

# STATES OF JERSEY

## Corporate Services Scrutiny Panel

### GST Review

**TUESDAY, 11th DECEMBER 2007**

**Panel:**

Deputy P.J.D. Ryan of St. Helier (Chairman)

Connétable D.J. Murphy of Grouville

Connétable M.K. Jackson of St. Brelade

Connétable J.L.S. Gallichan of Trinity

Mr. R. Teather (Panel Advisor)

**Witnesses:**

Mr. G. Grime (Jersey Finance Limited)

Mr. R. Kirkby (Jersey Finance Limited)

**Deputy P.J.D. Ryan of St. Helier (Chairman):**

Good morning from Corporate Services to Geoffrey Grime and Jersey Finance and, sorry, I have forgotten the other ...

**Mr. R. Kirkby (Jersey Finance Limited):**

Sorry, I am Robert Kirkby. I am the Technical Director for Jersey Finance.

**Deputy P.J.D. Ryan:**

So we are having a public hearing this morning to talk specifically about the G.S.T. (Goods and Services Tax) treatment of financial services. I can probably dispense with the standard note. I think you have probably seen it before, so we will take it as read. I think you are familiar with everybody here. Robert, maybe you are not?

**Mr. R. Kirkby:**

Yes, I am reasonably familiar.

**Deputy P.J.D. Ryan:**

Okay, so I do not need to make any introductions. Okay. Right, well we want to launch, just a quick bit of history really. You will recall that when the law came up for debate in the States there were some very late amendments that were proposed, and I am sure you are familiar with what I am talking about.

Corporate Services were a little worried about the speed with which they had been brought in, right at the last moment, and I think we expressed that fairly strongly in the States. We would like then to revisit that whole scenario and to talk about the Treasury's proposal. Just to recall we are still talking about the £5-10 million contribution from the finance sector as a whole to States' revenues. We are still on the scenario whereby there is a simple manner which avoids the administration, we are assuming as far as your particular stance is concerned. So, the first question is, are you happy that it has been achieved through the current law and the draft regulations as they stand?

**Mr. G. Grime (Jersey Finance Limited):**

Well, perhaps I can just answer generally and Robert can pick up the detail. I remember well our previous visit to you when we unashamedly were making a plea for a very simple straightforward scheme and I think we are pleased with the way in which that has gone forward. I have to say we have had some extremely helpful meetings in recent times with the Minister and his senior advisors and the law draftsman as well, which has been particularly helpful, really to enable the law draftsmen to understand it firsthand rather than through a chain, if you like, the areas where we thought clarification was necessary. Robert will talk a little bit about a meeting that took place a week ago where we were just highlighting one or 2 areas which needed clarification, which interestingly arose from review of the law and regulations by 2 of the major London law firms. So this was not just us, this was people outside the Island looking at the legislation and regulations and saying: "Well, what does this really mean?" or: "What does that really mean?" But, by and large, answering your question, I think we are pleased with the way progress has been made and subject just to one or 2 little details of where we are right now.

**Deputy P.J.D. Ryan:**

Okay.

**Mr. R. Kirkby:**

Yes, I think that is broadly correct. We have the simple flat rate scheme, the 2 tier approach; one approach for the licensed businesses on the Island, those with employees, et cetera, that are licensed by the Jersey Financial Services Commission and the second part of the scheme, which applies to those entities that may be administered in the Island but may typically have been exempt companies in days gone by. The issues really now are, sort of, minor issues about presentation of the law and regulations and how that is perceived by the external world and making sure that they can see it as a simple solution.

**Mr. R. Teather:**

You talk about the 2 groups, really the law is only one group, is there not?

**Mr. R. Kirkby:**

Yes. I think that is one presentational issue that we would like to address, is that when the primary law

was drafted in early 2007 we had a proposal for a flat rate scheme for administered entities and a presumptive scheme or partial refund scheme for banks plus other entities. What we would like to see is a primary law retaining the administered entity primary law but replacing the presumptive scheme law with a similar international service entity article which applies only to licensed services businesses. So what we are trying to achieve is 2 simple primary law articles and then below those 2 primary law articles we have the regulations that apply to that. So again, to the reader of the law and regulations it is much more simplistic.

**Mr. R. Teather:**

So separating the managers from the funds that they manage?

**Mr. R. Kirkby:**

Exactly.

**Deputy P.J.D. Ryan:**

Because that is not how the law is written at the moment.

**Mr. R. Kirkby:**

No, that is correct, and we had a meeting with the Minister last week where we asked if that would be possible to do that. So, fundamentally we agree with what we have at the moment, it is okay mechanically, but what we would like to see is it made mechanically simpler.

**Connétable M.K. Jackson of St. Brelade:**

Is this dictated by the requirement for the public perception to see the whole law as far simpler as per your original comment? Do you feel that the law as put at the moment is too complicated?

**Mr. R. Kirkby:**

The law currently works, if you have the time and you sit down and you go through the law, it does work, you can find your way around it. However, one of the problems Jersey will always face is that internationally Magic Circle law firms in London, and elsewhere, they will sometimes not use advisors in the Island, they will just pick up the law themselves and they want to be able to look at the law in 5 or 10 minutes and make a view. If they have to spend any longer time than that then they would tend to use an alternative jurisdiction. So what we will have to do is achieve that simplicity so within that 5 minutes they can say: "We can use Jersey. G.S.T. will not affect this international planning structure."

**The Connétable of St. Brelade:**

This is of crucial importance that the whole law is kept simple?

**Mr. R. Kirkby:**

Yes, absolutely.

**Deputy P.J.D. Ryan:**

Have we lost any business so far to other jurisdictions as a result of the proposed law being complicated as it currently stands?

