

STATES OF JERSEY



DRAFT GOODS AND SERVICES TAX (INTERNATIONAL SERVICES ENTITIES) (JERSEY) REGULATIONS 200

**Lodged au Greffe on 15th January 2008
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

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REPORT

The States Assembly agreed on 13th May 2005 (P.44/2005) to introduce a broad-based, 3% Goods and Services Tax (GST) as from 2008. The GST Primary Law was approved by the Assembly on 18th April 2007, was included on the Privy Council agenda on 25th July and subsequently given Royal Assent. It was registered in the Royal Court on 17th August.

The main “core” of supporting legislation in the form of GST Regulations followed under the following timetable – consultation document and draft Regulations available 3rd August; consultation for 4 weeks; lodged on 11th September; States debate 23rd October 2007. The Regulations were adopted by the States on 24th October.

It was stated at the time that Regulations under Part 12 of the GST Law relating to Financial Services Industry (FSI)/International Services Entities (ISE) would be dealt with as a separate exercise.

Treatment of FSI is described in Part 12 of the GST Law under the heading International Services Entities (ISEs) Part 12 currently allows an eligible entity on payment of a flat rate fee to be treated as an ISE. As such, an ISE would not be a normal taxable person for GST purposes – it would not need to register or charge tax on supplies and would be entitled to end user relief (registered suppliers would not charge GST to an ISE).

The Law also proposed a partial refund scheme for service providers which is now being replaced by a further graduated flat-rate scheme described in the Regulations. Articles 61 and 62 are to be deleted by amendment of the Law (see also at 3.6 below).

Treatment as an ISE is optional under Part 12 and eligible entities can opt for normal GST treatment (either registered or non-registered) if preferred.

The Regulations provide further detail on the following –

- Treatment of the recipients of financial service providers and service providers including eligibility.
- Level of the flat rate fees involved.
- Supplies on which the GST charged can be remitted and a value of supply (£1000) below which remission is optional (to reduce the administrative burden for suppliers).
- Procedure for an ISE to claim refund of any GST paid.

Other linked changes have been raised by Jersey Finance Limited (JFL)/Financial Services Industry (FSI) some of which will require amendments to the GST Law itself and these will be lodged shortly. The linked FSI changes include the following –

- Place of residence
- Partial refund Article 61 (under Part 12) to be deleted
- Provision for a partnership to be included in a group registration

- Payment on an annual basis
- Status of ISE – not a taxable person for GST purposes.

Financial and manpower implications

It is still estimated that 10 staff will need to be employed in order to administer the tax at an approximate operating cost of £1 million per annum. However, a 3% GST should generate approximately £45 million per annum in taxation revenue net of operational costs. Of that £45 million, it is expected that some £5-10 million will be derived from the FSI under these Regulations.

Explanatory Note

The object of these Regulations is –

- (a) to specify what descriptions of international services entity (ISE) may be admitted to an annual flat-rate scheme under Part 12 of the Goods and Services Tax (Jersey) Law 2007; and
- (b) to specify the actual sums to be paid under that scheme.

Those descriptions are, broadly, the vehicles (for example investment vehicles) effectively specified in *Regulations 4* and *5* and certain regulated service-providers (such as banks) specified in *Regulation 6*.

Treating service-providers as ISEs effectively means that service-providers are brought under the annual flat-rate scheme set out in *Articles 57 – 60* of the Law, instead of the partial refund scheme set out in *Articles 61* and *62* of the Law. (The partial refund scheme is not being implemented.)

In most cases, for an ISE to participate in the scheme, most of the services supplied by it must not effectively benefit individuals resident in Jersey (see *Regulations 4* to *6*).

An ISE may only participate in the scheme if an annual flat fee is paid for the ISE and the ISE is specified on a list maintained by the Comptroller of Income Tax (or the ISE fits a category of ISEs that appears on such a list): *Articles 57* and *59* of the Law.

