

**WRITTEN QUESTION TO THE CHIEF MINISTER
BY DEPUTY M. TADIER OF ST. BRELADE
ANSWER TO BE TABLED ON TUESDAY 17th APRIL 2012**

Question

Given that in March 2011, the then Deputy Chief Minister, was due to sign a Tax Information Exchange Agreement with India when he reportedly spotted clauses in the document which 'could have put Jersey at a competitive disadvantage', would the Chief Minister advise whether the document had been reviewed by senior island officials and , if so, whom?

Had the clauses which the then Deputy Chief Minister found unacceptable also been viewed by those officers, did they share his opinion and, if so, why did they not identify these issues up before the trip to India?

What justifications did the officers give for not identifying a problem existed?

Answer

The questions asked can be best answered by providing the history of the negotiation and signing of the Tax Information Exchange Agreement (TIEA) with India, as follows –

1. The TIEA was negotiated, as are all TIEAs, by the Adviser – International Affairs in the Chief Minister's Department and the Director of Tax Policy in the Treasury and Resources Department.
2. In the negotiations with the Indian authorities the latter indicated that they wanted included in the agreement an article (Article 8) regarding assistance with the collection of tax claims. This reflected similar provisions in the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters which the G20 was encouraging jurisdictions to sign and which India fully supported.
3. The Indian authorities gave Jersey to understand that it was their intention that Article 8 would be included in all their TIEAs. In addition the finance industry represented that the completion of an Indian TIEA was important because of India's business potential and the threat that if a TIEA was not signed Jersey would be included on a proposed Indian blacklist. In concluding the negotiations it was recognised however that before the agreement could be ratified the States would have to have been asked to approve the legislation necessary for Article 8 to be put into effect.
4. As with all TIEAs, and in accordance with the terms of the Letter of Entrustment issued by the UK that enables the Island authorities to negotiate TIEAs and DTAs in their own right, the TIEA with India was cleared with the UK authorities before the signing.

5. As the Deputy Chief Minister (also in his capacity as Treasury and Resources Minister) was making a promotional visit to India in March 2011, organised in conjunction with Jersey Finance, together with the Assistant Chief Minister with responsibility for external relations, arrangements were made with the Indian authorities that the TIEA signing should take place in New Delhi during the visit. However while Ministers were in India concerns were raised about the effect of the inclusion of Article 8, including the effect of the information received concerning TIEAs signed by India with Bermuda and the Isle of Man, which were not on the public record until February 2011 that indicated that, contrary to the previous understanding, all the TIEAs being negotiated by India did not include the article concerned.
6. The Deputy Chief Minister sought advice from officials in Jersey and following consultation with the Council of Ministers and Chief Minister, Indian authorities were asked to remove Article 8 from the TIEA. However they explained that the TIEA had been approved for signing at Cabinet level and the article could not be removed without Cabinet approval which would not be able to be sought while the Jersey delegation were in India. It was also indicated that there was no certainty that the Cabinet would approve the amendment requested because of the importance attached by the Indian authorities to the provisions in the article which were seen, in common with the equivalent provisions in the OECD/Council of Europe Convention, as making a valuable contribution to the success of the efforts by the Indian authorities to track down and recover the proceeds of corruption.
7. The option remained for the TIEA including Article 8 to be signed with ratification being left until the States had approved the necessary legislation to bring the TIEA with the article concerned into effect. However, following further consultation with the Council of Ministers and the Law Officers, the Deputy Chief Minister made the final decision not to sign and that a separate agreement between the Competent Authorities should be negotiated after the visit relating to the coming into effect of Article 8.
8. An agreement was then negotiated, and signed by the Treasury and Resources Minister as the Competent Authority, which provides that the provisions of the TIEA in Article 8 will not be put into effect until -
 1. The OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters comes into force in respect of Jersey (India has already signed and ratified the Convention), subject to any reservations entered into on behalf of Jersey in connection therewith; or
 2. Jersey starts giving administrative assistance in connection with tax claims to any other country or jurisdiction.

The States would also need to have passed the necessary legislation.

9. The TIEA was signed by the Deputy Chief Minister in London at the Indian High Commission on the 3rd November 2011.