

STATEMENT ON A MATTER OF OFFICIAL RESPONSIBILITY

2. The Chief Minister made a statement regarding the United States Foreign Account Tax Compliance Act

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

I am making a statement about negotiations on the U.S. (United States) Foreign Account Tax Compliance Act and on related negotiations with the United Kingdom. There will be reference to these matters in the U.K. (United Kingdom) Budget today. As Members will be well aware, F.A.T.C.A. (Foreign Account Tax Compliance Act) seeks to limit the evasion of U.S. tax by placing reporting requirements on foreign financial institutions. Consultations with industry were completed last Friday and it is clear that industries' preference is for Jersey to enter into a F.A.T.C.A. intergovernmental agreement with the U.S. We have sought to negotiate such an agreement. This is similar to the one that the U.K. signed with the U.S. last year and to some 50 other agreements that are still being negotiated. It is generally accepted that there are real benefits for financial institutions in reporting through an intergovernmental agreement, as opposed to reporting directly to the U.S. Internal Revenue Service. Guernsey, the Isle of Man and the Cayman Islands are among the jurisdictions to share this view. Our negotiations have progressed well and we recently initialled an agreement with the U.S.A. (United States of America). The only outstanding matter is a jurisdiction-specific annex on which a response from the U.S. is awaited. Therefore, financial institutions can be assured that they will be operating under the umbrella of an intergovernmental agreement and can plan accordingly. We hope to be able to sign the full agreement, including the annex, shortly. The agreement will then be presented to the Assembly for ratification and the required regulations will be presented for adoption. When the U.S. agreement is in force, financial institutions will have until 30th September 2015 to report information relating to calendar years 2013 and 2014. The U.K. indicated to us, to the other Crown Dependencies and to the U.K. Overseas Territories, that they wished to match the position being negotiated with the U.S. That is, they were seeking a F.A.T.C.A.-type agreement exchange on an automatic basis. They found it difficult to accept that we would be giving more information to the U.S. than the U.K. in the fight against tax evasion. We were concerned that there would not be a level playing field, globally. The U.K. clarified that they regarded F.A.T.C.A. as setting the new standard in international tax transparency. We understand that the U.K. will be pressing for this at the G8 meeting in June and at meetings of the O.E.C.D. (Organisation for Economic Co-operation and Development). We, along with Guernsey and the Isle of Man, also have concerns regarding those U.K. residents who are non-domiciled for tax purposes, the so-called "res non-doms". An alternative reporting arrangement for this category of taxpayers was sought because there were concerns about the potential loss of business to competitor jurisdictions. Such a loss would affect not only Jersey, but also the U.K. economy. There was also a concern regarding the internationally-accepted view that jurisdictions should seek the same information from their own taxpayers that is being asked of another jurisdiction. At all times we have emphasised to the U.K. that we are committed to supporting them in the fight against tax evasion. We emphasised our good track record, with tax evasion having been included as an offence under our anti-money laundering legislation since 1999. We mentioned our public statements, agreed with the finance industry, that Jersey neither needs nor wishes to accommodate those engaged in tax evasion. As a vice-chair of the O.E.C.D. Global Forum Peer Review Group which assesses compliance with the international standards, we seek to lead by example. Members will be aware that Jersey has an internationally-recognised reputation which has been confirmed in assessments by international organisations such as the I.M.F. (International Monetary Fund). Having balanced all these factors, I am announcing to Members today that we have agreed a package with the U.K. similar to those committed to by the Isle of Man and Guernsey. This agreement will be referred to in the U.K. Budget today. The package is as follows: an intergovernmental agreement that, apart from certain annexes, closely follows the agreement with the U.S; financial institutions will have up to

September 2016 to exchange information relating to 2013 and 2014; an alternative reporting arrangement for the 'res non-doms', which will be included in an annex to the agreement. This will be finalised to the same timetable as the agreement currently being negotiated with the U.S; disclosure facility, full details of which will be published shortly, which will allow investors with assets in Jersey to come forward and regularise their past tax affairs. In addition to this package, the U.K. have indicated that they are happy to consider a possible renegotiation of our current Double Taxation Agreement. The package of measures will put beyond doubt Jersey's ongoing commitment to the fight against tax evasion. We have also recognised the special relationship that we have with the U.K. We will watch with interest the efforts being made by the U.K. to promote a new global standard based on F.A.T.C.A. Should such a standard be adopted internationally we will respond appropriately. For our future as an international finance centre, it is important that the international community continues to recognise Jersey as a jurisdiction that has high levels of compliance. Increasingly, the best financial institutions and investors will only want to be associated with such a quality jurisdiction. By reaching agreement with the U.S. and the U.K. on enhanced information exchange, we are making an important contribution to the future success of Jersey as an international finance centre. We intend to continue engaging positively with the U.K. and other countries in the pursuit of the global objectives of transparency and international co-operation.

