



Jersey

## GOODS AND SERVICES TAX (AMENDMENT) (JERSEY) LAW 2008

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## GOODS AND SERVICES TAX (AMENDMENT) (JERSEY) LAW 2008

**A LAW** to amend the Goods and Services Tax (Jersey) Law 2007

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<i>Adopted by the States</i>	<i>12th March 2008</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>9th October 2008</i>
<i>Registered by the Royal Court</i>	<i>24th October 2008</i>

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

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### **1 Interpretation**

In this Law “principal Law” means the Goods and Services Tax (Jersey) Law 2007<sup>1</sup>.

### **2 Article 5 amended**

For Article 5(1)(a) of the principal Law there shall be substituted the following sub-paragraph –

“(a) the usual place of residence of a body corporate or of any other person that is not an individual is the place where its business is managed and controlled;”.

### **3 Article 31 amended**

After Article 31(5) of the principal Law there shall be inserted the following paragraph –

“(6) The Comptroller may, by general direction, make provision about the value of a supply of goods or services, and such a direction, so far as it is not inconsistent with this Law or the Regulations, shall

be taken into account for the purposes of this Law and the Regulations.”.

#### **4 Article 32 amended**

After Article 32(3) of the principal Law there shall be inserted the following paragraph –

“(4) The Comptroller may, by general direction, make provision for the evaluation of imported goods, and such a direction, so far as it is not inconsistent with this Law or the Regulations, shall be taken into account for the purposes of this Law and the Regulations.”.

#### **5 Article 42 amended**

For Article 42(1) of the principal Law there shall be substituted the following paragraph –

“(1) A registered person who supplies goods or services shall issue to the recipient an invoice in respect of the supply, except to the extent that it is otherwise provided under Article 43(1).”.

#### **6 Article 43 amended**

After Article 43(1)(d) of the principal Law there shall be inserted the following sub-paragraph –

“ ;  
(e) providing that any or all of the requirements of Article 42 shall not apply in respect of retail supplies of goods or services.”.

#### **7 Article 52 amended**

In Article 52(1)(b) of the principal Law, for the word “GST;” there shall be substituted the words “GST; or”.

#### **8 Article 56 substituted**

For Article 56 of the principal Law there shall be substituted the following Article –

##### **“56 Other relief**

- (1) The States may by Regulations make provision for enabling or requiring the remission or refund of GST, or the giving of relief from GST, in such circumstances as the Regulations prescribe.
- (2) The Comptroller may, by direction, make provision for enabling or requiring the remission or refund of GST, or the giving of relief from GST, in such circumstances as the direction specifies.”.

**9 Article 57 substituted**

For Article 57 of the principal Law there shall be substituted the following Articles –

**“56A International services entity**

For the purposes of this Part, an entity is an “international services entity” while its name is listed under Article 59(1) or (5).

**57 GST not chargeable on supplies to international services entity**

- (1) GST shall, despite anything else in this Law, not be chargeable on the supply of goods, or of a service, to an international services entity if –
  - (a) the conditions set out in paragraph (2) are satisfied; and
  - (b) any requirements that the States may by Regulations prescribe for the purposes of this Article are met in relation to the goods or service, the supply and the international services entity.
- (2) In the case of the supply of –
  - (a) goods, the goods are to be used or held for the purpose of any business carried on by or through the international services entity; or
  - (b) a service, the service is supplied for the purpose of any business carried on by or through the international services entity.

**57A International services entity not taxable person**

A supply of goods or of a service, being a supply made by an international services entity, shall not be a taxable supply unless any requirements that the States may by Regulations prescribe for the purposes of this Article are not satisfied in relation to the goods or service, the supply or the international services entity.”.

