Taxation of transactions involving "enveloped" property

Ministerial foreword

In Budget 2019 I undertook to bring forward a public consultation in order to seek views on a proposal to charge tax on a wider range of property transactions.

Under the current rules, stamp duty is charged when the title to Jersey real estate is transferred; whilst land transaction tax is charged on the transfer of shares in a company which gives the owner of those shares the right to occupy residential property in Jersey.

However, where commercial real estate is held within a company, and the ownership of the company changes hand by way of share transfer, then there is currently no charge to stamp duty or land transaction tax. Holding real estate within a company is sometimes known as "enveloping", as the real estate is said to be "enveloped" within the company.

Accordingly there is a clear tax incentive to envelop commercial Jersey real estate and the evidence from recent transactions within the Island indicate that this is a common practice.

Having taken external advice, the Treasury & Exchequer have prepared outline proposals to address the tax incentive to envelop Jersey real estate. This consultation seeks feedback and comments from interested parties on the outline proposals themselves and also the potential impact of the outline proposals on the Island's property market.

Furthermore the opportunity is also being taken in this consultation to seek general views on how the taxation elements of the existing stamp duty and/or land transaction regimes might be reformed or improved.

I encourage all interested parties to carefully consider the outline proposals and respond to the questions posed.

Minister for Treasury and Resources

1 Purpose of consultation document

1.1 This consultation document is being issued to seek feedback from stakeholders (including businesses, industry associations, practitioners and any other interested parties) on outline proposals to impose an equivalent charge to stamp duty on transactions which result in the transfer of an "interest" in Jersey real estate which are currently outside the scope of both the Stamp Duty and Fees (Jersey) Law 1998 ("the Stamp Duty Law") and the Taxation (Land Transactions) Jersey Law 2009 ("the LTT Law").

1.2 Treasury & Exchequer ("the Treasury") is seeking feedback, comments and suggestions on the outline proposals contained within this consultation document and also how stakeholders consider the outline proposals might impact on the Jersey property market, particularly the commercial property market.

1.3 This consultation is designed to seek feedback on the outline proposals so as to: 1) inform the Treasury of the potential impact of the outline proposals; and 2) inform the drafting of any law to implement the outline proposals in order to ensure a consistent, fair and equitable approach to all transactions which involve the transfer of an "interest" in Jersey real estate.

2 Introduction

2.1 Transactions resulting in the transfer of the ownership of real estate in Jersey may be subject to a tax charge under either: 1) the Stamp Duty Law; or 2) the LTT Law.

2.2 The Stamp Duty Law applies where the title to real estate (both residential and commercial) is transferred from one person to another person. The transfer of the title may be as a result of sale/purchase, gift, inheritance, etc.

2.3 The LTT Law applies to the transfer of shares in a company from one person to another person, where the ownership of such shares confers the right of occupation of land in Jersey. Land is defined in the LTT Law as a unit of dwelling accommodation, accordingly land transaction tax ("LTT") does not apply to non-residential property (i.e. commercial property). The transfer of the shares may be as a result of a sale/purchase, gift, inheritance, etc.

2.4 Where a contract involves the transfer of title to real estate the amount of stamp duty ("SD") is calculated by reference to the higher of: 1) the consideration for the transfer; or 2) the market value of the real estate.

2.5 Where the transaction is the transfer of shares in respect of which LTT is chargeable, the amount of LTT is calculated by reference to the higher of: a) the consideration passed in respect of the transaction; or b) the gross value of the land.

2.6 The rates of SD/LTT are banded. The same rates of SD/LTT apply in respect of transactions involving residential property.

2.7 However for transactions where the consideration exceeds £1.0m there is a divergence in the rates applied to residential and non-residential properties; with residential properties being subject to higher rates.

2.8 A table of SD/LTT bands and rates is provided in Appendix A.[1]

2.9 Transactions which are currently outside of the scope of both the Stamp Duty Law and the LTT Law will include, for example, transactions involving: a) the transfer of shares in a company holding property, whereby the ownership of those shares does not confer a right to occupy the land; and b) the transfer of shares in a company that holds commercial property.

2.10 As a result there is a tax incentive to hold certain real estate (particularly commercial real estate) within a company or other corporate structure. The practice of holding real estate within a company or other corporate structure is frequently known as "enveloping".

2.11 The Treasury has obtain external advice to inform the approach that could be adopted in order to address the existing tax incentive to "envelope" Jersey real estate. The Treasury has utilised this advice to develop the outline proposals. The outline proposals would ensure that a transfer of an interest in Jersey real estate would be treated in a consistent, fair and equitable way as those transactions which are currently within the scope of the Stamp Duty Law and the LTT Law.

