

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:

Mr. R. Kirkby (Jersey Finance Limited)

Mr. A. Ohlsson (Fiscal Strategy Group, Jersey Finance)

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

Good morning. Let us crack on because I am sure we all have plenty of things to do. Would you mind, just for the sake of the recording so that they can properly identify for you for the recording, could you each introduce yourselves?

Mr. R. Kirkby (Jersey Finance Limited):

Robert Kirkby, Jersey Finance Limited.

Mr. A. Ohlsson (Fiscal Strategy Group):

Alex Ohlsson, Fiscal Strategy Group, Jersey Finance.

Deputy P.J.D. Ryan:

Thank you. Just to recap quickly for the record, it is the treatment of the financial services industry under G.S.T. (Goods and Services Tax) that we are here to talk about. It is principally Articles 61, 57 part 12 of the law which was passed in principle but is subject to changes that we are aware of and the introduction of the concept of international service entities, et cetera, and a different treatment under G.S.T. We have had a re-write of the law from the Treasury. There were felt to be several problems with it at our last meeting. Since then, the Treasury have gone away and re-written large parts of it, but our belief and understanding is that there are still problems. In response to that, I believe that Jersey Finance has provided certain re-draftings and re-writings of the law in the way that they feel would get over the problems. Is that a correct assessment? Would you like to add anything to that?

Mr. A. Ohlsson:

No, I mean, I think the only thing that I would say is that the policy has been consistent throughout. It is really how that is written down in terms of the detail for legislation. So the changes have not been changes of policy at any stage, and the I.S.E. (International Service Entity) was introduced when the law was first passed by the States. So these amendments could effectively deal with the administration as with the detail of the provisions.

Deputy P.J.D. Ryan:

Okay. Robert? No?

Mr. R. Kirkby:

I agree.

Deputy P.J.D. Ryan:

Okay, well, we have tried in a very short space of time to get our heads around the various to-ings and fro-ings of the different drafts and what have you. We have very quickly looked at your latest draft, but perhaps it would be better if you could tell us which bits you have re-drafted and amended over the Treasury's latest draft, perhaps explaining why you feel they needed to be changed. I think that would help us for the record so that we could have a proper record of what exactly has happened.

Mr. R. Kirkby:

It is very difficult for us to do a sort of line-by-line analysis. The thrust of what we have been trying to do is effectively ensure that a gatekeeper providing work for Jersey will look at part 12 and very quickly look at part 12 on a stand-alone basis so they do not have to refer to the rest of the legislation. It will be on one page or so and they can look at part 12 and determine quite rapidly from Article 37 through to 66 that if there is an International Service Entity, they are not subject to registration for G.S.T. They are not a taxable person. They are not obliged to charge G.S.T. on services they provide or be charged G.S.T. on services they receive. Really that is what we have tried to do and you will see especially in articles 57, 58 and 59, we have just tried to make that absolutely explicitly clear and just simplified the language. Other areas you will see we have changed slightly are things like where previously there was a description of entities or a class of entities, we have just simplified that to say "the name of the entity", just to be absolutely crystal clear; very simple and that is basically all we have been trying to do, just to make sure that someone can pick that up in 5 to 10 minutes and understand they are not subject to G.S.T., end of story.

Deputy P.J.D. Ryan:

Okay. Obviously, Alex, you are a lawyer. Are you satisfied with your own performance on this one? Is

it going to work? Is the new draft going to achieve that?

Mr. A. Ohlsson:

What we wanted to do was to try to communicate to ultimately the draftsman what we saw being the problems with some of the drafting that had been used. We thought that the easiest way of doing that was to provide them with an alternative which is quite unusual in law-drafting terms. One normally just gives some comments and asks them to incorporate, but given that this is such a technical area that we thought on this occasion it was easiest to show them how we saw it, how we saw it operating, and the Law Draftsman could then look at those amendments and see whether they needed to amend those further to incorporate them into the final provisions of Jersey law. To give you some examples of what we did, the previous draft had the concept that various entities were International Service Entities, but they only received the G.S.T. treatment that was intended for International Services Entities. If a description of them appeared on a list, we said: "Look, it is much easier in explaining this to third parties to say either an entity is an I.S.E. and then it is treated in this particular way or it is not an I.S.E." Some of those are nuances, but in presentational terms, that is important in explaining it to third parties. So a local trust company or lawyer can explain to their client: "If an entity is an I.S.E., then this is the treatment." So we tried to simplify those provisions. We then sought to try and simplify the provisions whereby one can determine whether an entity is an I.S.E. or not so that the requirements which were in the original draft were that it meet certain conditions and that it appears on a list. I think the previous draft had included maybe a flexibility that added complexity that was unnecessary and we felt that the easiest way to deal with the listing was simply to have a list of I.S.Es. that was maintained by the Comptroller and it was felt originally that it was also important that third parties could maintain I.S.E. lists. So we proposed that the only people who should be able to maintain I.S.E. lists are the Comptroller or regulated trust companies because being regulated they would be trusted, effectively, to do it.

