

Corporate Services Scrutiny Panel

GST Sub Panel

THURSDAY, 7th SEPTEMBER 2006

Panel:

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

Connétable J.L.S. Gallichan of Trinity

Connétable M.K. Jackson of St. Brelade

Mr. R. Teather (Advisor)

Witnesses:

Representatives of the Fiscal Strategy Group:

Mr. A. Ohlsson

Mr. D. Wild

Mr. J. Riva

Ms. W. Dorman

Deputy P.J.D. Ryan of St. Helier:

Good morning, and welcome everybody. We will take the normal statement of conditions that you are appearing at the hearing as read if you are happy with that. There is a copy in front of you. So, anyway, we are here today to talk about the treatment of the financial services industry for GST (Goods and Services Tax). There is a general paper out and consultation has taken place between Jersey Finance and various other bodies locally in the finance industry, and I have got your response here in front of me, which is quite long and detailed. In very general terms, to kick off, do you think the Treasury are on the right track? Leaving aside the detail for the moment, are you, in general terms, happy that the Treasury are treating financial services more or less in the right way, first of all?

Mr. J. Riva (Fiscal Strategy Group):

I think in the round we are. There are some matters which I think it is important to understand. Firstly, financial services is a difficult issue to deal with in respect of any form of consumption tax, mainly because of the technicalities involved in trying to measure the quantum of the service provided, and each jurisdiction does have difficulties in dealing with these. Also, with our industry the majority of our services are with non-Jersey residents, and basically consumption tax is aimed at your local market. So, if financial services fell within the normal rules of GST, it would be unlikely that much money would be raised for GST on the financial service community. It is difficult to quantify exactly how much, but if you look at the Treasury's request of raising 5 to 10 million that constitutes between 11 to 22 per cent of the general output, and I very much doubt that that would be the case if financial services did fall within the general rule because I would expect the majority of the services would be zero-rated, in which case most of the GST incurred by financial service business will be recovered. So the general output would be far, far less than 5 to 10 million. So, on that basis, I think the financial service companies are actually incurring a disproportionate amount of GST. Having said that, the other side is the complication, as I mentioned previously, with GST and financial services and what the Treasury has presented us is a greater amount of GST being incurred by financial services, but I suppose the carrot is a much, much simplified system. So, taking those 2 points and considering the general community, I think in the

round we are satisfied with the proposals.

Deputy P.J.D. Ryan:

So, this so called win, win situation for the financial services industry whereby the community wins because they get more than they would otherwise get if you had to go through all the pain of accounting for exported services as opposed to local supply, but of course a very heavy administrative burden at the same time to do that, and therefore it is a win. The other side of the win is that the financial services industry would have a greater simplified administrative burden and are happy therefore to pay what would be a little bit more in GST than they might otherwise.

Mr. J. Riva:

I think so.

Mr. D. Wild (Fiscal Strategy Group):

Yes, absolutely. I mean it kind of reminded me of John Nash and his game theory where, you know, not everything in life is a zero-sum game. I think the proposals as presented do actually represent a genuine win/win insofar as, as you say, there will be a greater than otherwise yield from financial services, but the industry itself will benefit from having a simplified administrative burden.

Ms. W. Dorman (Fiscal Strategy Group):

I would only add to that that I think we do need to be careful about competitive positioning of the financial services industry and the 5 to 10 million that we are collecting from the financial services industry in GST, added to the fact that, for instance, there is a far wider range of companies taxable at 10 per cent in Jersey than there is on the current proposals in Guernsey and the Isle of Man, mean that there are costs being borne by our financial service industry which does mean that we need to be very careful in terms of being able to compete on costs.

Deputy P.J.D. Ryan:

You cannot contrast what is being suggested here with Guernsey because they are not proposing to have GST at the moment, although that might change. Certainly the Isle of Man has VAT (Value Added Tax), are you familiar with how the Isle of Man is treated and contrasted with what is being suggested here; can I ask you that?

Mr. J. Riva:

Well, I think if we take one industry within the financial services community, being the funds industry, one of the reasons why the Isle of Man does not have a major funds industry is because of VAT. Previously there was VAT on management charges and that meant that the Isle of Man was not an attractive location to place your funds industry, and I think that Jersey and Guernsey were a recipient of that business because it was just not commercial to locate your industry in the Isle of Man. So, I think we are very different in the way we are treating financial services in Jersey is different to the Isle of Man. I much prefer the Jersey treatment rather than the Isle of Man treatment because at least we have designed this treatment specifically for us. The Isle of Man cannot, it needs to abide by the UK rules since it is in symmetry with the UK system, and so they are not their own architects of their tax system.

Deputy P.J.D. Ryan:

Okay, thank you. So, what I think you are saying is that the provisions that are in here currently, you talked about investment funds, you are happy that that will not adversely impact the growth of the funds industry in Jersey?

Mr. J. Riva:

Personally, I think it has been done in such a way that it should not have any material impact upon it,

and same with the banks. One of the major issues in relation to the UK, and therefore the Isle of Man, is partial exemption and the complication that arises from that in relation to a Jersey system, and this presumptive scheme, this ought to take out most of the complications arising from partial exemption. So, once more, you know, we feel that it is a benefit.

Mr. D. Wild:

I think the discussion paper establishes the principles, but there is still quite a lot of work to do on the detail, particularly around funds. I mean, I think the paper says that most funds will qualify for ISS (International Services Status) status. But it recognises that there will be some complications, particularly with funds that are available to customers who belong in Jersey, and clearly, you know, we still wait to see the details on those proposals.

Connétable M.K. Jackson of St. Brelade:

Do you believe the 25 per cent on the presumptive scheme is reasonable?

