

# THE TAXATION OF DEEMED DIVIDENDS UNDER JERSEY LAW: THE CHANGING FACE OF TAXATION IN A LOW TAX JURISDICTION

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1. The tax climate for offshore jurisdictions is now changing faster than ever. The increasing pace of change is demonstrated by the recently introduced zero/ten corporate tax regime (“**zero/ten**”) in Jersey. The regime only has effect for the year of assessment 2009 and subsequent years. This has not, however, prevented EU countries complaining that zero/ten is not compliant with the “spirit of” the ECOFIN code of conduct on harmful tax competition for business taxation (the “**Code of Conduct**”). This has resulted in Jersey (along with Guernsey) agreeing to look at introducing a new corporate tax regime before zero/ten itself has barely introduced. This has, of course, been precipitated by the prevalent economic conditions, the global economic crisis and subsequent international panic.
2. The agreement by Jersey to reconsider its corporate tax regime (which is, in fact, actually compliant with the Code of Conduct) is interesting for several reasons. The first is the agreement of offshore jurisdictions to comply with the sensibilities of larger jurisdictions. Secondly, and the point considered by this article, is the way in which this is causing aspects of traditionally “high tax” jurisdictions to creep into “low tax” jurisdictions. Zero/ten is a perfect example of this, because while it is a reasonable attempt to marry the competing objectives and needs of Jersey domestically with its need to participate as a trusted member of the international finance community, it

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introduces anti-avoidance provisions, the likes of which have been considered by the courts of England and Wales for decades. This brings with it the possibility of post-*Ramsay* style purposive interpretation that such provisions bring.

3. Thus the prevalent direction for traditionally low tax jurisdictions is a move towards a more complete and regulated tax system, and the introduction of basic anti-avoidance provisions. The Income Tax (Amendment No. 29) (Jersey) Law 2008 (“**Amendment 29**”), was registered by the Royal Court on 28 March 2008, but has effect according to its provisions. This provision provides for the taxation of “deemed dividends”. Needless to say the deemed dividend provisions are part of zero/ten and Jersey’s attempt to retain its fiscal integrity while participating in the international community.
4. The purpose of the deemed dividend provisions set out in the ITJL, Articles 81B – 81P (the “**DD Provisions**”) is to tax Jersey-resident shareholders on profits of certain Jersey companies (while non-resident Jersey shareholders are not taxed). The DD Provisions have effect for the 2009 year of assessment and subsequent years (Income Tax (Amendment No. 29) (Jersey) Law 2008, Article 47).

## 5. *The scope of the provisions*

- 5.1. The DD Provisions apply to two types of companies: Jersey trading companies and Jersey financial services companies. Both are defined in ITJL, Article 81B(1), which provides:

*““Jersey financial services company” means a company to which Article 123D applies;*

*“Jersey trading company” means a company to which Article 123C applies and which is not –*

- (a) *a company subject to full attribution; or*
- (b) *a collective investment fund”*

This definition is not terribly helpful; in relation to a Jersey financial services company (an “**FS Co**”) it directs the reader to Article 123D and to Article 123C for a Jersey trading company (a “**JT Co**”), but doesn’t give any guidance as to what is a “*company subject to full attribution*” or a “*collective investment fund*”, both of which are excluded from being a JT Co.

- 5.2. Article 123D does not define an FS Co, it is in fact a charging provision which provides for FS Cos to be chargeable to income tax at 10%. An FS Co is defined in Article 3, which provides:

“... *“financial services company” means any company that –*

- (a) *is registered under the Financial Services (Jersey) Law 1998 to carry out –*
  - (i) *investment business,*
  - (ii) *trust company business, or*
  - (iii) *fund services business, as an administrator or custodian in relation to an unclassified fund or an unregulated fund;*
- (b) *is registered under the Banking Business (Jersey) Law 1991, other than a company registered for business continuity under that Law, pursuant to Article 9A of the Banking Business (General Provisions) (Jersey) Order 2002; or*
- (c) *holds a permit under the Collective Investment Funds (Jersey) Law 1988 by virtue of being a functionary who is an administrator or custodian mentioned in Part 2 of the Schedule to that Law ...”*

The DD Provisions relating to FS Cos will, therefore, only apply to companies within (a) – (c). The companies mentioned in (a) and (c) are service providing companies which are required to be registered with the Jersey Financial Services Commission in order to provide regulated services. Such companies are likely to have Jersey-resident shareholders.

