

OBSERVER RESPONSE

Thank you for your e-mail. You seem to have misunderstood the nature of the matter being discussed in the e-mail exchanges. I would regard it as a minor and technical matter which certainly does not lead to the conclusion you have inferred.

Jersey has embarked upon corporate tax changes to ensure that we meet our international commitment to the United Kingdom and to the EU Code of Conduct on Business Taxation. In conjunction with these corporate tax changes, we are strengthening domestic anti avoidance powers. As Comptroller of Income tax in Jersey, my involvement in these e-mail exchanges was to gain comfort that there was no mismatch between the planned corporate tax changes and para. 9a of the recently revised Jersey trust law to reassure myself that the overall effect of the the new arrangements would not be to create a risk of greater tax avoidance by Jersey residents. Any such deterrent powers, to the extent needed, would be either through a strengthened Article 134A which is the general anti-avoidance provision of the Jersey Income Tax Law or by a 'tick the box' regime for full disclosure of assets.

I am now content that I will have such powers to attack any tax avoidance of any sort arising on the domestic tax front and consider that these powers mirror those found as a matter of practice generally in most countries worldwide. It is a matter for other jurisdictions world-wide to take powers to themselves in their own domestic tax laws if they feel that their citizens are avoiding or evading their own domestic taxes.

For international clients using Jersey trusts, the introduction of clauses in the Trusts (Jersey) Law confirming the efficacy of "settlor reserved powers" simplify codify what many practitioners believe to be the current position. There is nothing novel in the proposed changes, which for example can also be found in the Trust Laws of other jurisdictions such as New Zealand and Delaware plus a number of other US States. Nor do they do anything to make tax avoidance or evasion any more likely than would be the case under the present statute – as a proper reading of the full e-mail exchanges will make clear. The intention behind the changes is to clarify and formally codify the responsibilities and obligations of the parties to the trust. We believe that a trust should be a transparent vehicle, with the declaration of trust setting out unambiguously the extent of the powers of both the settlor and trustee. The effect of the proposed changes will be to enhance transparency and accountability, something that can only be of benefit to those who establish trusts; those who administer them and, indeed, those who seek to challenge them. In actual effect, they will limit the possibility of sham trusts rather than increase it and enhance rather than reduce transparency of the overall trust settlement in the case of subsequent disputes between the parties.

As far as I am concerned this e-mail exchange was part of the usual technical and consultative processes that occur when a new law is being formulated and I cannot understand why you have jumped to the conclusion that you have in your e-mail.