

Treasury and Resources

Summary of Responses

GREEN PAPER: INTERNATIONAL SERVICES ENTITY REVIEW

23 September 2011

SUMMARY OF CONSULTATION DETAILS

This report summarises the responses to the Green Paper relating to the International Services Entity review, which was issued on 5 August 2011. The consultation period ran until 16 September 2011.

International Service Entity (**ISE**) status is an alternative to registration for Goods and Services Tax (**GST**). The views of business were sought on how well the ISE regime operates within the GST system. Together with a general review, the consultation also sought views on:

- Achieving greater equity between the ISE fees charged;
- Reducing the compliance burden associated with ISEs; and
- Raising additional revenue from ISEs.

In total, 15 responses were received to the Green Paper, of which one was from an individual, nine were from businesses and five were from representative bodies. These included a consolidated response from Jersey Finance Limited which summarised the responses which it had separately received to the Green Paper.

Many of the respondents did not answer the specific questions posed by the Green Paper but instead wrote more generally about the subject. The responses which specifically addressed the 24 questions posed are summarised below along with the general tenor of those which addressed the issues more generally.

A list of all those who responded to the Green Paper is included in the attached appendix.

OVERVIEW OF CONSULTATION RESPONSES

1. The ISE regime is considered to be working well, and to be achieving its goals of raising revenues from the finance industry in an administratively simple way.
2. Businesses support the retention of the ISE regime.
3. Businesses generally consider that the fee structure is not equitable, but opinions are divided on the extent to which the simplicity of the current system should be sacrificed to improving fairness.
4. The banking industry favours an across the board increase in fees as the most efficient way to increase revenues from the ISE regime for their industry. They consider that this would best retain the simplicity of the regime while ensuring the industry contributes to GST revenues.
5. Representatives from other industries consider that the level of fees charged should better reflect the benefit obtained by individual companies. A number of ways to achieve this were suggested, with no clear favourite identifiable.
6. Aspects of the operation of the regime are considered unclear, in particular in relation to the treatment of companies in liquidation and the calculation of the number of vehicles administered by trust companies. Further guidance or legislation in these areas would be welcomed.

MINISTER'S/DEPARTMENT'S RESPONSE TO CONSULTATION

The Minister would like to thank all those who took the time to respond to the Green Paper. The responses which were received were both informative and well considered.

It is clear that businesses in Jersey value the ISE regime and consider that on the whole it achieves its aims of collecting revenues with a minimum of cost and complexity. However, the burden of the ISE regime is being felt more heavily in some sectors, particularly in the trust industry, than in others. Further work must be

done to identify a way of spreading the burden more fairly. A White Paper will be issued in 2012.

Aspects of the ISE legislation are considered confusing and legislation will be brought forward to clarify these as part of the 2013 Budget proposals.

As an initial step, the ISE fee charged to banks will be increased from £30,000 to £50,000 with effect from 2012 onwards. This is anticipated to generate additional revenues of approximately £600,000 million in 2012. Total revenues from the ISE regime in 2012 are therefore anticipated to be approximately £10 million.

SUMMARY OF RESPONSES

A summary of the responses to each of the 24 questions asked is included here.

Question 1: Does business support the continued existence of the ISE regime and why?

All businesses which responded were in favour of the retention of the ISE regime, which they feel allows the finance industry to contribute to GST while remaining competitive with other jurisdictions. The certainty and simplicity of the system are considered to be beneficial for both businesses and the Treasury, by minimising the administrative burden associated with GST.

Question 2: Is the regime achieving the aims of collecting revenue from the financial services industry in an administratively simple manner and without placing the Island at a competitive disadvantage?

All but one of the respondents to this question agreed that the ISE regime is achieving its aims in a satisfactory manner. Some respondents suggested that the level of the fees as currently charged, or one respondent suggested, as proposed, would not put the Island at a competitive disadvantage but that the position could change if fees were increased in future. One respondent disagreed, submitting that the fee structure applied to trust company businesses in particular had already led to business being transferred away from Jersey.

Question 3: What would be the implications if the ISE regime were abolished and businesses were subject to the standard GST rules?