**Mr. R. Kirkby:**

We believe that some business is looking at alternative jurisdictions and that there has been comments from Magic Circle law firms, and the big 4 accountancy firms in London, that it may be simpler to use an alternative jurisdiction.

**Connétable D.J. Murphy of Grouville:**

Can I just ask, what is the Magic Circle?

**Mr. R. Kirkby:**

Sorry, it is sort of the top 6 to 10 law firms such as Allen & Overy, Linklaters, Slaughter and May and they usually have their own tax team in-house. So they do not always use accountancy firms.

**Deputy P.J.D. Ryan:**

Where are they going as an alternative jurisdiction?

**Mr. R. Kirkby:**

The ones we have heard about have been Guernsey.

**Deputy P.J.D. Ryan:**

Guernsey? Okay. Is that because they are not proposing to have G.S.T. or is that because our law is too complicated, or both?

**Mr. R. Kirkby:**

I think it is a combination, both.

**Deputy P.J.D. Ryan:**

Okay.

**Mr. R. Teather:**

They are saying that our law is complicated therefore let us go somewhere that does not have G.S.T.

**Mr. G. Grime:**

But if our law was simpler and clearer and they would understand right from the beginning that their vehicles would not be liable anyway, they will come here. Hence at the meeting a week ago making these requests for real clarification, which is not contentious, it is just making it easier to understand.

**Mr. R. Teather:**

But that is going to involve changes to the primary law, not just the regulations?

**Mr. G. Grime:**

Yes.

**The Connétable of Grouville:**

Is it a matter of content or presentation then, do you think?

**Mr. R. Kirkby:**

It is a matter of presentation we believe. So, for example, part 12 of the law refers to the financial services international service entity section and what we would like to propose is that at the start of that law there is quite a clear statement that says these vehicles are not subject to reverse charge under Article 34 and other complex G.S.T. matters. To say just categorically in very simple language that it will not affect your international structure. A bit like comparable to the old, still the current Article 12 in the Income Tax Act which applies to exempt companies where they can read one article and achieve comfort that it will not affect their structure.

**The Connétable of Grouville:**

So obviously you will never be convinced that this problem can be overcome of going to other jurisdictions but are you reasonably happy that we are holding our own with the presentation of the content?

**Mr. G. Grime:**

I think if what was discussed last week comes to pass then we will be very happy with that.

**The Connétable of Grouville:**

Okay.

**Mr. R. Kirkby:**

I mean Jersey can sell its services, not just off tax but on the fact the expertise we have, and we just need to make sure that tax is a neutral aspect of that and that if they want to do securitisation funds, et cetera, on the Island they come because of our ...

**Deputy P.J.D. Ryan:**

What do you say to the Guernsey competitor who, to use simple language, is currently saying: “Ha ha ha, we do not have G.S.T., come to us”?

**Mr. R. Kirkby:**

I think the response is the cost for one I.S.E. (International Service Entity) is £100 and if they are making a commercial decision for a securitisation vehicle which is dealing with receivables of a £100 billion and they make that decision based on a £100 cost then that is an oversight. Most intermediaries in London will also have established relationships in the Island with lawyers, accountants, et cetera, and the £100 becomes a non point.

**Deputy P.J.D. Ryan:**

So, you are still confident that you will be able to compete providing the changes are made that are needed?

**Mr. G. Grime:**

Yes.

**Deputy P.J.D. Ryan:**

I mean, I have to say, I do not know if you have any comment, but we, as Corporate Services, did in a public meeting have it on record that we felt that the law was way overcomplicated, and going back 6 months when it was first mooted, you know, any comments on that and other than: “Well, you were right” presumably?

**Mr. G. Grime:**

As I said a few moments ago, I think we have made great progress and subject to these details being sorted out, I could not get to that meeting but apparently the Minister was very happy to take on board all these issues and indication to us is revisions will be made.

**Mr. R. Teather:**

Are there any structural changes proposed, or is it purely presentation?

**Mr. R. Kirkby:**

Mainly presentation. I suppose one structural change would relate to Articles 4 and 5 of the primary law. This is about an issue which we addressed earlier, late 2006, under Amendment No. 27 in the Income Tax Law and the reason we did Amendment No. 27 was to address a problem that Jersey had faced for some time where a Jersey company which was managed and controlled in the U.K. could be

deemed to be dual resident for tax purposes in the U.K. and we were not able to use that dual resident company for the recently introduced U.K. R.E.I.T.s (Real Estate Investment Trust), so we wanted to amend that. We did that in Amendment 27. Unfortunately we have realised, and it has been pointed out to us by external practitioners, that Articles 4 and 5 of the G.S.T. law bring us back into that problem, so negating the effect of Amendment 27. We would like to propose a change to Article 5(1)(a) to replace the words: “Legally constituted” with the terminology: “managed and controlled” which would bring us consistent with the Income Tax Law. The change itself should not affect the impact of the G.S.T. law itself, but will ensure that we have not introduced Amendment 27 for no reason.

**Deputy P.J.D. Ryan:**

Okay, and the U.K. legal opinion is that that will be effective, that change of words?

**Mr. R. Kirkby:**

That is correct, yes.

**Mr. G. Grime:**

These are well understood terms in tax circles. I do not believe it is contentious in any way at all, it is just getting clarification.

**Mr. R. Teather:**

This is to get round the problem that people will be using B.V.I. (British Virgin Island) companies rather than the local Jersey ones.

**Mr. R. Kirkby:**

Yes, exactly.

**Mr. R. Teather:**

Unless there is any other technical points?

