

**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 Hérisser of St. Saviour  
Connétable D.J. Murphy of Grouville  
Mr. R. Teather (Adviser)

**Witness:**

Mr. J. Shenton (Ernst & Young)

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

So, good afternoon, Mr. Shenton, again.

**Mr. J. Shenton:**

Good afternoon, yes.

**Deputy P.J.D. Ryan:**

Thank you for joining us. We want to talk to you about the L.T.T. (Land Transactions Tax) and various -- in other words, that is the stamp duty on share transfer properties. The States passed a resolution to in principle charge stamp duty on both domestic and commercial property transactions effected through share transfers. The Treasury Minister has come forward with a law which deals principally with domestic property; has left out completely commercial property. I think it is principally around this area that we want to talk to you.

**Mr. J. Shenton:**

Mm hmm.

**Deputy P.J.D. Ryan:**

First of all, general principles, how do you feel in principle about this question of the anomaly between share transfers not paying stamp duty and normal transfers of property, freehold property, paying stamp

duty?

**Mr. J. Shenton:**

There is no reason why if you are conveying property, whether it is commercial or residential, you should not have a level playing field. So if it is by sale of shares or by sale of freehold then I think that you should pay on both if you are going to pay on either. But where you have now come back and said yes to residential and no to commercial seems quite bizarre since you are actually picking at a very small amount of the property market. Yes, I appreciate there are a few large houses scattered around the Island which will go by share transfer, but to come back and just simply ignore the commercial aspect as being too difficult does seem a little odd. You will obviously know better than me, the proposal was put forward to the States. Was it an either/or? One assumes he had the power to come back and only draft a law to cover half the proposal?

**Deputy P.J.D. Ryan:**

The States decision was an in principle one. He has come back with the first tranche of the law which deals with the domestic side. He has not said finally that he cannot deal with the commercial side, although he has said that when they have looked at it in detail they have come across so many problems that they have put it on one side at the moment. I think that would be the position.

**Mr. J. Shenton:**

Mm hmm.

**Deputy P.J.D. Ryan:**

What problems can you foresee with the application of stamp duty to commercial, to share sales which own commercial property?

**Mr. J. Shenton:**

I think if you look at it very simplistically where the majority of property sales are done through stand-alone S.P.V. (special purpose vehicle) companies, I think that they are fairly easy to track. I think around the edges where you have property held within a larger corporate or in a corporate group may be far more difficult to actually track that the ownership in that entity has changed, but I still cannot see why -- obviously I am no lawyer, that you cannot track through some means of reporting where an equitable or beneficial interest in a commercial property has not transferred. Whether you can do it through a stamp duty or you do it through a fee, surely that ownership can be transferred and tracked through the line. I know that there may be certain transactions which would fall outside, but -- and there may be a little bit of planning, but by not coming back with any ideas on the commercial side at all, you are not picking up the stamp duty on the plain vanilla commercial transaction, for example, down at the waterfront or wherever, and I think the little bit of difficulty around the edges seems to have said: "Well,

we are not going to bother with 80, 85 per cent of the transactions which would be easy to follow” and you have concentrated on the pure residential one which appears to be uneconomic.

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

We are told, John, some of the objections (and you might have comments on them) are that, for example, if there is a transaction between 2 non-Jersey-based companies that there would be issues with tax authorities. Another one we have been told is identifying the component of the shares that are just relating to property, you know, do not relate to anything else. We are also told that when a share is sold, would we take a tax off every share that is sold, which would obviously be pretty ludicrous. Do you feel that those are meaty objections or we could work around them?

