Jersey to introduce taxation for enveloped property transactions

News - 05/04/2022

Historically, the purchase of immovable property located in Jersey through the acquisition of the share capital of a property owning company (wherever domiciled) was exempt from stamp duty. However, the States of Jersey recently implemented legislation to impose a tax equivalent to stamp duty on such a sale, effectively closing the "loophole".

Other jurisdictions had previously taken similar steps. The UK first introduced its Annual Tax on Enveloped Dwellings (**ATED**) on 1 April 2013 for properties worth over £2 million. Since then, the threshold has been steadily reduced and the tax now applies to all property worth over £500,000. Guernsey introduced such a measure back in November 2017, in a law which reflects much of the same language as that now in force in Jersey.

On 8 February 2022, Jersey adopted the Taxation (Enveloped Property Transactions) (Jersey) 2022 (**the Law**) which came into effect on 4 April 2022.

The Law can be viewed here.

While a number of limited exemptions are included, virtually all sales of property holding companies are now subject to tax. The issue, transfer or redemption of units in a collective investment fund as defined in Article 3 of the Income Tax (Jersey) Law 1961 are excluded transactions under the Law, as is the transfer of shares from a nominee to the beneficial owner of the company or to another nominee holding for their beneficial owner.

All non-excluded "relevant" transactions involving Jersey property (whether commercial or residential) which is owned by, or let under a contract lease (a lease for a term of over nine years registered before the Royal Court of Jersey) are subject to the Law.

The Law defines a "relevant transaction" as a transfer to a person of a significant interest (more than 50%) in an entity (generally, this will be the acquisition of shares in a company or of a beneficial interest in any other body or company) which owns Enveloped Property in Jersey.

The Law will only apply where the market value of the Enveloped Property exceeds:

- £500,000 in the case of domestic properties, or
- £700,000 in the case of non-domestic properties

The Law provides that the Minister for Treasury and Resources may make an order to change these thresholds as required.

The market value of a contract lease will be determined by multiplying the annual rental (or market rent where a nominal rent is paid) payable under the lease by the number of years remaining in the term of the lease at the time of the transaction (capped at 21 years).

There are three different rates, one for domestic properties, one for non-domestic properties, and one for leasehold properties. The rates are calculated on a sliding scale depending on the market value for the Enveloped Property. In all cases, there will be an additional £80 registration fee payable on top of the calculated rate.

Where the Law applies, the person who acquires the significant interest as a result of the "relevant transaction" has 28 days to deliver a statement containing details of the transaction and attesting to the accuracy of the statement. This is similar to current law relating to Land Transaction Tax.

The owner of the Enveloped Property subject to the "relevant transaction", if it is registered or established or has a place of business in Jersey, must deliver a similar statement to the Comptroller within 28 days of the transaction unless the acquiring entity has already delivered such a statement.

Late payments incur a surcharge of 10%. Failure to deliver a statement as required can incur a penalty of up to £3,000.

If a person delivers a statement and/or supporting documents that it knows to be false or misleading, then they can be liable for imprisonment for 12 months and to a fine of level three on the standard scale.

For more information about the proposed new law or its implications, please contact any member of the Ogier Commercial property team.

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