

STATES OF JERSEY

Corporate Services Scrutiny Panel G.S.T. Review

FRIDAY, 15th FEBRUARY 2008

Panel:

Deputy P.J.D. Ryan of St. Helier (Chairman)
Connétable J.L.S. Gallichan of Trinity
Mr. R. Teather (Panel Adviser)

Witnesses:

Senator T.A. Le Sueur (The Minister for Treasury and Resources)
Mr. S. Lowthorpe (G.S.T. Director)

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

Good morning, Senator Le Sueur, Steve Lowthorpe. That was for the benefit of the tape recorder. Well, we have had quite a long chat with Jersey Finance this morning and we have something like 6 main points to discuss, but let us work in reverse and ask a fairly simple one: the start date for G.S.T. (Goods and Services Tax), is there a regulation that will say what the start date is somewhere?

Senator T.A. Le Sueur (The Minister for Treasury and Resources):

Yes, it is 1st May and it was in the regulations that were put to the States last October, I think, the Appointed Day Act.

Deputy P.J.D. Ryan:

Yes. Do we need, though, separately a regulation which says when the actual start is?

Senator T.A. Le Sueur:

No, the Appointed Day Act defines the start date.

Deputy P.J.D. Ryan:

Is the start, okay.

Senator T.A. Le Sueur:

In fact, there were 2 Appointed Day Acts. There was the Appointed Day Act that passed the law to 1st January and the implementation of the law on 1st May.

Deputy P.J.D. Ryan:

Okay. Which version are we going to be debating?

Senator T.A. Le Sueur:

Well, at the moment we are going to debate what is lodged because that is the way things would be. But I have to accept, having seen an alternative suggestion put to me at a pretty late stage by Jersey Finance Limited, that there might be ways of achieving the same objectives in a rather neater way. It might be possible in the timescale for me or someone to amend my own proposition to implement those changes, but I was reluctant to do that in advance of this meeting this morning because I thought if there were points coming out of this meeting which could be incorporated into that, so much the better. I think any change in a lodged proposition or the wording of legislation or regulations causes people to say: "What has changed?" The fewer times we can change the better. So, perhaps after this meeting, if we can find common ground then I might well be prepared to take some amendment to the regulations and delay the debate from 10 days' time to later, after the amendments have been lodged.

Deputy P.J.D. Ryan:

Okay. You are thinking of amending them yourself?

Senator T.A. Le Sueur:

I think in reality I can amend my own law amendments on 2 weeks' notice, but I would be reluctant to do that unless I felt that I had the support of the Scrutiny Panel behind me to do such a thing.

Deputy P.J.D. Ryan:

All right. Well, subject to these other discussions that we want to talk about, I think that we initially, having looked at Jersey Finance's version, believe that presentationally they do have some advantages.

Senator T.A. Le Sueur:

I think they do. The Law Draftsman advised me that there are some minutiae in there which would require tweaking just to make it fully compliant, but I think the general thrust of the amendments is one which I have always tried to achieve, which is that of simplicity and understandability but which is not always compatible with the way laws are drafted.

Deputy P.J.D. Ryan:

Yes. The only thing that we did say to Jersey Finance is the trouble is that all of this is so ... well, I think we would all agree, really, this is rushed.

Senator T.A. Le Sueur:

Yes, I think reluctantly I have to agree with you there, and that is why, in fact, I did lodge the regulations at the time I did, recognising that there was still ongoing discussions, but I thought unless we fix something down and fix a clear date we could go on talking indefinitely.

Deputy P.J.D. Ryan:

Yes. I suppose our view, and I would like to hear your view, is that we cannot really afford to have another go at it and still get it wrong.

Senator T.A. Le Sueur:

No. I do not think ...

Deputy P.J.D. Ryan:

It would be preferable to just give it a bit more time if need be just to make sure that this really is the final version.

Senator T.A. Le Sueur:

I do not think it is a question of getting it wrong because the policy objectives are achieved whether we went with the existing lodged version or with the amended version. That is the important thing, getting the policy right.

Deputy P.J.D. Ryan:

There are a couple of things on policy that ... yes.

Senator T.A. Le Sueur:

Yes, so if there were questions on policy which were uncertain, then we would certainly need to clarify those, but in terms of the way the law is worded, I think both the existing lodged version and the potentially amended version suggested by Jersey Finance achieve the same policy objectives but theirs perhaps in a neater way.

Deputy P.J.D. Ryan:

Okay. I suppose one of the things that we were slightly worried about was it appears, having spoken to Jersey Finance, that they have not had the time to consult as much as perhaps we would have liked with other lawyers perhaps in other jurisdictions, principally in the U.K., in the City, as to whether what they are suggesting cures the problem or the perceptions or whatever they were that have prompted them to make these changes in the first place. There has not been time to do that. I do not know what your view is on that one.

