# The enveloped property transactions tax – Answering your key questions

**Briefing Summary:** The Taxation (Enveloped Property Transactions) (Jersey) Law 202- (the "Law") was adopted by the States of Jersey on 9 February 2022.

**Service Area:** Property Law, Commercial Property, Residential Property

**Location:** Jersey

**Created Date:** 28 February 2022

Until now, the purchase of the share capital of a company which owns Jersey property has been beyond the scope of stamp duty. The Law has been introduced in order to address this perceived inequity, bringing in a tax equivalent to stamp duty that will be payable on such transactions.

In this briefing note we look to answer some key questions in relation to the remit of the Law and the impact it will have on businesses with property interests in Jersey.

## What is an enveloped property?

The Law defines an enveloped property (referred to in this briefing note as "Enveloped Property") as land in Jersey which is (a) owned by person who is not an individual, or (b) in respect of which the lessee under a contract lease of the land is a person who is not an individual.

In practice, this will catch most immovable property held by companies, whether it is owned by the company outright, or held by the company as tenant under a (long) lease.

Note that the Law only covers contract leases, which are leases granted for a term of over 9 years and which are required to be registered before the Royal Court of Jersey. Leases for a term of 9 years or less, often called 'paper leases', are not caught by the provisions of the Law.

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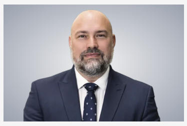

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## What transactions are caught by the Law?

The Law applies to relevant transactions, and a 'relevant transaction' is defined as a transaction that:

1. transfers to a person an interest in an entity (note: generally, this will be the acquisition of shares in a company or of a beneficial interest in any other body or company);
2. that entity is the beneficial owner of Enveloped Property in Jersey, or controls an entity that is the beneficial owner of Enveloped Property in Jersey; and
3. the effect of that transfer grants that person a significant interest in that entity.

A significant interest will be where the person owns or controls more than 50% of the interest in the entity, e.g. owns 50% or more of the total issued share capital in that company.

## Does the Law apply to both commercial and residential Enveloped Properties?

Yes, the law is specified to apply to Enveloped Property whether it is used for domestic or non-domestic purposes. Domestic purposes will usually equate to residential properties, and non-domestic with commercial properties.

A property will be determined to be either domestic or non-domestic in accordance with that property's rating under the Rates (Jersey) Law 2005 (the "Rates Law").

## How is mixed use property treated?

Broadly speaking, mixed use properties will generally be deemed to be non-domestic for the purposes of the Law.

Where the Enveloped Property contains two or more areas or units which are separately rated under the Rates Law, and at least one of those is rated as domestic and one is rated as non-domestic (and the areas/units are attached or adjacent to another area/unit), then the entire Enveloped Property will be deemed to be non-domestic.

## Is there a minimum value threshold in respect of the Enveloped Property?

Yes, the Law will only apply where the market value of the Enveloped Property exceeds:

- £500,000 in the case of domestic properties; or
- £700,000 in the case of non-domestic properties.

The Law provides that the Minister for Treasury and Resources may make an order to change these thresholds as required.

## How is market value determined?

The market value is defined as the unencumbered value of the Enveloped Property at the date of the transaction.

The market value of a contract lease will be determined by multiplying the annual rental payable under the lease by the number of years remaining in the term of the lease at the time of the transaction (capped at 21 years).

Where the annual rental payable under the lease is less than the market rent, when determining market value the calculation will use the market rent in place of the actual annual rental.

In practice, this may not be as straightforward as it seems, and it is unclear how the market rent will be determined where, for example, a premium has been paid on commencement of the lease but there is only a nominal (peppercorn) annual rent.

It may not always be apparent whether the rent payable under a lease is in fact market rent, which is itself determined based on a number of factors such as the terms of the lease (e.g. are they particularly onerous) and the physical condition and location of the property.

## What are the applicable tax rates?

There are three different rates, one for domestic properties, one for non-domestic properties, and one for leasehold properties. The rates are calculated on a sliding scale depending on the market value for the Enveloped Property. In all cases, there will be an additional £80 registration fee payable on top of the calculated rate.