Respondents to this question considered that the consequences of abolishing the ISE regime would be significant. Potential negative consequences included:

- Increased compliance and administrative burden.
- Increased cost of compliance, including systems changes.
- Increasing cost of doing business which would reduce Jersey's international competitiveness.
- Reduction in overall GST receipts as most services provided would be free of GST as they are provided to non-residents.

Question 4: Are there any alternatives to the ISE regime which would meet the aims outlined above?

No specific alternatives were identified; all respondents agreed that the ISE regime works well.

Question 5: Are there any other business sectors, either within or outside of the financial services industry, which should be automatically eligible for ISE status and why? If yes, how should the ISE fee be calculated for these sectors?

Responses to this question were mixed, with just over one quarter of those responding saying that no changes were required to the current rules. Other respondents suggested that all businesses whose clients are mainly outside Jersey should be automatically eligible for ISE status, as should all companies involved in the finance industry, or at a minimum all companies taxed as Financial Services Companies under the Income Tax (Jersey) Law 1961.

Question 6: Have any businesses turned down Jersey based clients because it would risk their ability to claim ISE status under the general criteria? Please provide detail.

No respondents indicated that they were aware of Jersey clients being turned away by businesses which were concerned about the risk of losing ISE status.

Question 7: Is the retention of eligibility for ISE status under the general criteria justifiable and why?

All of those who responded to this question agreed that the retention of the general criteria for eligibility for ISE status was justifiable. The following reasons were given:

- It gives businesses outside the financial services industry but whose clients are wholly or mostly outside the Island the ability to apply for ISE status;
- It allows industry to remain competitive on an international stage and allows collection of revenues by the Treasury which would not otherwise be due;
- Ensures flexibility;
- Encourages diversity by not putting unnecessary barriers before non-financial services businesses established in Jersey whose clients are overseas.

Question 8: Are the fee levels currently charged to ISEs considered equitable? If not, why not? How could the equity of ISE fees be improved?

Of the 12 responses to this question, only 2 considered that the current ISE fee structure is completely equitable. However, of the 10 who consider it to be inequitable, 4 consider that its potential inequities are outweighed by the benefits of simplicity which it brings.

Complaints about the current structure mostly focussed on the impact on trust companies. Respondents point out that the smallest trust company will pay the same basic fee (of £7,500) as the largest. Fees charged in respect of client vehicles cannot always be recharged, and will therefore be suffered by the trust company business. The effect of the basic fee, fees charged in respect of affiliated companies and fees charged in respect of client vehicles is that the trust industry pays the bulk of the fees collected through the ISE regime. This does not reflect the level of profitability of the industry, which is generally less profitable, both in absolute terms and on a per-headcount basis than either the banking or funds industries in the Island.

These respondents suggest that it would be more equitable if the fee structure for trust companies or for all types of ISE was amended to better reflect the benefit obtained by the entity. They suggest that a structure with a range of fees, based on

some measure of the entity's activity levels such as number of employees, turnover or profitability would remove some of this inequity.

Question 9: How could the ISE fee payable by banks be amended such that the fee is related, wholly or partly, to the size of the relevant bank? What issues would be created if the proposal outlined in paragraph 3.3.5. were adopted and why? Could this tiered approach be better based on other criteria?

Respondents involved in the banking sector and their representative bodies suggest that there may be benefits to using a tiered approach to setting ISE fees for individual banks, but that on balance the benefits of retaining the simplicity of the current system of a single flat fee outweigh the perceived inequities. They consider that the fee scale model proposed in paragraph 3.5.5 could lead to very significant fee increases for some banks which could lead them to opt out of the regime, with a commensurate drop in revenues from ISE fees overall.

Respondents not involved in the banking sector considered that tiered fees should apply to all industries, including banks. They suggested that basing the fees on the level of an individual institution's income may not accurately reflect the level of benefit association with holding ISE status. Other options suggested were linking the fee to:

- The size of the bank's deposit base.
- Number of employees (though other respondents suggested this might be seen as a tax on jobs or could distort employment decisions).
- Turnover.

Question 10: Does the current basis of calculation result in the ISE fee paid by TCBs being commensurate to the size of their business? If not, why not?

