

THE STATES OF JERSEY

**A SUMMARY OF RESPONSES TO
PUBLIC CONSULTATIONS ON:**

THE GST LAW

THE GST REGULATIONS

**THE TREATMENT OF THE FINANCIAL SERVICES
INDUSTRY UNDER GST**

CROWN AGENTS REFERENCE N^o: T23182

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TABLE OF CONTENTS

Table of Contents (i)
List of Acronyms and Abbreviations (ii)

SECTION	PAGE
1. INTRODUCTION	1
2. SUMMARY OF RESPONSES (AND GST CONSULTATION TEAM COMMENTS)	5
3. CONCLUSIONS AND WAY FORWARD	22

ACRONYMS AND ABBREVIATIONS

CA	Crown Agents
GST	Goods and Service Tax

SECTION ONE

INTRODUCTION

1. INTRODUCTION

This document is presented by Crown Agents, consultants to the GST implementation project.

It summarises the views expressed in the public consultations held between 28 March and 31 August this year concerning the implementation and operation of Jersey's Goods and Services Tax (GST), which is due to be introduced in 2008.

Since it is intended to provide only an overview of the comments and suggestions that have been made, and for reasons of space, it does not list in detail all of the replies received.

Where responses by the GST Consultation Team to issues raised during the consultations are included in this report, these reflect the views current at the time of writing. Any additional information received during, or after, the consultations that presents new issues, or requires re-examination of existing ones, will be carefully examined. As a result, changes will be made to the final versions of the Draft GST Law and Regulations that will be presented to the States Assembly for approval. Where the team considers that the case for change has been made, this is reflected in their comments in this report.

It should be stressed that the final scope of GST and the provisions of the GST legislation will be matters for the States Assembly to decide.

This report is divided into three Sections –

- Section One: Introduction
- Section Two: Summary of responses and GST Consultation Team comments
- Section Three: Conclusions and Way Forward

BACKGROUND

In 2004 the States agreed two major changes to Jersey's tax structure - a reduction in the general rate of tax on corporate profits, from the current 20 per cent to a rate of zero per cent for most companies but with a higher (and yet internationally competitive) rate of ten per cent for financial services providers.

These changes, known as "zero/ten" were considered to be vital to secure a sustainable economic future for Jersey since they would enable European Union demands for non-discriminatory taxes to be met, whilst combating competition from other business centres seeking to attract the highly mobile and economically important financial services industry away from the Island.

However, an effect of "zero ten" will be to reduce the States' future annual tax revenue by an estimated £80-100 million. The main impact of this is expected to be felt in 2008 and the full effect by 2010.

In order to fill this anticipated 'revenue gap' the States agreed a package of measures that included restrictions on its spending, an economic growth plan, an Income Tax instalment system, legislation to ensure that shareholders in zero per cent companies would ultimately pay personal Income Tax on their share of profits and a phasing out of certain Income Tax allowances for higher income groups.

Nevertheless, even after these provisions, there remained a £40-45 million annual revenue shortfall and some form of new tax, or taxes, became inevitable to ensure the continued provision of high quality public services.

However, in addition to producing the required £40-45 million of annual revenue, the aim was to design a tax, or taxes, which would be as simple as possible for all concerned, while maintaining Jersey's economic competitiveness and having the minimum possible impact on the cost of living and on business activities.

After detailed consideration, and following comprehensive public consultation, the States decided in 2005 to adopt a GST as the best of the alternative tax-raising measures - with a proviso that an income support scheme would be introduced to mitigate the effect of the tax on lower income groups.

In order to meet the design objectives, it was agreed that Jersey's GST should be broad-based but levied at the lowest possible rate and with the highest possible registration threshold (below which businesses would not be required to register for GST).

It was therefore decided that a single standard rate of three per cent (the lowest in the world) should be applied to most goods and services supplied in or imported to Jersey and that the registration threshold should be set at £300,000 of taxable turnover (one of the highest in the world). By comparison, the United Kingdom standard rate is 17½ per cent and its registration threshold is currently only £60,000.

It was calculated that the combination of the broad tax base and single low tax rate (capped for at least three years), would minimise the cost of administration and result in a one-off cost of living impact of only one to one-and-a-half per cent, while the high threshold would mean that only the biggest businesses would be required to register for and collect GST from their customers. (In fact, it is estimated that three quarters of Jersey businesses, about 4,500, will be relieved from the responsibilities of GST - thereby reducing the burden on smaller business and further reducing the cost of administration).

However, having decided to adopt GST, the States agreed that there should be full public consultation on the manner of its implementation and operation and that the views expressed would be taken fully into account by the States when final decisions were made on the scope of GST and the enabling legislation.

THE CONSULTATIONS

As a result, three separate GST consultations were conducted this year concerning 1). the Draft GST Law, which provides the legislative authority and framework for the tax: 2) the treatment of the Financial Services Industry under GST and 3). the Draft GST Regulations, which govern the administrative and technical procedures for the new tax.

The Draft GST Law: A policy paper, containing an explanation of GST and a guide to the various sections of the Draft Law was published on 28 March 2006. The document was intended as the basis for discussion and comment and contained details of how representations could be made. It was made available, together with copies of the Draft Law, at Parish Halls, the States Bookshop, the Customer Service Centre at Cyril Le Marquand House in St Helier and at the Public Library and both documents were published on the States website www.jersey.gov.je. Publication of the Draft GST Law policy paper marked the beginning of the consultation period. A deadline for comments was listed as 20 June but this was later extended to 30 June 2006.