Deputy P.J.D. Ryan:

Can I just clear that? I do not want to break your flow, but I will just ask you a question on that one for my own benefit. My understanding was you said that each individual I.S.E. would have to pass some test. Rather than through description, you know: "You are an I.S.E. if you fall into a category", it is: "This is what we are hoping to set up", some company or other, and you would have to go and get a ruling from the Treasury? How would that work?

Mr. A. Ohlsson:

Previously there was this concept of a description being included on a list and if you met that description, you fell into the I.S.E. category, but there was no real clarity as to what it meant by "description". At one point it was suggested that the description was something as simple as: "An entity that is included in a separate list maintained by XYZ trust company" or someone else suggested that it

meant: “An entity that meets the following characteristics.” So it is quite difficult to determine whether something is or is not an I.S.E. So what we suggested was for anyone to be able to determine whether an entity is an I.S.E. or not, if they appear on the list they are an I.S.E. They are only entitled to be named on the list if they meet the conditions that the Treasury set which is basically that the entity has no real connection with the Island in terms of local provisions, local consumption.

Deputy P.J.D. Ryan:

So each I.S.E. is going to appear on a list and be named?

Mr. A. Ohlsson:

Yes, and there will be 2 types of lists: one maintained by the Comptroller so an entity can make a direct application to the Comptroller, pay a fee and be named on the list, like a current exempt company can do. The other type of list is a list maintained by the trust company. The trust company again has to name the entity on the list, but it will principally be clients of that trust company. If their name is on the list, they are an I.S.E. If they are not named on the list, they are not an I.S.E.

Deputy P.J.D. Ryan:

I think I know the answer but I will ask you anyway. What is to stop a trust company just putting all and sundry on this I.S.E. list that it is maintaining?

Mr. A. Ohlsson:

A requirement in the provisions that before an entity can be named on the list, it needs to meet conditions for I.S.E. status which are the same conditions that have been there throughout.

Deputy P.J.D. Ryan:

Right, so this is down to regulation from the J.F.S.C. (Jersey Financial Services Commission) and to the trust company?

Mr. R. Kirkby:

It is not regulation from the J.F.S.C. These are tax provisions, so they are the trust companies trusted to put the relevant entities on and make sure they meet the conditions. Then at periodic intervals we expect the Tax Office to conduct an onsite audit.

Deputy P.J.D. Ryan:

So there would be an audit?

Mr. R. Kirkby:

There would be.

Deputy P.J.D. Ryan:

Okay, so that is subject to audit. Yes, okay. I do not think that was quite clear.

Mr. R. Teather (Panel Adviser):

No, there is no provision in the ...

Mr. R. Kirkby:

We believe that the general powers of audit onsite inspection - I cannot remember what part it is in, part 13 or 14 - will allow them to do onsite visits where they would check the list of ...

Deputy P.J.D. Ryan:

Okay, fine.

Mr. R. Teather:

Trust companies are happy that the Tax Office would do that.

Mr. R. Kirkby:

Yes, the biggest issue for the trust company is to ensure that the names of those entities that qualify for I.S.E. are on a list they maintain so therefore it is private information as opposed to publicly listed at the Tax Office. That was their biggest concern. The Tax Office have expressed that these onsite audits will be a very light-touch approach because it is very easy to quickly determine how many entities they have and whether they are paying the correct fees.

Mr. R. Teather:

What about the introduction of the tax information exchange agreements, that once the Comptroller has checked that list, he might have the duty to pass information on to third parties?

Mr. R. Kirkby:

Under the tax information exchange agreement, the Comptroller will first of all receive a request from an international jurisdiction with whom we have an agreement, so currently the U.S. or the Netherlands. Then he will provide the information he has in his powers to that jurisdiction. If he does not have that information in his powers, then he can go to the various entities in the Island and obtain that information from them.

Mr. R. Teather:

So it would not make any difference?

Mr. R. Kirkby:

It would not make any difference.

Mr. A. Ohlsson:

I think the concept of the trust company list was always envisaged although it is not currently clear from the place of the current draft because of this reference to description and the Comptroller had confirmed to us that the description element had, in his view, always included the concept of an entity named on the list maintained by the trust company. We simply felt that setting that out expressly was a much clearer way of dealing with that. Administratively, I think the fee collection provisions should be simpler as well because the fee collections will be made either by an entity that makes application to the Comptroller or by a trust company when it makes applications to the Comptroller to entitle it to maintain its own list. So the Comptroller should only get one cheque from the trust company in relation to all of the entities on that trust company's list.

