

STATES OF JERSEY



DRAFT GOODS AND SERVICES TAX (AMENDMENT No. 2) (JERSEY) LAW 200-

**Lodged au Greffe on 27th October 2009
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

DRAFT GOODS AND SERVICES TAX (AMENDMENT No. 2) (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 No. 2) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

REPORT

This Draft Law gives effect to proposals described in the Draft Budget Statement 2010.

Financial and manpower implications

The financial and manpower implications are clearly identified at Section 11 of the Draft Budget Statement 2010 (P.179/2009).

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 22nd October 2009 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 (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law clarifies a number of provisions of the Goods and Services Tax (Jersey) Law 2007 (here referred to as the “GST Law”).

Article 1 provides for the interpretation of the Law and *Article 12* for its name and its commencement.

Article 2 makes it clear that educational activities of an association, or the normal activities of a trade union, do not automatically amount to business.

Article 3 makes the disposition of a business as a going concern not chargeable to GST.

Article 4 sets out some refinements concerning when a supply is considered as taking place.

Article 5 makes changes to the treatment of services supplied outside Jersey to taxable recipients who are treated as suppliers under the GST Law. The ambit of supply is expanded to include not only supply for the purposes of a business carried on by the recipient but also supply for the purposes of a business carried on by a person connected with the recipient.

Article 6 requires GST debits or credits of less than £10 to be carried forward and not treated as nil.

Article 7 requires supplies to international services entities to be entirely for the purposes of the business of the entity if, under Part 12 of the GST Law, the supplies are to be treated as not chargeable to GST.

Article 8 extends, and clarifies, the periods during which the Comptroller may make assessments to GST in cases of inadequate accounting by taxable persons.

A person who makes a certain level of taxable supplies is liable to be registered under the GST Law. *Article 9(1)* amends paragraph 1 of Schedule 1 to make it clear that if a person makes a supply of land that is a capital asset of a business, that supply is not to be counted towards the value of the person’s supplies when deciding whether the person is liable to be registered or not. *Article 9(2)* inserts a missing “or” in paragraph 12 of Schedule 1.

Article 10 makes changes to ensure that medical and paramedical supplies by practitioners working through an agency are exempt from GST in the same way as they are if made by practitioners working for themselves. In addition, the exemption of education from GST is extended to cover certain instances of higher education.

Article 11 makes –

- (a) certain refinements to the zero-rating of supplies of dwellings, to include supplies of buildings only at the planning stage and buildings intended to be used as residential institutions or for charitable purposes; and
- (b) the zero-rating of stores and merchandise carried on planes and ships apply effectively only to commercial passenger-carrying planes and ships.



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Arrangement

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Jersey

DRAFT GOODS AND SERVICES TAX (AMENDMENT No. 2) (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 2007¹.

2 Article 2 amended

For Article 2(3) of the principal Law there shall be substituted the following paragraphs –

“(3) If a club, association, organization or other body has objects that are in the public domain and are of a political, religious, educational, philanthropic, philosophical or patriotic nature, it shall not be taken for the purposes of this Law to be carrying on a business only because its members subscribe to it, if a subscription obtains no facility or advantage for the subscriber other than the right to participate in its management or to receive reports on its activities.

(3A) If an association is a trade union or professional association, it shall not be taken for the purposes of this Law to be carrying on a business only because its members subscribe to it, if a subscription obtains no facility or advantage for the subscriber other than one or both of the following rights –

- (a) the right to participate in its management or to receive reports on its activities; or
- (b) the right to receive professional literature that relates to the relevant trade or profession.”.

3 Article 6 amended

After Article 6(3) of the principal Law there shall be added the following paragraphs –

- “(4) Despite paragraph (1), the disposition (whether or not in connection with its reorganization or winding up) of a business as a going concern shall not be chargeable to GST.
- (5) However, paragraph (4) shall not apply to the disposition of any liabilities or fixed assets of a business otherwise than as part of the disposition of the business as a going concern.”.

