

**CORPORATE TAX REVIEW**  
**PUBLIC CONSULTATION**

**Fiscal and Economic Policy Group<sup>1</sup>, 21st June, 2010**

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

## **1. Introduction**

1.1. As resolved by the States in October of 2009, Billet XXIX, the States is committed to a review of its corporate tax regime following communication via 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<sup>2</sup>.

1.2. This consultation document sets out the background to that review; the associated parameters of the review process; and the objectives and criteria that must be met by the outcome of the review process. It also sets out a timetable for the consultation process for the course of 2010.

1.3. Guernsey will ensure throughout this review process, that it does not undermine its economy by placing it at a competitive disadvantage to other jurisdictions, whilst providing clarity and certainty over the direction of travel for industry as soon as is practical and feasible.

1.4. It has recently been publicly confirmed that the zero/10 regimes of the Isle of Man and Jersey will be reviewed by the CCG. This process will commence in September, 2010.

1.5. It has also been publicly confirmed that, given Guernsey's commitment to the review process, the CCG has no plans to review Guernsey's zero/10 regime. Guernsey has been informed that it is understood and accepted that the review process of the zero/10 regimes of the Isle of Man and Jersey will need to be concluded before Guernsey would reasonably be in a position to properly make any decisions or public announcements on its desired 'direction of travel', ie an outline of any revisions to its corporate tax regime.

1.6. However, it is the preference to communicate this 'direction of travel' as soon as is reasonably practical to avoid unnecessary uncertainty for business. It remains the stated desire, as communicated previously by the Chief Minister in communications to the States during 2010, for the Treasury Minister to be able to communicate the intended 'direction of travel' in his December, 2010 Budget statement.

1.7. The purpose of this consultation is to invite comments, opinion and analysis from the public, business and all stakeholders on a movement away from the current zero/10 corporate tax regime and in particular to provide views on the potential alternative technical options for the basis of a revised corporate tax regime which have been set out in section 6.

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<sup>2</sup> A summary of the Code is provided as an appendix.

## 2. Background

2.1. Guernsey ranks in the premier league of offshore finance centres: it is a well regulated, respected, tax transparent jurisdiction.

2.2. This status was confirmed by last year's Organisation for Economic Co-Operation and Development ('OECD') white listing<sup>3</sup> and by the conclusions of the Foot Review<sup>4</sup> conducted for HMT, which also highlighted Guernsey's economic contribution to the UK economy. Indeed, commitment to this status is an express objective in the States Fiscal and Economic Plan (Billet D'Etat XVIII) endorsed unanimously by the States in July 2009.

2.3. This commitment is further evidenced by the recent consultation on the practicalities of movement to automatic exchange of information under the measures that Guernsey applies which are the same as the European Union ('EU') Savings Tax Directive<sup>5</sup>.

2.4. It is the belief of the Fiscal and Economic Policy Group ('FEPG') that positive engagement and a good neighbour philosophy will best serve Guernsey's long term interests. This is the manner in which Guernsey approaches its relationships with the UK, the EU and all international bodies and as such it is one of the reasons why Guernsey is held in such high regard on the international stage. Indeed, it was such a philosophy that led Guernsey, along with the other Crown Dependencies ('CDs'), to introduce the present zero/10 corporate tax regime after the European Union Code of Conduct Group ('CCG') ruled in the late 1990s that certain practices within the previous regime were non-compliant with the Code.

2.5. In October of 2009, it was communicated to Guernsey via HMT, that certain EU Member States no longer considered the zero/10 regimes to be fully compliant with the 'spirit' of the Code. The context for this change in position is clearly the backdrop of the reverberations of the global financial crisis and the deterioration of fiscal positions across EU Member States.

2.6. The reservations of the CCG equally applied to the zero / 10 regimes of both Jersey and the Isle of Man and all three CDs are presently undertaking reviews (and public consultations<sup>6</sup>) of their corporate tax regimes.

