

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)

Witness:

Deputy F.J. Hill, B.E.M. of St. Martin

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

Welcome to the Deputy of St. Martin, Bob Hill. Bob, this was your law originally. I say your law; this was your projet, your original proposition. I think just to set the scene, Bob, we have seen a number of people this morning, specifically Jersey Finance, and we will hear a little bit more this afternoon from John Shenton from Ernst & Young and also the Minister for Treasury and Resources about the original States decision, which was to try to include commercial property in this law. We have heard also quite a lot this morning from the lawyers with regard to the domestic side of the law and the law itself that is in front of us and we have had quite a detailed conversation with them about the law itself that we have in front of us. I think it is really over to you, having set that scene, to talk to us on how you feel about the commercial side as well as any other little anomalies that we found on the domestic side. So, over to you.

Deputy F.J. Hill, B.E.M., of St. Martin:

Thank you for allowing me to come to you. As you can appreciate I was well aware that this was going to be quite a complicated piece of legislation. It is also a move from the more social side of legislation, which I normally devote my attention to, but this was an area which I wanted to look at partly because of the inequity in it. So, there was a social issue there and I did start this off by asking a number of questions of the old F. and E. (Finance and Economics) Committee, way back before this ever came about. Then I started doing a lot more reading and in fact read both reports by Blampied because he did a 2000 one. He also did one in 2002. I was well aware of the complications there would be of the

possibility, if indeed I included commercial properties in there, and with that specifically in mind I did draft my report and proposition so that the States had 3 options, or 2 options actually; the third one is obviously to get F. and E. to do it, but I did specifically draft them so that the House could have the choice of doing one or 2 together, and to my surprise not only did they approve both, but they approved it unanimously which is unusual for a Deputy Hill proposition coming to the States, but that was unanimous and there was only a one-line entry from F. and E. saying that this is something they had in mind for some time and is quite fair. They had it in mind for some time, but I never thought they really had the stomach to take it through and by me actually taking it to the States we got it through and it took over 3 years, as you know, and I constantly, every 6 months, asked questions about where are we with it. At no time were we ever told in those answers, and I stand corrected -- I do not believe at any one time we were told that the complications were because of the commercial side; we were told of the proposition's -- the difficulties about drafting. When it did eventually come to us, or came to me, I had a look at it first of all and I could see that it does not use the word "commercial", it says "normal residential property" so it could easily miss the eye, but it did not miss mine. At the same time I thought at least we are getting somewhere here. It may have been better if F. and E., or indeed Treasury now, had come clean and made it quite clear what they were doing so we only had the one half and then said to the States: "We feel it is difficult to draft something in line with what the States have agreed." However, we are where we are. We now have a proposition which is meeting half of what the States have asked for, but I am also conscious that there will be a problem in drafting the shares on the commercial side and particularly where you have large premises because I can understand smaller commercials where maybe one owner who buys shares so it is company-owned but it is a much smaller size. So, it is probably easier to deal with. Probably some of those might even be less than some of the price of residential. Now, the difficulty I think the States are going to have, and this may be a job as part of your review here will be, is that if indeed you are going to make it residential we are looking at equality again. I think if the cost becomes easier to manage a transfer of a residential property we are going to tax those people, or make them pay a stamp duty, whatever it is called. However, if you have a commercial property you will not pay anything at all, whereas if you have a smaller property, which is manageable, do you leave those people out as well? Now, we had a joke earlier about what solution I have and probably one of the solutions would be, and I do not think we are ready to do that here in Jersey, that we would have a capital gains tax. So, if indeed when you sold property in shares and you made some profit from it, instead of paying a stamp duty you would pay some capital gains tax on it and that is food for thought. But I fully understand it is difficult. Blampied in his report had made it clear. Other people have made it clear but certainly I think the States would be running away from its duty just because it was difficult to tax or to impose a stamp duty on commercial not to pursue it on residential because, as I said when we debated or had the earlier debate about this when we were talking about proposing it in the States a month or so ago, I felt at least what we have -- we do not have the whole cake, but we have half a cake and that will be --

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

Obviously, Bob, we were quite interested in what you were going to suggest, having dropped a heavy hint at the beginning. Have you had any discussions -- I mean, we can obviously ask Senator Le Sueur as to how capital gains would apply and whether it could end up as roughly equivalent to stamp duty revenue?

