

JERSEY BRIEF

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JERSEY AND THE EU TAX PACKAGE

No sooner had Jersey reached an agreement with the OECD on its harmful tax competition initiative (see the Spring 2002 issue of Jersey Brief for more details), than attention turned to the EU's so-called tax package, and how it might affect the Island.



The EU is determined to prevent what it considers 'harmful' tax competition (relating mainly to business taxation and on the taxation of savings income) within the EU from distorting the single market. A proposed tax package was developed, consisting of the Code of Conduct on Business Taxation (the "Code of Conduct"), and a draft Directive on the Tax Treatment of Savings Income (the "Directive").

The Code of Conduct (developed by a group chaired by Ms. Dawn Primarolo, HM Paymaster General in the UK Government) defines 'harmful' tax measures as providing for "a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question".

By accepting the terms of the Code of Conduct, EU member States will commit to not introduce new tax measures that are 'harmful' and to remove existing 'harmful' tax measures, and also to promote its principles in other countries outside the EU. Of particular relevance to Jersey, it provides that: "Member States with dependent or associated territories or which have special responsibilities or taxation prerogatives in respect of other territories commit themselves within the framework of their constitutional arrangements, to ensuring that these principles are applied in those territories."

The Code of Conduct group identified 66 measures in various EU member states (indeed, in every member state other than the UK) and their dependent territories, which it classified as potentially 'harmful'. For Jersey this included tax-exempt companies, IBCs (international business companies), captive insurance companies and treasury operations.

The European Council's original proposals for taxation of savings income, put forward in 1997, contemplated that EU member states would be able to apply a withholding tax to such income, or to organise an exchange of information on such income. The UK government, driven by a belief that the draft Directive would damage the London-based Eurobond market, objected to this approach, arguing that the Directive should provide only for the automatic exchange of information. At the Feira European Council in June 2000 it was agreed that the withholding tax option would be dropped, though member states may apply a withholding tax for a transitional period of up to seven years.

Clearly, both elements of the tax package depend largely on agreement being reached by the EU with dependent and associated territories of member states and other key third party countries (namely the USA, Switzerland, Liechtenstein, Monaco, Andorra, San Marino) to introduce the same or equivalent measures. If not, it is

JERSEY LAW ON THE WEB

The Jersey Legal Information Board's web site - www.jerseylegalinfo.je - has recently been updated to provide access to all the Island's legislation since the Code of 1771 was adopted. The Code contained a comprehensive statement of all written laws in force in Jersey at that time.

The web site was originally launched in May 2001 to give both legal professionals and the public greater access to the law and legal information. It includes all unreported judgements made since 1997, the Rules of the Royal Court and practice directions, articles and case summaries from the Jersey Law Review, a database of Jersey Law firms and useful links to other sites.

Although the legislation, in book form, has always been available to the legal profession, the JLIB web site now provides a useful search facility which was not previously available, enabling lawyers quickly to locate references to particular statutory provisions.

Readers of Jersey Brief are also reminded that the Voisin & Co. and Volaw web site has a Library section containing a number of articles and Briefing Notes which may be of interest, as well as previous issues of Jersey Brief.

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feared that capital will flow out of the EU to other countries. It appears, however, that little progress has been made with negotiations with the two most important of these countries, USA and Switzerland.

To some extent, the credibility of the UK government, within both the EU and the City of London, depends upon the successful implementation of the tax package. If the package fails and the EU should revert to the original withholding tax option, signalling a major step towards tax harmonisation across the EU, this may generate a significant anti-EU backlash within Britain. If the tax package is agreed, the UK government would be committed by both the Code of Conduct and the Directive to ensuring, so far as it may within the framework of the constitutional arrangements, that the principles of both parts of the package are applied in the Crown Dependencies and British Overseas Territories.

At the end of October 2001, the UK government formally sought a commitment from these jurisdictions to embrace the Code of Conduct and the Directive. In December Jersey responded that it would be willing to engage in negotiations on implementing the same or

equivalent measures as those contemplated by the Directive (subject to a level playing field with competitor jurisdictions, in particular Switzerland), but not in relation to the Code of Conduct, until the Island's fiscal reform review has been completed. (See the article by Senator Frank Walker on page 3.)

