

STATES OF JERSEY
Corporate Services Panel
Review of Land Transaction Tax

WEDNESDAY, 7th MAY 2008

Panel:

Deputy P.J.D. Ryan of St. Helier (Chairman)
Connétable J.L.S. Gallichan of Trinity
Deputy R.G. Le Hérisier of St. Saviour
Connétable D.J. Murphy of Grouville
Mr. R. Teather (Adviser)

Witnesses:

Senator T.A. Le Sueur (The Minister for Treasury and Resources)
Mr. K. Hemmings (Head of Decision Support)

Deputy P.J.D. Ryan of St. Helier (Chairman):

We do not want to spend too much time talking about the general principle behind the law because the States has ostensibly accepted it, except to say that there is an anomaly in that the States originally wanted you to look at commercial property and this law does not cover commercial property. It also does not cover all domestic property. Why does it not cover certain of the domestic transactions as well?

Senator T.A. Le Sueur (The Minister for Treasury and Resources):

You will have to identify to me which ones it does not cover before I can explain to you why it does not.

Deputy P.J.D. Ryan:

You have gone for where a transfer of a share, the share conveys legal right of occupation as a definition within the law whereas there are a number - not necessarily a large number - of particularly, probably, single dwellings as opposed to, say, apartments and particularly the older ones where for one reason or another the shareholder that buys the shares relies on the fact that he owns 100 per cent of the share capital of that particular company and can appoint his own directors and by so doing occupies the property rather than the shares themselves conveying that legal right.

Senator T.A. Le Sueur:

That would be a matter of 2 things: firstly, legal interpretation and, secondly, the power of the possessor to combat what might be regarded as abuse of the law.

Deputy P.J.D. Ryan:

These would have been in existence 30 or 40 years ago.

Senator T.A. Le Sueur:

The fact that the Articles of Association are silent on the rights of occupation does not of itself deny the shareholder the ability or the right to occupy. That is why I say it would depend on the legal interpretation whether the fact that the Articles of Association are silent would deny the shareholder the right to occupy. I would suggest that unless there is something to the contrary in the Articles any reasonable man would say that a 100 per cent shareholder of a company which is silent as to rights of occupation implies that the shareholder has that right of occupation.

Deputy P.J.D. Ryan:

Interesting. Have you taken legal advice on that?

Senator T.A. Le Sueur:

I do not think I have specifically and it is something which I certainly could do if it was felt to be an issue.

Mr. K. Hemmings (Head of Decision Support):

If I could chip in on that. That was a change that was suggested by the Law Draftsman because we had this issue where simply owning 100 per cent of the shares in a company that owns a house does not necessarily give the person who owns 100 per cent of the shares the right to occupy, which is the way we were heading at one time. I am trying to look back and find the specific conversation or meeting where this happened, but it was the Law Draftsman who suggested the change in order to make the law tighter than it would otherwise have been without that.

Deputy P.J.D. Ryan:

I think I am taking from this conversation that you are fairly confident you can capture those?

Senator T.A. Le Sueur:

Yes, and I think if it was shown that we could not capture those clearly some amendment to the law would be necessary. At this stage I am confident we could capture those.

Deputy R.G. Le Hérisier of St. Saviour:

As a matter of interest, why was the law structured in that fashion? What was the reason why the 2 issues could not be linked up?

Mr. K. Hemmings:

I am going to have to look back on that one and perhaps have a conversation with Pam and I can provide you with a written answer to that question, if that is okay, very quickly.

Deputy P.J.D. Ryan:

That is fine. How much time and effort did you spend examining the question of commercial transactions?

Senator T.A. Le Sueur:

At a political level, not a great deal. It is clearly the intention, if we can, to tax shareholders of commercial property. The reality is for the lawyers and Law Draftsman as to how that could be translated into practice. I think just as Jurat Blampied hinted years ago that that could be quite difficult to achieve in practice so the advice that I have received from lawyers concerning these matters is that it would indeed be virtually impossible to bring in.

Deputy P.J.D. Ryan:

Compliance cost, administration cost?

Senator T.A. Le Sueur:

I do not think it is a matter of compliance cost or administration cost. It is a matter of the feasibility of wording the law in the appropriate way.

Deputy P.J.D. Ryan:

In avoidance?

Senator T.A. Le Sueur:

I think the danger is that some transactions may be caught that should not be caught and other transactions would not be caught that should be caught. The difficulty of enforcing a law like this where you could have both, particularly in commercial properties, vendor and purchaser living outside the Island. How would you usefully apply the law and how do you collect the duty?

Deputy P.J.D. Ryan:

It would have the potential for discriminating against those that were resident in the Island as opposed to those that were not.

Senator T.A. Le Sueur:

Yes, and it is only really in a situation where by dint of occupancy you can say that there is a definite taxpayer you can identify and collect a tax from. It is not going to be fair to the tax system and you have to acknowledge that limitation.

Mr. K. Hemmings:

There was a huge amount of time spent at officer level on trying to sort out the commercial side. The residential side was reasonably straight forward from the outset. The law did go through a number of lives, if you like, and at one stage we were looking at a law which created hypotechs(?) or charges over a property, so if a transaction happened then a legal hypotech would apply which, were we to find out about, would then create a judicial hypotech. We could go to court and create a legal charge over that property. We backed off on that one because we would have the situation that the Minister described where you would have people who happened to invest maybe in a fund anywhere in the world who could indirectly have broken the law in Jersey and would never know about it. It could equally happen with Jersey residents that by doing that you could have a whole generation of law breakers with this new tax which would be absolutely impossible for us to enforce. The version of the law that is in front of you, and hopefully will be in front of the States, is really the most workable solution that we were able to arrive at, at this point in time.