**10 Article 59 substituted**

For Article 59 of the principal Law there shall be substituted the following Article –

**“59 Listing of international services entities**

- (1) The Comptroller shall enter the name of an entity on a list kept by the Comptroller for the purposes of this Part if –
  - (a) application is made to the Comptroller for the entry;

- (b) the Comptroller is satisfied that the entity meets the requirements of Article 60; and
  - (c) the prescribed fee has been paid in respect of the application.
- (2) The Comptroller shall remove the name of an entity from that list if –
  - (a) the entity applies to the Comptroller for the name to be removed;
  - (b) any periodic or other sum prescribed by the Regulations is not paid in respect of the entity by the date prescribed by the Regulations; or
  - (c) the Comptroller is not satisfied that the entity meets the requirements of Article 60.
- (3) An international services entity the name of which is on the list kept by the Comptroller for the purposes of this Part may keep its own list of entities if authorized under paragraph (4) to do so.
- (4) The Comptroller shall, by annotation against the name of an international services entity on the list kept by the Comptroller for the purposes of this Part, authorize the entity to keep its own list of entities if –
  - (a) application is made to the Comptroller for authority for the international services entity to maintain its own list;
  - (b) the Comptroller is satisfied that the international services entity is registered to carry on trust company business under the Financial Services (Jersey) Law 1998; and
  - (c) any requirements that the States may by Regulations prescribe for the purposes of this Article are met in relation to the international services entity.
- (5) An international services entity while so authorized may include on its own list the name of any entity –
  - (a) in relation to which the international services entity carries on trust company business within the meaning of the Financial Services (Jersey) Law 1998;
  - (b) that meets the requirements of Article 60; and
  - (c) that is not a person or arrangement prescribed by Regulations, or specified by direction, under Article 60(1)(g) unless the Regulations otherwise provide or the direction otherwise provides.
- (6) The Comptroller shall revoke that authority of an international services entity if –
  - (a) the international services entity applies to the Comptroller for the revocation of the authority; or
  - (b) the Comptroller is not satisfied that the international services entity meets the conditions referred to in paragraph (4)(b) or the requirements (if any) referred to in paragraph (4)(c).
- (7) If the fee referred to in paragraph (1)(c) or the sum referred to in paragraph (2)(b) is calculated on the basis of numbers (or other

characteristics) of entities, the Comptroller may accept what he or she considers to be a fair estimate, or reasonable prediction, of the fee or sum in cases where the precise calculation of the fee may be impracticable.”.

## 11 Article 60 substituted

For Article 60 of the principal Law there shall be substituted the following Article –

### “60 Entities eligible for listing as international services entities

- (1) An entity meets the requirements of this Article if it is –
  - (a) a body corporate that meets the conditions set out in paragraph (2);
  - (b) a trustee (in the trustee’s capacity as a trustee of one or more trusts within the meaning of the Trusts (Jersey) Law 1984) that meets the conditions set out in paragraph (2);
  - (c) a partnership (which, in this Article, includes a limited partnership and a limited liability partnership) that meets the conditions set out in paragraph (2);
  - (d) an Anstalt, Stiftung, or foundation, that meets the conditions set out in paragraph (2);
  - (e) a collective investment fund;
  - (f) an unregulated fund; or
  - (g) a person or arrangement prescribed by Regulations made by the States, or specified by direction, that meets the conditions set out in paragraph (3).
- (2) Those conditions are, in respect of any entity referred to in paragraph (1)(a), (b), (c) or (d) –
  - (a) except as provided in sub-paragraph (b), that all of the following requirements are met –
    - (i) not more than 10% in value of all the supplies made by the entity of goods and services are made to individuals who belong in Jersey,
    - (ii) to the extent that the value of all the supplies of goods or services made by the entity in Jersey exceeds 10% of the value of all supplies of goods and services made by the entity, the supplies in Jersey are made only to an international services entity,
    - (iii) no individual who belongs in Jersey has the effective use, or the effective enjoyment, of any asset owned or administered by the entity,
    - (iv) no individual who belongs in Jersey has the effective use, or the effective enjoyment, of any goods, or service, supplied to or by the entity,