4 Article 28 amended

In Article 28 of the principal Law –

- (a) after paragraph (1) there shall be inserted the following paragraphs –

“(1A) If –

- (a) before the time specified in Article 26 or 27 in respect of any one or more supplies, the supplier provides a GST invoice in respect of the supplies; and
- (b) on or before the time or times of supply that would have applied to the supplies under this Part there is a change in the GST chargeable on supplies of the description to which the invoice relates,

the invoice shall cease to be treated as a GST invoice in respect of any such supplies for which payments are due after the change.

- (1B) However, paragraph (1A) does not affect a GST invoice in respect of any supplies for which payments are received before the change.”;

- (b) after paragraph (3) there shall be inserted the following paragraph –

“(3A) If, within the same month (and same prescribed accounting period of the supplier) as the time specified in Article 26 or 27 in respect of a supply, and at or after the time specified in Article 26 or 27 in respect of the supply, the supplier provides a GST invoice in respect of the supply, the supply shall, to the extent that the supply is covered by the invoice, be treated as taking place at midnight on the earlier of the following days –

- (a) the last day of that month;
 - (b) the last day of the prescribed accounting period,
- and not at the time specified in Article 26 or 27.

5 Article 30 amended

For Article 30(1)(a) of the principal Law there shall be substituted the following sub-paragraph –

- “(a) in the case where the recipient is a taxable person who receives the service –
 - (i) for the purposes of any business carried on by the recipient, or
 - (ii) for the purposes of any business carried on by a person connected with the recipient,this Law shall apply to the supply and the recipient as if the supply had been made by the recipient as supplier and in the course or furtherance of any business carried on by the recipient; or”.

6 Article 44 amended

For Article 44(1) of the principal Law there shall be substituted the following paragraph –

- “(1) If, at the end of a prescribed accounting period, the amount of GST due from any person or the amount of any GST credit of a person would be less than £10, that amount shall be added to the amount of GST credit, or GST debit, of the person in the next prescribed accounting period.”.

7 Article 57 amended

For Article 57(2) of the principal Law there shall be substituted the following paragraph –

- “(2) In the case of the supply of –
 - (a) goods, the goods are to be used, or held, wholly and exclusively for the purpose of any business carried on by or through the international services entity; or
 - (b) a service, the service is supplied wholly and exclusively for the purpose of any business carried on by or through the international services entity.”.

8 Article 78 amended

In Article 78 of the principal Law –

- (a) in paragraph (1)(a) for the word “second” there shall be substituted the word “fifth”;
- (b) for paragraph (4) there shall be substituted the following paragraph –
 - “(4) An assessment under this Part (except under Article 71(4)) of penalty tax or of a surcharge shall not be made –
 - (a) in respect of a person who was a taxable person at the time when the conduct giving rise to the liability to the penalty

- tax or surcharge occurred, after the fifth anniversary of the last day of the prescribed accounting period in which that conduct occurred; or
- (b) in respect of a person who was not a taxable person at the time when the conduct giving rise to the liability to the penalty tax or surcharge occurred, after the fifth anniversary of the last day on which that conduct occurred.”.

9 Schedule 1 amended

- (1) Paragraph 1(5) of Schedule 1 to the principal Law shall be repealed.
- (2) For paragraph 12(1)(a) of Schedule 1 to the principal Law there shall be substituted the following clause –
 - “(a) 2 or more bodies corporate; or”.

10 Schedule 5 amended

- (1) In paragraph 4 of Schedule 5 to the principal Law –
 - (a) the existing text shall be numbered as sub-paragraph (1);
 - (b) the following sub-paragraph shall be inserted at the end –
 - “(2) For the purposes of sub-paragraph (1), if –
 - (a) a service is or goods are supplied to a person (“the patient”) by a person (“the agency”) other than a person (“a practitioner”) specified in any of clauses (a) to (d) of sub-paragraph (1); and
 - (b) the service is or goods are nevertheless provided by a practitioner to the patient and in the course of the practitioner’s practice as such a practitioner,

the supply of the service or goods shall be taken to have been made by the practitioner in the course of the practitioner’s practice as such a practitioner and as referred to in the relevant clause.
 - (3) For the avoidance of doubt, the descriptions specified in sub-paragraph (2)(a) in inverted commas are not intended to limit the classes of persons to which they relate.”.
- (2) In paragraph 7 of Schedule 5 to the principal Law –
 - (a) the existing text shall be numbered as sub-paragraph (1);
 - (b) the following sub-paragraphs shall be added at the end –
 - “(2) For the purposes of this Law, the supply of a service, being higher education at Highlands College or an approved college, shall be exempt.
 - (3) In sub-paragraph (2), “higher education” has the same meaning as in the Education (Jersey) Law 1999”.