Mr. A. Ohlsson (Fiscal Strategy Group):

I think one of the concerns we have got is whether there is sufficient data available to determine that this model will produce a 5 to 10 million yield and will result in that effectively being the additional cost on the industry, or whether it will be significantly higher than that, and therefore the 75 per cent being the portion which is liquid in presumptive scheme to banks. We are not convinced that that percentage has been modelled appropriately, and suspect it should be a higher percentage rather than 75.

Ms. W. Dorman:

I think also if the recovery is not great enough then - you know, again we are talking without a lot of data - it is possible that banks might opt out of presumptive scheme because the cost of working out your part-exemption calculation might be outweighed by the benefit of recovering more of your input tax, assuming that the presumptive scheme is not going to be mandatory.

Mr. A. Ohlsson:

I do not think it should be seen as a potential windfall; receiving extra money, because this is obviously a non-recoverable additional cost on the banks, which in a competitive market comes back to the very reason of having to come up with the Zero 10 model.

Deputy P.J.D. Ryan:

Okay. I suppose we have already talked about this target of raising 5 to 10 million, and I think you have already answered the question largely, which is that you do support that in principle; yes, no?

Ms. W. Dorman:

We recognise the need for it I think is probably more [Laughter]

Deputy P.J.D. Ryan:

All right. You have asked for it to be optional, this presumptive scheme, what would happen if it was not; if it was mandatory?

Mr. J. Riva:

If I could give you an example; a bank set up in Jersey, its sole purpose is to provide services to non-Jersey residents. All of its services ought to be zero-rated, and therefore it should recover 100 per cent of its GST. It seems an unreasonable burden to place on that company that it can only recover 75 per cent of its import tax. It seems unreasonable, in my view, to have the presumptive scheme mandatory while it could simply operate as any other business within the Island that ought to be able to operate and recover all its GST. So, I think it seems reasonable to me for the presumptive scheme to be elective.

Deputy P.J.D. Ryan:

Right. Have you done any research which would indicate how many banks and how much of that sector might elect to account for GST properly and --

Mr. J. Riva

I honestly do not think the banks themselves have done the necessary data, there are too many pieces in the jigsaw puzzle have been missing for them to accurately do their research. I think a lot of it is gut feel; they believe that a large proportion of their customers are non-Jersey residents, and therefore they are of the view that 75 per cent is the minimum, and certainly not the maximum, amount of recoverability. But I think also there is an issue in relation to Jersey trusts and Jersey companies, which are treated as non-resident, whether they ought to be included as belonging to Jersey or not belonging to Jersey. Now, if you look at the ISS provisions that will mean that they are not belonging to Jersey and therefore you can discard them. But to classify them is a relatively difficult task, and a time-consuming task, and one which that I do not believe that banks would expend the money or the effort to calculate unless they are certain that these are the rules which will be before them in the next couple of years.

Deputy P.J.D. Ryan:

So, that would sort of suggest that you do not want to have too high a ratio or too low a ratio, depending on which way you are looking at it, under the presumptive scheme. If it is high enough they will not bother to try and do that exercise and will just pay it.

Mr. J. Riva:

Yes.

Deputy P.J.D. Ryan:

Then, presumably from the government's perspective if you have got banks opting out of a presumptive scheme that will have to be monitored, that will have to be checked, there is extra administration for government to check the records and make sure that that is true?

Mr. J. Riva:

Well, this touches upon the compliance issues of GST. If you look at the income tax rules the comptroller views most taxpayers within the financial service community as being honest and if they present computations and accounts to a comptroller of income tax above basic checks they are generally agreed. So I would be surprised if the Comptroller of Income Tax was presented with a set of records stating that 80-odd per cent of their customers were not Jersey residents that he would check each one of those records.

Deputy P.J.D. Ryan:

He would be able to believe it. But of course there is a Financial Services Commission, is there not, looking over their shoulder anyway? Yes, so you do not see that as too much of a problem for government?

Mr. J. Riva:

From the comptroller's point of view, I do not believe so.

The Connétable of St. Brelade:

Do you think the comptroller has got the capacity to deal with this at the moment? Clearly there has been a problem within a department with ITIS (Income Tax Instalment System). Is it your view that the present hierarchy can deal with it?

Mr. J. Riva:

I understand that they have appointed a director and I would expect that they would need to appoint staff to assist that director, otherwise I suppose he is going to kiss his children goodbye because he will not be seeing them for a while. So, I honestly do believe that they do need to appoint extra staff to deal with this. I do not have the figures available to me in relation to the Isle of Man and the amount of individuals that have been appointed within the Assessor's team to assist them with the VAT, but I would be surprised if they were less than the number of income tax staff they had or income tax professionals. So, you know, you do need a fair amount of a team to assist this with the new GST director.

Mr. D. Wild:

Clearly there is a correlation; the more complex the administrative and enforcement requirements, the bigger the team will need to be to manage that process.

The Connétable of St. Brelade:

Up another per cent.

Mr. D. Wild:

I think the original estimate was that the administrative costs will be in the region of one per cent of total yield, so about £500,000 a year, which I would imagine will be quite a challenge to deliver.

Deputy P.J.D. Ryan:

Can we just explore a little bit further the optionality of the presumptive scheme for a minute with banks? If it is optional, is it not true to say that a bank would have to assess all of its customer base for whether it is on- or off-Island?

Mr. J. Riva:

If it chose not to --

Deputy P.J.D. Ryan:

If it was going to opt out.

Mr. J. Riva:

If it was to opt out, then it would, yes.

Deputy P.J.D. Ryan:

What is going through my mind is that that would probably be painful in the short-term for the bank to carry out that exercise, but that from then onwards on an ongoing basis - you know, because most of the customer base would be fairly stable perhaps - you would maybe get an advantage of not paying that GST on your inputs into the future.

Mr. A. Ohlsson:

I think different banks give different answers to that question. Some banks say it is very easy to determine what is their on-Island/off-Island customer base split, and other banks say it is not easy at all.