2.7. Whilst no formal ruling has been made by the CCG with respect to the zero/10 regimes, indications from other quarters, such as the publication in 2010 by Belgium of a list of jurisdictions which do not subject the income of companies universally to tax at a rate of at least 10% (despite many of these jurisdictions being currently white listed according to

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<sup>3</sup> Organisation for Economic Cooperation and Development (OECD), *A Progress Report on the jurisdictions surveyed by the OECD Global Forum in implementing the internationally agreed standard (Original Report 2 April 2009, subsequently updated)*.

<sup>4</sup> Final report of the independent Review of British offshore financial centres, Michael Foot ([http://webarchive.nationalarchives.gov.uk/20100407010852/http://www.hm-treasury.gov.uk/d/foot\\_review\\_main.pdf](http://webarchive.nationalarchives.gov.uk/20100407010852/http://www.hm-treasury.gov.uk/d/foot_review_main.pdf))

<sup>5</sup> EU Savings Tax Directive, Consultation on move to automatic exchange of information, Fiscal and Economic Policy Group, 4<sup>th</sup> May, 2010

<sup>6</sup> The Isle of Man, consistent with the fact of the different timing of its financial year to the Channel Islands, published its public consultation in February.

OECD criteria of tax transparency), indicate that a non-positive general rate of corporate taxation is a probable cause of contention. It is unlikely that Belgium's move was introduced without at least some support from other EU Member States.

2.8. Similarly, an annex to the 2009 Foot review commissioned by HMT that was produced by Deloitte, the international business services firm, referred to a range of characteristics of 'normalised' corporate tax regimes. One such criterion was a positive general rate of corporate tax of 10 to 12 per cent. It is therefore quite plausible that this had some degree of tacit endorsement by HMT.

2.9. Against this backdrop, the States resolved in October 2009 to review its corporate tax regime.

2.10. The States resolved to undertake a review with a 'presumption of a general rate of 10%' applying. This presumption was informed by the fact that 10% is the lowest general rate of corporate tax within the EU<sup>7</sup> and as such would be the maximum positive general rate that could be applied whilst retaining a competitive position.

2.11. How a positive general rate could be applied technically is clearly the key subject of this consultation and section 6 sets out various technical options that could act as the basis of a revised regime.

2.12. It has recently been publicly confirmed that the zero/10 regimes of the Isle of Man and Jersey will be reviewed by the CCG. This process will commence in September, 2010.

2.13. It has also been publicly confirmed that, given Guernsey's commitment to the review process, the CCG has no plans to review Guernsey's zero/10 regime. Guernsey has been informed that it is understood and accepted that the review process of the zero/10 regimes of the Isle of Man and Jersey will need to be concluded before Guernsey would reasonably be in a position to properly make any decisions or public announcements on its desired 'direction of travel', ie an outline of any revisions to its corporate tax regime.

2.14. The States has also, through various informal working groups, liaised with industry and practitioners to develop its thinking to inform this consultation process.

2.15. Guernsey continues to work in co-operation with the other Crown Dependencies and it is the view of the FEFG that the ultimate outcomes resulting from the reviews of the three Crown Dependencies will be similar and comparable.

2.16. Guernsey has committed to remaining competitive with other jurisdictions. As was made clear by the Chief Minister, in announcing the timetable of this review to the States in April 2010, Guernsey will ensure that it does not, through either the timing of any implementation process or indeed the review process itself, undermine its economy by placing it at a competitive disadvantage to other jurisdictions.

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<sup>7</sup> 10% is the lowest general rate of corporate tax in the EU. The average rate across all EU Member States has fallen from 35.3% in 1995 to 23.5% in 2009 (source: Taxation Trends in the European Union, Eurostat)

### 3. Objectives of review

3.1. The Fiscal and Economic Plan sets out fundamental assumptions of States' economic and fiscal policy: central to a sustainable economy for Guernsey is the need to remain internationally competitive and central to its internationally competitive position is an internationally competitive corporate tax regime.

3.2. This basic tenet of States' economic and fiscal policy: retention of international fiscal competitiveness is key to the long run success and sustainability of the Guernsey economy thus provides the backdrop to this review.

