STATES OF JERSEY

CAPITAL GAINS TAX ON THE SALE OF RESIDENTIAL PROPERTY THAT IS NOT A MAIN RESIDENCE (P.61/2024) – COMMENTS

Presented to the States on 27th September 2024
by the Minister for Treasury and Resources

STATES GREFFE

COMMENTS

Deputy Andrews' proposition P.61/2024 seeks to impose, from 2028, a form of capital gains tax (CGT) at 20% on capital gains arising from the sale of residential property that is not a 'main residence'.

For the reasons set out below, the Minister for Treasury and Resources cannot support this proposition and urges States Members to reject it.

Arbitrariness of a Decision to Impose Taxation

The Deputy asks the States Assembly to agree (now) to introduce Capital Gains Tax without any research or public consultation. This would be irresponsible and ill-advised. No major form of new taxation has ever been introduced in Jersey without proper research and engagement with those likely to be affected. A Capital Gains Tax – even limited in scope to gains arising from the sale of residential property which is not the seller's main home, in the first instance – is very likely to be extended in scope in future and affect numerous parts of our community and a wide range of different asset classes. Jersey's longstanding reputation for fiscal prudence, certainty and stability could be quickly lost.

Income for the Strategic Reserve

The main contention put forward in the Proposition P.61 is that the Fiscal Policy Panel (FPP) annual report from November 2023 states that the forecast balance of the Strategic Reserve is lower than it should be to meet its objectives. Pages 78 to 81 of the Proposed Budget 2025-2028 (P.51/2024) set out a clear plan to grow the Strategic Reserve over the forecast period and beyond. We have only just received the FPP's report for 2024. The Minister will, of course, be considering its recommendations and advice and will be devising, with the Council of Ministers, additional ways in which more funds can be invested into our reserves. It is important that this work is conducted carefully, in a holistic and considered way, which meets the best interests of Jersey and not in a piecemeal and disjointed fashion.

Impact on Behaviours of Potential Landlords

A secondary reason in the proposition holds that a CGT would deter investors in the residential property market and "create more opportunities for first time buyers". The proposition fails to explain how that aim would be achieved and offers no meaningful economic analysis. Recent changes to the residential property market, including increases in interest rates; the additional 3% stamp duty charge; and changes to tenancy rules, have not yet filtered through. Layering further changes on top, when the impact is not yet fully understood, is reckless and may do considerable damage to the availability of much-needed rental accommodation.

Further questions to consider

The Proposition implies that the introduction of this tax is a simple matter. That is incorrect. Even had the Proposition been couched in terms of seeking review and consideration, a considerable number of questions would need to be considered and significant resources applied to work on the issue. Tax policy resources are currently heavily engaged in work on Independent Taxation, Pillar 2 and Prior Year basis taxation. Creating a new and unnecessary form of taxation is not a priority.

The Appendix provides a small example of some of the questions and policy issues that would need to be addressed before even the principle of this proposition can be debated.

Jersey's competitiveness and reputation
A Capital Gains Tax could be particularly potentially damaging to the health of our International Finance Centre. The future potential risk of an extension in scope of a CGT could deter new businesses from coming to Jersey and affect existing businesses' decisions about where best to locate, especially when such decisions may already be actively in play with regard to the OECD Pillar 2 initiative.

With the anticipated implementation of the Pillar 2 corporate income tax regimes from 1 January 2025, it is more important than ever for Jersey to continue to present itself as a jurisdiction that is a competitive place to do business and which wants to attract overseas businesses and investors. Even though the scope of the proposed CGT is initially limited, its introduction would represent a significant reversal of policy for Jersey. The very existence of a new CGT would raise the likelihood of possible future extensions in its scope.

Conclusion
For all these reasons, the Minister believes that adopting this proposition would set an unwelcome precedent, in conflict with our tax policy principles and our reputation as a stable and fiscally-prudent jurisdiction, and asks States Members to reject it.

MINISTER FOR TREASURY AND RESOURCES

Appendix – Example of questions that should have been considered before the proposition was lodged

Does it extend to property that is inherited?
Would CGT apply if an owner lived in the property at some point?
How would mixed-use property be treated? E.g. part commercial, part residential
Would CGT apply to gifts and transfers of property as well as sales?
Would the tax apply to properties held within companies, such as share transfer flats?
Would there be different rules when a property was sold to an individual or business connected to the vendor?
Would charities and social housing providers be included?
Would there be any exemptions or reliefs that are available in the UK's CGT system, such as the annual exemption, private residence relief or lettings relief?
How would pure capital gains be distinguished from increased value because of improvements made to the property?
Would capital losses be available to offset against capital gains?
How would leasehold property be treated?
How would transfers from joint into sole ownership, or vice versa, be treated?
Would property developers be liable to pay CGT on top of the income tax they are liable to pay on the sale of the property?
Dealing with inflation – would the tax be levied on cash or real capital gains?
How would CGT be collected? As with Stamp Duty, it is likely that conveyancers would need to be involved, so they would need to be consulted and their agreement to participate obtained.
How would we deal with vendors passing on the tax to buyers?