

Deputy S Ahier  
Vice Chair  
Corporate Services Scrutiny Panel  
Scrutiny Office  
Morier House  
St. Helier  
JE1 1DD

By email only: [REDACTED]

26 January 2022

Dear Deputy Ahier,

**Enveloped Property Transaction Tax (Jersey) Law 202-**

Further to our meeting on 5 January, I am writing on behalf of the Fiscal Strategy Group in relation to two issues.

London Economics report

We have reviewed the report prepared by London Economics for the Government entitled "Economic and distributional impacts of the proposed new Enveloped Property Transactions Tax" and which was published, by way of amendment to the Proposition lodging the draft Law, on 21 January 2022.

We do not consider that this desktop report, which we note was only commissioned last month, despite requests from stakeholders over preceding months, provides a sufficient basis for States Members to make an informed decision on the economic consequences of adopting the draft Law.

The report acknowledges its own limitations: as stated on page 1: "The work was undertaken over a short period in December 2021 and January 2022 and the scope and depth of the feasible analysis has been limited by those timescales. We are economists with wide experience of applying economic thinking and analysis to policy issues, including tax policy, but we are not experts in tax law or property markets, including the Jersey property market".

Despite these acknowledged limitations, the report makes broad assumptions as to the behaviour of market participants. It assumes that the introduction of EPTT will not significantly affect the level of activity by property developers and that falls in the prices that developers are able to charge to purchasers will be compensated by falls in the prices which developers will pay to landowners. Such falls in land prices, it is assumed, will be readily accepted by landowners. But all

these assumptions are made in the absence of any evidence obtained from participants in the Jersey property market.

As we have previously noted, the proposed tax is extremely broad in scope, capturing not just transactions where Jersey property is the main or principal asset of the corporate vehicle concerned, but any acquisition of a 'significant benefit' in a corporate vehicle which directly or indirectly owns (or leases) Jersey real property, whatever its other assets and activities. The London Economics report treats the proposed new tax as if it is simply aimed at property transactions, with no consideration of any economic effects of its wider scope.

In short, the report is, in our view, of very limited use and is certainly not the kind of comprehensive analysis that the introduction of this broadly defined new tax merits.

#### Use of Acte Opérateur

It has come as a huge surprise, particularly within the legal community, that the new Law is proposed to be brought in using Article 12 of the Public Finances (Jersey) Law 2019. We are not aware of this having been suggested at any time during the stakeholder consultations in 2021 and the legal community have been operating, quite reasonably in our view, on the assumption that the legislation, if passed by the Assembly, would need to go for Privy Council approval before it would be registered and this time gap would allow them to prepare for implementation (recognising that there is no guarantee that the EPTT will pass the Assembly and hence time spent now on implementation could effectively be wasted effort).

Whilst it is understood that Article 12 (and its predecessor provisions) have routinely been used to bring into force on 1 January taxation changes contained in the annual Finance Law, we are not aware of any precedent for the use of an acte opératoire to introduce a brand new tax. It was certainly not used when the Land Transactions Tax was introduced and there is no expectation generally that new taxes such as this will be introduced, with immediate effect, part-way through a calendar year.

But the immediate issue here is not the principle but the practicality. The administration/enforcement of EPTT (much like stamp duty and LTT) will be to a large extent outsourced to the legal community and they will need to develop processes and procedures to ensure that they and their clients are compliant and for this purpose will of course need to see the relevant forms and supporting materials (including the matters to be prescribed by the Minister by Order) once published - as things stand, there is simply the draft Law to guide them. The proposed fast-track implementation timescale leaves legal advisers and their clients with next to no time to prepare. The Panel may wish to seek confirmation from Revenue Jersey that it is confident that, on its side, all the necessary administrative machinery and resources will be in place by the implementation date to administer the legislation, including scrutinizing information provided by transacting parties' legal advisers on a timely and authoritative basis.

There is, of course, also the effect on transacting parties, who will be finding out only now about the proposed timescale and having to adapt to effects on the economics of pending transactions and to new compliance obligations. Mention of the proposed timescale has caused some significant concern and disruption, including in relation to transactions involving local, non-financial services businesses which own some Jersey real estate as part of their trading operations.

Since starting to prepare this letter, we have become aware of the two amendments lodged by the Panel, both of which are welcomed. To our mind, the fact that important issues of legislative scope remain to be decided underlines further the need for a proper lead-in time once the legislation has been passed by the Assembly (assuming it is). Parties with live transactions, and business more generally, need the ability to plan properly for the implementation of whatever legislative measures are ultimately adopted. Certainty, it need hardly be repeated, is vital for confidence in Jersey as a place to do business.

Yours sincerely,



**Alex Ohlsson**  
**Chairman**  
**Fiscal Strategy Group**