The treatment of the Financial Services Industry: This consultation on the proposed special arrangements for the Financial Services Industry under GST was launched on 19 May 2006 with the publication of a discussion document. Copies of the document were available, as above, and a deadline for comments was set at 31 August 2006.

The Draft GST Regulations: A six week consultation, aimed mainly at the business community, but open to all, was launched on 3 July, with a deadline for comments set at 31 August 2006. A discussion document, providing an explanation and summary of the proposed GST Regulations was also made available, as above.

GENERAL OVERVIEW

With the exception of detailed submissions from the Financial Services Industry and business associations, Crown Agents was surprised at the relatively low level of responses to the consultations - especially in the light of the importance of GST to Jersey and the widespread publicity that it has received.

A total of over 150 written responses to the three consultations were received from individuals, groups, representative bodies and/or companies by the closing dates - more than half of which concerned a single subject.

In addition to these, a number of representations were made in response to requests made by the Corporate Services Scrutiny Panel for comments on various aspects of GST. Although not part of the main consultations, the comments made directly to the Scrutiny Panel, where obtained by the GST Consultation Team from the Scrutiny Panel website, have been included in this summary.

Throughout the periods of consultations, meetings were held (and will continue to be held) between the Treasury and Resources Minister, members of the GST Consultation Team, Crown Agents' representatives and various organisations and individuals. Most of the discussions related to points of information but, where views have been expressed, these are also included in this report.

Among the submissions received, some simply requested information. Others expressed opposition to the principle of introducing a GST system in Jersey and there were a number of demands for economies in States spending and even a reduction in the number of States members. These were, strictly, outside the scope of the three consultations and have not been included in this report.

For the sake of simplicity the comments and suggestions received are summarised in Section 2 under subject headings.

ROLE OF THE SCRUTINY PANEL

As a result of the reform of the States from committee to ministerial government, an official mechanism for the scrutiny of government activities was adopted. This had a direct effect on the GST consultations. Shortly after the launch of the first consultation on the Draft Law, the new Corporate Services Scrutiny Panel produced terms of reference for a review of GST.

Throughout the period of the consultations the Panel made requests for submissions from the public and organisations to be made directly to the Panel on various aspects of GST.

While efforts to broaden the GST debate and involve as many individuals and organisations as possible is to be welcomed, it is the view of Crown Agents that this lead to duplication of effort and added a degree of confusion in the minds of potential respondents as to where they should address their comments. A more effective approach would have been to encourage responses to the main consultations and for such responses to be copied by the GST Consultation Team to the Panel.

The GST Consultation Team's view is that the Panel's intervention on the question of GST relief for charitable organisations resulted in unjustified fears about the effects of GST and generated hostility among the organisers of charities at a time when the Treasury and Resources Minister and the Consultation Team were seeking the views and co-operation of charities to achieve an equitable solution to the complex issue of GST relief for charities. It was indicative of a desire of the Scrutiny Panel to scrutinise 'decisions' before they were made, and at a time when views were being sought in order to reach informed decisions.

Notwithstanding this, the GST Consultation Team has co-operated fully with the Scrutiny Panel and has provided all requested information. In addition, copies of all responses to the consultations have been forwarded to the Panel for information.

SECTION TWO

SUMMARY OF CONSULTATION RESPONSES AND GST CONSULTATION TEAM COMMENTS

2. SUMMARY OF RESPONSES

LIABILITY AND TAX BASE ISSUES

GENERAL

In a letter to the Treasury and Resources Minister, The Jersey Chamber of Commerce and Industry Incorporated stated that it had supported the introduction of GST since it was proposed as part of the States fiscal strategy, because it was felt that it represented the ‘least worst’ option for clawing back lost tax revenues.

In its submission, following publication of the Draft Law, the Chamber said: *“We are pleased to note that the basic principles agreed in the fiscal strategy have not changed and that it is still proposed to have a three per cent rate of tax across all goods (albeit with a limited number of exemptions) and a high registration threshold of £300,000 turnover.*

“It is imperative that every effort is made to ensure that these basic principles are adhered to, particularly in light of the inevitable pressure that will be applied by certain States members to seek further exemptions. Such exemptions will only serve to complicate the implementation process, thereby incurring additional costs and complicating matters further.”

This view was echoed in meetings with local businesses and in a written submission from a leading retailer, who stated that recent calls for exclusions to the tax that would result in a higher tax rate should be resisted at all costs in order to preserve Jersey’s price advantage over similar jurisdictions

However, this was not a universal view.

EXCLUSIONS FROM GST

A number of requests for the exclusion of certain goods and services were received and these are included below.

EDUCATION - SCHOOL FEES

By far the largest number of responses (more than 70) concerned the imposition of GST on educational services. Almost all of these were from the parents of private school pupils who called for an exemption for school fees. These represented more than half of the total of all submissions on all topics, although it was a relatively small percentage of the potential response from parents of the more than 4,000 children who attend private schools in the Island. Nevertheless, some strong views were expressed.

“Since the era of Gladstone such taxes on learning have been regarded as both ‘Philistine’ and contrary to public policy,” wrote one respondent.

