STATES OF JERSEY

Corporate Services Panel
Review of Land Transaction Tax

WEDNESDAY, 7th MAY 2008

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

Witnesses:
Mr. R. Kirby (Jersey Finance)

Deputy P.J.D. Ryan of St. Helier (Chairman):
Good morning, Robert. For the record, Mr. Robert Kirby of Jersey Finance, and we are here to talk about share transfers, Robert, and stamp duty on share transfer properties in general.

Mr. R. Kirby (Jersey Finance):
Yes.

Deputy P.J.D. Ryan:
Correct me if I am wrong, but I suspect that your main concern in Jersey Finance is to do with the commercial or the lack of the commercial side of this legislation on commercial properties particularly, is it, or have you got some other background as well that you would like to talk about?

Mr. R. Kirby:
Yes, I think we had a number of issues with this proposal in law. I think the first issue is because a lot of the finance industry relies on company share transfers for many of its transactions, excluding property, we wanted to ensure that the law did not inadvertently create any issues for the finance industry, because to impose a stamp duty on share transfers would overnight make the industry non-competitive. So that was our first focus of the law . Our second focus was primarily on commercial property values, a concern expressed by the Jersey Banks Association that the introduction of a stamp duty on commercial properties within the Island may potentially affect the market price more than the expense of the actual stamp duty and, given the current liquidity position, could create then a problem in

terms of their security of borrowings value on commercial property within the Island. We then had our final concern. Something that Jersey Finance always strives to do with government is to ensure that laws are robust and workable. We introduced the conveyancing lawyers to ensure that they could manage these laws and they were equitable in terms of the current situation of freehold transactions. For example, one of the concerns we picked up was that the stamp duty table initially did not reflect that of a freehold transaction. So there was slight error. This was something we wanted to correct along with a number of other minor errors.

Deputy P.J.D. Ryan:
Okay. Have those errors been addressed in the latest drafts?

Mr. R. Kirby:
Yes, they have, yes, and I believe you are speaking to the conveyancing lawyers later.

Deputy P.J.D. Ryan:
We are.

Mr. R. Kirby:
So I believe they will all come back confirming this.

Connétable D.J. Murphy of Grouville:
You said that Barclays, the Bank Association, are worried about the knock-on effect of the suggested tax - we do not know what it is going to be yet or what it would be - and that it would exacerbate the fall in valuations. Is that correct?

Mr. R. Kirby:
It was not particularly Barclays. It was the Bank Association generally and they were concerned that the introduction of stamp duty would effectively reduce the market value of commercial property.

The Connétable of Grouville:
Can you explain to me how that would affect -- I mean, let us say we put a 1 per cent duty on of some kind, or not us but the Treasury did, then that would put up the cost of purchasing property by 1 per cent. It would not be 2 per cent or 10 per cent. Surely it would not affect the valuation to a larger extent than the amount of tax being created?

Mr. R. Kirby:
I believe that the levels were slightly higher than 1 per cent. I think it went to 3 and 3 and a half per cent.

The Connétable of Grouville:
Well, we can talk about that. Whatever per cent.

Mr. R. Kirby:
Most commercial properties in excess of £1 million, an increase in stamp duty to 3 or 4 per cent would reduce the value of a property of £1million corresponding by 3 or 4 per cent and potentially slightly more.

The Connétable of Grouville:
Yes. That is what I was getting at.

Mr. R. Kirby:
That is the concern. The concern was by the banks that where they lent money that was secured at, say, a 90 per cent loan to market value property, that would be reduced to more like a 90 to 95 per cent property, which reduced their security over the property, which was some concern for them especially given the current liquidity crisis.

The Connétable of Grouville:
If they lend me 95 per cent they still have not learnt their lesson, have they?

Mr. R. Kirby:
They still …?

The Connétable of Grouville:
They still have not learnt their lesson, lending 95 per cent?

Mr. R. Kirby:
I cannot comment on that.

Deputy P.J.D. Ryan:
I do not know whether Jersey Finance has an opinion on the principles that lie behind this law. Do you have a view on that as Jersey Finance, do you believe?