No GST is chargeable on a qualifying supply made to a listed ISE (*Article 57(1)* of the Law) and, because the ISE is not a registrable person (*paragraph 1(2) of Schedule 1* to the Law), it does not have to charge GST on a service provided by it.

A qualifying supply is one that has a value of at least £1,000, is (if it is a supply of goods) not made for direct re-supply to a person in Jersey (*Regulation 2(1)*), and is made to an ISE for the purposes of a business carried on through the ISE (*Article 57(2)* of the Law).

Regulation 3 fixes a number of different annual fees for different categories of listed ISE. In general, a fee becomes an aggregate fee if an ISE fits into more than one category, or if a number of ISEs are within a category of ISEs that participate in the scheme as a category.

Regulation 4 amends *Article 60* of the Law to change the terminology and to allow the Comptroller of Income Tax increased discretion in listing ISEs.

Regulations 5 and *6* add types of ISE to those already specified in the Law.

Regulation 7 allows an ISE to claim back GST that it has paid on supplies to it that are under £1,000 in value, as these supplies are not included in the operation of the flat-rate scheme under these Regulations.

Regulation 8 lends a title to the Regulations and brings them into force on the seventh day after they are made.



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Arrangement

Regulation

<u>1</u>	<u>Interpretation</u>
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<u>3</u>	<u>Annual sum for listing of ISE: Article 59(1) of Law</u>
<u>4</u>	<u>Amendment of Article 60(2), (3) and (4) of Law: Article 60(7) of Law</u>
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Jersey

DRAFT GOODS AND SERVICES TAX (INTERNATIONAL SERVICES ENTITIES) (JERSEY) REGULATIONS 200

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Articles 56, 57, 59, 60 and 100 of the Goods and Services Tax (Jersey) Law 2007^[1], have made the following Regulations –

1 Interpretation

In these Regulations –

“collective investment fund” means –

- (a) a collective investment fund within the meaning of the Collective Investment Funds (Jersey) Law 1988^[2]; or
- (b) a scheme or arrangement that is prescribed by Order under Article 3(7) of the Collective Investment Funds (Jersey) Law 1988;

“the Law” means the Goods and Services Tax (Jersey) Law 2007^[3],

“managed manager” means a person –

- (a) who –
 - (i) holds a permit under the Collective Investment Funds (Jersey) Law 1988 as a functionary falling within Group 2 of Part 2 of the Schedule to that Law, and
 - (ii) is managed under a service contract by a functionary holding a permit under that Law; or
- (b) who –
 - (i) is registered to carry on fund services business under the Financial Services (Jersey) Law 1998^[4] because the person falls within the classes of person specified in Article 2(10)(a) of that Law, and
 - (ii) is managed under a service contract by a person registered to carry on fund services business under that Law because the person falls within any of the classes specified in Article 2(10) of that Law.

2 Prescribed requirement: Article 57(4) of Law

- (1) For the purposes of Article 57(4) of the Law, the prescribed requirement in relation to an international services entity is that the supply to the entity, being the supply referred to in Article 57(1) of the Law –
 - (a) shall have a value (within the meaning of Part 9 of the Law) of at least £1,000, whether it is a

supply of goods or a supply of services; and

(b) shall not, if it is a supply of goods, be for onward re-supply –

(i) of the goods in the same state as they existed in when supplied to the entity; and

(ii) to, for the purposes of, or for the benefit of, a person who belongs in Jersey.

(2) If a supply of goods is made to an individual and received by the individual otherwise than for the purposes of any business carried on by the individual, the individual shall be treated for the purposes of paragraph (1)(b)(ii) as belonging in Jersey if the individual has his or her usual place of residence there.

