

2017.11.14

## **2.6 Deputy M.R. Higgins of the Chief Minister regarding correspondence in respect of the prospective blacklisting by the European Union of Jersey as a financial services centre: [1(609)]**

Will the Chief Minister advise Members whether Jersey is one of the 53 territories that have reportedly been warned via letter to make changes to their tax code or they may appear on a European Union black list that is expected to be finalised in December; or whether any other similar correspondence has been received in relation to potential blacklisting or suggested non-compliance of Jersey as a financial services centre?

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

We have received a letter from the E.U. code group which welcomes Jersey's co-operation so far and confirms the latest stage of analysis. The letter invites a commitment to discuss the group's concerns that a lack of legal substance requirements could lead to profits being registered here that do not demonstrate appropriate economic activity. The letter says the code group will not recommend Jersey's inclusion on a list of non-co-operative jurisdictions if we commit to addressing their concerns by the end of next year.

### **2.6.1 Deputy M.R. Higgins:**

A supplementary? Does not the Apple example show up exactly that we are not doing what they want us to do? May I ask, has the U.K. Government also withdrawn its support of Jersey falling on the blacklist?

### **Senator I.J. Gorst:**

Maybe I will take the second point first. No, the U.K. Government is working very closely with all 3 Crown Dependencies. I was in London again yesterday discussing this very issue. I will have a telephone conversation later this week with Treasury Ministers. I will be in Brussels again next week discussing with the commissioner and various member states. The United Kingdom is extremely supportive; they understand, as Senator Ozouf said earlier. The previous U.K. Prime Minister said it is no longer fair to call us a tax haven; that is absolutely right because of all the action that we have taken. But we want to continue to work with the European Union, the member states, the Commission, the code group. The Deputy will recall I was in Rome recently meeting the Finance Minister, meeting the chairman of the code group. We want to continue to work with them to ensure that they understand the substance requirements that we currently have that the Commission undertake and where we might continue to refine our processes and, if necessary, legislation to ensure that we can continue to give confidence.

### **2.6.2 Deputy G.P. Southern:**

Just for clarity, can the Chief Minister confirm that that is just over a year in which to come up with the substance test that he was talking about earlier, a rigorous substance test? Can he inform to us at this stage how he expects that to affect the some-30,000 companies that are registered here but do very little business here?

### **Senator I.J. Gorst:**

We get to the heart of the Deputy's view on financial services in Jersey, do we not, in that one single question? A lack of understanding of what is happening in financial services and a suggestion that we have got 30,000 companies that are doing very little. He is not right. He knows that the regulator when it is giving licences to regulated entities carries out substance work. As I have

already said this morning, we are a centre of substance, we are not just a brass-plated jurisdiction. The challenge for us now, as I have been talking about for a number of weeks - it is not new - is how we can give confidence to our European neighbours that we are a jurisdiction of substance and how we can work with them to continually refine our processes, our systems, if necessary legislation, to continue to give that confidence.

### **2.6.3 Deputy G.P. Southern:**

It seems to me that what the E.U. are saying to us is that our substance test currently is not rigorous enough and that we have to come up with a new substance test which is more rigorous within around a year. Is that not the case?

### **Senator I.J. Gorst:**

It is about understanding. It is about the European Union member states largely having a different legal base to us. They are civil law jurisdictions, they like to see something written in legislation in black and white. We do not always take that approach. We have processes, we have policies and procedures where the work is being undertaken, as I have said, by the Commission before it issues licences to regulated entities. Then we need to go on and consider how we can develop these tests so that we can give confidence about a substance that we have here.

### **2.6.4 Senator P.F.C. Ozouf:**

Would the Chief Minister agree that the E.U. is a highly-political body? It is a political process, just as Deputy Southern has every right to ask the questions he does; he comes from a particular political stable. It is in fact the O.E.C.D. that is the real expert body that one must look to for guidance in terms of compliance and not simply some of the statements that I have certainly heard made by some E.U. politicians which seem to be certainly using the opportunity of the Brexit discussions for perhaps making certain observations of Jersey in relation to the British Overseas Territories and Crown Dependencies and the linkage to the U.K. But it is the O.E.C.D that matters, would he agree?

