

Liberal Vannin Position Paper on the Common Purse Agreement

Written by Liberal Vannin
Saturday, 02 January 2010 18:00

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The Agreement

The Common Purse Agreement is an agreement between the Governments of the Isle of Man and the United Kingdom whereby the Isle of Man levies similar customs and excise duties to the United Kingdom. In return the Isle of Man receives a percentage of the total customs and excise duties levied in the United Kingdom. This was initially based on the relative populations of the Isle of Man and the United Kingdom, adjusted to reflect the level of visitors to the Isle of Man (i.e. the fiscal population). However, in 2007 the agreement was changed so that the Island's share of the Common Purse was based on the relative GDPs (gross domestic product) of both countries (details of this agreement are still awaited from Treasury). The 2007 agreement provided for certain services to be exempt from the pooled income and retained by the jurisdiction in which they originated. This was considered to be a good deal for the Island because by 2007 the GDP per head of the Isle of Man was greater than that of the UK. The benefits to both parties were, and still are that the agreement removes the need for customs and excise controls on traffic between the Isle of Man and the United Kingdom.

Whilst the history of revenue sharing between the governments of the Isle of Man and the United Kingdom goes back to 1765, the revenue sharing, in its current form, only goes back to 1957. The 1957 agreement enabled the Government of the United Kingdom to lay before Parliament a bill enabling Tynwald to levy, inter alia, its own customs and excise duties on the Isle of Man. In return, Tynwald agreed to levy similar customs and excise duties on the Isle of Man, and to receive a share of the total customs and excise revenues levied in both the UK and the Isle of Man under certain terms and conditions.

Abrogation Consideration

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In 1966 Tynwald gave serious consideration to abrogating the Common Purse Agreement and the Isle of Man Finance Board laid a detailed report on the subject before Tynwald on the 18th of October 1966. In preparing this report the Isle of Man Government was assisted by the UK firm of PA Consultants. The report concluded that, on balance, there was no strong case for abrogating the Common Purse Agreement (but with minority dissent). However, by 1976 the situation had changed sufficiently for the decision to be reviewed again. PA Consultants undertook an extensive study and produced a very detailed report which concluded that, "On economic grounds there was a case for ending the common purse...", that "...the Island institute negotiations with the UK with a view to ending the Common Purse Agreement" and that, inter alia, "...the Island should set up its own Customs and Excise service"

Many of the considerations covered by the report are as valid today as they were in 1976, one of which being the potential for increased tourism fuelled by lower duties on drink and tobacco. However, GDP per head of population in the Isle of Man is now greater than it is in the UK and consequently the Isle of Man must by now be a greater net contributor to the Common Purse.

Isle of Man Customs and Excise

The Consultant's advice was accepted and the Isle of Man Government took over the employment of all Customs and Excise staff on the Isle of Man. However, for whatever reason (possibly for reasons described below), the Isle of Man Government did not take the next step and abrogate the Common Purse Agreement. The infrastructure is nevertheless still in place for the Isle of Man to abrogate the Common Purse Agreement, as and when necessary, with little or no disruption to either trade or tourism.

Rentals and Royalties from Oil and Gas

The Isle of Man entered into an agreement, on or about 20th October 1966, with the Government of the United Kingdom, whereby the Isle of Man was to receive a share of the Royalties and Rentals, from oil and gas exploration and production on the whole of the UK Continental Shelf, through the Common Purse Agreement. In return the Isle of Man relinquished any interest it had to oil and gas exploration and production beyond its "territorial waters".

Escalating Oil and Gas Prices

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In 1966 this was considered to be a very good agreement for the Isle of Man, since, at the time, the Irish Sea was not considered to be very prospective, with the then current low oil and gas prices. However, during the early 1970s the oil price escalated rapidly and with it the gas price. In these circumstances the UK levied additional (windfall) taxes on oil and gas production in the form of PRT*, APRT* and SPD** (in addition to corporation tax). It is understood that the Isle of Man Government attempted, several times, to obtain a share of these additional revenues but was told, politely and on one occasion not very politely, that they were entitled to nothing.