The Code of Conduct represents a more difficult challenge for Jersey

In mid-April 2002, shortly before the UK budget speech, Ms. Primarolo demanded an immediate commitment from Jersey to cooperate with implementing the Code of Conduct failing which the UK government would contemplate unspecified measures. In spite of intense pressure from the UK Government, Senator Pierre Horsfall, President of Jersey's Policy and Resources Committee, refused to accede, whilst indicating Jersey's willingness to enter into constructive discussions.

On 14 May 2002 it was announced that, after an analysis of the Directive and following consultation with the finance industry, Jersey intends to introduce legislation to support the

exchange of information as contemplated by the Directive, with the prerequisite that it is first implemented by the EU member states and other third-party countries, in particular Switzerland. Once implemented, it will be necessary to develop a process for the automatic and spontaneous exchange of information in relation to the income covered by the Directive arising for the benefit of EU residents.

The Code of Conduct represents a more difficult challenge for Jersey. Negotiations for implementing the Code of Conduct cannot realistically commence until the Island has completed the current review of its fiscal strategy. However, the removal of those elements of the Island's tax regime that discriminate between residents and non-residents of the Island, including tax-exempt companies and IBCs, seems a distinct possibility.

A fuller version of this article can be found in the 'What's New' or 'International Relationships' sections of our web site.

For further information, please contact either Robert Christensen (rchristensen@volaw.com) in Volaw Trust Company or Ian Strang (ianstrang@voisinlaw.com) in Voisin & Co.

DIVORCE: VARIATION OF TRUSTS

Applicants for ancillary relief in Jersey will find it much more difficult than their English counterparts to persuade the Court it ought to treat a trust as a post-nuptial settlement, following a recent judgement given by the Royal Court.

The case of *J -v- M* (22 May 2002), in which Voisin & Co. acted for the wife in an ancillary relief application involving substantial assets, was the first occasion in Jersey in which the Court had to determine whether a trust was in fact a post nuptial settlement, and whether it had power to vary it.

The Court found, firstly, that its power to vary settlements was much more narrowly drawn than the equivalent power in the English jurisdiction. Whereas the relevant statutory provision in England, namely section 24 of the Matrimonial Causes Act 1973, gave the Court the power to vary "any ante-nuptial or post-nuptial settlement ... made on the parties to the marriage", the equivalent provision in Jersey, namely Article 27 of the Matrimonial Causes (Jersey) Law 1949, referred to the Court's power to vary a "post nuptial settlement ... between the parties to the marriage".

As the wife in *J -v- M* (unlike the husband and the children of the marriage) was not a beneficiary of the trust, and as the assets in the trust had been settled by the husband's late father, the Court held that it was not a settlement made between the parties, and



moreover, that it did not have the necessary 'nuptial' quality about it. Accordingly, the Court declined to vary the trust.

As the wife's main purpose in seeking to vary the trust was to secure for herself and the children the former matrimonial home, which was owned by the trust, the Court's decision could have been extremely bad news for her, particularly as the husband also had comparatively few assets in his own name. However, whilst the Court considered it unnecessary to decide the question whether the husband had effective control over the trust, it was fully prepared to accept that the substantial

assets in the trust were financial resources to which it was entitled to have regard in making proper financial provision for the wife.

The Court went on to decide that, notwithstanding the approach adopted by the English Court in 'big money' cases since the landmark judgement in *White -v- White*, the appropriate test to be applied in this particular case, where substantially all the assets in the trust had been inherited from the husband's father, was that of the wife's reasonable requirements. As these included the former matrimonial home, the Royal Court ordered the husband to "procure" the transfer of the property to the wife, and also to make to her a lump sum payment calculated by reference to the Duxbury tables. Finally, whilst discharging the trustee from the proceedings, the Court nevertheless expressly gave him "judicious encouragement" to respond favourably to any request from the husband which would enable him to comply with his obligations under the Order of the Court.

Voisin & Co. recently acted in two further cases which required the Royal Court to give effect to Orders from the Family Division of the High Court in England; the first freezing assets in Jersey to allow payments to be made to the plaintiff spouse, the second varying the terms of a trust. Full details of these cases can be found in the 'What's New' section of our web site.

