

2018.11.20

12 Deputy G.P. Southern of the Minister for External Relations regarding the economic substance test that would apply to internationally-owned companies incorporated outside the Island but trading through it: [OQ.204/2018]

What a waste of time the last 5 minutes was. Let us see if we can get any further on this one. Further to his reply to written question 252/2018, will the Minister state whether internationally-owned companies incorporated outside the Island but trading through the Island will be subject to his economic substance test and will he further confirm whether he has a record of where such companies do pay tax and why they do not register in the Island to take advantage of Jersey's tax regime?

Senator I.J. Gorst (The Minister for External Relations):

I have little further to add to the answers already provided to this question by my Assistant Minister, the Constable of St. Ouen, at the previous meeting of this Assembly.

3.12.1 Deputy G.P. Southern:

If I may, does the Minister have a register of those excluded from this test and can he confirm how the right to be excluded has been established?

Senator I.J. Gorst:

I am not sure what the Deputy is asking me. Is he asking me whether we know which companies are Jersey tax resident or not? I am not sure what he is asking me.

The Deputy Bailiff:

I will allow a further supplementary. Please, do ask a further supplementary on that one, I think.

Deputy G.P. Southern:

In answer to your question of my question, the key question is: does the Minister have a list of those to whom the economic substance test does not apply? What conditions are placed on that to get on to the list in establishing whether they should be excluded?

Senator I.J. Gorst:

I am wondering if the Deputy has read the legislation and read the consultation document. Perhaps he might like to come along to a briefing for States Members tomorrow. These are quite detailed areas. He, I think, understands the principle of tax residency but his question seems to indicate that he does not. I am sure he has read about relevant activities in the legislation and I am sure he understands the adequate level of certain activities and the basis upon which this test has been worked through. I am sure he understands the definition arising from the Forum on Harmful Tax Practices, the work that officials have done with the O.E.C.D. (Organisation for Economic Co-operation and Development) peer review group, but he seems to think there is a reverse operation. I am struggling to understand exactly what it is that he is asking me about on this piece of legislation.

The Deputy Bailiff:

We come to the final supplementary, Deputy, in any event. If there is a way you would wish to ... I am sorry, I beg your pardon, Deputy Tadier, you have only just put your light on.

3.12.2 Deputy M. Tadier:

Can the Minister explain how the economic substance test differs from what was previously called the sniff test by his predecessor, if there is any difference? If not, why the change in the name?

Senator I.J. Gorst:

I know there are some Members of this Assembly who wilfully misunderstand any changes that we bring forward, wilfully misunderstand any moves that we make to ensure ...

The Deputy Bailiff:

Senator, I do not think you can accuse people of wilfully misunderstanding because that is an intention to say something which they do not mean. Perhaps you would like to withdraw that and deal with the matter in a different way.

Senator I.J. Gorst:

If you suggest that wilfully misunderstanding is inappropriate parliamentary language, then I will withdraw from using such a phrase. Of course I will. I will be guided by the Chair. But it seems to me that the Member is fully aware that the work that we did with Jersey Finance and the regulator about not wilfully avoiding the will of other Parliaments and working particularly in the case of the United Kingdom and changing the code of practice that members of J.F.L. (Jersey Finance Limited) signed up to around aggressive tax avoidance, I would have thought that the Member understood from reading this piece of legislation that that is quite different from the substance test that I have brought forward in that piece of legislation. I would not have thought that the Member needed to ask a question to understand the differences.

3.12.3 Deputy M. Tadier:

First of all, welcome back to the Minister, we have missed him in the Assembly recently in some key debates. It is good to have him back. I am interested, for one, to know how the progression of policy and the evolution of policy exists when we had a previous Minister for External Relations who talked about this nebulous sniff test which was applied almost mysteriously. I am glad that we now have an economic substance test. Could the Minister talk about the way in which that is applied? Is it done by feeling or is it done systematically by going through various criteria and making sure that all are robustly adhered to? Perhaps he could seek to publish some more information for my colleague Deputy Southern. That might provide clarity rather than seeking to grandstand as he has been doing for the last few minutes.

Senator I.J. Gorst:

Might I say what a pleasure it is to be back. It never ceases to amaze me that some Members of this Assembly so openly side with our critics. We have a financial ... and now they are tutting and muttering, but I am afraid that is the case. The Deputy knows the work that the previous Government undertook in regard to ensuring that Jersey was not used for aggressive tax avoidance. He is fully aware of that. We have debated that and discussed it in this Assembly. He also now has in front of him a piece of legislation, so not nebulous as he tries to indicate, a piece of legislation that I will be asking this Assembly to approve at the sitting commencing on 3rd December. He, I think as he said, has seen the consultation document. From that and from the legislation, together with the codes of practice, he should be able to see that this is a thorough test proving once again a point which the Deputy has questioned in this Assembly, that Jersey is a jurisdiction of substance and we meet the highest international standards. We have an international finance centre in Jersey that I for one - and I think the majority of Members agree with me - am proud of. **[Approbation]**

3.12.4 Deputy G.P. Southern:

Ad hominem attacks again on my neighbour. The final supplementary then must be: does the Minister have a register of where internationally-owned companies incorporated outside the Island, trading through the Island, do transact their business and what evidence does he have that such companies pay tax in another place?

Senator I.J. Gorst:

This is a test which is built around tax residency in Jersey. If companies which use Jersey seek to have Jersey tax residency, then this tax will apply to them. It does not matter whether they are a Jersey-registered company or a registered company somewhere else across the globe. I have to be careful now, Sir, you having corrected me once in the use of wilful misunderstanding. I would not wish to attribute that to him because I would fall foul of your ruling. But he seems to misunderstand upon which basis the substance test is based. If international companies which are not tax resident here were to seek a tax relief here, then of course the tax authority would be aware of that. Perhaps that is the area that the Deputy is trying to ask about.