Senator T.A. Le Sueur:

I think I started from the viewpoint that it was firstly important to get a consensus of opinion from the various parts of the industry locally, and that has been subject to engagement with Jersey Finance for several months now. Indeed, I was hoping to lodge these before Christmas, as you were aware from my original timetable. That consultation I think has achieved that level of consensus, but it is only when the law is drafted that one can then see how it might be viewed by people outside the Island.

Deputy P.J.D. Ryan:

They have suggested: "Let us get it lodged and then we can find out" but ...

Senator T.A. Le Sueur:

Yes, so having lodged it and having now obtained their view of how lawyers outside the Island would see it, I must say I have not clarified the extent of that but I am quite prepared to believe that external lawyers would find this a bit turgid, if that is the right word, that it might put them off. I am not a Law Draftsman. What I asked the Law Draftsman to do was to draft a law which met the objectives politically.

Deputy P.J.D. Ryan:

Just going through my mind (and I am thinking on the hoof as we are on this meeting because we are so telescoped in terms of time), what might the implications be, for example, of bringing in financial services treatment at 1st June or something like that? Is that completely out or have you thought of that one as a possibility or not a thing that you want to consider? [Aside] I think we have answered that ourselves. I am just going through in my mind. It would delay the whole of G.S.T. in fact?

Senator T.A. Le Sueur:

I think it probably would, yes.

Deputy P.J.D. Ryan:

Fine, that is all right. Let us pitch into the one or 2 policy problems that we think we might have. Let us talk about this £1,000 *de minimis* that they have removed. No doubt you have given that one some thought?

Senator T.A. Le Sueur:

Yes. There are various ways of trying to achieve simplicity in G.S.T. and it seems whenever you try to simplify it in one way it becomes more complicated in another way. I am not wedded to the existing £1,000 treatment we have here. This is something which was, in fact, suggested to us by the industry in a way of trying to simplify matters and avoid dealing with small value transactions. It seemed a logical approach at the time, but there are other ways in which it could be addressed and certainly, having discussed the matter further, I think we could refine it perhaps in a way which would be more simple to

everyone if we limited the treatment to goods only and not to services. In other words, electricity, gas, water and telephone would not come into that category because they would all be services. I think water is a service, I am not sure. Is it a service or a good?

Mr. S. Lowthorpe (G.S.T. Director):

We have learnt a lot over recent weeks from the business community themselves, and this attempt I think was suggested even by Scrutiny quite some time ago. So I do not think anybody is against the principle of trying to relieve the burden of remitting or relieving tax in the smaller businesses, particularly the retail outlets. The way the law has been worded does not achieve that at all, so I think we accept that it does not achieve what we were trying to do originally. I think it would be better, if in fact there was a limit, that the limit did not apply to retailers particularly of goods or anybody on a retail scheme, and that normally is a retailer supplying goods. For anybody else, then it does not apply. Equally, the ability for an I.S.E. (International Services Entity) to recover any G.S.T. paid should not have a financial limit on it. They should have the ability to recover if they decide to.

Deputy P.J.D. Ryan:

Jersey Finance's big point, though, was that whatever you do, make it simple.

Senator T.A. Le Sueur:

Easy to say.

Mr. S. Lowthorpe:

That is a message that Jersey Finance will always give, but when you then say: "Well, can you suggest a way of making it more simple?" then ...

Deputy P.J.D. Ryan:

I guess they have, "Let us just take it out completely."

Mr. S. Lowthorpe:

I think, as we said before, it was something which Scrutiny thought was a good idea, we thought was a good idea, was replicated by Jersey Finance, and I think it was just the way that it was worded that was wrong. I think to take it out altogether does not achieve the policy objective.

Deputy P.J.D. Ryan:

What do you think of their contention, which is that if you take it out completely a *de minimis* would be self-regulating in that you would have a situation where a seller of goods, say computers, would say to I.S.E.s: "We are not going to give you the G.S.T. We are not going to bother looking at your certificate and taking records of it for anything under £500 and if you do not like that, then go and buy your computer from someone else." The I.S.E. would, therefore, under £500 worth pay the G.S.T. and

reclaim it, pay and reclaim, if he wants to. If he does not like it, he will go to another computer supplier who will say: "Anything under £300." And someone else: "Under £275." So the market would be self-regulating and it would be that the seller would weigh up his administrative cost and all the rest of it and reach his own view of what his own particular *de minimis* would be in his own sphere of operation where he charges G.S.T. or bothers with an I.S.E. certificate and zero rates. What do you think of that? That is their view, you know: suck it and see, and we do not need this, it does not do anything, it just adds complexity and does not really achieve a lot.

