

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY THE CONNÉTABLE OF ST MARY
ANSWER TO BE TABLED ON MONDAY 30TH JANUARY 2017**

Question

Will H.M. Attorney General clarify the legal status of Long-Term Care contributions and advise specifically under what provisions they are to be treated as a tax?

Answer

There is one question which determines whether charges such as Long-Term Care Contributions are a tax or not. This is whether there is a direct causal link between the charge and the individual benefits to be received. It is true that Long-Term Care Contributions are paid into a ring-fenced fund, are subject to an upper earning limit when calculating liability, and that liability for non-residents in respect of Jersey income is significantly restricted. However, although these and other considerations mean that Long-Term Care Contributions have many characteristics common to Social Security Contributions (which are not a tax), the absence of a direct connection between payment of the Long-Term Care Contributions and the benefit received means that it is to be regarded as a tax.

What determines the legal nature of the payment is whether there is a direct link between contributions and benefits.

The relevant legislation does not include reference to an individual's contribution record as being necessary in order to determine their entitlements.

It follows that, as a matter of law, Long-Term Care Contributions are taxation.

Which provisions treat Long Term Care Contributions as a tax?

The question of whether something is a tax, a charge or in any other category is rarely one of legal relevance ie the distinction generally has no legal consequence.

In Jersey, Long-Term Care Contributions will be treated as a tax for the purposes of the Public Finances (Jersey) Law, Articles 21 and 23, Long-Term Care contributions are taxation, and also Regulation 9(2) of Public Finances (Transitional Provisions) (No. 2) (Jersey) Regulations 2005 which also deals with the same borrowing issues.

Other statutes referring to “taxation”

There are statutes where, whilst Long-Term Care Contributions would amount to “taxation”, this has little or no practical consequence. These are:

- For the purposes of the Public Finances (Jersey) Law, Article 15, Long-Term Care contributions can be dealt with under the “taxation draft”, meaning that legislation in respect of raising of Long-Term Care contributions can come into effect without Royal Assent. (Although any such changes to Long-Term Care Contributions would in reality be brought by way of Regulations under the Social Security (Jersey) Law.)
- Article 42(1)(c) of the Charities (Jersey) Law, information requirements on charities in respect of taxation.
- Article 29(1) of the Data Protection (Jersey) Law, exemption in respect of crime and taxation.
- Article 2(5)(a) of the European Union (Implementation) (Jersey) Law, although in fact EU law has no relevance to setting either income tax or social security contributions.
- Privileges Immunities (Diplomatic, Consular etc) (Jersey) Law: the same privilege applies to taxation and social security contributions, so nothing turns on categorisation.
- State Immunity (Jersey) Order, Articles 11 and 15 would treat social security contributions and income tax the same, so nothing turns on categorisation.
- Taxation (Implementation) (Jersey) Law, Article 1. An agreement could in principle apply to Long-Term Care Contributions and equivalent charges raised in other countries. In practice, Long-Term Care Contributions fall outside the terms of relevant international agreements.

This answer is given on the basis of a search of the Current Edition of Jersey enactments for the word “taxation”, and may not have caught every reference in Jersey statute law to “tax” or “taxation”.