The Connétable of St. Brelade:

Well, basically under the 'know your customer' system in theory they ought to be able to. Is it a bit of blocking or reluctance (...overspeaking) --

Mr. J. Riva:

It is data capturing; it is trying to capture that data is relatively difficult, you know, it depends upon the

volume. Certain banks have 30,000 customers. Now, to determine the exact position of those in a centralised scheme is a difficult task.

Mr. D. Wild:

There is a particular difficulty for banks that operate in the local intermediary market as well, so banks that provide banking services to trust company businesses, because under the current AML (Anti Money Laundering) arrangements, trust companies can refer that type of business on an undisclosed basis so the banks would not necessarily know who the underlying principals behind the corporate vehicles are, so they would not be able to determine whether or not a vehicle has ISS status unless the TCB specifically tells it so.

Mr. J. Riva:

I think that is a very good point. A bank providing services to trusts, if they were to determine each of those trusts' specific circumstances they would need to write to them to ask for verification that that trust has ISS status, and they would need to do that each year, and that is quite a complicated task and quite time consuming.

Deputy P.J.D. Ryan:

If it is an optional from the Treasury's perspective they would be worried that over the course of a period of time they would have an erosion of this 5 to 10 million taking place, not necessarily straight away but, you know, as more and more banks, and as IT (Information Technology) systems and as know your customer and things develop, you may get a situation where the whole of this banking sector contribution dissipated.

Ms. W. Dorman:

One thing we do have is the ISS charge, which we have said should only apply to companies not to trusts, but even so although we do not have any numbers on it, we imagine that the £50 ISS charge will generate a quite substantial part of the 5 to 10 million.

Deputy P.J.D. Ryan:

But are the trust companies not saying that that would put them at a distinct competitive disadvantage versus Guernsey and other trust jurisdictions? I think they were saying (...overspeaking)

Ms. W. Dorman:

Some trust companies are saying that would be the case if the ISS charge applied to trusts, but if it applies to companies only I do not think there have been any strong objections.

Mr. D. Wild:

No. I think there is certainly a very strong feeling in the trust industry that there should not be any fee payable in relation to trusts, and I think that would be seen to be breaching a fundamental principle, if you like, in the way that trusts are subject to taxes or charges. So, we have recommended on the basis of representations received that there should be no ISS fee payable for any form of trust. I think in relation to corporates, the industry is reasonably comfortable that it is a disbursement that could either be passed on to the underlying corporate vehicle or could be absorbed, you know, within the trust company's own margin if they elect not (...overspeaking) --

Deputy P.J.D. Ryan:

Right. Because the Treasury are at the moment suggesting that trusts would pay it.

Mr. D. Wild:

That is right. Yes, and we have strongly recommended that there should be no charge on trusts.

Deputy P.J.D. Ryan:

Yes, so one of the things that we need to do is to look carefully at the arguments pro and --

Mr. J. Riva:

Very much. I believe there ought to be some symmetry between GST and income tax, and if you look at this area companies at present, ones which are incorporated in Jersey, are entitled to apply for exempt company status and pay a fee of £600, and this means that they are effectively taken out of the scope of Jersey income tax. While a Jersey resident trust, under the strict letter of the law, ought to be within the scope of Jersey income tax, but if their beneficiaries are non-Jersey resident then they are exempt from Jersey income tax and therefore taken out of the scope of Jersey income tax, similar to an exempt company, but there is no requirement to pay a fee of £600. So we feel that the ISS should reflect that in the income tax analysis of the exempt company regime, and companies, corporates, should pay the ISS fee while the trust should not.

Deputy P.J.D. Ryan:

Okay. That is actually one of the questions that we were going to ask you a little bit later on, but let us talk about it now, because we wanted to just contrast the current situation with exempt companies, and that current regime, against how it will be under Zero 10. Unfortunately we have to talk about Zero 10 as well as GST. Because you are, I am sure, very familiar, you are dealing with it every day, could you just remind us please for the record what that is; currently the exempt company pays a £600 income tax charge?

Mr. A. Ohlsson:

Well, I think the place to start is a Jersey company, i.e. a company that is incorporated in Jersey, pays an annual return of £150 per company per annum. In relation to tax, a company which is a Jersey resident but is owned by non-Jersey residents can elect for exempt company status, and in order to do so it pays an annual fee of £600. Those companies fall into 2 categories; they are companies which are Jersey resident by virtue of being incorporated here, and they are non-Jersey incorporated companies that are Jersey resident by virtue of being managed and controlled in the Island. So there are 2 types of companies. In addition to that, a non-Jersey company, which is an investment company, can seek concessionary status from the controller whereby it is exempt from paying the £600 fee. They are foreign incorporated investment companies, which currently pay zero fees. So, effectively the £600 should be paid by Jersey incorporated companies which elect for exempt company status and non-Jersey incorporated companies that are managed and controlled in Jersey and which are not investment companies.

Deputy P.J.D. Ryan:

I think what we need would be an analysis of what you have just said, because it is rather difficult to write it down quickly for us. So, I think what we will need to do is to get a matrix which shows us all of the different things.

Mr. A. Ohlsson:

Yes. What we do not have is the numbers of each of those different categories of entity.

Mr. J. Riva:

Well, we do have the figures for exempt companies, which is 19,000. The missing piece in the jigsaw puzzle is the number of foreign incorporated companies which are managed and controlled in Jersey; there is no figure for those.

Ms. W. Dorman:

Which at the moment pay no fee, no annual filing fee and no exempt company fee, so no contribution other than the administrator who looks after it.

Deputy P.J.D. Ryan:

Excuse me because if you are not a finance industry professional you do not have this sort of stuff constantly in your brain, so it gets a bit rusty. I have heard a lot of this before, but actually living with it on a day-to-day basis is another thing.

