK needs to be gained at as early a stage as possible. Whilst no clear direction at this stage has been provided by HMT, it is believed that a movement from a limited to general corporate tax rate of at least 10% is the likeliest route to achieve such support and success as 10% is the lowest general rate of corporate tax within the EU[1].

3.3 It would therefore be appropriate to consider, consult and discuss these options at the earliest possible event. The current planned review of taxation ('Fiscal and Economic Plan, Billet XVIII, July 2009) is presently in its pre-consultation phase with work commenced by the Fiscal and Economic Policy Group and the Treasury and Resources Department. It is therefore a logical step to extend this work to include a review of the general corporate tax.

---

[1] Portugal and Cyprus

4 Future compliance negotiations

4.1 Guernsey has engaged in dialogue with the other CDs, and there is acceptance across the board of the need for each jurisdiction to review how they conform to spirit of the Code. However, in addition to this acknowledgement, Guernsey, Jersey and the Isle of Man will use this opportunity to seek reasonable, practical and appropriate recognition of the steps they intend to take. These might include full double tax agreements with EU members, removal of discriminatory practices and easier access to EU markets.

5 Partnership working

5.1 It is intended to work in full consultation and partnership with other CDs by sharing technical expertise through a process of mutual assistance. The preferred outcome would be a common, harmonised approach to the maintenance of globally competitive tax systems, with the intention that there should be no significant differences between the corporate tax regimes of the islands.

6 Process

6.1 The pre-consultation preparatory work for the second phase of the Zero-10 review has already commenced. The review would be carried out, as initially planned, by the Fiscal and Economic Policy Group of the Policy Council, in conjunction with the Treasury and Resources Department. As is standard practice, there would be a full programme of consultation with all stakeholders and with the public.

7 Timetable

7.1 Given the issues outlined in section four above, it is important to bring forward proposals for a revision of the corporate tax system as soon as is practicable, certainly in providing a report to the States, after full consultation and discussion, as early as possible in 2010.

8 Recommendation

8.1 It is recommended that the current, planned review of taxation (‘Fiscal and Economic Plan’, Billet XVIII, July 2009) proceeds on the presumption of a 10% general rate of corporate tax.

L S Trott
Chief Minister

19th October 2009

(NB The Treasury and Resources Department strongly supports the proposal.)

The States are asked to decide:-

Whether, after consideration of the Report dated 19th October 2009, of the Policy Council, they are of the opinion:-

That the current, planned review of taxation ('Fiscal and Economic Plan', Billet XVIII, July 2009) shall proceed on the presumption of a 10% general rate of corporate tax.