Deputy R.G. Le Hérissier:

Did you then reach a conclusion that it is virtually impossible applying common sense tests, for example? It is virtually impossible to apply this to commercial properties; there is no solution. Is that correct?

Senator T.A. Le Sueur:

Certainly, if there is a solution it has eluded me and legal brains rather more competent than mine.

Deputy P.J.D. Ryan:

Did you consider coming back to the States and explaining that at an earlier point?

Senator T.A. Le Sueur:

I did not. I think I was more interested in complying with the requirement to bring something back to the States and I think to go back to the States and say simply: "This is more difficult than it stands and I think we ought to eliminate commercial transactions from the proposition" before showing States Members how I was going to deal with residential properties, would have simply levelled the accusation at me that I was trying to duck the issue.

Deputy P.J.D. Ryan:

The amount of revenue that you think you are going to collect of £1 million is still at £1 million? Do you think it might be more or might be less?

Senator T.A. Le Sueur:

To the extent that the £1 million was a best guess a couple of years ago it is probably slightly more now, but I would not like to say whether it is £1.5 million. It will depend on the state of the property market at any given time. If you had asked me 6 months ago before the credit crunch and some of the fall in the housing market in the U.K. I would have said quite possibly it would be much nearer £2 million. Given the present state of the housing market in the U.K. which has not fed through into Jersey at the same level, it could well be that demand could dry up. I suspect not, given the shortage of supply, but at this stage it is very much an estimate. There is no reliable information on which to make a forecast.

Connétable J.L.S. Gallichan of Trinity:

The general feeling was it was low. There are properties they are saying changed hands at £1.5 million in share property.

Senator T.A. Le Sueur:

That may well be, yes.

The Connétable of Trinity:

But it is better to be on that side than the other way then find you are not going to get it in anyway.

Deputy R.G. Le Hérissier:

In trying to resolve this issue was there any lateral thinking applied? For example, it has been suggested to us - only at a general level so far - that if we had a capital gains tax applied to property transactions we could revamp, if not remove, the stamp duty system and just apply capital gains tax. What is your top-of-the-head answer to that?

Senator T.A. Le Sueur:

I think that would be pretty unrealistic, putting it politely. For a start this proposal was designed to resolve inequity between the different sorts of purchaser. You can make a capital gains tax do whatever you want it to in theory, but if you take the U.K. model of capital gains tax that excludes your principal private residence. That does not distinguish between, as far as I know, whether that principal private residence is owned directly or owned through the shares in a company. The indication ought to be that there should not be a further inequity because had you sold the shares owned by a company that would be a taxable event for capital gains tax. If you sold the property to an ordinary freehold transfer that would not be liable to capital gains tax. It strikes me you are simply creating a double inequity rather than trying to solve the current problem. I do not think it is particularly realistic. Also, at what rate of

tax would you set that capital gain given that stamp duty is between one and 5 per cent? Would you have a capital gains tax of 2 or 3 per cent or would you have a capital gains tax of 20 per cent? I just do not know. While we did do some lateral thinking that was not one of them. I think if you want a bit of background as to our thinking, really to what extent does one try to address this? Does one address it within the existing stamp duty law; that did not seem to work? Do you try and address it through the income tax law; that did not seem to work? Do we address it at the Housing Department area or housing consent once you have shares in the company with no further interest? Just where do get hold of this elusive beast called a share disposal when it is not recorded anywhere? We went around the houses for quite a while, pardon the pun. We looked at what they did in the Cayman Islands and elsewhere and at the end of the day we decided there was no easy solution which I suppose is why it has taken 2 or 3 years to come up with the proposals before us at the present time, imperfect though they are.

Deputy P.J.D. Ryan:

Did you look at the U.K. system? We have heard this morning that the reason that the share transfer structure was invented was to primarily get around the inability within Jersey law to borrow against a long leasehold.

Senator T.A. Le Sueur:

I think it has also been used for other purposes. It could be, for example, if you wanted to put a property into a family trust you could not do that through a freehold, you would have to do it through a registered company.

Deputy P.J.D. Ryan:

Because of the difference between Jersey moveable and immoveable property laws?

Senator T.A. Le Sueur:

Yes. If you were to apply the U.K. stamp duty basis in the same way that U.K. stamps on all share transfer transactions that would achieve the objective, but it would have a side effect of killing off the finance industry.

Deputy R.G. Le Hérissier:

So it is not a compromise you would recommend?

Senator T.A. Le Sueur:

I would not take that one very kindly either.

Deputy P.J.D. Ryan:

It is good to get that on the record.

Senator T.A. Le Sueur:

When I say killing off, it would kill off one considerable aspect of the industry. You can appreciate the effect might be considerable.

Deputy P.J.D. Ryan:

Zero/Ten and all sorts. Did you consider through the income tax law just one part of the U.K. system which would be to tax occupation of a property on a notional rent basis as a benefit in kind, that is integral with the U.K. system?

