

JERSEY'S GOODS AND SERVICES TAX (GST)

An explanation and summary of the proposed
GST Regulations for public consultation

Deadline for comments 31 August, 2006

3 July 2006

GST

Introduction

A six-week public consultation begins today on the proposed Regulations that will govern the administrative and technical procedures of Jersey's Goods and Services Tax (GST).

This follows the completion, on 30 June, of a separate three month public consultation on the Draft Primary GST Law that provides an overall framework for the new Tax.

The proposed Regulations (referred to in the Draft Law) are likely to be of most interest to those businesses required to be GST registered, accountants and lawyers. However, since GST will affect, in some way, everyone living or doing business in Jersey, they are being offered for full public consultation in the interest of transparency and to ensure the maximum possible involvement of individuals and organisations in the implementation of GST in the Island.

This Policy Paper provides a summary and explanation of the proposed Regulations. Readers may find it helpful to refer also to the Policy Paper, "Jersey's Goods and Services Tax - An Explanation and Summary of the Draft Law," published on 28 March this year, which makes various references to the GST Regulations.

The proposed Regulations are available for inspection from today at Parish Halls, the States Bookshop, the Customer Service Centre at Cyril Le Marquand House in St Helier, the Public Library and on the States website www.jersey.gov.je

The previously published Draft GST Law and the Draft Law Policy Paper, together with a third consultation paper on the proposed treatment of the Financial Services Industry under GST, can be viewed also at the above addresses and on the States website.

It should be stressed that no final decisions have been made concerning the GST legislation. Following the earlier consultation on the Draft GST Law and the current consultations on the proposed Regulations and the treatment of the Financial Services Industry (both due to end on 31

August this year), a summary of the responses to the three consultations will be published. The Draft GST Law and the proposed Regulations will be revised, as necessary, to take account of issues raised during the consultations and any new information and they will then be lodged with the States.

It is the intention that the States will debate the Draft Law towards the end of this year and consider the Regulations early in 2007. (Note: where responses to the consultations are related to matters of policy, these will be decided by the States during the debates on the Draft Law and the proposed Regulations. Subsequently, further revisions to the legislation may be necessary).

Enactment of the GST Legislation is planned to take place in time for the registration of businesses during the second half of 2007 and the introduction of the new Tax early in 2008.

Why Regulations are necessary

Before any primary Jersey law can be enacted it must be ratified by the United Kingdom Privy Council and receive Royal Assent. However, Primary law may contain provisions for subsidiary law, in the form of regulations that may be made directly by the States, to cover administrative, technical and operational matters.

The Draft GST Law gives the States the authority to make such regulations as are necessary to bring the new Tax into effect and to ensure its future efficient operation.

The GST Regulations will be an integral part of the legislation. They will empower the Comptroller Income Tax (the official responsible for administering GST), to prescribe formal and procedural requirements (such as the method of filing returns and making payments) and will enable administrative changes to be made, where necessary. Because Regulations may be made by the States, without the need for UK ratification, legislative time can be saved and the States of Jersey and the Comptroller will be able to react quickly to changing circumstances, or to close any 'loopholes' in the Law.

Main provisions of the proposed GST Regulations

The proposed Regulations for Jersey's GST are currently in three sections. -

- Section 1 - General Administration
- Section 2 - Input Tax and Partial Exemptions
- Section 3 - The Supply of Goods and Services

Terminology

Throughout the Regulations, the following terms are used. -

“Law” means the Goods and Services (Jersey) Law.

‘Taxable supplies’ are those goods and services subject to GST.

‘Zero rated supplies’ are those goods and services that fall within the scope of GST but are taxed at a zero rate.

‘Exempt supplies’ are those goods and services that are not taxed.

‘Taxable person’ is a person or business making taxable supplies, who is required by the Law to register for GST as a result of having an annual turnover above a set limit, or threshold (proposed at £300,000 per annum in Jersey). Taxable persons must account for, and pay to the taxation authority, the GST they collect from their customers.

‘Registered person’ is a person or business making taxable supplies, who has registered for GST as a result of the legal requirement, or who registers voluntarily, thereby becoming a taxable person, even though his/her annual turnover is below the threshold.

