

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)

Witnesses:

Mr. T. Hart (Law Society)
Mr. A. Le Quesne (Voisin)

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

Good morning to you 2 gentlemen of the Law Society.

Mr. A. Le Quesne:

Sorry, could I just clarify that Mr. Hart is a senior member of the Law Society and a qualified solicitor. I have not passed the legal examination. I am not a qualified lawyer. I have, however, spent at least 30 years dealing with property, commercial property and share transfers so --

Deputy P.J.D. Ryan:

So you probably know more about it than anybody else.

Mr. A. Le Quesne:

I would not say that. I would not say that at all.

Deputy P.J.D. Ryan:

We hoped you would. For the sake of the recording and to help the transcription people could you just give your name so that they can recognise the voices through the microphone so that it is recorded?

Mr. T. Hart:

Sure. Tim Hart.

Mr. A. Le Quesne:

Andrew Le Quesne.

Deputy P.J.D. Ryan:

Thank you. Right. Well, we are here this morning to talk about the proposed Land Transactions Tax and the imposition of stamp duty on share transfer properties. First of all, on the general principle side, you are probably aware that the States has accepted the general principle of taxing share transfers, property, so we do not want to spend too much time talking about the general principle except to ask you do you have any sort of conceptual problem with that, in that an identical property would be subject to stamp duty if it was bought in a normal freehold transfer way? Do you have any thoughts on that?

Mr. A. Le Quesne:

I personally do not. You used the word “conceptual” and I think it is a good word because there are conceptual difficulties with some aspects of raising a stamp duty on the transfer of shares. The law as presently drafted, following the amendments that were made, principally at Mr. Hart and my suggestion, narrows down the law and defines the shares to which the law applies in a narrow fashion. But politically, and I suppose it is a political question, I cannot imagine there is a political objection to trying to achieve the degree of equity that I think the Treasury Minister is trying to achieve. Would you agree?

Mr. T. Hart:

Yes, absolutely. I think, as Mr. Le Quesne said, our involvement was to look at the draft as originally lodged from a legal workability point of view, but obviously accepting that there had been a political commitment in principle to try to achieve equity between the 2 forms of property transaction. I don't think that is something which we would feel would be right for us to try and sort of unpick at this stage.

Deputy P.J.D. Ryan:

Can I ask the question: the law says that stamp duty will be charged on transfer of shares when this transfer of shares conveys a legal right of occupation. In your experience, because I believe that there are certain share transfers that would escape that particular classification, in your experience what proportions are they and how much of the share transfers, in fact, do not convey the legal right of occupation?

Mr. T. Hart:

I think in a residential context obviously the use of the share transfer mechanism was the way in which in Jersey it was the mechanism to convey flats, primarily, in Jersey in the absence of long leases and before the flying freehold law came into being. It survived as a means both for pre-existing developments and new ones as a means of conveying flats where one does not have a freehold interest to

convey. So that is really, I think, what one traditionally means by share transfer. There are some dwelling houses which are owned by companies and where, in effect, the house could be conveyed by means of shares of the company. But that is actually fairly restricted because of the longstanding Housing Committee and the ministerial policy of not allowing freehold residential properties to be acquired by companies. There are some historical exceptions to that dating from the time prior to the policy coming into being and including dégrèvement properties and other properties which have the peculiar legal status to them. But certainly that is not a way in which for many years as I understand it now, one has been able to, as a rule, acquire properties and so there is not any significant market in houses by the sale of shares. The only exception, in fact, to the general policy at present is to allow (j) cats to be employees. They have to purchase through a company. But the conditions of the consent and, indeed, the undertaking which the employer and employee give is that the property will be conveyed out of the company to the employee on his either getting housing qualifications or upon losing the (j) category status. So there is not an ongoing trade in houses by means of share transfer.

Deputy P.J.D. Ryan:

Let me ask you a question about that one. If a (j) category person were to sell that property, just, say, to take an example to explain what I am trying to ask, say that is a (j) category person on a 5-year licence, if he sells the shares in that property at 4 years, will we have created another share transfer property?

Mr. A. Le Quesne:

No, he would not be because he would have given an undertaking to -- when (j) category purchasers purchase through a company, because they are not allowed to purchase in their own name, they purchase through a company and they give undertakings to the Housing Minister that include undertakings not to sell the shares without the consent of the Housing Minister.

Mr. T. Hart:

Yes. I did mention that person as a key part of it, yes.

Deputy P.J.D. Ryan:

So the Housing Minister would block the sale of those shares, presumably?

Mr. A. Le Quesne:

Yes, up to the Housing Minister, but yes.

Connétable D.J. Murphy of Grouville:

How could he block up the shares, sorry?

Mr. T. Hart:

Well, it would be a breach of an undertaking. The employee, if he did that, would be breaching the restrictions on the housing consent. He would be in breach of the housing --

Mr. A. Le Quesne:

That is a civil action as opposed to --

The Connétable of Grouville:

Well, they would be a criminal, I think, to be in breach of the --

Mr. A. Le Quesne:

It would be a criminal offence because it is a breach of housing consent condition.

Deputy P.J.D. Ryan:

I see. So then in order to sell that house at 4 years old he would have to convey the house out of the ownership of the shares --

Mr. A. Le Quesne:

Indeed, which would give rise to a stamp duty.

Deputy P.J.D. Ryan:

-- and sell it as a separate freehold?

Mr. A. Le Quesne:

Yes.

Deputy P.J.D. Ryan:

Okay. So that is something that we were worried about and you have covered it, so that is fine.

Mr. A. Le Quesne:

So there are just a few historic.

