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Minor but important changes to the Document Duty (Guernsey) Law 2017

MAY 2020

A Policy Letter entitled Minor Changes to the Document Duty (Guernsey) Law, 2017 has been submitted to H M Greffier for debate at the next sitting of the States.

The introduction of the new document duty regime brought about many welcome changes. You can remind yourself of the key changes here.

The current regime has been effective since 15 November 2017 but it was clear from the outset that certain transactions that should have been treated as being exempt from document duty were not taken into account when the original law was drafted.

What are the proposed amendments?

1. Conveyances by individual(s) to a company will now be exempt from duty, provided the individual(s) is/are the beneficial owner(s) of all the share(s) of that company.
2. Conveyances by trustees to beneficiaries where the trustees do not own the real property directly but via an underlying company will also be exempt.

Under the current regime, a conveyance by a limited company to its beneficial owner(s) is exempt from duty. This is commonly known as a 'de-enveloping'. The first exemption from duty permits a conveyance in the opposite direction to a de-enveloping; from individual to company, subject to certain conditions. When the 2017 Law and the equivalent Anti Avoidance Law was enacted, it was anticipated that many people would choose to hold property personally as opposed to through a company given that the Anti Avoidance Law introduced a regime where companies owning property would now pay document duty on a transfer of its shares in the same way that a conveyance attracted duty. While that is true, there are still many reasons why an individual would still choose to hold a property in a company owned by them as opposed to holding it directly. This first exemption seeks to ensure that in such an instance no duty will be payable. This was indeed the position prior to the introduction of the 2017 Law.

The second exemption will be of benefit for local trustees and fiduciaries because it streamlines the appointment and distribution of real property to beneficiaries. At present, where trustees hold real property via an underlying company and wish to convey to the beneficiary, multiple conveyances are required and currently permitted by the Greffe – otherwise duty would be payable; the underlying company would convey the property to all the trustees and those trustees would then convey the property to the beneficiary. The new exemption

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removes the need for multiple conveyances and allows the property to be conveyed in one conveyance from the underlying company straight to the beneficiary without incurring duty.

In summary

The amendments are not anticipated to be hotly debated, have certainly been a long time coming and are a welcome addition to the current regime.

The expectation is that the new exemptions will continue to simplify the conveyancing process, fall equally alongside the current exemptions and be used by professionals for legitimate and sensible purposes.

If you feel the new exemptions play to your hand, do reach out to any of the contacts listed in this briefing or any of your usual Collas Crill contacts.

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