

Financial and Commercial Law Sub-Committee  
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Corporate Services Scrutiny Panel  
Scrutiny Office  
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By email: [scrutiny@gov.je](mailto:scrutiny@gov.je)

26 January 2022

Dear Panel Members,

**Enveloped Property Transaction Tax**

We are writing in connection with the draft Enveloped Property Transactions Tax (Jersey) Law 202- which has been lodged for debate by the States Assembly on 8 February 2022 and which your Scrutiny Panel is currently reviewing.

We have two concerns in relation to the draft Law.

**Amendment of the Companies (Jersey) Law 1991**

The draft Law introduces a new Article 42 (1AA) into the Companies Law, requiring a Jersey company not to register a transfer of shares which is a “relevant transaction” for the purposes of the draft Law. In our view this is unnecessary and unwise and, as the Law Society sub-committee with specific responsibility for monitoring proposed changes to Jersey's companies legislation, we feel compelled to bring our concerns to your attention.

The obligation to pay EPTT arises when a relevant transaction takes place. The transaction constituting a relevant transaction could be the transfer of shares in a Jersey company but it could equally well not be given the breadth of the definition of relevant transaction - it could be the transfer of shares of a company incorporated anywhere in the world. In all cases the tax liability arises on completion of the transaction and any unpaid tax can be pursued in the usual way.

To raise the prospect of a transfer of shares in a company being void unless a receipt for payment of EPTT is produced to the company risks serious and disproportionate consequences. Shares will have been transferred and people will have relied upon that transfer being effective. Dividends will have been paid, insurance taken out, registrations made, regulatory filings submitted. All such actions would be open to question if at some later stage it transpires that the transfer was made without an EPTT receipt having been produced. To draw an analogy, a contract of employment is not voided because there is no valid receipt to show that Jersey social security was paid. One can imagine the resultant mess: the employer would have carried on paying income to the employee where no valid contract existed; insurance would have been taken out; notifications made to regulators; data protection registrations filed. All of that would subsequently prove wrong because there was no valid receipt for social security. It is this kind of uncertainty for business that we fear could ensue if the Companies Law is amended as proposed. This poses a risk to external investors' confidence in the use of Jersey companies as acquisition vehicles.

It is suggested that the new Article 42(1AA) is simply the equivalent of the existing Article 42(1A) relating to share transfers giving effect to transactions requiring the payment of Land Transaction Tax. But the two types of company involved are very different:

- one company will (by its articles of association) be structured as a vehicle to own Jersey real property and to confer rights of occupation by the ownership of shares;
- the other company (to which the new EPTT would apply) would not be so structured – it would just happen to be the owner of Jersey real property.

Given that the type of companies involved are very different, they should not be treated on an equal footing for these purposes.

#### Use of Acte Opérateur

We are also concerned to hear that a draft Act (an 'Acte Opérateur') has now been lodged pursuant to Article 12 of the Public Finances (Jersey) Law 2019 with a view to seeking to bring the draft Law into immediate effect upon being passed by the Assembly. We are not aware of this course of action having been mentioned to any stakeholders during prior consultations in relation to the draft Law nor are we aware of any precedent for the use of Article 12 (or its predecessor) for the purpose of introducing a brand new tax, let alone amending the Companies Law. We would query whether this is an appropriate use of Article 12.

The draft Law is to be debated by the Assembly in two weeks' time. If the draft Act were to be adopted, the Law would come into force 7 days thereafter. In other words, the suggestion is that brand new tax legislation will be in force in a mere three weeks' time. Yet transacting parties who will be affected by this, whether based in Jersey or elsewhere, will not be aware of the proposed change. Such parties risk finding themselves faced with both a change to the economic context of live transactions - as the London Economics report makes clear, the

introduction of the new tax can be expected to have an effect on the pricing of transactions - and getting up to speed with new compliance obligations, at extremely short notice. This is an issue not just for transacting parties but for their legal advisers, who on completion of a relevant transaction will need to file the relevant forms and pay the tax. Without the relevant forms and supporting materials having been published, how can legal advisers prepare themselves properly for the practical implementation of the legislation?

We are copying this letter to the Minister for Treasury and Resources and to the Minister for External Relations and Financial Services.

Yours sincerely

A handwritten signature in black ink, appearing to be 'I.W.S. Strang', with a horizontal line extending to the right.

Advocate I.W.S. Strang  
Chairman, Jersey Law Society Financial and Commercial Law Sub-Committee