Deputy P.J.D. Ryan:

Could you just clarify - again I think I know the answer but nevertheless I will ask you - why you felt it necessary that a trust company would need to have its own list separately from the Treasury list?

Mr. R. Kirkby:

This comes down to a key selling point of international finance entities, the provision of privacy and confidential information to clients. Quite often people establish trusts over their companies to maintain privacy and confidentiality, not for any reasons such as tax evasion but more for things such as potential kidnappers, they may have significant wealth in their assets they do not wish their children to be aware of at this stage ... There is always a concern out there that when information gets passed to government bodies, as we have seen recently in the U.K., that information can unfortunately leak into public hands whereas people believe that a private company will maintain much greater privacy and therefore protect the interests of the individual clients. So this has always been an overriding point, but if there is a list of entities that it is maintained by the trust company therefore maintaining the privacy.

Mr. A. Ohlsson:

I think also the Comptroller did not want to be in a position where he had to deal with a vastly increased number of entities because an I.S.E. will include any company administered in Jersey, whether it is a B.V.I. (British Virgin Islands) company or a Cayman company, not just a Jersey company. Currently, unless those apply for exempt-company status, the Comptroller does not have to deal with those. So it is about whether there will be a vast increase in the number of entities that are effectively paying the £100 fee, and rather than having to open a file in relation to each entity, the Comptroller would prefer, as I understand it, simply to receive a cheque for the number of entities times £100.

Deputy P.J.D. Ryan:

Nevertheless, when you are talking about the confidentiality and the privacy, if a foreign government applied to our Comptroller for information about a particular I.S.E., he would do it?

Mr. A. Ohlsson:

He has the power to obtain that information.

Deputy P.J.D. Ryan:

But he does anyway, so there is no difference.

Mr. R. Kirkby:

No, and we are always trying to strike that balance between privacy and confidentiality versus secrecy. You know, we are not out there for the, sort of, banking secrets that we see in other jurisdictions. It is just about being private and confidential. If there is any suspicion of criminal offences or pursuits such as money laundering or funding terrorism, then obviously we need to make sure that the Comptroller has those powers.

Deputy P.J.D. Ryan:

Okay. Alex, sorry, I stopped you at that point. Do you want to carry on from there or have you lost the track?

Mr. A. Ohlsson:

I had virtually finished. I think the only point to highlight is the re-drafting. Other than to try and clarify some of the administrative issues, it is very much presentational and, to us, this is the one part of the law where presentation is important because it is this part of the law that clients of the Island will be interested in.

Deputy P.J.D. Ryan:

Okay. How much market research have you done on this with your latest draft? By “market research” I mean how many lawyers in London and possibly other places have you spoken to and run this by? Have you carried out that kind of exercise?

Mr. A. Ohlsson:

The concept of the I.S.E. we have run through with Lloyds of London. Their company did the concept. In terms of the number of lawyers who have gone through in detail to consider the current provisions, I am only personally aware of one firm that has gone through it in great detail and did raise concerns, some of which are dealt with by the amended draft. Rob has dealt with discussions with the industry.

Mr. R. Kirkby:

There were another couple of law firms who have also gone through it in detail and one large accountancy firm and the revised draft reflects a number of their concerns which -- one was around whether -- to clearly state that it was not a requirement to register that you were not a taxable person and then you were not subject to the reverse charge which was always something that had been consistently raised because it was very unclear in the previous draft, whether you were or were not subject to that reverse charge although after some length of time of working through the law you could determine you were not, we wanted to make it explicit, the fact that you were not a taxable person; you were not obliged to register. So the final draft has not been circulated by us, but what we have done in the paragraph is show that the points they have raised as a concern have been addressed.

Deputy P.J.D. Ryan:

I mean, obviously the ultimate would be to get them to have a look at it and say: "Yes, that is it. That is fine", but you have not done that for reasons of time presumably.

Mr. R. Kirkby:

Also the Fiscal Strategy Group has always had a policy that we operate on a confidential basis with Treasury and Resources so we would not, unless they specifically gave us the ability to release it or if it was lodged au Greffe, we would accept that.

Mr. A. Ohlsson:

But again, from a legal perspective, I think what we are pretty comfortable with is the concept of changing these provisions and administering the provisions.

Deputy P.J.D. Ryan:

So when these latest changes that you have made are reviewed by your customers in London, you are confident that they will be more comfortable with it? Is that what you are saying?

Mr. A. Ohlsson:

Yes, I think our experience is that concerns have been raised as to the G.S.T. treatment of things like investment funds in Jersey, externally, and we have had to go through a process of educating people and, once we have done that and they understand the concept of the I.S.E., they accept that investment fund business in Jersey is not prejudiced by the introduction of the local G.S.T. What we want to do is to create the ability for people to come to that determination themselves easily and quickly. I think we feel that the revised part 12 that we have suggested presentationally achieves that much easier than the existing part 12, albeit the existing part 12 probably does achieve the same thing. It is simply an issue of presentation of third parties seeking to use the legislation.

