

STATES OF JERSEY



PROPOSED GOVERNMENT PLAN 2023- 2026 (P.97/2022): EIGHTH AMENDMENT (P.97/2022 AMD.(8)) – COMMENTS

STAMP DUTY ON WILLS OF IMMOVABLE ESTATE

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

STATES GREFFE

COMMENTS

Summary

The amendment proposes to increase the duty charged under Item 46 of the Stamp Duties and Fees (Jersey) Law 1998 (the “Stamp Duty Law”) on immoveable property upon the registration of a will.

The Council of Ministers does not support this amendment and asks Members to reject it.

Stamp Duty on wills – current position

1. Stamp Duty under Item 46 is charged on immoveable property upon the registration of a will, rather than upon the discharge of a will at the time of death of the Testator.
2. Registering a will should be encouraged because it evidences good title to immovable property and avoids uncertainty and confusion upon inheritance. Despite this, it is not compulsory for a will of immoveable estate to be registered.¹
3. Where a will is registered, Stamp Duty is not payable in the following circumstances:
 - the property is the matrimonial home left to the spouse or civil partner;
 - the property is left to a charity or social housing provider, or to a body that is exempt from income tax; or,
 - all property is passed, in the same shares, to those who would stand to inherit the property if the person had died intestate.²
4. Figures from 2021 show that around 60% of registered wills did not attract Stamp Duty.

Potential effect of the amendment

5. If the amendment were adopted, it would only affect the Stamp Duty charged on circa 40% of registered wills that do attract a charge to Stamp Duty.
6. Not only would the amendment not affect cases in which a will is not registered, but there is a risk that the increase in duty could also act as a deterrent to registration.
7. Stamp Duty used to be payable on the registration of a will of immovable estate even though it was the matrimonial home. Surviving spouses often chose to store the will with the Judicial Greffe rather than register it, meaning the estate was treated as intestate and no Stamp Duty was payable.
8. In raising duty rates, the amendment may once again discourage the registration of wills, leading to an overall reduction in duty charged.

¹ The Loi (1851) Sur Les Testaments D’Immeubles, and the Wills and Successions (Jersey) Law 1993

² In these circumstances, a nominal duty of £90 is payable upon registration

Implicit rent and income savings

9. The amendment states that the proposed increases will be payable against immovable property market values. For clarity, this amendment would not increase the Stamp Duty payable upon the purchase of a property. Therefore, although it is recognised that property owners may have an implicit rent, this amendment is unlikely to have any material impact on this issue.

Overreliance on personal income taxation

10. It is acknowledged that revenue from personal income tax in Jersey represents a higher portion of total tax revenue than in some other jurisdictions. This is because the range of taxes charged in Jersey (the ‘tax mix’) is limited compared to most jurisdictions: Jersey has fewer capital taxes and no inheritance tax; GST (an indirect tax) is also set at a rate lower than most comparable jurisdictions, in line with Jersey’s tax principles. Property taxes accounted for around 8% of Jersey’s total tax revenue in 2021,³ compared to an OECD average of 6%.⁴
11. Due to the modest number of registrations in scope of this amendment, and the potential for duty to decline, the amendment would have no material impact on the tax mix in Jersey.

Conclusion

12. At face value, this amendment could generate additional revenue. However, it is likely that the increase in duty would lead many to choose not to register a will. Consequentially, the amendment would be unlikely to have any impact on the composition of the tax mix.
13. As signalled in the Government Plan, the ongoing Stamp Duty review is due to conclude in 2023. The registration of wills will be considered as part of this review.
14. The Council of Ministers therefore asks States Members to reject this amendment.

³ [States of Jersey 2021 Annual Report and Accounts](#), p.194

⁴ [Housing Taxation in OECD countries](#), OECD