

## Changes to Guernsey's Document Duty Laws

Insights - 28/12/2017

On 15<sup>th</sup> November 2017, The Document Duty (Guernsey) Law 2017 came into force, bringing the payment of duty on transfer of real property (houses and land) more into line with modern life. The related Document Duty (Anti-Avoidance) (Guernsey) Law 2017 will make sure that similar property transactions are subject to the same amounts of duty. It is important to note that the new laws affect the island of Guernsey only, so not Sark and Alderney.

The Document Duty (Guernsey) Law 2017 has made document duty payable on all "chargeable transactions". A "chargeable transaction" is defined as the acquisition by any person of an interest in real property, or the creation of a charge against real property by the registration of an *hypothèque* (a legal charge or "bond"). The document recording a chargeable transaction cannot be registered at the Greffe unless document duty is paid.

There are exemptions, including transactions between family members (as a parent or child, or grandparent or grandchild or great-grandparent, as a sibling, uncle or aunt, nephew or niece), between spouses or civil partners (or former spouse or civil partner), or as a cohabitee. There are other exemptions for certain types of conveyance involving trustees, conveyances between companies in the same ownership, conveyances from companies to their beneficial owners, conveyances to charities, *partages* between co-heirs (a particular form of conveyance involving the splitting of a property) or any other conveyance between co-heirs, and transfers of property by will.

Previously in Guernsey, document duty was not chargeable when the effective ownership of a property passed to another person without a conveyance or other registrable document – for example by the transfer of shares in a company which owns that property. The introduction of the Anti-Avoidance Law means that duty will be chargeable on "relevant transactions". A "relevant transaction" is the transfer of property which has the effect of giving the buyer a "significant benefit", which is defined as the right to occupy the property (or control who does), the right to receive rent or other income from the property, and generally the right to enjoy the property. This change is expected to almost bring to an end to the practice of selling a house or commercial property by share transfer to avoid document duty. It is difficult to say how much

revenue this will raise for the Island, but with recent increases in the rate of duty it could be millions of pounds a year.

There are a number of exemptions under the new Anti-Avoidance Law, including transactions between family members (as above), and most (but not all) of the transactions exempt under The Document Duty (Guernsey) Law 2017 (described above). There are additional exemptions under the Anti-Avoidance Law for transactions involving partnership property, and property used for a company's or partnership's business. Importantly, exempt transactions will still have to be disclosed to HM Greffier.

The parties to a chargeable transaction or relevant transaction must now make certain declarations to HM Greffier – there are criminal penalties for making false declarations and for withholding information, and the duty to make a disclosure falls on both the buyer and the seller. A declaration such as this will often be contained within a conveyance.

Separately, there is also to be a change in practice from 1<sup>st</sup> January 2018 in terms of the accepted deduction from a total purchase price for personalty (moveable property, such as carpets, curtain and light-fittings) following suggestions that the 5% permitted deduction was too high. Agreement was reached that a figure of 2.5% is more appropriate today, therefore 2.5% of the total purchase price can in most, but not all, cases be attributed to the contents and will not attract duty.

If you would like to find out more about Document Duty or any other Guernsey property matter, contact the Ogier Guernsey property team today at +44 1481 721672 or email [gsy@ogierproperty.com](mailto:gsy@ogierproperty.com).

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