Mr. R. Kirby:
We have 2 views. One, we have a view that it is obviously inequitable for domestic property if you have 2 properties side by side on a street: one is a freehold transfer and they will pay stamp duty at x per cent and the one next door, identical property, same number of bedrooms, et cetera, the share transfer

will pay no stamp duty. Obviously that is inequitable. The problem, though, with stamp duty and property and land is something that the U.K. has faced significantly over the last 5 to 10 years and they have spent many years trying to amend their law to ensure they capture all the relevant stampable transactions. They have struggled to do so. In fact, the latest law could be considered by some as incredibly draconian and to some extent has an adverse impact on transaction and liquidity in the market in the U.K. So we understand it is a very difficult thing to achieve without adversely impacting the finance industry. So overall we would say we agree with the equitable concept but in practice it is very difficult to achieve to capture all domestic property.

Deputy P.J.D. Ryan:

Could you very quickly give me some understanding of what happens in the U.K. then and why they are finding it difficult? Richard obviously will know about it as our adviser but between the 2 of you, by all means, could you explain to us that difficulty?

Mr. R. Kirby:

Yes. About I think it is 3 or 4 years ago stamp duty in the U.K. was leveraged on property and land, except it would very easily be avoidable by using various transactions and structures, some of which used offshore and international finance structures. That was amended in, I believe, July 2006. But even the amendment consequently was also easily avoided by structures. So it was amended again the following year and again the following year after that. Each time new structures kept being brought out to avoid the tax, to the extent that it is believed that most commercial property in the U.K. is now owned in structures based offshore internationally.

Deputy P.J.D. Ryan:

This was mainly around commercial property, was it?

Mr. R. Kirby:

Mainly commercial property because the cost of doing the transaction is only of value if it is over a certain price and usually that was around £5 million, so only, in fact, commercial property.

Deputy P.J.D. Ryan:

If the States of Jersey was to start putting stamp duty on commercial property, do you think that commercial property owners or owners of companies that own commercial property in Jersey would start to avoid using similar kinds of offshore structures, not in Jersey but other offshore centres?

Mr. R. Kirby:

Once you impose a tax you do give people the motivation to try and plan around that tax and that is always the question to be asked when introducing new taxes: is the cost of the amount of tax possibly raised as opposed to the cost of collection versus how easy it is to avoid, is the question that will be asked. I would question whether this tax for commercial property would raise significant stamp duty or whether it would just be a new law that would very rapidly be avoided.

Deputy P.J.D. Ryan:
Right. If it is avoided is there a downside, a double whammy in that we are getting some advantages some way now for commercial property ownership that we would lose as a result? So could it have a negative impact?

Mr. R. Kirby:
It would probably reduce liquidity of commercial property by some small extent. But until it is put in place it is very difficult to ascertain.

Deputy R.G. Le Hérissier of St. Saviour:
My apologies. Sorry, I dashed out when you were en route and I did not realise you were that fast. But anyway, just thinking more broadly or more laterally, although I know it is slightly out of your remit, do you think the solution is just to abandon share transfer altogether?

Mr. R. Kirby:
I am not a property lawyer so it is very difficult to comment. But my belief is that when you have a block of flats it is very difficult not to use share transfer and share transfer was seen as a practical pragmatic solution. But I suspect that probably the question is better directed at the banks and lawyers.

Deputy R.G. Le Hérissier:
I only say that because it strikes me, reflecting upon your answers, you are just -- as soon as an anomaly arises you try and plug it. You then create further anomalies and it just goes on and on and on. We are going down this path which is leading us nowhere but here.

Mr. R. Kirby:
That is a fair point. I believe care needs to be taken. Although it is inequitable, especially with the domestic situation and we can see why people feel it is inequitable, whether a new law will address that and not leave other holes that people will exploit.

Deputy R.G. Le Hérissier:
Thank you.

Deputy P.J.D. Ryan:
I think the rest of our concerns and questions are probably better directed at the conveyancing lawyers,

to do with the domestic side. But, yes, going back to the commercial property, do you have any views - whether it is a personal view or Jersey Finance here, I am not sure - but do you think it is worth trying to tax domestic only, as the Treasury Minister is currently proposing?

Mr. R. Kirby:
I believe that probably is the most pragmatic solution available. In order to address the Deputies that raised the point originally in the States, I think this is the most pragmatic solution. I think trying to capture commercial property will generate very little stamp duty and will probably just generate increased motivation for people to plan around them.