Some other representative views were as follows:

“It is a basic right that every child from the age of five years to the age of 16 years should have free education. If every child now in fee-paying schools opted to take this right and the States of Jersey had to provide free education for all those children, I am sure that the Island would find it difficult to find the funds to do this.”

“While I acknowledge that the intention is to make GST as simple as possible and that, by levying it on all but a small selection of exempted goods and services, the rate will be also be kept low, there is surely an overwhelming case for exempting school fees, since those parents who opt for private education do so at considerable cost to themselves but also at a substantial saving to the States’ exchequer. If there were no private schools charging fees then the education bill to the States would not only be significantly higher but there would have to be a major capital investment in school buildings, etc. to replace those currently being funded by private educational establishments.”

One opposing view was expressed by one school. In response to a letter from the Corporate Services Scrutiny Panel, the Chairman of the Board of Governors stated: *“We believe that any campaign for exemption from payment of GST on school fees will at best fail because the payment of school fees is discretionary spending. At worst, the campaign could conceivably even be counter-productive. If, for instance, the principle of exemptions was to be accepted but the exemptions started with more essential things such as food, doctors fees and prescriptions, but without getting up to school fees, this could result in GST being charged on school fees at a higher rate than the proposed three per cent.*

“We do appreciate that the Catholic schools have a different argument in terms of faith but this argument would certainly not apply to our schools. For all the above reasons, this College has decided not to participate in any initiative.”

A case for exempting Jersey’s three Catholic schools from GST was made on their behalf in a letter from De La Salle College, which stated: *“The three schools, Beaulieu, De La Salle and Faithful Companions of Jesus, exist in the Island to provide religious education which was forbidden in States schools by the Loi sur L’Instruction Publique (1912). Our schools are obliged to charge fees because, unlike most European governments, Jersey does not provide ‘displacement funding’ for religious schools equivalent to the amount that would have been spent on the pupils concerned had they attended state schools.”*

The letter referred to a 1998 report on Jersey’s Education Service, in which it was recommended that consideration should be given as to whether the impact of obliging Catholic schools to charge fees was desirable within the context of the States education system as a whole.

“The response from the (Education) Committee was that though there was ‘considerable merit’ in the recommendation, it would be far too expensive.

“And so we argue that religious education is available only to those families who can afford it and that the imposition of three per cent on fees which the schools are obliged to charge would tend to exclude even more families. It could result in some families withdrawing. We see the tax, therefore, as a levy on the parental right to a religious education and hence an infringement of the laws of natural justice.

Several parents also commented that their only choice was to send their children to a fee-paying school if they wanted them to receive a Catholic religion-based education, since the States of Jersey did not provide free Catholic schools. The following representative comments were made.

“Many parents choose (a Catholic school) because they are seeking a particular kind of moral and spiritual education for their children. There is no equivalent in the Jersey States system, so there is no other choice. The three per cent GST is therefore a tax on our beliefs and this makes it immoral and hard to defend in a modern liberal society.”

“The taxes paid (by the parents of children at fee-paying schools) assist in providing an education for children at States schools. Why, by saving the States money by personally paying for my children to receive a Christian education, which the States of Jersey do not provide, should I also contribute three per cent towards the education of children in other establishments?”

This issue will, of course, be a matter for political decision. However, the GST Consultation Team points out that it should be borne in mind that if school fees were exempt from GST, private schools would incur a GST cost on their expenditure and this could affect their charges. In addition, the loss to the revenue resulting from the exemption of school fees, estimated at approximately £550,000 per year, could result in a higher rate of tax on other commodities and this would be borne by all taxpayers

Also, contrary to the views expressed in some of the submissions, the States does, in fact, in the majority of cases, subsidise private school education by making a grant to the private schools equivalent to the cost of a State school education for each pupil. In the United Kingdom, although VAT (the GST equivalent) is not charged on private education, private schools do not receive a government subsidy, as do some Jersey private schools.

EDUCATION - ADULT

The Jersey Federation of Women’s Institutes raised a concern that adult education would be seriously affected by the imposition of GST.

In a letter to the Treasury and Resources Minister, the Federation said: *“The availability of an accessible, high quality range of opportunities for study, which promotes the wider purposes of life-learning, has been part of the tradition of Jersey education for years, is becoming more successful every year and should be safeguarded by proper funding. We are extremely worried that the addition of GST will price many areas beyond the reach of many students and may deter people from enrolling on courses from which they would greatly benefit.”*

The Minister replied that the Draft Law, as it currently stands, will mean that any form of education for which a charge is made will be subject to GST. He added, however, that no final decisions on the detailed operation of GST had been made and the final draft of the legislation would not be considered until the results of consultation were known. Consultation was ongoing and discussions had already been held with the Chief Officer of Education, Sport and Leisure and the Principal of Highlands College.

CHILDCARE

Several respondents expressed concern about the application of GST on childcare costs. Childcare costs in the private sector were already high and, if parents cannot afford childcare costs, mothers may not be able to return to work, or children might be left with unregistered childminders, it was claimed.

MEDICAL SERVICES

A plea for medical services to be excluded from the scope of GST was made by the Jersey Medical Society. In its submission to the Treasury and Resources Minister, the Society said:

“General practitioners in particular are concerned about any added costs applied to patients seeing the doctor and the effect that this will have on their access to the services. We do not believe that applying a tax to the sick and ill for accessing medical services is a right and proper method for the States to generate income, regardless of any special help that you may be planning to give to less well off members of society.”