Mr. A. Ohlsson:

Well, I think the grey area is that there is no register of foreign incorporated companies that are administered in Jersey. Obviously the trust company businesses are required to maintain records, but the comptroller has no record of that. There is a view that there are foreign incorporated companies which are administered in Jersey, and may potentially be managed and controlled in Jersey, which are not currently paying the £600 exempt company fee, albeit that they should be paying that fee.

Deputy P.J.D. Ryan:

Right, so the comptroller is worried there is an anomaly there going on?

Mr. A. Ohlsson:

Correct.

Deputy P.J.D. Ryan:

Right, okay. Now, under the new rules of ISS status under GST, would those companies pay this £50 fee, is that what is being suggested?

Mr. A. Ohlsson:

The idea is that every company that would be consuming services on which GST would be applied would seek to elect for ISS status and pay a £50 fee, but they may of course not elect for the ISS status and that will be charged GST on the services that they consume within the Island.

Deputy P.J.D. Ryan:

Is that likely, that last scenario?

Mr. J. Riva:

It is, yes, but remember GST hits persons that belong to the Island and a fully incorporated company which is administered in Jersey, which is managed and controlled in Jersey, has its seat of management; people sitting around the table discussing exactly how the strategic direction of that company would be viewed to belong to Jersey and therefore within the GST net. So the idea is to take them outside of that net and the fee for that would be £50. Now, since it is aimed at a low fee there is no requirement to register, there would be no list available showing which of these companies exist. It is felt that for certainty reasons, to ensure that they do not breach any laws within the Island, a £50 fee is a reasonable amount to expend. So, although it is difficult to analyse, we have some confidence of there being quite a high compliance of this fee.

Deputy P.J.D. Ryan:

Right. So, the income to the Treasury generated from this scenario could be quite significant?

Mr. A. Ohlsson:

Absolutely. The £50 fee could generate a significant proportion of the 5 to 10 million.

Deputy P.J.D. Ryan:

Right. And the downside to that is ...? Is there a downside to that?

Mr. A. Ohlsson:

Well, the downside is it is an additional cost of having your company, if you are a non-resident, being administered in Jersey.

Deputy P.J.D. Ryan:

Right. Significant?

Mr. A. Ohlsson:

£50, no.

Deputy P.J.D. Ryan:

Your view?

Ms. W. Dorman:

Insignificant.

Deputy P.J.D. Ryan:

Insignificant?

Mr. A. Ohlsson:

We have not received significant representations from the industry that it would cause a problem.

Deputy P.J.D. Ryan:

Can you contrast that with say an overall management charge to what would generally be a BVI (British Virgin Islands) company, would it, or something like that? What is the management charge annually?

Mr. D. Wild:

I would estimate for an average trust company relationship probably, I do not know, between £3,000 to £5,000 would be a basic annual management fee.

Deputy P.J.D. Ryan:

So, £50? Is it going to be passed on, or is it going to be absorbed?

Mr. J. Riva:

I think it is important to draft the legislation in such a way that the liability ultimately rests with the ISS, but is collected and paid by the trust company as agent to that ISS. So, it would be left to the agent of the trust company to determine on a commercial basis whether it wishes to pass on that liability to the ISS because it must be the ISS's liability but the trust company is agent, and I think it is just going to be a case by case basis as to whether the trust company chooses to pass that fee on.

Deputy P.J.D. Ryan:

It is almost, is it not, a sort of a - depending on the management fee - 1.0 to 1.5 per cent tax on the management fee? Could look like a GST on the management fee.

Mr. A. Ohlsson:

Well, if you took a company that is paying an annual fee to a trust company of £3,000, and if the trust company were obliged to charge GST at 3 per cent on that, it is going to produce a charge of £90 of GST. So, if the company can opt out of that by paying £50 ISS, I mean the threshold on management fees is £1,600 at which point above that you are better off paying the £50 and not paying GST.

Mr. J. Riva:

I would also make the point that if the ISS were to be brought within the provisions of the GST rules then the likelihood is that that ISS is providing services off-Island, and so although it would be charged GST on its management charge it would still be zero rated and could recover it. The GST would not necessarily be an absolute charge on the ISS, but it does remove all the complications of the GST provisions.

Mr. A. Ohlsson:

For a trust company business dealing with that administration is going to cost them more than £50 per instant.

Deputy P.J.D. Ryan:

Right. I suppose coming full circle though, is that the area the trust companies are resisting this?

Mr. A. Ohlsson:

No. The trust companies as a whole are strongly resisting, and I think we support them, the ISS fee applying to trusts as well as to companies.

Deputy P.J.D. Ryan:

I see.

Mr. A. Ohlsson:

They are not strongly resisting its application to companies.

Deputy P.J.D. Ryan:

Okay. That is an important --

Mr. J. Riva:

It is. And if you look at the international standard you do not see trusts paying tax, or paying any form of registration fee or annual fee, and this would be a first and sometimes it is just not good to move away from the international standards.

Deputy P.J.D. Ryan:

Do other trust jurisdictions that manage companies in the way that we are talking about, do they have similar fee bases for companies? I mean, how does that put us in the international market?

Mr. J. Riva:

I think that fees are paid, but it is generally within the income tax provisions, and it is interesting to see the Isle of Man's proposals, and I think the rules actually since they received royal assent, that every company resident in the Isle of Man, that is not merely companies incorporated in the Isle of Man --

Mr. A. Ohlsson:

It is BVIs as well.

Mr. J. Riva:

-- but those BVI companies which are managed in the Isle of Man are required to pay £250.

Deputy P.J.D. Ryan:

Are they? That is 5 times as much.

