

STATES OF JERSEY

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DRAFT GOODS AND SERVICES TAX (AMENDMENT) (JERSEY) LAW 200

**Lodged au Greffe on 29th January 2008
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

DRAFT GOODS AND SERVICES TAX (AMENDMENT) (JERSEY) LAW 200

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Treasury and Resources has made the following statement –

In the view of the Minister for Treasury and Resources the provisions of the Draft Goods and Services Tax (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator T.A. Le Sueur**

REPORT

The States Assembly agreed on 13th May 2005 (P.44/2005) to introduce a broad-based, 3% Goods and Services Tax (GST) as from 2008. The GST Primary Law was approved by the Assembly on 18th April 2007, was included on the Privy Council agenda on 25th July and subsequently given Royal Assent. It was registered in the Royal Court on 17th August.

The main “core” of supporting legislation in the form of GST Regulations was then approved under the following timetable: consultation document and draft Regulations available 3rd August; consultation for 4 weeks; lodged 11th September; States debate and approval 23rd/24th October.

It was stated at the time that Regulations under Part 12 of the GST Law relating to Financial Services Industry (FSI) / International Services Entities (ISE) would be dealt with as a separate exercise.

Following a consultation exercise in November 2007 the GST (International Services Entities) (Jersey) Regulations were lodged on 15th January and are scheduled for States debate on 26th February.

Part 12 of the Law proposed a partial refund scheme (under Articles 61 and 62) which is now being replaced by an extended graduated flat rate scheme for service providers (described in the ISE Regulations). As a result these Articles are to be deleted and the following linked changes will also be made under the amendment law –

- Place of residence
- Status of ISE – not a taxable person for GST purposes
- Payment on an annual basis
- Provision for a partnership to be included in a group registration

At the same time as the above FSI linked changes are being made the opportunity has been taken to make some additional amendments in the interests of clarification/ interpretation. These are based on feedback mainly from professionals and the business community. The amendments providing clarification are as follows –

- Retail schemes – issue of tax invoices
- Rounding
- Treatment of imports – allows Agent of the Impôts to issue Regulations

The remaining amendments are corrections to the Law.

Financial and manpower implications

It is still estimated that 10 staff will be required to administer the tax at an approximate operating cost of £1 million per annum.

However, a 3% GST should generate approximately £45 million per annum in taxation revenue net of operational costs.

Of that £45 million, it is expected that some £5-10 million will be derived from the FSI under procedures covered by the amended law and the ISE regulations.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 28th January 2008 the Minister for Treasury and Resources made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Treasury and Resources the provisions of the Draft Goods and Services Tax (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law amends the Goods and Services Tax (Jersey) Law 2007 (“the GST Law”) to reduce some administrative requirements, to increase flexibility in certain concessions and to allow partnerships to join with bodies corporate in forming groups for GST purposes.

Article 1 defines the principal Law to mean the GST Law.

Article 2 brings a reference to a legal person’s residence into line with the meaning of that expression in Article 123 of the Income Tax (Jersey) Law 1961.

Articles 3 and 4 make changes to enable the Comptroller to make directions about the value of supplies and importations.

Articles 5 and 6 make amendments to ensure that retail supplies do not have to be accompanied by GST invoices where a receipt would suffice.

Articles 7, 14 and 21 make changes for the sake of uniformity of expression in the GST Law.

Article 8 makes changes to enable the Comptroller to make concessions under the GST Law.

Article 9 and 19 amend certain provisions about the flat-rate GST scheme for international services entities (“ISEs”) and to make it clear in two places (instead of one) that those entities, when listed, do not have to charge GST when they make certain supplies.

Article 10 changes the period of listing of an ISE to a period ending on 31st December in the year of listing (or another period, or other periods, fixed by Regulations).

Article 11 makes a change to make it clear that a limited liability partnership may be an ISE.

