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4th September 2015

Dear Mrs Galloway

**Consultation and Reform of the Compulsory Purchase Regime in Scotland
Incompatibility between Tax and CPO Provisions**

I refer to Strutt and Parker's response dated 17th June 2015 in respect of the above consultation. At the risk of introducing further issues at this late stage in your consultation consideration I would like to draw the attention of the Law Commission to a situation that has arisen in two cases which is likely to come before the Lands Tribunal as part of an issue relating to equivalence.

Most CPOs give rise to taxation issues. In accordance with Inland Revenue Note SP 8/1979, I understand that agricultural disturbance claims will be assessed as a taxable receipt under Class 1 and 2 of Schedule D. Difficulties arise however with capital taxes arising out of compulsory purchase. The claimant is unable to control the timing of any disposal which, absent the scheme, he would be able to do as part of normal tax mitigation.

Under the taxation Chargeable Gains Act 1992, capital gains tax (CGT) would seem to be payable in respect of any disposal consideration. Section 247 of the 1992 Act makes provision for rollover relief. Such relief is available if some or all of the disposal proceeds are reinvested by the claimant in a replacement property within a four year period starting 12 months before and ending three years after the date of disposal.

The time at which the disposal is treated as being made for tax purposes is the time at which compensation is agreed or otherwise determined in terms of section 246 of the relevant case law "*or if earlier (but after the 20th April 1997) the time when the Authority enter on the land in pursuance of their powers*". This essentially means that unless the parties have agreed compensation, the date of vesting becomes the date at which the disposal is made, notwithstanding the fact that in the current climate it is highly unlikely that compensation can, or could be, agreed at that date. Effectively therefore a landowner has no funds with which to purchase alternative property to rollover any gain. A further anomaly occurs in respect of Section 17a of the 1963 Act which limits claims arising out of reinvestment out of the property (stamp duty, agent's fees etc) to within "*the period of one year beginning with the date of entry*". The Claimant effectively has to pay CGT on any compensation received.

The English Authority on this issue is *Bishopsgate Parking (No.2) Limited* [2012] UKUT 22 (LC) which related to the compulsory purchase of a car park. The owner had difficulty in finding a suitable replacement and was liable to CGT. The Tribunal decided that CGT was capable of being compensated. There is no Scottish authority on this issue but I am aware of a number of cases pending where this is a major issue.

I feel that this is an area where clarity is required and which merits the Commission's attention.

Yours sincerely

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