Senator T.A. Le Sueur:

I think my view is that we need to look at the key objective here, and the key objective is a generic treatment for financial services industry entities, I.S.E.s. The *de minimis* is almost a peripheral procedural domestic issue. I am far more relaxed about how we treat that as long as we can achieve fairness, simplicity and understandability. So, as I say, recognising that there is going to be no perfect solution or there seems to be no perfect solution, I am fairly flexible about what treatment is adopted. Really, it then comes down to probably ease of operation for both the I.S.E. and the shopkeeper/retailer/supplier. I think the more you try to help in one direction, the more it becomes more difficult in the other direction and a balance is what we are trying to strike.

Deputy P.J.D. Ryan:

I think their view is that because a seller of goods that is G.S.T. registered, there is nothing in law which says he must supply.

Senator T.A. Le Sueur:

No.

Deputy P.J.D. Ryan:

There is something in law which says that if he supplies to an I.S.E. he must zero rate, but there is nothing to stop that purchaser saying: "Well, I am just not going to supply. Sorry, under those circumstances I am not going to supply."

Senator T.A. Le Sueur:

Yes. I think it may well be that we could remove the *de minimis* provisions in here completely. If then after operation of the law for 6 months or 12 months ...

Deputy P.J.D. Ryan:

We review it.

Senator T.A. Le Sueur:

... there seemed to be an obvious anomaly or difficulty here, we could bring in an amendment at a later

stage. It may be easier to have nothing in there at the moment and bring it in later. I think what we are trying to do is to achieve the previous objective I think which you had as well.

Deputy P.J.D. Ryan:

Utopia from day one.

Senator T.A. Le Sueur:

Yes, but if we cannot get utopia certainly I at the moment (I might need to discuss it a little bit more with Steve afterwards) see no reason why we could not just remove it from the regulations at this stage.

Deputy P.J.D. Ryan:

I think we have a question, though, over the difference between the types of sale, which could be a cash sale or an account (and, therefore, invoiced and audit-trailable) sale. Do you have a view on that, whether cash sales should be excluded from this or something?

Senator T.A. Le Sueur:

I do not really see that many I.S.E.s going around with a wad of £5 notes in their pocket.

Deputy P.J.D. Ryan:

I suppose the example that we thought of was the sandwich seller who supplies ...

Mr. S. Lowthorpe:

It takes me back to the answer I gave earlier, that I would not like to see the ability for a retailer of goods on a retail scheme, which effectively is a cash sale, having the ability to remit tax because it might not happen in the first year but having worked in regimes where there are similar schemes ...

Deputy P.J.D. Ryan:

Some bright spark will find a way.

Mr. S. Lowthorpe:

A bright spark will suddenly find that 50 per cent of the sales are to I.S.E.s and that we have lost a lot of tax and it is very, very difficult, particularly with the system we have, to verify those sales. So that was why my view was that if we are going to have it we cannot have it for retailers of goods, who effectively are using retail schemes, not issuing invoices.

Deputy P.J.D. Ryan:

So that effectively takes care of the cash element?

Mr. S. Lowthorpe:

Yes.

Deputy P.J.D. Ryan:

Can you decide with your retail schemes that one of the conditions of a retail scheme is that you do not deal ...?

Mr. S. Lowthorpe:

That is a retail scheme. A retail scheme is there for somebody who supplies to consumers and is selling effectively for cash, and the tax assessment is then based on total monies received. It is based on the gross takings which effectively are cash.

Deputy P.J.D. Ryan:

Exactly.

Mr. S. Lowthorpe:

I think this is where you were thinking of the potential problem with the law as it is, with a corner shop selling sandwiches, or I think the example you gave before was coffee or tea or milk.

Deputy P.J.D. Ryan:

Okay.

Senator T.A. Le Sueur:

Assuming that they have a taxable turnover of £300,000.

Deputy P.J.D. Ryan:

So you would exclude the retail schemes? Computer shops?

Mr. S. Lowthorpe:

Well, a computer shop generally ...

Deputy P.J.D. Ryan:

Will invoice.

Mr. S. Lowthorpe:

... will invoice in terms of the value of those sales, and then in most cases they are not then using a retail scheme.

Senator T.A. Le Sueur:

If you go in and buy U.S.B. (Universal Serial Bus) you might pay cash.

Deputy P.J.D. Ryan:

So would I be right in saying, to sum up what you have said, that you are inclined to give it a 6-month trial period with nil *de minimis*, are you?

Senator T.A. Le Sueur:

I would be quite prepared to if that also met with the Scrutiny Panel's approval, but I did not want to do that when I had a message earlier suggesting that we ought to implement something like that.