11 Schedule 6 amended

- (1) For paragraph 1 of Schedule 6 to the principal Law there shall be substituted the following paragraphs –

“1A Interpretation

In this Schedule –

‘aircraft’ means an aircraft that –

- (a) has an authorized weight exceeding 3 metric tonnes; or
- (b) has an authorized weight of 3 metric tonnes or less, and is being operated for valuable consideration;

‘authorized weight’, in relation to an aircraft, has the meaning given to it by or under the Airport Dues (Jersey) Law 1956³;

‘co-location’, in relation to computer server equipment, means the provision of a physical environment for the operation of the computer server equipment;

‘grant’ includes assignment, transfer and surrender;

‘major interest’, in relation to land, means an interest that confers an exclusive right on the owner of the interest to enjoyment of the land (whether or not that right is conditional, deferred or present), but does not include a lease of land for a term of 9 years or less;

‘ship’ means a vessel other than a vessel that is –

- (a) designed or adapted for use for recreation or pleasure;
- (b) a passenger boat to which a licence under Part 5 of the Boats and Surf-Riding (Control) (Jersey) Regulations 1969⁴ relates; or
- (c) a speed boat registered under Part 6 of those Regulations;

‘use for a relevant charitable purpose’ means use by a charity –

- (a) otherwise than in the course or furtherance of a business; or
- (b) as a village hall or similarly in providing social or recreational facilities for a local community;

‘use for a relevant residential purpose’ means use as –

- (a) a children’s home or other institution providing residential accommodation for children;
- (b) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs, or past or present mental disorder;
- (c) a hospice;
- (d) residential accommodation for students or school pupils;
- (e) residential accommodation for members of any of the armed forces;

- (f) a monastery, nunnery or similar establishment; or
- (g) an institution that is the sole or main residence of at least 90% of its residents,
except use as a hospital, prison or similar institution or as a hotel, inn or similar establishment;
‘valuable consideration’, in relation to the operation of an aircraft, has the meaning given to it by or under the Airport Dues (Jersey) Law 1956.

1 Supply of dwelling

- (1) The following shall be zero-rated –
 - (a) the supply (whether by sale, transfer or lease (of any term)) of an interest in or right over –
 - (i) a dwelling, or
 - (ii) a building intended solely for use for a relevant residential purpose or solely for use for a relevant charitable purpose;
 - (b) the supply of a licence to occupy a dwelling or such a building.
- (2) However, the supply of food or linen, or any cleaning service, as part of or together with the supply of an interest in, right over, or licence to occupy, a dwelling or such a building, shall not be treated as included in a supply referred to in sub-paragraph (1).
- (3) Sub-paragraph (1) shall not apply to the supply of an interest in, right over, or licence to occupy, a dwelling, if –
 - (a) the relevant sale, transfer or lease prevents the recipient from occupying the dwelling continuously during the term of the interest or right;
 - (b) the relevant interest, right or licence does not extend to the recipient’s occupying the dwelling continuously during the term of the interest, right or licence;
 - (c) the term of the interest, right or licence is less than 3 months; or
 - (d) a restrictive agreement or covenant, or permission under the Planning and Building (Jersey) Law 2002⁵, prevents the use of the dwelling as the recipient’s principal private residence.
- (4) Sub-paragraph (1) shall not apply to the supply of an interest in, right over, or licence to occupy, a building intended solely for use for a relevant residential purpose or solely for use for a relevant charitable purpose, if –
 - (a) the relevant sale, transfer or lease prevents the use of the building solely for the relevant residential purpose, or solely for the relevant charitable purpose, continuously during the term of the interest or right;

- (b) the relevant interest, right or licence does not extend to the use of the building for the relevant residential purpose, or the relevant charitable purpose, continuously during the term of the interest, right or licence;
- (c) the term of the interest, right or licence is less than 3 months; or
- (d) a restrictive agreement or covenant, or permission under the Planning and Building (Jersey) Law 2002, prevents the use of the building solely for the relevant residential purpose, or the relevant charitable purpose.”.

