

**WRITTEN QUESTION TO THE CHIEF MINISTER
BY DEPUTY G.P. SOUTHERN OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 24th MARCH 2009**

Question

Will the Chief Minister inform members of the extent of the tax information that can be exchanged with the respective authorities in the UK and France under the Tax Information Exchange Agreements (TIEAs) and, in particular, whether such information extends to Jersey-based -

- a) Funds;
- b) Trusts;
- c) Income both earned and unearned; and
- d) Savings and bank deposits

held by UK and French taxpayers?

Will he further outline the conditions that HM Revenue and Customs and its French equivalent have to satisfy, through Court actions or otherwise, in order to justify such exchanges and will he also state whether these 2 agreements differ in any significant ways from previous agreements such as that with the United States authorities?

Answer

All the TIEAs signed by Jersey, including those with the United Kingdom and France, are based on an OECD Model Tax Information Exchange Agreement. They provide for requests for any information that is foreseeably relevant to the administration or enforcement of the domestic laws of the parties concerning taxes covered by the Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes or to the investigation of tax matters or the prosecution of criminal tax matters in relation to such persons.

Under the terms of each Agreement each party shall ensure that it has the authority, in accordance with the requirements of the Agreement, to obtain and provide, through its competent authority and upon request:

- a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- b) information regarding the ownership of companies, partnerships, collective investment schemes, trusts, foundations and other persons, including information on all persons in an ownership chain; and
 - (i) in the case of collective investment schemes, information on shares, units and other interests;
 - (ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries;
 - (iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries; and
 - (iv) in the case of persons that are neither collective investment schemes, trusts or foundations, equivalent information to the information in sub-paragraph (i) to (iii).

The wording of each Agreement may differ slightly but the overall coverage is the same except that earlier agreements such as that with the United States, did not refer to foundations as there was no such vehicle in place in Jersey at the time. However, all of the elements referred to by the Deputy are covered in the Agreements entered into.

In the case of Jersey the authority to provide the information requested is provided by the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008.

All of the TIEAs, including those with the United Kingdom and France, also include the following requirements to be met when a request for information is made, which requirements are based on the OECD Model Agreement

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“Any request for information shall be formulated with the greatest possible detail possible and shall specify in writing:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) the nature of the information requested and the form in which the requested party would prefer to receive it;
- (d) the tax purpose for which the information is sought;
- (e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting party, with respect to a person identified in sub-paragraph (a) of this paragraph;
- (f) grounds for believing that the information requested is present in the requested party or is in the possession of or obtainable by a person within the jurisdiction of the requested party;
- (g) to the extent known, the name and address of any person believed to be in possession of, or able to obtain the requested information;
- (h) the statement that the request is in conformity with the law and administrative practices of the requesting party, that if the requested information was within the jurisdiction of the requesting party then the competent authority of the requesting party would be able to obtain the information under the laws of the requesting party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (i) a statement that the requesting party has pursued all means available in its own territory to obtain the information, except those that will give rise to disproportionate difficulty”.

Some media comment has suggested that the requirements to be met for a request for information to be responded to are such that few requests are made. It is worth repeating that the requirements referred to are those set out in the OECD’s Model Agreement which was adopted by the OECD Member States. Reference has been made to the fact that only five requests have been received from the United States since the Agreement was signed in 2002. However, the Agreement provided that in respect of civil tax matters the Agreement did not come into force until 1 January 2006 – as had been agreed at the time of signing and was also in the OECD Model Agreement. The five requests received have therefore been for the period since the 1 January 2006. All requests received from the United States authorities have been responded to positively and promptly. The United States authorities have always indicated that they do not expect to make many requests. One reason for this is that the fact that the information they require from a tax payer can be obtained under the terms of the TIEA will normally mean that the tax payer will make the information available voluntarily, the tax payer recognising that such cooperation would be viewed favourably by the US Tax Authorities. The US Tax Authorities have expressed their satisfaction and gratitude for the assistance given by the Jersey authorities in respect of those cases where requests have been made.