

# STATES OF JERSEY



## LAND DEVELOPMENT TAX OR EQUIVALENT MECHANISMS (P.147/2011): COMMENTS

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Presented to the States on 21st October 2011  
by the Minister for Treasury and Resources

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STATES GREFFE

## COMMENTS

The Minister for Treasury and Resources, as with P.90/2011, opposes this proposition.

The comment presented in response to P.90/2011 still stands and is reproduced in the attached Appendix. The key differences between P.90/2011 and this proposition are, firstly, that of timing, and secondly the proposal to ring-fence any revenues raised for the provision of affordable housing. This does not however affect the main arguments previously set out by the Minister for Treasury and Resources.

In summary –

- The Minister has committed to a review of land development tax as part of a wider review of property taxation which is to be undertaken by the Tax Policy Unit. This will be included in the Tax Policy Unit's work programme in the next 2 to 3 years. The review is considered an important one and will commence in early 2012. Until that work has been done it is not possible to say that a land development tax in the form proposed by the Deputy is appropriate for Jersey.
- As Oxera acknowledges in the reports helpfully reproduced by the Deputy, Jersey's special circumstances would make it difficult to reproduce an existing tax used elsewhere. Any new tax would therefore be likely to have to be designed from scratch, with due consideration for Jersey's unique position and subject to a full consultation exercise.
- The Minister cannot therefore commit to bringing forward legislation in Budget 2013 or at any time, unless and until it can be shown it is the right tax for Jersey.
- There is no urgency to enact measures because the 2011 Island Plan contains no new rezoning of green-field land for residential development that would deliver the significant uplift in land values to which the proposition refers.
- Nevertheless, the planning system approved in the 2011 Island Plan and in particular the increased use of Planning Obligation Agreements, is capable of delivering additional value to Island residents, in particular through the provision of affordable housing. Oxera has recognised that from an economic perspective this has an effect very similar to a land development tax, in that benefits pass from the developer to the community. In addition, States Members will be aware that profits derived from property development are already subject to income tax at 20%.

### **Part (a) – commitment to a taxing mechanism**

Although significant work has been undertaken by Oxera, it is clear from their reports that further substantial work would be needed to ensure that such a system was credible, effective and did not result in unintended consequences.

The main issues identified by Oxera as part of their review include (but are not limited to) –

- ◆ the particular circumstances of the Jersey housing market need investigating to ensure that any land development tax would actually fall upon landowners rather than be passed on to private households through increased rents and sale prices;
- ◆ how the tax would be introduced without creating distortions in the market;
- ◆ what would constitute a taxable event, for example would sales of land which reflect a “hope value” of future rezoning/planning permission be subject to the tax?
- ◆ how would the “taxable amount” be calculated such that the tax is only due on the increase in the value of the land that has been caused by the rezoning/planning permission decision? and
- ◆ when would the tax actually be payable, particularly if the sale of the land is delayed until some point in the future? This is particularly relevant in situations where a landowner develops their own land and then lives in the property.

#### **Part (b) – timing**

Oxera has acknowledged that this is a complex matter. Detailed work must be carried out before a decision can be made about whether a land development tax or equivalent measure is the right answer for Jersey. It would be extremely difficult to undertake that work and then design, consult on, and legislate for a land development tax, one without equivalent anywhere else in the world, in the 11 months remaining between the debate on P.147/2011 in November 2011 and the lodging of the 2013 Budget in October 2012.

The Minister for Treasury and Resources has committed to reviewing a land development tax as part of a wider review of property taxation which is being undertaken by the Tax Policy Unit. Work will commence in early 2012. This review is considered an important and overdue one, and will be given priority. However, in light of the complexities involved, the Minister cannot commit to bringing forward a land development tax or equivalent charge either in Budget 2013 or at any time unless it is in the best interest of Jersey. Without fully undertaking a review of the wider issue of property taxation, which will take time, it is not yet clear that a land development tax or equivalent measure is the right way of dealing with the perceived problem.