The Deputy of St. Martin:

We are back to equality and it could be seen by some people -- and no doubt you have had those people here this morning. No one wants to pay tax. We know that. None of us even wants to pay G.S.T. (Goods and Services Tax) but the fact is that if the States have agreed to something I think the States are duty bound to fulfil the wishes of the States unless they then have to bring back -- and one would assume what Treasury will have to do is bring back a report and proposition to rescind a decision of the States when my proposition was -- that is something maybe that has to be thrown in for your panel to consider.

Deputy R.G. Le Hérisier:

Say, for the sake of argument, if we do say: "Look, we have struggled and we have struggled valiantly. We are not copping out. We have struggled at looking at commercial property and we cannot find a way out." We are a bit worried that an uneven law going forward i.e. residential hit but not commercial and people will say in the States: "Oh, it is the developers again. They are getting away without paying." Would you move something, or I suppose we could recommend it in our report, to keep that side of it alive, so to speak?

The Deputy of St. Martin:

Yes. I believe that people -- if indeed those who buy under the normal way, i.e. you buy a property, you pay stamp duty, I think it is wrong that by being clever with the drafting or a device or scheme whereby you avoid paying tax. I think it is wrong and I have no problem about that at all, but at the same time I know, and I knew before the proposition was debated, that there were complications. Now, I gather elsewhere it is not share transfer. Property on commercial premises has no stamp duty. Am I right on that?

Deputy P.J.D. Ryan:

Are you talking about in the United Kingdom?

The Deputy of St. Martin:

Yes, elsewhere, in other jurisdictions. If indeed you ... how does it work in the U.K.? Because it is the first thing one would ask. If indeed there is some form of --

Deputy P.J.D. Ryan:

There would not be stamp duty on the transfer of shares.

The Deputy of St. Martin:

But would there be some ...?

Deputy P.J.D. Ryan:

Yes, it is done in a different way. If there is underlying property in a share transfer in the U.K. -- Richard, you answer it rather than --

The Deputy of St. Martin:

Harrods, or companies like that, how would they sell theirs?

Mr. R. Teather:

There is a slightly different setup in that on any sale of shares in the U.K. there is half a per cent stamp duty charge. Whether it owns property or whether it is just a normal commercial operation.

The Deputy of St. Martin:

You are saying it happens in the U.K.?

Mr. R. Teather:

Mm hmm.

The Deputy of St. Martin:

Well, if it happens in the U.K. why can it not happen here?

Mr. R. Teather:

That is why we have a finance industry in Jersey.

Connétable J.L.S. Gallichan of Trinity:

And you do not have one in the U.K. Any share dealings you do, there has never been a tax on it. You just buy shares in anything.

Deputy P.J.D. Ryan:

You would find that you would catch all sorts of transfers of shares that you were not intending to catch.

The Deputy of St. Martin:

But only shares on property.

The Connétable of Trinity:

No, shares. Not property shares.

Mr. R. Teather:

The U.K. stamp duty on shares does not depend on what the company owns. It is simply on all shares. That is the problem.

Deputy P.J.D. Ryan:

What we are asking you here for, and we must try and keep control of this, is to ask you for evidence that you have, if you have investigated any other means of applying stamp duty to commercial property, if you have done any research in your own right that we can draw on. That was the first question.

The Deputy of St. Martin:

For the record I can say no. Because again I assumed that F. and E. would have done all that before they actually recommended to the States and it was only a one line if you look at it. They did not and I think in fairness to F. and E. they looked, like most of us did, at the inequality side of it and thought: "Well, quite frankly we cannot allow that to continue so we are going to support it." But maybe part of the reasons why they did not come forward with it and had to do it when I took the report and proposition was that they had to act because they had something in front of them rather than leave it for never-never day.

Deputy P.J.D. Ryan:

That is on the commercial side. On the normal domestic side there are a number of things that we would like to ask you; if you carried out research, and if so what it is. For example, whether the amount collected is likely to be in the sort of £1 million bracket that they are saying. Have you carried out any research there, Bob?

