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Deputy Sam Mézec
Chair
Corporate Services Scrutiny Panel
By Email

29 November 2022

Dear Deputy Mézec,

Government Plan 2023-26 Review – Stakeholder Submission – Stamp Duty

Thank you for your letter regarding the proposed changes to stamp duty. We appreciate the opportunity to fully respond to all matters raised.

As you will no doubt recall, this set of legislative provisions was prepared in response to the States' decision to adopt Amendment 22 to last year's Government Plan 2022-25, lodged by the Corporate Services Scrutiny Panel.

A number of principles were important in the drafting of this legislation. The Panel's stated objective in lodging the Proposition was "*to assist with reducing property demand and re-balancing the market towards owner occupiers and first-time buyers*". This objective was to be achieved specifically through the means of transaction taxes – namely Stamp Duty, Land Transaction Tax and Enveloped Property Transaction Tax. Transaction taxes require certainty of interpretation (to the greatest extent possible) at the time of the transaction. There is no scope for application or interpretation after the fact, as there might be with income tax.

As stated in the submission, the Report and Proposition set out three types of transaction for inclusion in the amendment and defined these as:

- a) *Buy to Let – Purchasing a property specifically to let (rent) out*
- b) *Second home – Any residential property other than a main residence*
- c) *Holiday home – A home that people own in order to holiday in and that is in a different location to the home they usually live in*

None of these three terms were previously defined in law and there is a degree of ambiguity and overlap between the categories. For example, a property may be a holiday home for part of the year and rented out as a buy to let for another part of the year and, in many cases, a second home may be (but is not necessarily) also a holiday home. A holiday home will always be a second home.

It is worth noting that when considering their amendment, the CSSP engaged with the law drafters and quickly realised the challenges that would result by creating definitions. Treasury officials' early work with law drafters made it clear that defining each category would be complex and could create uncertain results that were difficult to evidence at the point of the transaction in many cases. It also became clear that the defining characteristic of

each category was that none were, and were not intended to be, the main residence of the purchaser.

In fact, the intent to cover properties other than a main residence was actually included in the definition of “second home” contained in the Report and Proposition itself, thus satisfying the intention of the Amendment. This definition also has the benefit of simplicity at the point of transaction, which is a long-standing principle of tax policy in Jersey.

I do not agree with the assertion that the scope has been substantially expanded beyond what was agreed or that the draft law was clumsily drafted or rushed. Officers engaged with experts in Law Drafters’ Office and Law Officers’ Department when developing the draft legislation. They also engaged extensively with legal experts in the property industry in Jersey and experts in the Judicial Greffe on policy and technical issues.

Industry views on this approach were then sought on the scoping definitions as part of the overall engagement on the draft legislation that was circulated by Revenue Jersey in July 2022 and discussed at a round table event later that month.

For the general information of the Panel, I would like to provide further detail on some of the matters raised with the Panel by Mr Shenton.

His letter says “*we would expect, where there is any uncertainty, for payment to be made and on situations of the relevant criteria for a refund to be claimed*”. During stakeholder engagement, it was made clear to officials by local legal experts that a repayment or refund system is not appropriate for Jersey, as it would create additional complexity and administration where it is not necessary. It would also not have been possible to deliver a new credit or repayment system in the time available.

I disagree with the suggestion that the language in the draft Law is open to interpretation. For example, the use of the word ‘occupied’ in Article [46] is not past tense but is used in the same way that you might say a parking space is occupied. As mentioned, officers have worked with law drafters, legal advisers, and property experts in the development of the draft legislation to implement Amendment 22.

It may also be helpful for the panel to understand that this is not about whether, at the point of acquisition, you own more than one property. The UK does adopt this approach, but it would not be appropriate here because it would result in cases where the higher rate was charged for purchases of a main residence in Jersey. Therefore, those looking to relocate to Jersey who have a property in the UK would not be subject to the higher rate, as long as their Jersey property is purchased for use as their main residence. The time elapsed between purchasing the property and taking up occupation is also not a relevant factor in whether the higher rate is due, provided the property is not used for any other purpose prior to occupying the property as a main residence, such as a buy-to-let.

The draft Law fits within the existing framework of the Stamp Duty Law, the Land Transaction Tax Law, and the Enveloped Property Transaction Tax Law. A new provision has been created to ensure that those knowingly making false or misleading statements as to whether a property is a main residence are committing an offence. References made within the submission to ‘blanket anti avoidance provisions’ are not recognised.

Turning to the examples provided in Mr Shenton’s submission:

1. Inheritance of property by a person who already owns a property
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Inheritance of property is not included within the scope of the draft Law. Therefore, there will be no change to the current process or legislation.

2. Shared equity, in that the owner of part of the equity (for example, Andium, would not meet the criteria to avoid paying additional duty)

Andium Homes Limited (Andium) is a secured creditor for any purchases through the Housing Gateway; it is not an owner and would not appear on the contract as a purchaser. Therefore, the higher rate would not apply. The majority of purchasers through the Housing Gateway are first-time buyers, the treatment of which are dealt with separately in the Stamp Duty law.