**Mr. R. Kirkby:**

The one technical point was to allow partnerships to be included in group registrations and this is particularly applicable to legal partnerships to allow legal partnerships to include their service companies which hang below the partnerships to be included in the group so that there is no intra group charges there. This is again just to achieve a slightly simpler application of G.S.T.

**Mr. R. Teather:**

How would that work where a subsidiary of the partnership is a trust company, for example? So you have got one registered under the International Service Entity, other parts of the group ...

**Mr. R. Kirkby:**

You would end up effectively with 2 groups. So you would have a legal partnership and service company A, B, C, for example, which are non I.S.E.s. Then you may have T.C.B. (Trust Company Business) fund administrator and they would be a small group, so that you would have 2 groups and there would be charges between those 2 groups. At least that achieves something better than maybe 3 groups without a group.

**Mr. R. Teather:**

But there would be no ability to group an I.S.E. with a local operator?

**Mr. R. Kirkby:**

No. The only other structural change was in the current regulations there was £1,000 *de minimis* value point and this really just needs clarifying that what we were proposing was that where, for example, employees of, say, a bank went out for lunch, the restaurant did not have to remove G.S.T. They would just charge G.S.T. on a normal basis and then the bank would have the option of whether they wished to recover that G.S.T. or whether they just wished to write it off as an additional 3 per cent expense. Unfortunately the regulations are not quite drafted along those lines.

**Deputy P.J.D. Ryan:**

So if I understand you correctly, that means that a finance company will have the option then of a pay and reclaim, rather like a charity currently does under the regulations?

**Mr. R. Kirkby:**

Yes.

**Mr. R. Teather:**

Well, like any exporter.

**Deputy P.J.D. Ryan:**

Or like any exporter would.

**Mr. R. Kirkby:**

Yes, that is correct. What we believe would happen is that most of the medium to large businesses would not bother because it would cost them more to account and reclaim those costs. What we want to prevent happening is the very small, say, trust company businesses where they may have, sort of, 5 to 15 employees. A lot of their purchases will only be less than £1,000 so they may buy a P.C. (personal computer) for £600, they may buy a desk for £600, et cetera, et cetera. They would never buy in bulk,



we must ensure we protect them.

**Deputy P.J.D. Ryan:**

Yes. Well, they provide competition apart from anything else, which is always healthy.

**The Connétable of St. Brelade:**

How would you see it being perceived by the rest of the public, the rest of businesses that are outside the financial industry?

**Mr. G. Grime:**

Well, I guess going back right to the beginning, as I understand it, financial services, when it comes to these sorts of taxes, are normally completely exempt, but the Minister said right at the beginning that he wanted, as Deputy Ryan said at the beginning here today, between £5 million and £10 million from the finance industry. So that is what this is all about. I would have thought if the man in the street thought about this, he would say: "Well, okay it is fine because we know that the finance industry is making a contribution of between £5 million and £10 million".

**Mr. R. Teather:**

Of course if you were completely exempt there would be irrecoverable input G.S.T.

**Mr. R. Kirkby:**

Over 90 per cent of the finance industry is in exports in some shape or form and so there would only be a 10 per cent irrecoverable element of G.S.T.

**Deputy P.J.D. Ryan:**

Yes, that is going back to the, sort of, generic treatment of financial services on the basis of having to prove how much your exports are.

**Mr. G. Grime:**

Yes, I should have said zero-rated.

**Mr. R. Kirkby:**

We believed at the time when the Crown Agents looked at this that the collection would be considerably below the £5 million level.

**Mr. R. Teather:**

So under normal G.S.T. it would be a lot less than that.

**Mr. R. Kirkby:**

Under normal G.S.T., yes.

**Deputy P.J.D. Ryan:**

Just going back to this option to have a pay and reclaim system for a second. I am just trying to finally get my head around it completely. Does that mean that that service entity, that I.S.E. would not be an I.S.E., would not register as an I.S.E., would not pay the fee?

**Mr. R. Kirkby:**

No, they would still be an I.S.E. but what we ...

**Deputy P.J.D. Ryan:**

Otherwise they would have to charge G.S.T. out on their sales so they have to be an I.S.E. so that they can zero-rate all of their sales side presumably? Is that right? If their clients are I.S.E.s they would be zero rated. I am just wondering whether this -- what is going through my mind is whether, to take it to its logical conclusion, whether if all ... lots and lots of companies decided to go on a pay and reclaim basis effectively they would become an exporter and zero-rate everything?

**Mr. R. Kirkby:**

There is ...

**Deputy P.J.D. Ryan:**

So they would not therefore be making any contribution to the £5 million to £10 million. That is what I am getting at. Is there a danger here?

**Mr. R. Kirkby:**

That is a valid point because all service businesses have the option of entering this scheme or not. So they can either use the flat rates, £30,000, £7,500 or they can apply normal G.S.T. principles. What we believe will happen, and this is supported by discussions with trade associations, is that the majority of businesses will pay the flat rate scheme because it is considerably cheaper than implementing the G.S.T. system, updating how your billing system works, employing someone part-time or fulltime to account for G.S.T. You know, say, a trust company business, you are paying a flat fee of £7,500, that is considerably less than a part time salary of someone to account for that and to implement the system. So we believe the majority will use the flat rate scheme.

**Deputy P.J.D. Ryan:**

Yes, I guess it depends on the size and whether you would ... yes.

**Mr. G. Grime:**

When we have had discussions with banks, for example, about this - let us take the big local banks, £30,000 ...

**Deputy P.J.D. Ryan:**

Precisely.

**Mr. G. Grime:**

No problem because they would not need 3 or 4 people plus changes of I.T. (information technology) systems.