Oil and Gas Discoveries in the Irish Sea

The increase in oil price resulted in an increase in oil and gas exploration in the Irish Sea. This, in turn, led to the discoveries of the Morecambe Bay, North Morecambe, the Rivers (Calder, Darwen, Crossans, Hodder and Asland), Dalton, Lennox and Millom fields, with estimated recoverable reserves of 7.5 tcf* of gas and 176 million barrels of oil. In addition, the Liverpool Bay fields (Douglas, Hamilton, Hamilton North, and Hamilton East) were discovered and developed to supply gas to the Point of Ayr power station in North Wales. Under the 1966 agreement the UK Government was obliged to keep the Isle of Man Government fully informed on all oil and gas operations in its sector of the Irish Sea. (Needless to say, as far as is known, it didn't!).-style: normal;">

Extension of Territorial Sea

On or around the 16th July 1991 the Isle of Man and UK Governments agreed to extend the Isle of Man 'territorial sea' from 3 miles to 12 miles. As part of this agreement the Isle of Man relinquished its right to a share of Royalties and Rentals from the UK Continental Shelf through the common purse agreement (i.e. for a small increase in not very prospective acreage the Isle of Man gave up a steady, if diminishing, revenue stream)

It is also understood that, in addition, the Isle of Man was asked to pay a significant sum to the UK Government for its agreement to this extension.

United Nations Convention on the Law of the Sea (UNCLOS)

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UNCLOS gives a coastal state the right to territorial sea up to 12 miles from its baseline. In addition it gives a coastal state the right to jurisdiction over an Exclusive Economic Zone (EEZ) extending, beyond its territorial sea, to the median line between the coastal state and its neighbour/s or up to the outer limit of the Continental Shelf or up to 200 nautical miles whichever is applicable.

Isle of Man Exclusive Economic Zone (EEZ)

Whilst the Isle of Man is part of the British Isles it is not a part of the United Kingdom and consequently the Continental Shelf Act 1964 and Petroleum Production Act 1934 in the UK have no application in the Isle of Man.

The constitutional relationship between the Isle of Man and the UK is similar to that of the Channel Islands, Gibraltar and the Falklands Islands. Consequently the Isle of Man, as a coastal state, can, as do the Falklands Islands Government, lay claim to its own EEZ.

The Isle of Man EEZ has never been delineated (because of the 1966 Agreement?). However, drawing a median line between the Isle of Man and both the United Kingdom and the Republic of Ireland would almost certainly place the Millom gas field and a significant part of the North Morecambe gas field in the Isle of Man's EEZ. Similarly, a larger section of the UK Ireland Gas Interconnectors (SIPS1 and 2) would also lie within the Isle of Man's EEZ as would significant additional fisheries and mineral rights.

Common Purse Renegotiation

All of the above factors must be taken fully into consideration during any renegotiation of the Common Purse Agreement.

As aforesaid it is Tynwald, and only Tynwald that has the power to levy Customs and Excise Duties on the Isle of Man. The change to the Agreement, as demanded by the UK Government,

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is not a minor administrative detail, it is a fundamental change to the Common Purse Agreement. As such the change demanded by the UK Government must be ratified by both Tynwald and Parliament before coming into effect. It is therefore noted with concern that Treasury has stated that it has already entered into an agreement with the UK whilst, only reluctantly and post event, providing some details of part of the changes demanded by the UK Government on the Government website.

The 2007 Common Purse Agreement can be terminated by either party by giving two years notice in writing, otherwise it continues indefinitely, in its present form, unless changed by Acts of Tynwald and Parliament. It is understood that the UK Government has advised the Isle of Man Government that it will reduce the Island's share of the Common Purse by up to £90 million in the tax year 2010 and up to £140 per annum thereafter. This change is as a result of a unilateral change to the method of calculating the Isle of Man's share of the Common Purse by the UK Government. Basically it has changed the Isle of Man's share from being on a primarily Gross Domestic Product (GDP) basis to a primarily Gross National Income (GNI) basis and, apparently, excluded all own coding service revenue so that none of these income streams will now be retained by the Island.

Changing the method of calculation from a predominantly GDP basis to a predominantly GNI basis has the immediate effect of including the remitted profits of, for example, all UK owned banks in the Isle of Man as part of UK GNI not Isle of Man GNI. Similarly remitted profits of, for example, USA owned gambling companies operating in the Isle of Man would be included as part of USA GNI not Isle of Man GNI. If the Common Purse is to continue in its present form it would be equitable to divide the Common Purse on the basis of GDP, as in the 2007 agreement, since most of the Island's trade is currently with the UK through the purchase of goods and services from the UK, much of it via the internet.