3.3. In his various statements to the States earlier in 2010, the Chief Minister previously set out certain objectives that any revised corporate tax regime must meet. These are that any new regime must:

- be competitive;
- be internationally acceptable;
- promote a sustainable economy in Guernsey;
- be based on a simple, solid rationale (and not be over-complicated);
- give rise to other benefits such as double taxation agreements

3.4. These objectives will therefore be used as a set of criteria for the evaluation of any proposals for a revised corporate tax regime for Guernsey. These commitments are not mutually exclusive: the commitment to international acceptability is not to preclude the objective of maintenance or enhancement of Guernsey's competitive position.

3.5. It is recognised that tax neutrality (see box 1) in respect of products offered by Guernsey's financial services sector is of central importance to the competitiveness of that sector in particular.

3.6. During any development work, the economic impact, both immediate and secondary, of any proposed revisions to the corporate tax regime will be modelled to ensure that any potentially positive or negative impact can be understood and, as far is feasible, measured to ensure that the health and sustainability of Guernsey's economy is not put at risk.

3.7. The requirement for a simple, solid rationale behind any revised regime is based on the belief and informal soundings received that a 'cherry picking' approach will not be deemed acceptable to the CCG. Similarly, the desire is to achieve a corporate tax regime that is itself sustainable to outside pressures in the long run; as such the foundation of a simple, solid regime based on a coherent set of intellectual sound principles is the best insurance against this and should provide the strongest foundation for sustainability of a corporate tax regime in the medium to long term.

3.8. It is acknowledged that the test of international acceptability is inherently subjective. However, clear reference and/or direction is provided by documents such as the OECD Model Tax Convention on Income and on Capital<sup>8</sup> and some, such as Deloitte (in its

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<sup>8</sup> Model Tax Convention on Income and on Capital - Condensed Version (July 2008)

annex to the Foot Review<sup>9</sup>) have set out their views as to the current position of the ‘emerging international consensus’ on taxation models.

3.9. It is recognised that international standards, ‘norms’ and conventional thinking are constantly evolving. The principles of UK taxation have evolved since the late 1990s in particular areas, for example foreign dividends. Until 1 July 2009, foreign dividends and other distributions received by UK corporate entities were chargeable to UK corporation tax, with credit available for foreign tax. Currently, a foreign dividend exemption exists, so that distributions will generally be exempt, subject to anti-avoidance provisions. The recent election manifesto of the UK’s Conservative Party set out a commitment to consult on a territorial system of corporate taxation.

3.10. Finally, it should be noted that the CCG process itself is to a very large extent a political exercise. Taxation is a matter of national sovereignty; however, it is apparent that an emerging consensus is forming within the EU for issues such as market access<sup>10</sup>, tax transparency and CCG issues to be viewed ‘as one and the same’<sup>11</sup> and there are thus market access risks to being officially deemed to be non-compliant with the Code.

#### **Box 1: Tax Neutrality**

Most international financial centres, offer a form of tax-neutrality: that is, a regime that does not subject entities to *additional* taxation, over and above the tax liabilities of parties in their home jurisdictions. Tax neutrality prevents double taxation, provides certainty in tax treatment and allows fiscally efficient cross border investment thereby facilitating global capital flows. It also maximises the return to investors and hence, potentially, the tax revenues in their home jurisdiction. Tax neutrality is particularly important for structures that are set up to achieve a specific purpose, where it is desirable not to incur an unnecessary additional tax-liability. Take, for example, a fund that is investing in a particular asset class such as emerging market equities and wants to attract investment from parties based in the UK, the US and the EU. If this fund is established as a vehicle that does not achieve tax neutrality, investors may be subject to tax at the fund level in addition to their tax liability in their home country, potentially resulting in double taxation of the same income. Furthermore, such a fund may create different liabilities for investors depending on their location. By precluding *additional* layers of tax, a tax-neutral entity is efficient for investors and creates a level playing field for multinational investors. This legitimate activity will be primarily motivated by real economic concerns – such as the raising of finance – rather than purely for tax purposes, but locating them in a tax-neutral jurisdiction can avoid unnecessary extra taxation.

