

STATES OF JERSEY



Jersey

DRAFT TAXATION (ENVELOPED PROPERTY TRANSACTIONS) (JERSEY) LAW 202- (P.119/2021): AMENDMENT

**Lodged au Greffe on 25th January 2022
by the Corporate Services Scrutiny Panel
Earliest date for debate: 8th February 2022**

STATES GREFFE

**DRAFT TAXATION (ENVELOPED PROPERTY TRANSACTIONS) (JERSEY)
LAW 202- (P.119/2021): AMENDMENT**

PAGE 36, SCHEDULE 3 –

Delete paragraph 1 of Schedule 3 and renumber the remaining provision accordingly.

CORPORATE SERVICES SCRUTINY PANEL

REPORT

Introduction

1. The Corporate Services Scrutiny Panel (the Panel) has lodged this amendment following written submissions made to its [Enveloped Property Transactions Taxation Review](#) (the Review) by key stakeholders which raise extreme concern on the potential legislative and economic impact of [P.119/2021 Draft Taxation \(Enveloped Property Transactions\) \(Jersey\) Law 202-](#) (the Draft Law).
2. The Panel believes that the Minister for Treasury and Resources (the Minister) has done little to alleviate the concerns that have been expressed to her by those taking part in the consultation process of the Draft Law. The Panel further suggests that the Minister has not provided the Assembly, or the Scrutiny function, sufficient time to contemplate the Draft Law and Addendums.
3. The Panel highlights that the Acte Opératoire ([P.119/2021 Add.\(2\)](#)) enables Enveloped Property Transaction Tax (EPTT) to be charged immediately should the Assembly adopt the Draft Law. The Panel is of the opinion that the introduction of new taxation should receive ample consideration. Although the Minister is of the opinion that EPTT is simply a method of reducing the avoidance of paying Stamp Duty or Land Transition Tax (LTT), it will introduce a new charge for those purchasing companies which own property in the Island.
4. This Amendment, if adopted by the Assembly, will remove the Amendments to Companies (Jersey) Law 1991 (the Companies Law) within the Draft Law, which would disable the registering of an instrument of transfer of shares for relevant companies until evidence of a receipt of EPTT is produced.

Evidence received by the Panel

5. The Panel has received comments on the Draft Law that express concern that the proposed changes to the Companies Law will create uncertainty and complexity around the transfer of shares in a Jersey company which risks such companies, and as such the Island, becoming less attractive to international investors which will in turn have a negative effect on Jersey's economy.
6. A practical example of the complexity and confusing nature that the Draft Law will introduce can be detailed as such:

A transaction which involves the transfer of shares in a Jersey holding company of a group which happens to have relevant Jersey real estate held further down the corporate structure. Such real estate may not be material to the group as a whole and/or the overall transaction which could lead to a risk that the liability to EPTT may not be identified in time for completion of the transfer. In that event, the purported transfer of shares at completion would be in breach of the Companies Law. In most cases, if the transaction parties are properly advised, it should be that the issue would be identified and resolved in time, but the risk remains.

7. This creates uncertainty around title to shares which bring little benefit and may prejudice investors against using a Jersey company as compared to those from other jurisdictions.
8. The Panel has also been informed that certain secured lending transactions, in particular where debt is used to fund the acquisition of a Jersey company and, in that connection, the Jersey company shares are to be pledged/secured by the new owner as collateral for that debt. Customarily, that security takes effect at completion of the transaction. The Panel has been further advised that while there are various methods to create such security under the Security Interest (Jersey) Law 2012 (as amended) ("Security Interests Law"), the usual approach is for secured parties to take possession of the share certificate and thereby constitute "control" security under the Security Interests Law.

Reason for Amendment

9. The Panel has agreed that in light of such information it would appear that the Draft Law would not, if adopted, keep with the mantra of keeping taxation simple and fair. Furthermore, the Panel holds serious concern that adoption of the necessity for companies completing relevant transaction to provide evidence of receipt of EPTT will risk companies facing extra administrative and legal burden.
10. The Panel wishes to highlight its concern that undue weight is placed upon the transferee to deliver a statement to the Comptroller for Revenue (the Comptroller). Beyond additional legal and administrative costs, this risks inadvertent noncompliance in the case that a company that owns Jersey property being purchased as a larger group and that ownership being missed, leading to reputational damage should the transferee be fined. This risks detrimental impact to Jersey's standing as International Finance Centre, and again may deter investors from purchasing companies that operate in the Island, damaging the Island's economy.
11. The Panel has scheduled a public hearing with the Minister to discuss these points and has requested further clarification throughout the Review. However, the public release of further information has been somewhat delayed, with Economic Impact Analysis only being published through addendum ([P.119/2021 Add.](#)) on the 21st January 2022. Furthermore, the public hearing will only be carried out on the 27th January 2022, seven days prior to the debate and well past the deadline for amendment to the Draft Law.
12. In a letter to the Panel the Minister has indicated that in her understanding Standing Order 72(10) limits its ability to call the Proposition in for further review. The Panel is awaiting further clarification on this point from the Bailiff and has identified that this Amendment is needed to ensure that the Panel's concerns in relation to the Draft Law can be debated by the Assembly.

Conclusion

13. The Panel has lodged this amendment as there remains much uncertainty and questions regarding the implication of the Draft Law and its practical and economic impact. Key stakeholders have raised significant concerns regarding the impact of the drafted Law's alterations to the Companies Law. The Panel believes that should this amendment be adopted the Minister can bring forward a separate Proposition to implement those changes following further analysis and enablement of scrutiny.

Financial and Manpower Implications

There are no financial and manpower implications arising from this amendment.