[9:45]

Studies commissioned from Capital Economics and McKinseys have both shown how we contribute to the U.K. economy and to world financial markets. Ministers are at present completing an update of the Island's financial services industry strategy. This strategy is designed to continue to ensure the industry innovates, prospers and continues to be regarded as one of the world's financial centres. I have absolutely no doubt that, working together, we in government, the regulator, and the finance industry will ensure the continuing success of Jersey, to the benefit of all Island residents. Thank you.

The Bailiff:

Very well. There are 10 minutes in which Members may ask questions. Deputy Baudains?

2.1.1 Deputy G.C.L. Baudains of St. Clement:

I wonder if the Chief Minister would clarify for me with regards to this outcome whether that affects the level playing field that apparently we were waiting for before entering into agreements with one or 2 countries. I thought we were waiting for a level playing field across all.

Senator I.J. Gorst:

Hopefully, as I explained in my statement, they are exactly the arguments that we made to the United Kingdom, but we do have a special relationship with the United Kingdom and therefore we made that point, I hope persuasively, that the U.K. are absolutely committed to ensuring a global level playing field and that is why they have set their agenda for the G8 later this year. But this is an agreement about tax evasion, and we have been absolutely committed to ensuring that Jersey is not used for tax evasion, as I said, since 1999. Therefore, in light of that special relationship and of that commitment to fight tax evasion, we have agreed to this package.

2.1.2 Deputy G.P. Southern of St. Helier:

Could the Minister give some details at this stage of the disclosure facility he refers to in the second page. Is it, for example, more or less stringent than the Swiss disclosure facility?

Senator I.J. Gorst:

It will be, as I said in my opening statement, published shortly and it is based largely on the Isle of Man disclosure facility which, as I am sure the Member knows, does have differences from the Swiss facility.

2.1.3 Deputy R.G. Le Hérissier of St. Saviour:

Despite the comforting words that have been placed here about our compliance with tax evasion, would the Chief Minister not acknowledge that in fact political sentiment is also running against tax avoidance? We have seen the issues in Cyprus with Russian money, no doubt we will see this afternoon further statements from the Chancellor. Can he tell me how he intends to deal with it, because the issues, in the public mind, are increasingly merged issues?

Senator I.J. Gorst:

Be in no doubt, we are absolutely committed to the fight against tax evasion and Members will be well aware of previous statements and comments I have made in the public domain and in this Assembly with regard to aggressive avoidance. The Deputy is right that in some media representations those 2 have been merged. They are different but I am also on record as saying that aggressive tax avoidance has no place in our future either. The world is changing; we must continue to show, as we have historically, that we are a quality, well-regulated jurisdiction, we have got independent reviews that prove that, and by signing-up to and agreeing to this package today, that should, I hope in Members' minds, put beyond doubt our commitment to ensuring that we are not used for tax evasion, but we have also committed to ensuring that when businesses are taking on new business, they have regard to the reputation of Jersey at large.

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

There are 3 little things that I would like the Chief Minister to clarify. On page 2, around the bullet points, on the first one it says: "An international agreement that, apart from certain annexes, closely delivers the agreement with the U.S. F.A.T.C.A." Can you explain what they are? That is number 1.

The Bailiff:

You can only have one question.

Deputy M.R. Higgins:

A pity; I would have chosen another one, thanks.

Senator I.J. Gorst:

I do recall a previous occasion where the Deputy has asked this question, and I answered him then, therefore it is in the public domain. As I have quite clearly said, we have initialled the U.S. intergovernmental agreement but there are annexes to that agreement which the U.S., and of course the U.K. as well, are, I use the word "negotiation". Perhaps the Deputy was more comfortable with "considering together" and that is where we are. And as I said in my opening statement, we are still waiting to hear back from the U.S. in regard to that annex.