- 5.3. Again, Article 123C is a charging provision which provides:

*“This Article applies to a company –*

- (a) *which is regarded as resident in Jersey, or which has a permanent establishment in Jersey; and*
- (b) *which is not a company to which Article 123D applies or a utility company ...”*

Article 123C causes such a company to be charged to income tax at the rate of 0%. Article 3 provides that the expression “trading company” should be construed in accordance with Schedule A1. This provides (at paragraph 2):

- “(1) *In this Law, “trading company” means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities.*
- (2) *For the purposes of sub-paragraph (1), “trading activities” means activities carried on by the company –*
- (a) *in the course of, or for the purposes of, a trade being carried on by it;*
  - (b) *for the purposes of a trade that it is preparing to carry on;*
  - (c) *with a view to its acquiring or starting to carry on a trade; or*
  - (d) *with a view to its acquiring a significant interest in the share capital of another company that –*
    - (i) *is a trading company or the holding company of a trading group, and*
    - (ii) *if the acquiring company is a member of a group of companies, is not a member of that group.*
- (3) *Activities do not qualify as trading activities under sub-paragraph (2)(c) or (d) unless the acquisition is made, or (as the case may be) the company starts to carry on the trade, as soon as is reasonably practicable in the circumstances.*
- (4) *The reference in sub-paragraph (2)(d) to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company –*
- (a) *such as would make that company a 51% subsidiary of the acquiring company; or*

- (b) *such as would give the acquiring company a qualifying shareholding in a joint venture company without making the 2 companies members of the same group of companies.”*

This, however, is not what is apparently meant by “trading company” in the context of Article 81B. In practice it seems probable that a JT Co and a trading company within Schedule A1 will largely be the same companies.

## **6. *The charge on deemed dividends of a JT Co***

6.1. A charge to tax is made in relation to ordinary shares in a JT Co by Article 81D and in an FS Co by Article 81G. Article 81D provides:

“(1) *This Article applies to an individual resident in Jersey who, at any time during a relevant financial period of a Jersey trading company, owns more than 2% of the ordinary share capital of that company.*

(2) *The individual shall be deemed to receive a dividend out of the relevant profits of the relevant financial period.*

(3) *The dividend shall be deemed to be received by the individual –*

(a) *as an interim dividend and a final dividend, in accordance with Articles 81E and 81F, where the relevant dividends paid or issued out of the company’s relevant profits for the relevant financial period have an aggregate value which is less than the prescribed percentage of those profits;*

(b) *as a final dividend, in accordance with Article 81F, in any other case.*

(4) *The States may by Regulations –*

(a) *amend the percentage mentioned in paragraph (1);*

(b) *prescribe a percentage for the purposes of paragraph (3)(a).*

Thus the mechanism for charge is set out across two articles in addition to Article 81D. What Article 81D does is to set out the framework for the

charge. The elements that must be present for a charge to tax to arise are as follows:

- 6.1.1. the shareholder must be an individual;
- 6.1.2. the shareholder must be resident in Jersey; and
- 6.1.3. the shareholder must hold more than 2% of the ordinary share capital of the JT Co.

In the rest of this article a shareholder conforming to the requirements set out in paragraphs 4.1.1 – 4.1.3 will be referred to as a “**JT Deemed Dividend Shareholder**”.

