

**QUESTIONS TO BE ASKED OF THE PRESIDENT OF THE POLICY AND RESOURCES
COMMITTEE ON TUESDAY, 4th FEBRUARY 2003 BY
DEPUTY P.N. TROY OF ST. BRELADE**

Question 1

Would the President –

- (a) give details of any correspondence, meetings and discussions (inclusive of dates) between the Policy and Resources Committee, the Comptroller of Income Tax and Finance and Economics Committee concerning the tax liability of essentially employed public sector employees for incorrectly declared rental subsidies?
- (b) advise members of the number of employees concerned and the total cost as advised to his Committee by the Comptroller for payment of the liability for a five year period for all employees affected?

Answer

- (a) Having first been alerted to the problem by the Human Resources Committee, the previous Finance and Economics Committee considered, on 18th September 2002, a paper prepared by the Comptroller of Income Tax. Subsequently, a meeting was convened at the request of the President of the new Finance and Economics Committee on 13th January 2003. Those who took part included the President of the Finance and Economics Committee, who chaired the meeting, the Presidents of the Policy and Resources Committee, the Education, Sport and Culture Committee and the Health and Social Services Committee. In addition, senior officers from the Education, Sport and Culture Department, Health and Social Services Department, Housing Department, States Treasury, States Human Resources Department, and the Income Tax Comptroller also attended that meeting.

Thereafter, the Finance and Economics Committee, on 15th January 2003, considered whether it would be appropriate to meet the tax liability from the General Reserve and the Policy and Resources Committee considered on 17th January 2003, whether the employer should meet the tax liability. Both Committees had Papers relating to these matters before them when they took their decisions.

The above sets out when the main discussions took place on this matter between the main parties concerned.

- (b) At this time, I am unable to confirm the exact number of employees concerned, nor the overall costs. This is because individual departments are currently collating information that will allow the Income Tax Comptroller to determine accurately what the true position is. However, it is most unlikely to exceed £500,000.

Question 2

Can the President –

- (a) advise whether there is any legal obligation for the States of Jersey to pay the tax liabilities of third parties (in this case employees)?
- (b) inform members whether the Committee recommends that public funds be utilised in payment of the employee liability and, if so, would he give the reasons for this decision?

Answer

- (a) I confirm that there was originally no legal obligation to pay the taxes in respect of States employees. However the Committees considered that there was a strong moral obligation to do so. They took into account the fact that the Income Tax Comptroller has allowed private sector employers to meet the tax liability of their

employees in similar circumstances. The decision of the Committees has subsequently been made public, so that the affected employees have been given to understand that their liabilities will be met. It is a settled principle of law that there is a requirement for consistency and fairness in relations between the individual and the state, and once the employees have been given a legitimate expectation that their liabilities will be met, they may in this way acquire a legally enforceable claim

- (b) The Deputy will have noted that I am making a statement to the Assembly on this matter later in the agenda. I will confirm, however, that the Policy and Resources Committee has requested the Finance and Economics Committee to utilise public funds to pay the tax liability of ‘essential employees’ in respect of the last five years, and the Finance and Economics Committee has acceded to this request. The reasons for doing so are set out in my statement. However, in essence, these are that –
- (i) many employees were not advised by their employer that the rental subsidy arrangements gave rise to a tax liability;
 - (ii) such employees were genuinely unaware of their liability;
 - (iii) the methods of payment chosen by departments to pay the rental subsidy were confusing from the point of view of identifying that the employee was receiving a benefit from the employer; and
 - (iv) it is important to retain the commitment and support of these key members of staff.

Question 3

Would the President confirm that some employees have correctly declared their rental subsidies on tax forms submitted to the Comptroller and paid all taxes due, while others have failed to do so, and if so, is he able to offer any explanation as to why some were aware of their responsibility to pay tax on the rent subsidy and others were not, given that since 1998 every tax form states ‘If your employer pays rent due under a lease in your name, that is taxable’?

Answer

I confirm that a small number of employees have correctly declared their rental subsidies whilst others have not. As I have stated earlier, in discussions with employees, it was apparent that there was a genuine lack of knowledge that such subsidies gave rise to a tax liability. This was not helped by the fact that their employer had not provided them with the information that would have assisted them in understanding their position. Indeed, in some circumstances, the method of paying the subsidy was convoluted and would certainly not have identified to employees that they were in receipt of a benefit that should be declared for tax purposes. It should be noted that some rental subsidy arrangements give rise to a tax liability whilst others do not.

Question 4

- (a) Can the President advise whether there is any legal obligation to reimburse those employees who have correctly paid tax on any rental subsidy received and advise whether the Committee recommends reimbursement for this group?
- (b) If so, would the President advise how many employees are involved, how many years would be reimbursed, and the total cost of reimbursement?

Answer

- (a) I confirm that there is no legal obligation to reimburse those employees who have correctly paid their tax. However, the Committees felt that there was a strong moral argument not to leave them in a worse position than those who had not paid their tax. It has, therefore, been decided to reimburse them for the tax that they have paid.

- (b) As I have already pointed out in my response to Question 1 (b), details are still being sought in connection with all those who are affected by these decisions. However, information so far received suggests that there are a relatively small number who have paid tax on their rental subsidies and, the additional costs associated with this group of employees are not, therefore, expected to be significant and are expected to fall within the overall figure referred to in my response to Question 1 (b).

Question 5

- (a) Can the President explain why such an important matter concerning the use of public Funds has not been brought to the States Assembly for debate, particularly as it involves a decision to utilise public funds to extinguish a liability not of the States but of third parties?
- (b) Would the President agree to prepare and present to the States a comprehensive report on this matter explaining in greater detail the background and legal position in relation to the parties concerned, and would he give an undertaking to members that no action to inform the employees concerned formally, to commit the States of Jersey to any particular action, or to implement any decision, will be taken until such time as all States members have had the opportunity to assess the report and decide what action is appropriate?

Answer

- (a) The Finance and Economics Committee has determined that this is a legitimate use of public funds.
- (b) Although I am prepared to bring a comprehensive report to the States should States members request it, the Policy and Resources and Finance and Economics Committees have been advised that a legal obligation now probably exists. (Please see my answer to question 2(a).) The Committees therefore believe that the payments should be made and I do not believe a further report will be of any great value in the circumstances.