Mr. J. Riva:

Five times as much, although if you recall within the Zero 10 proposals there is a requirement for BVI companies that are managed and controlled in Jersey to pay £150, so I suppose Jersey's fee is £150 under the income tax provisions, and £50 under the GST provision, nevertheless still slightly less than the --

Deputy P.J.D. Ryan:

So, we are keeping our competitive position? You are happy that we are keeping our --

Mr. A. Ohlsson:

In relation to companies.

The Connétable of St. Brelade:

Am I right in understanding that bank-managed ones will not be paying the £50?

Mr. J. Riva:

No, there is still a requirement for bank-managed ones to pay the ISS fee, but they may choose not to because the services provided by the banks will be outside the scope of GST. Nevertheless if I as a professional were to supply them with some services, if they have not elected to pay the £50 fee I would be required to include an extra 3 per cent on my fees to that bank entity. So, they may choose to elect for the £50. Also, if they do not elect for the £50 they may find themselves that they need to register for GST because their threshold is such that it exceeds the £300,000. So, I think in relation to your question if the bank applies the presumption test then it is not required to charge GST on its clients, and so one would expect that the client will not automatically consider applying for ISS, but it still may be optional for it to do so if it is receiving services from other service providers.

The Connétable of St. Brelade:

Will that have the effect of distorting the market in any way?

Mr. J. Riva:

It is difficult to give any proper analysis on that because I think what we have suggested is that banks, which do supply other services, there must be some form of threshold whereby when you look at this entity you determine whether its major services is banking or is it a trust company, so there must be an adequate percentage to enable it to elect for the presumption scheme because the majority of its services are banking services, and so the trust services are not quite incidental but are certainly not material in there overall outcome. In that case I do not believe it would adversely distort the market.

Mr. D. Wild:

But there is a genuine practical difficulty there in terms of a banking operation that delivers trust company investment business services out of the same legal entity, so it holds multiple financial services licences. If that banking entity is allowed to elect into the presumptive scheme then it would not, under that scheme need to distinguish between customers belonging in Jersey and those who do not, and therefore in theory would not need to obtain ISS status for its underlying clients, unless, as John said, those clients are receiving services from other third party service providers. Whether or not it would distort the market, we are talking really about very few banks, and I think the concept of a threshold test, which would say that provided that the bank's main business is deposit taking then it should still qualify for the presumptive scheme would be a sensible approach, but it is an area we have flagged in our response as probably needing a little bit more thought.

Ms. W. Dorman:

The issue applies to any local customers that the bank has as well because it would not have to charge

GST to a local customer as well as to an ISS, so there is potential lack of level playing field if there is any major non-banking activity within the bank.

Deputy P.J.D. Ryan:

What would the remedy be to get rid of any distortions there?

Ms. W. Dorman:

To disaggregate the supplies and say that you have to treat your non-banking supplies outside the presumptive scheme.

Mr. D. Wild:

Or to say as long as, you know, the non-banking supplies remain below a certain threshold of your total business activities then that is effectively an ancillary business line for you as a deposit taker. That is your main business and therefore because you are principally a deposit taker you are still eligible to qualify.

Deputy P.J.D. Ryan:

We have had a submission from one trust company that is quite strong on the distortionary effect; the inequity between the way banks could operate a trust business themselves but are not in the banking sector. Have you any comment; do you think this is significant?

Mr. J. Riva:

I think you do need to include a threshold. Now where you aim that threshold I believe further analysis needs to be undertaken.

Deputy P.J.D. Ryan:

Yes, I think you have already answered it to a certain extent, but it is a question of scale; how many banks are there that might be like this? I think you have already answered it. Do you think there is only a small --

Mr. D. Wild:

I think there are a very small number that have significant non-deposit taking activities within the same legal entity. If you have got a bank with a trust company subsidiary then the issue goes away. It is really just a relatively small number of institutions that would --

Deputy P.J.D. Ryan:

Right. Do you think that the majority of those institutions would actually have, if they are running a trust company business, if they are running investment business, if they are running banking business, deposit taking, they would tend to have those from a separate legal entity anyway?

Mr. D. Wild:

I think in most cases, yes, that is true.

Deputy P.J.D. Ryan:

But I suppose the Treasury could insist that the banks did that, is that your point; disaggregate them?

Ms. W. Dorman:

We do not mean actually create a subsidiary and move the business, but disaggregate them for the purposes of calculating their GST.

The Connétable of St. Brelade:

Do you have any concerns with the administration of claiming ISS and the related information requirements?

Mr. A. Ohlsson:

I think it comes back to the issue of trusts. I think there is a concern in relation to trusts. I think the attempt to apply ISS to trusts also disregards the actual legal position where it appears as though a trust is being thought of as a legal entity when it is not a legal entity. The only legal entity is the trustee of the trust. So, I think there is an issue in relation to trusts. Determining when a trust would be subject to an ISS and when one does not exist that would be subject to an ISS fee. In relation to companies I think there is less concern.

Mr. D. Wild:

I think that there is always going to be a tension on the one hand between wanting a very simplified, straightforward administrative system, and on the other hand, you know, in certain circumstances needing absolute legal certainty as to a vehicle's ISS status. While we think that in general terms the simplified approach will work in 80 to 90 per cent of the cases there might be a number of specific vehicles or transactions that will need additional certainty, or the law will need to provide for absolute certainty as to a vehicle's ISS status.

Mr. A. Ohlsson:

Yes. We are proposing that there should effectively be an annual collection of the ISS fee, notwithstanding when the company is incorporated or when it is dissolved. But, equally, it is very important that from the day that the company exists, albeit that an ISS fee may not have been paid, that one is able to rely upon the fact that the company does have ISS status.

The Connétable of St. Brelade:

Do you think that the administrative burden on the industry is going to be significant or will it be absorbed in present administration?

Ms. W. Dorman:

Do you mean in relation to the ISS fee?