Deputy P.J.D. Ryan:

Okay. You see, I suppose the crux of this line of questioning really is the passage of the treatment of G.S.T. for the financial services industry since when it was first mooted that the concept of I.S.Es. would be the way to go has been somewhat chequered. I suppose what I am saying to you is, or suggesting for you to comment on, is that really this should be the final definitive version. We cannot really afford to have another go at it. I hope you would agree with that and I am asking for you to express your level of confidence that we are now at the point where this is it.

Mr. R. Kirkby:

I think you are right. It has been a very interesting evolution of the concept, but I think that reflects the complexity of a tax such as Goods and Services Tax and indirect tax, and especially when applied to financial services and it has been very much an interesting process over the last 12 months or so of trying to come to a solution that we believe best meets both the physical contributions required in terms of financial, £5 million to £10 million, but also meets the simplicity issue that is required for both the finance industry on the Island but also, more importantly, financial customers and clients. We do believe we are there. That is not to say we do not believe that over the course of time there will be further modifications as this tax evolves and, as your adviser would inform you, such a complex tax as G.S.T. will continually evolve as wrinkles are found in practice, and this may arise from something, maybe a new vehicle is established in the Island or a new type of planning structure, asset protection structure. Something that we cannot anticipate at this stage may come around the corner, just a few months down the road, and that may require amendment, but at this stage, based on the information available, we believe this is a good position to be in. It provides simplicity. It provides greater certainty to our customers.

Deputy P.J.D. Ryan:

Normally one would put a draft out on this or some kind of a green paper and then put it out to consultation and ask lawyers to speak to their clients for comment and that kind of thing. We are quite up against a time barrier here. Do you think it is feasible that any kind of consultation, even if it is a very short one, would achieve anything at this point if your latest draft was accepted by the Treasury?

Mr. R. Kirkby:

I believe it is probably a balance between where we go after the consultation or whether we get the law and regulations lodged and passed by the States because once they are passed by the States, people have certainty that the G.S.T. position will not change, therefore from 1st May they believe structures.

Deputy P.J.D. Ryan:

So you would like to see it lodged?

Mr. R. Kirkby:

I believe that on balance we should lodge it.

Mr. R. Teather:

That is your version, not the Treasury's.

Deputy P.J.D. Ryan:

Your version.

Mr. A. Ohlsson:

It may well be that the Treasury wish to make some amendments to the draft that we have brought because we have simply put forward a draft today. You know, we are not Law Draftsman, so there may be some changes they decide they want to make. If they do, we are absolutely concerned that they would be ensuring it remains simple; it is an interpretation.

Deputy P.J.D. Ryan:

Okay. Can we ask about a few specifics within it? I would like to talk about the *de minimis* of £1,000 that was in the draft and no longer is in the draft. Tell us about that.

Mr. R. Kirkby:

The £1,000 *de minimis* was initially put in to provide a more practical commercial position so that we did not disadvantage the small Jersey retailer. So when they were providing a small good to a client such as a restaurant provider or maybe somebody providing milk to a registered I.S.E., they would not have to remove G.S.T. and therefore have all the administrative burden. What we were starting to find though once we had put the £1,000 *de minimis* in, there were concerns expressed by some suppliers that it would be difficult where they supply something that -- such as, for example, a utility provider, something that shifted on a regular basis maybe below £1,000 and above £1,000. It was very difficult for them to adjust their system to cover that. After some discussion, we decided that it did not require a provision because commercial reality would apply. So, for example, if a registered I.S.E. business, a trust company, for example, goes to buy a pint of milk and says: "Can I have a pint of milk, please?" it is £1 and there is 3 pence G.S.T. This person providing that milk is going to charge them G.S.T. regardless of whether they maybe wave their I.S.E. certificate. They are just going to say: "Look, it is £1.03." They are not going to debate that with this company. It would be a take-it or leave-it situation. So we believe that what will happen is there is no requirement for a provision agreed commercially; things will balance and just review the situation, as I said, to balance, to see whether anything further is required.

Deputy P.J.D. Ryan:

Anything further on that?

Mr. R. Teather:

Does that mean that there should not be a *de minimis* or that £1,000 was too high?

Mr. R. Kirkby:

We do not believe there should be a *de minimis* because of the practicalities that people providing services would fluctuate over and below that. We believe it is commercially -- so, for example, the corner shop providing the milk will always charge G.S.T., but, for example, if you are a small computer provider but you have a regular trust company client, but maybe it is always a £600 or £700 computer and it is a regular client, then for your client relationship needs you probably will remove the G.S.T.