**Deputy P.J.D. Ryan:**

I mean, my own feeling from my own experience of V.A.T. (value added tax) and G.S.T. systems is that you can over egg the administration cost of V.A.T., G.S.T quite considerably, particularly if you do not have a lot of experience first hand of it. You look at it and think: "Oh, this is going to be very costly." But, when it comes down to it, once an industry or generally commercially is used to G.S.T., V.A.T., it becomes very second nature and does not cost that much extra in administration. Now that is my own experience telling me that. So just taking that scenario in mind, as we said for a bank £30,000 is really, frankly, neither here nor there and they would have administration costs because they will have a lot of purchases to deal with, certainly on that, and sales to deal with. But are we going to, and I do not see anything particularly wrong, find that the majority of the £5 million to £10 million is going to come from the bigger institutions, whereas the smaller ones will maybe not pay the fee and reclaim the G.S.T.? Do you think that is likely?

**Mr. R. Kirkby:**

From our calculations we believe that the flat rate scheme will collect between £7 million and £8 million and we believe there is enough margin of error in there that if some small institutions choose not to pay the fixed rate scheme and apply the normal indirect tax solution that we will still easily collect the £5 million revenue. For example, there are 47 licensed deposit-taking banks. We believe probably 2 or 3 of those will not choose to pay the £30,000 fee, so we have lost maybe £60,000, maybe £90,000 there. Probably a very small percentage of the trust company business will do the same with their functionaries but that will be a very small proportion overall.

**Deputy P.J.D. Ryan:**

It was not so much the overall amount of money that I was worried about, it was more that it will come more from the bigger institutions and the smaller ones in fact may well not make that contribution. I was wondering whether it would push the contribution towards the bigger institutions.

**Mr. R. Kirkby:**

I suppose to balance that effect is the I.S.E.s ... the £100 I.S.E. charge will come from all levels of institutions, so even a small trust company business with a few employees will still have probably £100-£200. So there will still be a level of contribution at that level.

**Deputy P.J.D. Ryan:**

Okay.

**Mr. R. Teather:**

Just on that, what is the current state of play with that, because it swings as to whether the £100 is going to be paid, is going to be charged on the trusts or on the businesses?

**Mr. G. Grime:**

Trust companies, you mean?

**Mr. R. Teather:**

Yes.

**Mr. G. Grime:**

The T.C.B.s?

**Mr. R. Teather:**

Whether the management company is going to pay it on behalf of all of its managed entities or whether each entity will pay that £100?

**Mr. R. Kirkby:**

The current proposal is that we believe that the trust company business should pay the fee, should have the liability of the £100 plus the £7,500 because otherwise there is a risk that if the T.C.B. pays the £7,500, they do not have to charge G.S.T. therefore theoretically their administered entities may not need to pay the £100 and that would leave them with collection debts.

**Mr. R. Teather:**

Yes. So the fee for the trust company business would be £7,500 plus £100 for each trust?

**Mr. G. Grime:**

Yes, precisely. Then it is up to the T.C.B. as to whether it recharges that £100 to the underlying administered entities or whether it just regards it as an overhead.

**Mr. R. Teather:**

But that will be a charge from the company rather than a tax as such?

**Mr. G. Grime:**

Yes.

**Deputy P.J.D. Ryan:**

I suppose one of the attitudes among non-finance businesses is that, you know: "We are going to have to charge some people, the majority of our customers, say, at 3 per cent but there will be few finance people that we will have to worry about zero rate." They are saying: "Well, all that has happened therefore is that the finance sector has avoided is being passed on to us." There is a little bit of an attitude there. I do not know if you have any comments to make about it, other than the obvious one.

**Mr. G. Grime:**

Well, I think it is all to do with what is referred to as "end user relief" and certainly I am aware of the utility companies feeling a bit concerned about this. But I think, when you step back from it and look at it, they have to make a once and for all change to their systems and that really should not be an issue.

**Deputy P.J.D. Ryan:**

So they would flag the customers with an I.S.E. status flag and that would be it.

**Mr. R. Teather:**

But this could be much smaller businesses than ...

**Deputy P.J.D. Ryan:**

Yes, it could be.

**Mr. R. Teather:**

We have had representation from one medium sized business on the Island that, you know, you could be talking about computer companies, office services suppliers, people like that having to put into place a specialised computer system to deal with different types of customers.

**Mr. R. Kirkby:**

That was one of the reasons why we introduced the, sort of, £1,000 level, for those local businesses supplying the PC, the desk, the photocopier toner, the paper supplies. We understand a lot of those supplies were less than £1,000 invoice per time, so that would mean they would not be required to update their systems.

**Deputy P.J.D. Ryan:**

Yes. I mean, the idea originally of the fact that our *de minimis* was that it would make purchases under £1,000 a sticking tax as far as finance industry was concerned. With the pay and reclaim of course, it is not any longer a sticking tax for £1,000 or less. That has changed a little.

**Mr. G. Grime:**

Well, I think that picks up the point that Robert made earlier on that if you are a large company and your purchases most of the time are in excess of £1,000 then, of course, there will not be any tax charged in the first place if you are an I.S.E. But for the smaller one who is spending £500 here, £600 there, it is rather unfair for it to be a sticking tax on that business, so that business should have the right to reclaim.

**Mr. R. Teather:**

How will the £1,000 work with regular supplies, if you are buying, as you say, toner every few weeks and you will get sent a monthly invoice or monthly account?

**Mr. R. Kirkby:**

Well, I suppose personally Jersey Finance, for example, buys toner weekly, but we receive all our invoices along per item type basis. That is from a major office supplier in the Island so in our position we would have to -- well, we would not be an I.S.E. so we would claim that back and I believe that is a major supply, so I think that must be how they address all.