Deputy P.J.D. Ryan:

Fine. I think probably, because we are so short of time, for the record I think that we would probably support that on the basis that retail schemes as described by Steve would be excluded from it and subject to review in 6 months.

Senator T.A. Le Sueur:

With a review within 12 months.

Deputy P.J.D. Ryan:

A suitable period, 12 months. Yes, 6 months is too short, but 12 months, yes.

Connétable J.L.S. Gallichan of Trinity:

We are reviewing everything in 12 months. We are reviewing 3 per cent in 12 months, are we not?

Deputy P.J.D. Ryan:

No.

Mr. S. Lowthorpe:

I think, to be fair, there is a commitment to review, the post-implementation review, which we have committed ourselves to conduct before the end of the year.

Senator T.A. Le Sueur:

We have a post-implementation review but that does not necessarily mean that you will have to comply with the same timescale.

Deputy P.J.D. Ryan:

No. That is fine. That is that one. The 10 per cent local to export content area of the regulations as proposed by Jersey Finance, let me get this right. What are they proposing?

Mr. S. Lowthorpe:

I do not think they have changed that, have they?

Deputy P.J.D. Ryan:

It is allied to the lack of clarity that a non-financial services industry player could register under these as an I.S.E. because they are exporting more than 90 per cent of their turnover. There are at least 2 companies and probably several more that I can think of that would fall into that category and could register as an I.S.E. That would in theory mean if they are very large exporters and, therefore, any local content, even taking into account the total local market, could be considerably less than 10 per cent of their total turnover and they could set themselves up in the High Street being able to reclaim all of their purchases and costs through their input side but avoid having to charge G.S.T. as an I.S.E. for their local ... Do you see what I am getting at here? I think you probably know the kinds of businesses that I am referring to. At the moment, unless there is something explicit somewhere which excludes them from registering as an I.S.E. through Part 12 of the law, we see a possible problem there. It may not turn out to be a problem.

Mr. S. Lowthorpe:

Can I respond?

Senator T.A. Le Sueur:

Okay, yes, go on, Steve.

Mr. S. Lowthorpe:

I think it would be very fair and true to say that we have received inquiries from service providers who would not be within the definition of financial service providers as to whether they would be eligible for treatment under Part 12. So these are ...

Senator T.A. Le Sueur:

I think the panel are looking a bit quizzical there. That would be people, for example, who deal with international packages(?).

Mr. S. Lowthorpe:

That would be a good example.

Deputy P.J.D. Ryan:

I never thought of that one.

Mr. S. Lowthorpe:

These would be requests from providers of services who primarily are all export services, and there have

been inquiries under the law as it currently stands as to whether they would be eligible as I.S.E.s or not. The answer is, in terms of an interpretation, the legal advice given is that they probably would be eligible. In many ways it would be perhaps of benefit to the States to include them because we would not then have to register them. First of all, they would be eligible not to register in any case because there is an exemption from registration for somebody in exactly those circumstances. So they have a range of alternatives. They can notify a liability and request the Comptroller to be exempted from registration because effectively most of the sales are zero rated, or they could register in the normal way, or they could register as an I.S.E., pay the flat rate fee and in effect we would not have the administrative burden of repaying them. But these are businesses involved in services only because goods, if we took another example and I think you have sort of moved into the area of goods, then ...

Deputy P.J.D. Ryan:

We were particularly looking at goods but I had not thought of this one. It is interesting.

Mr. S. Lowthorpe:

Goods for resale are excluded specifically under the law in any case, so if we took another ...

Deputy P.J.D. Ryan:

Could you point us to that?

Mr. S. Lowthorpe:

Well, under ... if you could just give me a minute.

Deputy P.J.D. Ryan:

It is not in Part 12, then, is it?

Senator T.A. Le Sueur:

No, it would not be.

Mr. S. Lowthorpe:

It will be in the regulations.

Senator T.A. Le Sueur:

It is wider than financial services.

Deputy P.J.D. Ryan:

Is the title of Part 12 "Financial Services"?

Mr. S. Lowthorpe:

No, it is “International Services Entities” which, of course ... I can find it, it is there within the legislation either approved or lodged.

Deputy P.J.D. Ryan:

Jersey Finance thought it was not.

Senator T.A. Le Sueur:

Did they?

Mr. S. Lowthorpe:

Well, it is there. I can assure you it is. I will find it. If you can give me a few minutes I will find it.

Deputy P.J.D. Ryan:

Let us do it.

Mr. S. Lowthorpe:

If I can just continue, in actual fact where we have had a similar inquiry from, let us say, giving a good example, can this scheme be extended to the fulfilment industry, then the answer is no, it cannot.

