

**John Shenton, Grant Thornton – 15<sup>th</sup> November 2022**

**Subject:** Stamp Duty - Draft Finance (2023 Budget) (Jersey) Law 202- [GT-CI.FID298127]

I write with reference to the Draft Finance (2023 Budget) (Jersey) Law 202- which is scheduled to be debated on 13 December 2022.

I have read, with interest, the proposed changes to stamp duty and these changes would seem to be far wider than the Proposition put forward by Scrutiny (Proposed Government Plan 2022-2025 (p.90/2021); twenty second amendment) as well as the subsequent amendment which was lodged by the Minister for Treasury and Resources (Proposed Government Plan 2022-2025 (p.90/2021); twenty second amendment (P.90/2021 amd. (22)) - amendment)). It being noted that the first proposition was passed by the States 35:11 whilst the second amendment was passed 23:18.

If one looks to the original position lodged by Scrutiny it is clearly stated at paragraph 1 (Background) the following:

*This amendment seeks to raise reasonable tax revenue from those purchasing “Buy to Let” investment properties, second homes and holiday homes by applying a higher rate of Stamp Duty and Land Transaction Tax (LTT) on this category of property purchase. Definitions of these can be stated as:*

- A. *Buy to Let – Purchasing a property specifically to let (rent) out*
- B. *Second home – Any residential property other than a main residence*
- C. *Holiday home – A home that people own in order to holiday in and that is in a different location to the home they usually live in*

In the Draft Finance (2023 Budget) (Jersey) Law 202- it states:

*Higher rate of Stamp Duty on buy-to-lets, etc.*

*Following the States’ adoption of an amendment to Government Plan 2022-25 brought forward by the Corporate Services Scrutiny Panel, proposals have been developed to charge higher rates of Stamp Duty on the purchase of properties that are acquired for any purpose other than to be used as a person’s main residence. This includes buy-to-let properties, second homes, and holiday homes. The higher rate will also be applied to relevant transactions subject to Land Transactions Tax (‘LTT’) and Enveloped Property Transactions Tax (‘EPTT’).*

Given the clear direction of the States Assembly, and the statement within the proposed law that the changes are as a direct result of the “amendment to Government Plan 2022-25 brought forward by the Corporate Services Scrutiny Panel” I find it extremely disturbing that the scope, as drafted, has been substantially increased beyond what was agreed by the States Assembly to include all transactions “that are acquired for any purpose other than to be used as a person’s main residence.”

I note that there is no explanation as to why the scope has been extended. I would have expected, as a minimum, a detailed explanatory note. I am left with the initial impression that the wording of the draft Law is either clumsily drafted, rushed (it being noted that the current Treasury Minister has not long been in post), or has been intentionally drafted to deviate substantially from the agreed original mandate.

I would suggest, on first reading, that the proposed law will potentially catch the following additional transactions (please note that this list is not exhaustive) that were not envisaged when the original matter was debated and agreed by the States Assembly:

1. Inheritance of property by a person who already owns a property;
2. Shared equity, in that the owner of part of the equity (for example, Andium, would not meet the criteria to avoid paying additional duty);
3. Joint ownership between family members (for example joint ownership with parents and children to enable the children to be able to afford to buy a Jersey property);
4. Family ownership (for example, properties bought with the intention of allowing elderly parents or children to reside independently in the property);
5. Property developers acquiring properties to refurbish and sell on;
6. Mixed property acquisitions where the intention is to construct a main residence and a second property;
7. Property developers buying a property with the view of creating new dwellings (for example the acquisition of a house on a large site that would be demolished to build (say) 15 affordable homes).
8. Persons moving to the island;
9. Persons utilising bridging finance;
10. Single properties but having dual title deeds; and
11. Persons acquiring property that needs refurbishment before they are able to occupy it as their main dwelling

I would contend that none of the above examples fit the original requirements as determined by the States Assembly and that the draft Law needs to be urgently updated to reflect this.

It is clear that in examples, 2,5, 6 and 7 above (as a minimum) the sale price of the subsequent new properties would increase due to the additional stamp duty costs and therefore the stated intention of trying to make Jersey property more affordable would not be achieved.