**Deputy P.J.D. Ryan:**

If you are able to reclaim your inputs though, which is what you are saying, I suppose it does reduce the risk of aggregating lots of invoices into one monthly invoice of more than £1,000 so ... do you see what I am getting at? There is the danger that suppliers would aggregate, change their behaviour. Instead of going to buy one meal at a restaurant, you would wait until the end of the month and get an invoice for lots of meals, which was one little angle that we wondered whether it was going to happen with the £1,000 *de minimis*. But if you have got to pay, particularly for smaller businesses, probably banks as you say would not care, but, you know, for smaller businesses they would probably change their behaviour to save a bit of G.S.T. by aggregating purchases or leaves that. But if you can pay and claim it would get over that problem anyway.

**Mr. R. Kirkby:**

I think we have all got to remember that Jersey is a relatively benign tax environment, a very compliant society because the tax rates are so low and people ...

**Deputy P.J.D. Ryan:**

Up to now. We have not yet talked about Zero/Ten.

**Mr. R. Kirkby:**

So we believe that we have not that much incentive for mischief.

**Deputy P.J.D. Ryan:**

Okay.

**Mr. R. Teather:**

I was just wondering if we are having a pay and claim system whether £1,000 is high enough to remove the problem from the local suppliers?

**Mr. R. Kirkby:**

That could be a fair point but I suspect it would be probably prudent to leave £1,000 for the moment and review it at 6 months or 9 months, maybe the end of 2008, to see how things have progressed.

**Mr. R. Teather:**

Because it is not just the business is it? It is then the audit by the Tax Office who are going to be coming round saying: "Why have you zero-rated part of your supplies?" and they are going to have to keep a paper trail to show that that has gone to a certificate-holding I.S.E. It is going to be quite a burden.

**The Connétable of Grouville:**

Would you agree that £1,000 is not going to be a deal breaker or maker? It is not going to have a huge effect for anybody whether it is there or not?

**Mr. G. Grime:**

I think it is a question of fixing a figure. What we are talking about here, is it paying tax or not paying tax? You are not going to pay it if you are an I.S.E. because if your purchase is £1,500 you do not get charged with it in the first place, but if it is £800 you get charged with it and you claim it back. So it is just a practical figure that you have got to arrive at. I think Robert is probably right, let us see how it goes and if it is felt to be administratively the wrong figure, then it could be revisited after, say, 6 months' experience or whatever.

**Mr. R. Teather:**

Because I know when we were discussing charities with the G.S.T. team and we suggested some sort of certificate system, they said that that would be administratively very difficult for them to audit and they pushed charities on to a pay and reclaim system rather than an end-user certificate. So Jersey Finance seem to have -- well, the finance industry seems to have had an administrative system that benefits them

that the Treasury were not prepared to do for charities because they thought that the burden on the local businesses and the Tax Office would be too great.

**Mr. G. Grime:**

Yes. I am not sure we can really comment on that. The £1,000 does not apply to charities then, it is just a straightforward pay and reclaim.

**Mr. R. Kirkby:**

I think there is a difference that a lot of local T.C.B.s, banks, buy a lot of their supplies overseas whereas I suspect charities probably buy more of their supplies on Island. That may be one issue, but I am not sure.

**Mr. R. Teather:**

And the £1,000 will reduce the impact.

**The Connétable of St. Brelade:**

Am I right in thinking that this element of the tax has no effect on London or what is seen as London? How the Magic Circle like to review this detail of the whole taxation process.

**Mr. R. Kirkby:**

That should not have any impact on international planning. This is really just a local license service provider issue.

**The Connétable of St. Brelade:**

Really the point I am making is that I think the whole perception of tax, as you have indicated earlier on, is very fragile and I feel it concerning that any particular detail like this which can become overcomplicated might have the effect of altering that perception further away. So is this becoming, do you think, too unnecessarily complicated?

**Mr. R. Kirkby:**

Well, we hoped it would achieve simplicity.

**The Connétable of St. Brelade:**

As opposed to a simple claim back process.

**Mr. G. Grime:**

One of the points we have put to the Comptroller's Office is that he does not want to be bogged down with lots of repayment claims. So he is going to benefit from less administration, as is the taxpayer.



**The Connétable of St. Brelade:**

There is a trade off, in effect?

**Mr. G. Grime:**

Yes, I think it is a sensible compromise because if the £1,000 was not there, then of course the supplier could say it is easier for him because he just charges 3 per cent on everything but that makes more work for the I.S.E., more work for the Tax Office. So I think it is designed to create less work but I accept that so far as the provider is concerned, he has got to be satisfied that obviously the purchaser is exempt, has a certificate, so I suppose that is a bit more work for him at that point.

**Deputy P.J.D. Ryan:**

I think what was going through my mind then for a moment was whether there was any thought that this would cause any kind of distortion in the local supply market. I know we are getting into some detail here which we probably can move on from fairly swiftly now. But just one last thought is whether a local supplier would ... because once it gets to £1,000 he can zero-rate it, once it is less than £1,000 he cannot, so it reduces his margin a little bit, and if you do that often enough for a local supplier it is going to be significant on your bottom line if you can zero-rate something for £1,000, whereas at £999 you have got to give 3 per cent of your sale to the government effectively, from a local supplier's perspective. Any thoughts on that?

**Mr. R. Kirkby:**

That is not strictly right; if he sells an item at £900, he will charge £900 plus the G.S.T. at 3 per cent which will be £927. If he sells 2 items at £900 that is £1,800, he is going to just charge £1,800.

**Deputy P.J.D. Ryan:**

Is it neutral either way?

**Mr. G. Grime:**

It is not coming out of his margin.

**Deputy P.J.D. Ryan:**

As long as he can pass on the G.S.T.