2.12 It is estimated that the average additional tax revenues that might be raised on transactions involving "enveloped" office type commercial property could be approximately £1.0m per annum; although, as with SD and LTT, the amount raised in any one year will depend on the number of transactions which occur in that year.

3 Summary of outline proposals

3.1 Under the outline proposals the Minister for Treasury & Resources would introduce a "New Law" which will be in addition to the Stamp Duty Law and the LTT Law.

3.2 The "New Law" will be under the administration of the Comptroller of Taxes[2] ("the Comptroller").

3.3 The "New Law" will seek to impose a tax charge on certain transactions involving the transfer of Jersey real estate which are currently outside the scope of both the Stamp Duty Law and the LTT Law.

3.4 In order to do this the "New Law" will bring within the scope of the new tax charge transactions which confer to a person a "*significant benefit*" in Jersey real estate (e.g. the transfer of shares in a company which owns "enveloped property").

[1] For the avoidance of doubt this consultation document is not specifically concerned with SD/LTT bands and rates.
[2] To be the Comptroller of Revenue when the Revenue Administration (Jersey) Law comes into effect.

3.5 A "*significant benefit*" will be acquired whether the transaction(s) are in respect of the entity which directly owns the Jersey real estate or the transaction(s) relate to an entity or entities which indirectly own the Jersey real estate (e.g. the transaction is the transfer of shares in a company which owns a subsidiary company which owns the Jersey real estate).

3.6 For the purposes of the "New Law" a transaction which confers a "*significant benefit*" will be known as a "*relevant transaction*".

3.7 "*Relevant transaction*" will not include any transaction in respect of which SD or LTT is payable.

3.8 Certain "*relevant transactions*" will be exempt from the tax charge under the "New Law".

3.9 A transaction will be a "*relevant transaction*" whether or not any of the parties to the transaction are present or resident in Jersey, or whether or not any legal person being the owner of the property is registered or has a presence in Jersey.

3.10 Where a "*relevant transaction*" occurs a tax charge will arise, calculated utilising the same bands and rates which apply under the Stamp Duty Law and the LTT Law.

3.11 It is proposed that the tax will be self-assessed, similar to the tax charge arising under the LTT Law.

3.12 Where a "*relevant transaction*" occurs a self-assessment form together with the amount of tax due will need to be submitted within 28 days after the day on which the transaction takes place.

3.13 The Comptroller will be required to maintain a register of all the "*relevant transactions*" which occur.

3.14 There will be penalties and surcharges applied as a consequence of non-compliance or late submission of forms. These penalties will be similar to those which apply in the LTT Law.

3.15 The "New Law" will give the Comptroller the power to require parties to furnish information or documentation in order to determine whether a "relevant transaction" has occurred and/or the value of the transaction[3].

3.16 The Comptroller will also be given the power to raise assessments where he is of the opinion that: 1) there is non-compliance with the "New Law"; or 2) the main purpose, or one of the main purposes, of a transaction or series of transactions is the avoidance or reduction of the tax charge.

3.17 The "New Law" will include appropriate taxpayer safeguards, including an appeals process where a person is aggrieved by any decision or assessment by the Comptroller.

[3] In practice these powers may ultimately be included in the Revenue Administration (Jersey) Law rather than the "New Law" itself.

<u>Question 1:</u> What are your initial comments regarding the summary outline proposal for a "New Law" to charge tax on *"relevant transaction"*?

<u>Question 2:</u> How can the summary outline proposals be improved?

4 Definition of "*significant benefit*"

4.1 Transactions which confer to a person a "*significant benefit*" will include all transactions which result in the transferee, directly or indirectly, acquiring:

- any right or opportunity to occupy, or to control the occupation of Jersey real estate;
- any right or opportunity to receive, or to direct the distribution of, any rents or other money or money's worth arising from Jersey real estate; or
- any right or opportunity to enjoy, or control the enjoyment of, Jersey real estate in any way whatsoever

<u>Question 3:</u> Is the definition of *"significant benefit"* sufficient to capture the various ways in which a transaction could confer rights and opportunities to benefit from Jersey real estate?

<u>Question 4:</u> If you consider the definition of *"significant benefit"* is insufficient, please advise how the definition can be improved?

5 Acquisition of less than 100% interest

5.1 The definition of "*significant benefit*" would only include transactions where a person acquires, either directly or indirectly, more than 50% of the entity in which the Jersey real estate is held.

