STATES OF JERSEY

EU TAXATION OF SAVINGS INCOME AGREEMENTS: REPLACEMENT OF THE RETENTION TAX BY AUTOMATIC EXCHANGE OF INFORMATION

Lodged au Greffe on 12th November 2013
by the Minister for External Relations

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion −

to agree, with regard to the EU Taxation of Savings Income Agreements, to replace the retention tax with automatic exchange of information, as set out in the report of the Minister for External Relations dated 4th November 2013.

MINISTER FOR EXTERNAL RELATIONS

REPORT

1. The States are asked to agree, with regard to the EU Taxation of Savings Income Agreements, to replace the retention tax with automatic exchange of information.

Background

2. The States, on 22nd June 2004, adopted P.97/2004 and agreed –

   (a) to approve the two Model Agreements, as set out in the Appendix to the Report of the Policy and Resources Committee dated 14th May 2004, as the basis of the Bilateral Agreements on Taxation of Savings Income to be entered into with each of the 25 Member States of the European Union;

   (b) to authorise the President of the Policy and Resources Committee to sign these Bilateral Agreements or any documents ancillary thereto on behalf of the Island; and

   (c) to charge the Policy and Resources Committee to prepare the necessary legislative changes to enable the implementation of these Agreements for consideration by the States.

3. The States, on 21st June 2005, made Regulations providing for the bringing into effect of the Bilateral Agreements on Taxation of Savings Income entered into with each of the then 25 Member States of the European Union. Subsequently the States, on 16th January 2007, made Regulations providing for the accession to the European Union of Bulgaria and Romania.

4. In agreeing voluntarily to support the EU in the implementation of the EU Directive on the Taxation of Savings Income, Jersey, together with Guernsey and the Isle of Man, decided to follow Austria, Belgium and Luxembourg in opting for the application of a retention tax rather than the automatic exchange of information (AEOI) applied by the other EU Member States. This was also the decision of Switzerland. It was considered that this best safeguarded the Island’s position vis-à-vis its main competitors in Europe. Safeguarding the competitive position, particularly in relation to Switzerland, and reflecting a different business mix, was also the reason why Jersey did not follow the Isle of Man and subsequently Guernsey in making an earlier move to AEOI.

5. The policy has been to hold back from replacing the retention tax with AEOI until the EU has got its own house in order and Austria and Luxembourg have decided to make the move to AEOI. When the latter occurs, which is expected to be in 2015, the transitional arrangements under the EU Savings Tax Directive providing for the option of a retention or withholding tax will come to an end for Jersey. Under the terms of the Agreements entered into with all the Member States, Jersey would then also be obliged to move to AEOI. However, Jersey has always stated that once it is clear the EU is moving to full AEOI, it would consider whether to make a move ahead of when it would have no alternative but to do so.

Move to AEOI

6. Jersey has decided to enter into a FATCA agreement with the US and a similar intergovernmental agreement with UK; to join the UK and other jurisdictions in a pilot project on enhancing exchange of information; to support the G20 and OECD in the development of a single standard for AEOI based on the US FATCA; and to request the extension of the UK's ratification of the OECD/CoE Multilateral Convention on Administrative Assistance on Tax Matters. All of these initiatives involve acceptance of AEOI. It is clear that maintaining the present retention tax option for the EU Savings Tax Agreements is increasingly at odds with the transparency image the Island is seeking to project.

7. Of relevance for the decision on the timing of a changeover to AEOI is the declared wish of those banks that have offices in all 3 CDs to co-ordinate their systems. With the increase in the retention tax rate to 35% in July 2012, the majority of those covered by the Agreements have already opted for the voluntary automatic disclosure option.

8. The finance industry were consulted and the following views were received –

   - Most, if not all, of the High Street banks would wish to move to AEOI as soon as possible and are happy to move with effect from the date the necessary Regulations are made;

   - Some, while wishing to move quickly, would like more time to implement new systems and therefore see advantage in making the move later in 2014;

   - Some of the smaller financial institutions would like to have more time to implement systems and favour 1st January 2015.

9. Having regard to the foregoing, it is proposed that the Taxation (Agreements with European Union Member States) (Jersey) Regulations 2005 should be amended to enable all those wishing to do so to move to AEOI from the date the amended Regulations are made, and to make it mandatory that this move be made no later than 1st January 2015.

Financial and manpower implications

10. There are no manpower implications for the States arising from the making of the amended Regulations. However, under the terms of the Agreements, Jersey retains 25% of the retention tax proceeds before these are passed to the individual Member States. With the low interest rates prevailing, and the move to voluntary disclosure, the revenue from the retention tax is now lower than in the past, notwithstanding the higher rate of 35%. However, currently the States are benefitting from an income of some £2 million per annum, and this will be foregone with the replacement of the retention tax by AEOI.

4th November 2013