

200 to Bond

B/F will

April 4th

Mr Turnbull

under Treasury letter.

BT 514

DLT Clause 117

1 We were promised that the Treasury would look into the Pensions Minister's question as to whether there is scope for removing the risk of security in mortgage lending. Where is the reply? (para 7)

2. DLT was to be looked at again after the Election (a) What was the result of this new look?

3. The loss of tax is ^{about} £5 bn over 6 years. Will not the recovery mechanism impose administrative and legal costs (on tax payers in particular) and how do they compare with the sums "lost"? (Note that now inflation is down to low figures the DLT is likely to yield less)

4. I do not think either Michael Scholes or I were at fault in not pursuing this further. The implication of paras 7 and 9 is that the Treasury would provide additional evidence etc. They did not. The ball was in the Treasury court.

AW



AT
NDPM
AT 215

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

2 May 1984

Andrew Turnbull Esq
10 Downing Street

Dear Andrew,

CLAUSE 117 OF THE FINANCE BILL DEVELOPMENT LAND TAX:
DISPOSALS BY NON-RESIDENTS

Sir Alan Walters mentioned at a meeting with Sir Peter Middleton earlier this month the concern which had been expressed that Clause 117 could impair the security of existing mortgagees.

This matter had been raised last year when the original Clause was introduced (Clause 90 of the Spring Finance Bill). It was one of the measures which did not go forward because of the election and is now being re-introduced in the present Bill.

PE11

A note was provided under cover of my letter of 18 May 1983 for the Prime Minister, explaining the background to the Clause and its effects and undertaking to look again at the details to see whether there was any scope for removing the risk to mortgagees' security, however theoretical it might be.

.. This has now been done in consultation with the representative bodies. The discussions which have taken place are described in the attached note and you will see that most of the concern has been allayed. In particular the British Bankers' Association no longer intend to press for any amendment to the provisions as they stand in the Bill.

I am sorry that I have not been able to let you have a note on these discussions before now, but what we hope will be the last round has only just been completed.

Yours ever,

JCS

MISS J C SIMPSON
Private Secretary

CLAUSE 117: IMPACT ON SECURITY OF MORTGAGEES

... In response to an enquiry from the Prime Minister last year (a copy of the note is attached) we undertook to look again at the details of what is now Clause 117 of the current Finance Bill to see whether there was scope for removing any risk to mortgagees' security.

2. Mortgagees (mostly banks lending to non-resident customers on the strength of a mortgage on UK property) expressed concern about this provision when it was introduced as Clause 90 of the 1983 Spring Finance Bill. Their fear was that when they exercised their power of sale on default some of the proceeds would find their way back to the non-resident mortgagor instead of to the United Kingdom mortgagee. This could happen when the purchaser of the property withheld from his payment, as he was required to do, a proportion which he paid over to the Development Land Tax Office as an assurance that any liability would be met. If that deduction exceeded liability, repayment would be made to the non-resident mortgagor rather than the United Kingdom mortgagee, thus reducing the proceeds derived from the exercise of his right of sale under the mortgage.

3. This problem has been further examined in a series of discussions with the main representative bodies concerned - the Law Society, the Royal Institute of Chartered Surveyors and the British Bankers' Association. A number of changes have been made in the arrangements under the Clause designed to reassure these bodies.

4. First, it will be provided by Regulation that a mortgagee exercising his power of sale may himself apply to the Revenue for a direction as to the amount to be withheld in order to ensure that wherever possible there is no over-deduction of tax and the possibility of a repayment direct to the non-resident mortgagor is avoided.

5. Second, assurances have been given to the representative bodies that high priority will be given to dealing with such directions, thus again reducing the possibility of the mortgagee's funds being reduced by an excessive deduction. It is hoped that in most cases of this kind it will be possible to authorise no deduction at all.

6. Third, it has been established that if the UK mortgagee forecloses rather than exercises his power of sale, the problem of over-deduction will not arise at all. Foreclosure thus provides a remedy for what all accept is likely to be a rare case.

7. Fourth, we have undertaken to accept that where a mortgage incorporates an authority for any over-deduction to be repaid to the mortgagee, any repayment of tax will be made accordingly. Thus, for the future, mortgagees not wishing to go to the trouble of foreclosing will be able to include in the mortgage deed an undertaking on these lines which the Development Land Tax Office will respect.

