

3.13 Deputy G.P. Southern of the Minister for Treasury and Resources regarding investigations under Article 134A of the Income Tax (Jersey) Law 1961:

Will the Minister state the number of income tax investigations into transfer pricing, re-invoicing, licensing, thin capitalisation, corporate restructuring, inversions or the transfer of local ownership of non-finance companies to foreign ownership, thereby taking advantage of the Zero/Ten rules under Article 134A of the Income Tax (Jersey) Law 1961?

Senator P.F.C. Ozouf:

Can I ask Deputy Noel to be rapporteur for this question?

The Bailiff:

Very well, Assistant Minister.

Deputy E.J. Noel of St. Lawrence (Assistant Minister for Treasury and Resources - rapporteur):

This question will take a little longer than the customary 90 seconds to answer and I ask for Members' patience. I presume from the nature of this question that the Deputy is primarily referring to the potential for Jersey to be used for the evasion of international tax. Investigations instigated and undertaken by the Comptroller of Tax can only be in respect of suspected evasion of Jersey tax by Jersey taxpayers. Jersey cannot instigate an investigation of the avoidance of non-Jersey tax by a taxpayer. This is the same as in any other country. However, though it is actively involved in the exchange of information programmes, Jersey can, and indeed does, assist other countries to investigate their own taxpayers who might seek to use Jersey to avoid tax in other countries. In respect of the transfer of locally-owned companies to foreign ownership there is potential scope to avoid the deemed distribution rules. If a Jersey taxpayer structures his affairs so that it looks like his investment in a Jersey company is foreign-owned, he might indeed be trying to evade Jersey tax. In this case the rules apply to indirect holdings as well as direct holdings and so such structures will be challenged by the Comptroller when they come to his attention. To date there has not yet been any investigations in respect of such transactions as Zero/Ten is in its infancy and the Comptroller is only now starting to receive the information in respect of transactions that would fall under the new rules.

The Bailiff:

Deputy Southern, do you wish a supplementary?

3.13.1 Deputy G.P. Southern:

Yes. In fact the Assistant Minister has misinterpreted the question. The question was intended to refer to Jersey tax on Jersey companies and not international tax. Nonetheless, all of these mechanisms are mechanisms used by international companies and recognised internationally to avoid paying tax - not evade paying tax but avoid paying tax - and I just wondered, in the light of the previous answer which seemed to refer only to capital gains as the means to avoid tax, whether any such investigations were taking place in Jersey about avoiding Jersey tax?

Deputy E.J. Noel:

If the Deputy means that he is referring to Jersey local companies being transferred to foreign ownership he is mistaken as the majority of Jersey companies pay tax at zero per cent and so, therefore, there is no tax to avoid. The structures he refers to will not avoid the deemed distribution rules. The 10 per cent companies are often owned by companies resident in higher jurisdictions, so there would be no benefit in trying to avoid the Jersey taxation. The 20 per cent companies could not avoid Jersey tax, as usually in such structures they are charged 20 per cent tax by their deemed activity such as utilities. This all points to the view that he is talking about Jersey individuals trying to evade tax by trying to transfer their ownership of their Jersey assets offshore. That is a blatant breach of 134A and as such the Comptroller would pursue that with vigour.

3.13.2 Deputy G.P. Southern:

The question was how many pursuits have there been? Is the answer zero or is the answer a definite figure?

Deputy E.J. Noel:

I have already answered that in the first question. To date there has not been any investigation in respect of transactions under Zero/Ten as it is in its infancy and the Comptroller is only just now starting to receive the returns that will enable him to carry out any investigations should he see fit.

The Bailiff:

Very well, we will move on to the next question then which Senator Ferguson will ask of the Minister for Health and Social Services.