A recent report for the UK Treasury by Sir Michael Foot, published by the Times on 30th October, estimates that the UK Crown Dependencies make a significant contribution to UK banking liquidity. The total contribution to UK liquidity from the Channel Islands and the Isle of Man is estimated at US\$ 323 billion, of which the Isle of Man only provides US\$ 40 billion (significantly less than Jersey and Guernsey). Is the United Kingdom trying to kill off the goose that lays the golden eggs?

The UK Government is believed to have stated that, unless the Isle of Man immediately agreed to its demanded changes it would terminate the agreement by giving the 2 years notice. This is bully boy tactics, probably driven by a perceived need to be tough on tax havens. Nevertheless the Chief Minister is believed to have claimed major benefits for the Island through negotiation

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on the phasing in of the new agreement. (What benefits can you negotiate with a gun pointed at your head?).

Conclusion

Before precipitate action is taken a detailed study of the PA Consultants 1976 report is recommended. The situation in 1976 was very similar to the situation today, and it could well be that the negotiations resulting from the 1976/7 PA Consultants report did lead to the 1979 Common Purse Agreement which, at the time, was acknowledged to be both fair and equitable by both parties.

It is therefore recommended that Tynwald require the Isle of Man Government to give very careful consideration to giving notice to the UK Government of its intention to terminate the Common Purse Agreement at the end of a two year notice period.

It is further recommended that Tynwald require the Isle of Man Government to immediately commission PA Consultants to provide an update of its 1976 report to reflect current conditions reporting back to Tynwald by not later than its January sitting.

There is little to lose from this policy and much to gain. At worst the Island will find itself in a similar position to Jersey and Guernsey whilst saving the £230 million which Treasury seems so keen to throw away. At best a much more favourable Common Purse Agreement could be renegotiated giving full consideration to all of the above arguments.

Definition of Terms

1. PRT – Petroleum Revenue Tax
2. APRT – Advanced Petroleum Revenue Tax
3. SPD – Special Petroleum Duty
4. tcf – terra standard cubic foot or 1,000,000,000,000 scf of gas
5. GDP - The total value of goods and services produced by a country in any given year.
6. GNI – The GDP of a country plus income received from other countries less income paid to another countries

Common Misconceptions

- That the Common Purse Agreement and the revised Revenue Sharing Agreement are separate agreements. They are not, whilst they are written as separate agreements how the revenues are shared is fundamental to the Common Purse Agreement. Change to the revenue sharing arrangements is a change to the Common Purse Agreement.

- That the Common Purse Agreement is not a legally binding agreement between two states since the Isle of Man is not a sovereign state. The Isle of Man is a crown dependency, had it been a sovereign state the agreement would have been an Intergovernmental Treaty. However, the Common Purse Agreement is a legally enforceable agreement on both parties since it has offer, acceptance, consideration and is not contrary to statutory law (in either country).

- That the Island is not a coastal state under international law and in consequence can not claim an Exclusive Zone. The 1966 Agreement accepts that the Isle of Man has an economic interest in the areas beyond its territorial seas (otherwise the Isle of Man would not have been given a share of the rentals and royalties from the whole of the UK Continental Shelf) The Isle of Man must by definition be a "coastal state" as described in international law, otherwise it would have no right to "territorial seas". In addition, the Falklands Islands Government claims under the same international law a right to licence oil and gas exploration up to the median line between it and Argentina.

- That the Isle of Man has been on a gravy train, has received massive subsidies from the UK Government, and that the revised arrangement are simply putting right perceived wrongs. This is simply not true. Sharing revenues on the basis of fiscal population or GDP is fair and reasonable. It is arguable that, if anything, the Isle of Man has been a net contributor to the Common Purse because the Island's GDP per head is now greater than it is in the UK.

- That the Isle of Man attracts vast amounts of money from UK residents thereby allowing them to avoid the payment of UK taxes. This is not true; the fiscal arrangements in place between the Isle of Man and the UK prevent this happening. On the contrary, the Isle of Man attracts deposits from all over the world, which deposits are largely invested in the UK thereby giving a significant boost to UK liquidity. Without this the UK would now be in a much worse financial position than it now is. It is estimated by Sir Michael Foot in a UK Treasury report that the Channel Islands and the Isle of Man contribute about US\$ 323 billion per annum to UK liquidity.