Senator T.A. Le Sueur:

You would do that only for properties occupied by shareholders of companies which owned those properties? It is not very easy.

Deputy P.J.D. Ryan:

We have benefits in kind coming in through Zero/Ten, do we not?

Senator T.A. Le Sueur:

Yes, but benefits in kind tend to work across the board. If you have a benefit in kind of use of a motor vehicle, it does not matter who you are or what your business is, it is the same, benefits in kind. I am not sure how you would apply the benefits in kind of the ownership of shares and on what basis you would do that. Benefits in kind tax is an annual tax; stamp duty is a one-off tax. Are you suggesting you collect the one-off tax in stages over 5, 10 or 20 years?

Deputy P.J.D. Ryan:

I am asking the question as to whether you looked at it and I think you have answered the question.

Senator T.A. Le Sueur:

I think the answer is I did not think it was worthwhile pursuing very much.

Deputy P.J.D. Ryan:

Did you also consider whether you could address sufficient percentage of the problems of taxing commercial property transactions by the use of a de minimus or some kind of other formula which would decide whether a company's sole purpose in life was to own a property as opposed to having other assets as part of its asset base? Did you look at those kinds of issues?

Senator T.A. Le Sueur:

I did not think that a de minimus was particularly relevant in that respect. If you were to set a de

minus, say, you would not look at commercial transactions under £1 million?

Deputy P.J.D. Ryan:

No, we were looking at the de minimus by that. Richard will explain, but I think what we meant was if more than 20 per cent of a company's assets were Jersey land or property then transfers of shares in that property would be subject to the tax, but if it was below that you would not, that kind of thing.

Senator T.A. Le Sueur:

No, and I do not know, it might be quite tricky to value them. If you have a company with commercial activity then quite clearly on day one before it starts business the company simply owns the property, that is 100 per cent of its assets. It may well be that after it has been trading for 100 years the asset value of the company is relatively small. Also, the property asset value is relatively small in relation to its total value. At what stage do you assess that it ceased to become a property company for stamp duty purposes and when not? I think all you do then is risk creating further anomalies and inequities. At the moment we have one anomaly which is between residential property bought by transfer through the Royal Court and stamp duty. We are in danger of creating half a dozen mini anomalies in trying to solve one.

Deputy P.J.D. Ryan:

In a former life you were a commercial accountant in Jersey. Would you not have been advising your Jersey clients of a trading company, if they were going to buy the freehold asset from which they trade, to buy them as a separate company and keep that company clean and as a non-trading company?

Senator T.A. Le Sueur:

Very often, yes.

Deputy P.J.D. Ryan:

You do not think that would be a source of, therefore, trying to identify ...?

Senator T.A. Le Sueur:

Let us assume that one did that. As a Jersey resident shareholder I own a shop in King Street and if I sell shares in that company I am taxed on the value of that property. If the same property is owned by a U.K. multiple and they sell it to another U.K. multiple, as happens not infrequently, who is going to get assessed? I am going to be assessed because I am sitting here in Jersey owning this property. The U.K. resident shareholder who transfers from one portfolio to another escapes the tax. Is that fair; is that just? You simply penalise the Jersey resident shareholder and ignore the rest. Yes, you would solve one problem, but you would not solve the problem of the U.K. shareholder. To the extent you have solved the problem you would be adding to burden of Jersey residents and make it more likely that not only

Jersey businesses but Jersey properties would all be sold to Jersey non-residents. Or you would have the situation where I as a Jersey resident owned the shop in King Street through a Guernsey company. Not for tax avoidance reasons; I pay my tax on the rent. But when I came to sell the shop I would sell the shares in the Guernsey company. What do we do then?

Deputy P.J.D. Ryan:

I think it is important, though. I am sure you will appreciate this and accept that it is important that where the States has made a decision in principle that you are absolutely 100 per cent sure that it is not possible.

Senator T.A. Le Sueur:

Absolutely. I did not make the decision because I felt that I would antagonise a few businesses or that I was being paid by someone to keep my mouth shut. It was because we looked at this in considerable depth over a considerable period and found problem after problem, just as we have seen ourselves in the last 20 minutes and as you may have heard. I do not know what advice you have received this morning, but quite possibly similar sorts of comments from all those concerned about those difficulties.

Mr. K. Hemmings:

If I could just add to that as well. The earliest generations of the draft law were very much based around the Cayman's model where you do look at a percentage of the share value of the company. I think there is a huge issue about administration here as well and the issue of annual valuations so we have a current value. Do you value property as it is held by the business or value it as it would be were it stand-alone accommodation? We thought one of the issues would be placing an additional burden on Jersey businesses to value all property on a regular basis. In order for us to keep that information up-to-date would create a real burden both on companies and also on the States in terms of that.

Deputy P.J.D. Ryan:

It is interesting that you mention the Cayman Islands. We can have a look at that. Are you aware of any particular issues that the Cayman authorities have? Do they find it difficult? Have you had any contact with them?

Mr. K. Hemmings:

I have not been there to talk about it with them, but no, we have not specifically discussed that.

Deputy P.J.D. Ryan:

I suppose one can always find reasons to not do something because it would create problems in theory in a law, but the acid test is on a practical level how much of a problem is it? There does come a point, no doubt, where the practical problems become such that it is a waste, you just decide to forget it. Did you

look at it on that basis? On a practical level, is it possible?

