



# Economic Affairs Scrutiny Panel

## **Review of the Draft Price and Charge Indicators (Jersey) Law 200-**



Presented to the States on 25<sup>th</sup> September 2007

S.R.16/2007

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## Glossary

**Exclusive pricing** - where the base price of a good is listed, not including other elements of additional cost, such as tax, duty etc. these elements would be displayed separately as figures per good or overall percentages.

**GST** - Goods and Services Tax – the method of taxation approved by the States to come into force on 1st May 2008 (see Appendix 2). A form of VAT (see VAT)

**Inclusive pricing** – where the total price of a good including all elements of additional cost, such as tax, duty etc. is listed as a single figure.

**Regressive tax** – A tax which collects a larger proportion of the earnings of low-income taxpayers than of high-income taxpayers. Taxes which levy a fixed amount or those which are capped such as the Social Security payments are regressive taxes.

**Progressive tax** - A tax which collects a larger proportion of the earnings of high-income taxpayers than low-income taxpayers. Jersey (and most other countries) income tax is progressive to an extent as it includes exemptions for low-earners.

**Flat tax** - A tax which collects the same proportion of the earnings of high-income taxpayers and low-income taxpayers. Income tax with no exemptions or allowances would be a flat tax.

**RST** – Retail Sales Tax – a tax charged in the USA and Canada. It is applied only once, on the final transaction between a retailer and a customer, unlike VAT (see Appendix 2).

**VAT** – Value-Added Tax – tax charged in Europe and elsewhere. It is applied to all transactions and recovered on goods that are resold (see Appendix 2)

**Draft Price and Charge Indicators (Jersey) Law 200-** - ‘the pricing law’

**Goods and Services Tax (Jersey) Law 2006** – ‘the GST law’

**Enabling law** – a law which allows the government to take certain actions. In the context of this report, enabling laws allow the government to make detailed Regulations which describe how systems should operate. These are important as they often impose limitations or assumptions on what Regulations should or should not say. Amendments to Regulations which change their meaning so that they no longer conform to the relevant enabling law are not permitted.

**Shelf price** – the price indicated to consumers on the item or the retailer’s shelf.

**Point of purchase price** – the actual amount paid for an item.

**Registered businesses** – businesses with a total turnover of less than £300,000 will be given the choice of either registering for GST, in which case they will be obliged to charge it to customers but able to reclaim GST elements of purchases, or not to do so in which case they cannot reclaim GST but do not need to charge it to customers.

Non-registered businesses do not have the option of passing the costs of GST onto the public, from the point of view of the tax collectors they are the last link in the chain, and, like private individuals, must pay GST themselves.

**JCC** - Jersey Consumer Council – a consumer organisation

**JCOC** - Jersey Chamber of Commerce – an organisation which represents the interests of traders on the Island



## **The Panel's findings**

### **Conclusions**

The Panel is aware that no single method of display will satisfy all interested parties. It appears that the opinions of retailers and consumers are divided between inclusive and exclusive pricing.

Given the considerable public disquiet concerning the introduction of GST, and the very real fears that the rate will increase in the future, the Panel feels that it is essential that the public are aware, and regularly reminded, about the GST element of their expenditure.

The Panel does not consider that the currently planned period of uncertainty<sup>[o1]</sup> is a viable solution to the question of which is the best display method. It believes that the issues are well understood by businesses and the public and that further consultation will be unproductive.

### **Key Findings**

Page 15 – If food items had been zero rated for GST, the problems faced by food retailers selling UK pre-priced goods under an inclusive pricing system would have been eliminated.

Page 15 - The implementation of GST, whatever system of price marking is adopted, will add to the costs of doing business, especially retail. If inclusive price-marking is introduced there will be increased costs associated with re-labelling of many pre-priced goods from the UK. If the retailer chooses not to re-label a product then the retailer will suffer reduced profit margins, and may recoup this loss on other products. The alternative would be a reduction of promotional offers in supermarkets and UK chain stores.

Page 23 – Certainty is key to business management. Retailers need to know if a single price marking method will be imposed and if so what it will be. They need to know this as soon as possible.

Page 24 – The customer has a right to know how much they will be expected to pay when they reach the till. The customer also has a right to see how much GST they have paid per purchase.

## **Recommendations**

The Panel's recommendations are as follows-

**The Panel believes that Jersey consumers have a right to know:**

- (a) the total price they have to pay for goods, and**
- (b) the GST payable on purchases.**

**It therefore recommends that prices are marked and displayed inclusive of GST, and If an inclusive GST system is introduced, all businesses that wish to register for GST should be required to provide receipts that indicate the amount of GST paid in the transaction to the nearest penny.**

**If the States wishes to go ahead with a period of unregulated price marking following the introduction of GST then-**

- (a) the States should be asked to make a decision as soon as possible to indicate what method of price marking will be introduced at the end of this unregulated period in order to allow businesses the certainty they need to make investments in point of sale systems, and**
- (b) following this debate, the length of this 'unregulated period should be clearly defined, and of sufficient length in order to allow businesses to implement the appropriate systems so that all businesses are compliant from 'day one' of the new regime.**

In addition to the main recommendations, the Panel considers that Trading Standards should investigate the introduction of a voluntary component pricing system under which retailers and service providers would mark clearly on all price indicators the basic price of the goods and the tax component, as well as an overall price.

# **1. Introduction**

## **1.1 Constitution of the Economic Affairs Scrutiny Panel**

The Panel consists of-

Deputy G. Southern  
Connétable M. Jackson  
Deputy J. Martin  
Deputy K. Lewis

Deputy A. Breckon is also a Panel member but was conflicted for the purposes of this review due to work he had undertaken on behalf of the Jersey Consumer Council into the subject. Therefore he elected simply to give evidence to the Panel as Chairman of the Jersey Consumer Council.

## **1.2 Terms of reference**

The terms of reference for the review were -

To consider the draft Price and Charge Indicators (Jersey) Law 200- (in particular Article 2) in combination with the relevant Articles of the Goods and Services Tax (Jersey) Law 200- (in particular Article 94).