Deputy P.J.D. Ryan:

So there are a few old ones.

Mr. A. Le Quesne:

Yes, mainly now dégrèvement ones because, as Mr. Hart explained, it is very difficult now to get consent to put a single dwelling into corporate ownership.

Deputy P.J.D. Ryan:

Okay. Explain the dégrèvement one for us for the record, please.

Mr. A. Le Quesne:

Prior to 1993 -- well, forget prior to 1993. Under the dégrèvement procedure a property is vested in the creditor or the creditor's nominee, the subrogated nominee, by the operation of law. It is not a transaction to which the housing law applies. The housing law is a transaction-based law and it specifies what transactions it applies to. The dégrèvement, the vesting of the property pursuant to the Property Foncière Law, is not a transaction to which the law applies and, therefore, does not give rise to a housing consent. There is, therefore, a transfer of ownership without there being any housing conditions imposed on that ownership. That loophole was closed retrospectively in 1993 or 1994. But it was closed retrospectively back to 1993 by an amendment to the housing law which stated that any property acquired under a dégrèvement had to be occupied by persons effectively in a nutshell, by locally qualified people. So if a property was acquired in a dégrèvement after 1993 the premium, the non-qualified status, if you like, does not apply.

Deputy P.J.D. Ryan:

But it still applies for those before 1993?

Mr. A. Le Quesne:

It still applies to those before. But they are fairly scarce.

Mr. T. Hart:

There are 2 other categories similar, which was, again, before the relevant loopholes, if you like, were closed or the housing law extended to cover it, were acquisition by a company under a will, which, again, fell outside the housing law, and also ownership by a company since before 1949 when the housing law came into being. So those 3 historic categories were, provided a company acquired by one of those methods prior to the cut-off date, those properties are free of housing restrictions. So those properties can be traded on by means of shares, sell the shares in those companies, which is how there continues to be a market for those properties commanding premium prices, as Mr. Le Quesne said.

Deputy P.J.D. Ryan:

Okay. But overall they represent a fairly insignificant, would you say, part of the market?

Mr. T. Hart:

I think so, yes. They are a small number. Individually they tend to be that they will attract a higher price than they would if they were available for local occupation because of the freedom from those restrictions. But, yes, they are a small number in terms of that actual number of properties.

Mr. A. Le Quesne:

I cannot recall dealing with a dégrèvement property certainly in the last 2 or 3 years. I do not know about Mr. Hart in terms of --

Mr. T. Hart:

I have dealt with one recently.

Mr. A. Le Quesne:

One in the last 2 to 3 years. So they do not come up very often.

Connétable J.L.S. Gallichan of Trinity:

Plus they are at such a high premium anyway, you have to -- I know there was definitely 2 in Trinity in the 18 months. But they are -- the premium on buying these properties are so inflated that they tend to stick on the market quite a while without being moved.

Deputy P.J.D. Ryan:

I remember when I first bought a house (and I am talking personally now, going back, shall we say, 25 to 30 years ago) and there were some share transfer houses around at that time and they were offered for sale through estate agents. They generally were offered as share transfer on the basis that this was an advantage because you avoided the stamp duty. Because of that they commanded a slightly higher price. Would these have been the ones that were before the loopholes were closed down with the other things that you have described? Maybe they would have been (j) category originally and without the (j) cats people having made the necessary commitments to the Housing Minister or Housing Committee at that time, presumably. What I am asking is have those kinds of properties been converted away from being owned by companies and become now normal freehold houses, a lot of those?

Mr. T. Hart:

I think there are still a few houses which were -- either because of those particular cases we were talking about a minute ago or because they were acquired in companies literally decades ago before policy was such as to prevent that, there are still some knocking about.

Deputy P.J.D. Ryan:

Okay. I suppose the question is do you know how many of those previous transfer properties have you converted or conveyed out of a limited company into someone's name personally? Does that happen? Has that happened fairly regularly or is it happening?

Mr. T. Hart:

I think in the cases where they are in a company then, those limited number of cases I think generally there would not be an impetus on people to convey them out of the company because of precisely that.

Mr. A. Le Quesne:

I have done that at least once that I can recall, but it was in an instance where the client had acquired a dégrèvement property and wanted to acquire another property which was subject to housing control and it was a (k) property. We negotiated with the housing committee then that if the client released or conveyed out of the company into the housing pool by a conveyance the property that was previously subject to the dégrèvement so it thus became subject to housing consent, he would be allowed to purchase without --

Deputy P.J.D. Ryan:

So it was a quid pro quo, in other words?

Mr. A. Le Quesne:

Yes.

Mr. T. Hart:

It gets one off the market.

Mr. A. Le Quesne:

Yes.

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

Sorry, moving the discussion slightly, Andrew and Tim (and I am not sure this is in your remit), but as you know we are wrestling with the issue of commercial properties and no one has yet come up with a solution. Have you got any thoughts? Do you think there is a way out of this conundrum or is it from a pragmatic point of view not really worth approaching commercial property on the same basis?