The Deputy of St. Martin:

Yes, I did. I wanted to get a sort of broad figure what it was and among the papers I had obtained, and I do not know how official this is, except that it was notes of a meeting regarding possible introduction of stamp duty on share transfers and this is from a meeting from -- and I do not even know how they got it but it was just papers I obtained when I was doing my research. It is dated 22 April 2004 and you are more than welcome to have a copy. A meeting between Advocate Peter Bircham, Advocate Paul Mathews, and Jenny Hume, who at the time was part of the -- I think they have changed the name now but it was the Greffe and the Deeds Department. Alan Le Bihan is now involved in that department, but they had been discussing the issue of how they could address it and in there they say: "Share transfer is still very active in Jersey, especially with overseas investors who want to invest in property in Jersey,

even if they cannot live here. Approximately 10 per cent of the property market in Jersey is still being sold by share transfer.” That was a figure given on 22nd April 2004 and of course one has to look at the budget papers here, which we have had, the budget for 2008, and again it makes it quite clear the sort of monies they are looking at. They were looking here -- I refer you to page 26 of the stamp duty proposals which is in the budget of 2008: “There is no requirement to arrest share transfer transactions so additional revenue to be earned is difficult to estimate. A provisional estimate of at least £1 million per annum has been included in the forecast.”

Deputy P.J.D. Ryan:

Included in the forecast.

The Deputy of St. Martin:

Yes. That is it and that was in page 26 of the 2008 budget report.

Deputy P.J.D. Ryan:

Would your research indicate that that is low, Bob? What you have carried out?

The Deputy of St. Martin:

It is interesting because only as an exercise last night, because I had done this when I took the report and proposition to the States, and I picked out a number at random in the paper and here is one from Monday, 28th April, which was last night and here is just one page of an advert for one particular estate agent and there are 14 properties listed here, 9 are freehold and 5 are share transfer. One of the share transfers is £895,000 and another one here is £329,000 and another one is £695,230. So, we are looking at quite -- there are a couple of million pounds worth of property there which is not being -- there is no tax, or no stamp duty being paid for. So, I do not think it would be too clever for someone to work out. In actual fact I think F&E were rather conservative with that figure.

Deputy P.J.D. Ryan:

That is the feeling we have from other speakers.

The Deputy of St. Martin:

I think very conservative. I think they were very coy. I would -- again, off the top of my head I would say it could be considerably more.

Deputy R.G. Le Hérissier:

It is not directly your responsibility, but one of the interesting fallouts of this will be, Bob, if we go ahead with it, you probably know that it is policy, if not the law, that people who are share transfer buyers are not classed as first-time buyers, so it is to the advantage of a lot of young people to go the

share transfer route and then if and when they can get the finance to move into the first-time buyer market, but if we tidy up this law of course we will cut that route off.

The Deputy of St. Martin:

I am not quite sure whether in actual fact what is being proposed -- it is not an area which I have looked too carefully at, but if you are implying that at the moment people who buy share transfers are considered to be non-buyers and then they then sell and they have the capital they have gained, it could be said that they are gaining an unfair advantage by buying something by share transfer opposed to those who did not have the opportunity of buying share transfer. So, what we would be doing -- I would not have any conscience at all there. I would say we would making it across the board and bear in mind I know the estate agents are concerned because if first-time buyers face a new tax I think we are quite -- I am always conscious that you do not kick in paying tax or stamp duty until £150,000 or £160,000. There is a low figure which has been increased in the budget, I think, by 20 per cent.

Deputy R.G. Le Hérissier:

Do you think at the end of the day, Bob -- we discussed commercial and you have read these reports, do you think it would be inequitable if we introduced it for private buyers, said the problems are so bad for commercial we really have to go back to the drawing board, and quite frankly we are really struggling. What would your view be politically? Do you think it is worth introducing half of it, knowing that there are going to be real difficulties in bringing the commercial side in?

