



LAND AND BUILDINGS TRANSACTION TAX - GREEN FREEPORTS RELIEF: CONSULTATION ON PROPOSED LEGISLATION

Issued 11 May 2023

ICAEW welcomes the opportunity to comment on the Land and Buildings Transaction Tax - Green Freeports Relief: consultation on proposed legislation published by the Scottish Government on 17 March 2023, a copy of which is available from this [link](#).

For questions on this response please contact the Tax Faculty at taxfac@icaew.com quoting REP 40/23.

ICAEW requests that the Scottish government considers whether the proposed time limits will deliver the incentive for a sufficient period and has also responded to selected specific questions where it considers the draft legislation could be improved.

This response of 11 May 2023 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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ICAEW

Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK
T +44 (0)20 7920 8100 F +44 (0)20 7920 0547 icaew.com

The Institute of Chartered Accountants in England and Wales (ICAEW) incorporated by Royal Charter (RC000246)
Registered office: Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK

KEY POINTS

Time limits

The Scottish Government intends that relief will be available for qualifying transactions with an effective date falling within a specified period of five years, running from the coming into force date of the legislation. ICAEW notes that the draft legislation provides for relief on transactions within the period beginning on 1 July 2023 and ending on 30 June 2028. However, it is not clear whether any green freeport tax sites will have been designated by 1 July 2023. If no tax sites have been designated by 1 July, the relief may not be available for the full five-year period.

ICAEW observes that the equivalent stamp duty land tax (SDLT) relief applied with effect from 10 June 2021 and is available until 30 September 2026; a period of just over five years. However, the first tax sites were not designated until 19 November 2021.

ICAEW requests that the Scottish Government considers whether the proposed time limits will deliver the incentive for a sufficient period.

ANSWERS TO SPECIFIC QUESTIONS

ICAEW has responded only to questions 5 and 6, as it considers that the draft legislation concerning using land in a qualifying manner could be improved.

Qualifying manner

Question 5: Do you agree that the provisions as drafted work as intended?

The use as garden or grounds of a dwelling could benefit from clarification where the garden or grounds include a building other than the dwelling.

Question 6: If not, what amendments would you propose to the draft legislation and on what basis?

The Scottish Government should consider clarifying that the references to land used as the garden or grounds of a dwelling include a building or structure on the land, like para 3(4), Sch 6C, Finance Act 2003 in respect of the equivalent SDLT relief. A similar clarification is also made in s59(1)(b), Land and Buildings Transaction Tax (Scotland) Act 2013, for the definition of residential property.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).