Article 12 removes Articles 61, 62 and 66(2) of the GST Law, because a partial refund scheme for banks will now not be implemented. (Banks will however be able to participate in the flat-rate scheme for ISEs.) *Article 13* makes a consequential change to Article 63 of the GST Law.

Articles 15 and 20 make changes to allow partnerships to join groups of bodies corporate for group registration under the GST Law.

Article 16 makes it clear that Regulations about disclosing GST may deal with the rounding of amounts of GST.

Article 17 clarifies an existing provision about administrative fees under the GST Law.

Article 18 makes it clear that Regulations may allow the Agent of the Impôts to determine matters under the GST Law when importations are involved, in the same way as the Comptroller of Income Tax may determine matters in relation to both supplies and importations.

Article 20 makes a saving provision for Regulations already made and other things already done under the GST Law when that Law is amended by this Law.

Article 23 sets out the name of this Law.



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Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 5 amended</u>
<u>3</u>	<u>Article 31 amended</u>
<u>4</u>	<u>Article 32 amended</u>
<u>5</u>	<u>Article 42 amended</u>
<u>6</u>	<u>Article 43 amended</u>
<u>7</u>	<u>Article 52 amended</u>
<u>8</u>	<u>Article 56 replaced</u>
<u>9</u>	<u>Article 57 replaced</u>
<u>10</u>	<u>Article 59 amended</u>
<u>11</u>	<u>Article 60 amended</u>
<u>12</u>	<u>Articles 61 and 62 repealed; Article 66 amended</u>
<u>13</u>	<u>Article 63 amended</u>
<u>14</u>	<u>Article 67 amended</u>
<u>15</u>	<u>Article 84 amended</u>
<u>16</u>	<u>Article 94 amended</u>
<u>17</u>	<u>Article 97 amended</u>
<u>18</u>	<u>Article 100 amended</u>
<u>19</u>	<u>Paragraph 1 of Schedule 1 amended</u>
<u>20</u>	<u>Paragraphs 12 – 16 of Schedule 1 replaced</u>
<u>21</u>	<u>Paragraph 1 of Schedule 5 amended</u>
<u>22</u>	<u>Schedule 9 amended</u>
<u>23</u>	<u>Citation and commencement</u>



Jersey

DRAFT GOODS AND SERVICES TAX (AMENDMENT) (JERSEY) LAW 200

A LAW to amend the Goods and Services Tax (Jersey) Law 2007

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law “principal Law” means the Goods and Services Tax (Jersey) Law 2007^[1].

2 Article 5 amended

For Article 5(1)(a) of the principal Law there shall be substituted the following sub-paragraph –

“(a) the usual place of residence of a body corporate or of any other person that is not an individual is the place where its business is managed and controlled;”.

3 Article 31 amended

After Article 31(5) of the principal Law there shall be inserted the following paragraph–

“(6) The Comptroller may, by general direction, make provision about the value of a supply of goods or services, and such a direction, so far as it is not inconsistent with this Law or the Regulations, shall be taken into account for the purposes of this Law and the Regulations.”.

4 Article 32 amended

After Article 32(3) of the principal Law there shall be inserted the following paragraph–

“(4) The Comptroller may, by general direction, make provision for the evaluation of imported goods, and such a direction, so far as it is not inconsistent with this Law or the Regulations, shall be taken into account for the purposes of this Law and the Regulations.”.

5 Article 42 amended

For Article 42(1) of the principal Law there shall be substituted the following paragraph–

- “(1) A registered person who supplies goods or services shall issue to the recipient an invoice in respect of the supply, except to the extent that it is otherwise provided under Article 43(1).”.

6 Article 43 amended

After Article 43(1)(d) of the principal Law there shall be inserted the following sub-paragraph –

- “ ;
- (e) providing that any or all of the requirements of Article 42 shall not apply in respect of retail supplies of goods or services.”.

7 Article 52 amended

In Article 52(1)(b) of the principal Law, for the word “GST;” there shall be substituted the words “GST; or”.

