

Jersey's 'sniff test' for tax avoidance and the case of...

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I was [amused by this exchange in the States of Jersey](#) last week in which it became clear that Jersey uses a 'sniff test' when it comes to tax avoidance, but that some members fear it has a bad cold:

3.5 Deputy G.P. Southern of the Chief Minister regarding the mechanisms by which tax 'leakage' occurs through Jersey from U.K. tax revenues:

Will the Chief Minister inform Members of the mechanisms by which leakage estimated at £600 million by the report, The Value of Jersey to Britain occurs through Jersey from U.K. tax revenues and state what measures, if any, he is prepared to take to close down any such mechanisms identified?

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

The Capital Economics Report identified tax evasion and tax avoidance as the mechanisms whereby U.K. tax leakage is estimated to occur up to a maximum figure of £600 million. The measures being employed to reduce this possible leakage include the U.K. disclosure facility, recently presented to Members, the negotiation of an inter-governmental agreement for the automatic exchange of information, and the work being undertaken by the newly formed Sound Business Practice Committee. But let us be clear, the Capital Economics Report made it very clear that overall Jersey is a significant benefit to the U.K. in terms both of tax revenue and the creation of employment.

3.5.1 Deputy G.P. Southern:

In the light of the Chief Minister's statement that he wishes to clamp down on aggressive tax avoidance schemes, will the Chief Minister attempt what his Deputy failed to do in the last session, which is to give a definition of the criteria on which he will assess the aggression level of tax avoidance measures?

Senator I.J. Gorst:

That, I suspect, is something that may come out of the work that the Sound Business Committee is producing. Up until then, I can think of no better methodology than, as I have said in the past, either a sniff test or a taste test. We are not talking about something which is defined in law and therefore it is difficult, as much as the Deputy would like us to try to be able to define it.

3.5.2 Deputy G.P. Southern:

So is the Chief Minister saying that despite his assurances to clamp down on aggressive tax avoidance, he has no criteria by which to judge those measures?

Senator I.J. Gorst:

No, I have just described them.

3.5.3 Deputy M. Tadier:

What is the level of pungency which is required for the administrator of the sniff test for aggressive tax avoidance to be able to flag up whether or not aggressive tax avoidance is the type which is not desirable in Jersey's finance industry?

Senator I.J. Gorst:

These schemes can be quite complex, as the Deputy knows. They can be open and good schemes will have counsel opinion attached to them. They will also have approval from H.M.R.C. (Her Majesty's Revenue and Customs), and therefore if those items are not attached, then I would suggest that those working in the finance industry as a first port of call would ask themselves what is the basis of this scheme. Can it be reasonably explained, or is it just seeking simply to aggressively make hay from a loophole which does not have that opinion or that approval?

3.5.4 Deputy M. Tadier:

Supplementary. What safeguards are put in place to make sure that the person or body administering the sniff test does not, metaphorically speaking, have a cold?

Senator I.J. Gorst:

This is a complex area which while I might have used those terms myself, they are not straightforward, as I indicated in my supplementary answer, and therefore cannot simply be addressed in those terms.

3.5.5 Deputy S. Pitman:

Perhaps the Chief Minister could tell us, why did the sniff test fail when we had the Jimmy Carr fiasco? Why do we always get promises and no action seems to take place,

because I think that is the reassurance that Members are looking for?

Senator I.J. Gorst:

I thank the Deputy for that question because it is after that particular incident when that scheme came to light, that this Government started talking and reaffirming that we believe aggressive tax avoidance has no place in Jersey's future. We have entered into a number of agreements, we have a number of reviews whose (a) purpose is to say that we are well regulated and meet current international standards, and (b) that we are playing our part in helping to deliver new standards and trying to ensure with the setting up of the Sound Business Committee that Jersey is not used in the future for aggressive schemes like K2.

3.5.6 Deputy S. Pitman:

Supplementary. If I could just refer the Minister back to the question. Why did the sniff test fail then because apparently all these things were already in place, us being a well-regulated offshore centre?

Senator I.J. Gorst:

As I simply indicated, it was subsequent to that coming to light that Ministers started talking about what further could we do, how could we look at these issues, and we then started talking about how those involved in the industry should consider the schemes in those lights. Are they good reputationally for the company taking on the work? Are they good reputationally for Jersey? Do they meet those other criteria that I just talked about?

3.5.7 Deputy G.P. Southern:

Will the Chief Minister, both through his Minister for Treasury and Resources or otherwise, agree to requests that the control of income tax produces examples of tax avoidance equivalent to those measures which might trigger action under 134A for individuals on the Island?

Senator I.J. Gorst:

I do not know, obviously, what that clause is off the top of my head but I am always prepared to talk to the Minister for Treasury and Resources about any issue that might arise, but let us bear in mind that these are schemes which are employed by, or generally set up and advised by, the U.K. advisers for the benefit of U.K. residents, not Jersey residents. They can simply be administered here but we believe that they have no future. This report is the first time that we have commissioned independent economists to go away and do some work. You might say we have borne everything. We have looked at what our businesses are set upon and we see from this report for the first time that we are of benefit to the United Kingdom. We have taken steps to deal

with evasion and we are taking steps to deal with aggressive avoidance, and we believe that these theoretical amounts are now being put beyond doubt. We have got the U.K. disclosure facility, we have got the factor agreements and we have got developing international standards. I believe that shows that Jersey is part of the future of international finance centres. It has got a strong record to be proud of and we are part of the solution and not part of the problem. 3.5.8 Deputy G.P. Southern:

Sir, if I may, supplementary? Can the Chief Minister clarify that we do indeed have a general anti-avoidance regulation, it is 134A, to prevent tax avoidance by our own citizens and will he talk to the Comptroller of Income Tax to discover what types of mechanisms he has intervened on under 134A to prevent tax avoidance here?

Senator I.J. Gorst: Once again, the Deputy is talking about the Jersey tax system and yet these schemes are involved and taking advantage of loopholes in other jurisdictions' tax systems so it is not the same.