Senator T.A. Le Sueur:

If it is possible it is certainly not easy and it would take a considerable amount more work to try to put into any sort of order. I am not guaranteeing even if one did it would have success. I am still not sure how the Cayman Islands deals with the situation where the Bank of Bermuda gets sold to the Bank of Nova Scotia and how they would collect any tax on that transfer. It is enough to levy a tax at the point of registration of the land. It is harder thereafter when nothing changes, apart from the ownership of a piece of paper, in a jurisdiction that could be thousands of miles away.

Deputy P.J.D. Ryan:

Do they not have the same problems of people creating law breakers because transactions will take place on Cayman property remotely and no one knows about it? Do they not have those same problems?

Senator T.A. Le Sueur:

Possibly, I have no idea. The fact that they may have problems is no reason why we should try to replicate their problems.

Deputy R.G. Le Hérissier:

Thinking laterally, one solution (which may be a bit of a cop-out solution) is that somehow there be a phasing out of the share transfer market and that everybody, at some point in time, moves to buying freehold. Did you look at that as possibility? In a way, those in that market would just be allowed to keep selling, so to speak, until --

Senator T.A. Le Sueur:

One has to look at what is this Scrutiny Panel trying to look at. It is basically that we have found a solution that deals with residential properties to the best we can, but it does not address commercial properties. What you are suggesting, effectively, was that any commercial property would have to be owned by an individual, or groups of individuals. Given that, let us take the British Home Stores building and assume for a moment it is owned by B.H.S. plc, which has 20,000 shareholders, 200,000 shareholders, I do not know. Are we going to have that building owned by 200,000 people in equal shares? Each time a share of B.H.S. plc gets sold, do we do then a stamp duty transfer on that transfer? The mind does not just boggle; it goes into ...

Deputy R.G. Le Hérissier:

Turmoil.

Senator T.A. Le Sueur:

Turmoil. Just how you ... You would have a property such as that maybe owned by one person as nominee for the company. I am not quite sure that would stack up legally, let alone in terms of probate when that person died. I consider there could be all sorts of difficulties. I do not see any way other than allowing commercial properties, which are owned by business with -- often public companies, to be themselves owned other than by a company. That is the short answer.

Deputy P.J.D. Ryan:

I think there are 2 issues here which I will ask you to comment about this. One is that we are bringing it in for reasons of equity between stamp duty on ordinary transfer, ordinary sales of property, and the other is that we are bringing it in because we want the money, for reasons of tax raising -- tax-raising money. Which do you think it is in this instance? Or both?

Senator T.A. Le Sueur:

I would have thought primarily the equity, given that we have spent 3 years and lord knows how many hours of officer time trying to draft this law. There are probably easier ways of raising £1 million or £2 million a year, such as sticking another penny on a litre of petrol.

Deputy P.J.D. Ryan:

That does raise an interesting point because one of our witnesses this morning suggested that the whole question of stamp duty was in itself somewhat inequitable and unfair because it raised £20 million a year, approximately, from a relatively small number of people, many of which find it difficult. Buying a property is not an easy thing to do for many people and would particularly hit -- stamp duty hits the less well off and a relatively small number of them. What do you say to that? I suppose from that flowed the question of why do you not cure all the inequity problem by banning all -- by just dropping all stamp duty and putting the tax in a more equitable way on a larger number of people.

Senator T.A. Le Sueur:

You talk there about a general fiscal policy and that that is a fair point. That would give you a solution that was equitable. It would mean you would have to raise ... I think stamp duty raises --

Deputy P.J.D. Ryan:

£20 million.

Senator T.A. Le Sueur:

-- some £20 million plus, these days, say £25 million. You could either up G.S.T. to 5 per cent or you could increase --

Deputy P.J.D. Ryan:

That is a big shroud that you are waving there, Senator.

Senator T.A. Le Sueur:

No, I am saying that --

Deputy P.J.D. Ryan:

It could be on the --

Senator T.A. Le Sueur:

You would have to raise tax presumably --

Deputy P.J.D. Ryan:

20 means 20.

Senator T.A. Le Sueur:

-- from local residents. 20 means 20 --

Deputy P.J.D. Ryan:

Lower 20 means 20 thresholds?

Senator T.A. Le Sueur:

Yes, we would have to be twice as stringent as the first flight of 20 means 20, which means bringing it down really to lower/middle income families. You are going to assess --

Deputy P.J.D. Ryan:

Blampied proposal on domestic property?

Senator T.A. Le Sueur:

-- those people rather than a one-off transaction on property where I think (this may be social injustice or total inequity) people who can afford to buy a property and very often get tax relief on their mortgage, at least up to £300,000, are perhaps in a better position than people renting and not getting any tax relief on their rent. You are suggesting that those people get even greater benefit now because they will not even have to pay stamp duty when they buy a property.

Deputy P.J.D. Ryan:

Unless you put it back through the Blampied proposal.

Senator T.A. Le Sueur:

Unless you put it back through the Blampied proposal.

Deputy P.J.D. Ryan:

Then people would be paying it annually over a longer period of time. It might make it easier for them to afford it in their earlier years, particularly if you had some thresholds in de minimis. Do you think that is worth looking at, at some stage?

Senator T.A. Le Sueur:

It possibly is, but it was not what the proposition has asked me to do.

Deputy P.J.D. Ryan:

No, we are talking in general terms.