(3) If a supply of goods is made to a person who is not an individual, or the supply is received for the purposes of a business carried on by the person, the person shall be treated for the purposes of paragraph (1)(b)(ii) as belonging in Jersey if–

(a) the person has an establishment there and no fixed establishment elsewhere in the world;

(b) the person has no establishment anywhere in the world but the person's usual place of residence is in Jersey; or

(c) the person has establishments both in Jersey and elsewhere in the world and the person's establishment at which, or for the purposes of which, the goods supplied to the person are most directly used or to be used is in Jersey.

3 Annual sum for listing of ISE: Article 59(1) of Law

(1) For the purposes of Article 59(1) of the Law, the sum prescribed for the inclusion of a descriptor corresponding to an international services entity on the list for the purposes of Article 57 of the Law is the aggregate of such of the following amounts as applies to the international services entity –

(a) in the case of an international services entity that is registered under the Financial Services (Jersey) Law 1998 in respect of trust company business –

(i) the sum of –

(A) £7,500 in respect of each such registration of the entity as an affiliation leader (within the meaning of the Financial Services (Trust Company Business (Registration and Fees) (Jersey) Order 2003^[5]) or as a non-affiliated person (within the meaning of that Order), and

(B) £100 multiplied by the number of vehicles administered by the entity in its capacity as such an affiliation leader or non-affiliated person,

(ii) the sum of –

(A) £100 in respect of each such registration of the entity as a participating member (within the meaning of the Financial Services (Trust Company Business (Registration and Fees) (Jersey) Order 2003) of an affiliation where the member of the affiliation who is registered as its affiliation leader (within the meaning of that Order) has paid the fee prescribed under clause (i)(A) in respect of the inclusion of a relevant description on the list for the purposes of Article 57 of the Law and in respect of the same period of 12 months and the same affiliation, and

(B) £100 multiplied by the number of vehicles administered by the entity in its capacity as such a participating member, or

(iii) the sum of –

(A) £7,500 in respect of each such registration of the entity as a participating member (within the meaning of the Financial Services (Trust Company Business (Registration and Fees) (Jersey) Order 2003) of an affiliation where the member of the affiliation who is registered as its affiliation leader (within the meaning of that Order) has not paid the fee prescribed under clause (i)(A) in respect of the inclusion of a relevant description on the list for the purposes of Article 57 of the

Law and in respect of the same period of 12 months and the same affiliation, and

- (B) £100 multiplied by the number of vehicles administered by the entity in its capacity as such a participating member;
- (b) in the case of an international services entity that is registered under the Banking Business (Jersey) Law 1991^[6] in respect of deposit-taking business, £30,000 in respect of each such registration of the entity;
- (c) in the case of an international services entity that holds a permit under the Collective Investment Funds (Jersey) Law 1988, is not a collective investment fund and does not hold the permit as a managed manager, one amount of £2,500, however many permits the entity holds under that Law otherwise than as a managed manager;
- (d) in the case of an international services entity that holds a permit under the Collective Investment Funds (Jersey) Law 1988, is not a collective investment fund and holds the permit as a managed manager, one amount of £500, however many permits the entity holds under that Law as a managed manager;
- (e) in the case of an international services entity that is registered under the Financial Services (Jersey) Law 1998 to carry on fund services business in relation to one or more unclassified funds within the meaning of that Law, and is not so registered as a managed manager, one amount of £2,500, however many unclassified funds there are in relation to which the entity is so registered to carry on fund services business otherwise than as a managed manager;
- (f) in the case of an international services entity that is registered under the Financial Services (Jersey) Law 1998 to carry on fund services business in relation to one or more unclassified funds within the meaning of that Law, and is so registered as a managed manager, one amount of £500, however many unclassified funds there are in relation to which the entity is so registered to carry on fund services business as a managed manager;
- (g) in the case of an international services entity that is a body corporate or partnership, limited partnership or limited liability partnership, but is not –
- (i) an affiliation leader, non-affiliated person or participating member referred to in sub-paragraph (a),
 - (ii) an entity to which any of sub-paragraphs (b) – (f) applies, or
 - (iii) a vehicle in respect of which a fee has been calculated under sub-paragraph (a)(i)(B), (ii)(B) or (iii)(B),
- an amount of £100;
- (h) in the case of an international services entity that is a trust, but is not –
- (i) an affiliation leader, non-affiliated person or participating member referred to in sub-paragraph (a), or
 - (ii) an entity to which any of sub-paragraphs (b) – (f) applies,
- a nil amount;
- (i) in the case of an international services entity that is a collective investment fund, but is not –
- (i) an affiliation leader, non-affiliated person or participating member referred to in sub-paragraph (a), or
 - (ii) a vehicle in respect of which a fee has been calculated under sub-paragraph (a)(i)(B), (ii)(B) or (iii)(B),
- an amount of £100;
- (j) in the case of an international services entity that is an Anstalt, Stiftung or foundation, or a person, or entity, approved by the Comptroller as referred to in Regulation 5(1)(b), but is not –
- (i) an affiliation leader, non-affiliated person or participating member referred to in sub-paragraph (a), or
 - (ii) a vehicle in respect of which a fee has been calculated under sub-paragraph (a)(i)(B),

