

Submission to Corporate Affairs Panel on GST

Please find attached a submission on the GST review of the strategic plan.

I feel this is perhaps the most important area as:

From Article 1 of Protocol 3 of the 1972 Act of Accession of the UK to the European Union

The Community rules on customs matters ... shall apply to the Channel Islands and the Isle of Man under the same conditions as they apply to the United Kingdom.

(from: http://www.isleofman.com/finance/why_iom/intro_over/cons_parl_gov.htm)

It is therefore the area Jersey is most likely to be challenged on, in the Court of Justice, on the grounds of State Aid and Regional Selectivity.

Again for the purposes of clarity this represents entirely my own view and not necessarily that of any group I am associated with.

Preamble

The extension of GST to some financial services is not an uncompetitive step and if taken would allow zero-rating of other essentials such as foods, clothing and medical supplies.

By examining the areas of the finance industry on which VAT is levied in the UK and the Isle of Man this report hopes to demonstrate that many of the regressive and one would assume unpopular taxes which have been suggested by government documents can be avoided without harming our competitiveness.

1.0 The Isle of Man and Customs Duties

The Isle of Man is required within its constitution to charge and account for VAT on all products and services required under UK law. These VAT receipts are collected by HM Revenue and Customs.

In return the Isle of Man receives a percentage of all VAT receipts collected by HM Revenue and Customs, this accounts for a significant percentage of its annual income and has allowed the Isle of Man to adopt aggressive corporate and personal rates of tax.

Personally, I have a question as to whether such a situation, whereby the UK VAT receipts support continued reductions in the Isle of Man tax regime, will be allowed to continue.

This agreement allows the Isle of Man to effectively undercut both the Bailiwicks of Jersey and Guernsey and, in my opinion, is going to cause both islands significant financial difficulties in the future.

2.0 The Channel Islands and Customs Duties

The Channel Islands were given the right to set their own customs rates by King Charles II as a reward for their assistance in assisting the future king to escape from the Parliamentary forces during the English Civil War. (Source: The Constitution of Jersey, Deputy Roy Le Herissier).

This includes not only sales tax but also import duties on alcohol, tobacco and products derived from crude oil for example.

3.0 The Isle of Man VAT regime

The Isle of Man regime follows precisely the rules and regulations applied in the UK.

There are three rates of VAT:

- A standard rate, currently 17.5 per cent. This is the rate at which most businesses should add VAT to products and services that they sell.
- A reduced rate, currently 5 per cent. Some products and services have a lower rate of VAT, e.g. domestic fuel, energy-saving installations or the renovation of dwellings.
- A zero rate. Many products and services are given a zero rating, e.g. some foods, books and children's clothing. A zero rating for a product or service is not the same as a total exemption - see the page in this guide on goods or services exempt from VAT.

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageLabel=pageLibrary_GuidesAndBusinessBriefs&propertyType=document&columns=1&id=HMCE_PROD_008852

3.4 What supplies are reduced-rated?

Supplies of these goods and services are currently charged at the **reduced rate**: [5%]

- domestic fuel or power;
- installation of energy saving materials;
- grant funded installation of heating equipment or security goods or connection of gas supply;
- renovation and alteration of dwellings;
- residential conversions;
- women's sanitary products; and
- children's car seats.

http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_CL_001596

All services provided by companies in the Isle of Man, excluding those counted as basic necessities such as banking operations, are

charged at a rate of 17.5%. Under the 'place of supply' rules this charge must be charged and accounted for irrespective of the ultimate destination of the service. In other words it is impossible to export services.

During correspondence with Senator Le Sueur, it became apparent that the Senator might not have been clear on this point,

Whilst we could assess certain areas of the financial services industry to GST, as is done elsewhere, you must appreciate that most of the F.S.I. revenue comes from clients resident abroad (i.e. it is an export). Exports are traditionally not liable to GST.

Senator Le Sueur, correspondence 2nd April 2006

1.6 What does "place of supply" mean for UK suppliers?

If the place of supply of your services is the UK, you must charge any UK VAT due and account for it to Customs and Excise regardless of where your customer belongs.