Deputy P.J.D. Ryan:

So you have given that; that is a hard and fast rule?

Mr. S. Lowthorpe:

Yes.

Deputy P.J.D. Ryan:

Well, that is one. What about other exporters, shall we say, of food items?

Mr. S. Lowthorpe:

It has to be service related.

Deputy P.J.D. Ryan:

Food?

Mr. S. Lowthorpe:

No, because it involves goods. The intention of this section is that it applies to the service providers only. That was the intention of Part 12. I have to say that there is not a definition of “financial services” but you exclude goods by the law, which I am now going to ... I will probably have the next half hour to

find it. Just let me look. It is in the regulations.

Deputy P.J.D. Ryan:

In Jersey Finance's version or your version?

Senator T.A. Le Sueur:

In our version, certainly. I think it is probably in both, but it is certainly in our version.

Mr. S. Lowthorpe:

I am sticking to what has been lodged at the present time.

Senator T.A. Le Sueur:

Page 10, I think.

Deputy P.J.D. Ryan:

You are blind to the Jersey Finance one, are you not, at the moment?

Mr. S. Lowthorpe:

This would be regulation 2.

Senator T.A. Le Sueur:

2(1)(b), I think.

Deputy P.J.D. Ryan:

As belonging in Jersey.

Mr. R. Teather (Panel Adviser):

No, that is the supply to the entity, not the supply by the entity.

Mr. S. Lowthorpe:

Well, a supply, for example, if you are going to import goods for resale in the same state, which the fulfilment industry does, then they would not get remission of tax when those goods were imported.

Mr. R. Teather:

True, but they would not have to charge tax when the goods were sold.

Mr. S. Lowthorpe:

It just would not be worth their while.

Deputy P.J.D. Ryan:

No, it would not.

Mr. S. Lowthorpe:

The whole idea of the fulfilment industry is that they must get those goods in effectively free of tax and then re-export it as a zero rated supply. I have to say that when this has been explained to the one inquiry from a big fulfilment industry provider, he fully understood. It was an inquiry made on their behalf and I think equally the few inquiries that we have received from genuine service providers, they seem to favour the option for treatment as an I.S.E., which again is okay from our point of view because we have reduced the administrative burden. I do not think that there are that many, at this stage there does not seem to be too many, non-financial service providers who are thinking that they would be eligible for treatment as an I.S.E.

Deputy P.J.D. Ryan:

So basically you do not think there is a problem there?

Mr. S. Lowthorpe:

No.

Senator T.A. Le Sueur:

No.

Deputy P.J.D. Ryan:

Okay, that is fine, as long as you do not think there is a problem and obviously if a problem were to occur you would do something about it.

Mr. S. Lowthorpe:

We would have to, and if this was not robust enough we would have to make a specific amendment to the law to make it absolutely clear, but the legal advice that we have given is that we are okay.

Deputy P.J.D. Ryan:

Fine. Okay, that puts that one to bed. If you are sure that it is going to work in that area, then you are sure.

Mr. S. Lowthorpe:

But I am not sure that it has been included in the Jersey Finance version.

Senator T.A. Le Sueur:

It is still the same wording.

Mr. S. Lowthorpe:

Okay, so it is there.

Deputy P.J.D. Ryan:

Okay. I think what you are also saying is that particularly in terms of other industries that we may want to develop of an international services nature, this may provide an opportunity for the further development of that business into the future, I think. That may well be a hidden benefit.

Senator T.A. Le Sueur:

It may, yes.

Deputy P.J.D. Ryan:

I am thinking of information technology and intellectual property, services of all kinds.

Senator T.A. Le Sueur:

Yes.

Deputy P.J.D. Ryan:

Have you had any input from the Economic Development Minister or Department perhaps in this area at this stage?

Senator T.A. Le Sueur:

No. As I say, these regulations are primarily dealing with the treatment of the financial services industry. What we are talking about there is very much peripheral to I.S.E.s. Certainly I cannot imagine that the Economic Development Minister would be other than very pleased at the treatment of this nature, which would encourage such activities to take place in Jersey.

Deputy P.J.D. Ryan:

Should there be a review of the fee structure for those entities?

Senator T.A. Le Sueur:

Yes, I think there should, but bear in mind that in reality certainly the ones we are talking about to date I think it would not be 90 per cent of their activities carried out outside Jersey but something like 99.9 per cent. There is very little done in Jersey indeed, so I ...

Deputy P.J.D. Ryan:

So we are not going to lose out, it is just a question of whether we lose in or gain in?

Senator T.A. Le Sueur:

I think we could well charge them £1,000 or so and they would be happy with the privilege.