**Mr. R. Kirkby:**

Which he will be able to.

**Deputy P.J.D. Ryan:**

Yes, let us leave that. This whole perspective, this £1,000 *de minimis* and the pay and reclaim thing is relatively new to us. We had not realised that was in place. Because one of our questions was do you think it should be in place?

**Mr. R. Kirkby:**

I believe it probably should be in place and as Richard's point is whether £1,000 is the right level, I think that is something that will have to be tried and reviewed. I think it is difficult ...

**Deputy P.J.D. Ryan:**

I think we have examined it enough. I think we should move on from this area and talk about one or 2 other things. I would first of all like to ask you, the Jersey Financial Services regulations are being used as the way to set the different fee levels. Are you happy that that is right, first of all? Just as a more general point. Do you see any problems with that?

**Mr. G. Grime:**

Well as far as the flat rate is concerned, I think we thought that that was the best way of dealing with it. Because if you are a bank, you are registered as a bank, and licensed if you are a trust company. It is all very clear. So, for the purposes of identifying what flat rate each entity should pay it depends on the license which they hold. I think that is clear and straightforward.

**Deputy P.J.D. Ryan:**

Yes. I mean, would there be other ways?

**Mr. G. Grime:**

I guess you could think of other ways. I cannot remember how this happened right at the beginning but, I mean, it is a logical, sensible way of doing it.

**Deputy P.J.D. Ryan:**

And of course there are no arguments.

**Mr. G. Grime:**

Exactly.

**Mr. R. Kirkby:**

It was asked of us if we would use a similar model under Zero/Ten for the 10 per cent businesses.

**Mr. R. Teather:**

Is there a risk that because the regulation system is not designed to enforce tax you might get some

businesses trying to change their registration category in order to get a lower flat rate fee?

**Mr. R. Kirkby:**

I think the risk is that you may get some businesses which hold multiple, say for example, T.C.B. affiliated legal licenses may have to take a commercial view now to reduce the number of those licenses they hold. Some businesses hold 3 or 4 T.C.B. licenses as a result of acquisitions over a period of time. They may take a commercial decision to reduce one or 2 of those and there is a real risk, I agree, but again it is around the margin so we do not believe it will materially impact the collection. But they are very limited in terms of how much they can manage their licenses because they have to have the certain licenses to conduct the business they are undertaking, so we do not believe that is a significant risk.

**Deputy P.J.D. Ryan:**

I am thinking back into the past. There was a thought right at the start that using financial services laws to determine something like this, which is taxation, was felt to be inappropriate in some way.

**Mr. R. Teather:**

I think largely at this point that the J.F.S.C. (Jersey Financial Services Commission) are not designed to deal with tax issues.

**Mr. R. Kirkby:**

Yes. I think the point you are referring to referred primarily to the Direct Taxation Income Tax law. If a business was a 10 per cent business or a zero per cent business and then the Financial Services law changed and it became a 10 per cent business would it be challengeable and the Tax Comptroller has said that he will issue some sort of practice note of some description which will effectively honour the original rating at the time that licensed business, but that has yet to be worked on. I suppose the only other issue with linking the regulatory law is that when regulatory law changes you have to update the G.S.T. regulations accordingly. But I think it is a matter of just good housekeeping.

**Deputy P.J.D. Ryan:**

But it is interesting that you say that the work that was going to be necessary from the Comptroller you do not think has happened?

**Mr. R. Kirkby:**

We believe he is in the process at the moment for Zero/Ten of updating the number of practice notes and guidance notes. We believe it will be in that raft of work.

**Deputy P.J.D. Ryan:**

Okay. We have 2 groups licensed under the Collective Investment Funds Law, one of which pays

£2,500 and there is something called a managed manager who pays £500. Could you please explain to us, because we do not quite understand that?

**Mr. R. Kirkby:**

No problem at all. It is a complicated beast a managed manager. A fund functionary that would pay the £2,500 fee is a fund functionary with real employees on the Island and a real business that would tend to be a fund administrator, custodian or distributor. So they would do day-to-day work, their quarterly net asset values, look after custody of instruments, securities, bonds, et cetera. So they are a real business, shall we say tangible business? A managed manager is something that has evolved over the last 10 years and applies primarily to private equity but it is effectively where an international structure needs a license to operate in the Island, but only really conducts board meetings on the Island and out sources all its other services to administrators within the Island. So an example would be a private equity house may establish a partnership in the Island, that limited partnership requires under the regulatory laws of the Island a collective investment fund permit but then it out sources all its anti-money laundering, its administrative duties, et cetera, to an administrator within the Island, and that is effectively called a managed manager.

**Deputy P.J.D. Ryan:**

The managed bit refers to -- the first bit refers to the administrators in the Island?

**Mr. R. Kirkby:**

Yes.

**Deputy P.J.D. Ryan:**

And the manager itself is in inverted commas because it is ... I think I understand that.

**Mr. R. Kirkby:**

It does not really have arms and legs in the Island, shall we say, but it has a license so therefore the reduced rate.

**Deputy P.J.D. Ryan:**

You call it a manager for want of a better word, that is all? Okay. I think that is clear to me anyway. How we put that into words I am not too sure.

**The Connétable of Grouville:**

Am I correct in assuming that some of the banks use this system for representing foreign banks here who have not got licenses?

**Mr. R. Kirkby:**

There is a concept called managed banks. A bank may see a new jurisdiction such as Jersey and they wanted to put their toe in the water, so to speak, and they will use a managed bank operation because it means they do not have to incur the capital costs, recruitment costs of establishment. But if they are a deposit-taking bank, even as a managed bank they will have to have a deposit-taking licence.