The Deputy of St. Martin:

I can fully understand the dilemma. As I say, it would have been easier for the States to have voted against commercial in the first place, had F. and E. made the case as to why they should not, but the strange thing is they were supportive and I think partly because they had been a bit caught out. They had been playing along the line with my answers or every time I asked questions said: "We have it in mind. We have it in mind." In fact when they did not bring it in, in the 2004 budget, I then put in my report -- one can see the date I lodged it, 23rd November 2004. So, it was right at the time of the budget and we would have voted soon after the following year in January, so I think I caught them a bit cold and they felt really they had to support it, without giving it a lot of thought and then we have spent -- not we, but the Law Draftsman has spent 3 years and again I am quite happy to say this, if it had not been for me constantly asking questions as I do: "Will you give me an update on the progress of the law drafting?" we probably would not have been there today because there are some laws, as we know, that have let go, get lost in the dust and I did not allow it to go. Could I raise one other issue which I think would be quite an important one, if you are looking at the inequity of the system which is still in today, that if one looks at -- you have here an opportunity of buying something by share transfer at £2,950,000 for quite a nice looking property, however, the added price is there because in red it says: "No housing qualification required." Now, again, if we are looking at another inequality I think it would be

incumbent, I am saying, upon the Corporate Services to include another anomaly which is there whereby there is not only a share transfer loophole, but also that the dégrèvement properties and these which we were told were going to become liable for only (a) to (j) or (a) to (h) buying, that issue has still not been addressed. I think this may well be an opportunity for it to go on record that that should be addressed.

The Connétable of Trinity:

I have a feeling that dégrèvement has now come to an end. We do not -- no longer -- the ones that are existing are still there, but in --

The Deputy of St. Martin:

We have one in the parish not too far from me which is up again for sale, I gather.

The Connétable of Trinity:

Is it?

The Deputy of St. Martin:

Yes.

The Connétable of Trinity:

It is news to me.

The Deputy of St. Martin:

That is news to you. Okay, but I did see it in the paper the other day at well over £3 million. That property is not worth that because of the share transfer and because there is no qualifications required that property goes way up and, of course, that becomes a mark of the property lower down so I think the sooner we address the inequality the better. However, getting back to your question, I would still take it to get half and the States may well get a claim, but I think at least what we will be doing is getting half a problem solved. It would not be about inequality because I think most people would say if you have one house -- there is a fine house here. This is share transfer. That is almost like a castle, but you do not even know what price is on that so if people can afford property like that, probably £4 or £5 million, should they be complaining they are going to pay stamp duty on it?

The Connétable of Trinity:

I think the general consensus is that everyone is happy on the property side and they would support that. It is just the problem that because the whole projet has become commercial as well, that is what is really taking the eye off the other one. We are struggling with one side and I think one side is quite acceptable and we will get that through. Do not start changing down and going down on to capital gains tax in your debate because that will be another new discussion. Let us keep it simple on the property at the

moment. If you want to have capital gains tax by all means bring a projet for capital gains tax, but do not --

The Deputy of St. Martin:

Can I just correct John on what I said there? No, I am not talking about capital gains tax on residential. I said if indeed you want to find a way in which you could get some revenue from those people who are selling commercial property it is possible to look at something like a capital gains tax on commercial property. If we can make that absolutely clear because I still believe that people who buy residential property by share transfer, that half of the cake should still go through the States and the States should be big enough to say: "Look, there are loads of complications" and there are ways in which we could raise some revenue from people who are buying shares, that they will pay a tax on the profit they make on the shares. If you want to call that capital gains, okay, but it is a form of revenue raised from the sale of property. Maybe do not call it capital gains because it will send the wrong --

The Connétable of Trinity:

You just put that one out and see how it goes, but I think we do not want to be conflicted on this. That is for another day. I agree, if you want to have a capital gains tax, by all means, but bring it; do not start linking it to this property.

The Deputy of St. Martin:

Yes, but it may well be that, as the gentleman to the right was saying, we introduce some form of revenue raising or equality system whereby when people do buy property on share transfer or commercial property there is some tax on the shares that they pay.

Deputy P.J.D. Ryan:

Well, the Blampied proposal would do that. It is part of Zero/Ten. The Blampied proposal would deem a rent on that and so there would be tax to pay there. Let me ask you a couple of other questions. What do you say to the scenario whereby your multi-million pound property is probably likely to escape even under this law because there is a very good chance that the actual description of the shares do not in themselves convey the right to occupy and this law goes by the right to occupy? This law will probably hit flats and apartments. It is probably much less likely to actually hit houses where there is one occupier. Unfortunately, that is, I think, the case from the evidence that we have seen. What do you say to that?

