GST & Financial Services

Minor issues & drafting points

ISEs selling goods

We had some discussion in the Public Hearing about whether a company dealing in goods could become an ISE (if it passed the 90% off-Island test).

We were told by the GST Director that Regulation 2(1)(b) prevented this.

It seems that Reg 2(1)(b) doesn't actually prevent such a company becoming an ISE; it merely prevents it claiming the benefit of ISE status on those particular purchases when it is buying or importing goods for on-Island re-sale.

Unless there is another section that we have missed, this has three results:

- An entity selling goods could still be an ISE for all other transactions.
- An entity selling goods that became an ISE would still not charge GST on its on-Island sales (Art 57A (Treasury version), Art 58 (Jersey Finance version)), although the advantage would be minimised because it would incur input GST under Reg 2(1)(b) which would presumably not be recoverable.
- Reg 2(1)(b) only applies if the goods are sold "in the same state" they were bought. This means that a manufacturing or farming business that sold 90% of its goods off-Island could be an ISE, would not charge GST on on-Island sales and would not be charged any input GST (because Reg 2(1)(b)(i) would not apply).

The Panel's opinion was that entities selling goods should be able to become ISEs (and Jersey Finance also agreed with this), but that they should not be able to gain an unfair competitive advantage in the local market by doing so.

The answer may be to ensure that GST is charged on on-Island retail sales of goods (i.e. exclude them from Art 58 (Jersey Finance numbering; Art 57A in Treasury numbering)).

There is an additional concern that even service-providing ISEs could be able to gain such an advantage. For example a law firm that provided 90% of its services off-Island but had some on-Island clients would not charge GST on its services whereas a purely local firm would.

This would of course only be a problem where the goods or services were provided to consumers rather than registered businesses

The Policy Objective under the design stage of the GST project was to provide treatment for the FSI that kept the industry competitive but at the same time derives an annual revenue yield in the region of £5-10 million.
Part 12 of the Law and the supporting regulations have been prepared specifically for the FSI in order to achieve these policy objectives. In the words of Jersey Finance what we have is a "unique solution" and in the first year of operation we will all be learning.
For many reasons my view is that we should initially limit the approval of ISEs to what was originally proposed – the FSI. If we do extend then it should be to a very specific and limited number of other service providers.
In their own submission covering the extension of the flat rate scheme to service providers JFL

suggested that Legal and Accountancy businesses should not be eligible as ISEs (and this has been accepted).
The current GST treatment available for major exporters of goods is very reasonable – yes they need to register but as regular repayment taxpayers they can recover the tax by submitting monthly returns. Based on feedback (mainly on advisory visits) from the Fulfilment Industry they seem satisfied with this approach which does not impose significant increased compliance costs.
I am not sure that the overall position of JFL is, at this stage, to extend the ISE flat rate scheme to exporters of goods – I am aware that it is the view of perhaps one or two members of their Fiscal Strategy Group.
The workings of Part 12 will need to be reviewed before the end of 2008 and part of the review should include the potential to extend the ISE scheme to non FSI businesses which can then be based on "live" operational experience.

Sub Panel comment: This is a complex situation, and it may be difficult to draw a firm dividing line. The situation will have to be monitored, and the law may have to be tightened if there is evidence of abuse.

Other Financial Services issues

Art 57 & 57A — after "supply", perhaps we should insert "(including a deemed supply)". This would make it clear that ISEs are not subject to reverse charges.

Sub Panel proposal has not been incorporated. It was merely to make the situation clearer;

Art 57(3) — The meaning of this section (Treasury draft) is still unclear, unless one either examines it closely or knows what it is intended to do beforehand.

We understand that something more like Jersey Finance's version is likely to be adopted. That is certainly much simpler.

The one problem with Jersey Finance's version is that it does not actually require that an ISE be on a list (although when questioned they said that it should). If their version is adopted, then there should be a definition that an ISE is an entity that is included on a list under s60.

Sub Panel proposal has been incorporated.