<sup>9</sup> Annex 4: Final report of the independent Review of British offshore financial centres, Michael Foot ([http://webarchive.nationalarchives.gov.uk/20100407010852/http://www.hm-treasury.gov.uk/d/foot\\_review\\_main.pdf](http://webarchive.nationalarchives.gov.uk/20100407010852/http://www.hm-treasury.gov.uk/d/foot_review_main.pdf))

<sup>10</sup> The recent experience of the Alternative Investment Fund Manager Directive illustrates the manner the EU deals 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. It is highly plausible that the criteria for such ‘equivalence’ could readily be extended to matters of tax ‘governance’.

<sup>11</sup> Promoting Good Governance in Tax Matters, Opinion of the European Economic and Social Committee (ECO/260)

#### **4. Principles underpinning review**

4.1. In addition to setting out the objectives of the review in section 3 above, it is considered useful to also provide an outline of certain simple key principles which inform the review process itself.

- Simplicity makes for administrative ease and efficiency of system. The belief in relatively simple tax regimes has been a general feature of fiscal policy in Guernsey;
- Tax regimes should not act as a disincentive to nor distort economic activity: taxation on savings and investment, by raising the marginal cost of capital, are generally distortionary and thus reduce investment and long run economic growth. Thus financial products should be tax neutral to encourage investment and capital market efficiency and liquidity.
- Tax regimes should be fair and reasonable, and, as such, income should only be taxed, as far as is possible and practical, once only.

**4.2. Comments are invited as to whether these are suitable principles and if there are others that should be given consideration?**

## **5. Fiscal and economic impact of potential revisions to corporate tax regime**

### **5.1. Economic**

5.1.1. The latest available data<sup>12</sup> suggest that the finance sector contributes around 40% of Guernsey GDP and around a quarter of all employment. Guernsey's finance sector is somewhat more diversified than many offshore finance sectors: whilst banking contributes around half of finance sector output, it has strong and significant funds, insurance and fiduciary sectors.

5.1.2. Other high value added export orientated sectors such as business and information services sectors including e-gaming activities have also demonstrated strong growth characteristics in recent years.

5.1.3. The resilience of the Guernsey economy to the recent global downturn was in part attributed to the diversity of both the economy generally and the finance sector in particular. The Chief Minister in his statement to the States in April 2010 underlined the point that this must not be put at risk and indeed any revisions to the corporate tax regime have to provide a competitive fiscal environment for all types of business to flourish.

5.1.4. It will be vital therefore to model the economic impact, both immediate and secondary, of any proposed revisions to the corporate tax regime to ensure that any potentially positive or negative impact can be understood and, as far is feasible, measured to ensure that the health and sustainability of Guernsey's economy is not put at risk.

**5.1.5. Comments are invited from industry and expert practitioners in particular as to which global jurisdictions are considered to be key competitors, what tax treatment applies in such jurisdictions and also to what extent product tax neutrality is fundamental to their business models.**

### **5.2. Fiscal**

5.2.1. The purpose of taxation is to provide sufficient funds to provide a mix of quality public services that reflects the general (or median) preferences of Guernsey society. It is right and proper that users (individuals and firms) of those services should provide the necessary funds to cover such expenditure from taxation. On these grounds the tax base should comprise individuals and businesses with a physical presence on the island.

5.2.2. Following the implementation of zero/10, the States is presently forecast to run a fiscal deficit of some £40m during the course of 2010. Whilst this deficit was planned as part of the original two stage zero ten strategy and in relative terms, internationally speaking, small (some 2% of GDP), this is clearly unsustainable in the long run.

5.2.3. The raising of new additional revenues is not an express objective of the review process. Whilst some additional revenues may result from any revisions to the corporate tax regime, preliminary modelling suggests that any such revenues will not return the States to structural fiscal balance.