The Connétable of St. Brelade:

Yes.

Ms. W. Dorman:

I would have thought that would be manageable. But outside the banking sector there is the administration of the partial exemption calculations that they will need to do in any case, so in total I think GST administration will be significant.

The Connétable of St. Brelade:

Which will clearly be passed on to the ultimate client.

Deputy P.J.D. Ryan:

Do we have any local only banks, that just deal locally and not with international clients?

Mr. J. Riva:

We do.

Deputy P.J.D. Ryan:

Would they be at a disadvantage to international and local service providers under a presumptive

scheme, because presumably the local only banks would not have a presumptive scheme available to them because they are all dealing locally?

Mr. J. Riva:

Just to define locally owned as in I do not think we have any locally owned, but we do have branches of the UK retailers that deal with the local market. The proposal set out by the Treasury was that since they deal with more than 10 per cent of the persons belonging to Jersey that they would not be entitled to the presumptive test, in which case they would suffer no recovery whatsoever of GST. Our view, not aimed at those, was to remove that threshold and so there would be a net win for those type of organisations. It is incidental to the reasons why we wanted to improve that threshold. It was mainly for the other banks having difficulty in determining exactly which customers belong to Jersey, but an incidental win is that such banks, your locally owned banks or the banks that offer local services, will be entitled to a presumptive test and will be entitled to recover 75 per cent of their GST.

Deputy P.J.D. Ryan:

Right. I mean if they were not then presumably they would have to pass on their extra cost to their local customers?

Mr. J. Riva:

Yes, they would. They either absorb it or they pass on, yes.

Deputy P.J.D. Ryan:

Do you think it is significant that they would have a lot of competitive position against say another bank offering local services as well as international services? Could we see a drift away from the local only service providers? Do you think that is --

Mr. J. Riva:

Well, most of these are retail banks which have systems in place to deal with the local market. I do not believe that an international bank would want to compete within that specific market.

Deputy P.J.D. Ryan:

So, you do not see it as a significant --

Mr. J. Riva:

I do not. There is obviously a loss in revenue, how much that loss is I do not know, but bearing in mind that the financial service community has been charged to generate a certain amount of money, which I think it will, and given that these banks are generally part of a larger group, which will be paying significant amount of funds to the Treasury, when looking at them as a group it seems a reasonable concession to provide. But it does offend the general principle of GST that in services provided to local community you are entitled to pass on that GST to those people.

Deputy P.J.D. Ryan:

How big a problem do you think this threshold calculation thing really is? We have seen certain submissions. To contrast your position you are saying to drop the threshold all together, are you, am I getting this right?

Mr. J. Riva:

Yes.

Deputy P.J.D. Ryan:

Whereas I think we have seen submissions from one of the major High Street banks that suggests

something different. Are you familiar with the --

Mr. J. Riva:

I am.

Deputy P.J.D. Ryan:

Can you comment on their position versus Jersey Finance's position?

Mr. J. Riva:

I think Jersey Finance's position is much simpler. If it is simpler and if the Jersey Finance submission does produce the requisite amount of money then I know which one I would prefer.

Deputy P.J.D. Ryan:

Okay, fine.

The Connétable of St. Brelade:

Given that irrecoverable GST is an absolute cost and not recoverable in the UK, do you envisage that that same scenario would apply internationally in that if it is not recoverable in the UK would those same parameters applied in other countries? Would that be considered --

Mr. J. Riva:

I cannot think of any situation where GST incurred locally would be recovered elsewhere.

The Connétable of St. Brelade:

Right. So, that would be consistent?

Mr. J. Riva:

I believe so, yes. Wendy?

Ms. W. Dorman:

Yes.

Deputy P.J.D. Ryan:

Excuse us, because this is such a technical area we need to --

The Connétable of St. Brelade:

I may come in that it has been suggested that Jersey could charge income tax on commercial rents, possibly with no deductions, and also tax owners of a commercial property on the deemed rental value as an income tax. This could be creditable against UK tax. What are your thoughts on that?

Ms. W. Dorman:

I am not sure that that would be creditable because normally what is creditable is the tax paid on the profits of the enterprise and this is not a tax on the profits of the enterprise, so, John, I do not know if you agree, but I cannot see how that would be creditable.

Mr. J. Riva:

I think before this is made up to a realistic proposal, I mean much more analysis needs to be done on that because I do share Wendy's concerns, and a lot of these issues which come out of public consultation do need to be correctly analysed by professionals, and this is not solely a Jersey issue, we are talking about an international issue which will require international advice. So, I think it is a possibility that it could work, but then it may not. I think it is something which just needs to be

carefully considered, not solely within the Island but outside as well.

Deputy P.J.D. Ryan:

Can I just go back to this question of this threshold and just revisit the question of an ISS that might be dealing locally as well as internationally? Is there a threshold problem there? Do we see an administrative difficulty where an ISS might need to decide whether --

Mr. D. Wild:

I think if an ISS is dealing locally I am not sure it will qualify for ISS status.

Deputy P.J.D. Ryan:

In any way, shape or form?

Mr. J. Riva:

No. I think our submission has stated that where it provides services to persons belonging to Jersey, where those services are incidental then it ought to apply; then it ought to be satisfied the ISS, but otherwise the submissions from the Treasury is that it is an absolute, no services can be provided to Jersey residents.

Deputy P.J.D. Ryan:

Yes, but what is incidental? This is the problem; what is incidental? There should be some kind of a test there on a 15 per cent?

Mr. J. Riva:

I believe that there have been certain submissions that say incidental to be a limit of 15 per cent. Then it is difficult to put an absolute threshold because that could be subject to some form of abuse. A lot of things within Jersey are left to the discretion and the commonsense attitude of the comptroller. You know, it is similar to defining an elephant; one will know when services are incidental when one sees it.