**Mr. J. Shenton:**

I can see where they are coming from, but at the moment what you seem to have done is you have taken effectively the stamp duty law and you have taken, like, the income tax law and you have tried to push both of them together and they clearly do not fit. Now, are you actually looking to say: “Right, what actually we want to do is create a tax on the transfer of commercial property” and then someone says: “Well, we will link it to stamp duty.” One assumes there must be a way that people have to register an interest in Jersey land even held through a foreign corporate, or that something could be introduced that way and in order to register that interest or transfer that interest that they are charged a fee rather than a duty as it currently is. I understand what they are saying is if I have a property held through a B.V.I. (British Virgin Islands) company and I transfer the shares in that B.V.I. company to a different B.V.I. company, but one assumes that our housing law must be flexible enough to -- and in certain areas certainly draconian enough to stop or to allow us to actually ask people to state where there has been a change in beneficial owner. I cannot imagine that the concept is just too difficult to do because that must be where the value in this proposition is - it cannot be on the small one-bedroom flats at Spectrum or something like that.

**Connétable D.J. Murphy of Grouville:**

But most of your commercial transactions are going to be well outside the housing law. The housing law will not have anything to do with it.

**Mr. J. Shenton:**

But is there a mechanism about land in Jersey whereby if you have land in Jersey you have to register an interest in that land? Is that the way round it, whereby if you have land you have to register an interest? .....For example, the rates system obviously picks up who owns the land and the corporate and you are not going to necessarily show there is a change in the corporate entity, but is there anything which can be dovetailed on there or where you have to register if there has been a change in beneficial interest through the rates system or something like that and be able to bolt it on to some other part of the

law? Because given the numbers and given what was said, I do not think just taxing your predominantly low value share transfer flat, which to be honest share transfer was actually forced by the States because you never used to have flying freehold anyway, so in some ways the residential bit, I am sure the majority of the people would much prefer to have freehold because it saves you all the hassle with maintaining the company and sitting down with all the tenants who you may not like very much. But there must be a way to get into the commercial area, or if you accept that there are some problems around the edges then why do you not pick up the easy wins on the commercial side? You know, at the moment you are picking up nothing. If you are saying you cannot get to 20 per cent of the transactions, why do you not pick up the other 80?

**Deputy P.J.D. Ryan:**

How would you exclude the 20? How would you within the law ignore the 20?

**Mr. J. Shenton:**

Well, it depends how the law is written, does it not? If you are talking about a Jersey company which has an interest in land to make the transfer, then yes, you are going to end up with people saying: “Well, what I am going to do then is transfer my land out of my Jersey company into a foreign company.” But if the law is written whereby if you dispose of property from a Jersey company at least you get the 4 per cent on the initial transfer out to the B.V.I. company, which they may do now, and then when they come back with a new law which maybe, hopefully, will pick up the B.V.I. company, or some of the anti-avoidance provisions which Malcolm has under the income tax law which you want to dovetail this into, you would ask: “Why has he transferred it to a B.V.I. company?” You know, if there was a real will to catch the commercial property sector, I am sure you could pick them up, or at least the majority of them now. I just find it bizarre that they have just washed their hands of it.

**Deputy P.J.D. Ryan:**

We are being told that (1) you would get a lot of administrative cost, a lot of compliance cost, a lot of inefficiency in the collection of the tax and that (2) most businesses would actively seek to avoid it by rearranging their affairs in one way or another.

**Mr. J. Shenton:**

I think whatever you write down, whatever you put in a tax law (because at the end of the day this is what it is, it is a tax law) then there will always be someone who will be looking at that law from a different perspective. Whether it is the land transactions law, it is the income tax law, the G.S.T. (Goods and Services Tax) law, there is always someone who is going to be looking at it and saying: “How can I get an advantage from it?” You just have to make sure that your law moves as quickly as the people who are doing that. But the vast majority of people are not particularly interested in aggressive avoidance schemes, so you are actually throwing an awful lot of revenue away just because someone