To consider the impact of exclusive/inclusive labelling on the retail trade and other businesses and consumers.

To consider relevant legislation and experience from other jurisdictions.

Any other pertinent matters that may arise during the course of the review.

## 2. The draft Price and Charge Indicators (Jersey) Law 200-

### 2.1 The history of the draft Price and Charge Indicators (Jersey) Law 200-

Whilst the Treasury and Resources Department has responsibility for the operation of GST, the consumer protection aspects of price marking which this law deals with are within the remit of the Economic Development Department.

The original GST (Jersey) Law was debated on 17th April 2007. This is an enabling law which introduced the principle of GST and outlines how Regulations should be made under the law to operate the system. Numerous amendments to the law were proposed, including one by Deputy Breckon to Article 94. This Article outlines the powers of the States to make subordinate Regulations to control the display of GST- (Panel's emphasis)

*(1) The States **may** by Regulations make provision for or with respect to the display, disclosure, or other publication, otherwise than on GST invoices, of GST chargeable on the supply of goods or services or importation of goods.*

*(2) Those Regulations may require that, in advertisements, labels, receipts, or other things, that are or include expressions or indications of retail prices for goods or services supplied, a retail price be expressed or indicated as a global price that includes GST **without separate mention of GST.***<sup>[1]</sup>

Paragraph 2 above is permissive, and **allows** the States to make Regulations that disallow the separate display of GST. Deputy Breckon's amendment would have removed that paragraph and substituted the following-

*(2) Those Regulations may-*

*(a) require that advertisements, labels, receipts or other things that are or include expressions or indications of retail prices for goods or services supplied **shall make separate mention of and prominently display the amount of the price that consists of GST;** and*

*(b) specify the circumstances in which advertisements, labels, receipts or other things that are or include expressions or indications of retail prices for goods or services supplied **shall specify the amount of the price that consists of GST-***

*(i) on each item; or*

*(ii) on the cumulative value of all the goods or services supplied at the same time to a person.*<sup>[2]</sup>

This replacement paragraphs would have been restrictive, and **required** the States to make Regulations that displayed GST exclusively.

The amendment was rejected. During the course of the debate, members of the Executive consistently maintained that the appropriate subject for amendments was the forthcoming GST Regulations, or better still separate consumer protection legislation. The rationale was that the GST law was only an enabling law in this case, and that amendments to the actual price marking Regulations or the consumer protection law would more directly affect the actual outcome.

The Treasury and Resources Minister's comments sum up the Council of Ministers' position-

*"I think if we want discussion and consultation on this specific item [price marking], that discussion and consultation should take place in the context of a Price Marking Law which the Economic Development Minister promises we will have before the summer; promises before the Regulations have even been made."*<sup>[3]</sup>

Consequently, the draft Price and Charge Indicators (Jersey) Law 200- was lodged 'au Greffe' on 5th June 2007 by the Economic Development Minister.

## **2.2 Withdrawal of the law**

At its meeting of 27th June 2007, the Panel discussed the implications of the draft Price and Charge Indicators (Jersey) Law 200- as currently drafted.

The Panel agreed that while consumer protection was paramount, representation had been made to it by several interested parties to the effect that the introduction of an inclusive pricing system, especially with very few zero-rated or exempted products, would be generally undesirable and could cause specific complication with the importation of certain goods from the UK. Furthermore, concerns had been raised that there would be lack of clarity as to the amount of extra taxation per person under the regime as outlined in the law.

The Panel recognised that the law simply constructed a framework for Regulations which would detail the method of GST display, but felt that the presumption in favour of an inclusive system needed to be addressed prior to the introduction of any Regulations, as amendments to these would be restricted by the enabling law. The Panel was concerned that the law needed a proper period of examination before being debated.

The Panel decided to exercise its powers under Standing Order 72 in relation to the law, during its planned debate on 17th July 2007. This would suspend the debate on the second reading of the law by up to four meetings of the States. Due to the summer recess, the fourth meeting would have been on 9th October 2007.

The Chairman made a statement to the assembly on 3rd July 2007 to the effect that the Panel wished to scrutinise the legislation, and would be invoking Standing Order 72. The Minister was highly critical of this decision and suggested that the delay which this would incur would have a negative affect on retailers.

Whilst the Panel recognised that the delay might cause difficulties, the general opinion of retailers contacted at the time was that delayed legislation would be preferable to flawed legislation. The Panel nevertheless undertook to complete the report earlier than necessary by 25th September 2007.

The Panel then learned that the Minister had withdrawn the law, and intended to delay a decision on the marking of GST until some time after the introduction of the tax.

The result of the withdrawal of the law will be that there will be no regulated system of GST price marking in place when the Goods and Services Tax (Jersey) Law 2007 is due to come into force on 1st May 2008, the implications of this are discussed in Section 3.4

### 2.3 Effect of the law

(The draft law is included as Appendix 1)<sup>[k2]</sup>

The draft law is an enabling law which permits the States to make Regulations that control the manner in which prices are displayed to consumers. This could include aspects of legibility, mandatory display of cost per unit (i.e. 100ml – 30p, etc). It defines the offences that may be committed and the fines that can be imposed. The Panel is particularly interested in Paragraphs 3 and 4 of Article 2, which introduce a presumption that any requirements in the Regulations to be made under this law that refer to ‘the marking of prices’ will mean **‘the marking of prices inclusive of GST’**.

For example, if the law was passed, then if the Regulations later made under the law were to say-

*‘prices must be marked clearly and be visible from a customer’s eye level’*

then the effect of Article 2 Paragraph (3), while leaving the text of the Regulation unchanged, would be to make the line effectively say-

*‘prices (which must be inclusive of GST) must be marked clearly and be visible from a customer’s eye level’*

Paragraph 4 of Article 2 allows Regulations to make exemptions to this presumption in order to allow GST to be shown separately, and to set the particular way in which this is to be done.