- 6.2. Residence is not, at present, such an important and well defined concept in Jersey as it is in the UK. There is, therefore, no clear definition in Jersey law (though the term is used, and in some cases defined, in the Jersey laws relating to state benefits), though it is possible that this will change. The term “ordinarily resident” was discussed in *Hobden v Le Riche Stores* [1996] JLR Notes 2a (in relation to security for costs). The court adopted the English test in this case, and may do so in the future when considering residence in other contexts. This is, however, a prime example of the difficulties and the complexities which will become part of the Jersey tax system as it attempts to become more “compliant” with the Code of Conduct. The reasons why Jersey should avoid adopting English case law in relation to tax provisions are set out below.
- 6.3. In relation to the requirement at 6.1.2, this takes away the concern for non-resident Jersey shareholders. Such shareholders will not be taxed on deemed dividends, and will in effect retain the beneficial tax treatment to which they were subject under the previous system under the new zero-ten regime. The 6.1.1 requirement removes any concern that structures involving a Jersey holding company would be taxed under zero-ten because the Jersey resident shareholder must be an individual.
- 6.4. The “prescribed percentage” mentioned in paragraph 3(a) has been determined by the States under the Income Tax (Amendment of Law) (Jersey) Order 2008, and is 60%.
- 6.5. The requirement to hold more than 2% of the ordinary share capital is also relatively straightforward. It does, however, raise some questions, for example, whether a guarantor in a guarantee company (which does not have share capital) would be subject to the Deemed

Dividend Provisions when guaranteeing more than 2% of the total guaranteed amount. Prima facie it seems that this would not be the case because a guarantee company simply does not have shares, ordinary or otherwise. It is unlikely that an existing JT Co would be a guarantee company. There is no reason, however, that a new company could not form as a guarantee company, rather than a company limited by shares, which would apparently put the guarantors outside the scope of the Deemed Dividend Provisions.

- 6.6. The second question is what is meant by “ordinary share capital”. Article 3 of the ITJL defines “ordinary share capital” as “*in relation to a company, means all the issued share capital (by whatever name called) of the company, other than preference shares*”. “Preference share” is defined as “*in relation to a company, a share which confers a right to a dividend at a fixed percentage of the nominal value of the share, but no other right to share in the profits of the company*”. Preference shares appear to be defined by reference to the share in the company’s profit which they confer on the holder, but not by reference to the other rights attaching to them, e.g. voting rights. Therefore, provided that the preference shares only conferred a right to a dividend at a fixed percentage of the nominal value of the share, then even if they had significant voting rights attaching to the share, it would still be considered a preference share for the purposes of the Deemed Dividend Provisions.
- 6.7. Article 81D(2) deems the JT Deemed Dividend Shareholder to have received a dividend out of the “relevant profits” of the “relevant financial period”. Both terms are defined in Article 81B. Relevant profits are defined in Article 81B(1) as:
- “(a) *in relation to a financial period of a Jersey trading company, the balance of the income, profits and gains on which the company is charged under Schedule D at the rate of 0% after –*
- (i) *the making of any deduction or the giving of any allowance or relief to which the company is entitled under this Law,*
- (ii) *the deduction of any amount paid, before the last day of the following financial period, out of such income, profits and gains as a dividend on preference shares in the company ...”*

Relevant profits are calculated by reference to the amount upon which 0% income tax is charged by Schedule D. The amount will, effectively be the net amount of the amount so chargeable, less reliefs allowed by the ITJL and any actual dividends paid on a preference share. Relevant financial period means any period for which “*a company does not pay or issue any relevant dividends out of its relevant profits; or for which a company pays or issues relevant dividends out of its relevant profits where the relevant dividends have an aggregate value which is less than those profits*”.

6.8. These definitions make it clear that the Deemed Dividend Provisions should only bite where there isn't a dividend which is otherwise chargeable. The deemed dividends can be chargeable as either final or interim deemed dividends. The mechanism for each is set out in ITJL Articles 81E and 81F.