“We take the point that the more exceptions there are the higher a goods and services tax would become but we believe, in making this request to you, we would have the support of the general public; while we have a choice for the most part in what goods and services we buy, this does not apply when someone is ill.”

HEALTH AND SOCIAL SERVICES

Apart from the services provided by GPs and the Department for Health and Social Services, the main providers of care services are charitable organisations, including Family Nursing and Homecare, and several made submissions identifying the key role they play and the likely effects of GST on their income and expenditure. (Note: Further consideration on the treatment of charities under GST is currently ongoing. See under ‘**Treatment of charitable organisations**’ below)

BOOKS AND NEWSPAPERS

In one submission it was argued by a major Island retailer that the supply of books and news products provided a crucial educational and development role within society and one that would be discouraged by the imposition of a tax.

“This is not the correct and intended consequence of the tax but, unless the system provides reliefs for socially beneficial activities such as these, it will be the inevitable consequence.”

A question was asked also whether Christian books and Bibles provided by a charity through its bookshop would be liable for GST. The Treasury and Resources Minister replied that it was intended to include books in the scope of GST but a bookshop would not be required to charge GST on its sales if its annual turnover was below the proposed £300,000 threshold. However, it would then not be entitled to reclaim GST on its expenditure. (Note: Further consideration on the treatment of charities under GST is currently ongoing. See under ‘**Treatment of charitable organisations**’ below).

TREATMENT OF CHARITABLE ORGANISATIONS

A number of charitable organisations raised concerns about the treatment of charities under GST. In particular, fears were expressed that GST would apply to all income, including fundraising events and donations and the sale of goods and services designed to raise funds.

The Association of Jersey Charities, of which 214 charities on the Island are members, called for all charities to be given a blanket exemption from the GST system. This, said the Association, had the merit of simplicity. Another suggestion was that recognised charities should be issued with a 'charities exemption number' which could be given to the supplier of goods and services to prove that GST should not be charged.

It was also claimed by individual charities that their spending power on good works would be reduced if there were to be a requirement to pay or charge GST and it was pointed out that many charities provided social services that benefited Jersey at a cost far lower than would otherwise be provided by the States.

On 6 September this year a meeting of charitable organisations was organised by the Corporate Services Scrutiny Panel, attended by the Treasury and Resources Minister and members of the GST Consultation Team, to discuss the concerns about the effect of GST on charitable activities.

The Treasury and Resources Minister said that the concerns of charitable organisations were fully appreciated by the GST Consultation Team and he gave an assurance that it had always been the intention to grant some form of relief from GST for recognised charities. He said that discussions would continue to establish the best means of doing so and he invited further suggestions to ensure an equitable treatment for charities. It was pointed out that, in granting relief to charities, it was necessary to ensure that commercial organisations did not suffer a competitive disadvantage.

However, in any event, under the terms of the Draft GST Law, as it stands, donations and most fundraising would not be liable for GST since they would not be considered to be 'taxable supplies.'

BETTING AND GAMING

Opposition to the imposition of GST on betting transactions was expressed on the grounds that this would damage the business of Jersey-based bookmakers, since gambling on the Internet, or via a mobile phone to a credit bookmaker, or interactively through a television, is tax free. It was stated that there is no betting tax in Great Britain or the whole of Europe and there was a plea that betting services should be treated as exempt supplies, with a proviso that, in the event that GST is applicable, the value of the supply should be the gross win value.

The GST Consultation Team replied that the Draft GST Law did not currently provide for the exemption or zero rating of betting and gaming services supplied in Jersey and these services were intended to be taxed at the standard GST rate of three per cent. However, further consideration was being given as to how GST should be calculated on supplies made in the course of betting and it was hoped to issue further guidance in the near future. It was pointed out that, while betting and gaming was exempt from VAT in the United Kingdom, off course

betting was liable to Betting Duty and other forms of gambling were also subject to specific taxes.

ENTERTAINMENT AND THE ARTS

One submission requested consideration of a process whereby any funds raised by GST on ticket sales at the Opera House could be returned to the Opera House to support its activity. This, it was stated, would be similar to a process employed in Budapest, where a proportion of tax applied to a wide range of luxury articles is dedicated to the support of cultural activity.

The Treasury and Resources Minister replied that he was unable to accede to the request. GST was being designed to produce the necessary revenue with the minimum impact by keeping it as simple as possible and applying it to practically all goods and services. He pointed out, however, that GST is intended as a tax on consumers rather than the business community and that, as well as being required to collect GST from its customers, the Opera House would be able to offset any GST paid on its expenditures.

Another submission recommended that the Arts should be given a specific category and exemptions under GST on the grounds that they provided an essential contribution towards quality of life and economic development. In particular the Trust advocated that special tax status should be granted to works of art - preferably that a work of art and tickets to performing arts events should be exempt.

It also expressed concern that many self employed artists would face increased overheads because their low level of income would not qualify them for registration and they would be unable to reclaim GST on their business expenses.

However, under the terms of the Draft Law there is provision for voluntary registration. Also, unregistered businesses would not charge GST on their sales, enabling them to be competitive against registered businesses. Notwithstanding this, the views of the Arts Trust remain under consideration.

