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UPDATE

New document duty laws in Guernsey

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The Document Duty (Guernsey) Law, 2017 and the Document Duty (Anti-Avoidance) (Guernsey) Law, 2017, commenced on 15th November, 2017.

Under the new legislation, not only was the existing regime relating to registered documents replaced, but also a liability was created in respect of unregistered transactions such as the transfer of the share capital of a company which owns Guernsey realty.

The long anticipated changes to the Document Duty (Guernsey) Law, 2017 and the Document Duty (Anti-Avoidance) (Guernsey) Law, 2017, came into force on 15th November 2017. These changes have been on the States' agenda since 2011, when approval was granted in principle. The reasons given by the States for the introduction of the new regime are two-fold; "*firstly to ensure a consistent, fair and equitable approach to all property transactions and secondly, to raise additional revenue for the States*".

The Document Duty (Guernsey) Law, 2017

The new legislation introduces a revised regime for the imposition of document duty on *registered* documents in relation to transactions which transfer an interest in Guernsey real property such as a conveyance or create a charge against such real property, i.e. a bond, except in defined circumstances.

The legislation aims to simplify the approach to the document duty regime as well as to:

- introduce anti-avoidance provisions,
- introduce a formal appeal procedure against decisions of HM Greffier, and
- create offences of making false or misleading statements.

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

Under the existing document duty regime, where Guernsey real property is transferred by way of conveyance, the document is registered at the Greffe and the transfer of ownership (and the payment) is clearly ascertainable for the purposes of assessing document duty. However, for example, where a property is owned by a company limited by shares, effective ownership of that property could be transferred to a third party by a sale of the shares in the company to a new beneficial owner, rather than by conveyance. The share purchase agreement did not need to be registered, the transfer was not in the public domain and no document duty was payable, whatever the value of the property owned by the company or the price paid for it.

The Document Duty (Anti-Avoidance) (Guernsey) Law, 2017 introduces a regime imposing a duty on transactions for value which have the effect of conferring on a person a "*significant benefit*" in real property.

Certain transactions do not fall within the scope of this legislation such as:

- a right conferred by way of inheritance,
- a transfer effected by court order,
- a lease or licence to occupy,

- a creation, variation or discharge of a servitude etc.,
- a transfer of shares of a company which is listed on a recognised stock exchange,
- a transfer of shares of a company where the beneficial ownership is unaffected, i.e. a transfer from a nominee back to the beneficial owner/another nominee on behalf of that beneficial owner,
- any purchase/sale by or on behalf of a collective investment scheme or any issue/transfer or redemption of any units in such a collective investment scheme, and
- a transaction the *bona fide* principal purpose of which is to secure the repayment of a loan.

Note that a transaction may be a *relevant transaction* in the following circumstances, where the property is owned by:

- a company and the transaction is a transfer of the legal/beneficial ownership of any of the shares of that company,
- an LBG and the transaction is a transfer/creation for the benefit of the transferee of any right or interest in that LBG,
- a foundation and the transaction has the effect of conferring a *significant benefit* on the transferee in respect of that property,
- the trustees of a trust and the transfer is a transfer/creation of any interest in that trust or of any expectation that the trustees of the trust will confer any *significant benefit* on the transferee in respect of that property, and
- a partnership, LP/LLP and the transaction is a transfer/creation of any interest in such partnership, LP/LLP.

It is important to note that a transaction may be a *relevant transaction* whether or not any party to the transaction is present, or resident, in Guernsey, and any legal person, being the owner of the property, is registered or has a presence, in Guernsey.

How will duty be calculated?

Duty will be payable at a rate set by Ordinance (comparable to the rate set for document duty), based on the market value of the interest transferred. The Law imposes a duty of self-assessment jointly and severally on the transferor and transferee to correctly calculate the amount of duty payable on the transaction.

How is an application made?

A self-assessment form is required to be completed and submitted to HM Greffier within 28 days after completion of the transaction, accompanied by supporting documentation as to the market value, and by payment of the duty payable (if any). A pre-assessment is possible.

If the parties claim that the transaction is one that is exempt, then they must submit a declaration confirming the same. In such circumstances, there is no need to submit a valuation unless subsequently required to do so by HM Greffier.

There is clearly going to be a period of uncertainty around whether transactions will be exempt or not. In such circumstances, HM Greffier may, at his discretion, refer any transaction to the Director of Income Tax for an assessment. HM Greffier can also refer a matter to the Director of Income Tax when a dispute arises as to whether the transaction is caught by, or exempted under, the Law. A person aggrieved by a decision of the Director of Income Tax may appeal to the Royal Court against that decision.

Exemptions under both Laws

A number of transactions are exempt from document duty under both laws, if, for example:

- It is family transaction (i.e. transactions between spouses, civil partners and co-habitees between parents and children, grandparents and grandchildren, and great-grandparents and great-grandchildren, between siblings, aunts and uncles, nephews and nieces). An amendment already extends this category to transactions between first cousins.
- The transferee is a Guernsey registered charity, a registered friendly society, affordable housing or to the States of Guernsey.
- Its effect is the transfer of an interest in any property owned by a company to:

    - the beneficial owner of all the shares in the transferor,
    - another company the shares in which are all in the same beneficial ownership as the shares in the transferor,
    - another company which is a wholly-owned subsidiary of the transferor or of which the transferor is a wholly-owned subsidiary, or
    - another company where both the transferor and the transferee are wholly owned subsidiaries of the same holding company.

In addition, the following exemptions apply solely to transactions that would otherwise be treated as *registered* transactions under the Document Duty (Guernsey) Law, 2017, if:

- It is a transfer by or on behalf of:
    - a settlor to another person who holds that property as trustee,
    - by or on behalf of a trustee who holds that property as trustee to a person for whose benefit that property was held, or
    - from a person who has ceased to be a trustee to the new or continuing trustee if there is no change in the beneficial ownership of the property,
- The document effecting the transfer of an interest in real property is a will,
- The transaction is a *partage* or *délaissance* between co-heirs, or the creation, variation or discharge of a servitude etc, or
- The interest in real property is acquired by way of an order of court.

Similarly, the following exemptions apply solely to transactions that would otherwise be treated as a *relevant transaction*, under the Document Duty (Anti-Avoidance) (Guernsey) Law, 2017, if:

- It is a transfer of an interest in any property (real or personal) owned by/on behalf of all/some of the partners of a partnership, an LP or LLP to another partnership, LP or LLP (respectively) or to a company where the partners/members of the transferor and their respective shares of the partnership/company assets to which they would be entitled, are the same, before and after the transaction,
- It is a transfer of shares in a company where the significant benefit conferred arises from/relates to any real property which is owned by that company or any subsidiary and the principal use of that real property is for the purposes of a business, trade or undertaking operated by that company or a subsidiary (other than the letting out of such real property for money or money's worth), or
- It is a transfer of an interest in any property (real or personal) owned by/on behalf of a partnership, an LP or LLP and the principal use of that real property is for the purposes of a business, trade or undertaking.

Rates applicable under both Laws

The rates of duty applicable under both laws will be the same as those applicable under the present document duty regime, i.e. a document duty on graduated rates from 2% to 4% depending on the value of the transaction.

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