(2) In paragraph 2 of Schedule 6 to the principal Law –

(a) for sub-paragraph (1) there shall be substituted the following sub-paragraphs –

“(1) A grant of a major interest in, or in any part of, land shall be zero-rated if at the time of the grant –

- (a) the land or the part is subject to permission under the Planning and Building (Jersey) Law 2002 for the construction of a dwelling or a number of dwellings, or of a building intended solely for use for a relevant residential purpose; or
- (b) there is on the land or the part a completed building –
 - (i) designed solely as a dwelling or a number of dwellings, or
 - (ii) intended solely for use for a relevant residential purpose or solely for use for a relevant charitable purpose,and the land or the part are within, or coterminous with, the curtilage of the building.

(1A) In sub-paragraph (1)(b), the reference to “completed” in relation to a building is a reference to one or both of the following facts in relation to the building –

- (a) that every dwelling in the building is occupied by one or more persons living in the dwelling;
- (b) that the notice required by bye-law 13(6) of the Building Bye-laws (Jersey) 2007⁶ has been given in relation to the building work by which the building was constructed.”;

(b) for sub-paragraphs (4A) and (5) there shall be substituted the following sub-paragraphs –

“(4A) Despite sub-paragraph (4) –

- (a) the reference in sub-paragraph (1)(a) to the construction of a dwelling or number of dwellings includes a reference to the conversion of one or more existing buildings that are not dwellings into one or more dwellings; and
- (b) the reference in sub-paragraph (2) to the construction of a building designed solely as a dwelling or number of dwellings, includes a reference to the conversion of an

existing building that is not so solely designed into one that is so solely designed.

- (5) Sub-paragraph (1) shall not apply to –
- (a) the grant of a lease, being a grant that is not made for a consideration in the form of a premium in respect of the lease or of a first payment of rent due under the lease; or
 - (b) the grant of an interest in, or in any part of, a building designed as a dwelling or number of dwellings, or the grant of an interest in the site of such a building or of any part of such a building, if a restrictive agreement or covenant, or permission under the Planning and Building (Jersey) Law 2002, prevents the use of any of the dwellings as a principal private residence.”;
 - (c) paragraph (11) shall be repealed.
- (3) For paragraph 4 of Schedule 6 to the principal Law there shall be substituted the following paragraph –

“4 Zero-rating of exports

- (1) A supply of goods shall be zero-rated if the supply –
- (a) would involve their export from Jersey; or
 - (b) would involve their being shipped on a ship or aircraft for use –
 - (i) as stores on a voyage by that ship or aircraft to a destination outside Jersey, or
 - (ii) as merchandise for sale by retail on the ship or aircraft to persons carried on a voyage by that ship or aircraft to a destination outside Jersey, being sale during that voyage,
- and any conditions imposed by the Comptroller by direction are fulfilled.
- (2) Those conditions may include conditions as to the minimum or maximum value of the supply or of the goods and as to any other matter.”.
- (4) Paragraphs 5(3) and 6 of Schedule 6 to the principal Law shall be repealed.

12 Citation and commencement

- (1) This Law may be cited as the Goods and Services Tax (Amendment No. 2) (Jersey) Law 200-.
- (2) This Law shall come into force on 1st January 2010.

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- ¹ *chapter 24.700*
 - ² *chapter 10.800*
 - ³ *chapter 03.315*
 - ⁴ *chapter 19.060.30*
 - ⁵ *chapter 22.550*
 - ⁶ *chapter 22.550.05*