Mr. A. Le Quesne:

From a pragmatic point of view I think it is going to take an awful lot more thought as to how to raise the stamp duty on commercial property. The difficulty is that the law as drafted talks about the occupier; it talks about transactions. We suggested, but it was not taken up, that the law should talk about shares to which this law applies. But even if you adopt that solution, you would have to have so many either exemptions or areas where the Comptroller would have to exercise discretion and one would have to go to the Comptroller. Where there is an exercise of discretion there is always room for argument with the Comptroller. With a tax law, particularly with the Stamp Duty Law, the Stamp Duty Law is pretty clear and people can understand what it does: if you buy a property you pay a stamp duty

on the conveyance of that property. Any law that is going to try and mirror that the share transfer needs to have the same level of clarity, I think, for the benefit of clients and the benefit of lawyers, not that I am suggesting that it is the States job to benefit the lawyers, but I think a clear law, a law drafted with clarity, is of benefit to everyone. So that means that that law as drafted is clear as to the shares to which it applies. To try and extend that is difficult. For instance, I can remember I did own some shares in De Gruchy when it was widely ... It owned a very substantial piece of property but it also owned a very substantial business and the goodwill, et cetera. I owned a very small proportion. How do you assess stamp duty on the transfer of those shares?

Mr. T. Hart:

I noticed the suggestion about trying to deal with that by having de minimis limits. But I think still the problem is in terms of how you certify what proportion of the company's assets are represented by property. It could involve quite an involved process with the Comptroller. Who would certify that and who would value the different assets? There is a famous saying that the beauty of a stamp duty type law is that you have a transaction, it has a value and you simply apply the percentage to it and buy your stamps when you go to buy your L.T.T. (Land Transactions Tax) receipt in advance of the transaction. It is not something which really can turn the argument at all.

The Connétable of Grouville:

Can I just say, what would happen if instead of putting a value on it, let us assume X is paying £100,000 for the benefit of 1 per cent of the shares in a De Gruchy company, for instance, would it not be better just to tax the amount of the transfer value? But then, of course -- no, I am sorry, I am just talking against myself now, that you would then have to include the value of the business within that £100,000. Sorry, okay, I was off on a ...

Mr. A. Le Quesne:

The value of the shares which confer right of occupation is easily determinable. There is a market value because the shares have a specific purpose. The company itself has a specific purpose which is simply to hold the shares. It does not have an income other than the income it derives from its shareholders to discharge its obligations under its articles of association, which are simply to maintain the property and to insure. When you have a company that has obligations beyond that and, indeed, has income beyond and outside that limited framework, it is very difficult to determine what you might say is the fair value of those shares. It is a problem that I come across and I am sure Mr. Hart comes across when you are trying to draft a shareholders' agreement and deal with one party wanting to exit from the agreement or sell his shares and you have to try and determine the mechanism for determining what is often called the fair value. But it is only someone's opinion. Now, in addition, the Land Transfer Tax -- the taxation of land transactions is effectively a self-assessment tax because the purchaser submits the notice, the statement -- the purchaser submits a statement containing prescribed information and pays the amount of

L.T.T. In conveyances that is very simple. It is the consideration in the contract. For a share transfer apartment it would be simple. That would be the consideration for the apartment purchased by way of share transfer. But it becomes more difficult to self-assess and submit a statement if you are selling the shares in a company that either carries on a business and has multiple assets.

Deputy R.G. Le Hérisier:

So, having said that, am I right in drawing the conclusion that neither of you think that the model used for private property could be applied to commercial property? If that is the case, do you have any other alternatives you could suggest? Please?

Mr. A. Le Quesne:

I did listen to the debate on the share -- on this with some interest. It seems to me that it was accepted broadly that there was a difficulty with commercial property. Now, there was no doubt some political will to try and bring this into the net if you can. But I think, Mr. Chairman, you yourself said that taking it into Scrutiny with a view to producing a report by June 3rd, I think, that indicated how it could encompass commercial property was a very very daunting task, particularly as it has taken 3 years to get to where we are now. I cannot think of a way of applying this equitably to all types of commercial property. It would be inequitable to apply it to a company that owned as its principal sole asset a property, either commercial or residential, but not to apply it to a company that owned a property but had other assets.

Deputy P.J.D. Ryan:

Do you think people might start loading a company that had the principal asset as a property with other assets in order to avoid it?

Mr. A. Le Quesne:

I would not dream of suggesting that they would avoid it. Or perhaps they can avoid it so long as they do not evade it.

The Connétable of Grouville:

It would be a very expensive way of doing it, would it not?

Mr. A. Le Quesne:

Well, that is right, yes. It would also make self-assessment very difficult because it would leave it very much open to question. It would put upon the Comptroller's Department inevitably the obligation to check.

Deputy P.J.D. Ryan:

So that is an administrative cost immediately.

Mr. A. Le Quesne:

Indeed.

Deputy P.J.D. Ryan:

And for collecting what?

Deputy R.G. Le Hérissier:

Sorry. We never heard Tim's answer on that.

Mr. T. Hart:

No, I agree with that and I think, as I understand it, even if you try to say (which I agree with you entirely) the inequity of doing it, even if you say: "Well, we will just tax share transfers where they related to companies whose sole principal asset is property", even in the absence of people trying to do anything clever, you do then get all sorts of issues as to what a principal asset means and how do you deal with loan accounts and, indeed, liabilities, corporate liabilities. So even, I think, something, which on the face of it seems simple is going to be, I do not know ...

The Connétable of Trinity:

Is there any possibility really for all of this -- how many share transfer properties are there out there in the flat market? In that market we are not talking about high value, not top level, but the share transfer flat market, what would their values range from, £250,000 to ...?

Mr. A. Le Quesne:

Well, upwards of £1 million.

The Connétable of Trinity:

Upwards of £1 million?

Mr. T. Hart:

There is a big range. Starter prices have been going more than that for -- I do not know what the starting price is now. You might get it for £200,000; maybe £150,000 for something very small.