2.1.5 Deputy M. Tadier of St. Brelade:

On the eighth line of the second page the Chief Minister says: "Jersey seeks to lead by example in the fight against tax evasion." However, on the first page and on previous occasions he has said that Jersey: "Desires to see a level playing field globally before Jersey would be put in the position to have to sign up to F.A.T.C.A. with the U.K." Which position is correct? Do we want to lead by example or do we want to wait until there is a level playing field before Jersey starts to play ball?

Senator I.J. Gorst:

I am not sure they are necessarily mutually exclusive. We will, I believe, start to hear a term referred to as "fast followers" and that is a position that I think Jersey has historically been in for

a number of years. Now, we recognise that our future, and our future as a provider of financial services, is where we show that we are a quality jurisdiction; that we are complying with relevant international standards - there is no change there - but also, that we are a fast follower. So they are not necessarily against each other, those 2 positions. In actual fact, I would say that they work together.

2.1.6 Deputy M. Tadier:

A supplementary: so the Chief Minister is essentially saying that we lead by example by following others. Is that perhaps a personal way that he runs his own Council of Ministers that he is applying to the international relations?

Senator I.J. Gorst:

I think the term I used was: "fast follower".

Deputy M. Tadier:

Yes: "Follower".

2.1.6 Senator S.C. Ferguson:

None of us here agree with tax evasion, but is this, effectively, yet another instance of political bullying by the U.K. Government arising from their own inability to apply and [Approbation] simplify their own tax codes of which there are 11,000 pages?

Senator I.J. Gorst:

The Senator will have heard me say in my opening statement that one of the points that we made to the United Kingdom was that we would expect them to be collecting the same information from their own taxpayers, and in that regard she makes a very interesting point. In Jersey we have a transparent and clear tax code; other jurisdictions do not enjoy that, and I think they are rapidly realising that perhaps a simplified tax code is one way of ensuring and delivering economic growth.

2.1.7 Connétable D.W. Mezbourian of St. Lawrence:

The third bullet point on page 2 refers to: "Allowing investors with assets in Jersey to come forward and regularise their past tax affairs." Will the Chief Minister explain what is meant by the words: "Regularise their past tax affairs."

Senator I.J. Gorst:

I just thought it was quite straightforward: exactly that. We, as I said, have had anti-money laundering legislation which meant that tax evasion has been an offence in Jersey since 1999. We are confident in that, but we believe that by agreeing to this package whereby a disclosure facility would allow, if people have not been compliant, to contact H.M.R.C. (Her Majesty's Revenue and Customs) and regularise their tax affairs. We have already been doing that for a number of years through our legislation and making tax evasion an offence, and this therefore puts beyond doubt that we are absolutely committed to dealing with tax evasion.

2.1.8 Connétable P.J. Rondel of St. John:

Has Jersey gone along with the Isle of Man and Guernsey and capitulated, as we did over the fulfilment? This looks to me as a one way street. Since the Island got involved with the British-Irish Council and these regular meetings where supposedly exchange of information is happening at a certain level, a Ministerial level, will the Minister agree that sometimes our Members sitting around the table might be too free with local information to be passed across, which is, in turn, turned on its head and worked against us in the long run?

Senator I.J. Gorst:

Unfortunately, once again today, I cannot agree, with the Connétable of St. John. I do not believe that he can describe the way that this Government responded to the changes in low value consignment relief that the United Kingdom announced when we sought to have the decision judicially reviewed, as capitulation to them. Far from it; we are robust in our negotiations, we stand up for Jersey and we fight our corner as we think is best, in the interests of every individual and the economic interest of Jersey. This is a package about tax evasion. As I keep saying, we have been committed to ensuring that Jersey is not used for tax evasion since 1999. In fact, our legislation is far stronger than many jurisdictions around the world. I believe we have a record that we can be proud of and that these agreements today, borne out of our special relationship with the United Kingdom, should put that beyond doubt in anybody's mind.

2.1.9 Deputy T.M. Pitman of St. Helier:

Could I just refer to the line under the 3 bullet points, and if I can try and get 2 for one ...

The Bailiff:

No, only one.

Deputy T.M. Pitman:

Where it says: "Happy to consider a possible renegotiation of our current Double Taxation Agreement" could the Minister explain what that would involve and really why, precisely?

Senator I.J. Gorst:

We have not gone into any detail yet with a renegotiation of the Double Taxation Agreement, but as the Deputy will know, the current agreement in place is many years old and therefore needs to be brought up to date and made perhaps more fit for purpose.

The Bailiff:

That brings questions to the Chief Minister to an end.