Deputy P.J.D. Ryan:

Yes, no, okay. Fine, thank you. Could you just bear with me a second? Yes, the other thing I suppose, this is a general question again, and more technical. The actual law itself, actually the way the law is designed, the way it is under regulations and its designs, and I suppose a question more for Alex as a lawyer, I am going to put you on the spot a bit, are you happy with the way the law is presented? Is it easy enough to understand for professionals? Any comments around the actual technical design of the law?

Mr. A. Ohlsson:

I think we expected a simpler approach rather than the whole self-lifting of legislation from other jurisdictions, which appears to be what has occurred. I do not know if others agree with that.

Deputy P.J.D. Ryan:

Have the Jersey Law Society looked at and made any suggestions or submissions to the Treasury with regards to how the law itself could be simplified?

Mr. A. Ohlsson:

No. The Jersey Law Society relied principally upon the Jersey Finance response, which is the financial -
-

Deputy P.J.D. Ryan:

Do you intend that that would be the case? Do you think that is likely that we are going to say, you

know, simplify the law?

Mr. A. Ohlsson:

I think in Jersey lawyers tend to become to be less involved in tax matters than in other jurisdictions, and I think the Law Society are probably leaving this to the tax professionals to respond on, rather than to comment themselves.

Mr. J. Riva:

Jersey Finance has obviously made a few submissions in relation to the drafting of the law, and in particular with the lack of consistency with the current Jersey income tax law. If I could just give you 2 examples, and they are examples of a number. In relation to appeals the GST law seems to borrow the schedules and the articles of the income tax but they go further, and I really do not understand why they need to go further on the appeals. For example, if there is funds in dispute under the Jersey income tax law, which is mirrored within the GST law, one, the taxpayer appeals against that assessment and the assessment is heard in front of the commissioners, but the GST law goes beyond and states that a taxpayer is required to deposit the amount in dispute with the Comptroller of Income Tax. Another sort of example of the inconsistency is that in relation to offences the Jersey income tax law uses words such as “fraudulently” and “negligence” which are understood by tax professionals who have worked within the income tax regime for some years. But the GST laws use terms such as “knowingly” and “recklessly” and I really do not understand why there should be inconsistency between the Jersey income tax law and the GST law given that ultimately they will all be administered by the comptroller of taxes, one person, and we seem to have different levels of compliance risks and we do need to standardise that.

The Connétable of St. Brelade:

Has that been pulled out of the UK law, do you think?

Mr. J. Riva:

I believe so, yes. Always remembering that the income tax law will still generate a far greater amount of revenue for the Treasury than the GST law, but nevertheless there seems to be greater powers within the GST law than the income tax law, and that in itself is an anomaly, in my view. I do think that all these administrative issues and the compliance issues should be streamlined. Now, whether the income tax moves towards the level of the GST, or GST moves down the level of the income tax perhaps is an issue for debate, but if the Comptroller of Income Tax is happy with the level of compliance and the level of powers he has to administer the income tax law then I would expect that he ought to be happy with those powers to administer the GST law.

Deputy P.J.D. Ryan:

Have you made these kinds of suggestions and comments on the technicalities of the law to the Treasury?

Mr. J. Riva:

We have made it in the round in point 3.6 in our submission.

Mr. A. Ohlsson:

I think most of our response has been focussed on the core principles, and I mean I think it is a concern that the law approval process is happening in parallel with this. For instance, the regulations were posted on the Treasury website early in the summer with, I think, a 31 August consultation deadline. Well, we have passed that date and clearly we are still talking about major principles rather than commenting on regulations. So, I think it is important that the detailed terms of those regulations and the law itself is scrutinized, and I suspect we need to look at those in more detail once these more

significant decisions have been made.

Deputy P.J.D. Ryan:

Okay. That is an interesting point. Thank you for that.

The Connétable of St. Brelade:

It would certainly seem from an administrative point of view that it would be sensible for the Treasury to equate both these points otherwise they will simply be doubling up on staff, and I suspect that would be a strong attraction.

Ms. W. Dorman:

And I think in the UK VAT law grew up completely separate and was dealt with by a separate body to income tax and corporation tax, and therefore there are quite a few differences. Whereas in Jersey we are designing a new tax from scratch, which we know from day one will be administered by the income tax department, and I think we are missing an opportunity if we borrow from the UK law and therefore have anomalies that are really unnecessary.

The Connétable of St. Brelade:

Is the UK anomaly probably driven, as you suggest, by the difference in launching, but by the fact that VAT is dealt with by the Customs as opposed to the Treasury?

Ms. W. Dorman:

Well, Customs and the Inland Revenue are now merged, but historically they were not, and that is absolutely right, I think, yes.

The Connétable of St. Brelade:

Are they approached administratively, do you think, or just by department? Is the operation still separate?

Ms. W. Dorman:

I think it is an ongoing issue. It is not a complete merger from day one. There is a big amount of machinery to be merged but I think, over time, the intention is that there will be much more commonality.

Mr. D. Wild:

If I can just return to Alex's point, I may say as well that we, FSG (Fiscal Strategy Group), have spent a lot of time already looking at the Zero 10 and GST proposals, and as you appreciate the comments we have put forward, as Alex said, are dealing with points of principle on a relatively high level. There are clearly very significant resource implications there in terms of doing a very detailed review of the law and regulations. I am not sure that you are going to get that level of buy in, if you like, on a pro bono basis from the industry. There is a resourcing question there, I think, for Treasury and Resources in terms of how the detail is subject to effective scrutiny and review.

Deputy P.J.D. Ryan:

Okay. I think, Mr. Ohlsson, you have said that you have got your own principles but you will start looking at the law detail. But are you saying, David, that you do not think you will be doing that, because I think that will slightly ... What I am asking is are we likely to see a more technical analysis of the law itself at any stage?