(ii)(B) or (iii)(B),
an amount of £100.

- (2) In the case of a description corresponding to a class of international services entities, for the purposes of Article 59(1) of the Law the sum prescribed for the inclusion of the description on the list for the purposes of Article 57 of the Law shall be the aggregate of all the aggregates determined under paragraph (1) in respect of the international services entities included within the class.
- (3) In this Regulation –
- (a) a reference in paragraph (1)(a) to an international services entity's administering a vehicle is a reference to the entity's providing in relation to the vehicle any of the services specified in Article 2(4) of the Financial Services (Jersey) Law 1998;
 - (b) a reference to a vehicle is a reference to an international services entity within the meaning of Articles 57 to 59 of the Law, whether or not the inclusion, on a list, of a description corresponding to the international services entity (or to a class of international services entities that includes the international services entity) is in effect for the purposes of Article 57 of the Law;
 - (c) a reference to a vehicle does not include a trust;
 - (d) a reference in paragraph (1)(a)(i)(B), (ii)(B) or (iii)(B) to a vehicle administered by an entity does not include a vehicle –
 - (i) that is administered by another entity referred to in the same provision or in another of those provisions, being an entity within the same affiliation, and
 - (ii) in respect of which a fee has already been calculated under any of those provisions and paid;
 - (e) a reference in paragraph (1)(a)(i)(B), (ii)(B) or (iii)(B) to a vehicle does not include a vehicle in respect of which a fee has been calculated under paragraph (1)(g), (i) or (j) and has been paid; and
 - (f) a reference in paragraph (1)(a) to a number of vehicles is a reference to that number as it stands at the time when the application is made for the inclusion of the relevant description on the list for the purposes of Article 57 of the Law.

4 Amendment of Article 60(2), (3) and (4) of Law: Article 60(7) of Law

For Article 60(2), (3) and (4) of the Law there shall be substituted the following paragraphs –

- “(2) Those conditions are, in respect of a body corporate, or limited liability partnership, that is not a collective investment fund –
- (a) that all of the following requirements are met –
 - (i) not more than 10% in value of all the supplies made by the body corporate (or partnership) of goods and services are made to individuals who belong in Jersey,
 - (ii) to the extent that the supplies of goods or services made by the body corporate (or partnership) in Jersey exceed 10% in value of all the supplies made by the body corporate (or partnership) of goods and services, they are made only to another international services entity,
 - (iii) no individual who belongs in Jersey has the effective use, or the effective enjoyment, of any asset owned or administered by the body corporate or partnership,
 - (iv) no individual who belongs in Jersey has the effective use, or the effective enjoyment, of any goods, or service, supplied to or by the body corporate or partnership,
 - (v) such other requirements in respect of the body corporate or partnership as

