STATES OF JERSEY

PROPOSED GOVERNMENT PLAN 2023-2026 (P.97/2022): FOURTEENTH AMENDMENT (P.97/2022 AMD.(14)) – COMMENTS

RESIDENTIAL LAND WITHHOLDING TAX

Presented to the States on 7th December 2022
by the Council of Ministers

STATES GREFFE

COMMENTS

Summary
Deputy Luce proposes to introduce a new property tax in Jersey on non-resident owners of Jersey residential property at the point at which the property is sold. The aim is to restrict the ownership of Jersey residential property by non-residents.

The Council of Ministers understands the Deputy's aim of improving the supply of residential property in Jersey but asks States Members to reject the amendment on the basis that:

a) the Proposition as drafted is likely to have European Convention on Human Rights (ECHR) implications and it would be prudent for a full legal analysis to be undertaken prior to it being progressed further;

b) the rate of tax proposed in the amendment of 30% increasing to 50% is excessively high and is likely to be seen as punitive;

c) the tax is levied on the gross proceeds of sale and could result in transferors defaulting on their liabilities as the tax may be higher than the profits they receive;

d) the new tax will likely have unintended, detrimental impacts on the housing market, and would introduce a new administrative burden for conveyancers; and

e) it could lead to unintended consequences if non-resident owners hold onto the property as a means of circumventing the property tax.

Human rights and discrimination implications

1. The proposition seeks to introduce a new tax on the sale of immoveable property. It would apply only to those who are non-resident and who own residential property in Jersey. Jersey resident property owners would be out of scope of the new tax, however many residential properties they may own.

2. The differential treatment between property holders subject to their residence status may be considered discriminatory.

3. Given the proposition as drafted is likely to have ECHR/human rights implications, it would be prudent for a full legal analysis to be undertaken prior to the proposition being progressed.

Punitive tax

4. A tax on the gross proceeds is a form of sales tax. Similar to that of Value Added Tax (VAT) or Goods and Services Tax (GST), a sales tax does not take into consideration the profit or gains the seller receives on disposing of a property.

5. The proposition proposes to apply a tax at the rate of 30% increasing to 50% on the gross proceeds of a sale by a non-resident property owner. These rates of tax appear to be punitive and are likely to impact the legal analysis of ECHR compatibility as well as having significant detrimental impact in practice.

6. Comparatively, the UK taxes capital gains on the disposal of property that is not a main residence, the gain being the sales proceeds less acquisition costs (i.e. the profit). For non-residents, the rate of tax on any capital gains from the sale of property is 20%.

7. In France, non-residents disposing of property located in France are subject to capital gains tax at a rate of 19% as well as social security contributions at 17.2% on the profit if the seller is not affiliated with a compulsory social security scheme in an EEA country, Switzerland or the UK. An exemption is available if the property was the person's main residence prior to them leaving France.

8. New Zealand had introduced a residential land withholding tax (RLWT) which withholds tax from non-residents subject to the bright-line tax. The bright-line tax is an income tax applied on any gain on the sale of a property that has been owned for fewer than 10 years. Residents and non-residents are liable to the bright-line tax at their personal income tax rate – the highest rate being 39%.

9. Jersey's core tax policy principles are for taxes to be low, broad, simple and fair. The proposition does not meet these principles.

Default on charges held against the property

10. Property acquisitions are often purchased through a means of capital investment (i.e. a deposit) and debt (i.e. mortgage). The lender often places a charge over the property in so far that if a default on the repayments were made, on liquidation the lender is entitled to receive the proceeds of the property to settle the debt.

11. The proposition places a tax on the gross proceeds of the disposal of the property at significantly high rates such that the net income received by the vendor would be, in some cases, unlikely to settle the outstanding mortgage on the property.

12. For example: a property is sold for £350,000 with a mortgage of £250,000. If the property was sold by the non-resident owner between 1 January and 31 December 2024, under the proposal they would be subject to tax at a rate of 30% resulting in a liability of £105,000 (30% of £350,000). The proceeds of sale left after settling the tax liability would be £245,000 – less than the outstanding mortgage. This example does not consider the additional disposal costs such as conveyancing and other legal fees.

13. From 1 January 2025, the tax rate would increase to 50% and in the above-mentioned example the seller would have a tax liability of £175,000 with remaining sale proceeds being £175,000 leading to the seller being required to fund the outstanding mortgage balance through alternative funding.

Impacts on the housing market

14. The proposed tax would come into force from 1 January 2024, which is intended to provide non-resident owners 12 months to dispose of a property before the tax is introduced.

15. The policy aim is to increase the supply of homes that would be available for sale within 2023, if non-resident owners dispose of their properties before 1 January 2024.

16. It is understood that this tax has been proposed in light of the level of declared taxable income by non-residents. By virtue of there being a taxable income from these properties, it is reasonable to suggest that the income will have been generated by rents. Therefore, whilst the report focuses on increased supply to the purchase market, it fails to recognise that there will most likely be a reduced supply in the private rental market.

17. There is deemed a very high risk that a rapid disposal of non-resident properties could lead to a sudden and sharp impact upon the private rental market, which the wider market does not currently have the capacity to absorb.

18. The report asserts that there is *"undoubtedly a shortage of residential property for Islanders to purchase"*. However, anecdotal evidence suggests that the number of properties advertised for sale in Jersey is currently higher than it has been for a number of years. This shift in the market reflects the current economic climate, where it needs to adjust to the higher interest rates and lower levels of mortgage affordability.

19. Having regard to the slowing of the housing market, it should also be noted that even in normal circumstances, it can take a number of months for a property to become sold, being also dependent on a number of third parties being able to act quickly.

20. As such, the Council of Minsters does not consider that the 12-month 'grace period' is long enough to allow for non-resident owners to dispose of their property in sufficient time.

21. A further risk associated with the short grace period may be that tenancies are ended prematurely with properties left vacant for extended periods whilst they are actively marketed.

22. Sellers may also be inclined to increase the sales price of the property to mitigate the tax, leading to greater upward pressures on house prices.

Potential consequences of the policy aim

23. It is understood the proposition aims to increase the supply of residential homes by encouraging non-resident property owners to sell their properties to avoid paying tax in later years.

24. The tax would only apply where a property owner is a non-resident at the time of the sale and at the point at which the property is sold.

25. There is no requirement for a non-resident property owner to sell the property and therefore the proposition could result in more non-resident property owners holding onto property longer than intended so as to avoid the tax.

26. The non-resident property owner may also continue to hold onto the property until there is a significant uplift in housing prices to capitalise on the profits to fund the tax liability and any debt repayments.

27. Alternatively, a non-resident property owner who is from Jersey could move back to Jersey for the minimum period of time to be considered Jersey resident and sell the property, at which point they would not be subject to the residential land withholding tax.

28. The tax will also apply to someone from Jersey who currently live overseas and intend to sell a Jersey property that they own as a means to purchase a property in the place of their new residence or sell a property they have inherited. The high cost of the tax may outweigh the cost to retain the Jersey property, either as a vacant property or as rental accommodation.

Implications of administering the proposed tax

29. As outlined within the proposition, it is intended for the tax to be collected on behalf of the non-resident owner and transferred to the Treasurer. The proposal does not identify which party would be responsible for collecting the tax. However, evidence of the New Zealand regime suggests that the tax is collected by the conveyancer or solicitor facilitating the transfer of title.

30. The consequences of introducing such a system, particularly at short notice, would be significantly burdensome for the residential property industry and require additional resources, systems, and procedures for the conveyancer to withhold the tax. This additional step would add complexity and costs to property transactions, which are likely to be borne by both the seller and the purchaser.