Deputy R.G. Le Hérissier:

Building on John's question, because part of the pragmatism is, is it just worth selling up this structure to collect this tax in the private, let alone the commercial sector? The Housing Minister when pressed on this, he said he only had really crude data. He may have just interviewed a few people in King Street

or whatever. But he found it hard to access records. I think he said in answer to a question when he was put a bit on the defensive: about 16 per cent of transactions. Does this chime with the kind of business that goes through in your companies?

Mr. A. Le Quesne:

I would have thought residential share transfers there was quite a lot more. There are records because they are private transactions and I am not sure where the promulgators of his law got their information with regard to the volume of share transfer. It is a significant part. They start about, let us say, about £150,000. Well, you really ought to be looking at -- or one ought to be looking at flats starting at about £250,000 because anything below that would be caught usually by a first time buyer. So there would not be much stamp duty revenue on that and probably they get turned over to first-time buyers, but certainly share transfer flats range from £250,000 up to well over £1 million.

Mr. T. Hart:

I mean, until 1991 when the Flying Freehold Law came into force that was the only method of allowing for the sale of flats and I do not think, just because of the sheer difficulty and administrative problems associated with it, that there have been any, that I am aware of, conversions from share transfer to flying freehold. So, all flat developments and conversions done prior to 1991 would be, and remain, share transfers. So, all those are continually turning over and indeed there have been quite a number of developments, notwithstanding the advent of the freehold law that have been structured as share transfers.

The Connétable of Grouville:

That was a question I was going to ask. Given the difference between flying freehold and share transfer, what are the advantages, or disadvantages, of flying freehold over share transfer? For instance, if one wanted to say, really upsetting everybody and saying: "Right, all share transfers will now become flying freehold" could that be done and would it affect mortgagability? Would it affect value?

Mr. A. Le Quesne:

I think, to answer your first question, Connétable, the advantage of flying freehold is that it is immovable property and therefore under the current law it can be willed, devised to anybody. So, somebody who, let us say, had acquired a flying freehold property and had no Jersey qualified heirs, Jersey heirs with housing qualifications, they could nevertheless leave that property for their children, who might be resident in the U.K., and those children could occupy that property; no other property, but they could occupy that property.

The Connétable of Grouville:

I did not realise that.

Mr. A. Le Quesne:

But that is only on the immovable property and it does not apply to share transfer property because the shares form part of personalty and it is, I think, quite important to distinguish between ownership and occupier of share transfer property. Anybody, at the moment, can purchase share transfer property whether they are resident in Jersey, outside Jersey, whether they have housing qualifications or not. They can purchase them, but only people with housing qualifications can occupy those. So, in the event of the owner of a share transfer property dying, those shares would pass to the heirs, but the heirs would need to get consent from the Housing Committee to occupy the apartment and they would only get that consent if they qualified.

The Connétable of Grouville:

So, a flying freehold then would come into the same stage as a dégrèvement. Is that correct?

Mr. A. Le Quesne:

No, no.

The Connétable of Trinity:

No, dégrèvement is debts, basically.

The Connétable of Grouville:

Yes, I know. I am talking about the eventual outcome of it in that a non-qualified person could live in a flying freehold property if it was left to them.

Mr. A. Le Quesne:

Any freehold property, if it is left to them.

The Connétable of Grouville:

That is what I wanted to know. Yes. You see, that puts a block on doing a mass transfer of share transferring into flying freehold, does it not?

Mr. T. Hart:

I was going to say in relation to -- I do not think one could really -- in order to convert a block of apartments from a share transfer structure to a flying freehold structure you would need every single owner to consent.

The Connétable of Grouville:

I realise the difficulties. It was an idea that perhaps could be pursued, but obviously in view of what you

have said it cannot be pursued, because especially if you are going to then create the situation where you have literally a dégrèvement situation, but without the debt.

The Connétable of Trinity:

Could I just ask a question on flying freehold and share transfer? I believe if you own a share transfer flat that still entitles you to be a first-time buyer. Does it also apply to flying freehold, or does that become then your first-time buyer's property? If you own a share transfer that does not preclude you from going on to a --

Mr. A. Le Quesne:

Strictly it does preclude you but I think the policy, as I understand it, of the Minister for Housing is to allow you, provided I think your ... I am not quite sure how they exercise that discretion. The definition of first-time buyer does include acquisition of shares, ownership of shares, as well as freehold property, but as a matter of policy I think there is some latitude given to people of --

The Connétable of Trinity:

But would it be the same on flying freehold? Because that way you have paid stamp duty, have you not? Or is that definitely first-time buyers?

Mr. T. Hart:

I think that one definitely. I do not think there is any --

Mr. A. Le Quesne:

I think if you own a flying freehold unit you would not be a first-time buyer and I think it also applies to share transfer, if you have owned a share transfer apartment, but I cannot be completely certain on that.

The Connétable of Trinity:

Well, I would differ.

Mr. R. Teather:

Are you talking about stamp duty, or housing?

Mr. A. Le Quesne:

I am talking about housing. Qualifying as a first-time buyer, for instance, either stamp duty or purchasing a first-time buyer property.

The Connétable of Trinity:

What I was looking at then is there is a definite advantage if the Minister for Housing is not pursuing the

first-time buyer on the share transfer, but is definitely doing it on a freehold, because there are a lot of young people who buy a share transfer to start with and then come on to the first-time buyer market. I have some on the waiting list now and I know they have share transfers and they are allowed to go on the first-time buyers' list. There is a big difference if then as a freehold -- there is a big advantage on share transfer compared to flying freehold, for those people.

The Connétable of Grouville:

Can I just come back to the flying freehold situation? When you purchase a flying freehold you do still have to go through the residential qualification course, do you?

Mr. A. Le Quesne:

Yes, that is right.

