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Dear Deputy Ryan

Stamp duty on share transfer transaction: Draft Taxation (Land transactions) (Jersey) Law 200-

We refer to your letter dated 14 March 2008 inviting comment on the above Law and detail below our concerns and observations:

1. At the States sitting on 19 January, 2005 the States adopted the policy of the Deputy of St Martin and

   a) Agreed in principle, that stamp duty should be payable on all transactions of residential immovable property in Jersey undertaken through share transfer at a level equal to the amount which would be payable on a contract of sale of freehold property of the same value before Royal Court;

   b) agreed in principle, that stamp duty should be payable on all transactions of commercial immovable property in Jersey undertaken through share transfer at a level equal to the amount which would be payable on a contract of sale of freehold property of the same value before Royal Court; and

   c) charged the Finance and Economics Committee to prepare the necessary legislation for consideration by the Assembly in 2005 to give effect to the foregoing proposals.

   The members present voted in favour with one abstention.

   On 4 December, 2007 the Minister for Treasury and Resources lodged the Draft Taxation (Land Transactions) (Jersey) Law.

   On 26 February, 2008 the Minister for Treasury and Resources lodged various Amendments to the above.

   The draft law would appear to be fundamentally flawed in that the Minister for Treasury and Resources has not prepared the legislation to encompass b) above. The legislation should therefore be referred back to the States as implementation of only part of the proposals must seriously affect the economic return from the introduction of this legislation.

2. The stated aim is to mirror freehold transactions but the Law has been drafted so that it dovetails with the Income Tax (Jersey) Law 1961 and will be administered by the Comptroller of Income Tax. We are unable to understand why the Law has been drafted in this way and why the Comptroller of Income Tax being is being charged with the administration of this law bearing in mind the additional workload already in his office as a result of 0/10 and GST. One must question the stated assertion that this law will not require any additional manpower.

3. Current stamp duty on a freehold transaction is not administered by the Comptroller of Income Tax and therefore how does this Law meet the requirements of mirroring the existing position of transactions currently subject to stamp duty.

4. The report advises that "income from the tax is at the date of lodging this Draft Law uncertain". However the 2008 Budget statement includes £1m as an estimate of the income going forward to 2012 at the same rate. One would assume that it should be relatively easy to calculate the amount that this tax will raise as the Housing Department will be aware of the number of consents that they grant each year for individuals and the Planning Department should also be able to advise as to the number of share transfer properties being developed in any given period. We would request that the proposed economic benefits of this Law are reviewed before the matter is taken forward.

5. We would be grateful for clarification as to the restricted use of the definition of land to "a unit of residential accommodation". For example would Land Transfer Tax (LTT) apply to the garden / garage etc. and, if not, does this provide opportunities to minimise the tax payable.

6. This legislation grants the Comptroller surprising powers in that he is granted the same powers he has under the Income Tax Law in relation to anti avoidance provisions. There does not appear to be any corresponding powers contained within the Stamp Duty Law.

7. The penalty provisions contained within this draft legislation and the Stamp Duty Law do not mirror each other. This legislation can impose a prison sentence of 12 months whereas the Stamp Duty Law only imposes a sentence of 6 months.

8. The Law appears to be discriminatory in relation to co-habiting couples. It makes specific reference to matrimonial property and transfers from sole to joint and vice versa. There is no mention of transferring from sole ownership to joint in the case of a couple who are not married, nor indeed in the case of a same sex couple. Are these measures human rights compliant?

9. Your letter for comment refers to "damaging Jersey's international standing" and we trust that this is the main rationale for not including commercial property. Is there any evidence of this or is it merely supposition. Certain sectors already receive enormous unreciprocated benefits from owning land in the island under the provisions of Article 115 Income Tax (Jersey) Law 1961, and we are unable to see what enduring benefit

retaining Article 115 or granting further commercial exemptions brings to the island. The rates of stamp duty are already lower than most countries in Western Europe.

10. If the Law is aimed solely at residential transactions, we would suggest, as we do not have data available, that these transactions will be at the lower end of the market. Will these changes be inflationary to the less well off and put up a further barrier to home ownership. Furthermore if first time buyer relief is available will the yield from this tax be sufficient to cover administration costs.

11. At a time where interest rates are rising due to the uncertainty within the credit markets could the introduction of this tax create a glut of un-sellable flats?

12. It is noted that the Comptroller has power to obtain judgement for non payment of LTT and also to recover such debt from the individuals' earnings. Could this cause hardship- especially if the individual already has arrears of income tax and is paying ITIS at 35% and self employed Social Security at 12.5%.

13. The Comptroller has been granted the power to impose a 10% surcharge on LTT. There does not appear to be a corresponding power in the Stamp Duty Law. Again one wonders at the equity in this?

14. We note that an entry on the register in relation to the exchange of shares cannot be made until an LTT receipt has been issued. Will this cause delays and difficulty with funding etc.

We believe that the approach laid down by this Law is flawed as it fails to cover commercial transactions; the yield is unknown; the Law may be inflationary during a period of financial uncertainty; the Comptroller of Income Tax should not be the person to administer the Law; additional manpower may be required; and the Law has been written with reference to other Laws with which the new LTT law would appear to be not compatible.

We would strongly suggest that if additional fees are required from the transfer of interest in property located in Jersey then this could be achieved through a series a specific fees (covering only specific transactions) rather than trying to mirror the existing stamp duty law.

Yours faithfully

John Shenton
Tax Director
For and on behalf of Ernst & Young LLP