Deputy P.J.D. Ryan:

It may be something, depending upon what happens in the future, you would need to keep under review, perhaps?

Senator T.A. Le Sueur:

Yes. I would not want to in a way put any impediment in their way. To some extent it is far easier to have that treatment than for us to try to have to administer repayment claims.

Deputy P.J.D. Ryan:

That we might want to review in 10 years' time rather than one year's time.

Mr. S. Lowthorpe:

For the non-financial service providers that have made inquiries to date, the only supplies domestically they made were to one another. So there would be no revenue loss at all because they would all be registered and any tax charged by one to the other would have been recovered as input tax.

Deputy P.J.D. Ryan:

Okay. The lists of I.S.E.s, are you relaxed with the scenario whereby trust companies keep their own lists? Are you happy that the audit side of that from the Treasury is robust enough in that area? Do you have the powers?

Senator T.A. Le Sueur:

There are powers indirectly within the Financial Services Commission to investigate the probity of trust service providers, and I think if those providers were knowingly to submit false lists of income tax, the J.F.S.C. (Jersey Financial Services Commission) would not be particularly enamoured of them. From the service providers' point of view, I cannot see it is a great deal of incentive to them to make false declarations.

Deputy P.J.D. Ryan:

They will not gain anything?

Senator T.A. Le Sueur:

They are not going to gain anything really, they will just pass it on.

Deputy P.J.D. Ryan:

Stand a hell of a lot to lose and not very much to gain?

Mr. S. Lowthorpe:

Yes.

Senator T.A. Le Sueur:

So I think it can be policed with a relatively light touch.

Deputy P.J.D. Ryan:

Penalties for mistakes or ...?

Senator T.A. Le Sueur:

There are general penalties under the law.

Deputy P.J.D. Ryan:

There needs to be a fairly robustly ... what is the word I am looking for? There needs to be a reasonable level of management control in that area otherwise ...

Senator T.A. Le Sueur:

All I.S.E.s are by definition registered under the Financial Services Commission.

Mr. S. Lowthorpe:

It is something that we have given a lot of thought to. As I say, my background perhaps is one which worries more than I would need to here. I think we have to recognise that we are dealing with a heavy regulated body in general already. We had thought of putting in (and this was another suggestion from Jersey Finance) specific punitive clauses within Part 12 and there was a draft that was presented with specific punitive measures. Now, on the one hand we are told that the legislation is complicated, that U.K. lawyers find it difficult to read; I think they would also find it quite difficult if in the middle they also found a fairly heavy punitive measure. It does not send the right signals. It does not send the right messages. So those specific punitive clauses were taken out and I think that that is quite right.

Deputy P.J.D. Ryan:

Okay, that being the case, though, you are still relaxed that you can achieve through various means at your disposal the right level of accuracy?

Mr. S. Lowthorpe:

Yes, and I think on this one, this is again where everybody is going to learn and benefit from operational

experience. I think if, in fact, we found that there was abuse, deliberate abuse, then we would have to change the position.

Deputy P.J.D. Ryan:

Okay.

Senator T.A. Le Sueur:

I think to some extent ... this will not be regulated by members of Jersey Finance but it certainly is in the interests of Jersey Finance, given that they have given an undertaking to me that this fee structure will generate sufficient G.S.T. If it did not generate sufficient G.S.T. I would be looking to them to increase the rates of entity. So if one in Jersey is not playing ball, then the industry themselves are going to be keen to root out their rotten apples, if you like.

Deputy P.J.D. Ryan:

Just say a particular trust company forgot to put a few I.S.E.s on its list but still treated them as I.S.E.s, what would happen to them when it was realised by someone, J.F.S.C. or the Treasury, that there was a mistake here? What would happen to that company?

Senator T.A. Le Sueur:

I suggest that J.F.S.C. might well say: "Look, there has been an oversight on your part. Can you make a corrective return?" and I do not see why we cannot allow for corrective returns later on in the year to pick up any oversights. If there was evidence of deliberate evasion, I think that might give the J.F.S.C. far more worrying concerns than just a revenue of £100 of an entity.

Mr. S. Lowthorpe:

We have been asked the question in reality at potential I.S.E. service providers and we have said: "Well, if you genuinely do not even know the status of a particular I.S.E. or you missed it, then a voluntary disclosure is in order." They would just tell us.

Deputy P.J.D. Ryan:

Right. Have you any up-to-date assessment of how much money the fees will generate?

Senator T.A. Le Sueur:

Yes, I think we have. I think it has a certain margin of error. I would not know what the margin of error is, but I think the figure we are talking about is something like 7.2 or 7.3.

Mr. S. Lowthorpe:

7.3 was the figure.

Deputy P.J.D. Ryan:

Okay.

