STATES OF JERSEY

SHARE TRANSFER PROPERTY: STAMP DUTY

Lodged au Greffe on 23rd November 2004
by the Deputy of St. Martin

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion −

(a) to agree, in principle, that stamp duty should be payable on all transactions of residential 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;

(b) to agree, in principle, that stamp duty should be payable on all transactions of commercial 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;

(c) to charge the Finance and Economics Committee to prepare the necessary legislation for consideration by the Assembly in 2005 to give effect to the foregoing proposals.

DEPUTY OF ST. MARTIN

REPORT

Very few people would argue that it is inequitable that individuals buying residential or commercial property in their own name should have to pay stamp duty whereas they would not have to pay stamp duty if the purchase was being effected by the transfer of shares, particularly if the only asset of the company is a residential property.

Unfortunately the avoidance of stamp duty following the purchase by way of share transfer has been common practice for a number of years. Not only is the practice unfair, but also many millions of pounds have been lost in revenue.

In July this year, during the debate on Stamp Duties I drew Members' attention to the inequality and to the loss of revenue. The Finance and Economics Committee informed Members that the issue was a longstanding one but was being addressed. I therefore anticipated that the Finance and Economics Committee would have addressed the matter in time for the next Budget.

Following the debate I made a number of enquiries and learnt that in 2000 Jurat Blampied had been asked by the Judicial Greffier to prepare a report dealing with the loss of duty on property transactions when the transfer of shares conveyed immovable property in Jersey. Surprisingly, even though the Jurat agreed that the practice was inequitable he did not recommend any change to the law.

Earlier this month the Finance and Economics Committee published the Budget. I had expected to see that positive action had been taken by the Committee to introduce legislation to ensure that stamp duty would be payable for all share transfer properties from 2005.

On page ii of the Budget Report, the paragraph dealing with stamp duty, the Committee states, "it signals its intention to introduce stamp duty on share transfer transactions, which confer rights to Jersey property." The Committee does not say in what year stamp duty will be payable.

On page xxv, paragraph 12.4, which comments on share transfer, the following is recorded."The Committee regards that it is inequitable that share transfer property transactions avoid Stamp Duty, whereas equivalent property secured by conventional means suffers Stamp Duty. However it is not a straightforward matter to rectify and the Committee is announcing its intention at this stage to address this inequitable situation and bring forward proposals for levying Stamp Duty on share transfers which carry rights to Jersey property in next year's budget." The Committee does not state what proposals it will bring forward. I also question its positive intent to bring forward the necessary legislation in a reasonable timescale.

In Jurat Blampied's Report he believed that there were a number of problems to overcome by wide-ranging legislation and did not believe that the additional revenue that would be received would warrant the additional administrative costs that would be incurred by the States and by the private sector. He also believed that to include commercial property would be a hindrance to business if stamp duty were to be imposed on the transfer of shares in a company engaged in commercial activities.

I am respectful of the Jurat's comments but I believe that his reasons do not justify avoiding or delaying the issue. From the information I have received, as much as one million pounds a year is lost in revenue. I am also concerned that unless the States charges the Finance and Economic Committee to address the issue during 2005, the matter could well drag on. This would not only be unfair on those who pay stamp duty, but much-needed revenue would be lost.

I understand that there are law drafting implications, but I am also mindful of the law drafting implications surrounding the drafting of the Limited Liability Partnership legislation which was fast-tracked on the grounds that it was in the Island's best interest. Surely it must be in the Island's interest to introduce legislation which not only brings about equality but also much-needed revenue. It is difficult to understand why the Finance and Economic Committee has taken so long to address the issue.

Because of the law drafting implications I would have thought it more appropriate for the Finance and Economics Committee to seek "in principle" support for the introduction of legislation before drafting it. It would make little sense to have spent considerable time and effort drafting the legislation only for the States to reject it. Also, to ensure that the Finance and Economics Committee has the support of the States and to expedite matters to ensure that it will bring forward the necessary legislation for the year 2006, I ask that Members support my Proposition.

I am mindful of Jurat Blampied’s comments re commercial property, and because of his comments I have separated the two issues. However, I believe that there should be equality, and would hope that Members will give approval to ensure that stamp duty is payable on both residential and commercial properties.

In my view, there are no financial or manpower consequences arising from this proposition.