6.9. Article 81E provides:

“(1) *Subject to paragraphs (4) and (5), an interim dividend in respect of a relevant financial period shall be deemed to be received by an individual to whom Article 81D applies on the last day of the following financial period.*

(2) *The amount of the interim dividend which is attributable to a share comprised in the ordinary share capital of a Jersey trading company shall be the product of the following formula –*

$$\frac{A - B}{C}$$

*Where –*

*A is the amount equal to the percentage, prescribed for the purposes of Article 81D(3)(a), of the relevant profits for the relevant financial period*

*B is the aggregate amount of the relevant dividends paid or issued out of the relevant profits*

*C is the number of shares comprising the ordinary share capital of the company during the relevant financial period.*

- (3) *The amount of the interim dividend that an individual to whom Article 81D applies is deemed to receive shall be the product of the following formula –*

$$\frac{E}{H} \times G \times H$$

*Where –*

*E is the number of days in the relevant financial period for which the individual owned more than the percentage mentioned in Article 81D(1) of the ordinary share capital of the company*

*F is the number of days in the relevant financial period*

*G is the number of shares comprised in the ordinary share capital of the company which are owned by the individual during the period determined in accordance with E*

*H is the amount of the interim dividend attributable to a share comprised in the ordinary share capital of the company, determined under paragraph (2).*

- (4) *Where the winding up of the company commences before the day that the interim dividend would be deemed to be received by an individual by virtue of paragraph (1), and the winding up is not terminated, the interim dividend shall instead be deemed to be received by the individual on the completion of the winding up of the company.*
- (5) *Where an individual to whom Article 81D applies shall cease to be resident in Jersey before the day that an interim dividend would be deemed to be received by him or her by virtue of paragraph (1), and Article 126 does not apply in his or her case, the interim dividend shall instead be deemed to be received by the individual on the day before the day he or she ceases to be so resident.”*

- 6.10. This is a complex provision. Paragraph (4) can, for the purposes of most companies be ignored, being relevant only when a company is being wound up. Paragraph (5) deals with the case of a Jersey resident ceasing to be resident (except where the person is only temporarily abroad, in accordance with Article 126). Where

Paragraph (5) applies the deemed interim dividend is further deemed to be received by him on the day before he ceases to be resident in Jersey, thus ensuring the individual ceasing to be resident is brought within the charge to tax.

- 6.11. Putting aside the provisions in place to deal with the “exceptional” situations of winding up and ceasing to be resident, it is paragraphs (1) to (3) which explain how a deemed interim dividend will be charged are important. Unfortunately, it is necessary to return to Article 81B, for further definitions in order to understand the computation. Article 81B explains that a “relevant financial period”, “relevant profits” and “relevant dividends” are:

*“...”relevant dividend” means, in relation to the relevant profits of a financial period of a company, so much of any dividend as is paid or issued out of those profits, before the last day of the following financial period, in respect of a share comprised in the ordinary share capital of the company.*

*“relevant financial period” means a financial period –*

- (a) for which a company does not pay or issue any relevant dividends out of its relevant profits; or*
- (b) for which a company pays or issues relevant dividends out of its relevant profits where the relevant dividends have an aggregate value which is less than those profits;*

*“relevant profits” means –*

- (a) in relation to a financial period of a Jersey trading company, the balance of the income, profits and gains on which the company is charged under Schedule D at the rate of 0% after –*
  - (i) the making of any deduction or the giving of any allowance or relief to which the company is entitled under this Law,*
  - (ii) the deduction of any amount paid, before the last day of the following financial period, out of such income, profits and gains as a dividend on preference shares in the company;*

- (b) *in relation to a financial period of a Jersey financial services company, the balance of the income, profits and gains on which the company is charged under Schedule D at the rate of 10% after –*