The draft law also allows inspectors to seize goods if they believe that an examination of them would prove that an offence had been committed.

### 2.4 The proposition of Senator Norman

In response to the withdrawal of the law by the Minister, Senator L. Norman lodged a proposition entitled ‘Goods and Services Tax: price marking legislation’ (P.99/2007) on 27th July 2007.

This called upon the States to-

*“request the Minister for Treasury and Resources to take no steps to bring forward for approval an Appointed Day Act in respect of the Goods and Services Tax (Jersey) Law 200- until the States have debated legislation relating to the price marking of goods and, in particular, relating to the inclusion or exclusion of goods and services tax in the marked price of items offered for sale.”<sup>[4]</sup>*

The Panel expressed concerns that this proposition was to be debated on 11th September 2007, prior to the completion of this report. The Panel discussed the timing of the proposition with Senator Norman, and expressed reservations about asking the States to debate P.99/2007 prior to its receipt of this report. Senator Norman later deferred his proposition to 25th September 2007.

It was agreed that it would be deferred until the States had received this report, as early debate of P.99/2007 could prejudice the consideration of the report.

The Panel is broadly supportive of the P.99/2007, as it has received evidence from retailers that the

period without legislation will be a time of considerable uncertainty, and that some businesses may incur additional costs by investing in or altering systems to administer the addition of GST in one manner, only to find that the government chooses another option.

The Panel notes that comments to the effect that this might be an attempt to delay GST have been lodged by the Treasury and Resources Minister-

*"We have already decided that GST is the best, or 'least worst', option to secure a successful economic future for Jersey. To now allow a delay in its introduction while we further debate price marking would have serious consequences for Jersey ... States Members should not be sidetracked by an innocent-looking Proposition; the reality is that to approve this Proposition is to seriously undermine the ability of business and government to deliver smoothly and in a timely manner the necessary and agreed measures to implement the agreed fiscal strategy."*<sup>[5]</sup>

Notwithstanding the comments of the Treasury and Resources Minister, the Panel considers that it will not be in the interests of either consumers or retailers to implement GST with no method of regulating price marking in place.

### 3. Comparison of GST display methods

In the opinion of the Panel, the display of GST is primarily a matter of consumer protection. A 'consumer' in this context is not only a customer of shops and services but also a taxpayer, as the vast majority of transactions between businesses and individuals will be made more expensive, directly or indirectly, by GST. The Panel considers that individuals paying this tax have a basic right to know how much tax they have paid, and to have this information supplied to them in a simple and intelligible manner. They also have the right to see at a glance the price of goods that they intend to purchase.

The Economic Development Minister has taken inclusively as an overriding principle which he considers to be more important than transparency of taxation.

The Treasury and Resources Department, which is ultimately responsible for the tax, has indicated that while it might have a preferred method of display, (as detailed in the Treasury and Resources Ministers comments in Section 3.3) collection of the tax will not be affected by the manner in which it is displayed. The GST Director informed the Panel of this at a Public Hearing-

The Connétable of St. Brelade

*From a tax collection point of view I presume there is no difference [between inclusive and exclusive pricing]?*

Mr. S. Lowthorpe

*"No difference whatsoever... Really from an administration point of view it is not a problem as long as they pay their tax... There is nothing in terms of inclusive, exclusive which presents a problem."<sup>[6]</sup>*

There are three methods by which the government could require GST to be displayed on goods. Putting no requirements in place is also an option. These are-

Inclusive – only an overall price is displayed on each item, with GST included.

Exclusive – the basic price of each item is displayed, with signage indicating that 3% will be added at the till.

Component marking – the base price and the GST are shown separately, together with a total price.

The examples in the following sections take the very simple case of a GST liable product previously sold at £1.00 to illustrate how the price would be displayed under the relevant system.

### 3.1 Inclusive pricing

Under an inclusive system, the GST element of prices would not be displayed separately, and would simply be included in the overall price. An item previously sold at £1.00 would therefore be marked '£1.03', with no reference to GST.

This is the favoured position of the Minister. At the Public Hearing of 24th July he stated that-

*"We have got clear evidence that, in other places, consumer protection is based upon clear and transparent pricing. Some people will want to say that we are going to be transparent with you and what the price is on the shelf is going to be the price that you charge at the till."*<sup>[11]</sup>

The Minister also informed the Panel at that Public Hearing that he had assumed that inclusively was implicit in the introduction of GST-

*"You do not bring in GST/VAT without inclusive pricing and I have to say I am surprised that there is a suggestion, ... it is a surprise to me that anybody could consider implementing GST/VAT on a non-inclusive basis."*<sup>[12]</sup>

The Panel does not agree that 'GST' necessarily means 'inclusive GST'. However, the Panel does see merit in the suggestion that the shelf price should be the price paid at the point of purchase, in order that consumers are able to see clearly how much they will pay for a good or service.

Concerns have been raised, however, as to the effect of inclusive pricing on some businesses. The Panel held Public Hearings on the 24th and 25th July to record the concerns of some retailers over the implications of such a regime. When asked to estimate the initial implementation costs of inclusive GST to the Co-Op (the second largest retail business in the Island), JCOC representatives replied that-

*"Our [the Co-Op's] best guess is that it would cost somewhere between £50,000 and £75,000 to adapt all our computer systems to cope with GST...but what you have got to take on board is we are a pan-Channel Island business; we have got an operation in Guernsey as well as Jersey. Right across our state, if we are selling furniture in Jersey, we are selling furniture in Guernsey, the price is identical; our computer systems are geared to one price file...That will probably add another £50,000 - £60,000 to our costings."*<sup>[13]</sup>

Additional costs would be incurred by retailers which have standard pricing across the Channel Islands, as these businesses tend to control costs by having a single pricing structure and product database. Were 3% to be added inclusively to a single Bailiwick, these systems would no longer be viable, which would increase costs. This would also affect the numerous businesses that have outlets in both Jersey and Guernsey and operate combined advertising.

