

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M. TADIER OF ST. BRELADE
ANSWER TO BE TABLED ON TUESDAY 29th JANUARY 2013**

Question

Will HM Attorney General advise whether the United Kingdom government has any legal power to prevent Jersey signing the proposed FATCA with the USA and, if so, can he explain the legal and/or constitutional basis for this can be found. And, in this eventuality, what appeals mechanisms does the Island have against this decision?

Answer

A FATCA agreement concluded between Jersey and the United States of America would be an international agreement which can normally only be entered into between sovereign states.

Jersey is not a sovereign state and as such has no power to enter into international agreements without the consent of the Crown, in right of the Government of the United Kingdom (hereafter referred to as "the UK").

The UK has, however, allowed Jersey to enter into international agreements relating to taxation information under a letter of entrustment dated the 23rd November 2009. It has further entered into an agreement with Jersey on the 1st May 2007 known as the "Framework Agreement" under which it is agreed that Jersey will develop its international identity.

Accordingly, the UK should consent to the conclusion of a FATCA Inter-governmental agreement made on appropriate terms between the United States of America and Jersey.

There is no right of appeal, per se, but should the UK unreasonably withhold consent to such an agreement then that decision may be amenable to Judicial Review in the High Court of England and Wales.