Reg 6 — As discussed, the placing of this part of the definition is very unhelpful. It appears that Art 61(2) (Jersey Finance numbering) imposes a 10% local market maximum on banks (etc), since they are "bodies corporate", but then Reg 6 (Treasury numbering) removes it.

Given that the law is being amended anyway, we would suggest as a better way:

- Art 61(2) should specifically exclude such entities in its second line; and
- There should be a new sub-clause in Art 61 to deal with these entities.

I have no major problem with what is listed above.

Article 57/57A – a service supplied where received is not really a deemed supply – it is a supply – so not needed.
The joint aim of JFL; the GST team and the Law Draftsman has been to try and make the legislation simpler / easier to understand.
After a further meeting with JFL on 25th February a revised version of the law was lodged by the Minister on 26th Feb (amendments to the amendment law and amendments to the ISE regulations). These are now scheduled for debate by the States on 11th March.

Sub Panel proposal has not been incorporated.

Other issues - Law Amendment (Treasury numbering used)

Art 6 New Art 43(1)(e)

This waives Art 42 (the information that a GST invoice must show) for retailers.

We agree that retailers should not generally be required to issue a full GST invoice, but surely where they do it must still comply with the normal rules (e.g. where a computer shop makes a sale to a small business, which will need a GST receipt in order to recover GST).

This needs to be redrafted so that it only waives the requirement to issue a GST invoice, not the information to be shown if they do issue one.

Agreed and we are just following generic GST/VAT principles – retailers (using a retail scheme will be required to issue a tax invoice to a customer "on demand" – less detailed/simplified if the value of supply is below £250.
Details of the retail scheme (including tax invoices) are covered by Notice (in final draft form – due to be published next week) issued by the Comptroller under Article 43(3) of the Law.

The Sub Panel is happy with the explanation

Art 18 Amends Art 100

This allows the States to make Regulations that give more discretion to the Comptroller, and is now being extended to include the Agent d'Impots.

After discussion, the Panel agreed that Art 84(2), which lists the circumstances where the taxpayer can make an appeal, should be extended so that the taxpayer has a right to appeal against any determination, decision etc. of the Comptroller or Agent under any Regulation made under Art 100 (unless that Regulation specifically excludes such right of appeal).

This would be clearer, and less liable to error, than inserting a right of appeal each time a Regulation is made that gives discretion.

I do not disagree – some areas for "Direction" can be delegated to an appropriate agency – subject to review by the Comptroller. This is probably more an issue of presentational style.

Sub Panel proposal has not been incorporated.

Art 20 Amends Sch 1 para 12

Two or more companies are allowed to form a GST group (so that they do not have to charge and reclaim GST on inter-group sales or services), and now a partnership can also join such a group – but only where the group contains at least one company. This seems strange – surely two partnerships should be able to form a group on their own if they qualify. This could be relevant in practice, for example some accounting firms have a main partnership and separate LLP to carry out riskier business.

The interpretation above is correct and the law was amended on the basis of submissions/requests from the business community (including the accountancy profession). This change is more business friendly than is currently available under UK/EU VAT systems.

Sub Panel proposal has not been incorporated.

Art 20 Amends Sch 1 para 15(6)

Possibly the Comptroller should also have the power to refuse to allow an entity to leave a group, as well as refuse to let it join (from memory the VAT avoidance in the *Thorn EMI* case relied on companies being able to leave a VAT group at will).

I do not disagree – less relevant here as the conditions for inclusion in a group registration are different to that in the UK – each member must be registerable in its own right. I think the UK case mentioned above involved a group company that was making either making exempt supplies (this would not be allowed into a Jersey GST group) or an avoidance scheme involving non deductible input tax on purchase of cars (again we do not have specific non deductible input tax in Jersey) .

Sub Panel proposal has not been incorporated.

Art 20 Amends Sch 1 para 15(6)

The way this is currently drafted, the "entities" who can make an application to join or leave a GST group seem to only be the ones who are applying to join or leave, not the ones who are already in it. The representative member of the existing group should also be allowed to make the application.

In practice we would allow this – applications to leave would have to be submitted by the representative member, as would an application to include a new member. Not sure that I agree with the interpretation.

The Sub Panel is happy with the explanation