SUSTAINING JERSEY'S ECONOMIC SUCCESS

We continue our series of occasional guest articles with a contribution by Senator Frank Walker (pictured right), President of Jersey's Finance and Economics Committee.

"My number one priority is to ensure that the economic policies of the Island are appropriate in the face of change in both the Island and abroad - and thereby to achieve high and rising living standards for all the people of Jersey over the next decade and beyond.

Wherever you look in the world, the economies which have achieved consistently high living standards have been those with a commitment to low taxation. Governments which have been able to adapt to change most readily, and at the same time maintain low taxation, have been those which have achieved the highest living standards for their electorates.

This capacity for change and adaptation is especially important in an Island which has at its heart a major centre for international financial services. Ensuring the future of our financial services industry is of the utmost importance.

We face major challenges at the international level. High amongst these is the need to maintain our competitive advantages in an international political environment which is undergoing change. The working relationship with the United Kingdom and the European Union is one of the key aspects.

I am thinking especially of those growing political pressures, led mainly now by the European Union (EU), which are directed at so-called "harmful tax practices" (see the article on page 1 'Jersey and the EU Tax Package' for further details).

These pressures are aimed largely, and unfairly, at international finance centres such as Jersey.



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We cannot ignore these pressures, even if they appear inequitable and misguided in their application.

The Island is dependent for its living standards upon the global economy and has no choice but to adapt to the forces, both political and economic, which shape the fortunes of its premier industry - not only now but in the future.

The Island is under pressure from the EU to make certain changes to our system of business taxation. The pressure is directed particularly at our Exempt Companies and International Business Companies. We might even face potentially damaging counter-measures from EU Member States if we as policy makers failed to respond appropriately to the pressure.

Ensuring the future of our financial services industry is of the utmost importance

There may need to be a significant reduction in direct taxation on company incomes in the Island and a subsequent rebalancing of the tax burden towards personal and indirect taxation. This might be coupled where feasible with other forms of taxation directed at businesses.

A key issue in discussions with the UK Government and the other Members of the European Union will be the requirement of the level playing field, so that any reforms undertaken within the Island are matched by those countries and jurisdictions with which our own financial services industry is in competition.

Jersey has agreed to do all that it can to ensure that the Island is not a place where EU residents can circumvent the effect of the EU Savings Directive. The "Directive" is intended to ensure effective taxation of savings income in all of the EU Member States and the Island has agreed to move forward on the basis of exchange of information.

This decision is in the best interests of the Island, though the agreement has been based on the clear caveat that there is a level playing field in the application of measures throughout the EU and key third countries.

The competitiveness of our financial services industry must never be jeopardised in this process of change. We should never forget the key rôle which the financial services industry now plays in our community. It generates almost 70% of our Gross National Income - and two-thirds of our tax revenues.

It is the flow of income from financial services which has enabled us to achieve high standards in the provision of public services in Jersey. It is the cornerstone of the States Budget. It is fundamental to the future prosperity of the Island."

This is an abridged version of the article 'Sustaining the Long-Term Economic Success of our Island in an Ever-Changing World', which you can read exclusively in the 'What's New' or 'Tax in Jersey' sections of the Library on our web site.

ANOTHER HOUSING LOOPHOLE CLOSED?

On 28 May 2002, the States of Jersey adopted a further amendment to the Housing (Jersey) Law 1949 ("the Housing Law"). The amendment requires the sanction of the Privy Council before it can become law in the Island.

The purpose of the amendment is to close a loophole in the Housing Law that allowed land that was owned by a company since before 4 April 1949 to be developed with residential units that could then be owned and occupied by persons without residential qualifications who purchased shares in that company.

The amendment provides that units of dwelling accommodation built on land which was owned

by a company before the commencement of the Housing Law shall only be occupied by persons who fall within classes specified in Regulations. The amendment does not, however, apply to units that:

- were built before 28 July 1998;
- were being lawfully built on 28 July 1998; or
- have been, or are being, lawfully built in accordance with a planning permission granted before 28 July 1998.

In 1993, the States adopted an amendment to the Housing Law, which came into effect on 9 June 1993, which provided that land acquired as a result of a form of bankruptcy or by a

company, by inheritance, would thereafter be deemed to have been acquired subject to a condition that any units of dwelling accommodation on the land at the time or built thereafter would be subject to occupancy conditions.