The Deputy of St. Martin:

I would think it would be rather unfortunate. I think this is where scrutiny is a plus because I think it would be something that scrutiny will bring to people's attention and if indeed it would like to go the whole hog, also bring in a proposition to ensure that scenario does not happen. The difficulty we have

in Jersey is that a lot of our money is raised through tax avoidance. Part of the tax avoidance is that people will find loopholes for even avoiding tax in the very Island they live in. It seems to be okay for people living outside to avoid tax in their country, but to me it sticks in the gullet a little bit that people can find a way of getting around. What we are doing is all the time we are finding loopholes we are increasing the value of that particular property. I think it is a false value because if that becomes that, for someone to aspire to that, they have got to charge more for the house they are selling to aspire to the next and so the cycle goes on. Unless we can get greater equality across the board I think we are laying the route open for continually spiralling taxes.

Deputy P.J.D. Ryan:

What do you say to the problem that has been explained to us by people in Jersey Finance and the lawyers that to capture those £3 million houses where the shares do not convey this right of occupation and, therefore, this law will not catch them? In order to catch those people the brush would be much too wide and we end up sweeping up all sorts of other share transfer scenarios that we did not want to catch because we find ourselves trying to apply tax in all sorts of funny, anomalous ways that would have lots of downsides. What do you say to that? Let me put a question to you. Do you think it is a major problem that the £3 million house escapes? It is rather like the general rule of income tax. You end up taxing the people that you can catch and the cleverest ones escape and that is one of the problems with income tax. It would seem that this might be the same scenario here, that it will catch the £150,000-500,000 apartment buyer, but unlikely to catch the £3 million house buyer. There will be a lot of the £150,000-500,000 apartment buyers - many of them, probably hundreds a year - but the 10-odd or 5-odd £3 million houses still will not get caught.

The Deputy of St. Martin:

I think that is always a possibility that will happen: people escape the net. I think one of the general complaints of Joe Public is the fact that they cannot negotiate how much they like to pay tax so when we get a £1.1 million who comes to the Island and says: "I agree to pay the Island X number of pounds" the Island then has to have the moral courage to say: "Okay, if you would like to come here, I know we would like your £200,000-odd, but really we are morally upright in this Island and we feel that if Joe Public at the bottom end has to pay his gain, what he is due" I think should be across the board. I accept the fact, are we cutting our nose to spite our face. However, if you are going to ask me a question the direct answer will be that I think that people who buy a property and if they are finding ways to circumvent it we should find ways to stop them doing that. Therefore, we have equality across the board, that every one who buys all pay tax, whether you are a first time buyer or the guy who can use his money as an investment.

Deputy P.J.D. Ryan:

The question to you is that this law based on the shares having attached to them the conveyance of the

right to occupy. That is what it is, so where you have a share transfer where the shares do not convey the right to occupy and there are a small number of properties, usually the more expensive ones where the property of that company has been in existence for 2, 3 or 4 decades, it is not going to catch them. Do you think you would still, on balance, go ahead with this law anyway? There may be other ways to catch those --

The Deputy of St. Martin:

That is why I said earlier to the Connétable if indeed we cannot find a way of taxing them --

Deputy P.J.D. Ryan:

It may be nothing to do with share transfers.

The Deputy of St. Martin:

Yes, find something else. Again, I correct myself on the word "capital gains", but you would pay a fee on --

Deputy P.J.D. Ryan:

They will pay rates, of course. They will pay huge rates on that.

The Deputy of St. Martin:

Yes, but rates go to the parish and I am glad they do, particularly if they go to Trinity; so much the better, we can keep our rates up. Can I just throw something back at you because I am not as up to speed as I was on the Jersey housing law? I understand that you can buy property in Jersey even though you have no right to occupy.

Deputy P.J.D. Ryan:

Yes, you can buy to let out.