The main objection of the JCOC to inclusive pricing concerns imports from the UK. The greatest increase in costs of inclusive GST to some businesses would centre on the need to re-label products to include the GST component within the marked price. Many local retailers sell goods, primarily basic foodstuffs that are zero-rated for VAT, at the same cost as in the UK.

The zero-rated products would therefore have either to be specially labelled at source for the Jersey market or relabelled on arrival. The JCOC concluded that absorbing the GST on these products would

not be viable in many cases as the 3% tax would be greater than the profit margin.

Repricing the goods on arrival in the island would require a significant amount of staff resources, as the Jersey Chamber of Commerce explained to the Panel during its Public Hearings-

*“For example, when you have fresh products; one of the lines of products I sell are salads, florette salads, ... you cannot imagine sticking another price tag on them, an actual label on them with another price. You have products with a 3 or 4-day shelf life. It would take a whole day and a horrendous cost - the logistical cost as well as financial cost of sticking another label on them.”*<sup>[14]</sup>

Furthermore some retailers are unwilling to re-label goods on arrival, as many of these goods have prices indicated directly on the packaging (an example would be ready-meals or similar priced at 99p). These retailers subscribe to UK best practice in trading standards, and would consider labelling these goods at a price higher than indicated to be ‘overpricing’. They feel that such actions would not be permitted under the current UK consumer protection legislation, and are therefore not appropriate in Jersey.

*“From a consumer interest perspective, the last thing we would have entertained was overpricing a price marked pack with a different price, because that would have been totally unethical in our context, within the spirit and the nature of the current UK consumer protection laws on price marking. Although we are not obliged to follow those, it is good practice, in our opinion, to honour the spirit of that sort of thing, because it does provide our consumers (which, in our case, are our customers or members who own the business) with a degree of protection against the sharp practice, and we would have regarded that as sharp practice.”*<sup>[15]</sup>

The Jersey Chamber of Commerce has argued that arranging for goods to be specially labelled for Jersey at source would also be uneconomical.

The Minister accurately noted that-

*“GST is a fact of life that businesses have got to deal with and they are dealing with it on a day-to-day basis on an inclusive basis across the world, why are we any different?”*<sup>[16]</sup>

The Panel believes that Jersey is different, to an extent. Jersey does not produce a significant quantity of goods for internal consumption, and is therefore reliant on imports for many of its staple goods. This is not in itself an unusual position.

Notwithstanding this, what is unusual is that Jersey is not a large enough export market for any other jurisdiction to have an economic interest in labelling products specifically for it. The Island is in many cases treated as a sub-division of the UK market, and to label goods separately would remove the benefits gained from this and incur additional costs.

The costs, be they generated from exceptional payments to outside suppliers to re-label goods, or administrative costs from absorbing the costs of re-labelling internally, are higher in Jersey than in larger jurisdictions. This additional negative aspect must be considered when weighing up the options.

The Minister has acknowledged the concerns of business, particularly regarding the pricing of goods that are priced by variable weight-

*“Obviously, a one pound steak is different in weight from a two pound, so ... I*

*recognise the issue there. I recognise that that is one problem that some retailers have and I do not have a ready solution to that.*<sup>[17]</sup>

The effects on retailers of inclusive pricing will depend to a large extent on the nature of their business. There would be considerably less impact on retailers selling small numbers of high-value imported products than those such as food retailers which sell much larger amounts of lower-margin imported goods.

#### **Key Finding**

**The implementation of GST, whatever system of price marking is adopted, will add to the costs of doing business, especially retail. If inclusive price-marking is introduced there will be increased costs associated with re-labelling of many pre-priced goods from the UK. If the retailer chooses not to re-label a product then the retailer will suffer reduced profit margins, and may recoup this loss on other products. The alternative would be a reduction of promotional offers in supermarkets and UK chain stores.**

The Panel has noted that the problem centres on the importation of zero VAT-rated UK products, especially foodstuffs. This issue could have been avoided entirely by introducing a system of exemptions that mirrored the UK VAT system. The decision to maintain GST at 3% by introducing an 'exemption-free' regime is a factor in the difficulties now encountered with inclusive pricing.

#### **Key Finding**

**If food items had been zero rated for GST, the problems faced by food retailers selling UK pre-priced goods under an inclusive pricing system would have been eliminated.**

### 3.2 Exclusive pricing

In an exclusive system the GST element of prices would be displayed separately, and added to the price of goods at the till. A good previously priced at £1.00 would therefore still be marked '£1.00', but the retailer would prominently display signs saying '3% GST payable' on the shelves and at the till. 3% would be added to a customer's bill at the point of sale.

This system is favoured by some consumers as it details exactly how much tax is being paid on each transaction, and an individual will be aware at all times of the effect of GST on the cost of living. It will also clearly demonstrate what elements of household expenditure incur GST and which do not.

It is also the preferred option of the Jersey Chamber of Commerce and the Co-Op. They suggest that inclusive pricing would not be of benefit to consumers, and that the problems it would cause make exclusive pricing a considerably better option. Deputy Breckon stated that-

*"If [GST] is inclusive then there will be no transparency and there is a fear from businesses, small and large, as well as from consumers that if that happens ... then they will not know what it is and then there will be accusations and allegations about who has done what to the prices. But, of course, it will not fall on the Government, it will fall on the traders. So perhaps there is some political mileage in disguising a GST in an inclusive price. So perhaps this is a political agenda rather than one that is functional for consumers."*<sup>[18]</sup>

The American and Canadian Retail Sales Tax systems use exclusive pricing. State or federal tax is added as a percentage at the point of sale. Due to the overlapping jurisdictions, in many cases there is more than one tax element on goods. Exclusive taxation has the advantage in this case of allowing central pricing to take place, as variable state and local taxation will not affect the marking of goods. It should be noted that this Retail Sales Tax system is not identical to a GST or VAT system. A comparison of the two systems is available as Appendix 2.

