WRITTEN QUESTION TO THE MINISTER FOR TREASURY AND RESOURCES BY DEPUTY G.P. SOUTHERN OF ST. HELIER ANSWER TO BE TABLED ON TUESDAY 12th OCTOBER 2010

Question

Notwithstanding his answers to oral questions on tax avoidance on 28th September 2010, will the Minister now supply the figures requested for the numbers of tax assessments challenged by the Comptroller of Income Tax under the provisions of Article 134 of the Income Tax (Jersey) Law 1961, along with the tax recovered for the past 10 years?

Will he further confirm –

(a) that all of these cases have concerned the conversion of revenue into capital;
(b) that no cases have been brought under any of the 6 other categories of tax avoidance raised in my question;
(c) whether "deferred taxation" for companies has a role in the Jersey taxation system, and if so, to what extent this has the result of reducing tax returns from companies?

Will he also state what the effective rate of taxation of Jersey companies was for finance and non finance companies in the 2008 assessment year and what the estimate of the effective rates for these sectors is for 2010?

Answer

The Comptroller can only provide details for the years 2004 to 2010 (to date) as 2004 was the first year detailed statistics were recorded. No records have been kept of actual tax recovered in each case.

Total number of tax assessments raised = 2,140
Amount of investments on which Article 134A has been applied = £170 million

(a) All of these cases have concerned conversion of revenue into capital.

(b) The provisions of Article 134A have been used in other cases but have not necessarily required the Comptroller to raise an income tax assessment to counteract the loss or reduction of tax. Professional tax advisors regularly approach the Comptroller for tax rulings and confirmations of the tax treatment of, for example, new company structures, re-structuring or other tax planning schemes. The Comptroller does warn some tax advisors that he would regard the structure, re-structuring or other tax planning scheme as an avoidance transaction on which he would invoke Article 134A and that would be sufficient for the advisor to seek an alternative tax planning scheme. This deterrent effect is unquantifiable. But it does exist and remains very important in deterring individuals from avoiding or reducing their liability to Jersey tax. The Comptroller does not keep a central data base of such tax rulings, all such rulings being kept in the individual file concerned once the ruling is made and the case settled. Such rulings may well have involved one or more of the categories that the Deputy has identified.

(c) It is not absolutely clear what the Deputy means by "deferred taxation ". But if he means 'deferral' of tax under the deemed distribution regime for trading companies, deemed interim dividends are not assessed to tax on the Jersey shareholder until the end of the company's following financial period. This means that the first full year when deemed interim dividends will be declared will be the year of assessment 2010. So very little data is available at this time to measure deemed interim dividends. However, the Comptroller is generally aware from professional tax advisors that many shareholders are withdrawing the majority, or all, of the profits out of the company. This appears to be for a number of reasons:

1. The shareholder has to withdraw the profits from the company as that is his only or main source of income.
2. The shareholder wishes to keep his tax affairs simple and avoid deemed interim dividends and in turn avoid increased compliance costs.
3. The shareholder does not wish to build up tax due on undistributed profits at some point in the future. He would rather keep up to date by paying the tax he owes on his company's profits year by year.

Effective rate of taxation of Jersey companies for finance and non finance companies in the 2008 year of assessment:

Finance companies and non finance companies – 19% - 20%
IBC (finance and non finance) – between 0.5% and 2% but 30% on non international activities, with a designer rate of more than 2% available for international activities. [Note that the IBC regime was removed and is no longer available to new companies. Those companies which currently benefit from this regime can only do so until 31 December 2011, as agreed with the EU Code Group. They will then revert to either finance or non-finance companies and therefore be subject to tax at the relevant rates applying to those companies.]

Estimate of the effective rates for these sectors for 2010.

Finance companies – 10%
Non finance companies – 0%
IBC - finance and non finance 'grandfathered' to 2011 - as above

[Utility, property development and property rental companies – 20%.
IBC companies – see note above]