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2.4 Deputy S.Y. Mézec of the Chief Minister regarding the introduction of a ‘substance test’ to assist Jersey in playing its part to prevent the operation of aggressive tax avoidance schemes: [1(613)]

In light of the disclosures in the “Paradise Papers”, what work, if any, does the Chief Minister intend to do to introduce a ‘substance test’ to assist Jersey in playing its part to prevent aggressive tax avoidance schemes from being able to operate?

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

We do not want abusive tax avoidance schemes operating in the Island. We expect companies to pay the tax that is due in the jurisdictions where it is owed and we expect financial services providers to abide by our voluntary code. I believe we should find a way to assess the substance of companies that claim tax residence in Jersey, both locally incorporated companies and those incorporated elsewhere. I will work with the Minister for Treasury and Resources and the Minister for External Relations, together with their officers, to address this issue to ensure Jersey continues to be known as well regulated, responsible and internationally co-operative as a finance centre.

2.4.1 Deputy S.Y. Mézec:

It is possible that I missed it but when this was in the news last week I was listening to the statements that were made by Chief Ministers of other Crown Dependencies and overseas territories and I did not hear what sounded to me like a reference to a substance test from representatives from these other jurisdictions. Could I ask the Chief Minister if this idea is something uniquely Jersey in this sense or is it something he would be working with other jurisdictions to do the same thing across those as well?

Senator I.J. Gorst:

We would be here all day if we did dissect everything that was said during the course of last week with regard to these particular leaks. I have said for a long time, Senator Ozouf when he very ably supported me in this role has said, that Jersey is a jurisdiction of substance. The regulator carries out substance tests before it gives licences to regulated operators. The issue for us today is how we ensure that those who look at our model have confidence that we are a jurisdiction of substance, and I have said for a while that we must continue to ensure that we can give confidence in that regard. That is not an issue which is unique to Jersey. It is an issue and a desire which I believe is certainly shared by my fellow Crown Dependencies.

2.4.2 Deputy M. Tadier:

In the field of politics we are told from a very early stage when you send an email, or anything like that, how would you feel if it ended up on the front page of the *J.E.P. (Jersey Evening Post)* or a national paper. That is ultimately the test of whether or not what you do can be justified. Now increasingly places like Jersey, rightly or wrongly, are being called secrecy jurisdictions and in the leaks recently it was quite clear that Apple, while trying to get assistance from the law firm Appleby, were quite keen to maintain a confidentiality and secrecy. So could it be argued that if the same tests were applied to people taking business how would you feel if this information were leaked? Could you justify it both legally to yourself but also to government in line with government policy? Would that not be a sufficient test to apply?

Senator I.J. Gorst:

I know you are going to stop me from speaking too long but there, in that long question, were a myriad of questions. The test about how our reputation is perceived, not only by our big brands but by the global community, is really important and I have lots of conversations, particularly with our large banking brands, about reputation and how we and they are aligned in ensuring that we have a positive reputation. But if I might just drill down a little bit about the Apple situation. The Deputy will know that the I.C.I.J. (International Consortium of Investigative Journalists) quite clearly said that there was nothing illegal in what Apple were doing in claiming tax residency here. Importantly, the Deputy has tried to say that they were being secret.

[10:15]

They were not being secret about what they were doing. They informed the Irish authorities, they informed the European authorities, and they informed the U.S. (United States) authorities. I do not see how that can be described as being secret. On the other hand, for us here, we know that client confidentiality is an important part of what we offer. We are absolutely prepared and signed up to all the latest standards to exchange information automatically and on request, if jurisdictions require further information. In the case of Apple, as I have said, nothing illegal. They informed the relevant authorities, which is exactly what we would expect them to do. We will exchange information automatically to those relevant authorities going forward as well and we also have agreements in place where they can ask for further information. But equally, like we expect confidentiality with our own bank accounts, the client confidentiality that we offer is important and must be respected.

2.4.3 Deputy G.P. Southern:

I am glad the Chief Minister suggested that this was not illegal. My question is directly relevant to that. In his understanding of what action Apple and Appleby took in this particular situation, does he consider that those actions were either aggressive or abusive tax abuse?