8 Article 56 replaced

For Article 56 of the principal Law there shall be substituted the following Article–

“56 Other relief

- (1) The States may by Regulations make provision for enabling or requiring the remission or refund of GST, or the giving of relief from GST, in such circumstances as the Regulations prescribe.
- (2) The Comptroller may, by direction, make provision for enabling or requiring the remission or refund of GST, or the giving of relief from GST, in such circumstances as the direction specifies.”.

9 Article 57 replaced

For Article 57 of the principal Law there shall be substituted the following Articles–

“57 Flat-rate scheme for international services entity

- (1) GST shall, despite anything else in this Law, not be chargeable on the supply of a service, or of goods, to an international services entity if the conditions set out in paragraphs (2) – (4) are satisfied.
- (2) In the case of the supply of –
 - (a) a service, the service is supplied for the purpose of any business carried on by or through the international services entity; or
 - (b) goods, the goods are to be used or held for the purpose of any business carried on by or through the international services entity.
- (3) When the supply is made, the inclusion, on a list, of a description corresponding to the international services entity (or to a class of international services entities that includes the international services entity) is in effect for the purposes of this Article.
- (4) Any requirements that the States may prescribe by Regulations for the purposes of this Article are met in relation to the service or goods, the supply and the international

services entity (including a requirement in relation to a class of international services entities that includes the international services entity).

- (5) The States may by Regulations prescribe requirements in relation to any or all of the following for the purposes of this Article –
- (a) a service or goods;
 - (b) a supply;
 - (c) an international services entity or a class of international services entities.

57A International services entity not taxable person

A supply made by an international services entity shall not be a taxable supply if made when –

- (a) a description corresponding to the international services entity (or to a class of international services entities that includes the international services entity) is in effect for the purposes of Article 57; and
- (b) any requirements that the States may prescribe by Regulations for the purposes of Article 57 are met in relation to the entity (including a requirement prescribed in relation to a class of international services entities that includes the international services entity).”.

10 Article 59 amended

For Article 59(2) of the principal Law there shall be substituted the following paragraph–

- “(2) Each listing of a description shall have effect –
- (a) if the States have not by Regulations prescribed a time or period for the purposes of this paragraph, until midnight on 31st December in the year in which the listing is made; or
 - (b) if the States have by Regulations prescribed a time until, or a period during which, a listing shall have effect, until such time, or for such period.”.

11 Article 60 amended

For Article 60(1)(c) of the principal Law there shall be inserted the following sub-paragraph –

- “(c) a partnership (which, in this Article, includes a limited partnership and a limited liability partnership);”.

12 Articles 61 and 62 repealed; Article 66 amended

Articles 61, 62 and 66(2) of the principal Law shall be repealed.

13 Article 63 amended

In Article 63 of the principal Law the words “or name” wherever occurring shall be deleted.

14 Article 67 amended

In Article 67(2) of the principal Law, for the words “as customs duty” there shall be substituted the words “as if it were customs duty”.

15 Article 84 amended

In Article 84(2)(z) of the principal Law, for the words “a body corporate” there shall be substituted the word “an entity”.

16 Article 94 amended

After Article 94(2) of the principal Law there shall be inserted the following paragraphs–

- “(3) Regulations under paragraph (1) may specify that any amount of GST, or any amount that includes GST, be rounded to the nearest penny and may specify rules for that rounding.
- (4) Paragraphs (2) and (3) are included for the avoidance of doubt and do not limit the generality of paragraph (1).”.

17 Article 97 amended

For Article 97(3) and (4) of the principal Law there shall be substituted the following paragraphs–

- “(3) The States may by Regulations prescribe the fees that shall accompany the service or giving of instruments, documents, or information, referred to in this Article, as well as any other fee, sum or amount for which this Law makes provision.
- (4) In prescribing such fees, sums or amounts, the States may take into consideration such matters as they think fit, and such fees, sums or amounts may be prescribed so as to raise income in excess of the amount necessary to cover the expenses of the Comptroller, and of the Agent of the Impôts, in discharging their functions in respect of GST.”.