All respondents involved in the trust industry and their representative bodies considered that the fact that the basic fee of £7,500 is payable by all trust companies (TCBs), regardless of their size or number of employees, means that the fee paid by TCBs is not commensurate to the size of their businesses.

Respondents within the trust industry also noted that there is no consistency within the industry regarding the recharging of the element of the fee relating to the number

of vehicles administered. As a result, some TCBs may be suffering a higher fee than others, for reasons unconnected with their size.

Of the three responses received from outside the trust industry, one agreed with the responses from the trust industry. The other two considered that the current basis does reflect the size of the individual TCB as the fee payable in respect of vehicles administered increases in line with the number of clients.

Question 11: Is there a justification for the difference in the flat rate, standard fee charged to fund functionaries/FSBs (£2,500) and that charged to TCBs (£7,500)? What would be the impact if fund functionaries/FSBs were charged the same flat rate fee as TCBs and why?

There was a range of opinion in response to this question. Two respondents considered that fees should be lower for fund businesses in order to reflect the efforts being made to attract this industry to the Island. Respondents from the trust industry considered there was no justification for the difference and that fund businesses should be charged on the same basis as TCBs.

Respondents from outside the trust industry noted that although there was no apparent justification for the difference in fees, many fund businesses are also TCBs and therefore already pay as both TCBs and as fund businesses. They questioned whether any significant increase in fees would be received.

Question 12: Should the fee charged to fund functionaries/FSBs be related to the size of their business and why? If yes, how should the fee be calculated?

Two respondents considered that the fees charged to fund businesses should not be related to the size of their businesses, on the basis that the increased fees would be passed on to clients which could make Jersey more expensive for this type of business and put the Island at a competitive disadvantage.

The other respondents considered that the fee should be related to the size of the business and suggested the following bases for the calculation of the fee:

- Gross income
- Net income

- Number of employees
- Number of clients
- Annual income, as used by the JFSC for calculating fees
- Turnover

Question 13: How could the ISE fee charged to “other entities” more accurately reflect the benefit these businesses obtain from ISE status?

Respondents differed sharply in their opinions on this issue. In total, 4 responses were received, of which

- One considered that the fee should be of a similar level to that charged to fund functionaries and TCBs;
- One considered that the fee should be based on the number of staff and turnover;
- One considered that more classes of “other entities” should be inserted into the law which would thereby allow fees to be set at a more appropriate level; and
- One considered that the effort involved in obtaining sufficient information to establish the benefit available to each entity would outweigh the benefit of ISE status.

Question 14: In the context of TCBs, what would be the implications of the change to the definition of “vehicle” outlined in paragraph 3.4.2. and why?

Respondents considered that amending the definition of a “vehicle” for this purpose could slightly reduce the burden of administering the ISE regime for TCBs, but that the inevitable result would be an increase in the fees paid by TCBs. Fees would be difficult to recover from those entities not currently subject to the fee (because they are not eligible for ISE status), acting as a disincentive for these entities to come to Jersey and placing the Island at a competitive disadvantage.

Question 15: How could the general criteria in Article 60 of the GST law be improved?

Respondents suggested that the rules are ambiguous and should be clarified, in particular subparagraphs 3 and 4 of Article 60.

Question 16: What aspects of the ISE regime discourage businesses which are automatically eligible to be ISEs from seeking such status? Specific examples would be helpful.

All responses to this question identified the cost of the ISE fee as the key criterion, indicating that businesses will compare the level of irrecoverable GST they would incur together with the cost of complying with the regime if they did not opt for ISE status, with the level of the ISE fee charged.

Two respondents suggested that a lack of understanding of the regime might also be a factor.

Question 17: What factors are included in the decision making process that businesses go through when deciding whether to opt for ISE status? Is the decision based on a straight-forward comparison of costs, or are other factors involved? If yes, what are those factors?

Again, cost was cited as a key factor, together with the benefits of a simpler administrative burden, avoidance of the need to implement systems changes and competitiveness.

Question 18: What practical changes could be considered which would improve how ISE status works? (e.g. registration, payment, making supplies to ISEs etc.)