5.2.4. Therefore the potential requirement for additional separate measures to address the fiscal position remains. The States has recently embarked on a major programme (the

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<sup>12</sup> Guernsey Annual Economic Overview March 2010 ([www.gov.gg](http://www.gov.gg))

Financial Transformation Programme ('FTP')) to achieve significant expenditure savings over the next three to five years. It is anticipated that these savings will contribute to a narrowing of the structural imbalance.

5.2.5. Whilst it is not yet possible to accurately estimate the continuing structural fiscal imbalance it is likely that additional revenue raising measures will be required over and above any additional contribution from corporate taxation and the contribution of the savings of the FTP.

5.2.6. In a similar vein to the original zero/10 strategy, the FEPPG is of the belief that until there is greater certainty with regards to the overall revenue position resulting from any revisions to the corporate tax regime it would be premature to consider what other general fiscal options may be required. However, once there is greater clarity regarding the aggregate ongoing position, a general review will be initiated.

## **6. Options for review**

*During the pre-consultation phase of this review, discussions have taken place with a panel of internationally expert tax practitioners. The recommendation of this panel was that the consultation document should lay out the options that they considered were technically feasible and presented as far as possible without prejudice to ensure that the consultation process is transparently executed.*

*The following options have been deemed by the panel to be of such nature. The list of options are therefore provided without consideration given as to whether each meets any or all of the objectives set out in section 3 of this document, although where necessary on occasion comments regarding likely issues with regards to each option have been included in each section. The options are thus presented as potential candidates for the foundations of an alternative system to the current corporate tax regime. These are presented in summary form to facilitate detailed comment and questions on technical variations on each type of regime.*

### **6.1. Territorial system of taxation**

6.1.1. Under the generally understood concept of a territorial basis of taxation, tax liability is restricted to the income that is regarded as having its source in the jurisdiction concerned (i.e. it is liable to tax in much the same way as a branch is under a residence basis of taxation).<sup>13</sup>

6.1.2. Since July 2009 the UK has exempted dividends of foreign subsidiaries from tax in the UK with the result that the UK can now be characterised as having a partial territorial system. The Conservative Party in the UK also included a manifesto commitment to review proposals for a territorial system for corporate taxation.

6.1.3. Gibraltar, which to a certain extent is subject to EU law, has adopted a territorial basis of taxation.

6.1.4. Other EU jurisdictions, such as France, also operate a partial territorial system of taxation.

6.1.5. Other non EU international financial centres such as Singapore and Hong Kong also operate territorial systems of taxation.

6.2. The annex to the Foot Review report prepared by Deloitte, sets out a hypothesis ‘best practice’ corporate tax system: this appears to provide support to a view that a territorial type regime is such a system.

### **6.3. Treatment as transparent**

6.3.1. Under this system a company would either be, or possibly could elect to be, treated as transparent for tax purposes (i.e. in effect be treated in the same way as a partnership for tax purposes). This would mean that a company’s income would be assessable upon each beneficial owner in proportion to their interest in the company.

6.3.2. There are international precedents for such a system. Limited liability partnerships (LLPs) are corporate entities. However, LLPs that carry on a business are treated as transparent for UK tax purposes. Currently certain types of company are also able to elect to

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<sup>13</sup> Under a territorial system the residence of a company is relevant in determining the source of dividends and possibly certain other types of passive income, paid by that company.

be treated as transparent for US tax purposes under what is called the ‘check the box’ system.<sup>14</sup>

6.3.3. There are also various instances of entities in continental Europe that are treated as being transparent for tax purposes. A number of other EU jurisdictions have tax transparent vehicles: for example the French Société en nom collectif (SNC) and the Luxembourg SICAR (Societe D’Investissement en Capital a Risque (when established as an SCS (limited partnership)).

6.3.4. If a company was treated as being transparent for tax purposes the taxability of its profits would be determined by the residence of its shareholders.

6.3.5. Where the shareholder was resident otherwise than in Guernsey, the shareholder would only be liable to tax in Guernsey on profits regarded as having their source in Guernsey. In practice therefore the effects of such a system would be similar to those of a territorial system.