18 Article 100 amended

In Article 100 of the principal Law –

- (a) after paragraph (2) there shall be inserted the following paragraph –

“(2A) A reference in paragraph (2)(c) or (d) to a partnership includes a limited partnership and a limited liability partnership.”;

- (b) after paragraph (6) there shall be inserted the following paragraphs–

“(6A) Regulations, other than Regulations amending a provision of this Law, may –

- (a) allow a matter specified in the Regulations that relates to GST on the importation of goods to be determined by the Agent of the Impôts; or
- (b) make a matter specified in the Regulations that relates to GST on the importation of goods the subject of an approval or decision of the Agent of the Impôts or agreement with the Agent of the Impôts or subject to a condition imposed by the Agent of the Impôts.

(6B) Article 98 shall apply to a determination, approval, or condition, made, given, or imposed, by the Agent of the Impôts in the same way as it applies to a determination, approval, or condition, made, given, or imposed, by the Comptroller.

(6C) Paragraphs (6A) and (6B) do not exclude the application of paragraph (6) in relation to a matter that relates to GST on the importation of goods.”.

19 Paragraph 1 of Schedule 1 amended

For paragraph 1(2) of Schedule 1 to the principal Law there shall be substituted the following sub paragraph –

- “(2) This paragraph is subject to Article 57A in relation to supplies made by an international services entity, being an international services entity within the meaning of that Article.”.

20 Paragraphs 12 – 16 of Schedule 1 replaced

For paragraphs 12 – 16 of Schedule 1 to the principal Law there shall be substituted the following paragraphs –

“12 Eligibility for grouping

- (1) For the purposes of this Schedule, 2 or more entities, being –
 - (a) 2 or more bodies corporate;
 - (b) one or more partnerships and one or more bodies corporate,are eligible to be treated as members of a group if the conditions of sub-paragraphs (2), (3) and (4) are satisfied.
- (2) The first condition is that, in the opinion of the Comptroller, each entity has one or more of the following in Jersey –
 - (a) its usual place of residence;
 - (b) a business establishment;
 - (c) a fixed establishment.
- (3) The second condition is that, in the opinion of the Comptroller –
 - (a) one of the entities controls all of the others;
 - (b) one person (whether or not an individual) controls all of the entities; or
 - (c) 2 or more individuals carrying on a business in partnership control all of the entities.
- (4) The third condition is that each entity satisfies the Comptroller that it is, taken by itself, liable to be registered by virtue of paragraph 1 or that it–
 - (a) makes taxable supplies; or
 - (b) is carrying on a business and intends to make taxable supplies in the course of or furtherance of that business.
- (5) For the purposes of this paragraph and paragraphs 13 – 16 –
 - (a) an entity shall be taken to control an entity if –
 - (i) the first entity is empowered by an enactment to control the second entity’s activities,
 - (ii) the first entity is the second entity’s holding company, or
 - (iii) in the opinion of the Comptroller, the first entity exercises substantial control in fact over the affairs of the second entity;
 - (b) one or more individuals shall be taken to control an entity in the circumstance that –
 - (i) if the one or more individuals were a company, they would be the entity’s

- holding company, or
- (ii) in the opinion of the Comptroller, they exercise substantial control in fact over the affairs of the entity; and
 - (c) a partnership includes a limited liability partnership, but excludes a partnership (within the meaning of Article 11) that is not treated as a person by virtue of Article 11.

13 Groups of entities

- (1) The Comptroller may, on application, register as a group 2 or more entities that are eligible to be treated as members of a group.
- (2) The Comptroller shall do so by notice in writing to the entity that is to be the representative member of the group.
- (3) The registration shall take effect on and from the beginning of a prescribed accounting period specified in the notice.
- (4) The entities shall then be treated as members of a registered group for the purposes of this Law, and one of them, specified in the notice, shall be taken to be the representative member.
- (5) An application under this paragraph with respect to any entities shall be of no effect unless made –
 - (a) by one of those entities or by the person controlling them;
 - (b) not less than 90 days before the day on and from which the registration is to take effect, or at such later time as the Comptroller may allow; and
 - (c) in accordance with any requirements imposed by or under this Law.
- (6) The Comptroller may refuse an application made under this paragraph if it appears to the Comptroller necessary to do so for the protection of GST revenue, but shall not otherwise refuse such an application.

