

STATES OF JERSEY



DRAFT GOODS AND SERVICES TAX (JERSEY) LAW 200- (P.37/2007): SECOND AMENDMENTS (P.37/2007 AMD.(2))– COMMENTS

**Presented to the States on 17th April 2007
by the Minister for Economic Development**

STATES GREFFE

COMMENTS

Introduction

Members will note that Price Marking legislation is an important Consumer Protection measure. Price marking legislation is designed to ensure clarity, accuracy, honesty and certainty in pricing aspects of contractual dealings between traders and consumers.

[The States has agreed, in principle, to introduce a form of “input – output” sales tax commonly known around the world as GST or VAT. The United States (and certain parts of Canada introduced Retail Sales Taxes (RSTs). Whilst the issue of price marking is a separate consumer issue, the differences between the designs of the taxes are important.]

Reasons in favour of inclusive pricing

- Traders should not mislead consumers by charging a higher prices than indicated on labels, shelf edges, etc.
- Consumers should be entitled to know that “what you see is what you pay”.
- Inclusive pricing is *universally* regarded as best practice in virtually every country with GST/VAT. These include for example – Australia, New Zealand, Hong Kong, Singapore, Switzerland as well as the whole of the European Union. (The USA levies RST not GST/VAT and Canada.)
- By way of example the EU has a “Price Marking Directive” (98/6/EC) which aims to protect consumers, by requiring that all retail prices for goods to include tax – at whatever rate applies.
- If inclusive price marking is not mandatory there will undoubtedly be consumer confusion. It is inevitable that some traders will price on an inclusive basis and some exclusive (this is particularly relevant with some firms being exempted with the high threshold).
- Many high street stores already charge VAT-inclusive UK prices to Jersey consumers. Inclusive pricing will encourage them to absorb 3% GST rather than re-price all items.
- There is the potential to cause confusion for our visitors, as the vast majority come from countries where price displays include all taxes and they will expect a similar price marking system.
- Jersey’s reputation could be harmed if legislation is sanctioned which is openly against the requirements best practice elsewhere.

Specific comments on the Alan Breckon amendment to Article 94

The effect of Deputy Breckon’s paragraph (2)(a) will REMOVE the power for the States to make Regulations requiring that individual retail price displays include GST. Instead, it would seem that the Regulations could force traders to include a price breakdown of the original price plus a prominent indication of the exact amount to be paid in GST on every item. In effect, traders would be forced to display two price indications for every individual item.

However, paragraph (b) seems to then allow a choice of individual two-part price marking (as described above) or a single cumulative two-part price indication consisting of the total sum for the goods and the price element of the GST. This can only be applied in specific circumstances but the amendment does not suggest what these circumstances might be or make any provision for consumers to be informed as to which system is in use by a retailer. This dual system will remove the ability for consumers to carry out any direct price comparisons.

This amendment will impose a not insignificant burden on small traders (e.g. market traders, fish stalls, some convenience stores and mobile ice-cream vans) who do not routinely issue receipts.

Comments on Deputy Breckon's Report

Inflationary

Rounding is potentially a consequence of inclusive price marking with GST, particularly on low-cost items, just as it is in Europe with the various rates of VAT. However, it is hoped that traders will be honest and round down where appropriate to minimise the impact.

Example

An example is given of ten items costing 50 pence where the totalling and adding 3% at the till gives £5.15. If inclusive pricing is required this will be £5.20 which equates to 4% GST on the original price. There is a statement that the GST inclusive price is 33% higher which is highly misleading as the basis for this seems to be 1% of 3% which is one third more so the increase is 33%. There is no reasonable basis for this statement.

It seems to be Deputy Breckon's belief that price increases on low cost items will be between 5% and 10% but this is merely speculation as no evidence is provided.

Re-pricing of goods

Larger supermarkets stock a greater number of different lines and if inclusive pricing is mandatory then it is reasonable to provide a time period for retailers to comply. (The UK has a statutory period of 14 days for compliance on the rare occasion when the VAT rate changes) Pre-priced products will need to be addressed in any legislation as the retailer will either have to absorb the GST on those products or re-price the items (unless any legislation can deal effectively with this).

Informing consumers

With inclusive pricing retailers would not need to display any specific information about GST in their premises but they could, of course, as in some UK and French stores, show the tax element of the total charged on the till receipt.

Future implications

As referred to previously, if the rate of GST were to change (and I would stress I would wish to see the rate stay at 3%) retailers could, as in the UK, be given a statutory period to adjust their inclusive price indications as they do with normal retail price movements on a regular basis.

No real consumer protection

Deputy Breckon is well aware of the Consumer Safety (Jersey) Law 2006 which came into force in November 2006 and has already been effectively used to remove unsafe consumer goods from the local market. He is also aware of the draft Distance Selling (Jersey) Law 200- which provides rights for consumers who buy goods on the Internet or mail order. This will be lodged shortly. He is also aware of the Draft Supply of Goods and Services (Jersey) Law 200- which will at long last introduce consumer statutory rights for Island residents. This will go out to consultation in the next few weeks.

Attachments

Deputy Breckon has included three attachments which DO NOT support his amendment to Article 94! On the contrary, the Directive is very clear that "consumers must be guaranteed a high level of protection". He even refers members specifically to Articles 1, 2 and 10.

Article 1 gives the fundamental reasons for the legislation and Article 2(a) clearly states that a selling price shall mean the final price for a product including VAT and all other taxes, which is the opposite of what Deputy Breckon is trying to achieve.

In addition, I would respectfully suggest Deputy Breckon may have misunderstood Article 10 of the Directive, as he has interpreted this as allowing member states to vary the requirements of the Directive which is not the case. The Directive is in fact a “minimum harmonisation” Directive which means that the provisions are the minimum protection measures which consumers can expect to find in every EU country. The flexibility is provided in case any country wishes to extend, not reduce protection in the area of price marking.

Also included is the UK Price Marking Order which again DOES NOT support the amendment, but enacts the Directive requirements into UK domestic law. The Order follows very closely the principles enshrined in the Directive.

The third attachment included, again, DOES NOT support the amendment. It is a final report which appraises how the Directive has been implemented into the domestic law of all EU members. One of the main conclusions (paragraph 3– page 24) is that all member States indicated that the “Directive has been implemented without major problems”. This supports the view that inclusive pricing is an acceptable method of price marking goods to ensure consumers have transparent and unambiguous information.

Conclusion

I recognize members wish for a debate on the important issue of “inclusive” versus “exclusive” pricing.

In addition there is legitimate concern about the issue of "rounding".

Irrespective of the final outcome of the "inclusive" versus "exclusive" debate – I am clear that the most effective way to deal with this issue is to bring forward a standalone Price Marking (Jersey) Law. This will enable the States to make the appropriate Regulations which will be clearly identified as consumer protection measures rather than “attached” to the GST Law.

I can advise members that advice has been received and that drafting could be undertaken immediately.

I would propose to lodge a stand alone law which would permit the States to debate the issue as a stand alone proposition and consider amendments members may wish to lodge and debate.

I would undertake to lodge the draft Law before the summer break.

On this basis I would urge Deputy Breckon to withdraw his amendments or failing that, for members to reject the amendments in their entirety.