#### **Part (c) – retrospective nature of the tax or charge**

In paragraph (c) of the proposition, the Deputy is effectively asking the Minister to introduce retrospective tax legislation – i.e. law which has effect for a period prior to the law coming into force. That is not a feature of Jersey tax legislation, and may have human rights implications which do not appear to have been addressed by the Deputy.

In addition, the 2011 Island Plan contains no new rezoning of green-field land for residential development that would deliver the significant uplift in land values to which the proposition refers.

#### **Part (d) – provision of affordable housing**

The Deputy suggests that the funds raised through the introduction of a land development tax mechanism should be ring-fenced and applied to fund the provision of affordable homes for individuals on low incomes. The States have, however, recently approved the new Island Plan policies which seek to deliver a sufficient supply of affordable housing, relative to estimated need, over the next 10 years, involving the use of States-owned land and requiring a proportion of all residential development, above specified thresholds, to be affordable.

Planning obligations will continue to be increasingly employed to deliver affordable housing under the new 2011 Island Plan, which requires a proportion of all new housing, above specified thresholds from 2012, to be affordable. The thresholds set out in the Plan relate to the first 5 years of its operation (rising from 12.5% to 20%), when it must become established as a mechanism and yield results: the proportion of affordable housing yield for the remainder of the Plan period remains to be reviewed.

Supplementary planning guidance on the use of planning obligations is presently under review. Work is also being undertaken to enable contributions to deliver affordable housing to be made in 2012 as set out in the Island Plan. The guidance that will do this will be brought before the States for endorsement in early 2012.

These agreements, as Oxera note in their reports, should have the same underlying economic affect as a land development tax (i.e. a transfer of value from landowners to the community) without the introduction of some of the administrative complexities associated with the taxation approach.

The Minister for Treasury and Resources urges States Members to reject all parts of this proposition.

# STATES OF JERSEY



## UPLIFTS IN LAND VALUES: LAND DEVELOPMENT TAX OR EQUIVALENT MECHANISM(S) (P.90/2011) – COMMENTS

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Presented to the States on 4th July 2011  
by the Minister for Treasury and Resources

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STATES GREFFE

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2011

Price code: A

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## COMMENTS

The Minister for Treasury and Resources appreciates the sentiment behind this proposition and agrees that a land development tax warrants further review. However, for the following reasons the Minister for Treasury and Resources opposes this proposition:

- it is completely impractical to design and consult on a form of land development tax in the time remaining before lodging the draft Budget 2012 in September, and
- as the Oxera reports indicate, a poorly-designed tax risks creating issues (e.g. increased house prices, reduced property development, etc.) whilst raising little revenue.

The Minister for Treasury and Resources commits to review the land development tax option as part of the wider review of tax policy.

### Supporting analysis

In the report entitled "Which tax is best suited to Jersey's objectives?" dated February 2005, Oxera state –

"Overall, there appears to be scope for the introduction of a DGT (Development Gains Tax<sup>1</sup>), in the form of either a direct tax or planning gain."

However, in both this report and the follow-up report ("Further analysis of land/development based environmental taxes" dated January 2008), Oxera identify a number of issues which would have to be addressed before a development gains tax (or equivalent) could be brought before the States.

As the draft Budget legislation must be lodged by 27th September 2011, this gives a period of only 12 weeks (from the date of the debate) in which to address and find solutions to all of the issues raised by Oxera. The Minister for Treasury and Resources has been advised by senior Treasury officials that the design of a credible land development tax within this timeframe is completely impractical.

The main issues identified by Oxera and which need further consideration include (but are not limited to):

- the particular circumstances of the Jersey housing market need investigating to ensure that any land development tax would actually fall upon landowners rather than be passed on to private households through increased rents and sale prices;
- how the tax would be introduced without creating distortions in the market;
- what would constitute a taxable event, for example would sales of land which reflect a "hope value" of future re-zoning/planning permission be subject to the tax?