may transfer their property at the waterfront from a Jersey company to a B.V.I. company. But as it currently stands, if you caught the transfer of shares in the Jersey company or out of a Jersey company, moveable property or immovable property, and you got caught for 4 per cent, then you would have an immediate 4 per cent charge for them to move it from a Jersey company into a B.V.I. company, for example. So on a £4 million property that is £160,000. That is quite a lot of admin cost. You know, you only need one £4 million property to pick up, you know, 20 flats. You know, 20 residential flats at £200,000 each, you have 20 forms to fill in and you have 20 lots of admin against one £4 million commercial property. I know the estate agents (and I read some of the submissions they gave) have said: "Oh, it is going to scare off the investor" and that was bandied around when you wanted to get rid of Article 115 of the tax law in relation to pension schemes. I have not seen these investors -- I have never seen anything written down from an investor to say that he has pulled out. I know there is a lot of scaremongering and there is a lot of rumour, but I have never, ever seen anything concrete about it.

**Deputy P.J.D. Ryan:**

Well, we backed off that, did we not?

**Mr. J. Shenton:**

I know you backed off. I do not know why you backed off that one. I was fully in favour of you closing that one down as well.

**Deputy P.J.D. Ryan:**

Well, we, the States backed off.

**Mr. J. Shenton:**

The States backed off that one. So there is an advantage there but if you compare Jersey to the rest of Europe our stamp duty rates are still very low and you do seem to be ignoring the enormous area of revenue if -- one assumes the only reason you want this is actually nothing to do with the equity, I assume it is because you want to raise some cash?

**Male Speaker:**

No, it is equity.

**Deputy P.J.D. Ryan:**

Well, as far as the domestic property is concerned it is equity. You might be right about commercial property. Well, I mean, it is a question of how much commercial property is full freehold or not by a company. Most Jersey commercial property I would have thought would be bought company to company.

**Mr. J. Shenton:**

You are not going to buy a commercial property in your own name. Because of what you do with it, you want it through a limited liability company.

**Deputy P.J.D. Ryan:**

So the commercial side would only be a question of tax revenue raising.

**Mr. J. Shenton:**

Yes.

**Deputy P.J.D. Ryan:**

The domestic side, though, is a different kettle of fish. That is to do with equity between people buying freeholds in their own name or getting share transfer properties and avoiding the tax.

**Mr. J. Shenton:**

But doing the numbers, do the numbers stack up? You know, I noticed that suddenly £1 million appeared in the latest budget which was not there before, so somebody has either done some very detailed costings or stuck their finger in the air. The £1 million, you know, if you think of the share transfer market, yes, we all know there are some very wealthy 11(k)s and we also know that for whatever tax planning there is and there was, you always used to put the properties in a company. Now, because of the Shadow Director and everything else, you may not actually put the properties in a company, you may prefer them actually to stay in their personal name depending on what you want to do. But the vast majority of properties in this sector, in the residential sector of share transfer, are small, low value flats. I do not know whether the administration burden which you are going to put on the Comptroller of Income Tax, which he simply will not be able to cope with, is going to be sufficient to justify the inflationary element at the bottom of the market.

**Deputy P.J.D. Ryan:**

Yes. I think it is the commercial side which is interesting. I think you are basically saying that a lot of these objections that are being expressed about including commercial property you do not see them as being insurmountable, I think is what you are saying?

**Mr. J. Shenton:**

Certainly not. What is the benefit? Maybe I am being very simplistic here. You have a £10 million big office development owned by a U.K. pension fund, right? He pays no tax on the rental income. He now does not pay any stamp duty on the purchase. Even if he had a presence here and he is not in the finance industry he is not going to pay tax on his profit. The only thing he is getting from the Island is a capital gain. So he is paying no tax into the infrastructure at all. There is no tax, he is not paying anything to

be here. You are not charging him anything to be here because the tenants are going to pick up all the domestic rates and everything else, so all he has got is he is an external investor investing in Jersey and he is paying no tax or anything else here. So the only people who are likely to object to the share transfer tax will be the non resident -- he will object because he is not paying anything at the moment. The local investor will also object because he thinks that it is going to depress his capital gain, which again we do not tax. So the only people who are actually concerned about this are concerned about a small devaluation in the commercial property sector. If you ask any of the trust companies, the banks, the accountants and everyone else who are desperately looking for new office space, you know, whether there is an extra 3 or 4 per cent on the property I do not think it is going to make that much difference at all. But they do not pay. Where else in the world could you invest, buy property, invest there and pay nothing in tax?