FREIGHT CHARGES/INTERNATIONAL TRANSPORT

Submissions from groups representing shippers and freight forwarders stated that the imposition of GST on air freight *charges* would place local operators at a significant disadvantage compared with off-Island competitors.

“The application of GST to freight rates charged exclusively to local importers by a local carrier (would be) discriminatory and (would place) local importers and local carriers at a disadvantage compared with United Kingdom exporters dealing with the same goods or services.....and (would risk) jeopardising the viability of local companies and putting the jobs of those employed at risk,” it was claimed.

The representatives subsequently asked for confirmation that the supply of services would be treated as a supply of international services where the services or the supply are specifically from a place outside Jersey to a place in Jersey. *“This implies to us that the GST on air freight charges for goods being imported to Jersey will be zero-rated, as will the ancillary services and others which relate directly to the carriage of freight to Jersey.”*

The GST Consultation Team confirmed that *the respondents'* interpretation of the Draft Law in relation to the zero rating of ancillary services under Draft Article 49 (2) was correct and added that this would be reflected in the latest draft of the Law. Further input on the subject was invited.

POSTAL SERVICES

There was a call for careful consideration of the definition of what would be included as 'postal supplies' and for clear guidelines for businesses supplying both exempt and zero-rated and taxable supplies.

AIRSIDE SALES

It was submitted that *bona fide* air passengers travelling out of Jersey, in possession of a valid boarding card, should be entitled to purchase any goods within the airside zone, free of GST, as they are presently entitled to purchase duty free goods under current arrangements. This is likely to be allowed for existing sales but consideration is needed for future plans to provide a greater range of airside retail outlets.

THE BURDEN ON BUSINESS

IMPORTS

Throughout the consultation exercise, the issue of maintaining the existing free-flow of imports by regular commercial importers has been raised in submissions and at meetings with representative groups. The GST consultation team have given assurances on the intention to provide a system which maintains the existing free-flow but which provides for safe, secure collection of import GST.

ADMINISTRATION

Concerns about the cost of compliance with the GST requirements were expressed by the Jersey Chamber of Commerce and Industry Incorporated, which stated: *"It is clear that, despite attempts to keep the system simple, there will be a significant administrative burden on business in order to collect the tax on behalf of the Treasury."*

The requirement for registered businesses to include GST registration details of the purchaser on invoices and to include on their tax returns the value of exempt supplies they have made was also questioned by one respondent as being *"unnecessarily bureaucratic."*

However, a number of suggestions were received from the business community about ways in which the burden of GST compliance could be reduced for registered businesses. These included methods of book-keeping, automation, the treatment of bad debts and the valuation, paperwork and payment relating to imported goods.

One major Island retail company suggested that there were a number of areas where measures could be taken to ease potential burdens being placed on businesses by utilising the experiences of the United Kingdom VAT system.

“In respect of (many United Kingdom-controlled retailers) the key to a smooth administrative implementation of the tax would come from maintaining the basis upon which they trade at present, a basis which is inextricably linked to the United Kingdom processes.”

The Company asked for careful consideration to be given to a number of key administrative areas, including the adoption of retail schemes. Under such schemes, retailers supplying a high number of diverse products would not have to account for the items on a ‘line-by-line’ basis but would be allowed an element of discretion to make estimations where certainty on the nature of supply cannot be supplied.

TAX POINT

The main consultation document invited views on the most appropriate point for GST registered businesses to account for the tax charged to customers, offering the options of doing so on issue of invoice or on receipt of payment. There was a mix of views and the intention is to provide for either method. One company raised the issue of the timing of continuous supplies and an provision of appropriate tax point will be made.

SUBMISSION OF GST RETURNS

There were requests for quarterly GST accounting periods which aligned with the existing financial accounting periods of businesses. The intention is to provide this flexibility.

IMPLEMENTATION TIMESCALE

Several respondents pointed out that the proposed timeframe for the implementation of GST meant that there was a short timescale for businesses to complete the required work on internal systems and processes.

PLACE OF SUPPLY

The issue of place of supply of services was raised in some submissions. The GST Consultation Team replied that, although the Draft Law currently provides that they supply of services shall be treated as made in Jersey if the supplier belongs in Jersey, it was intended to introduce an additional schedule to the Draft Law defining certain services being supplied where they are received.

GROUP REGISTRATION

Several submissions requested provision of group registration to avoid the cost of administration of GST on inter-group transactions.

PERIOD OF GRACE

The need for flexibility of application of the penal provisions of the Law was advocated. This was suggested in the main consultation paper as the likely approach, other than in the case of persistent or deliberate non-compliance.

All of these issues are currently under consideration and will be the subject of ongoing discussions with the business community.

GENERAL ISSUES

TREATMENT OF THE STATES AND PARISHES

Submissions were largely in favour of the proposed treatment allows recovery of GST on all expenditure and envisages that the States will be one GST registration.

PRICES

There was a warning from the business community that the introduction of GST, along with other legislation, would increase the cost of compliance and would put pressure on prices and that the vast majority of Jersey businesses could not and would not absorb GST into their 'bottom line.' Those small businesses below the registration threshold, which would not be able to recover their GST costs, would increase their prices - possibly higher than three per cent, it was claimed.