Non-domestic Rates:

| Market Value of Enveloped Property | Tax Payable |
|---|---|
| **£700,000.01 to £1,000,000** | £13,000 for the first £700,000 plus £3 for each £100 or part of £100 in excess thereof |
| **£1,000,000.01 to £1,500,000** | £22,000 for the first £1,000,000 plus £3.50 for each £100 or part of £100 in excess thereof |
| **£1,500,000.01 to £2,000,000** | £39,500 for the first £1,500,000 plus £4 for each £100 or part of £100 in excess thereof |
| **Exceeds £2,000,000** | £59,500 for the first £2,000,000 plus £5 for each £100 or part of £100 in excess thereof |

Domestic Rates:

| Market Value of Enveloped Property | Tax Payable |
|---|---|
| **£500,000.01 to £700,000** | £8,000 for the first £500,000 plus £3 for each £100 or part of £100 in excess thereof |
| **£700,000.01 to £1,000,000** | £14,000 for the first £700,000 plus £3.50 for each £100 or part of £100 in excess thereof |
| **£1,000,000.01 to £1,500,000** | £24,500 for the first £1,000,000 plus £4.50 for each £100 or part of £100 in excess thereof |
| **£1,500,000.01 to £2,000,000** | £47,000 for the first £1,500,000 plus £5.50 for each £100 or part of £100 in excess thereof |
| **£2,000,000.01 to £3,000,000** | £74,5000 for the first £2,000,000 plus £7 for each £100 or part of £100 in excess thereof |
| **£3,000,000.01 to £6,000,000** | £144,500 for the first £3,000,000 plus £9.50 for each £100 or part of £100 in excess thereof |
| **Exceeds £6,000,000** | £429,500 for the first £6,000,000 plus £10.50 for each £100 or part of £100 in excess thereof |

Lease rates:

| Market Value of Enveloped Property | Tax Payable |
|---|---|
| **Exceeding £500,000 where domestic** | £3,500 for the first £500,000 plus 75p for each £100 or part of £100 in excess thereof |
| **Exceeding £700,000 where non-domestic** | £5,000 for the first £700,000 plus 75p for each £100 or part of £100 in excess thereof |

## The Law does apply to my transaction. What next?

There are separate obligations for the party acquiring the significant interest, and for the entity being sold that owns the Enveloped Property.

The person who acquires the significant interest as a result of the 'relevant transaction' must deliver to the Comptroller within 28 days of the transaction a statement containing prescribed details of the transaction, any required supplementary documentation, and confirmation and payment of the tax due. This statement must include a declaration that it is true to the best of that person's knowledge and belief.

Note that the prescribed details of the transaction are set out in more detail in the Taxation (Enveloped Property Transactions) (Statements) (Jersey) Order, which is supplemental to the Law. It includes details of the property-owning entity, details of any entity controlling that entity, details of the person acquiring the significant interest, details of the transaction, and details about the Enveloped Property. The statement must include or be accompanied by evidence of the market value of the Enveloped Property.

The owner of the Enveloped Property subject to the 'relevant transaction', if it is registered or established or has a place of business in Jersey, must deliver to the Comptroller with 28 days of the transaction a statement confirming that a significant interest has been acquired in that entity, and the name of the person who acquired the significant interest.

Where the person acquiring the interest has already delivered a statement to the Comptroller as set out above, however, the entity itself is not also required to deliver a statement.

## What are the penalties for non-compliance with the Law?

Late payments incur a surcharge of 10%.

Failure to deliver a statement as required can incur a penalty of up to £3,000.

If a person delivers a statement and/or supporting documents that it knows to be false or misleading, then they can be liable for imprisonment for 12 months and to a fine of level 3 on the standard scale.

The Treasurer of the States may also start proceedings for recovery of unpaid tax.

## What transactions will be excluded by the Law?

The Law is quite widely drafted, so that it will capture most transactions involving the acquisition of more than 50% of the share capital or beneficial interest in (i) companies owning (whether outright or as the tenant under a contract lease) immovable property, or (ii) companies that control such property-owning companies in Jersey, provided the market value of the Enveloped Property meets the thresholds set out above.

It does not matter whether the company is established in Jersey or has a place of business here.

However, Schedule 1 of the Law sets out a list of transactions that are excluded from the tax, which includes (but is not limited to):

- succession to an interest in the property of a deceased person, whether or not under a will;
- where the transfer of the interest in the Enveloped Property is made pursuant to a court order;
- where the company in question is listed on a recognised stock exchange;

- where the transfer of shares is from a nominee to the beneficial owner of that company, or to another nominee holding the shares on behalf of the beneficial owner;
- the issue, transfer or redemption of units in a collective investment fund;
- transactions that are already subject to LTT;
- transactions where the transferee is a Minister or a Parish.

## When does the Law come into force?

The Law will come into force on 4 April 2022.

## Carey Olsen is here to help.

If you would like any advice on how the Law will affect you or your transactions, please contact a member of our Jersey property law team.

*Carey Olsen Jersey LLP is registered as a limited liability partnership in Jersey with registered number 80.*