Deputy P.J.D. Ryan:

But you could have a *de minimis* at £50, say.

Mr. R. Kirkby:

You could, but what we have on balance, through discussion, we did not need it. Commercially people would sort it out themselves between the 2 parties.

Deputy P.J.D. Ryan:

Right, so the *de minimis* does not achieve anything other than complexity is what you are saying?

Mr. R. Kirkby:

Yes, we say it increases complexity and uncertainty.

Mr. A. Ohlsson:

Because you will not shop around when you are buying your pint of milk to find the shop that will not charge you G.S.T. if you are an I.S.E. whereas if you are buying a £750 printer, you may shop around. So the commercial reality is such that the market will resolve the issue.

Mr. R. Teather:

Take care of itself.

Mr. A. Ohlsson:

Yes, and if it does not take of it, it is something that we will have to deal with when we see how G.S.T. operates.

Connétable J.L.S. Gallichan of Trinity:

Yes. This is what we thought of, the first week we ...

Deputy P.J.D. Ryan:

Well, at a low level of G.S.T., I think that is probably a reasonable argument. Of course once G.S.T. gets to be larger, if it does ... Okay, we will cross that bridge when we come to it is your view.

Mr. A. Ohlsson:

Rather than create another level of complexity, and certainly for the utility companies in terms of implementing systems, this was another level of complexity in determining whether the bill was £1,005 or £995 but there did not seem to be that commercial demand in the market to introduce this provision.

Deputy P.J.D. Ryan:

Is it not a legal requirement on a supplier, if this is in law, that you have an I.S.E. certificate and they have to zero-rate? Is that not a legal requirement?

Mr. A. Ohlsson:

The law says that they shall not charge G.S.T. The question is if the shop says: "Look, it is a pint of milk. Go and buy it in a shop where they will accept your certificate. I do not want to enter into that contract with you. A shopkeeper has the ability to do that.

Deputy P.J.D. Ryan:

So, you are saying any supplier, even though it is a -- so, he has a legal -- so any supplier - let us forget the shopkeeper with a pint of milk. Let us say it is a computer company that is doing a promotion and selling computers at £350, you know, and he has bought 50 of them and it is the first 50 people that buy them and he is not prepared to -- just can he refuse to sell you one of those if you say: "Well, but I want G.S.T. off it?" Can he refuse to do that? You come to him. There is nothing in competition law? You do not have to enter into a -- there is nothing in law which says that any supplier has to supply? No.

The Connétable of Trinity:

You would shop around, would you not?

Deputy P.J.D. Ryan:

Just refuse the contract.

The Connétable of Trinity:

He may not if you are buying 30 computers.

Mr. R. Teather:

In that case it is worth his while to -- I was thinking of the admin burden on the local business and the audit by the Tax Office. Should there not at least be a requirement that you cannot use this for cash purchases?

Deputy P.J.D. Ryan:

Well, what is a cash purchase?

Mr. R. Kirkby:

The administration requirement for the local businesses is probably better this way.

Mr. R. Teather:

Well, you would have to prove that all the sales that you have not charged G.S.T. on have been to I.S.E.

Mr. R. Kirkby:

But then you would say, for example, the asset will have presumably a tax number. There will be a certificate of some form and there will be a number and maybe the number starts with a 6 if it is an I.S.E., so they will have a zero rated sixth number and that will be on the invoice when they provide the computer free of G.S.T. So, they will have that copy of that invoice on the files for ...

Mr. R. Teather:

But retail businesses do not have to issue it; do not issue G.S.T. invoices. That is what I am thinking.

Deputy P.J.D. Ryan:

Unless they are requested.

Mr. R. Teather:

Unless they are requested, yes.

Deputy P.J.D. Ryan:

But I think, I mean, we are almost in an open discussion on this, so you will have to excuse us for not specifically asking questions because we are developing something here. But if you are a local purchaser, I think what you are saying is if you are a local seller of goods of some variety to an I.S.E. or a trust company or a bank or a lawyer, each of those local businesses that are registered for G.S.T. will take a view on -- well, if anybody with an I.S.E. certificate comes to me with something I am selling to them below £500, either they pay the G.S.T. or they do not. So, they are setting their own *de minimis*, effectively. Each business will decide on its own level of administration. That is how it will work, I think. Would you agree with that accept?

Mr. R. Teather:

Yes, I think so.

Deputy P.J.D. Ryan:

Each seller of goods will reach his own view on what his own *de minimis* is and his own level of administration that he wants to cope with and if it is £500 before I can be bothered to record the I.S.E. number, et cetera.

Mr. R. Kirkby:

Exactly, and recording the numbers is the same issue, whether you have £1,000 *de minimis* or not. You have the same issue.

Mr. R. Teather:

Yes, except you would have fewer transactions.