The Connétable of Grouville:

You do?

Mr. A. Le Quesne:

Yes.

The Connétable of Grouville:

And yet when you die --

Mr. A. Le Quesne:

Because it is a conveyance. It is a conveyance. It is a transaction to which the law, the housing law, applies.

The Connétable of Grouville:

But the housing law loses control when you die.

Mr. A. Le Quesne:

No. It still retains control.

The Connétable of Grouville:

Well, no, it does not because your heir can then live in it without having qualifications.

Mr. A. Le Quesne:

The heir can.

The Connétable of Grouville:

Yes, that is what I was just saying.

Mr. A. Le Quesne:

But if the heir wants to let that property that again is a transaction to which the housing law applies and could only let it --

The Connétable of Grouville:

But he could live in it.

Mr. A. Le Quesne:

He could live in it.

The Connétable of Grouville:

So, he has a right of occupation of a freehold property left -- flying freehold left to him under a will.

Mr. A. Le Quesne:

Yes. But the same thing applies to a residential house anywhere.

Mr. R. Teather:

But he cannot sell that. If he sells that on then --

Deputy R.G. Le Hérissier:

He has lost his right of occupancy.

Mr. T. Hart:

Indeed. Absolutely right.

The Connétable of Grouville:

Would you class that as an anomaly? Loophole?

Mr. A. Le Quesne:

I think in a civilised society you should be able to leave your property to whom you wish and whoever you leave that property to should have enjoyment of it.

Deputy R.G. Le Hérissier:

I think that was the theory.

Mr. T. Hart:

I think the law was changed --

Deputy R.G. Le Hérisier:

You do not seem convinced.

The Connétable of Grouville:

The brain is going into overdrive at the moment. You might see the steam coming out of it.

Deputy P.J.D. Ryan:

Sorry, you were going to say?

Mr. T. Hart:

I was just going to say on that point, I think the law was changed about a year ago to restrict occupation of inherited properties purely to the person inheriting because previously the person inheriting could allow it to be occupied by other people on license but that has been closed as from, in relation to inheritances, a date in 2006 or 2007.

The Connétable of Grouville:

All right, I am clear on that now.

Deputy P.J.D. Ryan:

So, what proportion of, say, new blocks of flats are being sold as flying freehold, as compared to share transfer, in your experience?

Mr. A. Le Quesne:

I think it is fair to say that if it is possible to structure it in that way --

Deputy P.J.D. Ryan:

Which way?

Mr. A. Le Quesne:

As a share transfer. They will be sold as share transfers quite clearly.

Deputy P.J.D. Ryan:

As a preference?

Mr. A. Le Quesne:

Well, there is an advantage because there is no stamp duty.

Deputy P.J.D. Ryan:

No, just financial.

Mr. A. Le Quesne:

That is the principal commercial advantage of selling and marketing share transfer because most stamp duties are payable. There was much made in the States debate, I think, or quite a lot was made about non-residents being able to purchase share transfer but it did not mean, and I think there may have been some confusion in the House in some Members' minds, that acquiring the shares meant that they could occupy the property.

Deputy P.J.D. Ryan:

No, they cannot. They would be buying to let people.

Mr. A. Le Quesne:

So, buying as an investor.

The Connétable of Grouville:

We did query that with the Solicitor General and she sent us a letter back explaining the situation.

Deputy P.J.D. Ryan:

They would of course pay Jersey income tax regardless on the rental income.

Mr. A. Le Quesne:

On any rental income, yes.

Deputy P.J.D. Ryan:

Would that be deducted at source? Yes, I think it would be. How would that --

Mr. T. Hart:

I do not think, at present, although I think under the changes to the Income Tax Law it is going to come in, is it not?

Mr. R. Teather:

Just coming back to this question of how many and trying to get a handle on how much tax this might raise. Would the Housing Department know how many share transfers are going through each year?

Mr. T. Hart:

Well, they should do because they had to consent specifically to the occupation of each flat, on it changing hands, pursuant to the consent which was granted originally to the company which requires each new occupier to be specifically approved as qualifying in (a) to (h) or (a) to (j), depending what it is. The Minister for Housing has to consent, so they --

Deputy P.J.D. Ryan:

Would they know the transaction value?

Mr. T. Hart:

No, they would not.

Deputy P.J.D. Ryan:

So, they would not be able to assess the tax. They might know the numbers, but they would not be able to assess the tax.

Mr. A. Le Quesne:

They will know the volume.

Mr. T. Hart:

They will know the volume, yes.

Mr. A. Le Quesne:

I think though that you would find that ... I think somewhere there is a mention of expected revenue of about £1 million per year.

Deputy R.G. Le Hérissier:

Of £1 million.

Deputy P.J.D. Ryan:

I was going to ask you, in your experience, do you think that is fair?

Mr. A. Le Quesne:

I think that is low.

Deputy P.J.D. Ryan:

You think it is low.

Mr. A. Le Quesne:

I think it is low.

Deputy P.J.D. Ryan:

Can you quantify how low?

Mr. A. Le Quesne:

It is difficult to put a cap on it, or to put a limit on it, but I would say that ... well, let us take an example, let us say there are -- what were talking about earlier, 400 apartments at £250,000. Now, that gives us stamp duty, I think, of £2,500 approximately. So, 400 times £2,500. That is £1 million, easily.

Mr. T. Hart:

That was in fact on a value of £200,000, would give £2,500 stamp duty.

The Connétable of Trinity:

If you have a few million pounds thrown in.

