

2.8 The Connétable of Grouville of the Chief Minister regarding the Foreign Account Tax Compliance Act agreements between the United Kingdom and United States governments:

With reference to the Foreign Account Tax Compliance Act Agreements between the United Kingdom and United States Governments, can the Chief Minister confirm whether these agreements are proactive or reactive for practitioners in Jersey?

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

The Intergovernmental Agreement that the United Kingdom Government wishes to sign with Jersey will mirror the F.A.T.C.A. (Foreign Account Tax Compliance Act Intergovernmental Agreement that we have initialled with the United States Government. The obligations placed on practitioners in Jersey will be limited to those set out in the agreements, and to assist practitioners in meeting their obligations, we will be issuing guidance notes. The agreements will be brought to the States for ratification in due course, as will the regulations necessary to put the agreements into effect prior to which the finance industry will have been consulted. Linked to the agreement with the U.K. is a disclosure facility which, together with the necessary regulations, will be presented to the States shortly for adoption.

2.8.1 The Connétable of Grouville:

In the event that a Jersey practitioner inadvertently breaks an American law which does not exist in Jersey, will he or she be liable to rendition or prosecution and under whose jurisdiction will he be liable to be subject to this Act?

Senator I.J. Gorst:

I am surprised that that question is in order because it does not relate to these agreements. As I said, the obligations placed upon practitioners in Jersey will be clear within the agreements, and one of the reasons for the intergovernmental agreement, and the need for that intergovernmental agreement rather than direct report, is that the information is passed government to government and therefore if there are any issues which arise, they can be resolved government to government.

2.8.2 Deputy M.R. Higgins:

I am reading “reactive” in a particular way. Will the Chief Minister tell us whether, as a result of signing the agreements with the United States and the United Kingdom, other governments in Europe are queuing up, because I am aware that it appears that other governments do want similar agreements from the Island and the United Kingdom? In fact, they are pressing the United Kingdom to make sure that all Crown Dependencies and Overseas Territories enter into similar agreements. Can the Chief Minister explain whether he has been approached or whether there are any talks on this because the industry is going to have to react to those as well?

Senator I.J. Gorst:

Let us be clear. It is government that reacts and signs and negotiates agreements with other jurisdictions, obviously in consultation or after consultation with industry. As I said in my statement when we last sat in the Assembly, we are aware that the United Kingdom has this automatic exchange of information high on its agenda for the G8 later this year. Members will be aware that they have signed in-principle agreements with other European Member States only last week similar to F.A.T.C.A. and I said then, and I stand by that, that we will watch with interest the efforts being made by the United Kingdom to promote F.A.T.C.A. as a new global standard. Should such a standard be adopted internationally, we will, of course, respond appropriately.

2.8.3 Deputy M.R. Higgins:

Would the Chief Minister say that is he concerned that we may be used as a bargaining chip as part of the G8 negotiation, in other words, ensuring that information is exchanged from the Island in return for other things that the U.K. Government is seeking in the G8 summit?

Senator I.J. Gorst:

I would say that we could be used as a good example of a transparent, co-operative jurisdiction that complies with international standards, as long being involved and committed to the fight against tax evasion as shown by our 1999 law and therefore I believe that we can be used as an example for other jurisdictions.

2.8.4 The Connétable of St. John:

Are the laws that we are passing retrospective?

Senator I.J. Gorst:

As I said, those agreements will be ratified by this Assembly. I am not really sure what the Connétable means when he uses the word “retrospective” in this regard.

The Connétable of St. John:

If I could help, I will rephrase the question. If you sign the law today, will anything that happened last week or last year be taken into account?

Senator I.J. Gorst:

As I said, agreements will come to this Assembly for ratification in due course. It is not clear quite what the Connétable means, nor, what the Connétable in his opening question meant. When it comes to retrospective, of course every intermediary operating in Jersey, now will have obligations placed upon them with regard to these agreements. I am not sure that it can be seen quite in the terms of retrospective or not. It will be every intermediary operating in Jersey at the point that the agreements come into force.

2.8.5 The Connétable of Grouville:

In my original question which I was trying to dig down into, what I am trying to avoid is that we see the cases in the U.K. where citizens have broken a law inadvertently in another country and then been rendered from the U.K. into that country to stand trial for breaking a law which they did not know existed. Can he ensure, when he signs these agreements, that that is taken into account?

Senator I.J. Gorst:

We do seem to be confusing 2 issues here. As I said, the obligations within the agreements will be clear. We will be providing guidance notes to assist practitioners in meeting their obligations, and this Assembly will be asked to ratify those agreements and approve regulations in due course to bring them into force. With regard to the disclosure facility, it does oblige ourselves, that is the Government of Jersey, to require financial intermediaries to contact those of their current clients who are relevant persons to make the existence of the facility known to them. How they contact their current clients will be for each financial intermediary to decide.