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Stage 1 Report on the Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill



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Finance and Constitution Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any report or other document laid before the Parliament by members of the Scottish Government containing proposals for, or budgets of, public revenue or expenditure or proposals for the making of a Scottish rate resolution, taking into account any report or recommendations concerning such documents made to them by any other committee with power to consider such documents or any part of them;

(b) any report made by a committee setting out proposals concerning public revenue or expenditure;

(c) Budget Bills; and

(d) any other matter relating to or affecting the revenue or expenditure of the Scottish Administration or other monies payable into or expenditure payable out of the Scottish Consolidated Fund.

(e) constitutional matters falling within the responsibility of the Cabinet Secretary for Finance and the Constitution



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Introduction

1. The Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill (“the Bill”) was introduced by the Scottish Government on 13 November 2017. The Bill and its accompanying documents can be accessed via the [Parliament’s website](#).
2. The purpose of the Bill is “to give retrospective effect to the amendments made by the Land and Buildings Transaction Tax (Additional Amount-Second Homes Main Residence Relief) (Scotland) Order 2017.”¹
3. The Committee received five responses to its call for written evidence on the Bill. These can be accessed via the [Committee’s website](#).
4. A briefing on the Bill, including a summary of written evidence, has been produced by SPICe. This is available on the [Parliament’s website](#).

Background

5. The Land and Buildings Transaction Tax (Scotland) Act 2013 was amended by the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016. The 2016 Act introduced a 3% surcharge on the purchase of additional properties for £40,000 or more (the “Additional Dwelling Supplement” (ADS)) from 1 April 2016.
6. One of the policy objectives of the 2016 Act was that “married couples, those in a civil partnership and cohabitants (those living as if a married couple) are treated for the purposes of ADS as one economic unit” in order to address the risk of properties being moved between individuals for the purposes of tax avoidance.
7. The intention was that the ADS could be reclaimed when purchasing a main residence where the sale of the former main residence took place within 18 months. However, the legislation required the additional amount to be chargeable if spouses, civil partners or co-habitants were jointly buying a home to replace a home that was owned by only one of them. As a result, the relief could not be claimed in this scenario as only one name appeared on the title deeds.
8. In short, this meant that “the couple is being treated as one economic unit when determining if the ADS applies, but not when it comes to determining whether ADS should be repaid.”²
9. In June 2017, the Scottish Government sought to address this anomaly via secondary legislation.³ The Land and Buildings Transaction Tax (Additional Amount-Second Homes Main Residence Relief) (Scotland) Order 2017⁴ amended the 2013 Act to provide relief from the ADS for all qualifying future transactions and those transactions where buyers entered into the contract on or after 20 May 2017, and the effective date of the transaction was on or after 30 June 2017. During the Committee’s consideration of the Order, the Cabinet Secretary was asked whether it would apply retrospectively. He responded—

” the order does not resolve the matter retrospectively. That will require a further legislative mechanism that I am exploring.”⁵

The Bill

10. The Bill has a narrow scope, namely, to make the amendments made by the 2017 Order retrospective, enabling couples who have paid the additional amount of LBTT, in the scenario described, to claim a repayment regardless of the date on which they entered into the contract or the effective date of the transaction. In practical terms, this means that the Bill applies to transactions where—
 - the contract for the purchase transaction was entered into between 28 January 2016 and 19 May 2017 inclusive, or
 - the effective date of the purchase transaction was a date between 1 April 2016 and 29 June 2017 inclusive.⁶
11. In oral evidence to the Committee, the Cabinet Secretary for Finance and the Constitution (“the Cabinet Secretary”) confirmed that the Bill would mean that—
 - ” “qualifying buyers will be able to reclaim a payment of ADS when they have had to pay the additional amount despite having disposed of the previous main residence in the 18 months prior to the effective date or when they would not otherwise be able to reclaim the additional amount, having disposed of their previous main residence in the 18 months after the effective date.”⁷

Policy Memorandum

12. Whilst no formal consultation on the Bill was completed, the Policy Memorandum states that—
 - ” Scottish Government officials have discussed the issue being addressed by the Bill (in the context of the 2017 Order) with the Law Society of Scotland, Scottish Property Federation, ICAS and the Chartered Institute of Taxation in particular. These discussions suggest that there is widespread support among stakeholders for the provisions of the Bill.”⁸