### **Senator I.J. Gorst:**

The Senator is absolutely right. The international standard setter, rightly in this area, is - and should be - the O.E.C.D. and that is why we in Jersey are signed up to the multilateral instrument. It is why we have signed up to the B.E.P.S. inclusive framework. It is why we brought forward legislation about country by country reporting. These are tests which in themselves will give confidence to the E.U. about the substance that we have here, that we have got nothing to hide, that we have got nothing to be afraid of. If we look at capital economics, we can see the value of centres like ours. Sometimes in Europe that value is not well understood. Equally, we have to be alive to the reality that we are geographically in Europe. We have always taken, for the last number of years, a good neighbour relationship policy with the European Union, particularly when it came to changing our corporate tax structure to comply with the Code of Conduct requirements at that point. We continue to take that good neighbourly policy and the Europeans will admit, quite freely, that the international standard is set by the O.E.C.D. but they are looking for something more enhanced, something over and above the international standard. Of course, as we go through this work over the coming weeks, months and years, the right approach should be that if the Europeans want to enhance a standard, they should do that together with the O.E.C.D. so that it becomes a global standard, that there is a global level playing field. Because if there are real issues that they are concerned about they want to address they can only ...

### **The Deputy Bailiff:**

Minister, if you could bring your answer to a conclusion.

**Senator I.J. Gorst:**

I will stop now ... they can only be addressed on a global basis.

**2.6.5 Senator S.C. Ferguson:**

For clarity, we hear that we need a substance test, what other concerns is the Chief Minister going to be addressing?

**Senator I.J. Gorst:**

It is about giving confidence about the substance requirements that we already have and the processes that we already have in place and refining and continually looking to see how we can meet concerns and relevant international standards. That is where I am focusing on at this current moment in time, but officials are, as I have said, actively engaged with the B.E.P.S. inclusive framework and there are various elements of that which we, as progress is made on that global standard, will need to consider as well.

**2.6.6 Deputy C.F. Labey of Grouville:**

Is one of the reasons we appear on some of the global blacklists because of our Zero/Ten tax regime? Should we be looking at our tax structure as a whole and how it best serves our community?

**Senator I.J. Gorst:**

Let us be clear, we do not sit on any global blacklists. We do sit on some individual sovereign states' blacklists; they are very different things from a global blacklist. We are absolutely committed to ensuring that we are not listed later this year by the European Union. The issue there is that, of course, there is the gateway test about having a zero rate of corporation tax. If you go through that gateway, then you have a whole load of other tests. We have been in dialogue, answering questions for the Code of Conduct Group in this regard and will continue to engage for a successful outcome for Jersey.

[10:45]

When I was earlier - I lose track of days, as you well know - I think it was at the end of October in Brussels speaking to the tax officials of the permanent representatives' offices, they all said to me that they were not concerned about zero, but they wanted to have more confidence around substance and that is why we are working in those particular areas.

**2.6.7 The Deputy of Grouville:**

I believe we sit on Brazil's blacklist and Brazil is one of the fastest-growing global economies. It is that that my question was based on and I would like to know if he believes by having a Zero/Ten tax regime, which I believe is why we sit on that blacklist, if we ought to be looking at that. Thank you.

**Senator I.J. Gorst:**

Forgive me, I thought the Deputy was asking about a global list. She is quite right, as I said, we do sit on some countries' blacklists, and she is also quite right in regard to Brazil, and there are some others, where they simply list jurisdictions with a tax rate that they do not like, so it is not just zero, it is any tax rate. In some cases, there is quite a complex formula which would mean that even if we had a 20 per cent corporate tax rate as a standard rate, we would still be on those lists. So it is not quite as straightforward as the Deputy suggests. The External Relations Department of course have done a lot of good work in getting us off some of the E.U. member states' individual country lists and

we got off those lists as we have signed agreements to exchange information with them, even though we might have got on to that list because of our rate of corporate tax.

**2.6.8 Deputy M.R. Higgins:**

Listening to the Chief Minister where he is flitting from and to, I feel sorry for him. In fact, I wonder what is his Minister for Treasury and Resources and Minister for External Relations doing in this particular field. How often are they out of the Island fighting for Jersey's corner?

**Senator I.J. Gorst:**

Senator Bailhache is often out of the Island, as the Deputy knows. More recently perhaps not as frequently, but he will be increasing his overseas visits very shortly, certainly at the end of this month. We are a small jurisdiction and important interlocutors and Ministers around the globe unfortunately expect to see the Chief Minister. Therefore, I have little choice, not that there is a choice at all. I am here, I serve at the pleasure of the Assembly to do what I think is best for Jersey and its future. That often means, particularly in times of heightened interest as we are now, I have to get on an aeroplane and get out there and bang the drum for Jersey and explain to Ministers, senior officials around the globe, what we do, why we do it, and why we are part of the solution to delivering jobs and growth around the globe and not part of the problem.

**Deputy M.R. Higgins:**

Can I ask the Chief Minister, he did not explain what his Minister for Treasury and Resources was doing? I asked specifically.

**The Deputy Bailiff:**

Well, I am sorry, that was the final supplementary, Deputy. The Chief Minister has answered in the way that he has.