- (v) such other requirements in respect of the entity as the States may prescribe by Regulations; or
  - (b) if not all of the requirements set out in sub-paragraph (a) are met in respect of the entity, that both of the following requirements are met –
    - (i) the Comptroller is satisfied that the main purposes and main functions of the entity –
      - (A) are substantially consistent with the requirements set out in sub-paragraph (a), and
      - (B) are not the avoidance, or reduction, of the liability to GST of an individual who belongs in Jersey,
    - (ii) the Comptroller approves the entity for the purposes of this Article.
- (3) Those conditions are, in respect of any entity referred to in paragraph (1)(g), that both of the following requirements are met –
  - (a) the Comptroller is satisfied that the main purposes and main functions of the entity are not the avoidance, or reduction, of the liability to GST of an individual who belongs in Jersey;
  - (b) the Comptroller approves the entity for the purposes of this Article.
- (4) The condition set out in paragraph (2)(a)(iii) or (iv) shall be taken to be satisfied in a case or circumstances where, despite the fact that that clause would not, but for this paragraph, be satisfied, the Comptroller specifies by direction that the condition shall be taken to be satisfied.
- (5) In this Article, a reference –
  - (a) to a collective investment fund is a reference to a collective investment fund within the meaning of the Collective Investment Funds (Jersey) Law 1988;
  - (b) to an unregulated fund is a reference to an unregulated fund within the meaning of the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008.
- (6) For the purposes of this Article, an individual shall be treated as belonging in Jersey if –
  - (a) the individual has an establishment there and no fixed establishment elsewhere in the world;
  - (b) the individual has no establishment anywhere in the world but the individual's usual place of residence is in Jersey; or
  - (c) the individual has establishments both in Jersey and elsewhere in the world and the individual's establishment at which, or for the purposes of which, goods, services or assets are most directly used or enjoyed or to be used or to be enjoyed is in Jersey.”.



**12 Articles 61 and 62 repealed**

Articles 61 and 62 of the principal Law shall be repealed.

**13 Article 63 substituted**

For Article 63 of the principal Law there shall be substituted the following Article –

**“63 Notice**

- (1) The Comptroller shall serve notice on a person who applies for the entering of a name on a list kept by the Comptroller for the purposes of this Part, being notice in writing that specifies whether the Comptroller has entered the name and the date when the entry (if any) has effect.
- (2) The Comptroller shall serve notice on an international services entity if the Comptroller proposes (otherwise than in a response to an application from the international services entity) to remove the entity’s name from a list kept by the Comptroller for the purposes of this Part, being notice in writing of that proposal and the date when the removal is to have effect.
- (3) The Comptroller shall serve notice on a person who applies for authority under Article 59(4), being notice in writing that specifies whether the Comptroller has granted the authority and the date when the authority (if any) takes effect.
- (4) The Comptroller shall serve notice on an international services entity if the Comptroller proposes (otherwise than in a response to an application from the international services entity) to revoke the entity’s authority granted under Article 59(4), being notice in writing of that proposal and the date when the revocation is to have effect.”.

**14 Article 66 substituted**

For Article 66 of the principal Law there shall be substituted the following Article –

**“66 Opportunity to be heard**

- (1) The Comptroller shall not refuse to enter a name on, and shall not (otherwise than in response to an application from the relevant international services entity) remove a name from, a list kept by the Comptroller for the purposes of this Part without first giving either the person who applied for its entry on the list or the relevant international services entity an opportunity to be heard on the question whether the name should be on the list.

- (2) The Comptroller shall not refuse to grant authority under Article 59(4), and shall not (otherwise than in response to an application from the relevant international services entity) revoke any such authority, without first giving either the person who applied for the authority or the relevant international services entity an opportunity to be heard on the question whether the authority should be granted or revoked (as the case requires).”

#### **15 Article 67 amended**

In Article 67(2) of the principal Law, for the words “as customs duty” there shall be substituted the words “as if it were customs duty”.

#### **16 Article 84 amended**

In Article 84(2) of the principal Law –

- (a) for sub-paragraph (m) there shall be substituted the following sub-paragraph –
  - ‘(m) an application, removal of a name, revocation of an authority, or acceptance of an estimate or prediction under Part 12;’;
- (b) for sub-paragraph (z) there shall be substituted the following sub-paragraph –
  - ‘(z) the removal, under paragraph 16 of Schedule 1, of an entity from the registration of a group;’.

#### **17 Article 94 amended**

After Article 94(2) of the principal Law there shall be inserted the following paragraphs –

- “(3) Regulations under paragraph (1) may specify that any amount of GST, or any amount that includes GST, be rounded to the nearest penny and may specify rules for that rounding.
- (4) Paragraphs (2) and (3) are included for the avoidance of doubt and do not limit the generality of paragraph (1).”.