**Deputy P.J.D. Ryan:**

Yes, good arguments. Okay. Are there any other issues at all that we have not covered?

**Mr. J. Shenton:** I think the law mirroring the income tax law, the Draft Taxation (Land Transactions) (Jersey) Law does not mirror the tax law or the stamp duty law because the penalties are way out. There are some anomalies in there whereby I get charged and you do not get charged, I get locked up or I do not get locked up depending on how long it is, so I do not think there is parity there. I do not think it is a level playing field between the 2. I think there is also some other little anomalies between the 2. I do not think the Comptroller is the right man to do the job. He has 6 people to do G.S.T. I think 1,600 have registered and climbing, and there are goodness knows how many I.S.E.s (international service entities) out there. Where he is meant to get his extra manpower from, but I notice from the proposition he did not need anyone extra, which I also find slightly bizarre.

**Deputy P.J.D. Ryan:**

Yes, okay. What they are saying there is that it is a self-assessment tax so the lawyers do it.

**Mr. J. Shenton:**

Well, the lawyers will do it, so the lawyers will do it and the lawyers will charge for it.

**Deputy P.J.D. Ryan:**

Yes, but they will charge their clients for it.

**Mr. J. Shenton:**

Yes, they will charge their clients for it, so again you are actually creating inflation at the bottom of the market on small amounts of the residential sector. The lawyers will do it. There is also you will end up having to get some code of conduct or code of practice with the bankers because in the law it said that

you require the certificate but that is going to create funding problems because you cannot enter your name on the registry until you have paid, but until you have entered your name on the registry the bank is not going to lend you any money.

**Deputy P.J.D. Ryan:**

No, they have solved that.

**Mr. J. Shenton:**

Has that one gone?

**Mr. R. Teather:**

You get your certificate, you get your receipt before you ...

**Deputy P.J.D. Ryan:**

You can buy it before.

**Mr. J. Shenton:**

But, you know, the lawyers will self-assess but I just find it odd- I just think you are hitting the wrong end of the market, especially so hard after G.S.T. because obviously again if you look at G.S.T., all their furniture, fittings and everything else they have now got to pay 3 per cent G.S.T. on. Yes, the provision of domestic rental accommodation or domestic dwellings is zero-rated for G.S.T., but all the fitting out is obviously standard rated at 3 per cent. If you are aiming at the 11(k) and you want to create equity and in some ways maybe the relief for the first time buyer is there, but if you look at all the flats being sold and you get the relief for the first time buyer coming through, then your yield is going to go down even more and one assumes that the thresholds for the first time buyer will increase as the property market increases. Your yield is just going to dwindle and dwindle away.

**Mr. R. Teather:**

But then we were told this morning that we would not get anything from commercial either because they would follow the U.K. example and it would all be avoided.

**Mr. J. Shenton:**

Well, maybe they will avoid it, but surely the idea behind the law is obviously to ensure that the law is flexible enough to stay one step ahead of the tax planners.

**Mr. R. Teather:**

It is usually 2 steps behind.



**Mr. J. Shenton:**

Admittedly, which is very good, thank you very much. [Laughter] But, you know, you are always going to end up with certain things which are going to be outside, but you have an awful lot of commercial property out there which would -- if you drafted the law and brought it in is going to get caught from day one. Then if they make arrangements to avoid it then they have to make the decision whether at the first step they will move their property out to a B.V.I. company to avoid it all, depending on what law you bring in, but then there is always the thought in the back of their mind: "Well, I can do this and I can avoid future stamp duty on the uplift in the value of my property if I was going to sell it in 10 years' time and I can actually build in that uplift, but I also do not know whether in 5 years' time you are going to be sitting here again, Scrutiny, looking at the next draft of the land transaction law because you have found a way to tax the B.V.I. property." So the guy is going to be sitting there thinking: "Well, am I going to create a tax liability now in order to save myself absolutely nothing in 5 years' time?" If these people are here for long-term investment anyway and they are not here to speculate, then the tax is a long way off in the future. So if they are here to speculate, then why should you not tax them?