The Jersey Chamber of Commerce and Industry Incorporated stated: "*Suggestions that local businesses are making excess profits are without foundation and you should expect the three per cent rate to be passed on to the consumer virtually without exception,*"

One major Island retailer did give an assurance, however, that it was likely that it would absorb the three per cent GST as a business expense. *This view was echoed in a further submission which benefited from discussions with a range of UK based retailers.* (See '**Display of Shelf Prices**' below).

DISPLAY OF 'SHELF PRICES'

The Jersey Chamber of Commerce and Industry Incorporated requested consideration of how prices would be displayed and advocated the option of displaying prices exclusive of GST, supported by clear signage to give pricing information to consumers. One local business stated that a 'shelf edge' pricing inclusive of GST rather than a 'lump sum' GST on the final total, would cause a 'rounding up' of prices.

An alternative view expressed was to display prices inclusive of GST. One respondent said: "*Registered businesses must be prevented from quoting deceptive ex-GST prices.*"

One of the largest retail outlets on the Island also made a strong request that GST inclusive receipts should be allowed. In its submission, the Company stated: "*The identification of GST over and above a net sales value would create a very significant IT change requirement with no benefit to the customer.*" It was suggested that other methods were available for business customers who required 'full tax invoices.'

The Company, which is part of a United Kingdom Group, stated that, in its case, prices were unlikely to change and this would result in a three per cent contribution cost to the business. Because of this a specific till receipting requirement for Jersey alone (outside of the United Kingdom estate) would be very unwelcome.

The draft GST Law does not currently legislate on the issue of price display. In many regimes, this is regarded as a consumer rather than a tax issue.

DE MINIMIS LEVELS

Local businesses also raised the concern that GST would increase the problems they faced in competing with off-Island and Internet shopping and a request was made to impose a realistic *de minimis* limit for privately imported goods, below which GST would not be charged. One respondent stated that all imports to Jersey should be subject to GST.

This issue was highlighted in the Draft Law discussion document and remains under consideration. The challenge is to set a limit that will not be low enough to create administrative problems but high enough to protect Island businesses from unfair competition.

HOSPITALITY

The Jersey Hospitality Association, acting as spokesman for the hospitality, tourism and leisure industry in the Island, said in its submission that GST would increase the overheads cost to the industry and, inevitably, this would, have to be passed on to the consumer, thereby impacting adversely on the Island's ability to compete in the international hospitality market.

"It is also noted that Jersey owners will be subject to 20 per cent tax on profits, whereas non-resident owners will not be so liable. This only serves to exacerbate the adverse financial position of local owners compared with their international counterparts," the Association said.

"It is recognised that the finance industry is of great importance to the economy of the Island.....It appears likely, therefore, that some form of relief will be available to that industry. The hospitality industry is, we maintain, also an important contributor to the economy - yet no relief, even for the additional costs of operating as unpaid tax collectors, is suggested.

In our paper, dated 12 May, 2004 'Facing up to the future' we asked that all tourism industry capital expenditure items and improvement programmes be fully deductible against taxable profits. Such relief would go some way to alleviating the additional costs (faced by the industry). Another form of relief might be to zero rate targeted activities such as the conference business, or enable business customers to recover GST suffered where they come to Jersey to hold their conferences."

The GST Consultation Team responded that supplies made in the construction, refurbishment and improvement of non-residential dwellings would be taxable at three per cent but registered businesses making taxable supplies would be able to recover GST incurred in making those supplies. Hotels which are not registered will not be able to recover the tax they incur but neither would they be required to charge it on the supplies they make.

VEHICLE SALES

The Jersey Motor Trades Federation urged the adoption of a 'margin scheme' to apply to the sales of second hand vehicles. Under this scheme, which operates in the United Kingdom, the

sales of pre-owned vehicles by GST registered dealers would attract GST only on the margin between buying and selling prices. The Federation stated that it considered the volume of used car sales, at 12,000 to 12,500 vehicles per year, justified the operation of such a scheme.

The Federation made a further request for the payment of GST on imported new and used cars to be deferred until registration by the DSVD in order to alleviate cash-flow problems resulting from vehicles remaining in stock but unregistered for long periods, or being returned to the manufacturer under a sale-or-return arrangement.

The GST Consultation Team replied that a margin scheme was considered to be incompatible with the declared objective of keeping GST as simple as possible and that the conditions to justify it (a high rate of tax and large amounts of tax) do not exist in Jersey. In view of this, no provision has been made in the Draft Regulations for a margin scheme, although there is provision in the Law to regulate at a later date, if justified.

With regard to the payment of GST on imported vehicles, the GST Consultation Team stated that the current thinking was that Jersey Customs would charge GST at importation but that payment would be deferred (for a yet unspecified period). The issue was under consideration in the wider context of the treatment of all commercial imports.

BUILDING SUPPLIES

Concern was expressed that, when making building supplies, the supplier would not know whether to charge GST to the customer because s/he would not know whether the supplies were in connection with a standard or zero rated activity. The GST Consultation Team was able to provide the assurance that the supplier would simply charge GST to the customer and that it would be a matter for the customer to reclaim the GST element as input tax, if appropriate.

RETAIL EXPORT SCHEME

The Jersey Chamber of Commerce and Industry Incorporated and local businesses requested consideration of a retail export scheme, whereby visitors to Jersey could reclaim the GST they had paid on high value items when they left the Island and 'exported' the goods. This, it was claimed, would assist in maintaining Jersey's price advantage over competing jurisdictions.