Deputy P.J.D. Ryan:
Okay. One of the ideas that the panel or the panel's adviser has come up with is that on commercial property we have some kind of de minimis where share transfer would only be taxed if something like, say, the de minimis was, say, 20 per cent of the company's assets were Jersey land and buildings. Do you think that is a practical possibility, so that we try and catch the ones that we want and leave the ones that we do not? Because there is this problem of ownership of shares in, say, a floated company or something like that. Do you have any feelings on that?

Mr. R. Kirby:
I am always very nervous of thresholds because it is very difficult, by the nature of the valuations. When you have a company which has, let us say it is 5 assets within the company, one of which is property and the rest may be unlisted shares - it may be debts or the securities - to value each of those assets correctly in current market conditions is quite difficult. For example, you may have a situation where valuations fluctuate quite wildly, especially given the current market volatility. So it would be very easy for a company have more than 20 per cent of its commercial property being in Jersey one day and the following day for it to be considerably less, dependent on the shares and other things. So thresholds always produce a problem of valuation and then you can end up with debates with the tax office about those valuations. The U.K. have a specialist valuation team for this which indicates how difficult the area is.

Mr. R. Teather:
Would we be likely to have many companies that are not aboard or are most of them either purely Jersey investment vehicles or fairly tiny amounts of Jersey property?

Mr. R. Kirby:
I think my understanding is that most companies that have commercial property just have one property within one company because it is generally seen as a cleaner way of doing it. But my bigger question would be how much tax would be raised from collecting stamp duty on commercial property, and my

belief is that I am not sure it would be that significant.

Mr. R. Teather:

The Treasury’s estimate was £1million.

Deputy P.J.D. Ryan:

Well, I think, yes, the Treasury’s estimate was £1million for both commercial and domestic. Is that right?

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

Sorry, if I am allowed to speak, the £1 million really comes from the domestic side only, based on an estimate of 400 at £200,000 each(?). So it is very ballpark.

Deputy P.J.D. Ryan:

Right, domestic and ... okay. Thank you. Has anybody else got any more?

Deputy R.G. Le Hérissier:

Sorry, just going back to basics and it is one of these issues, Robert, where the more we get into it, the less we seem to know about it all or the more convinced we are of our relative ignorance. But what would be the advantages to a company of buying share transfer other than the absence of stamp duty? Are there any other advantages?

Mr. R. Kirby:

For commercial property it is always prudent from the legal perspective to put property into a company because then the landlord is the company and, should there be any problems with the buildings, say, a claim made against the buildings, for example, the lift fails or something like that, then the liability rests with the company and not with the ultimate owner. So most commercial properties, probably 99 per cent would be within a company. So that would be the main driver for people. It is not done to avoid stamp duty. It is generally just done as a pure practical legal point.

Deputy P.J.D. Ryan:

I am just going to refer -- I know it is not strictly on the menu, so to speak, but if I can cast your mind back to Zero/Ten and the question of superannuation funds.

Mr. R. Kirby:

Yes, Article 115.

Deputy P.J.D. Ryan:

Yes, where there is some thought that those superannuation funds should not avoid income tax on their rental income. Is that the right ...?

Mr. R. Kirby:

Yes, currently they are provided with an exemption for tax on their rental income, so they receive their rental income gross and they are not subject to tax in Jersey.

Deputy P.J.D. Ryan:

Would it be mainly commercial property that we are talking about here?

Mr. R. Kirby:

I believe it is only commercial property that superannuation funds invest in, as far as I am aware, in Jersey.

Deputy P.J.D. Ryan:

Do you have any view on that one because without this applying to commercial property, of course, they will continue to avoid any stamp duty on share transfers on commercial property as well? Any thoughts?

Mr. R. Kirby:

I have no real thoughts on that. I know the issue originally with the Article 115 and the exemption was that it would have a very sudden and dramatic effect on market value of prices within the Island and, particularly given the recent developments, that was seen as not a healthy move. But in terms of the policy decision of whether they are not subject to Jersey tax or not, I do not believe it is appropriate. I asked that question.

The Connétable of Grouville:

If residential property was subject to a form of stamp duty tax, would it have any effect on your finance industry workers?

Mr. R. Kirby:

On the workers?

The Connétable of Grouville:

I know it sounds like a no-brainer but I would just like some confirmation of how it would affect them.

