

Legal Review



DWELLINGS PROFITS TAX – IS IT NECESSARY?

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Anyone who has bought or sold a residential property in Guernsey will almost certainly have heard of Dwellings Profits Tax (“DPT”). Essentially the tax is levied on profits made on the sale of a dwelling unless the sale is exempt. The rate of tax is 100%, although allowances may be claimed for relevant expenditure.

The most common exemptions are either five years’ ownership or ownership and occupation for one year.

At the time of completion of the conveyance, the vendor is obliged to produce a DPT exemption certificate (or a certificate stating that no tax is payable or the tax has been paid) from the Income Tax Authority to the Conveyancing Court. The conveyance cannot be registered unless the certificate is produced.

The question has arisen as to whether the tax is still necessary. An investigation of the background to the introduction of the law relating to DPT, which was brought into force in 1975, has revealed some interesting facts.

On 1 March 1973 the States of Guernsey resolved that the Advisory & Finance Committee (as it was then) should examine the problem of speculation in property and report to the States as a matter of urgency with recommendations.

The Committee’s report revealed that in the first half of 1973, 135 of 1,100 open market dwellings (or 12%) had been conveyed! Of these 47% were bought by local residents, 33% by non-residents and 20% by companies. The report commented that “There is no doubt that speculation in the open market has been widespread”.

The real increase in the price of open market dwellings during the five years leading up to the report, after taking into account inflation, was 90%. The Committee also commented that “Speculation has not itself caused prices to rise permanently; rather it is the case that the speculator has exploited the opportunity which the rising market has presented”.

The position with regard to local market dwellings was less spectacular. The corresponding percentage of dwellings conveyed within the same period was less than one fifth of that on the open market and the real increase in prices was 34%. This was chiefly attributed to the continued expansion of the economy.

The report stated that “Contrary to popular conviction, the speculator in dwellings has not in any substantial way denied young people the chance to own their own home. Indeed, much the greater part of local market property development involves no speculation whatsoever”.

However, the Committee reached the conclusion that speculation was “fostering the growth of an unhappy and unhealthy divisiveness in the community”.

The Committee recommended that several measures be introduced to address the problem. These included:

1. Prohibition on the ownership by a body corporate of either an open or local market dwelling, without a permit from the Housing Authority.
2. No individual should be allowed to own solely or with others more than one open market dwelling, except with a permit.
3. An individual who did not possess residential qualifications or a housing licence should not be allowed to own a local market dwelling, except with a permit.

The issue came back to the States in June 1974 and it was reported that the incidence of speculation had fallen substantially. Also, the plans to control ownership of dwellings and establish a Land Commission, which had been recommendations of the Committee, had been shelved, influenced no doubt in the case of control of ownership, by concerns expressed by the Law Officers with regard to the draconian nature of the proposals. However, the taxation of gains on sale (a further recommendation) was brought forward in The Dwellings Profits Tax (Guernsey) Law 1975 and this remains with us today, having been modified by subsequent legislation passed in 1983 and 1989.

The question of whether the Law serves a useful purpose is undoubtedly subjective, depending upon whether you believe that it is acceptable for the States to intervene in the control of free market forces. I think that there can be little doubt that if DPT had not existed, the periods of intense activity in the housing market (particularly with regard to the local market at the end of the 1980’s and approximately 3-4 years ago) would have produced fat gains for speculators.

My personal view is that it is highly unlikely that the Law will be repealed anytime soon. By and large it is not unfair and it appears to have become generally accepted within property circles.

The Law does contain a section enabling the States to suspend all or any of its terms for such period as they see fit. This might be a preferred option, but only if the anti-lobby is sufficiently vociferous!

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