The changes identified were:

- Clarifying the ISE position of companies in liquidation;
- Issuing guidance regarding certain elements of the definition of a “vehicle” for the purposes of calculating the fees payable by TCBs;
- Introducing statutory deadlines for applying for ISE status and the payment of fees.

Question 19: The Treasury Minister committed in his Budget speech to increase the total revenue raised from ISE fees. What is the most appropriate way of achieving this? An “across the board” increase in all ISE fees? A

tiered approach to each category of ISE? A broadening of the number of businesses which can become ISEs?

Those banks and their representative bodies which responded were strongly in favour of an “across the board” increase in fees, on the basis that it would retain the simplicity of the current regime while generating the additional revenues identified. They note that the increase would be likely to lead to some companies opting out of the ISE regime. They note that this would lead to an increase in overall GST revenues, although the precise amount of the increase would not necessarily match the amount of ISE fee revenue foregone.

Respondents not involved in the banking sector favoured the introduction of tiered fees reflecting differences in business size, over across the board increases. A minority of respondents noted that the trust industry had suffered from the increase in the basic ISE fee in 2011 and suggested that a further increase for this sector would not be appropriate at this time.

Question 20: What would be the impact of the potential increases in ISE fees outlined in section 3.2. and why?

As indicated, respondents involved in the banking sector favoured increasing fees on an across the board basis for their industry.

Respondents suggested that a blanket increase in fees would have a negative effect on the trust industry. Smaller companies would be more inclined to opt out of the ISE regime, which would expose them to the complexities and cost of administering GST. Larger companies would be more likely to remain as ISEs but Jersey’s competitiveness could be damaged as companies sought to pass increased fees on to their clients.

Question 21: What would be the impact if managed managers were charged a flat rate fee of £1,500 and why?

Only three responses were received to this question. Respondents considered that there were two main risks associated with increasing this fee in this way:

- Managed managers would undertake a cost/benefit analysis to decide whether to remain as ISEs. Respondents considered that most managed

managers derive relatively little benefit from being ISEs and that therefore many would opt out of the regime. The loss of revenue from ISE fees foregone would be unlikely to be recouped in additional GST receipts;

- Imposing an additional charge on this type of business could jeopardise Jersey's ongoing attempts to attract more family office structures to the Island and therefore put Jersey in an uncompetitive position.

Question 22: Is GST Direction 2008/17 still justified? Why? Would your answer be different if the standard managed manager fee was increased to £1,500? Is the current level of the fee appropriate even if the managed manager fee remains at £500?

Respondents consider that the Direction is still justified although they consider it would be more appropriate for it to be included in legislation rather than by Direction. Concerns were raised that increasing the fee charged could lead to this mobile business relocating outside Jersey.

Question 23: In light of the answers to questions above, would your suggestions improve the equity of the fees charged?

Five responses were received to this question; all but one of which considered their suggestions would improve the equity of the ISE fee structure.

Question 24: Are there any further comments that you would like to make in relation to ISEs which have not been adequately covered by the answers to the questions set out above?

Respondents noted that the finance industry is predominantly an export industry and that as such it is not appropriate to charge domestic consumption taxes to it. They considered that increasing costs in Jersey could lead to Jersey's export industries being less competitive internationally.

Concern was expressed about the perception that the finance industry was being overburdened with both tax and regulatory costs, that the industry is under significant pressures and that international groups are continually monitoring the efficiency of their operations. Business has already left Jersey because it compares unfavourably with other jurisdictions.

One respondent expressed concern that both the ISE and certain regulatory fee structures were having the effect of encouraging business to consolidate their activities into a smaller number of entities, thereby exposing the industry to more risk.

Only one respondent suggested that the ISE regime as a whole should be abolished.

Appendix: List of respondents

Barclays Wealth Intermediaries & International

Deloitte LLP

dms Jersey Limited

Equinox Trustees Limited

HSBC group

Institute of Directors

The Jersey Association of Trust Companies

Jersey Bankers Association

Jersey Finance Limited

Jersey Society of Chartered and Certified Accountants

Mekad Limited

RBC Wealth Management

Mr Gino Risoli

Standard Bank

Standard Chartered