However, a significant group of small retailers have also made the case against exclusive pricing. They have expressed concerns that their older till systems, although sufficient for their current needs, would be incapable of adding the GST percentage once a transaction has taken place. Mr A. Hosegood, a local retailer, informed the Panel that-

*"There is this system in place and all these software-driven tills are VAT based and that is the important thing ... you can quite simply turn it on and get it working. If it is the button on the end of the till, it sounds ever so easy but it is not because your system is not designed to do it. It can do it but it is a lot more work and more expense."*<sup>[19]</sup>

This was echoed by Mr. P. Breakspear, a supplier of point of sale systems-

*"I have spoken to most of the programmers for the software that we supply and most of them have said yes they would be prepared to rewrite the software to incorporate an add-on tax [an exclusive GST] ... but the biggest problem would be that they would obviously only rewrite it in the latest version of the software, which again means that smaller businesses that have not been able to afford to upgrade would be forced into having to upgrade if they wanted to show it as a separate tax at the end of the bill."*<sup>[20]</sup>

He also noted that-

*“They would have to upgrade not only their software and their hardware, but they would have to have current up-to-date support contracts in order to be able to install that software.”<sup>[21]</sup>*

As these older point of sale systems are mostly designed for the domestic UK market, their design must make provision for calculating GST under an inclusive system, as this is the manner in which VAT would be calculated in the UK. The method of calculation is detailed for information as Appendix 3.

Mr. Breakspear estimated the cost to retailers with older tills not compatible with the latest software at “£3,000 and £4,000 a terminal”.<sup>[22]</sup>

### **3.2.1 Comments on the legality of exclusive pricing**

#### **European Union legislation**

During the course of the Public Hearing on 24th July 2007, the Economic Development Minister addressed the possibility that exclusive pricing could be introduced. He expressed concerns that exclusive pricing might not be legally possible-

*“It seems that there is a debate and there is some uncertainty as to whether or not you could have compulsory exclusive pricing on GST. I think that there needs to be some work done, and perhaps you could call to evidence and get legal advice and other constitutional advice because I am not at all sure that it would be possible to bring in a GST/VAT with compulsory exclusive pricing.”<sup>[23]</sup>*

This concern was based on the existence of European Union (EU) legislation-

*“There is an EU (European Union) directive on the matter which requires all EU countries to have their VAT marked as inclusive ... the Directive is 98/6 EC of the European Parliament and the Council of 16th February 1998... I think it is difficult to envisage a situation that the Island would effectively, knowingly and blatantly move against [that directive].”<sup>[24]</sup>*

In response to this statement, the Panel undertook to determine Jersey’s position in relation to the EU and the consequent restrictions on internal legislation.

Jersey is not a full member of the EU, and its relationship to the EU is specified by Protocol 3 of the Treaty of Accession of the UK. Article 1 of Protocol 3 states that-

*‘The Community Rules on Customs matters and quantitative restrictions, in particular those of the Act of Accession, shall apply to the Channel Islands and the Isle of Man under the same conditions as they apply to the United Kingdom.’<sup>[25]</sup>*

The Panel understands that the directive is a consumer protection measure which falls outside of the Island’s obligations to the European Union under Protocol 3. The introduction of exclusive pricing in Jersey does not therefore appear to be restricted by EU legislation.

#### **Jersey Legislation**

During the Public Hearing on 25th July 2007, the Director of Consumer Protection also made the point that there could be compliance issues with some existing laws under an exclusive GST system-

*“You might want to make a note to look at the licensing law because the licensing law requires that certainly restaurants and pubs display the prices of their beer, all their minerals, at the door and on price displays inside. The licensing law also says they must not charge a price higher than is stated on that price list. You might like to look at whether that means they are automatically bound to include GST in those prices. ... I think the Places of Refreshment Law does a similar thing for cafes that are not licensed but sell products. They have to display a price.”<sup>[26]</sup>*

The Panel has noted the relevant Articles of legislation, which are detailed below. These essentially require the proprietors of licensed premises or places of refreshment (cafes etc.) to clearly display in specified areas the prices to be paid for all items for sale. This could be considered incompatible with exclusively marked GST, as the prices displayed would not match those paid at purchase.

#### Places of Refreshment (Jersey) Law 1967

##### *Conduct of registered premises*

(1) *The proprietor shall take all such steps as are necessary to ensure that –*  
(b) *during the hours that the registered premises are open for the sale of meals or refreshments, there shall be kept displayed –*

- (i) *at the exterior of, and in close proximity to, each entrance to the registered premises, being an entrance normally used by customers,*  
(ii) *in such manner as to be easily readable by customers, in each room on the registered premises in which meals or refreshments are served to customers,*

*at least one list specifying the prices to be charged for meals and refreshments ... easily readable by members of the public;*

(c) **a price in excess of the appropriate price specified in lists displayed in pursuance of sub-paragraph (b) is neither demanded nor received for any meal or refreshment;**<sup>[27]</sup>

#### Licensing (Jersey) Law 1974

##### *Posting of a licence and other particulars*

*The holder of a licence shall –*

(c) **keep displayed, at the exterior and close to each entrance of the licensed premises normally used by the public, ..., a notice specifying the charges made for the various descriptions of liquor sold ... and keep every such list displayed at the exterior of the premises illuminated where necessary for it to be easily readable by customers;**<sup>[28]</sup>

In practical terms, these laws would require either inclusive pricing, or a number of amendments to be made to permit exclusive pricing. This is a strong argument in favour of inclusive pricing in this sector.

In the opinion of the Panel, public houses are likely to prefer inclusive pricing for obvious operational as well as legal reasons.

### 3.3 Component marking

Under component marking

the overall price of the good would be clearly marked, and the GST payable on the product would also be listed. A good previously priced at £1.00 would be advertised as-

£1.03 = (£1.00 plus 3p GST).