8. The Royal Institute of Chartered Surveyors declared themselves content with these assurances. The British Bankers' Association have agreed to remove their opposition to the Clause on the understanding that we shall be prepared to review the arrangements should there be any evidence in practice of difficulties for mortgagees. It is believed that the Law Society's concern has also been allayed - although this cannot be formally confirmed until the Committee concerned has met on 1 May. They, too, would like to take part in any monitoring of the provisions which takes place.

9. The Financial Secretary raised the subject of the new provisions at a recent meeting of the Tax Consultative Committee a group of senior accountants, lawyers and tax practitioners, including Mr Bruce Sutherland, Mr Milo Kerr and Mr Michael Loup. The Committee did not think that the arrangements would cause any difficulties.

10. With these new safeguards the Clause should not impair to any significant degree the security of UK mortgagees. The operation of the new arrangements will, however, be carefully monitored in consultation with the main representative bodies.



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PS/EST
PS/MST(C)
PS/MST(R)
Mr Hudson
Mr Middleton
Mr Cassell
Mr Moore
Mr Robson
Mr Robertson - IR
PS/IR

18 May 1983

M C Scholar Esq
Prime Minister's Office
10 Downing Street
LONDON SW1

~~cc Mr Beighton~~
Mr Wiltshire
Mr Hutton (DLT)
Mr Dunn.



Dear Michael,

CLAUSE 90 OF THE FINANCE BILL

You wrote to me on 4 May asking for a note on Clause 90 of the Finance Bill for the Prime Minister.

I now enclose a note setting out the background to this clause and discussing the particular issues of concern to the Prime Minister.

Yours,

Judith

MISS J C SIMPSON
Private Secretary

CLAUSE 90 OF THE FINANCE BILL

1. The Prime Minister asked for a note on this clause.

Background

2. Development Land Tax is charged when a disposal of land results in a realisation of development value. Residents outside the United Kingdom as well as residents here are liable. A foreign court will not however enforce a claim to United Kingdom tax so in practice someone who is outside the jurisdiction can ignore such a claim with impunity.

3. To meet this problem a purchaser of development land from a non-resident vendor has been required since the inception of the tax, and subject to the let-outs mentioned below, to withhold 50% of the purchase price and remit it to the Revenue. If the amount withheld is more than the ultimate liability the balance is repaid with interest; if it is too little the Revenue have to take their chance in collecting any extra that is due.

4. There are a number of let-outs from the requirement to deduct tax:-

- (i) the vendor may seek the agreement of the Revenue that there should be no deduction, or that the deduction should be less than 50%. Applications of this nature are always given high priority; and

- (ii) there is no requirement to make a deduction if -

- (a) the consideration does not exceed £50,000 (under the previous Government £10,000);

(b) the property is a dwelling house and the consideration does not exceed £25,000 (this has been effectively swept up under the previous head); or

(c) the land is not development land, ie there is no unused planning permission in force.

5. The weaknesses in the existing provisions have led to a loss of tax of about £5 million so far, which is not insignificant compared to the total yield of DLT of some £110 million over the six years of its life. The great bulk of the losses are not in fact due to foreign investors but to overseas subsidiaries of ultimate UK taxpayers.

Clause 90

6. Clause 90, which did not impose any new liability to tax, but sought to make the collection procedure simpler and more evasion-proof,

(a) Increased the exemption limit for private dwelling houses from £25,000 to £150,000;

(b) reduced the normal rate of deduction from 50% to 40%;

(c) but improved the machinery for collecting the tax which is due under the existing law, by extending the scope of the requirement to deduct tax to include disposals of land other than development land. The new rules should be simpler than the old ones and easier for solicitors to apply, and the Law Society have agreed with this.

The Prime Minister's Questions

7. The Prime Minister asks first whether the clause would introduce new risks into lending on mortgage security. In a

theoretical way the present provision can throw up some such risk. But in practice there have been no cases which have given rise to any difficulty in the past, and there seems no reason why such cases should now arise. But in view of the Prime Minister's query, the details are being looked at again to see if there is scope for removing any such risk, however theoretical it may be.

8. Second, the Prime Minister asks if the clause would make inward investment less attractive. The answer must be no, unless foreigners were only investing in this country on the assumption that they could avoid their UK tax liabilities. In any case, as stated in paragraph 5 above, in the large majority of problem cases, the underlying taxpayer is a United Kingdom resident rather than a genuine foreigner who has purchased property here as an investment.

9. DLT generally is a tax that we intend to look at again after the Election.

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