Deputy P.J.D. Ryan:

So, it is entirely up to the local businesses to where he wants to set his own *de minimis* and it will be self-regulating because it will be at a point where he loses business.

Mr. A. Ohlsson:

Correct.

Deputy P.J.D. Ryan:

Okay. Interesting concept. Not one that lawyers and tax officers are used to dealing with, but nevertheless we will see what the Treasury Minister thinks of that.

The Connétable of Trinity:

There is no difference. It will all be the same as before. Why worry about G.S.T. in the first place. Let the year go by and let the businesses decide whether they charge it or not. It will level out and within a year you are going to find out which way it is going to go, are you not? If they are really losing and out of business, they will check it out and they will do something. Why worry.

Deputy P.J.D. Ryan:

If the questioning is a little bit haphazard, please forgive us, only we are still trying to cope with quite a lot of new information in a fairly short timescale. Let us talk about Article 61(2)(a) and this is the local contents. Yes, and generally Article 61 where there is not a requirement that an I.S.E. is engaged in services or financial services for that matter. What is your attitude, or maybe you are not too bothered, about the possibility that a local company that is primarily an exporter, could register as an I.S.E. so long as 10 per cent or less of his business is local?

Mr. R. Kirkby:

I think it is important here to look at what the collection would be. So, if you are primarily an exporter,

regardless of whether you are financial services or not, that the export is a zero rated supply and that allows you to reclaim all your input to G.S.T. So, if you were an exporter - say you export purely Royal new potatoes - you will not charge G.S.T. on that supply and you will be entitled to recover all the G.S.T. you have paid on your farm machinery, your fertilisers, pesticides, et cetera, and the net collection for the States is zero. Except you have the quarterly or 6-monthly administration of the G.S.T. returns. So, if you are entitled to I.S.E. status, you will pay the £100 charge, because presumably you are not a registered J.F.S.C. business, and the net collection fee treasury is £100 as opposed to zero. So, in effect there is no net difference for the States.

Mr. R. Teather:

Except there is a 10 per cent *de minimis*.

Mr. R. Kirkby:

There is a 10 per cent.

Deputy P.J.D. Ryan:

But he could be retailing locally in a farm shop and getting the 3 per cent advantage over other ...

Mr. R. Kirkby:

But that could be possible and that is probably a policy decision.

Deputy P.J.D. Ryan:

It does leave the door open for that? If you take another example where someone might be a large exporter of music media and you would then probably have less than 10 per cent of your business local, but could you not set up a High Street shop and get a 3 per cent advantage over your competitors locally?

Mr. R. Kirkby:

You could potentially, but arguably you could also argue that it exists already where the local customer, because the limit is, I believe, £400, can import the media free of G.S.T. anyway.

Deputy P.J.D. Ryan:

Yes, but if you are a local retailer - say an internet retailer - and you were to sell a C.D. (compact disc) or D.V.D. (Digital Versatile Disc) to a local person who would have to charge G.S.T. at 3 per cent according to the law, he would not be importing. So, you could set up a local high street shop and get a 3 per cent advantage over all other local retailers of media or electronic goods, for that matter, of all varieties.

Mr. R. Kirkby:

Potentially, yes. You would have an interesting administrative challenge to ensure that you did not exceed that 10 per cent threshold because he would ...

Deputy P.J.D. Ryan:

Well, it depends on how big an exporter you are.

Mr. R. Kirkby:

No, I agree. But I do believe this would have to be a policy. We have requested 10 per cent from the financial services perspective because that is a manageable threshold.

Deputy P.J.D. Ryan:

So, would you accept that Government might need to do something to define the boundaries of where Articles 57 to 66 would apply?

Mr. R. Kirkby:

We would, but we would be very keen for the 10 per cent to remain for financial services.

Deputy P.J.D. Ryan:

Okay, if we could just talk about that and just again, for the record, remind us - I think we have spoken about it before - but if you could just remind us why you think that 10 per cent is so important.

Mr. R. Kirkby:

For example, at the moment, under the exempt company regime, if you are a collective investment fund, there is a 10 per cent threshold if there is less than 10 per cent of Jersey interest - individual interest - in that fund. You are still allowed exempt company status and that reduces the issue for people promoting funds to have to check every single investor. The same applies really under G.S.T. Collective investment funds will be I.S.E.s and we need to ensure that, effectively, the same *de minimis* remains for them. That is one example, but also for things such as -- but basically it is a threshold that means people do not have to monitor too closely, so therefore it reduces the administrative burden, but ensures they can still obtain the I.S.E. status.

Deputy P.J.D. Ryan:

Sorry, am I getting a little bit confused here? I did not think the collective investment funds were subject to the 10 per cent.

Mr. R. Kirkby:

They are not.

