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3.9 Deputy G.P. Southern of the Minister for Treasury and Resources regarding the ‘tax gap’ and measures to combat practices contributing towards tax avoidance: [9696]

Will the Minister list the mechanisms that may be used to contribute to the tax gap between tax revenue expected and that produced from business and personal taxation? How many times and to what effect have rulings under Article 134A of the Income Tax Law been made and what further measures, if any, are envisaged to clamp down on tax practices that contribute to tax avoidance?

The Connétable of St. Peter (Assistant Minister for Treasury and Resources - rapporteur):

Jurisdictions that have produced and published tax-gap analysis would typically identify the loss of tax revenue arising from 3 types of behaviours. Firstly, the amount of tax loss from people making innocent mistakes or misunderstanding their obligations; secondly, the amount of tax lost from tax avoidance where people enter into arrangements that could be strictly legal but contradict the intention of the law and, lastly, on deliberate tax evasion. That is confirmed in the 2017 Budget statement: “Jersey will commence work on calculating its tax gap in the summer of 2017 and it is estimated it will take approximately 2 years to complete.” Returning to Article 134A, it is the Comptroller’s general anti-avoidance provision: “Where the Comptroller is of the opinion that the main purpose or one of the main purposes of a transaction is the avoidance or reduction of an income tax liability, the Comptroller can change the person’s income tax assessment to negate the purpose of tax benefits.” That is one of the mechanisms. This general anti-avoidance provision has proved an effective tool in countering the impact of abusive behaviour and deterring taxpayers from considering putting tax planning in place. In respect of the use of Article 134A, general anti-avoidance provision in 2015, the latest complete year which data is available, our Taxes Office has challenged 75 taxpayers in respect of investments worth approximately £18 million, which, on their face, did not produce taxable income. As a result of those challenges income will be deemed to rise on approximately £7 million of these investments and will be taxed at the appropriate rate. The Taxes Office is continually seeking to address tax avoidance, for example, as part of a global common reporting standard initiative ...

The Deputy Bailiff:

Minister, I must interrupt you, you are well into the 30 seconds normally allowed for an answer. I appreciate it is a complex question but I wonder if you are able to bring your answer to a conclusion.

The Connétable of St. Peter:

Apologies, Sir, it is a complex question. I just want to make sure that Members understood the full implications of what 134A does in protecting us from tax. Do I have your permission to continue? I will not be too much longer, hopefully, Sir.

The Deputy Bailiff:

For a short while only ...

The Connétable of St. Peter:

Thank you very much, Sir. I very much appreciate it. As part of the 2017 Budget the Minister has proposed changes that will require local financial institutions to provide relevant information on Jersey taxpayers directly to the Taxes Office. Work to review existing sanctions against tax avoidance and evasion is currently underway in the Taxes Office. Only thinking will be considered by

the ministerial steering group for the review of personal income tax in the first quarter of 2017. The Taxes Office will, of course, be looking at best practice work worldwide. On the back of this work the intention is that during 2017 and 2018 the Minister for Treasury and Resources will table new legislation that will increase the costs and penalties for deliberately evading tax and, for example, for incorrect tax declarations where carelessness or recklessness has been involved. Nearly finished, Sir.

The Deputy Bailiff:

I am going to notionally add an additional minute to the time allowed for this supplementary ...

The Connétable of St. Peter:

Thank you very much, Sir. In advance, if it is tougher for any work we will be offering a disclosure opportunity in 2017 which will provide all taxpayers with an opportunity to put their tax affairs in order. Thank you, Sir, and thank you for your consideration.

3.9.1 Deputy G.P. Southern:

I would have been grateful for the opportunity to ask a supplementary earlier.

[10:45]

Because what I want to find out is twofold, one, what mechanisms are expected to be in place to avoid paying tax, either under 134A or otherwise? Secondly, what estimate since the Minister for Treasury and Resources decided to investigate it, it must be significant sums involved, otherwise it would not be worth doing. If it was only tuppence ha'penny you would not be looking. What sort of estimate does he think might be being avoided at this stage.

The Connétable of St. Peter:

The Deputy did ask what measures are there in place to avoid tax; I think those are the words he used. I hope there are no mechanisms to avoid tax. What we are putting in place is many mechanisms to stop people from avoiding tax, using Article 135A in its extended form. If I am wrong, I will give way to the Deputy, Sir.

The Deputy Bailiff:

No, it is not a question of ... you can answer the question, I am afraid, Connétable, or you can ...

The Connétable of St. Peter:

Okay. Sorry, I have missed the second part of the question by deviating.

The Deputy Bailiff:

I think it was how much might be lost was the second part of the question.

The Connétable of St. Peter:

Yes, that is a piece of work that is being done and that needs to be done. Certainly some work was done in the United States on why we cannot compare Jersey with the United States. They estimated over there that 42 per cent of tax is not collected, particularly from the black economy, that is cash in hand, and there is no reason to suspect that we are very far different from that. That is one area of work that needs to be looked at, particularly where we know there is tax avoidance. However, having said that, most of those tend to be in more labouring classes, where you are hiring a handyman and the cost of chasing them would probably be far in excess of the amount of tax it would yield from taking it through a processor.

3.9.2 Senator S.C. Ferguson:

Will the Tax Department be looking at the use of companies by local residents in order to avoid tax?

The Connétable of St. Peter:

I think I covered that in the first part of my answer. We will be looking at that and all of their tax affairs will need to be disclosed to the Taxes Office.

3.9.3 Deputy M. Tadier:

I am sure in the past it has been said that we are one of the most tax compliant places in the world in terms of efficiency of collecting money and loss, if you like, in terms of the overall yield. Is that still the case or has something changed or is it basically the jury is still out on whether that is still the case?

The Connétable of St. Peter:

Unfortunately the Deputy is asking me to pass an opinion and that would be possibly misleading. I cannot give him a definite answer, has it changed. I would expect it has not, but that is an opinion.

3.9.4 Deputy M. Tadier:

I suppose maybe to phrase the question in a different way: do we know the statistics of estimates being made within the Treasury Department of how tax efficient we are in collecting revenues that are due? We know that for the large part tax returns are basically done on honesty for people to declare what they have earned. That goes a certain way, but what statistics and hard facts does the Assistant Minister have to base this review on?

The Connétable of St. Peter:

I cannot give the Deputy the actual figures because we do not have those figures. All I can say is that in Jersey we have a low, broad and simple tax regime, which encourages people to comply more than ones that have much higher rates of tax, where there is a lot more to gain from those higher rates of tax for the individual. My assumption would be, with confidence, that we are still performing well compared to other jurisdictions.

3.9.5 Deputy G.P. Southern:

Again, what I would like the Assistant Minister to focus on is the areas which are causing concern, because obviously you would not be going to look at the tax gap if you did not think there was a tax gap there, and whether it is between the £80 million income tax that we get from business taxation or it is the £400 million we get from personal taxation, where is the emphasis going to be between business and personal taxation in seeking to correct what might be seen as the tax gap?

The Connétable of St. Peter:

The Deputy raises a good point there. I think the main focus is on where people deliberately contrive to avoid paying tax. That is where I think the greatest benefit will be found, by employing a wider use of Article 134A to enable us to challenge much more strongly these measures. Jersey is a very professional financial institution and people with monies will go to lawyers to find a way to get around paying more tax. Article 134A enables us to challenge those devices they may use to ensure we can get as much as possible from them. It is keeping our focus on that part of the work, extending the penalties, hopefully dissuading more people from going through avoidance measures which are contrary to the spirit of the law. That is what we hope to do.