**Mr. R. Teather:**

That was the other thing that was raised, was how much dealing in commercial property is there? Because if it is not sold very often we will not get very much --

**Mr. J. Shenton:**

You are not going to get lots but there is always a number. You would have to ask one of the estate agents. I am sure Roger Trower or someone would be delighted to tell you how much he has sold.

**The Connétable of Grouville:**

What are you going to do about public companies with multi-property assets spread over a wide area, not just Jersey?

**Mr. J. Shenton:**

I think you would have to assign a value -- I think you would have to have the provision to assign a value to the -- you have a value to the property. Do you not -- under the rates law do not you assign a value to the property?

**Mr. R. Teather:**

It is about 20 years out of date.

**Deputy R.G. Le Hérissier:**

Apparently in the Caymans they do value and they value annually, apparently.

**Mr. J. Shenton:**

Oh.

**The Connétable of Grouville:**

You are talking about a per share transaction? 100 million shares, for the sake of argument. You have one property in Jersey. How do you assign a value in the property in Jersey to the 100 million shares, per share, if you are going to tax on that basis?

**Mr. J. Shenton:**

But you are going to end up with no tax. because you have a plc at the top. Well, then you come back down to what percentage of properties are owned, what percentage of commercial property in Jersey is owned by the plc and are you then not bringing in the law because you have 2 properties owned by a plc? I think it is trying to get a much better idea of what the mix of property ownership is.

**Deputy P.J.D. Ryan:**

What would you say to the suggestion that you could not bring in many laws because there are one or 2 problems with them and ...? Could you think of other laws that we have brought that caused problems but we still brought them in because we want to catch 85 per cent of stuff?

**Mr. J. Shenton:**

Not off the top of my head well, there are certainly anomalies out there. I think the 115 in the income tax law is a prime example whereby you have excluded a certain area of the population. Certain things in the tax law about residents and domicile exclude certain people. Yes, people say it is unfair and you end up with winners and losers whatever you do. You know, I get more tax allowances because I am married with 2 children, more than a single person proportionately does, and I did not have my children to avoid tax. But you have winners and losers in every single thing you do and it is whether you want to say: "Well, in order to be fair to everyone I am not going to tax anybody."

**Deputy R.G. Le Hérissier:**

One of the big issues, John, and in a way we are asking you to help us form an alternative, how do we find out who the -- given it may be a multinational, as Dan said, how do we find out who the beneficial owner is of a company so that we can give the bill for the fee to these people?

**Mr. J. Shenton:**

What information do you have through the rates system?

**Deputy P.J.D. Ryan:**

No, we are talking about if your plc --

**Mr. J. Shenton:**

Well, the plc, if you are actually looking to apportion -- if you come back to the income tax law where you were talking about -- which you have passed, about the apportionment of profits up and investment income and everything else, and you have gone and said, rightly so: "I cannot track Mrs. Miggins' 1 per cent ownership of BP through every single subsidiary so we will have a de minimus limit that that one does not follow through" and that is on the statute and that works very well or will work very well, but overriding that, if you have a Jersey company with 100 shareholders, there are powers within the income tax law that Malcolm has that he can actually then drive through to the 100 shareholders. So he is actually looking at 2 identical scenarios but he has the opportunity to ignore the person who owns the shares in BP but assess the one who owns the shares in a Jersey investment holding company. I take your point, I do not think you can look through a big multinational and find out who to assess the profit on, but one would suggest that if you break down St. Helier, who does own what? Do you know who owns all these properties? How many plcs do you have? Because again if it is 90 per cent then there is no point introducing the law. If it is 10 per cent then you think: "Well, am I going to achieve something by taxing the other 90?" But then you go back to what do you do with -- under the present law or as it is drafted, what do I do with a commercial building with 3 flats in? How do I tax that? Or do I build a block of flats, do I go to Housing, do I build a block of flats and do I put a shop on the ground floor and then convert the shop later to another unit of residential accommodation? You know, reading this and reading what they called an area of residential -- some phrase which I cannot remember --

