STATES OF JERSEY

DRAFT TAXATION (LAND TRANSACTIONS) (JERSEY) LAW 200- (P.185/2007): COMMENTS

Presented to the States on 10th March 2008
by the Corporate Services Scrutiny Panel

STATES GREFFE

COMMENTS

Introduction

This draft Law is a response to an original proposition that “share transfers” (that is the purchase of Jersey property by buying shares in a company) should be subject to stamp duty.

This is a very difficult area to legislate for, and internationally this sort of tax is very rare. The UK does not impose such a tax (although it has been mooted in the past).

Jurat Blampied, in a report commissioned by the States in 2000, recommended that these transactions should not be taxed, because of the complexity and cost of administering it (for the public, businesses and the States). He concluded that –

> “the problems of requiring stamp duty to be paid on the transfer of shares where immovable property is concerned are very considerable indeed”.

Operation of the tax

Under the draft Law, a new tax (LTT) will be charged where there is a transfer of shares in a company which also gives the purchaser the right to occupy residential property in Jersey (Article 3(1)).

The tax will be charged on the greater of the price paid for the shares and the value of the underlying Jersey land, at the same rates as would be charged for stamp duty if the underlying land were sold.

Tax is also charged in other circumstances, which appear to be designed to prevent avoidance of the tax (Article 3 (1)).

The tax is to be paid to the Comptroller, who will issue a receipt. There are 2 enforcement mechanisms if the tax is not paid –

- The Comptroller has the power to directly assess the tax, and charge penalties (Article 12); and
- It is a criminal offence for the secretary and directors of the company to register the share transfer (Article 10).

The original proposition

Proposition P.211/2004, introduced by the Deputy of St. Martin and passed by the States, agreed in principle–

> “that stamp duty should be payable on all transactions of residential [and commercial[1]] immovable property in Jersey undertaken through share transfer at a level equal to the amount which would be payable on a contract of sale of freehold property of the same value before the Royal Court”.

That was a very difficult proposition to implement.

For example, when an unincorporated business is sold, stamp duty is charged on the proportion of the price that relates to Jersey land (whether a shop, a factory or a farm). Applying this to the purchase of shares means that if any company (or group of companies) owns land in Jersey, a proportion of the purchase price of those shares would be subject to Jersey stamp duty. One problem is that many UK shops, banks and other companies operate in Jersey, and some of those will own their own premises; it would be an impossible situation to declare that Jersey stamp duty were payable every time anyone, anywhere in the world, bought shares in one of these non-Jersey companies.

This draft Law is therefore much more restricted than the original proposition –

1. It only applies to residential property, not commercial; and

2. It only applies where the shares also give their owner the right to occupy that property.

Effectively the draft Law prevents the common use of “share transfers” to avoid stamp duty on residential property transactions. That is a desirable objective in itself, but it is narrower than the original proposal.

Issues

There are various issues that the Panel would like to examine, including –

1. Does the tax cover all the transactions that it should, and if not can it be extended without causing major problems?

2. In particular, would there be a practical way to tax commercial property transactions and property investors without damaging Jersey’s international standing?

3. Does the tax catch unintended situations, or charge more tax than it should? (For example the draft Law does not have provisions to deal with properties jointly occupied by more than 2 people).

4. How much tax is this likely to raise, against the probable administrative costs for the States?

5. Will the tax cause any administrative problems for taxpayers? In particular, will the fact that share transfers cannot be registered until the LTT is paid make the process of buying shares slower or more risky?

6. Are the enforcement mechanisms appropriate for this type of tax?

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[1] *There were 2 separate parts of the Proposition, one covering residential property and the other commercial property. Both were identical, and both were passed.*