**The Connétable of Grouville:**

There are other banks that are not deposit-taking?

**Mr. R. Kirkby:**

Yes, but if they are not a deposit-taker then they are not subject to the £30,000 fee.

**The Connétable of Grouville:**

So this would be a similar managed manager, managed bank manager?

**Mr. R. Kirkby:**

It is a similar concept, yes and I suppose it is the same as a managed trust company or ...

**Deputy P.J.D. Ryan:**

Unless there is anything else specific, I want to move to wrap up with a couple of other things which are not specifically to do with financial services, but are affected by the regulations for financial services, which I do not know if you have had any discussions with. Maybe you are going to, sort of, shrug your shoulders and say that: "Well, we do not know, you will have to ask the G.S.T. or the Treasury Minister or the G.S.T. director." It would seem to us that non-finance businesses, no licenses under the J.F.S.C., would be able to register as an I.S.E. providing they export 90 per cent of their goods and services. I am thinking of the fulfilment industry primarily. They could then just pay a flat fee of £100 and escape all G.S.T. administration, presumably still covered by the £1,000 *de minimis* and the pay and reclaim?

**Mr. G. Grime:**

Yes. This is something that we have specifically addressed with the Minister. You are right, a good example of this is fulfilment. There are other examples, intellectual property, those sorts of areas, and I can think of one where literally 99.9 per cent of the turnover is export and I think it is fair to say when this legislation was drawn up, the I.S.E. was only intended to apply to the financial services area. But when you look at the wording it does not say that, so as currently drafted it can apply to any business where predominantly its turnover is for export. It was a particular issue that we raised on the basis of something I tried to say earlier on. If this did not apply to, say, a fulfilment company then the fulfilment company would have to pay tax on all its inputs and claim it all back. That cannot be a good use of the time of the staff of the Tax Department, the Tax Office. So logic says, let businesses that fall into this

category be treated in the same way as an I.S.E. and, Robert, there were some specifics on this that were talked about last Monday, which perhaps you can pick up?

**Mr. R. Kirkby:**

Yes. We talked about the current I.S.E. regulations specifying the 90 and 10 per cent that applies to services only and what was proposed was that for service businesses, so for example, intellectual property companies, that they should be eligible for I.S.E. status because they would be able to recover 100 per cent of their input taxes and implementing the systems, et cetera, would be tantamount to a waste of time. The beauty of the I.S.E. also is that you have to apply -- if you are not within a regulated business, you have to apply to the Tax Comptroller, so the Tax Comptroller does have discretion to reject or commit to the applications. Now what was recognised that where it was not services, such as intellectual property which would not really impact the Island as such, but if it was, say, fulfilment where it was goods, D.V.D. (digital versatile disc), C.D.s (compact discs) et cetera, and a small amount of those fulfilment services do filter into the Island, that the level for goods should be, say, one per cent based on turnover so that you could allow those fulfilment that maybe did not supply the Island in any shape or form to still be eligible for this. But any of those fulfilment that did supply the Island and breached the one per cent would not be able to fall within its I.S.E. But I would suggest that for I.S.E. status you do have to apply to the Tax Comptroller so there is some discretion within the system.

**Deputy P.J.D. Ryan:**

I do not know if you recall, right at the beginning of the suggestion that we would move to this flat rate scheme for financial services, one of the concerns that we had was that this could somehow have an undesired or unrealised side effect to do with harmful tax practices and ring-fencing and what have you. I think we were assured by both the Minister and Jersey Finance and your lawyers and, in fact, the Attorney General, I think, that you had looked into all of this and because it was indirect taxation it did not have any implication as regards the E.U. (European Union) rules on harmful business tax practices. But what you have just said to me, if we are now bringing in a situation where non-finance businesses ... because let me ask you a question, this 90 per cent rule for export, does that apply to companies within financial services or only non-finance businesses?

**Mr. R. Kirkby:**

It just applies to part 12, I.S.E. regulations. It does not specify whether it is finance or non-finance.

**Deputy P.J.D. Ryan:**

No, what I am thinking ...

**Mr. G. Grime:**

So it does apply.

**Mr. R. Kirkby:**

So effectively it can apply to any business.

**Deputy P.J.D. Ryan:**

Because have you not said in the past that banks would have difficulty in proving how much of their business related to export and ...

**Mr. G. Grime:**

Yes, that is precisely the point. Because if a bank opens an account for a trust, which is a Jersey trust administered by the T.C.B., the trust company business, so on the face of it that is a Jersey client. But it is not, because the clients are offshore. So it would be very difficult and very costly for banks to be able to drill down for every account they have got.

**Mr. R. Kirkby:**

I think what has happened is that you have hit on one of the problems with the regulations, is that for licensed businesses they do not have to fulfil a 10 per cent or 90 per cent.

**Deputy P.J.D. Ryan:**

That is right. Whereas a non-finance, non-J.F.S.C. licensed business would -- now, question; is that not a ring-fenced benefit for the financial services?

**Mr. G. Grime:**

This does not apply to corporates. I thought the harmful tax practices was only for individuals.

**Deputy P.J.D. Ryan:**

Well, that is business taxation. Anything to do with business taxation.

**Mr. R. Kirkby:**

Business direct taxation, is it not?

**Deputy P.J.D. Ryan:**

Well, it does not say that.

**Mr. R. Teather:**

The argument has always been that indirect tax is a consumer tax.

**Mr. R. Kirkby:**

Although there is an element of ring-fencing taking place - simplistic, I think, rather than ring-fencing - the actual collection of G.S.T. is considerably higher than would otherwise apply if we applied a normal solution. It would be difficult for a body to argue that we were ...