Mr. A. Le Quesne:

Indeed you must also remember that you are going to get a revenue from the borrowings as well because you are going to charge a stamp duty or a land transfer tax in respect of security agreements and that is half a per cent. Now, most of those people buying for £250,000 are probably going to be borrowing £200,000. So, 400 ... I think that is £8 million, so it is another £400,000, is it not?

Deputy P.J.D. Ryan:

Right. So, you are assuming -- one was assuming, not you, that all of those 400 transactions at £250,000 or whatever, were loan free, were cash purchases to give the £1 million.

Mr. T. Hart:

Yes, you would, yes.

Deputy P.J.D. Ryan:

So, it is low.

Mr. R. Teather:

Although, if there are houses below that or flats below that, bought by first-time buyers, the yield would be a lot less.

Mr. A. Le Quesne:

The yield would be lower because they would be first-time buyers, but I think a reasonable estimate of flats in that area, within those parameters, would be between 300 and 400 flats a year. That is only -- after all, that is 7 a week. Now, spread that between the legal firms, we are dealing with at least one or 2 a week, sometimes 6 and that is just one office. So, there is a significant volume.

The Connétable of Grouville:

You could be talking about 1,000 a year then, instead of 400.

Deputy P.J.D. Ryan:

If we bring this law in, will we suddenly find that -- particularly if we count flats then as a null in the first -- you know, if you buy a flat you a first-time buyer but you do not then stay on the first-time buyers' list afterwards, do you think we will see a reduction in share transfer volume and movement of flying freehold?

Mr. A. Le Quesne:

I think that the imposition of the stamp duty transfer will remove one of the most significant advantages to share transfer. The ability to sell the apartment to a non-qualified individual will still remain but that is not the significant advantage of selling by share transfer. It is an advantage but the greatest advantage is the present freedom from stamp duty. I am involved in a couple of developments which will be completing in the future and I have debated with my clients whether to go the share transfer route or the flying freehold route. To go the share transfer route you have to transfer the property into a clean company, if it is not in one, and you have to be very careful about that when you start off and make sure that a freehold earning company is a clean company so that you can sell shares in it. If it is not, then you have to transfer it and you will pay stamp duty on that transfer and it is the vendor, or the developer, who will pay the stamp duty, whereas with the -- as opposed to the purchaser, the end purchaser, will be paying the stamp duty either on the share transfer, if the law comes in, or on flying freehold.

Deputy P.J.D. Ryan:

So, naming no names, what was the decision?

Mr. A. Le Quesne:

Have not made one yet.

Deputy P.J.D. Ryan:

Your advice?

Mr. A. Le Quesne:

It is a commercial decision but I can just explain to them the advantages and disadvantages and there are

numerous ones to be considered, from a commercial point of view; the saleability, the ability to pre-sell off plan, the cost of setting up a structure, but it is down basically to marketability.

Deputy P.J.D. Ryan:

Would your advice change prior to this? I mean, if this law comes in -- is your advice to your customer, your client, at the moment based on this law being in place?

Mr. A. Le Quesne:

It is. Because I think we are ... well, until it was referred to the panel, we both thought the law was going to be in force certainly no later than the end of the year.

Mr. R. Teather:

But from what you said before this will only affect new developments. People will not start unwinding.

Mr. A. Le Quesne:

No, no. I do not think so. It would be too costly and -- so, you might see share transfer dying out on new developments but, as Tim said, there is a huge number of share transfer apartments out there that exist at the moment and will get turned over.

The Connétable of Grouville:

If a form of tax was brought in or stamp duty on the flying freeholds -- sorry, share transfers, that would then put them on a par with flying freehold, would it?

Mr. A. Le Quesne:

Flying freehold residential apartments, yes.

The Connétable of Grouville:

So, it would be on a complete par so really it would not matter which route they went, except of course for the inheritance issue.

Mr. A. Le Quesne:

Inheritance.

The Connétable of Grouville:

Okay.

Deputy P.J.D. Ryan:

Could we talk about the practical collection mechanism with the law? Either for this new law or for

other stamp duties on normal freeholds. Do you have any comments or suggestions as to how it could be improved, made more efficient in any way?

Mr. T. Hart:

No, I think the main problem that we had with the first draft, the originally lodged draft of the L.T.T. law, was that there seemed to be a sort of chicken and egg situation in relation to the ability to complete a transaction and then the requirement to pay the L.T.T. but one of the amendments that was made makes it clear that you can pay your L.T.T. in advance of completion. It is not -- there is simply a latest date, which is 28 days after completion, on which it has to be paid, but that is not now consistent with -- because there is not an earliest date, it is not inconsistent with the fact that a transfer cannot be registered until the L.T.T. has been paid, so you can in a similar way to buying one's stamps in advance of the conveyance, one can pay one's L.T.T., get the receipt in advance and then proceed to completion. I mean, I think that the stamp duty system works pretty well and I think this now comes as close as it can do to that and is pretty workable, I think.

Deputy P.J.D. Ryan:

It is going to be collected by the Comptroller of Income Tax. Any thoughts on that?

Mr. A. Le Quesne:

I think that that would be the best office to be dealing with it. It is a self-assessed act. We are going to be wanting to claim the money back some time because the only difference between the stamp duty on the conveyance and the L.T.T. is that you have to pay and get your L.T.T. and deliver that L.T.T. receipt to the company secretary because it is an offence for the company secretary, or the company, to register it if the L.T.T. has not been paid. Now, sometimes transactions fall apart, do not proceed, are delayed. With a conveyance you do not actually purchase the stamps or stick them on the contract until the Friday morning when you know you are going to court, even though I have brought contracts back and have steamed stamps off [**Laughter**] but not on many occasions. So, that is very simple. If you are dealing with a share transfer one first of all has to remember that it does not have to complete on a Friday afternoon. It can complete at any time. So, it will need an office which is geared up to issue these and in any event, on larger conveyancing transactions where the stamp duty is substantial, instead of putting stamps on a Treasury receipt for the stamp duty is obtained and that is attached to the contract. If they are geared up to issue Treasury receipts in that way, they probably have the infrastructure to issue L.T.T. receipts.