The Connétable of Trinity:

I disagree with the Chairman. I think those who -- there is a market of people who just do property transactions and they buy and sell. Let them pay for it. I would say there is quite a -- it is well known that you see the same houses turning over and over after a few years.

Senator T.A. Le Sueur:

Year after year, yes.

The Connétable of Trinity:

Other people never sell one. Why should you penalise the people who are profiteering out of it or make everybody else pay for them. I disagree with that totally, Chairman, I am afraid.

Deputy P.J.D. Ryan:

I am not sure whether I agree or disagree. **[Laughter]** At least we know where you stand. **[Laughter]**

Senator T.A. Le Sueur:

Insofar as that might solve your inequity, it has got ... It has ticked that particular box. I do not know if it ticks many other boxes, but ...

The Connétable of Trinity:

Stick to the proposition, I think.

Deputy P.J.D. Ryan:

Can we talk about the collection process. Do you foresee any problems with that? Do you see any policing issues? Do you see any costs of administration, particularly?

Mr. K. Hemmings:

There was quite a bit of discussion early on about who would administer this and, for various reasons, not that many people were interested. The Greffe could not be -- because the stamp duty had always essentially been around land and just did not really fit and there was no transaction to register. Housing would only know about a change of occupation and they would not know about a change of ownership, necessarily. As far as Housing are concerned, if the property was the same and the occupier was the same, the fact that the ownership of shares had changed hands, they would not know and did not want to know, so their numbers were incomplete. Who else we spoke to ... The J.C.R.A. (Jersey Competition Regulatory Authority) who --

Senator T.A. Le Sueur:

No, Jersey Financial Services Commission.

Mr. K. Hemmings:

No, J.F.S.C. (Jersey Financial Services Commission) who, again, did not feel it was appropriate because it was outside of their remit. Eventually we came down to either a separate collection agency within the Treasury or the Income Tax Office. The Income Tax Office obviously have experience of everything around the fringes of this, around anti-avoidance, around things like appeals. Where there is no other infrastructure separately within the Treasury that would all have to be built up. We did discuss with the Controller of Income Tax whether he would be willing to take this on and the decision was, yes, that was the most appropriate place, but on the basis that administration would be as simple as possible because of all the other changes that are happening in the Income Tax Office at the moment. We spoke at great length to the Judicial Greffe to get experience from them on collection of stamp duty. Stamp duty, even though there is a registered document, it is essentially self-assessed. If someone says: "This property has changed hands for that amount of money" then that is what stamp duty is charged on. That element of self-assessment, we decided we would carry across on what was being proposed to the States in terms of this. I think if you spoke to some of the Income Tax Office people they would say ... in an ideal world they would like something much more tighter and verifiable in terms of balancing the potential yield against the cost of administration. I think we struck a balance that we felt was appropriate to take to the States.

Deputy P.J.D. Ryan:

Any questions on that one? Have you got any queries on that?

Male Speaker:

The amount of policing costs.

Deputy P.J.D. Ryan:

Policing costs?

Mr. K. Hemmings:

There is a certain amount. I think the feeling is if something looked basically wrong, so if a 6-bedroom share transfer house had changed hands and someone was telling us it had changed hands for £50,000, then in the same way as the Judicial Greffe would, we would go and do something about that. I do not think we envisage there will be anyone out there actively looking for share transfer properties that have changed hands that we do not know about. I do not see how you would even go about doing that. It may be that we may be informed, shall we say, whereby a transaction has happened and for some reason it is not important to the purchaser that the change of shares is registered, which is why that was put in the law. That was an important safeguard to us, that rather than simply hope we would never find out about a transaction we thought the purchaser would want the safeguard ensuring that the change of ownership shares had registered. I do not --

Deputy P.J.D. Ryan:

One lawyer would research as part of his searches and would look for that?

Senator T.A. Le Sueur:

I think also the lender wanting to lend on the property might also want to do their own searching.

Deputy P.J.D. Ryan:

You have presumably discussed this with the lawyers and so on?

Mr. K. Hemmings:

Yes, we have. In terms of policing, I do not think we envisage much, if any, in terms of this.

Deputy P.J.D. Ryan:

The downside risks to a lawyer of trying to get cute with this would be ...

Mr. K. Hemmings:

It would be quite a risk.

Senator T.A. Le Sueur:

It does no -- it is of no financial benefit to the lawyer, effectively. It does reputation risks to the law firm.

Deputy P.J.D. Ryan:

Huge.

Senator T.A. Le Sueur:

At the end of the day, there is not a great deal of benefit to be achieved in that respect.

Mr. K. Hemmings:

We were informed by the lawyers that there is no legal necessity to involve the lawyer in a share transfer transaction, which again is why we put in the safeguard about the registration of the shares themselves. That was our method of policing that particular scenario.

Deputy R.G. Le Hérissier:

Sorry, just swinging slightly; not laterally any more. You mentioned the Caymans, Kevin, on one or 2. Did you come -- we are told that share transfer or such for property is virtually not available or not found anywhere else in the developed world, is that correct?

Mr. K. Hemmings:

We were not able to find anything directly comparable, no. The Caymans legislation is rather different. It is an annual return from companies, so it will not -- were we to adopt that in Jersey, we are talking about every company registered in Jersey annually making a return to the States saying what value of shares had changed hands and what the value of their property was in relation to the total issued share capital. We are talking about something very different than what we are putting forward to the case.