Senator T.A. Le Sueur:

Million, that is, which is (in case the media are around, but they are not) rather more than we might have got otherwise. So rather than the industry not getting any contribution to G.S.T., they are making a significant contribution.

Deputy P.J.D. Ryan:

Okay. Those were the policy areas that we were worried about, unless you think that there are any others that we have not in our very short space of time managed to identify. Are there other policy things that they are changing that you are considering?

Senator T.A. Le Sueur:

There are no other changes that we are considering. We have considered changes and we have made changes over the last 6 months to such an extent that we are now I hope in a state where everything we wanted to achieve has been achieved, albeit in a somewhat convoluted legalistic way.

Deputy P.J.D. Ryan:

Are we still as convinced as ever that the advantages of going this route are real?

Senator T.A. Le Sueur:

As opposed to treating the industry as a bog standard ...?

Deputy P.J.D. Ryan:

In the generic way that was originally written into the law?

Senator T.A. Le Sueur:

Yes, I think for one thing the yield will be at least as great as we would have got on a conventional treatment. On a wider political aspect, I think the standard treatment would have created a lot of additional administrative burden both for us and for businesses for no economic benefit to the Island. It is virtually dead resource. I think it is also a lot simpler, even if it does create rather complicated wording. The treatment thing is a lot simpler, something that certainly I am quite happy with, yes.

Deputy P.J.D. Ryan:

So it is worth doing, basically, is what I am saying?

Senator T.A. Le Sueur:

Yes.

Deputy P.J.D. Ryan:

The passage of time goes on and we keep evolving and what have you. Are there any tricks? Because we looked at other jurisdictions and how they treated financial services primarily, but it is probably 6 to 9 months ago. Have you looked to see if there are any recent changes to the way, for example, New Zealand ...? Because there was something that New Zealand were looking at, I seem to recall. Have you looked at others to see if there are any tricks that we have missed, so that we truly are cutting edge? Has somebody else got a better idea?

Senator T.A. Le Sueur:

I do not know if we are cutting edge. I do not necessarily want to be at the cutting edge. I want to have a system which is appropriate to Jersey, one which works. I think if you keep waiting for the perfect system to come along and say: "Oh, there is a wonderful new scheme in New Zealand came out in February. Let us tear all this lot up and start again", you cannot do that.

Deputy P.J.D. Ryan:

I was not so much looking at that; I was just looking to see if we had carried out a sort of final ...

Mr. S. Lowthorpe:

No, there is not. There are certainly efforts in Europe. It has been recognised and there is a project now which is about to kick off which is supported by U.K. Treasury to look at the whole treatment of the financial services industry in Europe, and I think the Treasury have said that any recommendations that are made, the benefits would not be for at least 5 to 7 years. So I have looked at the terms of reference for that project. They are fairly wide. They will not end up with anything as simple as we have here and, if anything, I know that there are jurisdictions in the world that are looking at what we are doing here to see whether it can be replicated. The changes in New Zealand were very limited, were business to business, and were also linked to fairly significant changes in the direct tax regime. So it was not even an initiative that was purely aimed at G.S.T. I think what we are doing, as Jersey Finance have said, is quite unique and I think it will be for others to follow if they wish.

Deputy P.J.D. Ryan:

Okay. Well, I think as a general statement and for the record we are inclined to support the Jersey Finance model. We do not wish to create any delay.

Senator T.A. Le Sueur:

No, thank you.

Deputy P.J.D. Ryan:

So we do not want to call things in and re-look at them. We would rather that you set the pace. That means you will need to amend ...

Senator T.A. Le Sueur:

We will need to amend these and that will depend on the co-operation of the Law Draftsman as to how quickly we can achieve that. He is aware of these suggestions, as I have put them to him already. As I say, he thinks subject to a few tweaks here and there, they can be achievable. What you have, as you have probably seen if you had a chance to go through them, is the interrelationship between these regulations and the primary law. So it is not simply a question of amending one proposition; it is a question of amending 2 propositions.

Deputy P.J.D. Ryan:

That just reminds me of something that we were talking about. There was something in the regulation that Jersey Finance agreed with us might need to be put into Article 12 of the law, and that was ...

Senator T.A. Le Sueur:

Article 12 or Part 12?

Deputy P.J.D. Ryan:

Part 12, sorry.

Mr. R. Teather:

That was the fact that regulated entities are not subject to the 10 per cent cap on local activity.

Senator T.A. Le Sueur:

I think they may have made amendments to the law, did they not?

Deputy P.J.D. Ryan:

I do not think it was in there, but they seemed to agree, which would tend to suggest that it was not in their amendment.

The Connétable of Trinity:

It was the one you brought up, which was the last one. It was "shall be" or ...