#### **18 Article 97 amended**

For Article 97(3) and (4) of the principal Law there shall be substituted the following paragraphs –

- “(3) The States may by Regulations prescribe the fees that shall accompany the service or giving of instruments, documents, or information, referred to in this Article, as well as any other fee, sum or amount for which this Law makes provision.
- (4) In prescribing such fees, sums or amounts, the States may take into consideration such matters as they think fit, and such fees, sums or amounts may be prescribed so as to raise income in excess of the

amount necessary to cover the expenses of the Comptroller, and of the Agent of the Impôts, in discharging their functions in respect of GST.”.

## 19 Article 100 amended

In Article 100 of the principal Law –

(a) after paragraph (2) there shall be inserted the following paragraph –

“(2A) A reference in paragraph (2)(c) or (d) to a partnership includes a limited partnership and a limited liability partnership.”;

(b) after paragraph (6) there shall be inserted the following paragraphs –

“(6A) Regulations, other than Regulations amending a provision of this Law, may –

(a) allow a matter specified in the Regulations that relates to GST on the importation of goods to be determined by the Agent of the Impôts; or

(b) make a matter specified in the Regulations that relates to GST on the importation of goods the subject of an approval or decision of the Agent of the Impôts or agreement with the Agent of the Impôts or subject to a condition imposed by the Agent of the Impôts.

(6B) Article 98 shall apply to a determination, approval, or condition, made, given, or imposed, by the Agent of the Impôts in the same way as it applies to a determination, approval, or condition, made, given, or imposed, by the Comptroller.

(6C) Paragraphs (6A) and (6B) do not exclude the application of paragraph (6) in relation to a matter that relates to GST on the importation of goods.”.

## 20 Paragraph 1 of Schedule 1 amended

For paragraph 1(2) of Schedule 1 to the principal Law there shall be substituted the following sub-paragraph –

“(2) This paragraph is subject to Article 57A in relation to supplies made by an international services entity, being an international services entity within the meaning of that Article.”.

## 21 Paragraphs 12 – 16 of Schedule 1 substituted

For paragraphs 12 – 16 of Schedule 1 to the principal Law there shall be substituted the following paragraphs –

### “12 Eligibility for grouping

(1) For the purposes of this Schedule, 2 or more entities, being –

- (a) 2 or more bodies corporate;
  - (b) one or more partnerships and one or more bodies corporate,  
are eligible to be treated as members of a group if the conditions of sub-paragraphs (2), (3) and (4) are satisfied.
- (2) The first condition is that, in the opinion of the Comptroller, each entity has one or more of the following in Jersey –
- (a) its usual place of residence;
  - (b) a business establishment;
  - (c) a fixed establishment.
- (3) The second condition is that, in the opinion of the Comptroller –
- (a) one of the entities controls all of the others;
  - (b) one person (whether or not an individual) controls all of the entities; or
  - (c) 2 or more individuals carrying on a business in partnership control all of the entities.
- (4) The third condition is that each entity satisfies the Comptroller that it is, taken by itself, liable to be registered by virtue of paragraph 1 or that it –
- (a) makes taxable supplies; or
  - (b) is carrying on a business and intends to make taxable supplies in the course of or furtherance of that business.
- (5) For the purposes of this paragraph and paragraphs 13 – 16 –
- (a) an entity shall be taken to control an entity if –
    - (i) the first entity is empowered by an enactment to control the second entity's activities,
    - (ii) the first entity is the second entity's holding company, or
    - (iii) in the opinion of the Comptroller, the first entity exercises substantial control in fact over the affairs of the second entity;
  - (b) one or more individuals shall be taken to control an entity in the circumstance that –
    - (i) if the one or more individuals were a company, they would be the entity's holding company, or
    - (ii) in the opinion of the Comptroller, they exercise substantial control in fact over the affairs of the entity; and
  - (c) a partnership includes a limited liability partnership, but excludes a partnership (within the meaning of Article 11) that is not treated as a person by virtue of Article 11.