- the States may prescribe by Regulations, or
- (b) if not all of the requirements set out in sub-paragraph (a) are met in respect of the body corporate or partnership, that both of the following requirements are met –
 - (i) the Comptroller is satisfied that the main purposes and main functions of the body corporate or partnership –
 - (A) are substantially consistent with the requirements set out in sub-paragraph (a), and
 - (B) are not the avoidance, or reduction, of the liability to GST of an individual who belongs in Jersey,
 - (ii) the Comptroller approves the body corporate or partnership for the purposes of this Article.
- (3) Those conditions are, in respect of a trust that is not a collective investment fund –
- (a) that all of the following requirements are met –
 - (i) not more than 10% in value of all the supplies made by the trustees, as trustees of that trust, of goods and services are made to individuals who belong in Jersey,
 - (ii) to the extent that the supplies of goods or services made by the trustees, as trustees of that trust, in Jersey exceed 10% in value of all the supplies made by the trustees, as trustees of that trust, of goods and services, they are made only to another international services entity,
 - (iii) no individual who belongs in Jersey has the effective use, or the effective enjoyment, of any asset of the trust,
 - (iv) no individual who belongs in Jersey has the effective use, or the effective enjoyment, of any goods, or service, supplied to or by the trustees as trustees of that trust,
 - (v) such other requirements in respect of the trust as the States may prescribe by Regulations, or
 - (b) if not all of the requirements set out in sub-paragraph (a) are met in respect of the trust, that both of the following requirements are met –
 - (i) the Comptroller is satisfied that the main purposes and main functions of the trust –
 - (A) are substantially consistent with the requirements set out in sub-paragraph (a), and
 - (B) are not the avoidance, or reduction, of the liability to GST of an individual who belongs in Jersey,
 - (ii) the Comptroller approves the trust for the purposes of this Article.
- (4) Those conditions are, in respect of a partnership (including a limited partnership) that is not a collective investment fund –
- (a) that all of the following requirements are met –
 - (i) not more than 10% in value of all the supplies made by the members of the partnership, as such members, of goods and services are made to individuals who belong in Jersey;
 - (ii) to the extent that the supplies of goods or services made by the members of the partnership, as such members, in Jersey exceed 10% in value of all the supplies made by the members of the partnership, as such members, of goods and services, they are made only to another international services entity;
 - (iii) no individual who belongs in Jersey has the effective use, or the effective enjoyment, of any partnership asset;

- (iv) no individual who belongs in Jersey has the effective use, or the effective enjoyment, of any goods, or service, supplied to or by one or more members of the partnership as such members;
- (v) such other requirements in respect of the partnership as the States may prescribe by Regulations, or
- (b) if not all of the requirements set out in sub-paragraph (a) are met in respect of the partnership, that both of the following requirements are met –
 - (i) the Comptroller is satisfied that the main purposes and main functions of the partnership –
 - (A) are substantially consistent with the requirements set out in sub-paragraph (a), and
 - (B) are not the avoidance, or reduction, of the liability to GST of an individual who belongs in Jersey,
 - (ii) the Comptroller approves the partnership for the purposes of this Article.
- (4A) For the purposes of this Article, an individual shall be treated as belonging in Jersey if –
 - (a) the individual has an establishment there and no fixed establishment elsewhere in the world;
 - (b) the individual has no establishment anywhere in the world but the individual's usual place of residence is in Jersey; or
 - (c) the individual has establishments both in Jersey and elsewhere in the world and the individual's establishment at which, or for the purposes of which, goods, services or assets are most directly used or enjoyed or to be used or to be enjoyed is in Jersey.”.