5.2 Accordingly the acquisition of 50% or less of the entity would not be within the definition of a "*significant benefit*" and accordingly no tax charge would arise.

5.3 Where less than 100% of the entity is acquired, the tax charged on the "*significant benefit*" would be a proportion of the tax which would be charged if 100% of the entity was acquired.

5.4 Where less than 50% of the entity is owned and subsequent transactions result in the person owning more than 50% of the entity, the tax would be calculated only on the proportion by which ownership of the entity exceeds the 50% threshold.

5.5 However in order to prevent the use of the 50% threshold to avoid the tax charge (e.g. acquisitions in a "piecemeal" manor) the aggregate acquisitions in the 3 years prior to the 50% threshold being exceeded would be taken into account in determining the amount of the tax to be charged.

5.6 Transitional rules would be required to take account of the acquisition of less than 50% of an entity prior to the introduction of the "New Law".

<u>Question 5:</u> Do you agree that the "New Law" should include a threshold so that an acquisition of 50% or less of an entity in which Jersey real estate is held is not charged to tax?

<u>Question 6:</u> If you do not agree, what alternative proposal would you suggest for transactions resulting in 50% or less of the entity being acquired?

<u>Question 7:</u> If such a threshold is included in the "New Law", do you agree with the proposed anti-avoidance provision? If not, what alternative anti-avoidance provision would you suggest?

<u>Question 8:</u> How could the proposed treatment of acquisitions of less than a 100% interest be improved?

6 <u>Definition of "*relevant transaction*"</u>

6.1 For the purposes of the "New Law" it is proposed that a "*relevant transaction*" will include where Jersey real estate is owned by:

- a **company** and the transaction is a transfer of the legal/beneficial ownership of the shares of that company;
- a **guarantee company** and the transaction is a transfer/creation for the benefit of the transferee of any right or interest in that guarantee company;
- a **foundation** and the transaction has the effect of conferring a "*significant benefit"* on the transferee in respect of Jersey real estate;
- 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 Jersey real estate; or
- a **partnership, LP/ILP/SLP/LLP** and the transaction is a transfer/creation of any interest in such partnerships

<u>Question 9:</u> Are the proposed "*relevant transactions*" sufficient to capture all transactions where a "*significant benefit*" in Jersey real estate is transferred from one person to another?

<u>Question 10:</u> If not what other *"relevant transactions"* should be included within the "New Law"?

7 <u>"*Relevant transactions*" not treated as conferring a "*significant benefit*"</u>

7.1 It is proposed that under the "New Law" transactions will not be treated as conferring a "*significant benefit*" if they are by virtue of:

- a succession to an interest in the property of a deceased person, whether under a will or otherwise (it being noted that some transactions may be subject to stamp duty on the registration of a will on moveable property);

- an order made by the Court pursuant to: 1) a divorce or separation; 2) a vesting order pursuant to an arrest of property proceedings;
- a lease or a licence to occupy;
- the creation, variation or discharge of a servitude, way leave or covenant;
- the transfer of shares in a company which is listed on an approved stock exchange as defined in Article 3 of the Income Tax (Jersey) Law 1961;
- the transfer of shares in a company by a nominee: 1) to the beneficial owner of the company; or 2) to another nominee who holds the shares on behalf of the same beneficial owner;
- the issue, transfer or redemption of any units in a collective investment fund;
- an agreement giving a person an option to purchase any property at some time in the future; and
- a transaction of which the *bona fide* principal purpose is to secure the repayment of a loan

Question 11: Do you agree that the transactions listed in paragraph 7.1 should be treated as not conferring a "*significant benefit*" for the purposes of the "New Law"?

Question 12: If not:
a) which transactions should be deleted from the list and why?; and/or
b) what additional type(s) of transaction(s) should be included on the list of transactions which should not be treated as conferring a "*significant benefit*" and why?

8 Exemptions

8.1 The "New Law" would also give exemption from the tax charge in respect of certain "*relevant transactions*" where:

- all parties to a transaction are associated (e.g. spouses, civil partners);
- the transferee is a charity;
- the transferee is the Government of Jersey; and
- the effect of the transaction is to transfer the property from one person/entity to another person/entity where the same person(s) is the beneficial owner or ultimate beneficial owner

Question 13: Do you agree that the transactions listed in paragraph 8.1 should be treated as exempt from the tax charge under the "New Law"?

Question 14: If not:
a) which "*relevant transaction(s)*" should not be exempt from the tax charge and why? and/or
b) what additional *"relevant transaction(s)"* should be exempt from the tax charge and why?