13. Revenue Scotland has also confirmed that all stakeholders who submitted written evidence are regular participants in its LBTT Forum. According to Revenue Scotland’s website, the purpose of the Forum is to—
 - ”bring together stakeholders with an interest or involvement in LBTT and provide them with an opportunity to hear the latest news and developments about the devolved tax. It also provides a space to share experiences and openly discuss LBTT issues.”⁹

Financial Memorandum

14. The Bill's Financial Memorandum (FM) states that—
- ” the nature of the LBTT tax return, which is submitted by individuals or by agents on behalf of individuals, is such that it is not possible to definitively indicate the number of spouses, partners or cohabitants who would become able to claim a repayment of tax as a result of the Bill.”¹⁰
15. However, for the purposes of the FM, the Scottish Government (in conjunction with Revenue Scotland and on the basis of a 1.8% increase in buyers intending to reclaim the additional amount since the 2017 Order came into force) estimates an increase of repayment claims of between two and five percent which translates to between 76 and 189 additional cases. The average repayment value of the additional amount for joint buyer purchases is stated as being £8,231 and on this basis the FM suggests that the Bill could result in a total tax reclaim of between £655,000 and £1,555,000. The FM also states that it is likely that the majority of repayment claims will fall into financial years 2017-18 and 2018-19 (although there may be residual claims as late as 2022-23 due to a 5-year limit). The FM does not specify the budget from which these costs would be allocated although it notes that any additional work for Revenue Scotland would be absorbed within existing budgets.

The Committee invites the Scottish Government to provide annual updates on the numbers of repayment claims made and amounts repaid.

Issues Raised in Written Evidence

Awareness Raising

16. All written evidence received was supportive of the Bill although several noted the importance of ensuring that relevant taxpayers are made aware of the retrospective policy change. Both the Chartered Institute of Taxation and the Law Society pointed out that since there is no way of identifying those taxpayers who may be eligible to claim a repayment, thought must be given as to how best to effectively communicate the changes to potentially eligible taxpayers.
17. When invited by the Committee to respond to these concerns, the Cabinet Secretary replied—
 - ” I am not sure that a mass publicity campaign would be the most proportionate, effective or targeted intervention, whereas Revenue Scotland will have a very clear function...I am happy to have Revenue Scotland engage with the committee—it is not for me to do so—if the legislation is successfully passed, explaining how it will contact people who are entitled to reclaim the money.”¹¹
18. The Cabinet Secretary further noted that “the legal world will be well aware of the Bill and will raise publicity” but also observed that “it is a fair point that we must try to identify them (taxpayers eligible to claim a repayment)...it is a good question for Revenue Scotland.”¹²
19. Revenue Scotland’s written submission states that if the legislation is passed it will provide information on its website to raise awareness of the legislative changes and explain how a claim can be made. However, both Revenue Scotland’s written submission and the Bill’s FM (to which Revenue Scotland contributed) are clear that—
 - ”The nature and content of the LBTT return means that when completing their returns, taxpayers do not supply information that would enable us to identify individual taxpayers who will become able to claim a repayment as a result of the Bill.”¹³

The Committee invites Revenue Scotland to consider further what steps it will take to seek to identify potentially eligible taxpayers in light of the Cabinet Secretary’s comments quoted above.

Other Issues

20. In addition to concerns relating to awareness-raising, several respondents raised separate issues that were outwith the Bill’s scope.
21. Concern was expressed that the scope of the Bill was too narrow. For example, the Law Society stated that—

” “the limited scope of the LBTT Bill misses the opportunity to deal with a number of other changes to LBTT which are urgently required.”¹⁴

22. The annexe to the Law Society’s submission provides a number of examples where its members have identified areas which, in their view, require further legislative change to the LBTT ADS regime. The Law Society and ICAS also call for changes to allow LBTT group relief to be granted where share pledges are in place.

23. Noting that it is not uncommon for unintended consequences to arise from tax legislation, the Chartered Institute of Taxation, the Law Society and the Scottish Property Federation all suggested that it would be helpful to have an annual Scottish Finance or Tax Bill brought before Parliament. The submissions suggest that such a bill would allow any technical issues arising in the devolved tax system to be considered and addressed on an annual basis at a set time in the parliamentary calendar. ICAS made a similar point, stating that—

” “the existing limited annual tax procedure to vote on income tax rates and bands is not enough. To maintain and improve the Scottish devolved taxes a regular, formal, tax process is needed.”¹⁵