Mr. R. Teather:

They can have 100 per cent local.

Deputy P.J.D. Ryan:

So, that is different to what you are saying there, Robert, is it not?

Mr. R. Kirkby:

Yes, apologies.

Mr. A. Ohlsson:

I think Robert is talking about the structures which are effectively private schemes which are collective investment funds in the broader sense, but not regulated as collective investment funds because they are private schemes, with perhaps less than 50 participants.

Deputy P.J.D. Ryan:

Yes, 50 very wealthy people and one of them may well have more than 10 per cent.

Mr. A. Ohlsson:

One of them may well be local, but have significantly less than 10 per cent.

Mr. R. Kirkby:

There are vehicles that have up to 50 investors which are not classified as a collective investment fund. So, there may be a Jersey individual who is one of those 50 who may have 2, 3 per cent interest in that fund and that would qualify here because it is below the 10 per cent and we want to ensure that continues.

Mr. R. Teather:

Would that also cover things like local branches of banks? Would they be able to shelter under the I.S.E.?

Mr. R. Kirkby:

Local banks, because they are regulated under the financial services deposit taking licence, that is the only condition for them to qualify as I.S.E. status. We removed any threshold of local versus non-local supplies because of the difficulty in determining at what point those supplies tip over the cliff edge, if you will. I think we had quite a long discussion last time about this issue of how do you measure the amount of supplies, especially in the larger banks where they are providing many, many financial services and it is determining which ones are provided to locals versus non-locals. So, for banks, any regulated business, there is no threshold provided. It is regulated by the efficacy of the trust, deposit

taking or a fund function.

Mr. R. Teather:

So, they can have any level of local activity because that is what we have picked up here. We have spotted that collective investment schemes do not seem to be able to have any level of local involvement.

Deputy P.J.D. Ryan:

They are removed. So, they are not subject to any threshold or anything like that?

Mr. A. Ohlsson:

Correct, but there is an anti avoidance provision which allows the Comptroller to do.

Mr. R. Teather:

I thought that works the other way? I thought that allowed him to make them I.S.E.s when they were not, rather than stop them being one. This is 61(2)(b) that if you do not meet the 10 per cent test, you can still be an I.S.E. if the Comptroller is satisfied.

Deputy P.J.D. Ryan:

So, that is your, subject to?

Mr. A. Ohlsson:

There are obviously provisions inserted for the States to prescribe additional circumstances or additional requirements that need to be met for entities to qualify as I.S.E.

Deputy P.J.D. Ryan:

So, ultimately we have that.

Mr. A. Ohlsson:

So, I mean, it may well be that after a period of operation it is decided to tweak these provisions.

Mr. R. Kirkby:

I do think it is important to reiterate that Jersey is a very benign tax environment and it is highly compliant because the tax rates are low and administration is light, and I do not believe there will be a significant shift to an avoidance culture within the industry because we have aimed here to keep it very simple both in terms of low cost and low administration. It is probably not in anyone's interest to take the risk of avoiding only a 3 per cent G.S.T. charge for a 15 year prison term. I think that balance of risk versus reward is very much advocating that you just comply; you are in a compliant culture. If the

G.S.T. rate increases significantly then maybe that balance would shift and something may need to be addressed.

Deputy P.J.D. Ryan:

Because we have not got a great deal of time, are there other differences that we have missed? I mean, I think we have to ask you that.

Mr. A. Ohlsson:

I think the changes that we have discussed are all presentational and administrative changes, other than the £1,000 where we accept that that is a policy issue.

Deputy P.J.D. Ryan:

Aggregation - sorry, to butt in there - aggregation; you have removed the aggregation clause where if you fall into several categories as an I.S.E., you have an aggregated fee to pay.

Mr. R. Kirkby:

No, we have moved it into 3(1), line 4. It was just a drafting change as opposed to a -- if you go to the regulations, Article(3)(1) and then line 4, you can see the word "aggregate".

Deputy P.J.D. Ryan:

Okay. Anything else?

Mr. A. Ohlsson:

The conditions that we have talked about in relation to 10 per cent and so on, we have not sought to change any of those. Those are lifted straight from the Treasury draft.

Mr. R. Kirkby:

The only other change is previously for every collective investment fund you had to apply to the Tax Comptroller for authority to be an I.S.E. and we removed that because there are so many collective investment funds, it seemed an unusual request when, if you were a non-collective investment fund, you did not have to apply. So, that just seemed a misdemeanour; maybe an oversight by the draftsman who corrected.

Mr. R. Teather:

So, again that will be done by the manager. We will put that on his list.

Mr. A. Ohlsson:

One change that we did make, which I suppose is a policy change, is we have proposed that the

provision setting out certain specific paragraphs or articles of part 12 that could be amended by the States by regulation, should be amended such that the States have the ability to amend the whole of part 12 by regulation, which we think is sensible.