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<sup>1</sup> Development gains tax is the term used by Oxera in their reports, land development tax is the term used in the proposition.

- how would the “taxable amount” be calculated such that the tax is only due on the increase in the value of the land that has been caused by the re-zoning/planning permission decision; and
- when would the tax actually be payable, particularly if the sale of the land is delayed until some point in the future. This is particularly relevant in situations where a landowner develops their own land and then lives in the property.

All of the above points will also determine the impact of the administrative burden and the complexity of the tax.

In paragraph 57 of the Deputy’s report it is stated that –

“The only serious argument against action is that it is difficult to do. In response to this I would simply say firstly, that I am not so sure that it is true.”.

This statement is inconsistent with Oxera’s conclusions, as evidenced by the points above and the following extract from the 2008 report –

“...given that some of the detailed issues arise as a result of the interactions with the planning system itself, and the local market characteristics, it is possible that Jersey would need to develop more or less from scratch a structure that worked for Jersey.”.

As Oxera indicate throughout both reports, in order for a land development tax to be successful, it must be credible or landowners may hold back sales, planning applications, etc. In this context “credible” means that landowners believe that the tax is going to be in place for the long term and hence cannot be avoided through delaying their actions. It is essential that any land development tax is well designed (i.e. addresses all of the issues raised by Oxera) and forms part of a comprehensive fiscal framework rather than being introduced as a standalone, piecemeal measure.

Work has already commenced on the development of this comprehensive fiscal framework, including establishment in 2011 of the tax policy unit. The tax policy unit is conducting a review of Jersey’s overall tax policy to ensure that it meets the needs of the Island over the medium to longer term. Property taxes, of which land development tax is just one of a number of measures, are already being looked at as part of this review.

Finally, paragraph 13 of the Deputy’s report indicates that such a tax could raise £25 million over a period of years. This is clearly very attractive; however this calculation should be treated with extreme caution. Firstly, it assumes a tax rate of 50%; it is questionable whether 50% is the “reasonable rate” of tax anticipated by Oxera in their 2005 report. As the tax rate is reduced, so is the potential yield. Secondly, this yield is calculated by reference to figures in the 2005 report which are out of date.

In terms of anticipated yield, Oxera acknowledge in their 2005 report that –

“...it is reasonable to conclude that the revenue potential of a DGT, measured on an average per-year basis, is quite small”.

This of course is no reason not to pursue such a tax. However, the figure quoted by the Deputy in paragraph 13 should be treated with caution and should not be considered to be certain or necessarily achievable.

It should also be acknowledged that progress has already been made in the area of Planning Obligation Agreements. Such agreements, as Oxera note in their reports, should have the same underlying economic affect as a land development tax (i.e. a transfer of value from landowners to the community) without the introduction of some of the administrative complexities associated with the taxation approach. Planning Obligation Agreements also have the benefit of being able to focus on addressing the particular externalities arising out of a development. Put simply, they are a firm mechanism to ensure that the impacts arising from development are mitigated, or to achieve measures to make development acceptable.

Planning Obligation Agreements have already been used in Jersey to achieve transport improvements and affordable housing, to great success.

The revised Island Plan has extended further the potential scope of Planning Obligation Agreements, so that they can be used more often to deliver social housing and other benefits to the community (e.g. public art, new public spaces, etc.) Supplementary planning guidance on the use of Planning Obligation Agreements will be brought forward in due course now that the Island Plan has been approved. In particular the mechanism for affordable housing contributions will be brought before the States for endorsement by the end of 2011.

The introduction of a land development tax alongside Planning Obligation Agreements would result in 2 measures which would impact on the value of land, this duplication and the potential issues it causes would need to be addressed before a land development tax could be introduced.

On the basis that it is not feasible to bring forward the proposals as requested in part (a) of the proposition as part of Budget 2012, it is not necessary to address part (b) of the proposition.