Senator I.J. Gorst:

I have been quite clear, we have no wish here and it is a criminal offence to endeavour to commit tax evasion, and it is an offence for the individual who even unwittingly might facilitate that. We also have no desire to be used for abusive or aggressive tax avoidance schemes. We have been quite clear about that. I refer the Deputy to the statement that Apple themselves issued a week ago today about the process that they had undertaken, confirming to relevant authorities. I also reiterate that officials have requested any documentation from the I.C.I.J. if they are aware of any wrongdoing. To date they have refused to provide that documentation. Without that documentation I am not prepared and it would not be right for me to prejudge.

2.4.4 Deputy G.P. Southern:

Would the Chief Minister mind answering the question, which was what was his interpretation on his understanding of these actions whether the actions were aggressive or abusive tax avoidance, as he knows full well?

Senator I.J. Gorst:

I believe that I did just answer that question. Let us remind ourselves, as well, that in Apple's own press release they said that they were paying exactly the same amount of tax that they were paying when those companies were tax resident in Ireland. So they are not reducing their tax liability by moving their tax residency. Without the further information that the I.C.I.J. may or may not hold, which may or may not show any wrongdoing, it would not be right for me in this forum to prejudge.

2.4.5 Senator S.C. Ferguson:

The systems described were perfectly legal. According to Lord Clyde an individual is perfectly entitled to use legal means to avoid tax. Something I believe about H.M.R.C. (Her Majesty's Revenue and Customs) and a shovel. But is it not time the Chief Minister gave firmer, clearer support to our industry, or robust support even, when they are unfairly pilloried rather than merely saying: "We may have to alter our law."?

Senator I.J. Gorst:

I think the quote that the Senator used is perhaps being challenged by international perception and the international community and is a quote that we would have to and we consider carefully. Jersey is a jurisdiction that signs up to all relevant international standards. More than that, we are party to ensuring that they are provided on a global level playing field. We signed up to the Common Reporting Standards to automatically exchange information. We signed up to the O.E.C.D. (Organisation for Economic Co-operation and Development) base erosion and profit shifting. This Assembly is approved country by country reporting legislative changes. We absolutely compete on showing we can meet those relevant international standards, on showing that we are a jurisdiction of quality, on showing that we are a jurisdiction that where evasion is a criminal offence and, on top of that, which is often where I get challenged, that we do not want to be used for abusive and aggressive avoidance. I believe that that is the right position to take. I believe that that is the position that is understood, not only by the Government of the United Kingdom but also by governments around the world, importantly our European friends as well, and I will, and I do, defend what happens here in Jersey. I am proud of the financial services industry that we have in Jersey. I think if we look at reports like *Capital Economics* we provide great benefit to the United Kingdom: 250,000 jobs, £500 billion worth of upstreaming. We are delivering growth and jobs around the globe and we should be proud of it and I am.

2.4.6 Deputy M.R. Higgins of St. Helier:

Can the Chief Minister explain what he thinks a substance test should be? Can he confirm that Apple have got substance in the Island or have they merely just booked the US \$252 billion that they have offshore in the Island or did it not come here at all? Can he please explain?

Senator I.J. Gorst:

As I said, I could comment on every speculative comment that was made either in the reporting on the television or subsequently in various papers. It would not be right for me to do so. The Deputy, I would have expected, has also seen a media release that the Jersey Financial Services Commission issued late last week as well which ties in exactly with what Apple said in their release about having tax residency in Jersey, and therefore I think the assumption can be made, although we have to be careful not to jump to assumptions, that the money in those companies is invested around the globe. The Deputy also knows that the test in the Income Tax Law about mind and management can be met in one way, the tests and base erosion and profit shifting and country by country reporting can be met in another way, and what I am committed to, together with the other departments, is making sure that we can show the test in various pieces of legislation stand up and are understood and accepted, are set to specific because a test cannot be the same right across any type of company. A test for a trading company and a test for an investment company, one would expect to look very different indeed. That is what we are going to work to deliver.

2.4.7 Deputy M.R. Higgins:

In terms of a supplementary, the Chief Minister said Apple are paying the same tax as they did before. My understanding is that the money was transferred from Ireland to Jersey where they pay

no tax and then was transferred back to Ireland so it is paying the same tax. Will the Chief Minister confirm if that is the case or not?

Senator I.J. Gorst:

I have no idea where the Deputy has got his understanding from at all. He obviously has not looked at the information released from the Jersey Financial Services Commission. He obviously does not understand what tax residency means. He obviously does not understand that a company which is a non-Jersey company and where it might hold its investments, its assets and its cash and how they operate. I am slightly surprised that he has made the comments he does knowing his experience in financial services.

