

Document duty on property company shares

Tax Alert

It's been a long while coming, but as they have been threatening to do for some time, the States of Guernsey voted on 17 May 2017 to change the rules regarding the payment of Document Duty for property companies. So duty will become payable when shares are sold to cause the same duty cost as if the property were itself being purchased.



The obvious two affected situations are where companies are sold in cases involving:

- Open market house sales where the property is held in a dormant Guernsey holding company.
- Local commercial property also held within a company.

When will this happen?

As with any new law it has to pass through the Privy Council and then be introduced into Guernsey law, so its not certain when these conditions will all be met but we know the process is taking place and can realistically expect it to become effective quite soon.

The new regime only applies to Guernsey property; the current Alderney system will continue unchanged.

Charge to be on changes to beneficial ownership

Under the new regime, there does not need to be a conveyance or other registrable document in order for document duty to be applicable to a transaction. Instead, with some exceptions as listed below, duty will become chargeable on all transactions for value which have the effect of conferring on a person a "significant benefit" in real property i.e. the right to enjoy the benefits of ownership without actually owning the property directly. The rates chargeable for the duty under this new regime are to be comparable with those under the current document duty regime. Duty on transfers of property is payable on the consideration paid, where the transaction is at arm's length; otherwise, duty is calculated on the basis of the market value of the realty transferred.

Exceptions

There will be some exemptions and these are to be welcomed. To date where beneficial ownership hasn't changed it has been possible to request a court approved transfer without incurring duty costs but that has not been included in law but rather a matter of practice and an Advocate applying to the court. These new 'formal' exemptions will then help such situations and make matters very much clearer.

1. Family transactions (i.e. transactions between spouses, civil partners and co-habitees between parents and children, grandparents and grandchildren, and great-grandparents and great-grandchildren, between siblings, aunts and uncles, nephews and nieces).
2. Transfers in favour of charities or friendly societies, providers of affordable housing and the States.

3. Transactions occurring when a partnership transfers assets which confer a significant benefit in relation to real property to another partnership (for example, by reason of conversion to a different type of partnership), or to a company, where the partners (or members, where the transfer is to a company), and their respective partnership shares (or shares of the company assets) are the same before and after the transaction.
4. Certain transfers of shares in a company, or a partnership, where the principal use of the real property in respect of which the significant benefit arises, is for the purposes of a business, trade or undertaking operated by that company or a subsidiary.
5. Documents settling property on trust, making a transfer of property from a trustee to a trust beneficiary, or transferring property from retiring to new trustees.
6. Documents conveying property from a company to its beneficial owner or to another member of the same group of companies.
7. Documents transferring property by will, by partage or by conveyance between coheirs.
8. Documents creating or affecting servitudes, wayleaves or covenants.
9. Documents that are Acts of Court evidencing a transfer of property, such as a vesting order, an administration order or an order relating to provision for family and dependants under inheritance legislation, or a vesting order in saisie proceedings.

The inclusion of exemptions then for intra-group transfers, and the sale of a business that happens to include a trading premises, are we feel particularly welcome, as well as those for family arrangements.

Though it is anticipated that the burden of document duty will remain with the purchaser, the new regime makes the purchaser and the vendor jointly and severally liable for duty due. This is therefore something that vendors will need to be aware of as well as purchasers.

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