Senator T.A. Le Sueur:

Maybe they have not.

Mr. R. Teather:

No, it is still in the regulations. Article 6 in your regulations.

Senator T.A. Le Sueur:

Article 6 of my version? Yes, which is Article 4 of their version.

Mr. R. Teather:

It is still there as Article 4, yes.

Senator T.A. Le Sueur:

Yes.

Mr. R. Teather:

We just felt that since we are amending the law, it seemed better to put that into the law rather than have the initial law saying that you have this 10 per cent threshold and then having to turn to the regulations to get ...

Deputy P.J.D. Ryan:

On the same basis that a lawyer will want to take Part 12 and everything in Part 12 that affects him.

Senator T.A. Le Sueur:

Yes. Frankly, I am relaxed as to whether the amendments go into the regulations or into primary law so long as they achieve the policy objective overall. We are amending both the law and the regulations so as long as it is in one.

Deputy P.J.D. Ryan:

On the basis if we really are going to do the job, let us just really do it, get it all, absolutely.

Senator T.A. Le Sueur:

There are times here, I have to say, when we might think one way and the Law Draftsman says: "No, it is better done the other way" and I am not an expert in law drafting, so I have to, to some extent, be guided by what should be in the law and what should be in regulations. So long as the objective is achieved one way or the other I am fairly relaxed, but if we are going to accommodate the wishes of Jersey Finance and the Panel in a better way, so much the better.

Deputy P.J.D. Ryan:

What decides what should be in regulations and what should be in the law? If it is in the regulations it is easier to change, is it not?

Senator T.A. Le Sueur:

In the regulations it is easier to change. There are some fundamental principles which you want to put in the law. Ideally, put as little as possible into the law and as much as you can into regulations. But then it becomes a philosophical issue of how easy you want it to be to change certain matters.

Deputy P.J.D. Ryan:

So the balance against that is how easy it is to read the law and get out of it what you want from a London lawyer.

Senator T.A. Le Sueur:

Yes. I think from that point of view, as I say, an international lawyer will tend to look at the law first, then the subordinate legislation and then, if he is still interested, go to the practice notes. So, yes, from a marketing point of view the law is the first thing they will look at.

Deputy P.J.D. Ryan:

So should that be in the law, is the question.

Senator T.A. Le Sueur:

If it is felt to be an important issue from a perception point of view, yes. I am not sure that it is.

Deputy P.J.D. Ryan:

Okay.

Mr. R. Teather:

It is partly that this does contradict what is in the law, which makes reading it much more complex.

Senator T.A. Le Sueur:

Yes, that is a fair comment.

Deputy P.J.D. Ryan:

So this is early days for us. We are still forming opinions as we speak.

Senator T.A. Le Sueur:

Yes, but I think if I can sum up, we seem to be saying let us put it into law so we do not have a regulation negating the generality of the law.

Deputy P.J.D. Ryan:

I think that is our view, is it not? Because if the purpose of us doing this is so that it can be marketed

properly ...

Senator T.A. Le Sueur:

Well, I think that needs to be one of the purposes, but the primary purpose has to be that it meets the objectives.

Deputy P.J.D. Ryan:

I think our view is that maybe that should be in the law, and certainly Jersey Finance agree that it should be in the law.

Senator T.A. Le Sueur:

Okay.

Mr. S. Lowthorpe:

Yes, okay.

Deputy P.J.D. Ryan:

Okay. Is there anything else?

Mr. R. Teather:

No.

Deputy P.J.D. Ryan:

I think that concludes.

Senator T.A. Le Sueur:

As I say, I will endeavour to persuade the Law Draftsman and I can lodge these amendments no later than Tuesday week, is that right? It is the next sitting of the States, 26th February. That will mean that the debate on the 26th will not go ahead and I can notify the States to that effect quite quickly in case anyone is interested in reviewing it, other than yourselves.

Deputy P.J.D. Ryan:

I am sure they are chomping at the bit.

Senator T.A. Le Sueur:

In fact, it is quite convenient, then, because it could mean that we will debate both the law and the regulations at the same time. At the present time I have one on one day and one on another, which was a bit unusual particularly to debate regulations before you debate the law amendments. So I think we can achieve extra benefit of tidying up procedurally by doing them both at the same time. I am happy to do

that. I was happy to go along with the thrust of the Jersey Finance proposals. As I say, what I did not want to do was to have 3 different sets of proposals flying around at the same time. So having got your views on this, I am grateful for your views and your suggestions that we are all thinking along the same lines. We can achieve the same objective in a better way with the amendments. So, thank you for your input as well.

Deputy P.J.D. Ryan:

You are very welcome. Good luck. Thanks very much.