STATES OF JERSEY

DEVELOPMENT LEVIES (P.14/2023): AMENDMENT

Lodged au Greffe on 11th April 2023
by the Council of Ministers
Earliest date for debate: 18th April 2023

STATES GREFFE

1 PAGE 2, PARAGRAPH (a) –

For the words ", to further the aim of a fair tax system, a land development tax or an equivalent" substitute the words "a fair".

2 PAGE 2, PARAGRAPH (b) –

For the words "Minister for Treasury and Resources" substitute the words "Council of Ministers" and for the words "by 31st March 2024" substitute the words "31st March 2025".

COUNCIL OF MINISTERS

Note: After this amendment, the proposition would read as follows –

THE STATES are asked to decide whether they are of opinion –

(a) to agree that a fair charging mechanism should be introduced to raise revenue for the States from any significant uplift in the value of land arising from when the land is rezoned or from when planning permission has been granted;

(b) to request the Council of Ministers to bring forward for approval the necessary legislation to give effect to the decision by 31st March 2025; and

(c) to agree that that the proposals in paragraph (a) should also be designed to have the effect of capturing uplifts in the value of land arising between the date of the debate of this proposition and the coming into force of the necessary legislation and to request the Minister for Treasury and Resources, having sought appropriate advice, to take the necessary steps to achieve this objective if possible.

REPORT

Summary

The Council of Ministers is broadly in agreement with Deputy Kovac's policy aim to introduce a charging mechanism to capture a proportion of the uplift in land value arising from land being rezoned or when planning permission is granted, while being mindful that this needs to be well-framed to avoid undue disincentives or delay in developing land.

This amendment to part (a) is a minor one that seeks to remove reference to this being a tax, as the mechanism to capture value could take the form of a tax, or levy, or some other mechanism to extract value.

The amendment to part (b) separately seeks ensure that there is sufficient time to consider and evaluate viable options for the introduction of a charging mechanism, including any necessary consultation, and to bring forward the necessary legislation.

Part (c) of the Proposition refers to the application of a charging mechanism on a retrospective basis as the Proposition proposes to apply any uplift in land value from date of lodgement of the Proposition rather than from the date the law is enacted. The Council of Ministers is concerned about the retrospective nature of part (c), and while the proposition is clear that this should only be done "if possible", Ministers do not welcome the retrospective nature of part (c) of the Proposition.

Background

Numerous propositions have been lodged and debated by the States Assembly over the past 15 years to introduce, or at least agree in principle, a charging mechanism to capture some of the uplift of land value from the grant of planning permission. All of these propositions were, for one reason or another, unsuccessful which perhaps highlights the difficulty in designing a viable option. This is supported by the experience of other jurisdictions, particularly the UK, where governments have been generally unsuccessful in introducing and maintaining a successful regime to levy a charge on the uplift of land value arising from the grant of planning permission.

The Community Infrastructure Levy (CIL)[1] is currently in operation in parts of the UK, which can be levied by local authorities on certain new developments in their areas. CIL is a relatively new instrument and research has revealed a wide spectrum of views on it, to the extent that drawing definitive conclusions as to its efficacy at this point would be difficult.[2]

The principle of introducing a planning charge or levy in Jersey that is able to capture the land value uplift created when planning permission is granted has been endorsed by the States Assembly when it approved the Bridging Island Plan 2022-2025 in March 2022. Work is still required to design and develop an appropriate charging mechanism that is appropriate for use in the Island. The Council of Ministers, with more time, will be able to assess all potential design options to ensure that a viable charging mechanism is introduced. It will also be able to review and update previous work on proposed levies

[1] Community Infrastructure Levy - GOV.UK (www.gov.uk)
[2] CIL_Research_report.pdf (publishing.service.gov.uk)

such as the Jersey Infrastructure Levy (P.100/2017) and the associated viability assessment.

Sufficient time is required to allow the Council of Ministers to consider the interaction this charging mechanism would have with existing policies. The property tax system has undergone significant changes over the past two years (i.e., introduction of the Enveloped Property Transaction Tax (EPTT) and the higher rate of stamp duty for second homes), while at the same time changes in the external environment are placing additional pressure on the property market. Policies have also been introduced, in the Bridging Island Plan, which already require developers to deliver other forms of planning gain – such as the provision of affordable homes or a proportion of assisted purchase housing – on some development sites. The Council of Ministers feel that the introduction of an additional property tax at this time without sufficient lead time for preparatory work and consultation may cause further and unnecessary disruption in the housing market, potentially undermining work to tackle the housing crisis.