The Panel has noted examples of best practice provided to Australian businesses by the Australian Competition and Consumer Commission, which suggests that retailers -

*‘Consider a washing machine with a base price of \$500 upon which a GST of 10 per cent (\$50) is applicable. The full cash price for the consumer would be \$550. What forms of price advertising would be acceptable for this washing machine?’*

*The full cash price, e.g. ‘\$550’*

*The full cash price and additional information, e.g. ‘\$550 (including GST)’ or ‘\$550 (including \$50 GST)’*

*All component cash prices, totalling to the full cash price, e.g. ‘\$500 + \$50 GST = \$550’*

*All component cash prices, e.g. ‘\$500 + \$50 GST’<sup>[29]</sup>*

This system is inclusive, but it clearly identifies the value of informing consumers about the level of tax paid.

The Panel has included this system in the review as it offers the benefits of both inclusive and exclusive pricing. Customers would be able to see at a glance how much GST was being paid on any given item, while still paying the price indicated on the shelf at the point of purchase.

The Panel also considers that the component marking scheme broadly meets the criteria of the Economic Development Minister and the Treasury and Resources Minister as a system of GST display. Both Ministers have indicated that the final method of GST display must clearly indicate to a consumer what they will pay for any given item.

Separate marking of GST would also have the advantage<sup>[o4]</sup> of informing consumers if a business was registered for GST, as it would appear on a receipt or bill.

The preference of the Economic Development Minister for inclusive marking has been demonstrated in Section 3.1. The Treasury and Resources Minister outlined his preference for some form of inclusive system in response to the proposition of Senator Norman (see Section 2.4)-

*“The GST Regulations (under Article 94 of the Law) require the pricing policy of the retailer to be effectively brought to the attention of the customer before goods are purchased. Price marking must be unambiguous, easily identifiable and clearly displayed.*

*The Regulations place the onus on the registered person (the shopkeeper) to ensure that the customer is made fully aware of the price he or she is being*

*asked to pay before he or she makes a purchase. I believe this is the right approach.*<sup>[30]</sup>

An additional effect would be to draw attention to double taxation. Under the current plans, the government would charge GST on the tax that consumers are already paying in impôt duties. The Minister referred to this situation at the Panel's Public Hearing-

Deputy G.P. Southern

*Are we going to end up paying GST on tax? So when something has got impôt on it, are we going to be paying GST on the total price, or are we going to be paying GST on the price without the impôt? Are you double-charging, effectively?*

Senator P.F.C. Ozouf

*We are collecting 3 per cent GST on all, with only exemptions for medical supplies, which we supported. Yes, effectively it is GST on top of the duty rates. That has always been implicit.*<sup>[31]</sup>

Notwithstanding the benefits of component marking detailed above, the Panel recognises that it is not a panacea. The implementation costs are likely to be considerable, and there will be an ongoing cost to businesses for complex signage and labelling of products.

### **3.3.1 Mandatory receipt provision**

A method of ensuring that consumers are aware of the tax component on their purchases under any system of GST display would be a requirement for businesses to provide customers with a receipt indicating the amount of GST paid in the transaction either per item or as a whole or both. This would however require that receipts be provided as a matter of course, or at least on request.

The Panel recognises that this would require an investment from retailers and businesses, but considers that it represents the 'gold-standard' of consumer protection. It is of the opinion that businesses registered for GST would be in a position to make the relatively modest investment necessary, if their systems were to need to be upgraded. Many businesses would be in a position to provide receipts displaying GST at the current time. Businesses under the GST registration threshold (with a turnover of less than £300,000) could consider this addition to the associated costs when deciding whether or not to register.

The Director of Consumer Protection expressed to the Panel his acceptance of the mandatory receipt policy during the Panel's Public Hearing-

The Connétable of St. Brelade

*"I note that in some countries it is an obligation for the traders to give a receipt. Would you consider that appropriate in Jersey?"*

Mr. T. Le Roux, Director of Consumer Protection

*"It would probably be a good idea. I do not know whether or not the Chamber of Commerce would have a view on whether you would want to force traders to give receipts. Certainly there are not many that do not because if you have to take goods back or you have a problem with them, what will the trader say to you? Can I see your receipt, please? The vast majority of traders, let us face it, do give receipts."*<sup>[32]</sup>

During the same hearing, however, the Economic Development Minister indicated that this would not be necessary under his intended inclusive pricing regime-

*“A healthy thing to do is to have a till receipt that would give you as much information but I think we need to be realistic in terms of not moving away dramatically from the established till procedures that tills are being bought effectively on the UK VAT system or on the European system. I do not think we should reinvent the wheel dramatically. So, I think there are - the minimum standard is acceptable to me, as far as the European directive is concerned.”<sup>[33]</sup>*

The Panel does not consider the requirement to clearly display GST paid on transactions to be ‘reinventing the wheel’, and neither does it feel that a system which provides only minimum standards of consumer protection should be the preferred choice.

### 3.4 Free marking - an additional option

This is the method of price marking that will be instituted following the withdrawal of the draft Price and Charge Indicators (Jersey) Law 200-, until some decision is made. 'Free' GST display is not a method of pricing but a system under which retailers would be permitted to price goods in whatever manner they saw fit, according to their preference. It involves the least regulation, and will carry the least onerous investment requirements. Ultimately, the government chooses not to intervene in price marking as long as it can collect the tax.

At first glance, this would appear to be the most convenient method for retailers, who do not have a universal preferred option on the method of GST display. However, reservations have been expressed from the retail community and other quarters that because this is to be only a temporary system it might cause considerable difficulties in the future. Mr. Breakspear commented that-

*"I find the worst decision that the States could have made was not to make a decision at all for 12 months. ... If we advise people to go down one route and then in 12 months' time the States say, you know: "You are going to go this way" then they are going to have to change it all back again, another cost implication."*<sup>[34]</sup>

M. Hosegood was also of the opinion that the States needed to make a decision on a method of price marking. He thought that the *laissez faire* position was harmful because-

*"We [retailers] need stability because time goes so fast and 12 months is going to have gone like that. We need clarity. It does not matter, just give us a system."*<sup>[35]</sup>

When later asked if he had any additional comments for the Panel he added-

*"Please make a decision. You know, that is the absolute thing."*<sup>[36]</sup>

An additional risk of this system is that consumers may be adversely affected. There would be no requirement for retailers to maintain standard pricing methods over time or across different outlets. The public would not have a standardised system to guide them through the introduction of GST, and this is likely to result in a more acrimonious transitional period than would otherwise be the case.