#### **6.4. Repayable tax credits**

6.4.1. Under this system a company would be liable to tax on a residence basis. However, a proportion of the tax paid by the company could be reclaimed by shareholders when dividends were paid by the company. This is the system is operated by Malta<sup>15</sup>.

6.4.2. A tax credit equivalent to part or all of the underlying tax paid by the company on its profits is attributed to the dividend and shareholders are permitted to recover part or all of this credit on the making of a claim. However, a tax resident individual would then be taxable on the net dividend plus the refunded tax, whereas a non-resident would not be taxable. In this way, taxation of the full dividend on the resident individual is achieved.

6.4.3. Dividends paid by companies in many jurisdictions carry tax credits with them. However, in most jurisdictions they are either not repayable, or are only repayable by non resident shareholders under the terms of a double tax agreement.

6.4.4. This system is relatively complex and thus does not avoid the low level of compliance burden normally associated with fiscal neutrality.

6.4.5. This system also requires companies to distribute profits to benefit from the tax credit for part or all of the underlying tax suffered by the company.

#### **6.5. Flat rate / residence basis of taxation**

6.5.1. In those instances where Guernsey has subjected the profits of a company established in Guernsey to taxation, historically it has done so on a residence basis (i.e. it has subjected the worldwide income of the company to taxation but allowing, in certain cases, a credit for comparable taxes paid elsewhere).

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<sup>14</sup> However, under the tax proposals announced by the Obama administration in May 2009, companies would cease to be able to elect to be treated as transparent for US tax purposes.

<sup>15</sup> The Maltese system typically results in a net effective rate of tax of 5% notwithstanding that the rate of tax charged on the company initially is 35%. However, the effective rate may, depending on the circumstances, be different with a nil rate applying in certain cases.

6.5.2. Under a residence basis of taxation the profits of a company not resident in the jurisdiction will generally only be liable to taxation if the non resident company has a permanent establishment (e.g. a branch) in that jurisdiction but only to the extent that the profits are attributable to that permanent establishment. The non resident company may also be liable to tax on certain types of passive income (such as investment income) arising in the jurisdiction concerned.

6.5.3. The basis on which Guernsey requires companies to compute taxable profits is similar to the basis that applied in the UK up to 1965 (i.e. when capital gains became liable to tax in the UK).

6.5.4. Various changes have been made to the way that profits are computed for UK tax purposes which have resulted in there now being differences in the ways in which taxable profits are computed for UK tax purposes and for Guernsey tax purposes.

6.5.5. In particular, Guernsey has no explicit transfer pricing provisions. Arguably, Guernsey's existing general anti-avoidance provision could be used to counter transfer pricing abuses. However, the annex to the Foot Review report prepared by Deloitte suggests that an 'arms length' basis is the international norm.

6.5.6. Unless Guernsey was able to offer (or in the case of funds continue to be able to offer) exemption from this basis of taxation, increasing the rate of tax paid by companies in Guernsey above zero would result in companies in Guernsey no longer being able to enjoy fiscal neutrality. This would result in Guernsey losing one of its key competitive advantages.

## **6.6. Abolition of corporate taxation**

6.6.1. A number of jurisdictions impose no direct taxes whatsoever; many of these are Overseas Territories of the UK (and are thus, through that UK connection, also implicated in the CCG review).

6.6.2. As mentioned above, Guernsey believes in adopting a good neighbour policy, but it is also implicit that there must be a level playing field approach from international organizations such as the OECD and EU.

6.6.3. A further option for Guernsey might thus be to also abolish corporate tax. However, because Guernsey relies on the income tax paid by individuals to fund much of its public revenue, there would be a need to retain, and possibly expand, Guernsey's existing 'deemed distribution' provisions (i.e. the provisions under which the assessable profits of Guernsey companies are attributed to Guernsey resident shareholders). There may also be a need to introduce other measures to replace revenue lost in this way, which could consist of:-

- a) Increased/new fees and charges for various sectors of the economy;
- b) Increased/new indirect taxes.

