

Minister spells out risks from tax avoidance

By Christine Herbert

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THERE is nothing new in recent amendments to the Jersey Trust Law which will encourage further tax avoidance, Treasury Minister Terry Le Sueur sought to assure States Members on Tuesday.

Nevertheless, there could be significant risk of tax 'leakage' under the new zero-ten proposals, correspondence has revealed.

Senator Le Sueur was responding to questions from St Helier Deputy Geoff Southern, who wanted the him to spell out any such risks and how they would be dealt with by the Comptroller of Income Tax.

Specifically, he asked about the risks from Article 9(a) of the Jersey Trust Law and whether the settlor reserved powers conferred by the law pose a risk of possible greater tax avoidance by non-Jersey residents.

His line of questioning stems from confidential e-mail correspondence between States officials about the new zero-ten tax arrangements, referred to in the Observer newspaper on 17 September and now published on the website of the Tax Justice Network, an organisation opposed on moral grounds to the activities of international finance centres such as Jersey.

In an e-mail on 13 September Income Tax Comptroller Malcolm Campbell suggests that



Senator Terry Le Sueur

one of the areas of potential difficulty is Article 9(a) and says: 'This could be problematic for tax purposes and needs to be considered carefully as it seems to me there could be tax avoidance through this mechanism.'

In subsequent e-mails both the States director of international finance, John Harris, and Paul de Gruchy, finance industry executive at Economic Development, say the changes will not make it any easier to avoid tax and are intended to bring Jersey law in line with that already established in competitor jurisdictions. But in an e-mail dated 14 September, Mr Campbell says he is concerned that there could be 'significant tax leakage' not only by the wealthy,



Deputy Geoff Southern

but also the 'middle classes'.

In the States on Tuesday Senator Le Sueur said he believed that Deputy Southern had misunderstood. 'The purpose of Article 9(a) is to give the settlor, whether Jersey resident or non-resident, the power to give directions without making the trust invalid. I fail to see what Deputy Southern is getting at,' he said.

In a supplementary question, Deputy Southern quoted extracts from an e-mail sent by Mr de Gruchy in which he says: 'If zero-ten is implemented with look-through provisions, for example, 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 of that company in a trust, and let the assets roll up.'

The Bailiff, Sir Philip Bailhache, then intervened to say that he could not allow supplementary questions of that length.

Senator Le Sueur replied that the purpose of the e-mails from Mr Campbell was to see whether there were powers in need of strengthening. 'These were all available to Jersey residents previously. I do not see that the change to the trust law has altered anything,' he asserted.

Status

Deputy Southern asked whether the potential risks would affect SPVs (special purpose vehicles) and in turn the status of the Island in relation to the European Union Savings Tax Directive.

In one of the e-mails Mr Harris says: 'If we simply lump up all regulated businesses in a general definition we will sweep up vital zero tax vehicles such as SPVs, funds etc into the ten per cent zero rate and the resulting reaction from industry and external advisors will not be pretty.'

Senator Le Sueur replied that he was 'not competent to deal with that' and that he needed to take further advice.

The Trust Law amendments in question are currently awaiting approval by the UK Privy Council.