Mr. R. Kirkby:

That allows a more rapid change of regulations if something crops up, for example, in new structure or maybe some changes are required on the £1,000 *de minimis*.

Mr. R. Teather:

There was just one other minor one that I have. To keep your only list under this system, you have to be an I.S.E., yourself. Would that perhaps exclude, if you had a local law firm, for example, that maybe did local work, but had a few international clients, they would not be able to certify their clients as being I.S.E.

Deputy P.J.D. Ryan:

Yes, would it be unfair on them. I am thinking would this be predominantly a local accountant that deals mainly with ...

Mr. A. Ohlsson:

Well, they are currently prohibited from providing any administration services to companies without being regulated trust companies.

Mr. R. Teather:

But they could be regulated, but fail the 10 per cent test, so therefore they cannot be an I.S.E., themselves.

Mr. R. Kirkby:

There is no 10 per cent test if you are a regulated business. This comes back to, if you are a regulated deposit taking or trust company or fund functionary, there is no 10 per cent threshold. You just have to be regulated. It is in regulation ...

Mr. R. Teather:

I thought part 12, section 61(2).

Mr. A. Ohlsson:

Article 61(1)(h): "Permits the States to prescribe certain circumstances in respect of an entity which, if the States do prescribe those circumstances in respect of an entity, that entity qualifies, notwithstanding any of the other provisions", and the ...

Mr. R. Teather:

So, you are going to use that to override ...

Mr. R. Kirkby:

In Article 4 of the regulations.

Mr. A. Ohlsson:

The Treasury draft provided that 3 sets of circumstances would qualify an entity to be an I.S.E. in Article 6 of the Treasury draft which was: "Registration under the financial services law to carry on trust company business or funds, services, business; registration under the banking business law to carry on deposit taking business or the holding of a permit as a function within the meaning of the collective investment fund." This was Article 6 of the Treasury regulation which, in the Jersey Finance revised draft, is now Article 4 of the regulations.

Mr. R. Kirkby:

That is identical to the Article 6; well, almost identical.

Mr. R. Teather:

Would that not be better in Article 61?

Mr. A. Ohlsson:

I agree. There were certain provisions -- maybe to take a step back, the part 12 document that we provided to you, is what part 12 will end up looking like. The Treasury have proposed 2 documents; one being an amendment to the law and the other being a set of I.S.E. regulations. The I.S.E. regulations also sought to amend the law where the law previously provided power to amend by regulation. Whereas the amendment deals with the provisions which the Treasury did not have power to amend or the States do not have power to amend by regulation. We do think it will be preferable that the amendment deals with the whole of amendment of part 12 and the regulations are simply dealing with the continuing issues that need to be dealt with by regulation.

Deputy P.J.D. Ryan:

That would be normal practise, would it not? I mean, most laws are designed that way, are they not?

Mr. A. Ohlsson:

No, some laws have powers for the States to amend them by regulation and you would have a set of regulations which are mixed; some prescribing amendments to the law and some being continuing provisions.

Mr. R. Teather:

But in this case, since we have an amendment to the law anyway, it makes sense to put it all in.

Mr. A. Ohlsson:

I think so.

Mr. R. Teather:

It makes sense, but the amendment is simply to replace part 12 and regulations to deal with the matters which are continuing regulatory matters. As to those with circumstances, they could fit in the law; they could fit in the regulations. I do not think that matters.

Mr. R. Kirkby:

But the circumstance point applies to local presence businesses, so they are less of a concern to us because local businesses will be advised locally. It is the international people, they will just pick up part 12 and we believe all the matters that relate to them are covered by part 12 as we drafted.

Mr. R. Teather:

But, for example, a new bank thinking of setting up in Jersey might ...

Mr. R. Kirkby:

Yes, usually a new bank setting up in Jersey, their first question would be about what regulatory requirements there are and they would normally speak to Jersey Finance and the regulator, and then we would talk to them about the various tax issues, et cetera, and they would also take professional tax advice and legal advice before entering the jurisdiction. They are not the type of customer or who would just pick up part 12 and take a view. That is more for people setting up S.P.V. (Special Purpose Vehicle) type vehicles and trusts, et cetera. If someone set up a real presence, they will do a lot more detailed due diligence before embarking on that.

Mr. A. Ohlsson:

I think one other point we would make, is that the businesses are doing everything necessary to implement for 1st May, but this is the one area of uncertainty, and to get these provisions finalised and be able to tell the industry how they will be dealing with I.S.E.s, I think it is fundamental that we do it as quickly as we can.

Deputy P.J.D. Ryan:

Right, okay. Right, anything else? Okay, thanks very much. Anything else at all? No. Thank you very much for your time and we will see how we go from here, fairly shortly. Thank you.