9 Obligation to comply with the "New Law" and pay the tax

9.1 The obligation for complying with the "New Law" and payment of the tax could be placed on either: 1) the transferee; or 2) the transferor; or 3) jointly and severely on the transferee and transferor.

9.2 The proposed approach, which is consistent with both the Stamp Duty Law and LTT Law, is to place the compliance obligations on the transferee.

<u>Question 15:</u> Do you agree that the obligation for complying with the "New Law" and paying the tax due should be placed solely on the transferee?

<u>Question 16:</u> If your answer to question 15 is no, who do you consider should have the compliance and payment obligation under the "New Law" and why do you consider these obligations should be placed on them?

10 Compliance

10.1 It is recognised that the entity holding the Jersey real estate may not be resident in Jersey or within the jurisdictional powers of the Island.

10.2 Furthermore where the real estate is owned within a more complicated corporate structure, the entity in which the "*significant benefit*" is acquired may not own the Jersey real estate directly.

10.3 As such ensuring compliance with the "New Law" may be challenging.

10.4 It is proposed that the "New Law" will create offences for non-compliance similar to the offences within the LTT Law. Accordingly the proposal will make it an offence if: 1) a person ("a principle offender") fails to deliver the required statement or makes false or misleading statements; and 2) a person assists a principle offender in the commission of an offence.

10.5 The Comptroller will be able to serve notices and/or documentation by: 1) delivering them to; 2) leaving them at; or 3) by sending or transmitting them to, a) an individual at their usual or last know place of abode wherever that might be; b) a legal person at the registered office, principle place of business or last known principle place of business in Jersey or elsewhere; and c) an unincorporated body by serving on any partner, member of the committee or similar governing body, manager, director or similar officer

<u>Question 17:</u> Do you consider that the proposal in respect of offences under the "New Law" are sufficient?

<u>Question 18:</u> Given that some transactions may not occur within the Island's jurisdiction, what further powers do you consider should be included within the "New Law" in order to ensure compliance?

11 Valuation of Jersey real estate

11.1 It is proposed that the amount of tax will be calculated based on the market value of the Jersey real estate which is held by the entity in respect of which a "*significant benefit*" is acquired.

11.2 The market value could be ascertained by either: 1) making it a requirement that an independent professional market valuation of the real estate is carried out at the time of the transaction; or 2) accepting the value of the real estate as determined for the purposes of the entity's financial statements.

11.3 Making it a requirement that an independent professional market valuation of the real estate is undertaken at the time of the transaction would be a reliable method of determining the value for the purposes of the "New Law"; however this might create additional cost.

11.4 Accepting the value of the real estate as determined for the purposes of the financial statements of the entity in which the real estate is held might reduce the cost. However such a valuation may not be current or reliable. This would depend on who carried out the valuation and whether or not the valuations are carried out at regular intervals.

Question 19: Do you agree that the tax charge should be calculated based on the market value of the Jersey real estate held in the entity in respect of which the *"significant benefit"* is acquired?

Question 20: If you do not agree, on what basis should the tax charge be calculated? Why do you consider this basis to be fairer than calculating the tax charge on the market value?

Question 21: Do you agree that the market value should be ascertained by requiring an independent professional market valuation to be obtained?

Question 22: Do you consider that the market value of the property, as determined for the purposes of the financial statements of the entity in which the property is held, will provide a reasonable valuation for the purposes of calculating the tax charge?

Question 23: If you do agree with the statement in question 22, what rules would be required to ensure that this valuation was fair and reasonable?

Question 24: Why do you consider that this method is preferable to requiring an independent professional market valuation?

12 Impact on the Jersey property market

12.1 The Treasury will request the Economics Unit to undertake an economic and distributional impact analysis of the outline proposals.

12.2 To assist with this analysis the Treasury is seeking comments and evidence as to the potential impact that the outline proposals might have on the Jersey property market.

Question 25: What impact do you anticipate that the outline proposals might have on the Jersey property market?

Question 26: Please explain how you have arrived at your conclusions and provide any evidence which supports these conclusions?

13 Improvements to the current Stamp Duty Law and LTT Law

13.1 Whilst consulting on the outline proposals, the Treasury would also like to take this opportunity to engage with stakeholders with regards to the Stamp Duty Law and the LTT Law.

13.2 The Treasury is seeking feedback from stakeholders as to how the framework for charging Stamp Duty and/or LTT could be reformed or improved. Please note that the Treasury's interest is limited to the taxation element of Stamp Duty and this consultation does cover issues such as which documents are "chargeable documents" under the Stamp Duty Law.

