



NEW DOCUMENT DUTY LAWS FOR GUERNSEY

APRIL 2017

A Policy Letter titled www.gov.gg/article/159398/The-Documents-Duty-and-Anti-Avoidance-Duty has been submitted to H M Greffier for debate at the next sitting of the States, along with two draft laws (Projets de Loi).

In reality, there is unlikely to be too much debate in view of the fact that the Policy & Resources Committee are keen to minimise the delay in implementing these new laws.

What do these new laws do?

The Document Duty (Guernsey) Law, 2017

This is set to repeal and replace the current legislation, a 1973 Law and a 2003 Ordinance, with the intention of simplifying the approach to the document duty regime.

As well as simplifying the procedure, the new law will:

- Introduce anti-avoidance provisions
- Create an offence of making false or misleading statements and
- Introduce an appeals process against decisions of H M Greffier

It is important to note that the current rates of duty payable are not due to change with the implementation of this law.

The Document Duty (Anti-Avoidance) (Guernsey) Law, 2017

This law represents a new system of document duty and will impose duty on transactions which are not conveyances but have an effect comparable to the transfer of an interest in real property akin to a conveyance.

Under the current regime, upon a conveyance, the document is registered at the Greffe and the transfer of ownership and the consideration is clearly ascertainable for the purpose of assessing duty. However, a transfer of shares in a company which owns a Guernsey property does not attract duty, and is not a registrable document.

The purpose of the new law is to ensure that these types of transactions will attract duty going forward and be treated in the same way as conveyances registered at the Greffe.

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The general principle will be that duty will be charged on all transactions which:

1. Confer on a 'transferee' a significant benefit in real property (i.e. enjoyment of the benefit of ownership of real property, such as the right to enjoy or occupy it)
2. Are made in return for payment in money of money's worth and
3. Are not exempt under the law

Exemptions include the following:

- Acquisition by inheritance
- Matrimonial vesting orders, administration orders in inheritance situations, saisie vesting orders
- The grant of leases or licences
- Wayleaves and other rights
- Certain other transactions concerning companies where beneficial ownership is not affected
- Transfers of shares in listed companies
- Transfers by or on behalf of collective investment schemes
- Family transactions
- Transfers in favour of charities or friendly societies, and providers of affordable housing to the States
- Transfers of assets from a company/partnership to another where the beneficial owners/partners are the same
- Transfers of shares in a company/partnership where the main use of the property owned by the company/partnership is for the business or trade of that company (other than lettings)

Duty will be payable on the market value of the Guernsey property that is the subject of the transaction. In the majority of cases (but not always) this will be the consideration paid.

How will duty be paid, and by whom?

The law will include a system of self-assessment and impose liability, jointly and severally, on the transferor and transferee, although in practice it will be expected that the transferee will pay, as is presently the case. A form will need to be completed and submitted to H M Greffier within 28 days of the transaction, together with supporting documentation as to market value, and the payment of the duty itself. If the transaction is deemed exempt, then an assessment form will still be required stating this and signed by both parties. There will be administration fees payable to the Greffier, likely of a similar amount to the current document registration fees.

The Greffier may require additional information or refer the matter to the Director of Income Tax, who may make his own formal assessment and has powers to impose penalties or give directions to make adjustments if he deems the transaction's purpose to be to avoid tax liability. A right of appeal to the Royal Court is available against such decisions.

New offences

New offences will be created, being fraudulent evasion of duty, failure to comply with the self-assessment regime, and the making of false or misleading statements. In addition, a director (or equivalent for other entities, such as partnerships) of a company that commits

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an offence who has consented to, connived or been neglectful in allowing such an offence to be committed, will also be guilty of that offence.

In Summary

The anti-avoidance legislation has been talked about for many years and been a long time coming.

As with all these things, the devil is in the detail and it is therefore very much hoped that it will be utilized and administered in a sensible and proportionate manner, so as not to complicate or frustrate the transactional process.

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FOR MORE INFORMATION PLEASE CONTACT:



PAUL NETTLESHIP

Partner // Guernsey

t:+44 (0) 1481 734200 // e:paul.nettleship@collascrill.com



JASON GREEN

Partner // Guernsey

t:+44 (0) 1481 734216 // e:jason.green@collascrill.com

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