Mr. R. Kirby:

I think it would have the same effect on finance industry workers as it would on any other industry workers in terms of the price of the property would effectively increase slightly by virtue of the stamp duty effect that the purchaser would have to pay. But I do not believe it would have any distinguishing effects --

The Connétable of Grouville:
No wide effect, no putting them off coming to Jersey, anything like that?

Mr. R. Kirby:
No. Interestingly enough, stamp duty in Jersey is still lower than the U.K. because of its tiered effect. Whereas in the U.K. if you drop over say £250,000 you are instantly subjected to 3 per cent on the whole value, whereas in Jersey you are only subjected to, say, 3 per cent on the few pounds over the £250,000.

The Connétable of Grouville:
There is no other glaring effect you can think of that might happen?

Mr. R. Kirby:
No.

Deputy P.J.D. Ryan:
I think this is an interesting area, that the J category person that comes in typically to work in the finance sector, under the housing law, is the share transfer property the only property that they can buy or has that changed now?

Mr. R. Kirby:
I cannot comment on the history. But for a person you are always permitted to purchase a (j) category type property, which can either be freehold or share transfer but you must hold it in a company. So if you buy it as freehold you must drop it into a company. That is one of the Housing Regulations requirements.

Mr. R. Teather:
So that will be just on an ongoing basis? It has to be via a company?

Mr. R. Kirby:
Yes. It has to be via a Jersey company.

Mr. R. Teather:
Normally that will be sold as a share transfer?

Mr. R. Kirby:

As a share transfer at some stage in the future, potentially.

The Connétable of Grouville:

What is the minimum now of (j) cats?

Mr. R. Kirby:

There is no minimums. It is an allocation of (j) cats to certain houses.

Connétable J.L.S. Gallichan of Trinity:

I think the valuation was something like £275,000. Indeed, if it was £275,000 in your house but if you were into housing and the property value was over £275,000, they would then allocate a (j) cat to your property.

Mr. R. Kirby:

I believe that is the case, apart from new properties.

Deputy P.J.D. Ryan:

Is this creating new -- is this part of the housing law in (j) categories, is this creating new share transfer properties on sort of an ongoing rolling basis?

Mr. R. Kirby:

Potentially, yes. Probably quite low number, though, I suspect.

Deputy P.J.D. Ryan:

Is that because most (j) category people are buying existing share transfer?

Mr. R. Kirby:

Probably some are buying existing share transfer, some are not. A lot do not buy and a lot -- and a small minority do buy and have to put it in a company. I do not believe the number is significant from my peer group of (j) category holders.

Deputy P.J.D. Ryan:

I will tell you why. One of the concepts that we were examining is to look at it in a similar way to the United Kingdom treats domestic property that is owned by a company in that they treat it as a benefit in kind and deem a rent. Of course, that makes it less attractive. One of the concepts, I suppose, we are looking at would be whether there was another way or --

Mr. R. Kirby:
Well, that would create a tax considerably over stamp duty, so it would tax you as a benefit in kind at 20 per cent ongoing.

Deputy P.J.D. Ryan:
Yes. What we were starting to look at (I do not think it has gone any further than starting to look at) was a concept whereby over a period of time we not exactly legislated but provide increasing incentives and maybe change laws to suit, like housing laws and (j) cat laws and what have you to try and work the share transfer flat, move it over a period of time into flying freehold as a sort of a positive incentive and also move the remainder of the houses that are share transfer into the freeholds being owned by the owners of the property, the occupiers, in a proper way, so that as an alternative to bringing in this kind of law we would over a period of time move them out, distribute them in a way that -- by giving positive incentives to people to not have them. Is that the concept we are talking about? It is almost like a negative equity thing that we are trying to -- we are creating a climate whereby it is advantageous to not have a share transfer, rather than -- it would not necessarily happen immediately. It could slowly ratchet up over a period of years. But we would get to a position in, say, 5 to 10 years' time when this problem did not exist any more or this inequity problem did not exist any more.