In circumstances where Andium purchased a share in the equity of a property, Stamp Duty would not be levied on Andium in accordance with Schedule 1, Item 13(t)(b) as Andium is listed as a company under the Social Housing (Transfer)(Jersey) Law 2013 and therefore liable to the judicial fee only.

3. Joint ownership between family members (for example joint ownership with parents and children to enable the children to be able to afford to buy a Jersey property)

The experience of past transactions indicates that it is much more likely that a parent is named on the loan rather than on the title to the property, which has no bearing on the Stamp Duty charged on the acquisition of the property. Stamp Duty due on the registration of the *obligation* is dealt with elsewhere in the Stamp Duty Law and is not included within the scope of the draft Law.

The deposit to purchase a dwelling may be gifted to a child and the child utilises such monies to purchase the property in their own name. In this case the higher rate of duty would not apply.

Further guidance covering specific examples will be issued in due course. Please see the response to example 4 for further information on Ministerial Directions that could be applied in these circumstances.

4. Family ownership (for example, properties bought with the intention of allowing elderly parents or children to reside independently in the property)

No higher rate would apply if the property were purchased in the name of the intended occupier. In practice, this is most easily done by gifting the monies to purchase the property or acting as a guarantor. If the purchaser is not intending to occupy the property as a main residence, then it would be classed as a second home, or investment property, and would be in scope of the higher rate.

Following the wider Stamp Duty review, the Minister for Treasury & Resources will utilise his power to give a Direction to the Comptroller and Registrar as to the exercise of their discretion in the reduction or remission of Stamp Duty, and LTT if it is just to do so. The Ministerial Direction is the appropriate mechanism to address concerns about complex, extenuating family circumstances where the acquisition is only within scope of the higher rate because of these circumstances. For example, the Direction will cover situations where an adult child is incapacitated or is losing capacity.

5. Property developers acquiring properties to refurbish and sell on

The Council of Ministers has also decided to provide a specific exemption for property developers who acquire a dwelling that will form part of their trade under Article 51(b) of the

Income Tax (Jersey) Law 1961. This is being lodged as an amendment to the Government Plan to be debated in early December by the States Assembly, alongside an accompanying legislative amendment.

6. Mixed property acquisitions where the intention is to construct a main residence and a second property.

The treatment that would arise in this example is dependent upon the status of the property/land at the point of acquisition. The higher rate only applies to purchases that are a dwelling at the point of the passing of the contract; if land or a commercial property is acquired with planning permission to create new residential properties, the standard rate is charged.

As stated above, property developers who acquire a dwelling that will form part of their trade are proposed to be exempt from the higher rate of duty.

7. Property developers buying a property with the view of creating new dwellings (for example the acquisition of a house on a large site that would be demolished to build (say) 15 affordable homes)

Please see response to example 5 and the proposed amendment. The higher rate only applies to the purchase of dwellings. If the property to be developed is commercial property, the higher rate would not apply.

8. Persons moving to the island

Those moving to the Island and purchasing a property that they will occupy as their main residence will not be subject to the higher rate. This will be the case for the vast majority of people moving to Jersey. Whether or not they retain their property elsewhere is irrelevant, provided they intend to occupy the Jersey property as their main residence. Where a person is moving to Jersey but is not willing to declare that their Jersey property is their main residence, they will be subject to the higher rate as this is a second home.

9. Persons utilising bridging finance

The financing structure utilised has no bearing on the registration of the contract, and therefore the liability to stamp duty on the registration. Stamp Duty due on the registration of the *obligation* is dealt with elsewhere in the Stamp Duty Law and is not included within the scope of the draft Law.

10. Single properties but having dual title deeds

Properties in Jersey purchased by more than one individual can either be purchased jointly and for the survivor, or in indivisible shares. Most commonly, indivisible shares are used in cases of inheritance, which are out of scope as stated, or in circumstances in which one purchaser has contributed significantly more equity.

Whether a property is purchased jointly and for the survivor or in indivisible shares has no bearing on the whether the higher rate of stamp duty is charged; rather it is whether the property will be occupied as a main residence.

Those who purchase an investment property in indivisible shares will be subject to the higher rate.

Those who purchase a property and are jointly named on the title deed will not be subject to the higher rate provided that they both intend to occupy the property as their main residence.

11. Persons acquiring property that needs refurbishment before they are able to occupy it as their main dwelling

The legislation does not require a purchaser to indicate a time frame nor details of when the property would be their main residence, provided that it is not intended to be used for any purpose other than use as a main residence. There is a recognition that some properties may need to be renovated to be suitable, delays for work visa purposes, etc.

We trust that this highlights to the Panel that the approach adopted is in keeping with the original intention of the Amendment as agreed by the Assembly.

As previously stated, this work is a result of the Assembly approving Amendment 22 to the 2022-2025 Government Plan. The Amendment required that the work be completed within 2022 to be in operation by 2023. This work therefore took priority over the progression of the wider Stamp Duty review.

The wider issues will be considered as part of the Stamp Duty review, which is due to conclude next year.

If the Panel requires any further information, we would be happy to assist.

Yours sincerely,

Deputy Ian Gorst

Minister for Treasury and Resources