

2.6 Deputy G.P. Southern of the Minister for Treasury and Resources regarding tax evasion arising from recent changes to the Trusts (Jersey) Law 1984:

Would the Minister inform Members whether residency-based exclusions recognised by recent changes made to the Trust (Jersey) Law enable tax avoidance or evasion to take place by Jersey residents and non-Jersey residents alike, and if so, how?

Senator T.A. Le Sueur (The Minister for Treasury and Resources):

I have re-read the whole of the Trusts (Amendment No. 4) (Jersey) Law that the States passed earlier this year and I can find no reference to residency-based exclusions. I, therefore, emailed the Deputy to seek clarification. He pointed me to the email referred to in a recent *Observer* article of which, unlike most States' Members, he seems to have a copy. The relevant part of that email referred to Article 9(a) of the recently passed Law. It might have better if the Deputy, in the first instance, had addressed his question informally either to me or, better still, the Comptroller of Income Tax, since the Deputy seems to have misunderstood the point of Article 9(a). The changes agreed in paragraph 9(a) of that Law enable the settlor of a Jersey Trust, whether resident in Jersey or elsewhere, to have the power to give certain directions to the trustees of that Trust without thereby making the Trust invalid. However, I fail to see what the Deputy is getting at. Jersey residents and Jersey non-residents have always had the power to create Trusts and to reserve certain powers of the settlor. They simply have to use a Trust, created under a Cayman law or BVI (British Virgin Islands) law or New Zealand law, or the law of any other jurisdiction with such facilities. All that the new Law has changed is that they can now set up such a Trust in Jersey as well.

2.6.1 Deputy G.P. Southern:

I was taking my time thinking as to where exactly I wanted to go with the particular answer that I have received. The thrust of the question is that under 'Zero/10', in response to a question asked by the Comptroller of Income Tax where he says: "If the settlor has a new power to instruct trustees", is it not possible for a Jersey resident to settle assets and property such as a Jersey Trust in property in such a Jersey Trust, then appoint, say, Guernsey resident trustees, thereby achieving a no tax situation in both jurisdictions? After several years he, the settlor, becomes a non-resident in Jersey and then instructs the Guernsey trustees as to his wishes. He gets the assets and income diverted for his own use. The question was: "Under that situation is that possible?" The answer was: "If 'Zero/10' is implemented with look through provisions, I would expect many wealthy people who might own a private Jersey investment company to simply move the assets to a company in another jurisdiction, place the shares in a company Trust and let the assets roll-up tax free."

The Bailiff:

Deputy, I did not interrupt you, but I will not allow another question of that length. Standing Orders require supplementary questions to be concise, please. Minister?

Senator T.A. Le Sueur:

The purpose of the email correspondence to which the Deputy refers was to seek to what extent the anti-avoidance powers need strengthening in the light of current practice and in the light of the move to 'Zero/10'. It is clear that this is an issue, and it is merely a matter of how serious an issue it is. Given that the arrangements that the

Deputy speaks about were already available previously, Sir, I do not see that the passing of a new Trust Law has exacerbated that to any extent whatsoever.

2.6.2 Deputy G.P. Southern:

In a further passage in the email the advisor says: "If the discretion of the trustee is fetted, i.e. powers are reserved for the settlor, there is a risk that the Trust could subsequently be attacked as a sham. For an international client these are reasons not to use a Jersey Trust." Does he agree that that risk has been made possible by the changes to the Trust Law?

Senator T.A. Le Sueur:

Risks are there in various forms the whole time, Sir, and this Trust Law simply clarifies the position for the purposes of legal certainty. It does increase a possible risk. That is why I have asked the Comptroller to make sure that that risk is quantified and, if needs be, appropriate action taken to deal with it.

2.6.3 Deputy G.P. Southern:

If I may, Sir, the Minister has referred to the size of this potential problem. Does the Minister accept that this arrangement would affect all S.P.V.s (special purpose vehicle) in the Island and would be directly affecting the E.U. (European Union) Savings Tax Directive and endangers those 2 particular methods of tax collection?

Senator T.A. Le Sueur:

That is a question, Sir, on which I am not competent to give an answer at this stage. I think if the Deputy cares to either write to me or pose a further question, I would take advice on that. The short answer is I do not think so but I would like to get my facts straight.