

**WRITTEN QUESTION TO THE CHIEF MINISTER  
BY DEPUTY G.P. SOUTHERN OF ST. HELIER  
ANSWER TO BE TABLED ON TUESDAY 10th JULY 2012**

**Question**

“Will the Minister explain to members why it is not in the Island’s interest to join Guernsey and the Isle of Man in signing up to the automatic information exchange under the European Union (EU) Savings Tax Directive?”

To prevent any repeat of the recent K2 publicity and to improve our reputation for transparency, will the Minister explain whether the coverage of the EU Savings Tax Directive will be extended to include disbursements from Jersey based trusts to residents in the UK and elsewhere and, if not, why not?

Will the Minister also state whether the introduction of a requirement for full public disclosure of the ultimate beneficial owners of all companies registered in Jersey has been considered and, if not, why not?

Will he further state whether the introduction of a requirement for all Jersey based paying agents (i.e. banks, trust administrators, company administrators, etc) to declare income and capital distributions to persons resident in the UK and elsewhere in the world to the Jersey tax authorities, in order that the Island authorities are able to meet their commitment to co- operate with international exchange of tax information has been discussed with regulators and, if not, why not?”

**Answer**

The question is in four parts and they are taken in turn as follows –

**First paragraph**

When in 2004 Jersey agreed to help the EU Member States in the implementation of the EU Savings Tax Directive (EUSD) the initial thought was to follow the Member States in adopting automatic exchange of information. However when a key competitor among the Member States, Luxembourg, and others, decided to favour the withholding tax option Jersey, along with Guernsey and the Isle of Man, considered that it should follow suit to protect its economic interests. However the agreements signed with each of the 27 EU Member States provided that as soon as all the Member States adopt automatic exchange of information Jersey would do the same.

The question posed is why is Jersey’s position different from that of Guernsey and the Isle of Man both of whom have adopted automatic exchange of information for the EUSD without waiting for the EU. The answer lies in the fact that Jersey has a different business mix and therefore a different degree of competitive pressure. This is reflected in the fact that the finance industry in Guernsey and the Isle of Man saw less competitive threat from the early adoption of automatic exchange of information than the industry in Jersey. Jersey’s position, as explained to and understood by officials in the European Commission, has remained that Jersey should not be expected to bear an economic cost from making a change which the EU Member States

themselves cannot agree on. Accordingly, Jersey continues to wait for the Member States to set a date for when automatic exchange of information would apply to all 27 Member States.

### **Second paragraph**

Luxembourg and Austria are currently blocking progress on the planned extension of the scope of the EUSD to cover trusts and companies. Jersey has indicated to the European Commission that it is prepared to give further support to the EU by providing for the extension through the necessary amendment to the existing EUSD Agreements with the individual Member States. However, it has also been mentioned to the Commission that it may prove difficult to obtain the States' ratification of the amended Agreements if at that time Jersey is being discriminated against by Member States in allowing access to financial markets within the EU.

The next step is for the Member States to agree on the mandate to be given to the European Commission to negotiate amendments to the existing EUSD agreements with non-EU jurisdictions. We have been informed that once that mandate has been agreed negotiations will commence with Switzerland and, when it is clear that good progress is being made, negotiations will be opened with the Crown Dependencies and other associated or dependent territories. We are therefore waiting on the EU, for the extension of the existing EUSD Agreements to cover trusts and companies is not something that can be done independently of the EU.

### **Third paragraph**

On the matter of the availability of information on the ultimate beneficial ownership of companies registered in Jersey, we are currently recognised as a leader. Information is available both in the company registry in respect of all Jersey incorporated companies and in the hands of the regulated trust and company service providers in respect of companies administered incorporated in Jersey and elsewhere.

At a recent Tax and Crime Forum held by the OECD in Rome Jersey was held up by the World Bank as the example for others to follow in complying with the current international standards. Specifically it was stated that Jersey leads the way in combining effective company registry requirements with the rigorous regulation of trust and company service providers to ensure that beneficial ownership information is available. Mention was also made of the fact that in the World Bank report on "how the corrupt use legal structures to hide stolen assets and what to do about it" the Jersey model is used to describe the conditions under which the company registry can be considered a viable option for providing beneficial ownership information. At meetings of FATF working groups the USA also has referred to Jersey as a leader, and has indicated that because of resistance from individual States such as Delaware they believe it is unlikely that they will be able to get agreement in the foreseeable future on the placing of the same high level of obligations on those providing trust and company services.

Jersey is committed to complying with all relevant international standards. Currently there is no indication of international support for the full public disclosure of ultimate beneficial ownership. None of the international standard setters have proposed this. The FATF has just revised its recommendations and issued a new interpretative note on beneficial ownership which states that countries should ensure that either; (a) information on the beneficial ownership of a company is obtained by that company and available at a specified location in their country; or (b) there are mechanisms in place so that the beneficial ownership of a company can be determined in a timely manner by a competent authority. Jersey fully meets the latter requirement, as independent assessments have shown.

If in the future the international standard setters agree on a global requirement for public disclosure of ultimate beneficial ownership Jersey can be expected to respond to this alongside other countries. In the meantime we will watch with interest the steps taken by the USA, UK and others to match Jersey in the availability of information on beneficial ownership which can also be accessible when it is properly required.

**Fourth paragraph**

The Island authorities continue to honour their commitment to co-operate in the international exchange of information in accordance with current international standards. To-date 115 requests for information have been received and in no cases have those approached for information presented any difficulty in supplying the information requested. Where required this includes information on income and capital distributions to the taxpayer concerned. As with other countries who are similarly meeting their international obligations, and in an equally satisfactory way, Jersey's ability to meet the current international obligations does not call for a general and extremely burdensome requirement to be placed on all institutions to declare all income and capital distributions to persons resident in the UK and elsewhere in the world to the Jersey tax authorities.