It is interesting to note that all attempts to introduce a development tax in the UK (1947, 1967, 1973, 1976, and 2007) were retracted before or soon after they took effect. While the taxes were appealing on paper, in practice they discouraged development, provided wide scope for disagreements in valuations, were able to be circumvented by large development companies leaving individual landowners to carry the burden, and brought in lower revenues than expected. The most recent attempt to introduce a development tax in 2007 was abandoned in favour of reforms to planning application fees, which are now set as high as £300,000 for multi-house developments or large building works and will potentially raise an additional 35% in 2023 under the Government's Levelling Up agenda.

Stakeholder consultation

The experiences of other jurisdictions (see Appendix 1) suggests that any tax on property development requires strong political resolve and a credible commitment to maintain the tax indefinitely if it has a chance to succeed. This requires consultation, discussion, debate, analysis and political buy-in, all of which takes time.

This Proposition, if agreed without amendment, would commit the Council of Ministers to introduce a new form of charge without sufficient time to work through the important prior steps to develop an understanding of the views of Islanders and key stakeholders. In postponing the lodgement of the legislation, the Council of Ministers will be able to consult with the relevant stakeholders to make sure that the chosen approach is proportionate and minimises the risk of unintended consequences in the property market.

It is particularly important to consult with property developers who will ultimately be impacted by the proposed charge and are currently facing significant challenges with rising costs. The new Bridging Island Plan is imposing new policy obligations on development the detailed implications of which upon overall viability for different forms of development need to be assessed before a further charge is contemplated. Similarly, the impact of the higher rate of stamp duty for second homes is still being understood and the Council of Ministers do not feel that it would be prudent to introduce an additional charge on the sector in quick succession.

Design choices

The report supporting the Proposition refers to the introduction of charging mechanism by way of a tax, yet the Proposition outlines the charging mechanism could also be introduced by way of a levy.

There are different merits in a tax or a levy (and indeed other options to consider), which operate in different ways. Aside from this high-level design choice, there are a wide range of further decisions that need to be made on the tax rate, tax base and administrative model. These choices will ultimately dictate the extent to which the underlying policy objective is achieved, the impact on Islanders and the administrative burden for the Government.

The Council of Ministers wishes to consider all options to evaluate which mechanism is potentially the most effective and, as such, will require the time and resources to conduct the necessary analysis in advance of any policy decision on the charging mechanism.

2022-2025 Bridging Island Plan

The States Assembly unanimously approved the 2022 to 2025 Bridging Island Plan which included the establishment of a Sustainable Community Fund (SCF) to be funded through a land development levy or a planning charge designed to capture the land value uplift created when planning permission is granted at a standard rate charge.

The Proposition states that it does not seek to interfere with this earlier decision of the States Assembly and that any tax should operate on a stand-alone basis. However, it is difficult to understand how this could be achieved in practice when both the proposals outlined in this Proposition and the Bridging Island Plan relate to very similar concepts. The only difference between the two proposed changes is that Deputy Kovac's proposition levies a percentage charge (of a suggested 50%) on the value uplift whereas the Bridging Island Plan suggests a specific fee. Through this amendment, the Council of Ministers also wishes to allow sufficient time to consider how a charging mechanism could be designed to achieve the aims of both this Proposition and the Bridging Island Plan while potentially supporting the funding of the proposed Sustainable Communities Fund and seeking to ensure that development remains viable.

Financial and manpower implications

The Proposition estimates "roughly £100 million" could have been generated (over an unspecified time period) through a 50% charge on the uplift in value if a charge had been introduced previously. Supporting calculations have not been provided to validate this estimate. Revenue projections cannot be produced by Government until decisions have been made on the design of the charging mechanism.

The initial manpower implications arising from the proposed amendment cannot be quantified at this time but would stem from the time and resources required to research, analyse, consult stakeholders and provide recommendations to the Council of Ministers on the options for a charging mechanism for the uplift in value from granting planning permission or rezoned land.

