

3.14 Deputy M. Tadier of the Chief Minister regarding an investigation into aggressive tax planning schemes:

Given the Chief Minister's assertion last year that: "There is no wish or need to accommodate or to give encouragement to those who seek to involve Jersey in aggressive tax planning schemes" (Hansard, 26 June 2012) will the Chief Minister carry out an investigation to ascertain the extent to which these schemes are used in the Island, to confirm his position in this matter?

Senator I.J. Gorst (The Chief Minister):

Last year I met with finance industry representatives. We agreed on the importance when deciding on what business to undertake of taking into account the reputation of the Island as well as their own reputation and generally applying what has been referred to as the sniff test. I am confident that this message has been taken on board by all concerned. However, one of the recommendations arising from the McKinsey study is that there should be created a Sound Business Practice Committee, one of the rules of which would be to identify business practice in Jersey which may conflict with Jersey's aim to be an international finance centre which supports only legitimate business and recommend action to address activities not in line with this aim. The Steering Group that is to progress all the McKinsey's recommendations on which government, the regulator and industry are represented met on Monday and the creation of the Sound Business Practice Committee is being actively progressed.

3.14.1 Deputy M. Tadier:

There is a lot in there and I thank the Minister for his initial response. There is an issue, is there not, I would ask the Chief Minister? Because, of course, aggressive tax planning, which the Minister denounced only a year ago, is perfectly legitimate and legal and seems to be practised by some elements within the finance industry. So, how is it that this sniff test will be applied? Does that sniff test have any teeth, if you excuse the mixing of metaphors? Does the person who is performing this sniff test have the prerequisite olfactory senses to be able to sniff-out anything that is not quite right? Is there any legal basis for that?

Senator I.J. Gorst:

I think the Deputy knows the answer to the question before he has asked it. He also, from previous questions in this Assembly, knows that this is not a straightforward but a complex area and arises from complex tax codes in other jurisdictions. As I said, I have spoken to finance industry representatives. They themselves are aware that when they are taking on business they should have regard to Jersey's reputation across the world as they have regard to their own reputation. I believe that they take those issues seriously. I believe that we can have confidence that they are doing so.

3.14.2 Deputy R.G. Le Hérissier:

Does the Chief Minister not think there is a real issue building-up as evidence that in a radio interview with a banker from the African sub-continent on Radio Jersey this morning, namely that McKinsey is moving the Island away from Europe where business is clearly becoming undertaken in a much more hostile environment and looking to other areas of the world like the Far East and Africa? Does he not think our ability to apply the tests of which he is so proud is very limited, as indeed did that speaker on the radio this morning? It is very limited when we are operating in markets where there are different cultures, where there is considerable distance and where we do not probably know the market to any extent as we appear to know the European market?

Senator I.J. Gorst:

I cannot agree with that at all. Of course, different markets are looking for different characteristics from their financial services. We know that in the Middle East and in the Far East

confidentiality and privacy is a very important factor when they are choosing either a provider or a jurisdiction. We should not stand aside from that. As the Deputy knows, we are in the process.

[11.30]

We have initialled a FATCA Agreement with the United States Government. That is a global standard. We have reached agreement with the United Kingdom Government, because of our long historical association. We watch with interest the move to automatic exchange and we are waiting the outcomes of the G5 pilot, the G8 initiative, the work that the O.E.C.D. (Organisation for Economic Co-operation and Development) is doing. We can be proud of our record when it comes to meeting relevant international standards and we will continue to do so in the future.

3.14.3 Deputy R.G. Le Hérissier:

Just a clarification. Could the Chief Minister then confirm that the standards which he applies to one part of the world will indeed be applied with the same rigour and in exactly the same fashion to the new markets which he is seeking?

Senator I.J. Gorst:

These are jurisdictional issues and I would expect financial services companies in our Island to apply these tests to business across the board. It is absolutely right and proper that they do so, that they consider the best interests of Jersey and of their organisation when taking on new business. I do not think that is any doubt.

3.14.4 Deputy G.P. Southern:

Can we get down to practicalities? Can the Minister name the company in Jersey that does a conduit for the Jimmy Carr scheme, for example? Can he assure Members that officers have talked to representatives of that company and the company has withdrawn from that activity?

Senator I.J. Gorst:

I cannot and I do not believe that that is my job to do so. Those organisations are regulated by the Jersey Financial Services Commission. They will be authorised individuals and therefore they will be reviewed appropriately in that regard.

3.14.5 Deputy G.P. Southern:

Supplementary, if I may then? Will the Minister ensure that the J.F.S.C. (Jersey Financial Services Commission) talks to that company and can assure him that they have withdrawn from such activities, which do damage our reputation?

Senator I.J. Gorst:

I have made my position quite clear with regard to the role of the Jersey Financial Services Commission, as the Deputy ought to remember when I answered questions on this last year. They were one of the parties that I spoke to with regard to having regard to Jersey's international reputation and our best interest.