6.6.4. It is unclear how sustainable such an approach would be in the long term. It is not clear whether the CCG would accept the retention of Guernsey's attribution provisions and significantly it is questionable as to whether such a regime would be considered internationally acceptable. It should be borne in mind that the Overseas Territories mentioned above levy no direct taxes whatsoever, either at corporate or individual level.

## **6.7. Assessment of options**

6.7.1. Each of the above options clearly needs to be scored against the objectives laid out in section three: in particular whether they could form a basis of a simple, competitive, internationally acceptable system which would lay the fiscal foundations for a sustainable and successful Guernsey economy in the medium and long run.

6.7.2. Each of the above options also needs to be reviewed to identify problems and issues not just sector by sector basis but also potential ramifications and unintended consequences to the Guernsey economy.

6.7.3. The FEPPG is seeking expert analysis and opinion, in particular, from professionals, expert practitioners and firms on the above options.

**The following questions in particular are therefore posed for each potential baseline option:**

**What would be the impact on Guernsey's international competitive position?**

**What are your views on the international acceptability of such a regime?**

**What technical issues are presented by such a regime?**

**What approach could be adopted to mitigate such issues?**

**What are the potential issues that could negatively impact on your business?**

**What potential features of such a regime could have a positive impact on your business?**

**What do you consider to be the key risks of moving to such a regime?**

**What do you consider to be the key opportunities of moving to such a regime?**

6.7.4. The concept of a 'normalised' corporate tax system has been introduced during the course of the past year. This can be seen as a euphemism for 'international acceptability'. **Therefore comments and opinion is also welcomed as to what may well constitute normalised (eg inclusion of minimum principles, minimum rates and/or minimum acceptable tax base etc) from expert practitioners and industry. In particular, the FEPPG is interested to receive comments as to what is considered to be the standard international practice across individual / specific industries or sub sectors.**

6.7.5. **Comments are also welcome on any alternatives that could be given consideration as a foundation of a corporate tax regime that have not been presented above.**

## **7. Reciprocal benefits**

7.1. Guernsey has achieved OECD 'white listing' status for meeting international standards of tax transparency and has recently published its public consultation document on a movement to automatic exchange under its equivalent measures for EUSD.

7.2. The introduction of any revised system of corporate taxation for Guernsey ought to give rise to the opportunity to negotiate reciprocal tax or market access treatment with the EU: for example double tax agreements with major trading partners and / or inclusion within scope of the Interest and Royalties Directive and the Parent-Subsidiary Directive.

7.3. As was communicated by the Chief Minister in his statement to the States on May 28<sup>th</sup> 2010, Guernsey has transparently communicated its approach to this corporate tax review. The rationale to such an approach was that this would best place Guernsey to negotiate reciprocal benefits during the review process.

**7.4. Comments and opinion from industry is therefore requested as to what specific reciprocal or equivalent measures would best provide growth opportunities for Guernsey based businesses. Comment is also desired on the relative value of such reciprocal benefits and also to specify particular geographies, if any, of greater importance. Comment is also welcome on what competitive advantage; actual or perceived could be achieved by such measures.**

## **8. Timetable**

8.1. As has already been outlined in earlier sections, Guernsey will ensure that it does not, through either the timing of any implementation process or indeed the review process itself, undermine its economy by placing it at a competitive disadvantage to other jurisdictions.

8.2. Clearly the outcome of this public consultation will inform significantly any proposed revisions to Guernsey's corporate tax regime but discussions and negotiations at a political level with the EU/UK will be an integral part of the process and ultimately any proposals will need the endorsement and sanction of the States.

8.3. It has also been publicly confirmed that, given Guernsey's commitment to the review process, the CCG has no plans to review Guernsey's zero/10 regime. Guernsey has been informed that it is understood and accepted that the CCG review process of the zero/10 regimes of the Isle of Man and Jersey will need to be concluded before Guernsey would reasonably be in a position to properly make any decisions or public announcements on its desired 'direction of travel', ie an outline of any revisions to its corporate tax regime.