Mr. J. Riva:

I think the Treasury and Resources need to go away and consider the points of principle which we have

laid down insofar as consistency with the income tax law and then come up with a redraft of the law before we provide technical analysis on that. I mean, they need to buy in on this principle but there should be commonality between the compliance and administration of both of the taxes, always bearing in mind that the principle tax is still income tax.

Deputy P.J.D. Ryan:

Okay. Thank you. Well, thank you very much this morning for your time. I think that concludes, unless there is anything else that we have missed, that you feel that we have missed, that you would like to bring in front of us.

Mr. J. Riva:

There is one point which was very important and that is inter-company fees and services.

Deputy P.J.D. Ryan:

Ah, the grouping?

Mr. J. Riva:

The grouping.

Deputy P.J.D. Ryan:

We have not talked too much about grouping.

Mr. J. Riva:

I think it is extremely important for those inter-company services to be outside the scope of GST. We believe that if they are not that would cause huge, huge issues.

Deputy P.J.D. Ryan:

That is a point that we have a question on that we have somehow missed and I apologise for that. We can understand how you feel that that might be a big issue - inter-group charging of GST. Presumably, this was the syndrome in very general terms that killed the funds industry in the Isle of Man. But there is a concern that this would give scope for the avoidance of GST, input GST, even the 25 per cent under presumptive that would stick. It would give an opportunity for larger groups to avoid lots of that through using off Island supply of computer systems or, you know, outsourcing off Island to avoid it. Can you comment on that?

Mr. J. Riva:

Well, they can at the moment and so if what you are effectively saying is that the differentiating factor for a bank in Jersey not to use their wholly owned subsidiary in the UK to supply those services is because with Jersey services at present it is 3 per cent cheaper than their own services and I do not believe that that is the case.

Deputy P.J.D. Ryan:

So, you do not think it is significant?

Mr. J. Riva:

I think that if a bank in Jersey - you know, if we just take IT - if it has a choice between using a local supplier and its wholly owned company which offers exactly the same services, then I do not believe that GST would be the differentiating factor on that choice.

Deputy P.J.D. Ryan:

Of course, if larger rates of GST in the future it might be different, but ...

Mr. J. Riva:

It will. But surely it is always more beneficial for a group to receive its own services than to go outside. So I think they are already in a position where they would utilise group services rather than local services.

Mr. D. Wild:

I think that that reflects the overall strategic direction of the industry over the past 10 years where we have increasingly focused on, you know, putting high value front office services in the Island and as a quid pro quo, you know, banks and other institutions have had to outsource certain back office functions off the Island. I think to have GST charged on those types of intra-group supplies would be very detrimental indeed.

Connétable J.L.S. Gallichan of Trinity:

There are enormous connotations regarding IT supply altogether, particularly with electronic retailing if you go down that route. Who knows what is going to happen there? That would have a marked effect on the Jersey trade in that, with the shift of business from the High Street to electronic retailers suddenly finding that that is going to be pretty well uncontrollable or will we be paying 3 per cent VAT whereas those buying through a Jersey company may be not? There are quite a few unknown questions on this.

Deputy P.J.D. Ryan:

Yes, I suppose an issue on this grouping, you could have a local grouping only, which excluded an off-Island member of the group. Because, obviously, an IT company in the UK would be zero rating off the UK island - the bigger island - to the smaller island. It could be zero rating to Jersey and, therefore, that group as a whole would be avoiding a lot of input VAT that way.

Mr. J. Riva:

That seems to go against our outsourcing policy.

Ms. W. Dorman

They are 2 separate issues. I think, you are right, that you can look at domestic grouping separately from international grouping. But a lot of the trend in recent years has been towards outsourcing services off-Island and quite often to group companies for cost-saving reasons and to introduce a GST charge --

Deputy P.J.D. Ryan:

Local resource implications.

Ms. W. Dorman

Yes.

Mr. J. Riva:

It has been encouraged by government and it just seems inconsistent to develop a GST that goes against that general strategy. There must be some alignment of policies.

Ms. W. Dorman

The impact would not be to in-source on Island to avoid the GST. The impact is more likely to be that you would lose your high value business in Jersey.

Deputy P.J.D. Ryan:

Okay. Thank you. Are there any other points that we have missed?

Ms. W. Dorman

The other point of principle that we made representations on is the place of supply rules and whether you base your GST on where the customer is based or where the supplier is based; and I think that was a point that in the consultation it was recognised was something that should be considered. The EU is moving towards place of customer for reasons that we have discussed before on the difficulty in capturing GST or VAT. If you do not do that under your recurrent electronic supplies et cetera and at the moment the general basis of place of supply under the proposals is the place of the supplier rather than the customer. So, we question whether that is the right answer, particularly for an Island which is basically exporting most of its services. That is a fairly fundamental point which probably needs to be addressed fairly early on because it does have implications for the rest of the GST law.

Deputy P.J.D. Ryan:

Where someone belongs rather than where a supply might come from?

Ms. W. Dorman

It is the concept of use and enjoyment.

Deputy P.J.D. Ryan:

Okay.

Mr. A. Ohlsson:

We gave the example in our letter of a satellite broadcasting company.

Deputy P.J.D. Ryan:

Yes. I read that in your submission. Okay, that is a point that we will include. Anything else?

Mr. A. Ohlsson:

I think the only other point that we wanted to make sure, I suppose, that we have been clear enough on, because it was a point that the Jersey finance manifests were based on, is this issue of trusts and ISS applying to trusts.

Deputy P.J.D. Ryan:

Yes. We have explored that quite carefully. I am sure that will feature quite prominently in our report. Thank you very much, lady and gentlemen, for your time this morning; most appreciated, thank you. Good morning.

ADJOURNMENT