Deputy R.G. Le Hérissier:

That is what they do in the Caymans, is it?

Mr. K. Hemmings:

That is what they do in the Caymans.

Deputy R.G. Le Hérissier:

They have an annual return assessing property value?

Mr. K. Hemmings:

Yes, and in development areas it is 9 per cent in the Caymans, so it is very big business. They do not have income tax, so it is a major earner.

Deputy R.G. Le Hérissier:

There must be some very rich people living in the Caymans.

Mr. K. Hemmings:

Given 9 per cent for property values in the Caymans, it is obviously worth them investing in the administration that they must have to do, because I certainly would not like to have to build up the administration for something like that in Jersey. Whereas obviously in terms of revenue compared to income tax, it is a very small stream for us, so hence we were looking to keep the administration side of things down to a minimum.

Deputy P.J.D. Ryan:

You could have a share transfer taking place outside of Jersey's legal system, so if it was a foreign company, a Caymans' company or something like that. Is it going to be possible for the Income Tax Department to reconcile their stamp duty on share transfers with Housing, say? Have you looked at that one so that you could -- because presumably Housing would still have to okay an occupier change for a foreign-owned company.

Mr. K. Hemmings:

Housing would register a change of occupation, but they would not register a change of owner.

Deputy P.J.D. Ryan:

No, but your income tax could reconcile with Housing, could they? Or have you looked at that as a possibility of just making sure you do not miss any?

Mr. K. Hemmings:

I do not know about data protection issues on that one. We have certainly given the (or proposed in the draft law) ability for the Comptroller of Income Tax to request on the annual income tax return whatever information he or she wishes in order to fulfil the aims of this law. The ability is there, I think, in future to request the information from every income tax return that would allow us to reconcile against other pieces of data.

Deputy P.J.D. Ryan:

Okay on this particular subject?

Deputy R.G. Le Hérissier:

Yes.

Deputy P.J.D. Ryan:

Next one. Reliefs: first-time buyer, inter-spouse transfer. I think those were the 2 main ones, are they not, of the reliefs? Are there other reliefs?

Male Speaker:

Death; there is a probate, I think.

Deputy P.J.D. Ryan:

You see, we have a sneaking suspicion that probably a disproportionate ... I have not said "majority" even, but a disproportionate amount of extra taxation is likely to fall through this law into the laps of the first-time -- the genuine first-time buyer. I say "genuine" as opposed to the notional first-time buyer that we all recognise when they buy a house, the first -- one of the designated first-time buyer houses. You do not know who buys the property, apartments and flats and things, by share transfer, whether they are first-time buyers or not at the moment. Although we strongly suspect that a disproportionate amount of the transactions are for the real first-time buyer, the first property that a Jersey buyer buys. Bearing that in mind, can we discuss the reliefs and whether we believe that they are appropriate in today's Jersey housing market and whether you have looked at this one. I think you understand what I am getting at.

Senator T.A. Le Sueur:

Yes, up to a point. The schedule to the law sets out the rates of land transaction tax for first-time buyers.

Deputy P.J.D. Ryan:

Now that they would be the same. We accept that they are the same as the normal transactions, the others, but what we are really -- because we have been looking at this, we have been looking at both the existing and the reliefs under this new law and are ... Perhaps it is too early to say we have come to the conclusion, but we are -- when you look at the "real" Jersey market of what first-time buyer houses cost, and £435,000 is the latest one for -- and share transfer buyers have previously, according to the Housing Department policy, not counted as first-time buyers when they buy a share transfer in the past. The policy is that they can still be a -- even though they are second-time buyers or even third-time buyers, share transfers do not count. What is your reaction to that?

Senator T.A. Le Sueur:

I think that is probably a matter of Housing Department policy, which, okay, we ought to try and get joined up to this. That anomaly exists at the present time. That is an anomaly of the Housing Law or the housing treatment of first-time buyers. Could we have a situation where you have a first-time buyer for land transaction tax and also a first-time buyer for a conventional property purchase? If there is not ... I am not sure if we have addressed that one, but if there is not, we probably need to. Clearly, a first-time buyer discount should morally be available only once, either as a freehold property or as a share transfer; it does not matter which way around, but it should not be applicable twice. If we have missed that one, yes, I think we need to put it right. We need to put it right both in the Land Transaction Tax Law and in the Housing Law. There is no point in solving half the problem and leaving the other half still hanging around.

Deputy P.J.D. Ryan:

I think the point was being made, and I think by certain estate agents, that the de facto first-time buyer stamp duty discount that has been operating has been operating whereby there is zero stamp duty on a lot of first-time buyer's first purchase of the share transfer and then a reduced amount on their second or possibly third purchase.

Senator T.A. Le Sueur:

Because of ... Well --

Deputy P.J.D. Ryan:

Which is when they moved from the share transfer flat to the £435,000 3 bedroom house, which is then the first-time buyer house.

Senator T.A. Le Sueur:

Which assumes (probably taking at the present time, and not necessarily correct in going forward) people move from a share transfer flat to a house. You might well find that when they get to my age they move from a house to a share transfer flat.

Deputy P.J.D. Ryan:

I am not specifically talking about the last-home buyer, as you were saying. **[Laughter]** I am talking about the first-time buyer, because that was the purpose of this question.