The Deputy of St. Martin:

You can buy to let, yes. So what is stopping people buying this under that tax? Getting back to your original question, that is why I feel if people can buy property today without the right to occupy it does not matter whether they buy share transfer with no right to occupy or ordinary freehold property. Again, we are making it equal across --

The Connétable of Trinity:

It does, because the share transfers do not go through court. The other ones do. The freehold will pay a stamp duty. It is a major difference on that one, I am sorry.

The Deputy of St. Martin:

This is something which F. and E. or Treasury should have looked at when they brought this piece of legislation. They should also have brought legislation along the line to ensure that they go hand in hand.

Deputy P.J.D. Ryan:

I am trying to keep our discussions framed as questions to you to draw out of you any information you might be able to give to us. For example, it would appear that the law will mainly affect the first time buyer market in terms of numbers. It would appear from our research that that is what this law will do in that it will mainly affect apartments. There will be a section of people that are buying apartments between, say, £300,000-600,000 that would not be classed as first time buyers. Perhaps I am going over the top when I say “mainly”, but certainly a highly significant number of first time buyers. Do you think that the relief for first time buyers that exists currently, both through this law and through the freehold purchase stamp duty, are sufficient?

The Deputy of St. Martin:

It is not an area that I have looked too closely at because again I can only go by what I --

Deputy P.J.D. Ryan:

Should there be bigger relief? Should we accept slightly less revenue? If it is, say, £2 million, should we be accepting that maybe that it will only be £1 million, that we will give the other £1 million away, back to the first time buyer, if, at the same time, we are saying that when they buy a share transfer flat they no longer can obtain first time home buyer status for the second purchase?

The Deputy of St. Martin:

Could I say, I think it is a bit of a red herring, the business about catching first time buyers who buy share transfer property. The very nature of property going up -- mainly all Dandara. You can get some quite quality property and one has only got to go down to Les Arches at Anne Port and see that there. Those are share transfer and I doubt very much whether there are many first time buyers there. Of course, I would have thought this law would catch those people because they will be paying a lot more than -- but I am all in favour of helping the young people get on the property ladder. If it needs to raise up that threshold before they start paying tax, I will support that and that could be funded from the money that is being lost by clever lawyers who find a way of avoiding tax. The greater equality we have, I think we will get 2 winners here, one, the gain will be to the general tax revenue, and also if there is a way in which we can encourage first time buyers onto the market, okay. Again, it is swings and roundabouts. There will be winners, there will be losers, but I think we should get away from the message that I have here on the front page saying that first time buyers face a new tax. A lot of first time buyers do pay that tax. It is only when they buy share transfer that they do not pay and if we are looking at equality I believe the fairest way would be for everybody to pay.

The Connétable of Trinity:

Yes, I think it is fair to say that is correct, but we were told by one of the people that came before that freehold property is classed as a first time buyer property, but share transfer does not call that a first time buyer property. As you are aware there are a lot of people of 23, 24, who have bought maybe a share transfer between friends -- just to leave home, they are not renting, and then they come out after 4 or 5 years and they have a girlfriend and then they have been unable to put their names on a first time buyers list. Of course, maybe it is right or wrong because if they bought the freehold they could not do that. The thing is this could impede them in doing that. I totally agree with you on the tax side, I am just saying if they are first time buyers it might restrict them from putting their name down.

The Deputy of St. Martin:

It may well be in a flick of a pen or an oversight when the law was drafted that one is set up because does it stand up to tough scrutiny, or any scrutiny of any sort, to say that if you buy by share transfer it is not -- it seems illogical. All we will be doing, I would have thought, is putting back a much more level playing field than we have now.

The Connétable of Trinity:

I totally agree with you. I am saying it just happens that I believe that Housing does not count share transfer for first time buyers, but they do on freehold. It is just a technical thing, but there are some people I know who have their names on a waiting list for first time buyers who do own share transfer property.

The Deputy of St. Martin:

It would be fair to say that Housing have allowed a tremendous number of anomalies to occur because it seemed suitable at the time. That is why we still have this dégrèvement property or unqualified property. I think it seems to be that there has always been more than one way to skin a cat and if there is an opportunity of finding a loophole for someone then we find it. I say the sooner we can have greater equality the better.

Deputy P.J.D. Ryan:

Thanks very much, Bob, for your time. We will see how we get on with the Treasury Minister this afternoon.