Prescriptive signage would be essential if this method were to be adopted to obviate confusion amongst consumers.

#### Key Finding

**Certainty is key to business management. Retailers need to know if a single price marking method will be imposed and if so what it will be. They need to know this as soon as possible.**

### 3.5 Advantages and disadvantages of GST display methods - Summary

Below is a summary of the various retail issues raised during the course of the review and an explanation of how each method of GST display would affect them.

#### Clarity for consumers – price paid

This has been a central theme in the Panel's discussion of GST display. It is generally agreed that the consumer is the most important person in the retail exchange, and will ultimately bear the cost of the tax.

Inclusive pricing - This system would allow customers to see at a glance what price is to be paid, as under the pre-GST system.

Exclusive pricing - There may be a certain lack of clarity with this system, as not all businesses will be registered to pay GST. The result will be that two retailers adjacent to each other could have prices that were not directly comparable. A GST registered retailer could advertise a good previously sold at £1.00 as '£1.00' with GST chargeable, but the customer would pay £1.03 at the till. A non-registered retailer could display it at '£1.02' or similar, (thus covering the GST element of his supply-side costs) with no additional GST charge to the customer. This is likely to confuse the consumer.

Component pricing - This avoids the need for consumers to calculate a percentage addition to the total price of their purchases, as well as displaying GST for the public to see. Shops not registered for GST would be able to display the fact that GST was included in the basic price.

#### Clarity for consumers – tax paid

The Panel considers that this is an important consideration as the public have a right to know the level of tax to which they are liable. Public awareness of the tax will also act as a disincentive to future governments to increase the level of taxation, and encourage them to seek alternative methods of balancing budgets.

Inclusive pricing - Under a fully inclusive system it would not be clear to consumers what level of tax was being paid on each good, or overall. This would expose the tax system to accusations that it was in effect a 'stealth tax'.

Exclusive pricing - This would provide the clarity as to the tax paid on goods.

Component pricing - This system makes the consumer aware of how much GST is being paid on each item, as it would be clearly marked at the point of purchase. This removes the 'stealth tax' label from GST and would provide the public with a better understanding of the impact of the tax.

#### Key Finding

**The customer has a right to know how much they will be expected to pay when they reach the till. The customer also has a right to see how much GST they have paid per purchase.**

#### Price points

Price points are particular levels which make goods appear less expensive than they actually are, and act as a psychological incentive to buy. The most common end in '9' or '99', although there are others. Price points will affect the exact cost of GST on any particular item to some extent whatever system is introduced.

Inclusive pricing - There are two conflicting opinions on the effects of inclusive pricing on price points.

One school of thought suggests that if an item is 99p there will be a strong incentive for retailers to absorb the GST and to continue to sell the item at this price. The retailer would either accept a reduction in revenue or displace the cost of input GST from some goods onto others.

The opposing view is that despite being only 3% the GST will drive items to the next price point, so an item previously costing £1.49 might be increased to £1.59. The effects depend upon the price points in question, as the less expensive the good the higher the proportional difference between adjacent points. This argument is not generally accepted however as competition will have the effect of maintaining downward pressure on retail prices. Were competition to be absent in a given sector there could be sharp inflation.

The effects of competition will not allow retailers to charge exactly the prices that they wish.

Exclusive pricing - This is least likely to affect price points as retailers will simply sell items at the same price and GST will be added at the till.

Component pricing - The effect on price points is unclear. It may be that retailers will maintain price points with GST added, for instance '£9.99 plus 30p GST = £10.29'. Conversely, retailers could instead choose to maintain overall the price at a price point, for instance '£9.70 plus 29p GST = £9.99'.

This decision will be affected to an extent by how successfully retailers distance themselves from the GST they charge. One could imagine that the attitude to be cultivated would be that goods costs £9.99, but that due to circumstances beyond the retailer's control the consumer is forced to pay 30p directly to the government through the retailer's till. Retailers have not expressed firm opinions on whether this would be the case, and accordingly the effects of component pricing on price points are unknown. Experience in the USA would indicate that tax is generally added to price points, however some retailers will cover the tax as a discounting tool.

## **Rounding**

Another point of concern to the public is the possibility that retailers would take the advantage of the imposition of GST to round up the cost to the nearest penny<sup>[o6]</sup>.

Inclusive pricing - As the GST element is hidden, there is a possibility that retailers could include a higher GST element than strictly justified. This would be most likely when the exact GST would be slightly over a whole penny, i.e. if a good cost £2.05 then the GST would be 6.15p, but the retailer could round up to 7p without the customer being aware as the overall price would be £2.12 with no mention of GST. This could be the case on every item in a transaction, and the effect on

purchases of large quantities of low-value items could be that this rounding could increase to the detriment of the consumer.

Exclusive pricing - If GST were to be added as 3% of the total exchange, then rounding could only take place once, with much more limited implications.

Component pricing - Were the GST indicated on every product, retailers would be able to round up GST only if they were willing to be seen doing so.

Although the Panel has considered the matter of price rounding as it is prominent in the mind of the public as a danger of GST, it does not consider that this is a central issue. Retailers will charge for goods what they feel consumers will pay, subject to profit, turnover and competition considerations. Therefore rounding up or down will be dealt with in the normal manner, by the choices made by consumers. Retailers rounding up GST would be no different to those rounding down and adding a penny to the base price. Component marking would enable customers to be aware of this, and they would still be free to make their own decisions on the best prices.