13.3 For example the Treasury has been made aware that, where Jersey real estate is enveloped within a corporate structure, the cost of stamp duty when transferring the real estate from one company to another company may be a barrier to group restructuring in circumstances where the restructuring does not result in a change to the ultimate owners of the real estate.

13.4 Accordingly stakeholders are asked to bring to the attention of the Treasury any other issues relating to the framework for charging Stamp Duty and/or LTT and how these issues can be addressed.

Question 27: Do you consider that the framework for charging Stamp Duty and/or LTT requires reform or improvement?

Question 28: Please identify the area(s) within the Stamp Duty Law or the LTT Law in respect of which you consider reforms or improvements could be made.

Question 29: Please explain why you consider the area(s) of the Stamp Duty Law or LTT Law require reform or improvement?

Question 30: Please explain how the area(s) you have identified should be reformed or improved?

Question 31: In regards to the specific issue highlighted in 13.3, how should the Stamp Duty Law be changed to address this particular issue?

14 How to respond to this consultation

To help us process your consultation response please provide the following information:

Question 32: In what capacity are you responding to this consultation?

Question 33: Do you represent a business which invests in commercial property?

Question 34: Do you represent clients in the buying or selling of Jersey real estate?

Thank you for taking the time to consider the issues within this consultation, which will assist in the formation of the final proposals.

Responses should be submitted by email to:

Tax.policy@gov.je

With a subject line of: "**Taxation of transaction involving "enveloped" property".**

This consultation paper has been sent to the Public Consultation Register.

Feedback on this consultation

We value your feedback on how well we consult or seek evidence. If you have any comments on the process of this consultation (as opposed to the issues raised) please email communications.unit@gov.je

How we will use your information

The information you provide will be processed for the purpose of consultation. The Comptroller of Taxes will use your information in accordance with the Data Protection (Jersey) Law 2018 and the Freedom of Information (Jersey) Law 2011. We may quote or publish responses to this consultation but we will not publish the names and addresses of individuals. If you do not want any of your response to be published, you should clearly mark it as confidential. Confidential responses will be included in any summary of statistical information received and views expressed.

Glossary & Key Terms

"the Comptroller": the Comptroller of Taxes

"the LTT Law": Taxation (Land Transactions) (Jersey) Law 2009

"the Stamp Duty Law": Stamp Duty and Fees (Jersey) Law 1998

"the Treasury": Treasury and Exchequer

"LTT": land transaction tax

"SD": stamp duty

Appendix A

Table of SD rates non-residential property

Value of transaction range		SD payable: non-residential property
£1	£50,000	0.5% subject to a minimum of £10
£50,001	£300,000	£250 in respect of the 1st £50,000 plus 1.50% on the excess
£300,001	£500,000	£4,000 in respect of the 1st £300,000 plus 2.00% on the excess
£500,001	£700,000	£8,000 in respect of the 1st £500,000 plus 2.50% on the excess
£700,001	£1,000,000	£13,000 in respect of the 1st £700,000 plus 3.00% on the excess
£1,000,001	£1,500,000	£22,000 in respect of the 1st £1,000,000 plus 3.50% on the excess
£1,500,001	£2,000,000	£39,500 in respect of the 1st £1,500,000 plus 4.00% on the excess
£2,000,001		£59,500 in respect of the 1st £2,000,000 plus 5.00% on the excess

Table of SD/LTT rates residential property

Value of transaction range		SD/LTT payable: residential property
£1	£50,000	0.5% subject to a minimum of £10
£50,001	£300,000	£250 in respect of the 1st £50,000 plus 1.50% on the excess
£300,001	£500,000	£4,000 in respect of the 1st £300,000 plus 2.00% on the excess
£500,001	£700,000	£8,000 in respect of the 1st £500,000 plus 3.00% on the excess
£700,001	£1,000,000	£13,000 in respect of the 1st £700,000 plus 3.50% on the excess
£1,00,001	£1,500,000	£22,000 in respect of the 1st £1,000,000 plus 4.50% on the excess
£1,500,001	£2,000,000	£42,000 in respect of the 1st £1,500,000 plus 5.50% on the excess
£2,000,001	£3,000,000	£67,000 in respect of the 1st £2,000,000 plus 6.50% on the excess
£3,00,001	£6,000,000	£127,000 in respect of the 1st £3,000,000 plus 8.50% on the excess
£6,000,000		£367,000 in respect of the 1st £6,000,000 plus 9.50% on the excess