5 Other types of ISE: Article 60(1)(d) and (5) of Law

- (1) The following are prescribed as things for the purposes of Article 60(1)(d) of the Law–
 - (a) an Anstalt, a Stiftung or a foundation; or
 - (b) an approved person or an approved entity.
- (2) The following are prescribed as conditions for the purposes of Article 60(5) of the Law in respect of the things referred to in paragraph (1)–
 - (a) that all of the following requirements are met –
 - (i) not more than 10% in value of all the supplies made by the thing of goods and services are made to individuals who belong in Jersey,
 - (ii) to the extent that the supplies of goods or services made by the thing in Jersey exceed 10% in value of all the supplies made by the thing of goods and services, they are made only to another international services entity,
 - (iii) no individual who belongs in Jersey has the effective use, or the effective enjoyment, of any asset owned or administered by the thing,
 - (iv) no individual who belongs in Jersey has the effective use, or the effective enjoyment, of any goods, or service, supplied to or by the thing, or
 - (b) if not all of the requirements set out in sub-paragraph (a) are met in respect of the thing, that both of the following requirements are met –
 - (i) the Comptroller is satisfied that the main purposes and main functions of the thing –
 - (A) are substantially consistent with the requirements set out in sub-paragraph (a), and
 - (B) are not the avoidance, or reduction, of the liability to GST of an individual who belongs in Jersey,

- (ii) the Comptroller approves the thing for the purposes of this Regulation.
- (3) A collective investment fund is prescribed as a thing for the purposes of Article 60(1)(d) of the Law.
- (4) The condition prescribed for the purposes of Article 60(5) of the Law in respect of the thing referred to in paragraph (3) is that both the following requirements are met–
 - (a) the Comptroller is satisfied that the main purposes and main functions of the collective investment fund are not the avoidance, or reduction, of the liability to GST of an individual who belongs in Jersey;
 - (b) the Comptroller approves the collective investment fund for the purposes of this Regulation.

6 Other types of ISE: Article 60(1)(e) and (5) of Law

- (1) The following are prescribed as circumstances for the purposes of Article 60(1)(e) of the Law–
 - (a) registration under the Financial Services (Jersey) Law 1998 to carry on trust company business or fund services business;
 - (b) registration under the Banking Business (Jersey) Law 1991 to carry on deposit-taking business; or
 - (c) the holding of a permit as a functionary within the meaning of the Collective Investment Funds (Jersey) Law 1988.
- (2) The condition prescribed for the purposes of Article 60(5) of the Law in respect of the circumstances referred to in paragraph (1) is that both the following requirements are met–
 - (a) the Comptroller is satisfied that the main purposes and main functions of the person who holds the registration, or permit, referred to in paragraph (1) are not the avoidance, or reduction, of the liability to GST of an individual who belongs in Jersey;
 - (b) the Comptroller approves the person for the purposes of this Regulation.

7 Relief on supplies valued at less than £1,000: Article 56 of Law

The Comptroller shall refund to an international services entity the GST that is chargeable on any supplies to it of goods or services if the following conditions are satisfied in relation to the international services entity and in relation to the supplies –

- (a) the conditions set out in Article 57(2) – (4) of the Law, except to the extent of the requirement set out in Regulation 2(1)(a);
- (b) each of the supplies has a value (within the meaning of Part 9 of the Law) of less than £1,000;
- (c) such records of the supplies, and of the GST chargeable on them, are kept by the international services entity as the Comptroller by direction requires;
- (d) the GST has actually been paid;
- (e) such records of supplies of goods or services, being supplies made by the international services entity, are kept as the Comptroller by direction requires;
- (f) application is made for the refund at such time or times as the Comptroller specifies by direction;
- (g) application is made in the approved form.

8 Citation and commencement

- (1) These Regulations may be cited as the Goods and Services Tax (International Services Entities) (Jersey) Regulations 200-.
- (2) These Regulations shall come into force on the seventh day after they are made.

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- [1] *L.27/2007*
- [2] *chapter 13.100*
- [3] *L.27/2007*
- [4] *chapter 13.225*
- [5] *chapter 13.225.90*
- [6] *chapter 13.075*