Mr. R. Kirby:
I think I suppose my first thought would be I believe it would take decades to unwind the current situation, particularly where you have properties that are owned either by Jersey or non-Jersey companies or by non-Jersey trusts. So although you are not allowed to hold a Jersey property in a Jersey trust, you can hold a Jersey property in other jurisdictions' trusts, and also because of the estate issue where you have people inheriting property down the line and potentially never moving on to the open market for centuries, I believe, some of the properties have not seen the light of day for many years. So I think it would take years to potentially unwind and would probably be quite difficult. My biggest question is really what are we trying to achieve? Are you trying to increase a tax collection from stamp duty and how much is that and how much will it cost in terms of legislative time and administration to achieve that, or are we trying to resolve inequity?

Deputy P.J.D. Ryan:
Yes. So you see there are 2 different things in there?

Mr. R. Kirby:
I think there are 2 different things. I believe the stamp duty collection amount is pretty negligible in the scheme. It is less than about .2 per cent of the overall base tax take. So I believe we are looking really at the inequity. I think if we can address the inequity and address maybe 70 per cent of the inequity

through this law then I think that would be a good result because I believe it is so difficult to capture the remaining 30 per cent.

The Connétable of Grouville:

So you are saying if we decided to recommend (we are not the decision-making group) that they just leave commercial property alone, that we never touch it because it is so difficult to find a way of doing it equitably, and just try to impose some form of stamp duty on residential property, a tax or a stamp duty of a kind, but to ignore the commercial property, would you agree with me on that?

Mr. R. Kirby:

It seems to me the most pragmatic solution. It just seems you are addressing, I believe, probably the voting population's main issue. When you sold us domestic property, they see the inequity day in day out. I believe it is the most pragmatic solution and will raise a small of amount of revenue for the States. That is my personal belief.

The Connétable of Trinity:

Can I just clarify? Many many years ago when people first came to Jersey, yes, maybe an accountant or something, they did buy properties in a company's name and then when they got to around their qualified time limit they could then transfer to their own name. It seems now that people, (j) cats, definitely are buying a lot quicker in the market than they were 10 or 15 years ago. Are you implying that they are putting it into a company? Because obviously they have paid their stamp duty and they have bought these new properties now. If they are putting them in a company will they then, the next time they are transferred, not have stamp duty to pay?

Mr. R. Kirby:

That is a good question. I will just use me as an example to make it easier. If I have bought a property and it is in a company, once I have residential qualifications the Housing Office ask me to move that property into my own name. That is an obligation. However, if before I reached housing qualification time limit I sell my property, then I can sell it in the company. So there are 2 issues there. One, I am forced after 10 years to move it into my own name but if I sell it in the meantime it still remains as a share transfer.

Deputy P.J.D. Ryan:

Do you think there would be a financial advantage in selling it as a share transfer property or will you get your housing qualifications?

Mr. R. Kirby:

I think the cost of transacting property in Jersey is so expensive that the small advantage you get from saving some stamp duty is eroded by the legal costs. I cannot believe it would motivate me to …

Mr. R. Teather:
But the Housing Department would not let you stay in that house. It wants you to achieve the housing qualification if it was owned by the company.

Mr. R. Kirby:
Yes, that is correct, yes.

The Connétable of Trinity:
So that way you would then be liable to stamp duty if you sold it?

Mr. R. Kirby:
If I sold it, the purchaser would be liable, yes.

The Connétable of Trinity:
Yes. But there will not be any stamp duty when you transfer it from the company to your name, will it?

Mr. R. Kirby:
No, there is not. They have agreed there is not any, thankfully.

Deputy P.J.D. Ryan:
Are there any other questions? Not really? All we have got. All right. Okay. Well, thank you very much.

Mr. R. Kirby:
Can I just make one comment?

Deputy P.J.D. Ryan:
Unless you have got anything else, of course.

Mr. R. Kirby:
Just for a point of note. Jersey Finance appreciates the role of the Scrutiny Panels and it thinks it is good corporate governance. However, we would just like you to know that it does take us a considerable amount of time to prepare for panels and for interviews. So whilst we appreciate the process, we like to note that it does detract from us doing our sort of day job, as you would. It is just a point I make.

Deputy P.J.D. Ryan:

We will try not to waste your time.

Mr. R. Kirby:
It is not a case of wasting our time. But it does have quite a considerable impact in terms of preparing to make sure we are up to speed with the point of the submission.

Deputy P.J.D. Ryan:
Great. Thank you for that. Noted, thank you.

Mr. R. Kirby:
Thank you.

Deputy P.J.D. Ryan:
Yes. Thank you very much.