

# Legal Review



## PROPERTY TAX SET TO GO

by Advocate Jason Green, Collas Day

### About the author

Jason Green is a partner at Collas Day and heads the Property department. Jason's experience centres on property, ranging from the property matters of individual clients to major commercial transactions. He was part of the Collas Day team that advised on the transfer of control of Herm. His work on residential property has led him to deal extensively with matters of inheritance and the structuring of individual and family assets.

**A**t the end of January the States of Guernsey voted to suspend (but not repeal) the Dwellings Profits Tax (Guernsey) Law, 1975 (the Law).

### What is the DPT Law?

The Law was enacted in the 1970s in order to combat speculation in the property market. It is a tax on the sale of a dwelling, or the grant or assignment of a lease or sublease. The rate of tax is 100% of the profit made on the sale, lease or assignment.

### Exemptions

The Law provides for a number of exemptions, the most common of which are where:

- the property has been occupied by the owner or their spouse as their main residence for a minimum period of 12 months (or, in the case of a company, occupied by the person who has the controlling interest in that company for the 12 months immediately preceding the sale)
- the owner has owned the property for at least 5 years
- the sale is by a person in the business of construction, reconstruction, repair or renovation, subject to certain conditions

### Effect of the Law

Although the intention of the DPT Law was never primarily for the collection of tax - but rather a disincentive to speculate - the amount collected over the years (around £58,000 in the past 15 years or so) has been far outweighed by the administrative costs of running such a scheme by the Guernsey Income Tax Authority.

On a practical level, on every sale of a property there must be an assessment of whether a liability exists. If the transaction is exempt, the vendor will be required to produce an Exemption Certificate, which must be applied for, usually by their Advocates. If not, then there must be confirmation that the tax has been paid before the conveyance can proceed.

Add to this the fact that the primary goal of the tax, to prevent speculation in the property market and keep housing prices

down, has failed (local market properties recently hit an average price of £400,000) then it seemed like good sense to scrap it. The Treasury & Resources Department, the States body which proposed the amendment, considered that the Law was not effective either from an administrative point of view or in achieving its objectives. From the States' point of view, valuable resources can be redeployed to where they are needed most and, from a client's point of view, a layer of bureaucracy has been removed.

### Suspension

By suspending rather than just repealing the Law, the States will be able to monitor the effects of the suspension and will retain the flexibility of being able to reintroduce it should they feel, as before, that a deterrent is required.

### A Positive Step?

In our opinion the suspension will only benefit clients. The Law could, and often did, add an extra burden on transactions, and had potential to cause a great many problems in what would otherwise be a straightforward property sale, with no hidden speculative agenda. Clients purchasing buy-to-let properties are currently advised of the potential liability under the Law should they wish to sell within 5 years of purchasing. Clients who are not developers by trade can be caught out if they intend to redevelop their property and then sell if they have not lived in it or owned it for the requisite period.

We are often instructed solely on DPT matters where a dispute has arisen over liability. These issues generally take a lot of time and money to sort out. The suspension will undoubtedly make the process of selling property a lot smoother and will result in one less thing to worry about.

### Not yet in Force

Although the change in the Law has been approved, it still requires enabling legislation. At the time of writing this has not been done but it is expected within a matter of months. It will be interesting to see what difference, if any, this has on the market.



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