**Deputy P.J.D. Ryan:**

Is it not a fee though? Because if we are making it -- it has got nothing to do with the amount of G.S.T. It is a fee, is it not?

**Mr. R. Kirkby:**

It is a fee under the G.S.T. law so therefore it is effectively G.S.T.

**Deputy P.J.D. Ryan:**

Would you like a 5 minute break? It is just that it might be difficult while there is only one of you here. We will take a 5 minute break if you do not mind and then we will reconvene.

**(A short break)**

**Deputy P.J.D. Ryan:**

I think for that particular one -- sorry, you have had some further thoughts, have you?

**Mr. R. Kirkby:**

We have had a few further thoughts just over coffee. First is that it is standard practice within the E.U. to differentiate different types of areas, so, for example, the U.K. private schools are not subject to V.A.T. and can reclaim V.A.T. For example, in Switzerland, which I know it is not strictly in the E.U. but applies a V.A.T. system similar to the Sixth Directive T.V.A. (Taxe sur la Valeur Ajoutée) there is not applicable on services to trust company businesses or this sort of export services even though they are applied within the territory. Also within Jersey we have ring-fenced effectively charities and doctors' services, et cetera, so we do not believe that what we are doing within finance is that dissimilar to those. The other thing was the primary law has been passed H.M. Treasury now and they have had time to consider that and they have not raised that as an issue, and they are very aware of the harmful business tax practices. So, I suppose, on balance, we feel reasonably comfortable with the position.

**Deputy P.J.D. Ryan:**

Okay, right. Are there any other questions that remain?

**Mr. R. Teather:**

Just one other one. If we are going to extend I.S.E.s to non-finance businesses, is £100 the right fee for them to be paying or are we going to need in future more categories of different fees to cover I.T. and



fulfilment?

**Mr. R. Kirkby:**

I believe that it is only appropriate that Jersey Finance comments on matters relating to the finance industry and I think it would be up to the Treasury Minister to determine whether the fee of £100 is appropriate in those circumstances.

**Mr. R. Teather:**

Within the finance industry, are you happy that there are not going to be -- because the £100 is the default, is it not? Are you happy that there are not going to be significant volumes of businesses dropping through the net into the default £100?

**Mr. R. Kirkby:**

Overall, provided the Treasury Minister collects the required £40-45 million G.S.T. which will then support the overall revised tax framework for the Island of Zero/Ten, 20 means 20, et cetera, then finance will be happy because finance requires certainty for the future of business. That certainty is both tax law and regulations, so provided the Minister is happy with that position then we would be happy.

**Deputy P.J.D. Ryan:**

Okay. Well, that concludes everything that we wanted to ask you and I always now try and ask in a public hearing, is there anything else that you want to tell us that we have not asked but we should have done?

**Mr. R. Kirkby:**

I think just as you have given us this opportunity, just some other minor points; Article 57, we believe just needs some clarification about the use of lists. This is in the primary law. This Article 57 paragraph (3) talks about lists, it is quite difficult to read and we have requested that this is clarified in some form of practice note. So again it is just easier for people to understand.

**Mr. R. Teather:**

This is where the trust company business keeps a list of its trusts rather than having them on ...

**Mr. R. Kirkby.**

Public record, yes.

**Mr. G. Grime:**

If the Comptroller felt that he was not very comfortable, he has the right to go in to the trust company and ask for details. But what practitioners did not want was to have lists of all the underlying I.S.E.s in

a book in a central ...

**Mr. R. Teather:**

In the public domain?

**Mr. G. Grime:**

Well, even in the Tax Office itself, because our clients are sensitive about where their information goes and to whom it might be available. So it is certainly clear that the Comptroller reserves the right, because it is a self-regulated self assessed thing on the part of the trust company business. So the list will be in the trust company business, not in the Tax Office.

**Mr. R. Teather:**

How will this work for giving certificates to suppliers? So, for example, if you have got a trust or an entity that is on the trust company business' list and then a Jersey law firm is providing advice to that, will the trust company business be able to certify?

**Mr. R. Kirkby:**

Yes, it is an excellent point which is something we have discussed. We believe what will happen is, say, law firm X provides services to Jersey company Y, which is an I.S.E., there will be an engagement letter in place between those 2 parties and in that engagement letter will be some provision that will be signed by that party to say that it is an I.S.E. and the liability for that declaration will rest with the I.S.E. rather than a, sort of, certificate per se will be a signed declaration.

**Mr. G. Grime:**

I think it is envisaged, is it not, that T.C.B.s would have a certificate? But the underlying vehicles would not have a certificate and it would be, as Robert has just said, a letter signed by the T.C.B. confirming that.

**Mr. R. Kirkby:**

By the T.C.B. or the director of the I.S.E. or however that I.S.E. was so structured. The only other point really is that these regulations will require guidance notes to be issued by the G.S.T. director, particularly on areas such as how do you define an administered entity and such things as that, so that is something we were awaiting.

**Deputy P.J.D. Ryan:**

Is that likely to add complexity back in when you are trying to simplify it, these guidance notes?

**Mr. R. Kirkby:**

No, I think guidance notes are just about things such as when do you pay your £100 or your £7,500? How long have you got to pay it? That type of practical point which you would not ...

**Mr. G. Grime:**

Routine clarification really. Certainly not trying to add to complexity, but just, you know, make it clear.

**Deputy P.J.D. Ryan:**

Anything else?

**Mr. R. Kirkby:**

No. That is it.

**Deputy P.J.D. Ryan:**

Well, thank you very much for your time today and for being so open and frank with us wherever you can be. I thank everybody for attending, press included, and look forward to seeing you probably in the New Year on one or 2 other matters to do with other things that we are looking at. Thank you very much and good morning.