‘The Comptroller’ is the Comptroller of Income Tax, who is the official charged under the GST Law with administering the tax.

‘Output tax’ is the GST charged on the supply of goods and services.

‘Input tax’ is the amount of GST incurred by a registered person in the course of making taxable supplies to his/her customers, which he/she can reclaim from the tax authority (subject to certain restrictions).

‘Exempt input tax’ is that portion of GST that cannot be reclaimed because it is incurred in the provision of exempt supplies.

‘Partial exemption’ relates to a situation where a taxable person makes both taxable supplies and exempt supplies. In this case, input tax must be apportioned - e.g. in the most simple case, if 30 per cent of a taxable person’s business relates to exempt supplies, only 70 per cent of the GST incurred in business expenses may be included as input tax. (Note: partial exemption adds administrative complication for both businesses and taxation authorities in many countries. However, as the Jersey GST Law is currently framed, with the minimum number of goods and services excluded from the scope of GST, this is likely to be far less of a problem on the Island).

‘Tax year’ is any period of 12 calendar months, beginning on the first day of April, May, or June, according to the accounting periods allocated to a taxable person. (Note: this applies to taxable persons who are partially exempt because they are required to make an annual adjustment calculation).

‘Accounting period,’ in relation to a taxable person, means the period determined by the Comptroller for that person to make returns and payments of GST.

‘Offences’ used in the context of these Regulations refer to administrative offences which incur a fine (e.g. a failure to register for GST). Elsewhere in the Draft Law there is provision for prosecution in cases of fraudulent or criminal offences.

Section 1: Goods and Services Tax (General) (Jersey) Regulations 200-

Part 1 (Preliminary)

Regulation 1 (Interpretation) defines the terms used in this section.

Regulation 2 (Duty of Comptroller) requires the Comptroller Income Tax to act to protect the GST revenue in all cases where he/she exercises a power under the Regulations.

Regulation 3 (Procedural requirements) states that claims, applications and other documents and notifications, made to the Comptroller, must be in a form and manner specified by the Comptroller. It also requires the Comptroller to give public notification of his/her requirements under this Regulation. (See 'Public Notices' below).

Regulation 4 (Partnerships and unincorporated associations) states that, in the cases of partnership and unincorporated associations (i.e. clubs or organisations providing facilities, or advantages, to their members for a fee), each partner, or member of the body, is jointly liable to give notifications as required by the Law but will be taken to have done so if notification is made by one or more authorised partners, or officers, or members. This regulation also gives the Comptroller the authority to determine what bodies may be treated as unincorporated associations under the Law and requires him/her to give public notice of such decisions.

Part 2 (Registration)

Regulation 5 (Notification of liability to be registered) makes it an offence to fail to notify the Comptroller of a liability to register for GST and renders an offender liable to a fine. (Note: the Comptroller will provide an application form for registration, which will require information about

the business - name, address(es), estimated turnover and type(s) of supply).

Regulation 6 (Registration) allows the Comptroller to specify the content and format of the certificate of registration.

Regulation 7 (Notification of changes) authorises the Comptroller to determine the means by which a change in the circumstances of a registered person should be notified and requires him/her to give public notice of the method of notification. Registered persons who fail to notify a change of circumstances are guilty of an offence under this Regulation and are liable to a fine.

Regulation 8 (GST representation) applies where a person is appointed to be the GST representative for a taxable person and it sets out the conditions for representation. Failure by a person appointed as a representative to notify the Comptroller of his/her appointment, or cessation of appointment, is an offence under this Regulation and attracts a fine.

Regulation 9 (Business temporarily run by a representative) applies where a registered person becomes bankrupt, dies, or becomes incapable of managing his/her affairs. It enables the person having responsibility for the affairs of the registered person to apply for the Comptroller's approval to be treated as the registered person and sets out the conditions. Also under this Regulation, where the property of a declared bankrupt taxable person is vested in the Viscount (in accordance with the Jersey Bankruptcy Law), that property shall be taken to remain the property of the taxable person until it is sold by the Viscount and the Viscount shall have the approval of the Comptroller to be treated as the registered person for the purposes of the Law.