We would specifically not expect property developers to be subject to the additional charge as they clearly do not meet any of the original tests. The acquisition by a property developer is clearly not "Buy to Let" investment properties, second homes and holiday homes. Property developers already are subject to Jersey tax at 20% on the net profit. As a basic and fundamental drafting requirement, I would have expected the draft Law to have specifically excluded property developers. This simple exclusion not only would have met the original remit but would have directly assisted Revenue Jersey in relation to determining whether purchasers were investing or trading in property at purchase. Persons acquiring property would have to determine clearly at point of acquisition whether the purchase was for investment purposes (additional stamp duty but no income tax) or for trading purposes (no additional stamp duty but 20% on net profit).

We would have expected, where there is any uncertainty, for payment to be made and on satisfaction of the relevant criteria (for example, residing in a property for a set amount of time or inhabiting a property after refurbishment) for a refund to be claimed.

It is also noted that the language used in the draft Law is somewhat open to interpretation which I find disturbing for new legislation and would request further clarity.

If one simply looks at the changes proposed under paragraph 47 (Article 1 (interpretation)) a number of concerns arise. In the interpretation section it is noted that main residence is simply defined as "means the property that is occupied as the person's main residence, whether or not it is in

Jersey.” The use of the word occupied is past tense (rather than to be occupied) but we are referring to an acquisition so at point of purchase and the time of liability virtually no properties are actually occupied. The definition of relevant property assumes a future use so would appear to be in direct conflict to the above. The form that will accompany the transfer uses the phrase the “document must be accompanied by a statement by the person to whom the property is transferred as to whether the property is a dwelling acquired for use as the main residence of that person.” The tense is again different that that within the definition of main residence.

The draft law also makes no reference to any time frame for that occupation. For example, if the residential property is uninhabitable then it would appear the extra duty may be due. There is no suggestion that the property will not be occupied at some point in the future, but this does not seem to meet the main residence test but could meet the relevant property test (but is naturally excluded as it fails the main residence test).

If persons are looking to relocate to Jersey what time frame are they allowed to complete the move, as most would have a second home in the UK. If they retain the original property in the UK, for example, to allow family members to reside in it or for it to be available for their use when returning to the UK, or let out, or if there is a delay in selling, will all Jersey acquisitions be considered to be a second home?

Similarly it would also appear that if a person occupied the new property for a week after purchase (assuming that the point above is ignored) could this be sufficient for the additional duty to be avoided?

We would expect the Law to be more specific in all these areas. As stated above, we would have expected, where there is any uncertainty, for payment to be made and on satisfaction of the relevant criteria (for example, residing in a property for a set amount of time, moving to Jersey and selling the existing residence or inhabiting a property after refurbishment) for a refund to be claimed. It is noted that there are some anti-avoidance provisions within the draft Law but there is no detail regarding how these would be applied and to what type of transactions. A blanket anti avoidance provision is not helpful as it would simply increase disputes and add to cost.

Whilst writing we are disappointed that the review of the full stamp duty law has again been delayed. We would suggest that the Law needs to be updated to recognise modern practices and standards. For example we would not expect duty to be payable when properties pass between family members or upon liquidation of a company and the property passes to the beneficial owner.

It seems bizarre that whilst Jersey is holding itself out as a transparent and compliant world leading jurisdiction, it still encourages the retention of property ownership through companies as it economically unpalatable (as stamp duty is due) to de-envelope existing Jersey property to the beneficial owner. There has been significant recent and ongoing publicity in the UK (and the OECD) concerning disclosure of ultimate beneficial ownership but Jersey seems blind to this.

We would suggest that higher interest rates, inflation and a sluggish economy has softened the property market over recent months. Reviewing the Fiscal Policy Panel’s recent report we would contend that a small delay in introducing the stamp changes, to ensure that they are comprehensive and correct, would not have a significant effect on the market. We have seen with other tax laws passed recently by the States Assembly (Independent Taxation as a simple example) that passing incomplete piecemeal Laws leads to further confusion, debate, cost and delays.

We would strongly urge Scrutiny to examine these draft proposals in detail and engage with the Treasury Minister at the earliest opportunity with a view to having these proposals temporarily withdrawn (but with an agreed revised timeframe to introduce) so that the issues identified above can be rectified and clarified, rather than pass the current proposals with so much uncertainty.

Kind regards

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