Senator T.A. Le Sueur:

That happens to be a quirk of the market at the moment. It is not necessarily always going to be the situation. At the moment there is a large supply of share transfer apartments and a relatively small supply of freehold properties. If you had a situation where there was a large supply of freehold properties and a very small supply of share transfer flats, the likelihood is that many first-time buyers would go straight towards buying a house. Again, it depends on affordability. You are almost implying that apartments are cheaper than houses. Some apartments are cheaper than houses and some apartments are more expensive than cheap houses. I think we are not going to solve all the social issues of the world within this land transaction tax. What I tried to do is, as with any taxation, try to keep it simple (which is quite difficult) and try to keep the rates of tax here matching those of the Stamp Duty Law so that we do not create yet another inequity.

Deputy P.J.D. Ryan:

The question is (and I think I know the answer, but I will ask it anyway) have you looked at the suitability of the reliefs for first-time buyers, both through this law and through -- and while you were

looking at this law at the other one as well? Have you reviewed that as to whether it is really doing what it should do?

Senator T.A. Le Sueur:

Yes, I review stamp duty rates on an annual basis at the time of the budget. It may well be that one needs to look at them, particularly at the current time in the light of the increased level of price in the housing market, to extend the range for the first-time buyer. That becomes a difficult decision as to what extent you want to raise revenue from stamp duty and from whom.

Deputy P.J.D. Ryan:

Although, you did say that this law has been brought in primarily for reasons of equity, rather than tax raising. You could use -- and I put the question to you, could you use some of the extra revenue from this to use it to review the first-time buyer reliefs for both sets of laws, both sets of circumstances? Could you use some of the revenue from L.T.T. (Land Transaction Tax) to review the equity, or rather the suitability, fit for purpose position with regard to first-time buyers, generally?

Senator T.A. Le Sueur:

You can use the revenue from Land Transaction Tax for anything which is in the States Business Plan. You then say: "To what extent do we want to vary the rates of tax, the incidence of tax, on different parts of the community" which you do at the time of the budget. Certainly, there is an argument to be had saying that higher-valued transactions would pay a further increased rate of tax or stamp duty, and lower-valued transactions would pay an even greater reduced level of stamp duty. I point out that that top rate, we are getting to a rate, I think, not far off the U.K. rate. I am not sure what current value the U.K. are at as well.

Deputy P.J.D. Ryan:

3 per cent. 4 per cent in the U.K., about £500,000.

Senator T.A. Le Sueur:

I mean, yes, we could go in that direction to some extent. That becomes a political debate, which I am quite happy to have. The point is that we also have consistency, which we do.

Deputy P.J.D. Ryan:

I think we are as one on the consistency; it is a question of whether, as a result of in L.T.T. --

Senator T.A. Le Sueur:

That is maybe where we are -- maybe when we come to scrutinise the budget one of the things you would like to raise at the time, you will --

Deputy P.J.D. Ryan:

It might be. I might indeed. Can I just ask you the question, to clarify it in my own mind. A first-time buyer pays a stamp duty in both laws between £200,000 and £250,000. The rate is 0.75 per cent, I think. That is the first-time buyer regime, stamp duty regime.

Senator T.A. Le Sueur:

I am not sure, because it is going to be banded, obviously.

Deputy P.J.D. Ryan:

I think that works out at 0.75 per cent, but that is not really the question. The question is what happens if a first-time buyer buys a £300,000 property? Do they revert to the normal rate because they have gone above the £250,000, or do they still get the benefit of the lower rates in the earlier bands, in the lower bands, or what? How does that work?

Senator T.A. Le Sueur:

They get the ... Well ...

The Connétable of Trinity:

If they go below the band for £250,000, then it is a percentage higher. It is not -- it is always through the true price.

Deputy P.J.D. Ryan:

The normal stamp duty bands are (if you are not a first-time buyer) up to £50,000 is 0.5 per cent; £50,000 to £300,000 is 1.5 per cent; £300,000 to £500,000 is 2 per cent; £500,000 to £700,000 is 2.5 per cent, and above that is 3 per cent. If you are a first-time buyer, up to £150,000 is a straight flat £150 fee. Then you go between £150,000 and £175,000, you pay 0.25 per cent on top of that for that band.

Senator T.A. Le Sueur:

Then 0.5 and 0.75.

Deputy P.J.D. Ryan:

Then 0.5 and 0.75 when you are at £250,000 on those bands. What happens if you buy something at £300,000? What do you pay as a first-time buyer?

Senator T.A. Le Sueur:

I think we have now got ...

Deputy P.J.D. Ryan:

Do you still get the benefits of these low rates and the £150 at the lower figures and just pay the extra over the top? If so, at what rate do you pay it?

Senator T.A. Le Sueur:

At the ... Well, again, parity with these distributions(?). In fact, there was an amendment to the Land Transaction Act that it now goes up to £300,000 rather than £250,000.

Deputy P.J.D. Ryan:

You have got £200,000 to £300,000 --

Senator T.A. Le Sueur:

It is in paragraph ...

Mr. K. Hemmings:

I do not have the Stamp Duty Law with me, but this really links up -- replicates what is there. I do know that the curve for first-time buyer -- stamp duty payable by a first-time buyer is not a smooth curve, as you would expect. There are some lumps in it.

Deputy P.J.D. Ryan:

My question is whether -- if you are above this -- well, it is now £300,000, so say you were at £350,000, do you suddenly go back to paying these full non-first-time buyer rates at a much higher amount?