Mr. T. Hart:

I think it needs to work in the same way in that if one has purchased a Treasury receipt for stamp duty and the transaction does not proceed you will simply then contact the Treasury and return a receipt and they will not cash the cheque. So, there is an easy method of effective reimbursement. So, I think as

long as one has the ability to do exactly the same ...

Deputy P.J.D. Ryan:

Another question has occurred to me in that the payment of L.T.T. relies upon this right of occupation, legal right of occupation, attached to the shares. Do you think there is any scope for argument using different language that lawyers might, or whoever set up the company in the first place, have used which will be: "Oh, well, it does not quite do that." Is there scope for administrative costs to the States because it is not absolutely clear? We are talking about quite a lot of money here, so if someone can get away without it they might.

Mr. T. Hart:

I think though that from a purchaser's point of view one needs to know that contractually, vis-à-vis the company and its other shareholders, one has an unassailable right to use and enjoy and occupy a particular apartment and indeed the lender will also need to know that to know that it has proper security. So, I think if you try and move away from that with a view to trying to avoid the stamp duty I mean it is really the tail wagging the dog and you are losing the actual key benefits that you are after, after the transaction.

Deputy P.J.D. Ryan:

Yes, I suppose what is going through my mind is the odd share transfer property that is owned by a company where the shares do not actually specifically implicitly say that, where there are people who just rely on the -- purely on the ownership of the shares and being able to control the board of directors.

Mr. A. Le Quesne:

But the law, as presently drafted, would not apply to that.

Deputy P.J.D. Ryan:

Exactly.

Mr. A. Le Quesne:

But the vast majority of residential share transfers are this form where the exclusive right of occupation is vested in the registered holder of the shares. Share transfer is a very artificial means that was devised more than 40 years ago to overcome the problem of being unable to mortgage a long lease and unable to convey an apartment, or part of a building. I am not aware of any other jurisdiction which has an exactly similar form, although lots of jurisdictions have something similar to the flying freehold law. But the share transfer is very peculiar to Jersey.

Deputy R.G. Le Hérissier:

Sorry, can I press -- I mean, it is slightly off the point, but why was it needed in Jersey? What was the special situation?

Mr. A. Le Quesne:

Because before 1991 you could not convey the freehold ownership of an apartment. You could grant a long lease of the apartment but you could not mortgage that. So, this means of passing exclusive right of occupation was devised, and one has to remember that each shareholder, or no shareholder has any interest, direct interest, in the property belonging to the company. They do not have an interest in the freehold at all. They are only interested in the shares which give them the right of exclusive use occupation. The words are, "exclusive use and occupation". It does not infer the word "ownership" because the ownership rests with the company.

The Connétable of Grouville:

Can I just say here, as a matter of interest, that I remember that first one being created. It was by Maurice Pratt and Herbert Walford at Quennevais. It was a development exactly opposite the Synagogue, where the Synagogue is now, a development of 4 flats and they were puzzling how to do it and I think it was Dick Christen that created this share transfer. That is historically for you.

Mr. R. Teather:

But going back to Deputy Ryan's question, these ones where you do not have the right of occupancy, are those the ones that we talked about before, the old --

Mr. A. Le Quesne:

They are the ones where effectively the purchaser is purchasing the entire issue cheque, not the company. Now, it is important to distinguish between the company and its shareholders and this was one of our problems with the original draft of the law. In law, simply because you own the shares, all the shares of the company, does not mean that you have the legal right to occupy the property and indeed for the company to permit you to occupy that property, other than by way of a fair license, would be a transaction to which the housing law would apply and you would have to get consent.

The Connétable of Grouville:

We have that from the Solicitor General. I did query whether in fact at some stage somebody was going to challenge the situation that you were granting somebody exclusive right to live somewhere and at the same time they are then subject to the housing law which prevents them doing that. I just wondered if one day some of them might just decide to take it on. I am sure you chaps would love that.

Deputy P.J.D. Ryan:

Can we talk about the reliefs which are in the normal stamp duty law for freehold purchasers. There are

reliefs for first-time buyers. What other reliefs are there, that you can think of, if there are any?

Mr. A. Le Quesne:

Transfers between spouses. Transfers between joint owners.

Deputy P.J.D. Ryan:

How does that work? There is no stamp duty husband to wife?

Mr. A. Le Quesne:

I think there is a reduced stamp duty on a transfer between -- from joint ownership into sole ownership and from sole into joint, where the joint owners are spouses.

Mr. T. Hart:

Yes, and there is -- it is carried forward into the schedule to the L.T.T. law where it is either a voluntary transfer between spouses, sole to joint, and joint to sole, or it is pursuant to an order of the Matrimonial Causes Division of the Royal Court to make such a transfer. Then in both cases there is a nominal fee; £60, which I think would replicate exactly what would be the case on a conveyance of such property because it would be £10 plus the --

Mr. A. Le Quesne:

I think the question as to whether the reliefs are adequate and are proper and should be allowed is more a political one. I think the important point is that they should be -- if the law is going to be brought in they should be mirrored exactly in the schedule to the Land Transfer Taxation.