8.4. However, it is the preference to communicate this 'direction of travel' as soon as is reasonably practical to avoid unnecessary uncertainty for business. It remains the stated desire, as communicated previously by the Chief Minister in communications to the States during 2010, for the Treasury Minister to be able to communicate the intended 'direction of travel' in his December, 2010 Budget statement.

8.5. It has already been stated that it is the belief at the highest political level in Guernsey that it is our belief that the ultimate outcome of these reviews will be 'similar and comparable'.

8.6. Given the democratic process and any required preparatory legislative work, the earliest feasible implementation date for any revision to the corporate tax regime is likely to be during the course of 2012. It will also be necessary to ensure that any appropriate preparatory work in terms of publicity, training and education is accomplished before implementation of any changes. Clearly it is likely that under any movement grandfathering provisions are also anticipated to apply for existing companies for a period of time.

8.7. It is also recognised that uncertainty over the zero/10 regimes for all three Crown Dependencies is likely to impact negatively on growth prospects in all three jurisdictions. Guernsey is of the opinion that the preference of industry is for clarity and certainty over the direction of travel of all three Crown Dependencies as soon as is practical and feasible (with the recognition that this preference for certainty is secondary to achieving a corporate tax regime which meets the criteria laid out in section 3).

8.8. The zero/10 system remains Guernsey's present corporate tax regime. The timing of any movement is clearly predicated on the actions of competitor jurisdictions. It is understood that the zero/10 regimes of Jersey and the Isle of Man will be subject to a review by the CCG commencing September. Clearly, the outcome of that process will inform Guernsey's approach to the consideration of the results of this consultation.

**8.9. Comments are therefore requested on the timing as outlined above specifically with regards to any issues or practical considerations. Comments are also welcome on the risks associated with movement to a revised regime.**

## **9. Consultation**

**9.1. Individuals, businesses, representative groups are invited to respond to this consultation, in particular the question areas specifically referred to at the end of sections 4, 5, 6, 7 and 8 above.**

9.2. This public consultation period will close at 5pm on August 27<sup>th</sup>, 2010. Responses will be collated and reviewed and it is the intention for a feedback document to be published during the autumn.

## **10. Conclusion**

10.1. The Fiscal and Economic Policy Group invite comments on the above from firms, industry representative groups and individuals.

All consultation responses should be addressed to:

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States Economist and Secretary to the Fiscal and Economic Policy Group  
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Or via email: [corporatetaxreview@gov.gg](mailto:corporatetaxreview@gov.gg)

## **Appendix: Summary of the EU Code of Conduct Group on Business Taxation**

The Code of Conduct for business taxation was set out in the conclusions of the Council of Economics and Finance Ministers (ECOFIN) of 1 December 1997.

The Code is not a legally binding instrument but it clearly does have political force. By adopting this Code, the Member States have undertaken to

- roll back existing tax measures that constitute harmful tax competition and
- refrain from introducing any such measures in the future ("standstill").

The Council, when adopting the Code, acknowledged the positive effects of fair competition, which can indeed be beneficial. Mindful of this, the Code was specifically designed to detect only such measures which unduly affect the location of business activity in the Community by being targeted merely at non-residents and by providing them with a more favourable tax treatment than that which is generally available in the Member State concerned. For the purpose of identifying such harmful measures the Code sets out the criteria against which any potentially harmful measures are to be tested.

The Code of Conduct requires Member States to refrain from introducing any new harmful tax measures ("standstill") and amend any laws or practices that are deemed to be harmful in respect of the principles of the Code ("rollback"). The code covers tax measures (legislative, regulatory and administrative) which have, or may have, a significant impact on the location of business in the Union.

The criteria for identifying potentially harmful measures include:

- an effective level of taxation which is significantly lower than the general level of taxation in the country concerned;
- tax benefits reserved for non-residents;
- tax incentives for activities which are isolated from the domestic economy and therefore have no impact on the national tax base;
- granting of tax advantages even in the absence of any real economic activity;
- the basis of profit determination for companies in a multinational group departs from internationally accepted rules, in particular those approved by the OECD;
- lack of transparency.