    - (i) *the making of any deduction or the giving of any allowance or relief to which the company is entitled under this Law,*
    - (ii) *the deduction of any amount paid, before the last day of the following financial period, out of such income, profits and gains as a dividend on preference shares in the company ...”*
- 6.12. The relevant financial period is one in which no “relevant dividends” are paid out of relevant profits, or relevant dividends paid out are less than relevant profits. Relevant dividends are simply actual (rather than deemed) dividends which are paid to the shareholders. It should be noted that the definition of relevant dividends does not differentiate between dividends on ordinary shares and dividends on preference shares. Given that an individual who does not hold at least 2% of the ordinary share capital cannot be brought into charge on dividends on preference shares this appears to be something of a mismatch, though it does not make the provision unworkable.
- 6.13. The relevant profits are those under which the JT Co is charged at 0% (under Schedule D). This effectively charges income tax on the (ordinary) shareholders rather than the company, meaning that the taxation environment remains a positive one in which trading companies can operate, without adverse taxation consequences for non-resident shareholders.
- 6.14. Thus, and coming back to the original point, a charge will arise to a Jersey resident on the proportion of the profits of the company (by way of a charge on the deemed dividends) that are not charged to Jersey income tax, other than at the 0% rate. The computation in paragraph (3) ensures that the correct proportion of the deemed interim dividend is charged on each shareholder, according to the number of shares they hold, and the number of days in the relevant financial period for which they have held the shares.

6.15. A deemed final dividend is charged under Article 81F. This provides:

- “(1) *A final dividend in respect of a relevant financial period shall be deemed to be paid to an individual to whom Article 81D applies on whichever is the earliest of –*
- (a) *the individual ceasing to own more than the percentage mentioned in Article 81D(1) of the ordinary share capital of the Jersey trading company;*
  - (b) *the completion of the winding up of the Jersey trading company;*
  - (c) *the individual’s death;*
  - (d) *31st December in a year of assessment where, for the following year of assessment, the Jersey trading company in which the shares are or were owned by the individual becomes, for the purposes of this Law, a company subject to full attribution;*
  - (e) *the day before the day the individual ceases to be resident in Jersey, unless Article 126 applies in his or her case.*
- (2) *For the purposes of paragraph (1)(a), it shall be immaterial whether or not the change of ownership of the shares is effected by a change in the registered shareholder.*
- (3) *Subject to paragraph (4), the amount of the final dividend which is attributable to a share comprised in the ordinary share capital of the company shall be the product of the following formula –*

$$\frac{A - B}{C}$$

Where –

*A is the relevant profits for the relevant financial period*

*B is the aggregate amount of the relevant dividends paid out of the relevant profits*

*C is the number of shares comprising the ordinary share capital of the company during the relevant financial period.*

- (4) *Where, pursuant to Articles 81D(3)(a) and 81E an interim dividend has been deemed to have been received by an individual in respect a relevant financial period, the amount of that dividend, determined in accordance with Article 81E(2) shall be deducted from the product of the formula in paragraph (3).*
- (5) *The amount of the final dividend that an individual to whom Article 81D applies is deemed to receive shall be the product of the following formula –*

$$\frac{E}{H} \times G \times H$$

*Where –*

*E is the number of days in the relevant financial period for which the individual owned more than the percentage mentioned in Article 81D(1) of the ordinary share capital of the company*

*F is the number of days in the relevant financial period*

*G is the number of shares comprised in the ordinary share capital of the company owned by the individual during the period determined in accordance with E*

*H is the amount of the final dividend attributable to a share comprised in the ordinary share capital of the company, determined in accordance with paragraphs (3) and (4).*

- 6.16. This provision is designed to cause a similar charge to arise on the ending of a shareholding, whether by the winding up of the company, the sale of the shares, the company becoming subject to full attribution, the death of the shareholder or the shareholder becoming non-resident (presumably this is the shareholder becoming permanently non-resident, and no temporarily non-resident in accordance with Article 126). In either case, the provision is designed to prevent non-resident shareholders from being taxed in Jersey, while at the same time ensuring that the profits of the Jersey resident company are brought within the charge to Jersey income tax.