2.4.8 Senator P.F.C. Ozouf:

Would the Chief Minister agree that the portrayal of Jersey by *Panorama* was unbecoming of the BBC and we frankly would have expected better. Would he further agree that in fact Senator Ferguson might well be reminded of some of the defences of the finance industry that have been made vigorously and to worldwide audiences when such other supposed leaks of information has been done? Would he particularly remind the Assembly of the phrase that is being used that Jersey is not a tax haven? Jersey is not the problem. If other countries would have applied the same exacting standards, like having a beneficial ownership register available to law enforcement agencies, and if they did not have complicated tax rules the world would not have had the problems that effectively the “Paradise Papers”, through leaked information, exposed in other places but not in Jersey.

Senator I.J. Gorst:

I have got to say I was surprised by the way that the media coverage unfolded, particularly in regard to the 2 programmes that the Senator referred to. Particularly when they seem to spend the majority of the programme telling their viewers that there was nothing illegal. The Senator knows, he and I have stood on the steps of Downing Street defending Jersey, what we do, our record to the worldwide community and he and I, even in our respective roles, will continue to do so. The response on every situation will not be identical, nor should it be identical, because what we see happening in the media is not always reflective of what is happening behind the scenes. We will make the decision that we make in Jersey’s best interest. Sometimes that will be difficult. Sometimes we will be criticised for the way that we have responded on the particular issue. That is because we are aware of other things happening and we need to speak to those other things which are happening. We need to align and accord with those voices and show to those important decision makers that we understand what is happening, that we are prepared to make difficult decisions and we will continue to do so. If the rest of the world had followed our model, particularly around beneficial ownership, being an early adopter of the Common Reporting Standard, being part of the B.E.P.S. (Base Erosion and Profit Shifting) Working Group, then I think the global level playing field and the way that we deal with tax transparency would be in a far better place than it is today. But I am hopeful that others will continue to ...

The Deputy Bailiff:

If you could bring your answer to a close, Minister.

Senator I.J. Gorst:

... follow our standards and we will see progress.

2.4.9 Deputy A.D. Lewis of St. Helier:

Would the Chief Minister agree that there is a very big difference between confidentiality and secrecy; and that confidentiality, when providing professional services, is absolutely paramount to maintaining our representation? Therefore, what is the Chief Minister doing to encourage and progressing further the highest possible standards of cyber security in Jersey? What can his Government do to assist with that?

Senator I.J. Gorst:

That is an excellent question because it gets to the nub of the world in which we now live. Some of my interlocutors earlier last week were somewhat resigned that the way we hold information now and the way that we hold it digitally means that we are going to have to expect more and more of this sort of behaviour: criminal hacking, leaking by disgruntled employees. I think that, again, out of a difficult situation positive action can come. We know that the Jersey Financial Services Commission has got the best record, I think, on the Island of managing its information from a technological perspective. We know that we have got a cyber security strategy and that is being acted upon and that we have put resource aside. What I hope that this does is ensure that every single finance and business service on this Island takes a second look at its own cyber security strategy and enhances it because it is going to be absolutely fundamental into the future. The Deputy is right, there is a big difference between client confidentiality and secrecy. If our bank details were put into the public domain, there would be uproar. It would be a breach of data protection. That is client confidentiality. Secrecy is where we do not exchange any information with other relevant authorities.

The Deputy Bailiff:

Chief Minister, if you could bring your answer, please.

Senator I.J. Gorst:

We do, we have been clear, and will continue to.

2.4.10 Deputy S.Y. Mézec:

It may well be early days at this point but in the statement that the Chief Minister put out last week, it made reference to amending our legislation to introduce a substance test which would represent a tangible action towards this aim. Does the Chief Minister have any sort of idea about what the process to getting to that point may look like, when he would envisage anything coming before this Assembly to be considered and how he would seek to consult on any such legislation beforehand?

[10:30]

Senator I.J. Gorst:

It is early days. We need to further and better understand the concerns that the European Union has about substance, but I expect to be in a position to bring forward a number of measures which can be simply thought of as constant improvements to the system that we already have in place. I expect some of those measures we will be talking about and perhaps bringing forward for consultation prior to the election next year. I cannot begin to imagine that if there are in those constant improvements to be statutory changes, that will have to happen after the election, but we are going to work together to understand further where concerns are about substance and then how we can address them.