**13 Groups of entities**

- (1) The Comptroller may, on application, register as a group 2 or more entities that are eligible to be treated as members of a group.
- (2) The Comptroller shall do so by notice in writing to the entity that is to be the representative member of the group.
- (3) The registration shall take effect on and from the beginning of a prescribed accounting period specified in the notice.
- (4) The entities shall then be treated as members of a registered group for the purposes of this Law, and one of them, specified in the notice, shall be taken to be the representative member.
- (5) An application under this paragraph with respect to any entities shall be of no effect unless made –
  - (a) by one of those entities or by the person controlling them;
  - (b) not less than 90 days before the day on and from which the registration is to take effect, or at such later time as the Comptroller may allow; and
  - (c) in accordance with any requirements imposed by or under this Law.
- (6) The Comptroller may refuse an application made under this paragraph if it appears to the Comptroller necessary to do so for the protection of GST revenue, but shall not otherwise refuse such an application.

**14 Consequences of registration as group**

If entities are treated as members of a registered group for the purposes of this Law, then for the purposes of this Law –

- (a) any business carried on by a member of the group shall be treated as carried on by the representative member of the group;
- (b) the supply of goods or services by a member of the group to another member of the group shall be disregarded;
- (c) any other supply of goods or services by or to a member of a group shall be treated as a supply by or to the representative member of the group;
- (d) GST paid or payable by a member of the group on the importation of goods shall be treated as paid or payable by the representative member and the goods shall be taken to have been imported by the representative member; and
- (e) the members of the group shall be liable jointly and severally for any GST due from the representative member.

**15 Variation of registration as group**

- (1) The Comptroller may, on application, vary the registration of a group by adding, removing or substituting entities as members of the group, or cancel the registration of a group.
- (2) The Comptroller shall do so by notice in writing to the entity that is or is to be the representative member of the group.
- (3) An entity shall not be added or substituted as a member of a group unless eligible to be treated as a member of the group.
- (4) Any such variation or cancellation shall take effect on and from the beginning of a prescribed accounting period specified in the notice.
- (5) An application under this paragraph with respect to any entities shall be of no effect unless made –
  - (a) by one of those entities or by the person controlling them;
  - (b) not less than 90 days before the day on and from which the variation is to take effect, or at such later time as the Comptroller may allow; and
  - (c) in accordance with any requirements imposed by or under this Law.
- (6) The Comptroller may refuse an application made under this paragraph if it is an application to add or substitute an entity and it appears to the Comptroller necessary to refuse the addition or substitution for the protection of GST revenue.
- (7) The Comptroller shall not otherwise refuse an application made under this paragraph.

**16 Removal from group where change in circumstances**

- (1) This paragraph applies to an entity that is a member of a group registered under paragraph 13.
- (2) If it appears to the Comptroller that –
  - (a) the entity does not fulfil the condition set out in paragraph 12(2);
  - (b) the entity has ceased to be controlled by the entity, person, or individuals carrying on business in partnership, that controls or control the other entities in the group;
  - (c) the condition set out in paragraph 12(3) is no longer fulfilled in respect of the group; or
  - (d) the entity does not fulfil the condition set out in paragraph 12(4),the Comptroller shall, by notice in writing to the entity and to the entity, person, or individuals carrying on business in partnership, that controls or control (or, in the case referred to in clause (c), last controlled) the other entities in the group, remove the entity from registration of the group.

- (3) The Comptroller shall not do that without first giving the parties that are to be given that notice an opportunity to be heard on the question of the removal.
- (4) The removal shall have effect on and from such date as the Comptroller specifies in the notice.”.

**22 Paragraph 1 of Schedule 5 amended**

In paragraph 1(j) of Schedule 5 to the principal Law, for the word “authorized” there shall be substituted the word “approved”.

**23 Schedule 9 amended**

After paragraph 2 of Schedule 9 to the principal Law there shall be inserted the following paragraph –

**“3 Amendments made by Goods and Services Tax (Amendment) (Jersey) Law 2008**

The amendment of a provision of this Law by the Goods and Services Tax (Amendment) (Jersey) Law 2008<sup>2</sup> shall not affect the validity, or prevent the continuation of the operation, of anything done, or any Regulation made, under the provision before the amendment takes effect, if the same thing could have been done, or the same Regulation made, under that provision immediately after that amendment of the provision.”.

**24 Citation and commencement**

This Law may be cited as the Goods and Services Tax (Amendment) (Jersey) Law 2008.

**A.H. HARRIS**

*Deputy Greffier of the States*

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<sup>1</sup> *chapter 24.700*  
<sup>2</sup> *L.36/2008*