

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

MINOR CHANGES TO THE DOCUMENT DUTY (GUERNSEY) LAW, 2017

The States are asked to decide:

Whether, after consideration of the policy letter entitled 'Minor Changes to the Document Duty (Guernsey) Law, 2017' of the Policy & Resources Committee, they are of the opinion:

1. To approve the proposals to introduce two further exemptions to the requirement to pay document duty under the Document Duty (Guernsey) Law, 2017 as set out in Section 3 of the policy letter;
2. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4 (1) of the Rules of Procedure of the States of Deliberation and their Committees.

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The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

2 April, 2020

Dear Sir

1 Executive Summary

1.1 In May 2017 (Billet d'État X, 2017) the States considered a policy letter entitled "Document Duty and Anti-Avoidance Duty" and approved the introduction of a regime, parallel to the existing document duty regime, which imposes a duty on transactions which have an effect comparable to the transfer of an interest in real property but which do not involve a conveyance or other registrable document and so do not attract document duty. The new regime came into effect on 15 November 2017. The existing Document Duty Law was also revised in order to clarify and modernise it, ensure that it is human-rights compliant with the introduction of an appeals procedure, and introduce anti-avoidance provisions to discourage the use of artificial transactions designed to avoid document duty.

1.2 In light of the experience with the operation of the new regime for in excess of two years, it is recommended that two further exemptions are added to include certain transactions which would in many cases have been treated as exempt under the previous regime. The 2017 Law includes provision in section 3(2) enabling the States to add exemptions by Ordinance.

2 Background

2.1 The Document Duty (Guernsey) Law, 2017 ("the 2017 Law") simplified the structure of the document duty regime so as to introduce a general liability to

document duty on all transactions falling within the definition of "chargeable transaction" for the purposes of the Law, with specified exemptions. This contrasts with the previous regime, under the Document Duty (Guernsey) Law, 1973, which imposed different rates of duty on specified types of registered document and included very limited exemptions. Certain transactions such as conveyances between family members were treated as exempt at the discretion of H M Greffier but were not specified as exempt in the legislation.

- 2.2 Exemptions under the 2017 Law include: family transactions; transactions conveying real property to, or charging real property owned by, charities, friendly societies, affordable housing providers or the States; and other specified transactions such as transfers by will, between co-heirs and by order of a court.
- 2.3 The list of exempt transactions also includes (a) the transfer of real property owned by a company to the beneficial owner, or owners, of all the shares in the company (but not a transfer from the beneficial owner, or owners, to a company in which the beneficial owner, or owners, owns all the shares), and (b) the transfer of real property from the settlor of a trust to the trustee of the trust, or from a trustee to the beneficiary of the trust.

3 Proposed Exemptions

- 3.1 The first proposed additional exemption is where an individual, or more than one individual, conveys a property owned by that individual or individuals to a company of which that individual or individuals is/are the owner of all the shares. Such transfers are commonplace in family structures, etc and, given the enactment of the Document Duty (Anti-Avoidance) (Guernsey) Law, 2017, which imposes liability to tax on transfer of property by share transfer, there is no reason to discourage such transfers as a subsequent sale of the company would not result in the avoidance of document duty. Under the previous regime, these transfers were not treated as subject to document duty if the company was in the beneficial ownership of the individual or individuals who were conveying the property and the proposal would merely formalise the former discretionary exemption under that regime.
- 3.2 The second proposed additional exemption concerns transfers of property within trusts where the trustees do not own the real property directly and the transaction is a conveyance between an underlying company owned by the trustees and the beneficiaries of the trust, or between such an underlying company and the trustees. There are many reasons (including the personal liability of trustees, conveyancing issues each time a trustee retires or dies, the desirability of separating real property assets from personal estate, among others) why it might be considered desirable that an underlying company

should hold the trust property rather than it being owned by the trustees directly. In many cases, where family trusts were involved, such transactions would have been treated as exempt under the previous regime. This was not taken into account when the original exemption was drafted to exempt transfers to and from trustees and it is considered appropriate that the exemption should be extended to cover such transactions.

4 Compliance with Rule 4

- 4.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 4.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not to be put into effect.
- 4.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Policy & Resources Committee.
- 4.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Policy & Resources Committee to advise the States and to develop and implement policies and programmes relating to fiscal policy.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens