STATES OF JERSEY

DRAFT BUDGET STATEMENT 2017 (P.109/2016): SECOND AMENDMENT

Lodged au Greffe on 28th November 2016
by the Deputy of St. Ouen

STATES GREFFE

PAGE 2, PARAGRAPH (a) –

After the words "as set out in the Budget Statement" insert the words –

"except that the estimate of income from taxation during 2017 –

(i) shall be decreased by £220,000 by maintaining for the year 2017 the current (2016) rates of stamp duty and land transaction tax charged on residential properties; and

(ii) shall be increased by £250,000 by increasing for the year 2017 rates of stamp duty and land transaction tax charged on non-residential properties to the current (2016) rates charged on residential properties.".

DEPUTY OF ST. OUEN

REPORT

"*Taxes should be low, broad, simple and fair*" – Strategic Plan 2015–2018.

The 2015 Budget Statement proposed an increase in the rates of stamp duty and Land Transaction Tax (LTT) for all property transactions in excess of £1 million. The highest rate of duty until that time had been a 5% rate chargeable on sums over £2 million. The proposal was to introduce graduated rates rising from 4% on sums between £1 million to £1.5 million to 7% on sums over £3 million.

On the very day of the Budget debate the Minister for Treasury and Resources lodged a last minute amendment to his own budget seeking to restrict the proposed higher rates of duty to residential properties only.[1]

After a short debate, the Minister's amendment was approved by 36 votes to 8 with no abstentions.

The result of the amendment has been that, from January 2015, rates of stamp duty and LTT on high value residential transactions have been greater than the rates charged on high value transactions in non-residential or commercial property. The following table illustrates this –

Property cost	**Non-residential property (unchanged)**	**Residential Property (rates applicable from 2015)**
£1 million – £1.5 million	£22,000 plus 3.5% on the difference between the cost and £1 million	£22,000 plus 4% on the difference between the cost and £1 million
£1.5 million – £2 million	£39,500 plus 4% on the difference between the cost and £1.5 million	£42,000 plus 5% on the difference between the cost and £1.5 million
£2 million – £3 million	£59,500 plus 5% on the difference between the cost and £2 million	£67,000 plus 6% on the difference between the cost and £2 million
More than £3 million	£59,500 plus 5% on the difference between the cost and £2 million	£127,000 plus 7% on the difference between the cost and £3 million

The present Minister for Treasury and Resources proposes to increase yet further the stamp duty and LTT rates payable on high value residential property transactions but to leave rates for commercial property transactions untouched. My amendment seeks to reinstate the original proposals in the 2015 budget statement, thereby returning to the position where we make no distinction between the uses of properties and charge duty only in relation to their values. I believe that there are no longer any good reasons for making such a distinction.

My amendment is largely revenue neutral for the budget because it would increase rates payable on commercial transactions but not implement the higher rates for residential property proposed in the Budget Statement.

[1] Draft Budget Statement 2015 (P.129/2014): sixth amendment

Why did the Minister for Treasury and Resources in 2014 bring his last minute amendment to his own budget proposals? The report accompanying the amendment states –

> *"Despite being lodged on 18th July 2014, representations have been very recently received outlining concerns that that the highest headline rate of stamp duty of 7% proposed in the draft Budget could impact on the Island's commercial property market, deterring investors, particularly when the rates in Jersey are compared to the highest rate applied to commercial properties in the UK of 4%. The higher rates of stamp duty proposed in the draft 2015 Budget would mean that the stamp duty payable on commercial property in Jersey would become higher than that due in the UK for property costing £2.65 million and above.*
>
> *The Property Tax Review which has been published alongside the Budget sets out a very detailed analysis of property taxes including stamp duty. Since this Green Paper has been published, it has become increasingly clear that there may well be some gaps and lacunas in the existing property tax collection arrangements. Where aggressive avoidance practices are identified, we would seek to shut them down as soon as possible.*
>
> *A potential avoidance practice on stamp duty has been flagged up and officers have been instructed to investigate this opportunity as a matter of urgency and, if required, to fast track legislation to close it.*
>
> *As a consequence, it is therefore proposed that the extension of the higher rates of stamp duty to non-domestic property is deferred, pending the drafting of a fuller set of amendments on stamp duty for commercial property, to be laid before the States for consideration in the New Year."*[2]

In proposing his amendment, the Minister stated –

> *"It is somewhat of a regret that it was only last Thursday that I received representation from the commercial property interests about concerns that they had about these changes and their representations that the effect of these proposals, if it included commercial properties, could - and I say could - affect Jersey's competitiveness. They asked that they be deferred until we have completed the Property Tax Review."*[3]

and

> *"I have been particularly made aware of an avoidance opportunity in the area of use of long leases instead of the outright sales of property. It is not yet clear how widely this is used but if it were allowed to continue this could undermine the very intention that we are seeking to raise revenue from property transactions. For that reason, and the reason that I think it is important on occasion to listen to industry, I have asked officials to investigate the whole issue of the stamp duty on commercial property to hold - and this is the result of this amendment - the stamp duty rates as they are for commercial properties*

[2] Draft Budget Statement 2015 (P.129/2014): sixth amendment
[3] Hansard 23rd September 2014; 1.1

and to accelerate the introduction, whoever is the post-holder, and indeed the Assistant Minister who will continue in office now for the next few weeks. I will not be dealing with anything in the Treasury as of tomorrow but I will ask the Assistant Minister to be overseeing effectively a fast and speedy look at the opportunities for abuse so that legislation could be presented as soon as possible in dealing with that. Also giving consideration as to whether or not the feedback that has been received on this avoidance issue is widespread and whether or not there is a case to maintain the original intention of bringing in higher rates of stamp duty on commercial properties. I think we all agree that we want to raise the appropriate amount of tax from property, it is something that has been a feature of Corporate Services' reports over a number of years. I am very clear, I think there are opportunities to raise more revenue from commercial property in the Island and I want to deal with the abuses; there have been issues in the past."[4]

and

"I do not like bringing late amendments but in the circumstances it is the right thing to do; it is the right thing to listen, hold back, research, do more work and accelerate what may be better proposals. For those reasons I move the amendment."[5]

Clearly the Minister brought his amendment for 2 reasons –

(1) He had received representations from commercial property interests which considered his Budget proposals harmful to competition; and

(2) He wished to delay the proposed increase in rates for commercial property transactions pending an investigation into possible avoidance practices.

In relation to the first reason, I feel sure that the Minister would have obtained advice from Treasury officials (and perhaps others) before lodging his 2015 Budget Statement proposing across the board increases in stamp duty rates and LTT. In his speech to the Assembly, he did not explain why the last minute representations from industry were so persuasive as to override the advice he had already received. It also meant that Assembly members had almost no time to ask their own questions and test what they were being told.

Is there still an argument that increasing rates on high value commercial transactions would stifle competition? Information available on the gov.uk website shows current rates of duty for freehold sales and transfers of commercial property in the UK[6] –

Property or lease premium or transfer value	**SDLT rate**
Up to £150,000	Zero
The next £100,000 (the portion from £150,001 to £250,000)	2%
The remaining amount (the portion above £250,000)	5%

[4] Hansard 23rd September 2014; 1.1
[5] Hansard 23rd September 2014; 1.1
[6] www.gov.uk/stamp-duty-land-tax/nonresidential-and-mixed-use-rates

It can be noted that the highest rate of duty in the UK is now 5% and that it starts at a much lower threshold than the existing or proposed Jersey higher rates.

The table below give some examples of rates of stamp duty on commercial property transactions that would be charged in the UK and in Jersey –

Property Cost £	**UK duty** £	**Current Jersey duty** £	**Jersey duty proposed by this amendment** £
1 million	39,500	22,000	22,000
1.5 million	64,500	39,500	42,000
2 million	89,500	59,500	67,000
3 million	139,500	109,500	127,000
3.6 million	**169,500**	139,500	**169,000**
5 million	239,500	209,500	267,000
10 million	489,500	459,500	617,000

It can be noted that UK rates are higher than the proposed Jersey rates up to a transaction level of £3.6 million. Below that Jersey would remain very competitive and even a £5 million transaction would only create a difference of £27,500. Obviously this is the current situation and the position with regard to UK rates seems to have been slightly different in 2014 when the Minister expressed concern about Jersey's competitiveness in the commercial property market remarking that "*the stamp duty payable on commercial property in Jersey would become higher than that due in the UK for property costing £2.65 million and above*".[7]

There are relatively few commercial property transactions that take place at prices of over £1 million. Treasury officials inform me that there were 16 in 2015 and 13 from January to October this year. Without extensive research in the Public Registry, I cannot say how many of them were transactions at prices of over £3.6 million. Furthermore many high value local commercial properties are owned by companies and sales often take place by way of a sale of the shares in the holding company which does not attract any duty or taxation whatsoever.

Stamp duty is not the only consideration for potential investors in Jersey commercial property. For example, our parish rates are very much lower than UK business rates and rental returns are generally higher here than in many UK locations.

It is clear that any adverse comparison with the UK only arises in the few cases where commercial properties change hands at over £3.6 million. But what is the rationale for having differing rates of stamp duty depending on the use of property rather than its value? In the case of residential property rates, there does not seem to have been any comparison with other jurisdictions which might be in competition to attract new residents and I am not aware of any evidence that the higher rates have deterred newcomers to the Island. In line with the principle of low, broad, simple and fair taxation, I consider that we should equalise the rates for residential and commercial

[7] Draft Budget Statement 2015 (P.129/2014): sixth amendment

property as originally proposed by the Minister for Treasury and Resources in his 2015 Budget Statement.

In his amendment to the 2015 Budget Statement, the Minister for Treasury and Resources also mentioned that he wished to defer the proposed increase in rates for commercial property transactions pending an investigation into possible avoidance practices. I am advised by Treasury officials that an investigation was conducted and no significant avoidance practices were found. The Minister indicated that legislation would be fast tracked if any such practices were found but no legislation has been brought forward on the subject since the Minister raised his concerns. Therefore I believe we can discount the possible existence of avoidance practices as a reason for not increasing stamp duty rates on commercial property transactions.

From the Minister for Treasury and Resources' report on his amendment and his speech to the States Assembly, it is apparent that holding back the proposed increase in stamp duty rates on commercial property was only intended as a temporary measure. The report states –

> "*As a consequence, it is therefore proposed that the extension of the higher rates of stamp duty to non-domestic property is deferred, pending the drafting of a fuller set of amendments on stamp duty for commercial property, to be laid before the States for consideration in the New Year.*"[8]

The Minister also told the States Assembly that the commercial property interests that had lobbied him only asked him to defer proposals until the Property Tax Review had been completed.

More than 2 years have passed since that budget debate. No amendments to the laws relating to stamp duty were laid before the States Assembly in the New Year 2015 or since. The Green Paper on Property Tax Review (R.101/2014) was published on 18th July 2014. In a written answer tabled on 24th February 2015 the new Minister for Treasury and Resources stated that he would *"consider all options for reform of the property tax system, including reform of the existing system, when the responses to the consultation have been reviewed in full."*[9] I believe we are still waiting to hear from the Minister.

The temporary deferral has taken on an air of permanence. The current Minister for Treasury and Resources has clearly considered what changes could be made in stamp duty rates but, rather than addressing the reasons for distinguishing between residential and commercial properties, he has instead proposed a further rise in residential property rates, thereby vastly increasing a differential which was only ever intended as a temporary measure.

There is a further consequence of ever increasing rises in duty on residential properties. The budget statement only makes reference to the duty being charged on the purchase of properties but, importantly, it is also charged when a Will is registered in the Public Registry. I believe the States Assembly should consider the impact of requiring a stamp duty payment of perhaps several hundreds of thousands of pounds before a person inheriting property can benefit from an inheritance. Of course that person will be in the fortunate position of inheriting property of substantial worth but at rates proposed by

[8] Draft Budget Statement 2015 (P.129/2014) sixth amendment
[9] 1240/5(8628)

the Minister of up to 9%, this begins to look more like an inheritance tax than a stamp duty. It is true that there are generous concessionary rates when children inherit but they apply only when children inherit equally. There are occasions when a parent has good reason to benefit children in different ways.

I am grateful to the Treasury officials who have provided me with background information and figures to enable me to bring this amendment. They have advised me in the following terms –

> *"Forecasting revenue from transactional taxes such as stamp duty is notoriously difficult; the Income Forecasting Group ("IFG") has therefore adopted a prudent approach to forecasting stamp duty revenues that takes in account the impact of very large, one-off transactions that are unlikely to reoccur. Utilising this methodology, aligning commercial property rates with existing residential rates would be forecast to raise an additional £250,000 per annum."*[10]

Against this must be set the loss of additional duty of £220,000 from the increased rates of duty on residential property proposed in the Budget Statement. The result appears to be a marginal gain of £30,000 but having regard to the difficulties of forecasting stamp duty revenue, it is probably best to regard my amendment as revenue neutral.

Financial and manpower implications

There are no manpower requirements arising. The financial implications are as given above and in the amendment itself.

[10] E-mail from Deputy Controller of Taxes (Policy, International & Transformation) 24th November 2016.