### **Compliance cost to retailers - labelling of goods**

The labelling of goods has been a point of concern primarily for some retailers, especially those which import pre-priced lines of goods sold in UK supermarkets. They have stated that there are considerable implications in needing to reprice goods imported at zero-VAT rate from the UK to reflect GST.

Inclusive pricing - This would require the repricing of numerous imported goods, especially food items to reflect GST. Some retailers have indicated that they would be unable to absorb the GST rate of 3% as in many cases their profit margin is below this level and therefore doing so would be unsustainable. Staffing and other costs incurred by repricing would be considerable, and would inflate the costs of these goods to uneconomic levels. The Panel has been informed that the result would be the withdrawal of numerous product lines from sale in Jersey. This will primarily affect certain large retailers and those which import zero-rated UK goods.

Exclusive pricing - Exclusive pricing would not require the repricing of goods, as the GST would be added at the point of sale.

Component pricing - This would require more complex labelling of all goods, as well as the re-labelling of imported pre-priced goods, as under the inclusive pricing system. Under this system retailers would have the additional burden of indicating on all goods the GST to be charged, as well as replacing the UK prices.

### **Compliance cost to retailers – initial implementation**

Inclusive pricing - Many till systems in Jersey are geared up to a UK VAT style tax, and would function better under this system than under an exclusive system.

Exclusive pricing - Some large retailers have systems which would be compatible with the exclusive system, or would be able to easily obtain programs that would be compatible.

Component pricing - Tills that would function under inclusive pricing would also function under this system, as long as the GST on each item was labelled at exactly 3%.

## Effect on non-registered businesses

- Inclusive pricing - As registered businesses will not charge GST, and although the lack of GST in prices will not be immediately clear, it is likely that non-registered businesses will be able to charge marginally cheaper prices as they will only have to cover GST paid out on stock, services etc and not charge 3% on a total price set at a level intended to cover staff costs, rent, and other non-GST chargeable expenses. Their margins will still be set by market forces.
- Exclusive pricing - This option would introduce a two-tier system under which most businesses will charge GST at the till but non-registered businesses will not be able to do so. This will therefore not represent a level playing field, although whether the 'no GST' label that non-registered business will be able to display will outweigh the higher shelf prices that would have to be charged to cover their GST costs is unknown.
- Component pricing - Non-registered businesses would simply not be obliged to mark GST on the shelf, but just to label the total price. If compulsory receipt provision was introduced, non-registered businesses would be free from this requirement as they would have no GST element to display.

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[1] P.37/2007 - Draft Goods and Services Tax (Jersey) Law 200-, Article 94 - Display of retail prices

[2] P.37/2007/Amd(2) - Draft Goods and Services Tax (Jersey) Law 200- second amendments - Deputy A. Breckon

[3] States of Jersey Hansard transcript – 18th April 2007 - Section 1.4.2

[4] P.99/2007/Com - Goods and Services Tax - price marking legislation - Senator L. Norman

[5] P.99/2007/Com - Goods and Services Tax - price marking legislation - comments of the Treasury and Resources Minister

[6] Mr. S. Lowthorpe, GST Director, Public Hearing 24th July 2007, transcript p 10-11

[7] Mr. J. Hopley, Jersey Chamber of Commerce, Public Hearing 25th July 2007, transcript p5

[8] Mr. R. Shead, Jersey Chamber of Commerce, Public Hearing 25th July 2007, transcript p11

[9] Mr. J. Hopley, Jersey Chamber of Commerce, Public Hearing 25th July 2007, transcript p11

[10] Economic Development Minister, Public Hearing 24th July 2007, transcript p35

[11] Economic Development Minister, Public Hearing 24th July 2007, transcript p20

[12] Economic Development Minister, Public Hearing 24th July 2007, transcript p5

[13] Mr. J. Hopley, Jersey Chamber of Commerce, Public Hearing 25th July 2007, transcript p5

[14] Mr. R. Shead, Jersey Chamber of Commerce, Public Hearing 25th July 2007, transcript p11

[15] Mr. J. Hopley, Jersey Chamber of Commerce, Public Hearing 25th July 2007, transcript p11

[16] Economic Development Minister, Public Hearing 24th July 2007, transcript p35

[17] Economic Development Minister, Public Hearing 24th July 2007, transcript p35

[18] Deputy A. Breckon, Public Hearing 25th July 2007, transcript p2

- [19] Mr. A. Hosegood, Public Hearing 4th September 2007, transcript p5
- [20] Mr. P. Breakspear, Public Hearing 4th September 2007, transcript p10
- [21] Mr. P. Breakspear, Public Hearing 4th September 2007, transcript p16
- [22] Mr. P. Breakspear, Public Hearing 4th September 2007, transcript p11
- [23] Economic Development Minister, Public Hearing 24th July 2007, transcript p3
- [24] Economic Development Minister, Public Hearing 24th July 2007, transcript p3 and 4
- [25] Treaty of Accession of the UK, Protocol No 3 – ‘on the Channel Island and the Isle of Man’, Article 1 (1952)
- [26] Mr. T. Le Roux, Public Hearing 24th July 2007, transcript p2
- [27] Licensing (Jersey) Law 1974, Article 12
- [28] Places of Refreshment (Jersey) Law 1967, Article 27
- [29] ‘All inclusive pricing and the GST’ - Australian Competition and Consumer Commission - [www.accc.gov.au](http://www.accc.gov.au)
- [30] P.99/2007/Com - Goods and Services Tax - price marking legislation – comments of the Treasury and Resources Minister
- [31] Economic Development Minister, Public Hearing 24th July 2007, p56
- [32] Mr. T. Le Roux, Public Hearing 24th July 2007 transcript p5
- [33] Economic Development Minister, Public Hearing 24th July 2007, transcript p39
- [34] Mr. P. Breakspear, Public Hearing 4th September 2007, transcript p13
- [35] Mr. A. Hosegood, Public Hearing 4th September 2007, transcript p6
- [36] Mr. A. Hosegood, Public Hearing 4th September 2007, transcript p15