Deputy G.P. Southern:

I would have thought a year later the Minister might know that officers have spoken to this company and have arranged to make sure they are not doing it. It is a year on.

3.14.6 Deputy T.M. Pitman:

Deputy Southern has asked my question. However, I would ask, following the Chief Minister's answer, he said it is not his job that such scams, I would say, as K2, are regulated. Clearly they are not regulated very well. Does that not suggest to the Minister that a bit more of, perhaps, a personal interest from himself is required to ensure that we do not get these damaging episodes?

Senator I.J. Gorst:

We are starting to refer back to press coverage which happened in the United Kingdom last year. I said a lot in that regard and Members seem to have forgotten that. I suppose that is a hazard of my position. With regard to K2, it was a U.K. promoted product. It had U.K. advice and it just so happened that it was administered in Jersey. As I said at the time, it could have been administered in any other jurisdiction and to some extent that can happen to any jurisdiction. So, I do not think I have anything further to say in that regard.

3.14.7 Deputy T.M. Pitman:

Supplementary, if I may? The very fact Deputy Southern, I think, was trying to get across, what has been done? It is fine to say this happened last year, but what has been done. I accept it is not the Chief Minister's job to do it, but surely he should be finding out what has taken place.

Senator I.J. Gorst:

We certainly know that the United Kingdom Government have brought forward a G.A.A.R. (General Anti-Avoidance Rule) and they will be bringing that into their legislative programme and therefore I hope that that will ensure that schemes similar to that are no longer able to be promoted from the United Kingdom.

3.14.8 The Connétable of St. John:

If a Member has evidence of malpractice, would the Minister be prepared to put a paper together with P.P.C. on a way forward, so we do not have to wash our dirty linen off-Island?

Senator I.J. Gorst:

I am not quite sure how that question is connected. But, I do feel that perhaps the mover of the initial question was trying to dig themselves out of a hole with some comments that they made recently which from my regard seem to have no basis in fact or reality and now he is trying to move the argument on to one which is aligned with my own and this Government's position.

3.14.9 Deputy M. Tadier:

It seems that the sniff test does work, but it only works when it is carried out by foreign journalists who make their way to the Island to sniff out some of the dirt themselves, which is not done satisfactorily by our own Ministers, it would appear. Can the Chief Minister confirm that he is guilty of cognitive dissonance? Because on the one hand he tells the BBC last year quite openly that he has no desire to see aggressive tax schemes used in Jersey. He said: "I have every intention of ensuring that this message is received and understood by all concerned." Yet, he has told us today that he does not even know or seem to care which company was employing the K2 scheme that Jimmy Carr and many others were involved in using Jersey. So will the Minister confirm that what he is saying is that we do not want aggressive tax planning if there is reputational damage to Jersey, but aggressive tax planning is quite fine so long as there is no reputational damage to Jersey in any way and it does not matter because we will not check those things anyway?

Senator I.J. Gorst:

Absolutely not: I am concerned about Jersey's reputation. This Government continues to, as I said, comply with relevant international standards. My position with regard to aggressive tax planning remains and it is quite clear. I am afraid that my position appears over the recent publicity and time to be at odds with the Deputy, who does not wish to base his comments on fact and on evidence, but simply seems to read them in a book and then pass them off internationally as facts. Perhaps, we in this Assembly have a duty, while of course being free to say whatever we like under freedom of speech, but we have a duty to ensure that when we are talking about our main industry - and let us not forget the livelihoods of our constituents - to at least deal with facts when we are doing so.

3.14.10 Deputy M. Tadier:

The Minister obviously has a duty not to make statements which he has no intention of following up, saying on the one hand that: “We do not want aggressive tax avoidance, but we will do nothing to prevent it and I am not interested in setting up any investigations into whether it exists, because I can talk with impunity in Jersey and no one cares about that.”

The Bailiff:

The question, Deputy, is ...?

Deputy M. Tadier:

Of course, the Minister will agree with that?

Senator I.J. Gorst:

I could not disagree more. It seems that the Deputy has forgotten what I said only 10 minutes ago in my opening answer to his question, which is very important and he cannot for one moment say that I or we as a Government will do nothing. As he knows, we have initialled an agreement with the United States Government on F.A.T.C.A. (Foreign Account Tax Compliance Act). We have come to agreement with the United Kingdom Government with a U.K. F.A.T.C.A. That is not doing nothing. That is proudly putting ourselves at the forefront of international standards and meeting our obligations to our neighbours. It is not doing nothing, but it is based on fact. It is understanding the reality of the financial services industry in our community and the benefits that they bring to our community and not as some other Members seem intent on doing in this Assembly and outside of these shores.

Deputy M. Tadier:

All words and no action.