Regulation 10 (Transfer of a going concern) applies where a business carried on by a taxable person is transferred as a going concern. Under this Regulation, any outstanding obligation, duty, or liability under the Law (with the exception of

criminal liability) is transferred to the person to whom the business is transferred, unless otherwise agreed by the Comptroller. Failure by the taxable person and/or the person to whom the business is being transferred to notify the Comptroller of a transfer of business is an offence under this Regulation and attracts a fine.

Regulation 11 (Notification) places an obligation on a person who is no longer required to be registered to notify the Comptroller of the change of circumstance. Failure to do so is an offence under this Regulation and renders the person liable to a fine.

Regulation 12 (Exemption from registration) states that the form of notice that exempts a person from registration shall be determined by the Comptroller. This applies to a person who makes supplies which are taxable but at the zero rate (e.g. exports). Failure by a person required to notify the Comptroller of changes concerning supplies by an exempt person is an offence, attracting a fine, under this Regulation.

Part 3 (GST Invoices)

Regulation 13 (GST invoice to be issued) makes it an offence for a person to fail to issue a GST invoice when required by the Law and renders that person liable to a fine. (Note: it is intended that this requirement should not apply to low value/high volume retail sales).

Regulation 14 (Form of GST invoices) enables the Comptroller to determine how the particulars of a supply of goods and/or services and the amount of GST should be set out in an invoice and requires him/her to give details by public notice. (Note: a GST invoice will be required to show the name, address and GST registration number of the supplier; the name, address and GST registration number of the customer where applicable; a description of the goods/services supplied; the value of the supply and the GST element).

Regulation 15 (GST invoice issued to self by taxable person) applies where a taxable person provides a document to him/herself, purporting to be a GST invoice for the supply of goods or services by another taxable person (often referred to as 'self-billing'). It gives the Comptroller discretion to treat the document as an invoice provided by the supplier of the goods or services.

Regulation 16 (Comptroller may deem documents to be GST invoices) applies where a person other than the taxable person provides a document purporting to show goods or services supplied by a taxable person and where the Comptroller is satisfied that the document is bona fide.

Regulation 17 (Where business assets are sold to recover debt) covers the situation where a third party sells the assets of a taxable person's business in settlement of a debt. Because such sales are regarded as 'supplies' for GST purposes, this Regulation enables the seller, or agent, to issue GST invoices, instead of the taxable person.

Regulation 18 (Time in respect of GST invoices) gives the Comptroller the authority to determine the time within which GST invoices must be issued and the time at which a GST invoice is deemed to have been issued. It requires the Comptroller to issue a public notice on this matter.

Regulation 19 (Accounting periods) authorises the Comptroller to determine the accounting periods and the manner of payment of GST and requires him/her to issue a public notice to explain the requirements. (Note: the proposal is that, in normal circumstances, GST returns will be quarterly and, as far as possible, businesses will be able to select periods that will align with their accounting years. GST returns will require, as a minimum, details of the value of sales and purchases, the GST element on sales and purchases and the amounts payable or repayable. Payment methods will reflect modern commercial practice, including by electronic means. The Comptroller will determine the time limit for

submissions of returns - probably one month after the end of the period).

Regulation 20 (Claims for input tax) specifies that claims by a taxable person for a deduction of input tax must be made within a period of three years from the end of the accounting period during which the relevant GST became chargeable.

Regulation 21 (Comptroller may accept estimate of output tax) applies where the Comptroller is satisfied that there is good reason why a taxable person is unable to calculate the amount of any output tax to be paid to the Comptroller at a due date and gives the Comptroller discretionary powers to accept an estimate.

Regulation 22 (Comptroller may accept estimate of input tax) gives discretionary powers to the Comptroller, as in Regulation 21 (above), but in relation to input tax.

6 **Regulation 23 (Records to be kept)** specifies that a taxable person must keep such records as determined by the Comptroller for six years, or as directed by the Comptroller. It requires the Comptroller to issue a public notice on this matter and makes it an offence, attracting a fine, for failure to keep records in accordance with this Regulation. (Note: it is proposed that these records will include details of purchases and sales, purchase invoices, copies of sales invoices and export/import evidence).