14 Consequences of registration as group

If entities are treated as members of a registered group for the purposes of this Law, then for the purposes of this Law –

- (a) any business carried on by a member of the group shall be treated as carried on by the representative member of the group;
- (b) the supply of goods or services by a member of the group to another member of the group shall be disregarded;
- (c) any other supply of goods or services by or to a member of a group shall be treated as a supply by or to the representative member of the group;
- (d) GST paid or payable by a member of the group on the importation of goods shall be treated as paid or payable by the representative member and the goods shall be taken to have been imported by the representative member; and
- (e) the members of the group shall be liable jointly and severally for any GST due from the representative member.

15 Variation of registration as group

- (1) The Comptroller may, on application, vary the registration of a group by adding, removing or substituting entities as members of the group, or cancel the registration of a

group.

- (2) The Comptroller shall do so by notice in writing to the entity that is or is to be the representative member of the group.
- (3) An entity shall not be added or substituted as a member of a group unless eligible to be treated as a member of the group.
- (4) Any such variation or cancellation shall take effect on and from the beginning of a prescribed accounting period specified in the notice.
- (5) An application under this paragraph with respect to any entities shall be of no effect unless made –
 - (a) by one of those entities or by the person controlling them;
 - (b) not less than 90 days before the day on and from which the variation is to take effect, or at such later time as the Comptroller may allow; and
 - (c) in accordance with any requirements imposed by or under this Law.
- (6) The Comptroller may refuse an application made under this paragraph if it is an application to add or substitute an entity and it appears to the Comptroller necessary to refuse the addition or substitution for the protection of GST revenue.
- (7) The Comptroller shall not otherwise refuse an application made under this paragraph.

16 Removal from group where change in circumstances

- (1) This paragraph applies to an entity that is a member of a group registered under paragraph 13.
- (2) If it appears to the Comptroller that –
 - (a) the entity does not fulfil the condition set out in paragraph 12(2);
 - (b) the entity has ceased to be controlled by the entity, person, or individuals carrying on business in partnership, that controls or control the other entities in the group;
 - (c) the condition set out in paragraph 12(3) is no longer fulfilled in respect of the group; or
 - (d) the entity does not fulfil the condition set out in paragraph 12(4),the Comptroller shall, by notice in writing to the entity and to the entity, person, or individuals carrying on business in partnership, that controls or control (or, in the case referred to in clause (c), last controlled) the other entities in the group, remove the entity from registration of the group.
- (3) The Comptroller shall not do that without first giving the parties that are to be given that notice an opportunity to be heard on the question of the removal.
- (4) The removal shall have effect on and from such date as the Comptroller specifies in the notice.”.

21 Paragraph 1 of Schedule 5 amended

In paragraph 1(j) of Schedule 5 to the principal Law, for the word “authorized” there shall be substituted the word “approved”.

22 Schedule 9 amended

After paragraph 2 of Schedule 9 to the principal Law there shall be inserted the following paragraph–

“3 Amendments made by Goods and Services Tax (Amendment) (Jersey) Law 200-

The amendment of a provision of this Law by the Goods and Services Tax (Amendment) (Jersey) Law 200- shall not affect the validity, or prevent the continuation of the operation, of anything done, or any Regulation made, under the provision before the amendment takes effect, if the same thing could have been done, or the same Regulation made, under that provision immediately after that amendment of the provision.”.

23 Citation and commencement

This Law may be cited as the Goods and Services Tax (Amendment) (Jersey) Law 200-.