24. In its Final Report (published in June 2017), the Budget Process Review Group recommended that—

” “the Scottish Government in consultation with the Finance and Constitution Committee examines the need for a Finance Bill and brings forward any recommendations by the end of the current Parliament.”¹⁶

25. Several submissions also stated that whilst tax policy making is rightly the preserve of Scottish ministers, technical changes are often administrative in nature and as such, there should be a role for Revenue Scotland to provide input into such discussions. The Scottish Property Federation, for example, states that—

” “there is a formal understanding.....between HM Treasury and HMRC on areas of responsibility over SDLT policy and administrative policy. This could be something that the Committee might explore with the Scottish Government and Revenue Scotland as this and other areas of taxation evolve.”¹⁷

26. Similarly, The Law Society states that it would—

” “encourage Revenue Scotland and the Scottish Government to set up a Policy Partnership in relation to the devolved taxes so that they can work more closely together in relation to changes to the devolved taxes and so that necessary changes to the legislation which are at the administrative end of policy could be promoted by Revenue Scotland and not only by the Scottish Government. We believe this would assist greatly in the smooth running of the devolved tax system and would be of great assistance to taxpayers and their advisers.”¹⁸

27. When invited to comment on these suggestions, the Cabinet Secretary noted the Bill’s narrow scope but acknowledged that “there are wider issues” relating to LBTT. He agreed that—

” “It would be nice to have a finance bill like the one at Westminster that is able to do a lot of tidying up when there might be unintended consequences and anomalies or when refinement might be required. That would be a great place for such issues to be addressed in the future.”¹⁹

28. With regard to the specific comments in relation to share pledges and group relief, the Cabinet Secretary stated that whilst not part of this Bill—

” “I think I have a remedy that would help with that specific issue, but I will write to the committee before I announce anything—I will not prejudice or preview that now. There are other matters that are not relevant to the purpose of this piece of legislation but that I will reconsider in the light of the engagement that we have had.”²⁰

The Committee invites the Scottish Government to confirm what steps it intends to take in response to issues raised in written evidence that were outwith the scope of the Bill.

Conclusion

The Committee supports the general principles of the Bill.

- 1 [http://www.parliament.scot/Land%20and%20Buildings%20Transaction%20Tax%20\(Relief%20from%20Additional%20Amount\)%20\(Scotland\)%20Bill/SPBill22S052017.pdf](http://www.parliament.scot/Land%20and%20Buildings%20Transaction%20Tax%20(Relief%20from%20Additional%20Amount)%20(Scotland)%20Bill/SPBill22S052017.pdf) (short title)
- 2 http://www.legislation.gov.uk/sdsi/2017/9780111035818/pdfs/sdsipn_9780111035818_en.pdf
- 3 http://www.parliament.scot/S5_Finance/Meeting%20Papers/FCC_PUBLIC_PAPERS_210617.pdf
- 4 <https://www.legislation.gov.uk/ssi/2017/233/contents/made>
- 5 <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11032&mode=pdf>
- 6 <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2018/2/1/Land-and-Buildings-Transaction-Tax--Relief-from-Additional-Amount---Scotland--Bill#The-Bill>
- 7 <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11358&mode=pdf>
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- 8 <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11032&mode=pdf>
- 9 <https://www.revenue.scot/about-us/revenue-scotland-events/lbtt-forum>
- 10 [http://www.parliament.scot/Land%20and%20Buildings%20Transaction%20Tax%20\(Relief%20from%20Additional%20Amount\)%20\(Scotland\)%20Bill/SPBill22FMS052017.pdf](http://www.parliament.scot/Land%20and%20Buildings%20Transaction%20Tax%20(Relief%20from%20Additional%20Amount)%20(Scotland)%20Bill/SPBill22FMS052017.pdf)
- 11 <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11358&mode=pdf>
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- 13 http://www.scottish.parliament.uk/S5_Finance/General%20Documents/Revenue_Scotland_LBTT.pdf
- 14 http://www.parliament.scot/S5_Finance/General%20Documents/The_Law_Society_of_Scotland_LBTT.pdf
- 15 http://www.parliament.scot/S5_Finance/General%20Documents/ICAS_LBTT.pdf
- 16 http://www.parliament.scot/S5_Finance/Reports/BPRG_-_Final_Report_30.06.17.pdf
- 17 http://www.parliament.scot/S5_Finance/General%20Documents/Scottish_Property_Federation_LBTT.pdf
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- 19 <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11358&mode=pdf>
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20 <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11358&mode=pdf>
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