Mr. K. Hemmings:

That is a good question. I do not know the answer to that one. The answer that we can give, it will be whatever it is with the stamp duty fees with --

Senator T.A. Le Sueur:

I think on the stamp duty, if the value of your property exceeds --

Deputy P.J.D. Ryan:

The top band.

Senator T.A. Le Sueur:

-- £300,000, it is deemed not to be a first-time buyer property.

Deputy P.J.D. Ryan:

Because that is the way the law reads to us. What do you think about that? Do you think that is another

area that you need to review?

Senator T.A. Le Sueur:

I think it is an area that could be reviewed on the basis that ... I think it could be reviewed in 2 ways: either you raise the ceiling of the first-time buyers to affect current market values, which could be £400,000. I do not know what the --

Deputy P.J.D. Ryan:

Do you think there is something in the House Price Survey that it could be tied to?

Senator T.A. Le Sueur:

It is possible. I think you have to ... You have got to remember that this law is interpreted in accordance with the wording of the law. If you have a (j) category or, you know, a 11(k) comes into the Island, says: "Well, I am a first-time buyer. I am buying this house for £2 million. I want the first £300,000 of it at discount rates, please, because I am first-time buyer, thereafter I will pay the top whack."

Deputy P.J.D. Ryan:

You could use the Housing Law though, could you not, to say you have to be a --

Senator T.A. Le Sueur:

No, you would say that -- you have to interpret the Stamp Duty Law in accordance with the law. If the law says that a person who purchases for the first time in Jersey will be entitled to these reliefs, at the present time, if he is buying a posh house (to put it crudely) he does not get the relief. If he buys a first-time buyer valued house he does. You have got 2 ways of addressing it: either you up the maximum value of the first-time buyer house to catch all the people who you think socially you are trying to catch, or you simply have the smooth approach applicable to everybody. It is an anomaly. I get questioned at the present time from people who agree they are buying a £400,000 house and intend to get the benefit of the --

Deputy P.J.D. Ryan:

Of the first-time buyer --

Senator T.A. Le Sueur:

-- first-time buyer relief. My personal view is it is better to increase the level of first-time buyer ceiling and review that on an annual basis on the budget. That is why we upped -- I think it was the last year's budget the stamp duty for first-time buyers went from £250,000 to £300,000. Maybe that was not enough. We tend to be playing catch-up here. It is almost self-perpetuating. The more you push up the

notional value of a first-time buyer house the more --

Deputy P.J.D. Ryan:

The house prices will go up.

Senator T.A. Le Sueur:

Then vendors will say: "In that case, I will put up my house price to reflect what seems to be the going rate."

Connétable D.J. Murphy of Grouville:

We put up the mortgage interest tax relief at the same time.

Senator T.A. Le Sueur:

You might well look at mortgage interest tax relief at the same time. I think that is perhaps a different -- it might well be what the Chairman was suggesting earlier, but the additional mortgage -- the additional income tax we generate by not increasing the mortgage interest tax relief could be used to subsidise the first-time buyer. If you think about it politically, you are trying to deal patently with the people with mortgages who feel they are felt hard done by, or people who are first-time buyers. Or you simply throw money at everybody.

The Connétable of Grouville:

Or do not give any to anybody.

Senator T.A. Le Sueur:

Then find somewhere else to get it from.

Deputy P.J.D. Ryan:

Without wishing to put words in your mouth, I think that you are accepting that this might need some review.

Senator T.A. Le Sueur:

I think if I did not review the first-time buyer rates in the December budget the Scrutiny Panel would want to know why.

The Connétable of Grouville:

We covered commercial while I was out?

Deputy P.J.D. Ryan:

Yes, we have.

Senator T.A. Le Sueur:

I am afraid so.

The Connétable of Grouville:

Did we get a result? [Laughter] Did we come to a solution?

The Connétable of Trinity:

Commercial we had been to this morning.

The Connétable of Grouville:

Sorry?

The Connétable of Trinity:

We went to one this morning. It is buried.

The Connétable of Grouville:

Sorry?

The Connétable of Trinity:

It is buried.

The Connétable of Grouville:

Oh, buried.

The Connétable of Trinity:

He went to a funeral at 12 Noon.

The Connétable of Grouville:

There again, you are not being equitable, are you? You are going to have the argument that if you are not charging on commercial transactions, if you are transferring -- charging it on first-time buyers, you are not being equitable.

The Connétable of Trinity:

No, I think Deputy Hill sort of intimated --

The Connétable of Grouville:

This is a no-winner.

The Connétable of Trinity:

-- he would be happy to go off or he would be happy to ...

Deputy P.J.D. Ryan:

Senator, thank you very much. I think we have concluded everything we wanted to find out, slightly ahead of time.

Senator T.A. Le Sueur:

You have not come up with the perfect solution for me? **[Laughter]**

Deputy P.J.D. Ryan:

Thank you very much for your time. We will endeavour to reach our conclusions and any recommendations in a timely manner, well in time for the debate.

Senator T.A. Le Sueur:

Thank you. I hope you perhaps appreciate why it has taken a couple of years for this law to come anywhere near the statute book.

The Connétable of Grouville:

It is dreadful, is it not. I could understand the start of it, yes, equity, fine, but then you go look into it and ...