Regulation 24 (Adjustments in the course of business) applies where there is a variation in the consideration (i.e. the value in money) due on a supply made by a taxable person, evidenced by a credit or debit note, or other document and where the consideration includes an amount of GST. It requires the taxable person, whether supplier or recipient, to adjust his/her GST account accordingly for the relevant accounting period.

Regulation 25 (Postponement of GST credit) gives the Comptroller discretionary powers to allow the whole or any part of a GST credit to be held over to a subsequent accounting period.

Part 4 (Citation and Commencement)

Regulation 26 (Citation and commencement) authorises these Regulations to be known as the Goods and Services Tax (General) (Jersey) Regulations 200- and enables them to come into force on a day to be notified.

Section 2: Goods and Services Tax (Input Taxes and Partial Exemptions) (Jersey) Regulations 200-

Under Article 36 of the Draft GST Law, input tax may be claimed from the taxation authority by a registered person, or deducted from the amounts of GST that he/she would otherwise be required to pay. These Regulations establish the conditions under which such claims or deductions may be made.

Part 1 (Preliminary)

Regulation 1 (Interpretation) defines the terms used in this Section. This Regulation also states that nothing in the Regulations can be taken to mean that a taxable person may credit all or any part of GST on goods or services if they are not used in making taxable supplies in the course of business.

Part 2 (Input taxes and partial exemption)

Regulation 2 (Attribution of input tax to taxable supplies- basic method) states that a registered person may claim as input tax all of the GST on goods and services incurred in making taxable supplies - and sets out the method for determining the deductible portion of input tax.

Regulation 3 (Attribution of input tax to taxable supplies - other methods) gives the Comptroller the authority to authorise a method for determining the taxable supplies that may be claimed or deducted, other than that specified in Regulation 2 (above).

Regulation 4 (Attribution of input tax to foreign and specified supplies) enables the GST incurred by a taxable person on imported goods, or goods and services supplied to him/her in making supplies outside Jersey, to be counted as input tax, provided they would be taxable supplies if made within Jersey.

Regulation 5 (Attribution of input tax to self supplies) states that where a taxable person makes a supply to him/herself, recovery of input tax on that supply will not be allowed.

Regulation 6 (Treatment of input tax attributable to exempt supplies as being attributable to taxable supplies) enables the treatment as taxable supplies of the following (normally exempt supplies), when made incidentally to the normal business of a taxable person. -

- a) any deposit of money,
- b) the services involved in arranging any mortgage, hire purchase, credit sale, or conditional sale transaction and
- c) the assignment of any debt due to the assignor in respect of a supply of goods or services made by the assignor.

This treatment is not permitted if the supply is made by the taxable person in the course of carrying on the business of, or similar to, a bank, an insurance company, agent or broker, an investment company, a mortgage broker and other financial institutions. (The full list is contained in the Draft Regulations).

Regulation 7 (All input tax to be attributable to taxable supplies if exempt input tax is low) states that, if a taxable person's exempt input tax (i.e. the amount of input tax that is attributable to exempt supplies) is not more than five per cent per month, on average, all his/her input tax during the prescribed accounting period shall be treated as being attributable to taxable supplies.

Regulation 8 (Deduction of input tax in special circumstances) covers the situation where taxable persons, who provide both exempt and taxable supplies, make purchases of taxable supplies for their business needs but are unable, at the time of purchase, to identify whether those supplies will be used for the benefit of the taxable or exempt parts of their business. It enables the taxable person to count all of the GST involved in such purchases as input tax at the time of purchase but requires a repayment of the input tax on any taxable supply used within six years of purchase for the provision of exempt supplies.

Regulation 9 (Non-attribution of input tax) covers a situation similar to that in Regulation 8 (above) but where the taxable person has not made a claim for input tax on his/her purchases at the time of purchase. It enables the taxable person to make a proportionate claim of input tax up to six years after the date of purchase if all or some of the original supplies are used by the taxable person in making taxable supplies.

Regulation 10 (Treatment of supplies made outside Jersey) states that the amount (of money) which a person is liable to account for under Regulation 8 (above), or is entitled to be paid under Regulation 9 (above), shall be calculated to the extent to which the goods or services are used, or intended to be used in making taxable supplies, including those made outside Jersey, expressed as a proportion of usage. In this Regulation, 'exempt supplies' includes those supplies made outside Jersey, which would be exempt if made in Jersey.