**Deputy P.J.D. Ryan:**

A unit of residential accommodation.

**Mr. J. Shenton:**

Yes, you know, do I exclude the garden? Do I exclude the garage? Can I avoid all of that?

**Deputy P.J.D. Ryan:**

So I think you are making the point that by not attempting to deal with the commercial side we are opening ourselves up to all sorts of avoidance?

**Mr. J. Shenton:**

Yes. I think by keeping the law so narrow that all you are looking at is the residential side, I think all actually you are going to achieve is people being a little bit smart and saying: "I can get round this."

**Deputy R.G. Le Hérissier:**

When you say in your last paragraph, John, that this ought to be achieved through a series of specific

fees, what do you mean by specific fees?

**Mr. J. Shenton:**

Well, if you cannot or- if you feel that you cannot or if you feel it is not right that you do not charge stamp duty on a commercial transaction, then there must be a way to require people who have an interest in Jersey land to pay a fee in order to hold it on some big list somewhere. There is always a way round, and a little bit more red tape, in order for them to pay a fee in order to be on the list. If you do something in relation to Jersey land, you have to pay a fee, you have to pay for a stamp or something. You are not going to raise the same percentage and probably your fees are not going to be as big, but there must be a mechanism through fees rather than relating it to the value of the transaction because again you go back to avoidance and say: "What is the value of the transaction?" If you put a restrictive covenant on something, what is the value you are conveying in order to raise revenue? But it comes back down to how much revenue do you want or do you want a level playing field?

**Deputy R.G. Le Hérissier:**

You mentioned -- we have had one witness (and we did not explore it in depth) mention that capital gains tax could be an alternative and you did mention, but of course when we mention words like that people see sort of the imminent collapse of the finance industry and so forth. What is your view?

**Mr. J. Shenton:**

Please do not mention capital gains tax. I do not mind land development tax which you already have. I think capital gains tax would be very, very damaging to the finance industry, the mere mention of it. No, thank you.

**Deputy P.J.D. Ryan:**

Any further questions? Could we scrap stamp duty completely and tax in a different way?

**Mr. J. Shenton:**

I do not think this is the way forward. I think it works very well for freehold property. I think that you can leave that alone. I do not think that this is the way to create a level playing field. I think you are aiming at the wrong people at the wrong time and with the wrong administration and the wrong law, and I think that if you wanted to be successful I think you have to look at the wider picture to include commercial property and I think you have to go back and decide how much revenue you actually want from this and devise the law in some ways backwards from the revenue line rather than coming at it saying: "I would like a level playing field."

**Deputy P.J.D. Ryan:**

Okay. Any further questions? Thank you very much.

**Deputy R.G. Le Hérisssier:**

Sorry, just one. You probably do not know the answer to this, John, although your contribution has been very good, I should add. Do you know any other jurisdiction that has done this successfully or ...?

**Mr. J. Shenton:**

No.

**Deputy R.G. Le Hérisssier:**

Is that because in your view you should not go there?

**Mr. J. Shenton:**

I think if you look to the U.K. they did not go there because they did not want to, but I think there are other considerations in the U.K. because they do get picked up for capital gains tax and everything else so there are other ways and other mechanisms in order to generate revenue from these people. Where we are is we are in a slightly different position because a foreign investor is not actually contributing to the Island at all in tax terms.

**Deputy P.J.D. Ryan:**

Okay. Well, thank you very much for your time.