The above amendments do not apply to residential units that already existed on the relevant date, which can still be purchased by non-residents without having to satisfy the stringent requirements of the Jersey authorities under the Housing Law.

If you have any queries in relation to residence in Jersey, please contact Simon Habin (simonhabin@voisinlaw) of Voisin & Co.

JERSEY FINANCE FLIES THE FLAG

Jersey Finance hosted a conference in London's Millennium Hotel in Mayfair on 23 May 2002 to promote the strengths and increasing diversification of the Island's finance industry.

More than 200 delegates attended, including around 80 of Jersey's leading finance specialists, politicians and civil servants. The President of Jersey's Policy and Resources committee, Senator Pierre Horsfall, and Finance President Senator Frank Walker both spoke about the continuing development of Jersey's high quality

finance industry, while reiterating the ability and willingness to adapt to challenges.

Guest speaker Angela Knight, Chief Executive of the Association of Private Client Investment Managers and Stockbrokers, stressed the importance of political representation at the highest level: Jersey needs to represent itself more proactively to the EU in relation to its tax package, so that the Island can be considered "a jurisdiction akin to Switzerland and Luxembourg". She also warned that the Island could no longer

depend on the UK for protection on matters where a conflict of interest may arise.

The delegates spent the afternoon in workshops focussing on specialist areas of the industry, including capital markets, funds and wealth management. Robert Christensen, Managing Director of Volaw Trust Company, chaired a well-attended session on employee benefits, to which Ian Strang, Managing Partner of Voisin & Co., contributed as one of the key speakers.

NEW COMMERCIAL LAWYER

Emma Allan, a Scottish Solicitor and Notary Public, joined the Commercial Department of Voisin & Co. earlier this year.

Having graduated from Aberdeen University with an Honours Degree in Law in 1995, Emma obtained a Diploma in Legal Practice from the University of Dundee a year later. She then spent two years working as a trainee solicitor with Burnside Kemp Fraser in Aberdeen, where she trained in all areas of the law including conveyancing, commercial, private client and court work.

After qualifying as a Solicitor and Notary Public in 1998, Emma then returned to her



home town of Perth, joining the Commercial Department of Miller Hendry where she dealt with a wide variety of commercial and

corporate issues. In particular, Emma spent a lot of her time carrying out work for the three leading Scottish banks.

In the spring of 2001, Emma and her husband moved to Jersey, where she took up a position in the Business Law Department of another local law firm.

Since joining Voisin & Co. Emma has been continuing to provide advice on commercial law issues, particularly to banks and local trust companies, and her wide experience is proving extremely beneficial to the Commercial Department.

TAGLAW SPRING 2002 CONFERENCE

TAGLaw is a worldwide network of over 100 prominent law firms from around the world, of which Voisin & Co. has been a member for the past three years. TAGLaw conferences are held twice a year in Spring and Autumn and give the opportunity for members to meet up and exchange views in a series of structured seminars as well as in a social context. As such, member firms are able to share their local knowledge and expertise and so provide a high quality world-wide legal service for their clients.

The network enables the member firms to introduce existing clients to trusted fellow

members in other jurisdictions, and so provides the opportunity for Voisin & Co. to offer its services to new clients dealing with contentious and non-contentious matters in Jersey by way of introduction from other members. TAGLaw has, at its core, a firm belief in ensuring that all member firms commit to stringent standards in order that one member may refer its clients to another whilst having the utmost confidence that the service provided will be of the highest quality.

Advocate Michael Preston represented Voisin & Co. at this year's Spring conference in Seattle, meeting several friends from previous

conferences and representatives of new member firms in what is considered to be one of the most 'liveable' cities in the USA. The conference was hosted by the firm of Ryan, Swanson & Cleveland PLLC, whose hospitality was greatly praised by Advocate Preston. Needless to say, the delegates list for the next conference in Vienna is already filling up fast !

For further details in relation to the firm's membership of TAGLaw, please contact Advocate Michael Preston (michaelpreston@voisinlaw.com).

This newsletter does not provide or offer legal, financial or other advice upon which you may act or rely. Specific professional advice should always be taken in respect of any individual matter. For professional advice on any of the matters referred to herein please contact:



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