Conclusion

In conclusion, the Council of Ministers support the principle of capturing uplifts in value, while wishing to ensure that in developing the legislation care is taken to avoid undue incentives to development property. They therefore ask States Members to accept the amendment, including to extend the deadline by one year to allow policy officers to consider and carefully evaluate viable options for the introduction of a charging mechanism.

Appendix A

Land development charging mechanisms in other jurisdictions

Repealed

The UK has experimented with several versions of a development tax, with each being quickly revoked after proving to be a disincentive for development, encountering practical difficulties in valuation, or being gamed by organised developers.

- 1947: The post-war "Development Charge" provided for under the *Town and Country Planning Act of 1947* was levied at 100 per cent of the uplift in land value from changes in planning permission, with the goal of replicating the price at which the owner of land could buy back the right to develop land. The charge was revoked in 1953 after suffering several setbacks (Lent, G., International Monetary Fund, 1967):
    - Rather than apply to develop the site, landowners would sell the land at inflated prices to developers who would sit on the land and lobby for the abolition of the tax.
    - Landowners would haggle over pre-development valuations, which proved to have wide confidence margins and be largely arbitrary. It was common to negotiate tax liabilities down to as little as half the initial assessment.
- 1967: The "Betterment Levy" was imposed at 40% of the value above 110% of the prior use value. Despite attempting to preserve an incentive for landowners to put their property forward for development, the levy was revoked in 1970 citing valuation issues and gaming by developers related to the timing of improvement work (Barker, K., Review of Housing Supply, 2004).
- 1973: The Development Gains Tax extended capital gains taxation to disposals of land with development potential at rates of 82% for individuals and 52% for companies. The tax was revoked with the next government after proving unpopular (Barker, K., Review of Housing Supply, 2004).
- 1976: The Development Land Tax was levied on development gains arising from sales and deemed dispositions of land. Development companies were able to game the valuation rules to avoid the tax, while most revenues came from individual landowners. The tax was ultimately revoked for its perceived unfairness (Barker, K., Review of Housing Supply, 2004).
- 2006: The Planning Gain Supplement was developed to tax the windfall gain on sales of land for residential development at the point that full planning permission is granted. The complexity and practical difficulties ultimately led to the abandonment of the tax before it was implemented in favour of an increase in planning fees (House of Commons, Housing, Planning, Local Government the Regions Committee, Planning Gain Supplement, Vol. II Written evidence, 2006).

Sydney's Betterment Levy taxed the conversion of land from agricultural to urban use between 1970 and 1974, with proceeds paid into a Land Development Contribution Fund. It failed after political pressure from property developers and was criticised for ratcheting up the price of land zoned for housing without a corresponding decline when the levy was removed (Archer, R.W., Urban Studies, 1976).

Denmark's grundstigningskyld was enacted in 1933 and revoked in 1964. It levied a tax of 4% on the unrealised increase in value of all properties, assessed at 4-year intervals. Landowners were allowed to deduct a percentage of increase in general land values, as well as an amount to account for potential assessment error, usually 10 per cent of the original land value (Lent, G., International Monetary Fund, 1967).

In place

Israel's Land Betterment Tax, the *hetel hashbacha*, was introduced in 1949 and is levied at a rate of 50% on the increase in property value following a municipal planning decision, payable either when the landowner implements the planning decision (less construction costs) or when the landowner sells the property (Rebelo, E., Land Use Policy, 2017). The liability for the tax and property valuations are frequently subject to dispute, with several lengthy and complicated appeal and counter-appraisal procedures commonly resulting in lower assessments.

The Australian Capital Territory's Lease Variation Charge came into force in 1971 and is levied at the time of approval of a development application. Payment can be deferred until the project is realised. The charge has been refined considerably over time yet has endured and could be a model for Jersey; however, its current complexity serves as a warning of the commitment and resources required to follow through on a development tax (ACT Government).

In progress

The State of Victoria in Australia's Windfall Gains Tax, first announced in May 2021, will take effect from July 2023. It will apply to the rezoning of land that results in a value uplift of more than $100,000 (at a rate of 62.5% between $100,000 and $500,000 and 50% for amounts exceeding $500,000). The Valuer-General Victoria will determine the value of the land before and after rezoning. Landowners liable for the tax will be able to defer 100% of the tax for 30 years after the rezoning, or until a dutiable transaction of the property occurs. A deferred liability will accrue daily interest at the 10-year bond rate (Victoria State Revenue Office).