## **7. The charge on deemed dividends of an FS Co**

7.1. The charge on deemed dividends of an FS Co, is similar, but not identical to, that on a JT Co. The major difference is that there are not separate computations for interim and final deemed dividends; Article 81G provides:

*“This Article applies to an individual resident in Jersey who, at any time during a relevant financial period of a Jersey financial services company, owns more than 2% of the ordinary share capital of the company.*

- (2) *The individual shall be deemed to receive a dividend out of the relevant profits of the relevant financial period.*
- (3) *The dividend that an individual is deemed to receive under paragraph (2) shall be deemed to be paid to the individual on whichever is the earliest of –*
  - (a) *the individual ceasing to own more than the percentage mentioned in paragraph (1) of the ordinary share capital of the Jersey financial services company;*
  - (b) *the completion of the winding up of the Jersey financial services company;*
  - (c) *the individual’s death;*
  - (d) *31st December in a year of assessment where, for the following year of assessment, the Jersey financial services company becomes, for the purposes of this Law, a company subject to full attribution; or*
  - (e) *the day before the day the individual ceases to be resident in Jersey, unless Article 126 applies in his or her case.*
- (4) *For the purposes of paragraph (3)(a), it shall be immaterial whether or not the change of ownership of the shares is effected by a change in the registered shareholder.*

- (5) *The amount of the dividend that is attributable to a share comprised in the ordinary share capital of the company shall be the product of the following formula –*

$$\frac{A - B}{C}$$

*Where –*

*A is the relevant profits for the relevant financial period*

*B is the aggregate amount of the relevant dividends paid or issued out of the relevant profits*

*C is the number of shares comprising the ordinary share capital of the company during the relevant financial period.*

- (6) *The amount of the dividend that an individual to whom this Article applies is deemed to receive shall be the product of the following formula –*

$$\frac{E}{H} \times G \times D$$

*Where –*

*E is the number of days in the financial period for which the individual owned more than the percentage mentioned in paragraph (1) of the ordinary share capital of the company*

*F is the number of days in the relevant financial period*

*G is the number of shares comprised in the ordinary share capital of the company owned by the individual during the period determined in accordance with E*

*D is the amount of the dividend attributable to a share comprised in the ordinary share capital of the company, determined in accordance with paragraph (5).*

- (7) *Where an individual is deemed to receive a dividend pursuant to this Article, the amount of income tax chargeable in respect of the dividend shall be reduced by an amount equal to the product of the following formula –*

$$\frac{E}{F} \times \frac{T \times G}{C}$$

Where –

*E, F and G have the same values as in paragraph (6)*

*T is the amount of tax that the company is liable to pay under Schedule D on its relevant profits of the relevant financial period*

*C is the number of shares comprising the ordinary share capital of the company during the relevant financial period...*

- 7.2. Paragraph (1) applies the deemed dividend provision to the same category of shareholders in FS Cos as in JT Cos. It is the circumstances under which a dividend is deemed which are different. Paragraph (3) provides that a dividend is only deemed, in the case of an FS Co under the circumstances that a final dividend is deemed for a JT Co, i.e. there is no interim deemed dividend.

## 8. *Anti-avoidance*

- 8.1. Paragraph (4) provides a basic anti-avoidance provision (the same provision is included in respect of deemed final dividends of a JT Co in Article 81F(2)): “*it shall be immaterial whether or not the change of ownership of the shares is effected by a change in the registered shareholder*”. Thus a change of ownership effected by means other than the change of the registered shareholder will not prevent a charge arising on the deemed final dividend.
- 8.2. This provision is, presumably, intended to prevent the avoidance of a charge on a final deemed dividend arising by, for example, a Jersey resident shareholder transferring the shares into a trust of which he is a trustee. It may not, however, be such a straightforward provision; if that had been the only intention the provision would have been more effectively phrased by reference to beneficial ownership.
- 8.3. This highlights what is particularly interesting about the DD Provisions – they attempt to merge two things: the need to be compliant with the Code of Conduct and the needs and expectations of a typically low tax jurisdiction. The provisions are somewhat complex, as is frequently seen in jurisdictions, such as the UK, with

fuller tax legislation and more complex anti-avoidance provisions. This being said, the provisions are not littered with complex anti-avoidance, though the method of calculation is complex.