Deputy P.J.D. Ryan:

So, you are happy that those reliefs are extended into the new law correctly.

Mr. A. Le Quesne:

I think if you are going to maintain equity then, yes.

Mr. R. Teather:

But for example there is an exemption from stamp duty for, or a flat fee, buyers of property -- first-time buyers where it is less than £150,000. Do those exist in Jersey?

Deputy P.J.D. Ryan:

How many properties are there, or first-time buyer properties, that are under £150,000 nowadays, in your experience?

Mr. T. Hart:

There is very little.

Deputy P.J.D. Ryan:

To help us with our political decision-making.

Mr. A. Le Quesne:

The first-time buyer I think is now £300,000.

The Connétable of Trinity:

If they are there they would be taken up by mortgages already.

Deputy P.J.D. Ryan:

Is that mortgage relief?

Mr. T. Hart:

No, that is for the stamp duty. I mean, it recently went up for the purposes of freehold premises and similarly is replicated here to £300,000 to --

Mr. R. Teather:

But you are paying three-quarters of a per cent, about that.

Mr. T. Hart:

Yes, that is right.

Mr. R. Teather:

It is not --

Mr. T. Hart:

On the £230,000 year.

The Connétable of Grouville:

Patrick, would you excuse me? I have a funeral to go to. Thank you.

Deputy P.J.D. Ryan:

Because of course first-time buyers, if they are effectively buying share transfer properties, will be escaping stamp duty completely, prior to this law.

Mr. A. Le Quesne:

Prior to this law, yes.

Deputy P.J.D. Ryan:

So, it does beg the question as to whether ... how many first-time buyers -- I mean, we know there are some, but are buying -- but how real are they as really first-time buyers, is the question for us because it could be said, and many people do say, and the estate agents have in fact said, and I would be interested in your comment, that most first-time buyers are in this flat market up to £250,000. So, one could say that the real relief for first-time buyers, prior to this law, is through share transfer. That we have been allowing relief through share transfer, effectively.

Mr. A. Le Quesne:

It is not a relief just available to first-time buyers. It is a relief available -- not a relief, because there is no obligation. I suppose, you cannot be relieved of --

Deputy P.J.D. Ryan:

It is not just first-time buyers, it is the ones that buy £1 million flat as well.

The Connétable of Trinity:

The only downside would be that if the Housing Committee changed their policy that the share transfer people are allowed to go on a first-time buyers' list, or that they own a share transfer, but that would go the same as a freehold because there are a lot of youngsters who do purchase share transfer property, knowing it does not affect their first-time buyer status. If it becomes exactly the same as a freehold then you might find that they will not be encouraged to go for that.

Mr. A. Le Quesne:

Maybe.

Deputy P.J.D. Ryan:

Okay. Have we covered everything on our list of questions? Except to ask you if you have any other issues at all that you would like to raise. Is there anything that we have missed that we have not asked you about, or any other opinions that you might want to impart?

Mr. R. Teather:

We have had one issue raised whether there is a clash between probate duty and share transfer tax.

Mr. T. Hart:

I think we tried to address that because there is now a relief where the transfer is made. The share

transfer property is made simply by the executor or administrator to the intended beneficiary. Now, that is a relief that is not necessarily in the freehold context because freehold property devolves automatically to the heirs or legacies without an executor. So, it is a one-stage acquisition, for which stamp duty is payable on the registration of the will, but in the probate context there is probate duty paid on the grant of probate being taken out and then there is the necessity for the second stage, which is the transfer to the beneficiary and so we had thought that that was an unfair double taxation. So, there is the relief in the current law to --

Mr. R. Teather:

Do you think that has added ...?

Mr. T. Hart:

I think so.

Mr. A. Le Quesne:

But the observation I would make is that Article 21 of the law empowers the Minister to make orders and it may well be, indeed in our meeting with the Law Draftsman and the Solicitor General, the Law Draftsman did point out that quite a lot of this could be covered by orders. You see, there is one other situation, and it involves security interest where a secured party may -- the Land Transfer Tax will have been paid on the security interest on the value of the amount borrowed. It may be that a secured party would want to take the shares that it holds, or the share certificate that it holds, into its own name and I think it would be unreasonable to expect L.T.T. to be paid on that transfer. It would obviously be paid if the secured party sold the value and realised the asset, but the security interest law allows for possession of certificate and also title to the shares. Most bankers, most financial institutions initially take possession of the certificate and a blank transfer. Some then take, or exercise their right to transfer that into their own name or a nominee and on that there should be, I think, a relief from L.T.T.

Mr. T. Hart:

Because in truth it is only part of the security taking process. It has simply moved from one mode of security to another without --

Deputy P.J.D. Ryan:

From which the L.T.T. has already been paid in the first place.

Mr. T. Hart:

Yes, precisely.

Deputy P.J.D. Ryan:

But you think that could be covered by order basically?

Mr. A. Le Quesne:

I would have thought so, yes.

Deputy P.J.D. Ryan:

That may be a point that we would want to --

Mr. A. Le Quesne:

The simple answer to the final question; do you agree with the Treasury's approach to tax the easy transactions now and deal with the difficult ones later? Yes. That is the shortest answer you will get from any lawyer.

The Connétable of Trinity:

You could get, "No".

Mr. A. Le Quesne:

You could get, "No". [Laughter]

Deputy P.J.D. Ryan:

Thank you very much for your time this morning. It has been appreciated. We do appreciate that preparing for these kinds of things does take up your time but it is important that as government scrutiny we have the benefit of your expertise. Thank you for that.

Mr. T. Hart:

Thank you very much.