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&_pageLabel=pageVAT_ShowContent&id=HMCE_CL_000346&propertyType=document

1.4 What supplies are not covered by the finance exemption?

In general, financial services are exempt from VAT. However, the following supplies although connected to financial services, are not exempt:

- debt collection and credit control;
- **bookkeeping services;**
- equipment leasing;
- **executor and trustee services and the administration of estates;**
- **investment, finance and taxation advice;**
- management consultancy;
- **management of investment trusts;**
- **management of unauthorised unit trusts;**
- merger and take-over advice;
- **portfolio management;**
- registrar services;
- safe custody and safe transportation services;
- **service companies' activities e.g. administration, payment of salaries and wages.**

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&_pageLabel=pageMySite_ShowContent&id=HMCE_CL_000111&propertyType=document#P28_2246

I have emboldened the list above to highlight the areas which are predominant in the Jersey Financial Services industry.

There is no reason why a levy of GST at 3% on the above services would be deemed uncompetitive, particularly if it was done in conjunction with the Bailiwick of Guernsey.

4.0 The refund of 'input GST'

The proposal document indicates that the financial services industry will be allowed to reclaim GST paid on its supplies (e.g. for paper, computer hardware and software etc.) and in its place pay a charge nominated by the government, estimated to be around £5 million per year for the industry as a whole. £5 million would seem to be a significant reduction in the amount of GST that would be charged on the purchases of various equipment required to operate.

I simply can not understand the theory behind this step which achieves very little other than to risk Jersey being driven to budget deficit.

In terms of the Code of Conduct this seems to be ring fencing an advantage to one particular section of the Jersey economy. Given that this sector is almost exclusively to the benefit of non-residents in itself it may constitute a breach of the Code.

It certainly is a breach of the principle of 'State Aid' and utilises Customs rates to achieve a favourable tax rate. There is a valid argument that this may see Jersey in the European Court of Justice.

5.0 The European Union rules on State Aid

Whilst Jersey's [arguable] membership of the EU has exceptionally limited implications, there are grounds for a full exemption to financial services to GST to be considered preferential treatment of one sector of the economy and the validity of the plans thus to be called into question under the 'State Aid' principle.

The Treaty of Rome Article 87 sets out the general substantive principles for evaluating the compatibility of State Aid with the concept of a "Common Market".

This is done with the aim of preventing Member States from granting to undertakings aid which distorts or threatens competition by favouring certain undertakings or the production of certain goods and which affects trade between Member States.

Article 227(4) of the Treaty of Rome applies the Treaty and Community measures to any European territory for whose external affairs a Member State is responsible. This would include both the Bailiwicks of Jersey and Guernsey. Protocol 3 is also interesting on this point.

From Article 1 of Protocol 3 of the Act of Accession of the UK to the European Union

The Community rules on customs matters ... shall apply to the Channel Islands and the Isle of Man under the same conditions as they apply to the United Kingdom.

I believe that there is a case which can be brought against Jersey itself, in the European Court of Justice with regard to GST.

It would depend on whether the member nations will be looking to find a breach. I am of the opinion that they will not willingly accept the tax package as proposed. I would use Gibraltar as an example of the likely reaction to a 0% tax rate.

Whilst naming the tax GST rather than VAT may have been in part a response to the above concern there is some question as to whether it would not be deemed a VAT charge in any case.

It would be improper for me to make judgement as to the likelihood of it succeeding due to my lack of knowledge in this area, however you may feel it an appropriate area to seek further legal advice.

6.0 Other Reasons to bring Financial Service within the scope of GST

The best reason not to accept a GST exemption for financial services is that it would act as a reason for the current or future Treasury Minister, to raise the rate at which GST is levied only when absolutely necessary, which Senator Le Sueur has been unable to rule out.

Extending GST to the financial services would also allow for exemptions to be granted to food, medical supplies, educational supplies, clothing and other basic necessities without any corresponding rise in the rate at which it is levied.

7.0 Acknowledgement

The views and opinions stated in this submission are entirely my own and do not necessarily reflect the views of any person consulted nor any group with which I am associated.

8.0 Circulation

In addition to Scrutiny Officers and members of the States of Jersey, a copy of this submission will be sent to the following persons:

Rt. Hon. Dawn Primarolo MP
Barry Gardiner MP
Chris Huhne MP
Deputy David Jones, Member of the States of Guernsey