- 8.4. Unfortunately, because Jersey tax law contains few anti-avoidance provisions, and tax litigation is comparatively rare in Jersey, the way in which the anti-avoidance element in Articles 81F(2) and 81G(4) would be interpreted by the Jersey courts is a matter of conjecture. It is possible that the Jersey courts would look to English law for guidance, as they do in other areas of the law. The Jersey courts will only look to other systems of law where there is no local guidance, and while that other law may be persuasive, it is not binding (see, for example, *Re Father Amy* [2000] JLR 237). In essence, the courts may, but are not obliged, to follow a different but similar system of law.
- 8.5. The systems of law most commonly looked to are French and English, the former most commonly in relation to succession and property law and the latter in relation to company law, administrative law, criminal law and statutory interpretation. Where there is a statute which is based on an English statute then decided cases on the English statute will be highly persuasive. The anti-avoidance provision in Articles 81F(2) and 81G(4) does not appear to derive from an equivalent English provision.
- 8.6. There is, however, a more fundamental reason why the Jersey courts may (or should) avoid following English law in relation to the interpretation of taxing statutes. The basis of taxation, and the manner and circumstances under which tax is imposed in Jersey, and many offshore jurisdictions, is entirely different to that in onshore jurisdictions. The two jurisdictions' tax regimes have developed separately and on entirely different lines. This is surely part of the reason that some EU member states have objected to zero/ten on the basis that while it is compliant with the Code of Conduct it is not compliant with its spirit. Anti-avoidance provisions, and post-*Ramsay* purposive interpretation are alien to Jersey law, and should remain so. Not only are the concepts alien to Jersey law, but the underlying reasons for the use of them is alien to Jersey law. Jersey has no history of circumscribing tax mitigation in the manner that English legislation has done and has traditionally kept the taxation of its inhabitants to a minimum, taxing only income and being without capital taxes.
- 8.7. Whatever the original reason for Jersey developing as a low tax jurisdiction, and taking account of the fact that we live in an

increasingly regulated world where it is no longer possible for a country to maintain a simple and favourable tax regime without considering the ramifications of that regime for neighbouring countries the reasons for developing tax law should be carefully considered. The political situation should not dictate the way in which the courts interpret the law, or where they look to for guidance in this interpretation. The principles under which the Jersey courts will take guidance from the case law of other jurisdictions is well documented and does not, I would argue, encompass the adoption of principles of interpretation that have been developed and finessed over decades of interpreting the legislation of a high tax jurisdiction with little or nothing in common with Jersey. This would surely go beyond what is necessary to comply with the spirit of the Code of Conduct.

**9. *The Jersey fiscal strategy review 2009: zero/ten and deemed dividends – a short-lived regime?***

There was, in the latter part of 2009, a meeting between the Chief Minister of Jersey and Financial Secretary to HM Treasury. This, combined with changing attitudes towards taxation policy precipitated by the global financial crisis, has resulted in a new fiscal strategy review, which may cause there to be a new business tax regime in Jersey before ECOFIN officially reviews zero/ten. It seems, therefore, unlikely that the operation of the DD Provisions will come before the Jersey courts. Equally, it seems unlikely that the policy change toward anti-avoidance and more complex taxing provisions exhibited in the DD Provisions will prove to be a one-off, rather than the first piece to fall in Jersey's move towards a more typically onshore fiscal regime.