The current official view is that such a scheme would impose an unnecessary administrative burden and, in any event, is not warranted because of the very low rate of GST. However, there is nothing in the Draft Law that would prevent the recovery of GST by a customer, provided that satisfactory evidence was provided that goods had been exported.

TRANSITIONAL PROVISIONS

There were representations about the need to ensure that the Law made provision for contracts and agreements in place before the start of the tax and which continued beyond. Although the detail is yet to be included in the draft Law, it is intended that suitable provisions will be made.

ENFORCEMENT POWERS

The States of Jersey Police raised three areas of concern. The proposed enforcement powers appeared inadequate; there appeared to be no provision for the effective exchange of financial intelligence; and the potential for fraud and the significant implications for resourcing and specialist skills appeared to be underestimated.

“Experience has shown in the United Kingdom that VAT fraud is widespread and involves large volumes of money. Criminals have been quick to see the potential of not only denying/concealing revenue owed but falsely claiming rebate on funds from the tax authorities. The sums of money involved are often substantial and require a great deal of co-operation and expertise to unravel complex scams.”

The response added that there was a need to develop a strategy to combat GST fraud before the Law was introduced and offered the co-operation of the Force.

The Treasury and Resources Minister replied that the views expressed would be considered when the final version of the Draft law was prepared and he welcomed the submission and offer of assistance from the Police.

Another respondent warned that the risk of non-registered persons issuing bogus GST invoices was high. As this was a fraud against consumers, the proposed penalty was too low.

There were contrary views expressed to the effect that the enforcement provisions in the draft Law were not compatible with the ‘light touch’ approach under Income Tax legislation.

TREATMENT OF FINANCIAL SERVICES

The discussion paper on the treatment of the Financial Services Industry under GST outlined a simplified means of achieving a £5-10 million GST contribution from the Industry in Jersey without creating an onerous administrative burden or an uncompetitive environment.

It was addressed primarily to regulated firms conducting banking, investment, trust company, fund services (together with the investment funds) and insurance businesses and to those firms providing legal and accounting services in this context.

A separate document addressing the detailed issues raised in the feedback on that paper will be issued. This will be the subject of further discussion with the Industry.

Because the financial services sector in Jersey is largely geared towards international clients, many of the services supplied do not result in domestic consumption by individuals belonging in Jersey.

In light of this, a standard GST/VAT treatment of these transactions would be likely to create an excessive administrative and compliance burden in relation to the expected GST yield.

The discussion paper therefore proposed simplified schemes that establish a fair and reasonable GST yield, without creating an inordinate administrative burden.

Where only a small part (less than ten per cent) of its banking services are provided to individual customers located in Jersey, a Presumptive Scheme was proposed that would permit a bank to recover 75 per cent of the GST incurred on related expenditure. Firms undertaking trust company business or fund services business and some others would also be eligible for simplified schemes that, in the Comptroller's judgement, would lead to a fair and reasonable GST estimate.

With regard to trusts, companies and partnerships formed or administered within the financial services sector, the discussion paper proposed that, in these cases, subject to certain safeguards, there would be no requirement to register for GST but any supplies to the company, trust or partnership would be eligible for remission of GST. An annual fee of £50 would, however, be payable under these so-called *International Services Status* provisions.

Since the provision of services can present some difficulty in establishing the time and place of consumption, the discussion paper sought to define 'time and place of supply' rules.

The EU basic rule is that the place of supply (as proxy for place and time of consumption) is determined by reference to the location of the supplier although complex override criteria are applied in the case of many financial services. The discussion document invited comment on the merit adopting a basic place of supply rule based on where the customer belongs.

Jersey Finance is the official body established between Jersey's Government and finance industry to represent and promote the Island as an international finance centre of excellence. Jersey Finance has established a Fiscal Strategy Group ("FSG") for the purposes of responding to the States of Jersey fiscal strategy proposals.

The FSG consulted widely with the various Trade Association Members of Jersey Finance in preparing its response to the GST consultation. Jersey Finance also invited all Members to provide comments to FSG or directly to the GST Consultation Team. The FSG response stated:

"We believe that the proposals now outlined in the two new consultation papers do go a long way to meeting the original objectives outlined above, and towards the creation of a "win-win" situation for both Jersey's economy and the Industry which provides the most significant contribution towards it. However, there are still a number of elements in the latest proposals which, we believe, could potentially unduly complicate the position in respect of the financial services industry.

We are also concerned that the economic impact of the current proposals has not been adequately modelled. Specifically, in our view there is a significant possibility that the proposals as currently presented could yield considerably in excess of the Minister's £5-10 million "target" yield from the financial services industry... We would therefore strongly urge the GST implementation team to perform and publish further research and economic modelling before finalising the detailed proposals"

FSG feedback on specific matters is summarised below. In the interests of brevity certain detailed and technical points have been omitted:

- FSG are of the view that there is a need for GST grouping provisions under which “*intragroup supplies (including supplies from fellow group companies based outside the Island) would not be subject to GST.*”
- In FSG’s view the Presumptive Scheme for banks should be elective and should be available to all banks without the need to satisfy the 10% threshold test. FSG further considered that it would unduly complex to disaggregate non banking activities.
- FSG noted that under the Presumptive Scheme banks providing other services (e.g. investment business or trust company business) within the same legal entity might enjoy an advantage in comparison to “stand alone” trust company businesses etc if the bank did not charge GST on chargeable supplies to Jersey customers or if it was not required to obtain International Services Status for “corporate vehicles” that it administers. In view of these difficulties FSG was of the view that it may be possible to frame a more workable threshold test, for example based on a split of business activities.
- FSG take the view that “*the place of supply should be determined, for all services, according to the ‘use and enjoyment’ principle.*”
- FSG accepted the proposed annual £50 GST fee “*for any entity which has a separate legal capacity (both Jersey and foreign domiciled)*” where the entity is administered in Jersey, meets the relevant criteria and seeks International Services Status. FSG also supports the simplified certification process for entities administered by a regulated trust company business.
- FSG accepted the need for a mechanism for confirming the International Services Status of trusts and other legal arrangements that do not give rise to separate legal personality. However FSG is of the view that whilst the International Services Status principles and mechanism should apply there should be no annual fee on the grounds that any fee would breach a long established principle that non-resident trusts are not subject to any form of taxation or charge.
- FSG regard Parts 13 (Failure to Comply), 15 (Appeals), 16 (Offences) and 17 (Miscellaneous) of the draft Law as unnecessarily complex and capable of simplification without materially weakening the Comptroller’s ability to enforce compliance.
- FSG believe that the simplified schemes outlined in the discussion document should be workable in practice.

In addition to the industry feedback received from FSG a small number of submissions were received from individual businesses operating in the sector. These submissions were generally supportive of the FSG position, reiterating some issues and expanding on particular matters of concern to the respondent. The further points made by these respondents (omitting some detailed technical points) included:

- The observation that legal arrangements that do not give rise to separate legal personality are not always easily identifiable and that this was a further reason to exclude these arrangements from the International Services Status fee base.

- GST grouping provisions should also extend to partnerships.
- Transitional arrangement will be necessary for long term contracts.
- One respondent was of the view that lawyers and accountants should bear some GST burden.

A submission was also received from the Jersey Financial Services Commission (“the Commission”). The Commission is responsible for the regulation, supervision and development of the financial services industry in Jersey. Amongst other more detailed matters the Commission’s response noted that:

- In view of the proposal to rely on regulated service providers to maintain International Services Status records and account for fees it will be necessary to create gateways allowing the Commission to pass information to the Comptroller and vice versa in regard to apparent compliance failures.
- The draft Law defines supplies in ways that are inconsistent with other laws, especially the Second Schedule to the Proceeds of Crime (Jersey) Law 1999.
- Schedule 5 of the draft Law does not accurately represent the position of funds under the Collective Investment Funds (Jersey) Law 1988 or insurance under the Insurance Business (Jersey) law 1996.
- The discussion document does not address the possibility of an unregulated person certifying that an entity has International Services Status.
- A basic place of supply rule based on where the customer belongs would appear to remove the advantage that a non-Jersey supplier might otherwise have over a Jersey supplier. On the other hand this might prompt non-Jersey suppliers to withdraw from the market.

SECTION THREE

CONCLUSIONS AND WAY FORWARD

3. CONCLUSIONS AND WAY FORWARD

In a letter to the Treasury and Resources Minister, one respondent expressed scepticism about the public consultation process in Jersey.

“I have devoted a great deal of time to participating in these exercises in the past and, generally, I have received no indication that anyone has even bothered to read my submissions,” he said.

The views expressed by this correspondent are, in fact, included under various subject headings in this report and are currently under consideration by the GST Consultation Team.

It is the view of Crown Agents that the consultations, under the management of the GST Consultation Team, were properly conducted within States’ guidelines. They were well publicised and adequate supporting public information was made widely available. All reasonable opportunities were afforded for all who wished to make submissions.

Crown Agents notes that the GST Consultation Team will continue to accept and consider comments and suggestions even beyond the closing deadlines for submissions.

The issue of exclusions generated the greatest response, particularly in terms of numbers.

The submissions from private individuals concentrated almost exclusively on the treatment of school fees.

There were presentations from some providers of childcare about the adverse impact of GST on that sector.

One submission called for exclusion of medical services and several charitable organisations made representations about the detrimental effects of taxing their caring activities and pointing out the knock-on effects on the States. Towards the end of the consultation period there were a significant number of submissions from charities, mostly via the Corporate Services Scrutiny Panel. To allay any unnecessary concerns the GST consultation team prepared an explanatory leaflet on the possible implications of GST for charities and supported the Minister for Treasury and Resources at a public meeting called by the Scrutiny Panel.

With one exception, there was an absence of requests for exclusion for the following:

- Food;
- Children’s clothing;
- Books and newspapers;
- Fuel and energy.

The majority of responses from businesses and business organisations supported the concept of a broad-based, low rate, simple to operate tax with minimal exclusions. One organisation pointed out that this was the foundation of its support for the original proposal to introduce GST.

A number of submissions were directed at ensuring the 'business friendly' approach referred to in the main consultation paper and a range of suggestions for amendments to the draft Primary Law were made. Some of these have already been taken on board and others are under consideration.

The consultation exercise has proved very useful in reviewing and re-formulating policy and, more specifically, in finalising the enabling legislation. The GST team should be in a position to provide further drafting instructions to the Law Draftsman to enable a revised version of the draft Law to be lodged in time for States debate by early January 2007.