Regulation 11 (Exceptional claims for tax relief) enables the Comptroller to authorise a taxable person to claim input tax on the supply of goods and services provided up to six months prior to registration.

Part 3 (Citation and Commencement)

Regulation 12 (Citation and Commencement) authorises these Regulations to be known as the Goods and Services Tax (Input Taxes and Partial Exemptions) (Jersey) Regulations 200- and enables them to come into effect on a day to be notified.

Section 3: Goods and Services Tax (Supply) (Jersey)

Regulations 200-

The Draft Law specifies the time of supply/tax point in normal circumstances. These Regulations provide for other situations when goods and services are to be treated as having been supplied and therefore become liable for GST.

Regulation 1 (Interpretation) specifies that where, under these regulations, a supply is treated as taking place each time a payment is received, or an invoice is submitted, the supply is to be treated as taking place only to the extent covered by the payment or invoice.

Regulation 2 (Goods for private use and the free supply of services) applies to goods that are supplied for private use, including free services. Under the Law, these will be regarded as being a supply of services and, under this Regulation, they will be regarded as having been supplied on the last day of the accounting period in which they are used or made available.

Regulation 3 (Supplier's goods in possession of buyer) applies where goods are supplied under an agreement by which the supplier retains property in them until all or some of the goods are appropriated by the buyer. In these circumstances the supply is to be treated as taking place on the date of appropriation. Where this regulation applies, a supply of any of the goods shall be treated as taking place at the date of appropriation by the buyer, or the date when a GST invoice is issued, or the date when payment is received by the supplier, whichever is the earlier.

Regulation 4 (Retention payments) covers the situation where part of the payment, or consideration, is retained by the buyer pending satisfactory completion of the contract by the supplier. The effect of the Regulation is to treat the supply as being made in separate stages - with any part-payment, or the issue of a stage invoice being regarded as the time of supply, whichever is the earlier.

Regulation 5 (Continuing supplies of services) applies where goods and/or services are supplied

on a continuing basis and are paid for periodically. Ordinarily these will be treated in the same way as those covered by Regulation 4 (above). However, this Regulation enables the parties to agree successive payments at intervals not exceeding one year.

Regulation 6 (Royalties and similar payments) treats further supplies of royalties and similar payments as being made each time a further payment is received, or a further GST invoice is issued, whichever is earlier.

Regulation 7 (Supplies for works) relates to work in the construction industry (i.e. involving the construction, alteration, demolition repair or maintenance of any building or civil engineering work), under contracts that call for progress payments. It treats each occasion on which a GST invoice is issued as being a time of supply, unless a progress payment is received before the issue of an invoice - in which case the earlier time is to be treated as the time of supply.

Regulation 8 (Citation and commencement) authorises these Regulations to be known as the Goods and Services Tax (Supply) (Jersey) Regulations 200- and enables them to come into force on a day to be notified.

Public Notices

Where the Regulations give authority to the Comptroller to make directions, agreements, approvals, etc. (e.g. methods of accounting and forms and procedures to be used), these will be made by public notices published in the Gazette Section of Jersey Evening Post and on the States website following enactment of the GST Law.

(Note: these notices will be supported by business and public information material. It is intended to publish a series of easy-to-read leaflets on various aspects of Jersey's GST and to produce a lay person's guide to the final version of the Law. In addition, following enactment, tax authority staff will make educational visits to businesses as they register for the new Tax to ensure that they are fully aware of their obligations and that they are properly prepared to collect and account for the Tax when it is introduced).

(Note: the views of the business community on how business practices can be accommodated and how the burden of compliance can be reduced are important parts of the GST consultations and may well influence the final administrative procedures and aspects of the legislation. For this reason, public education and information material will not be prepared until the GST Law has been enacted).

Financial Services Industry

As a result of the public consultation on the treatment of the Financial Services Industry under GST (due to end on 31 August 2006), it is likely that further Regulations will be necessary. These will be included in the final draft of the Regulations, which will be published before being lodged with the States for debate.

How can I make my views known?

Please forward your comments, suggestions, or questions, in writing, by Thursday, 31 August 2006, to:

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