

The Land Transaction Tax on Share Transfer Properties

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The Taxation (Land Transactions) (Jersey) Law 2009 (the "Land Transactions Law"), came into effect on 1 January 2010.

Purpose

The purpose of the Land Transactions (Jersey) Law was to introduce a tax on certain types of transaction that confer "rights of occupation of land in Jersey". Such tax is known as the Land Transactions Tax ("LTT").

Why?

Freehold purchasers have always been required to pay Stamp Duty in relation to the purchase of property, in accordance with the Stamp Duties and Fees (Jersey) Law 1998 (the "Stamp Duty Law"). However, those purchasing share transfer property are not required to pay Stamp Duty under the Stamp Duty Law. The Land Transactions Law achieves parity of treatment between these two types of purchase (freehold purchases and share transfers of residential properties) by placing a legal obligation on the purchaser of a property by share transfer to pay a self-assessed tax exactly equal to the Stamp Duty that would be payable on a freehold purchase of the same value.

How will this affect me?

The Land Transactions Law is aimed at the share transfer of residential properties only, not commercial property, and where the shares in the company give the owner of those shares a right to occupy that property. So, a typical example would be a purchaser borrowing money to purchase a share transfer apartment to live in. LTT is payable on the transfer of shares to acquire the right to occupy that apartment and on the secured loan.

More specifically, the transactions that are subject to LTT fall into three categories:

1. The transfer to a person of any share, ownership of which, by virtue of the

articles of association of the company in which the share is held, confers a right of occupation of land in Jersey;

2. A declaration that a share (as described in 1 above) is held on trust for the benefit of a person or an amendment to such a declaration substituting the person for whose benefit the share is held;
3. The creation of a security interest pursuant to a security agreement in any share described in 1 above.

The phrase "right of occupation" is not defined in the Land Transactions Law, however the Land Transactions Law has been drafted in a way to specifically exclude any transactions of shares in companies where no right of occupation of land occurs as a result. Furthermore, in determining whether a right of occupation is conferred, any lease or tenancy or other interest in the land to which the right of occupation is subject and any restriction or requirement of the Housing Law in Jersey is disregarded. There is also provision for the States to specify by Regulation transactions to which LTT does not apply.

How much will I have to pay?

LTT is calculated on exactly the same basis as Stamp Duty is calculated under the Stamp Duty Law, which is on a sliding scale dependant upon the value of the property (but in this case this will be the value of the shares).

There are various concessions and exceptions. Some examples are the transfer of sole ownership into joint ownership and vice-versa of the matrimonial home, acquisitions by charities and on the devolution on intestacy of a deceased person's estate.

As a general guide on the basic amounts that apply in most cases, LTT is charged in the following way:

- Transactions with a value up to £50,000:

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50p for each £100 or part thereof (minimum £10);

- Transactions exceeding £50,000 but not £300,000: £250 in respect of the first £50,000 plus £1.50 for each £100 or part £100 in excess thereof;
- Transactions exceeding £300,000 but not £500,000: £4,000 in respect of the first £300,000 plus £2 for each £100 or part £100 in excess thereof;
- Transactions exceeding £500,000 but not £700,000: £8,000 in respect of the first £500,000 plus £2.50 for each £100 or part £100 in excess thereof;
- Transactions exceeding £700,000: £13,000 in respect of the first £700,000 plus £3 for each £100 or part £100 in excess thereof; and
- For security over the shares, £50, plus (subject to a minimum of £5) 50p for each £100 or part of £100 of the amount secured by the security agreement.

What about first-time buyers?

The concessions on Stamp Duty for first-time buyers found in the Stamp Duty Law are reflected in the Land Transactions Law. The Land Transactions Law, will need to be amended contemporaneously with the Stamp Duty Law to ensure that LTT will continue to be charged on an identical basis.

How does the Comptroller of Income Tax know when a transaction has taken place?

In a case where the transaction confers a right of occupation of land, the Land Transactions Law places a duty on the person who acquires the right to declare the transaction and pay the LTT. In the case of transactions which are security interests (loans secured against shares), it is the lender who must declare the transaction and pay the LTT. The Comptroller produces a LTT receipt.

Failure to make a declaration to the Comptroller, failure to pay LTT, and knowingly making a false or misleading statement are each offences created under the Land Transactions Law, all of which may be dealt with by fine or even prison sentence. It is therefore essential to notify the Comptroller in cases where LTT is payable.

LTT must be paid within 28 days following the

transaction or else a surcharge of 10% of the LTT due will be added. The Land Transactions Law confers discretion on the Comptroller to waive such surcharge in limited circumstances.

The Land Transactions Law amended the Companies (Jersey) Law 1991 in order to prevent a company registering an instrument of transfer of shares affected by the Land Transactions Law, until a receipt of payment of LTT has been produced to the company. Failure to do so is an offence, the penalty for which is a fine for the company and every officer of the company in default.