

Taking forward a Scottish Land and Buildings Transaction Tax



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

ICAEW Members in Scotland

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

Yes, make my response

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

available, but not my name
and address

Yes, make my response
and name available, but
not my address

or

- (d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

CONSULTATION QUESTIONS

QUESTION 1 – TAX STRUCTURE:

Do you agree with the Scottish Government's view that the Land and Buildings Transaction Tax should be structured progressively?

In principle, we agree that the Land and Buildings Transaction Tax ('LBTT') should be structured as a progressive tax, as this will remove some of the current distortions in the market created by the current 'slab' system under SDLT.

By removing current distortions, a progressive tax will encourage purchasers to take a more commercial approach to the prices offered for property and will also discourage some current practices, such as the tendency for some purchasers to place an unjustifiably high price on moveable fittings (carpets, curtains, etc).

Such behavioural changes will lead to an increase in tax yield and we would suggest that this should be taken into account when setting tax rates.

Whilst we agree with a progressive approach to the tax in principle, we would be concerned if rates were set which placed an excessive burden on large residential property purchases, as this may discourage key workers, business owners and other influential individuals from relocating (or returning) to Scotland.

QUESTION 2 – SUPPORTING SCOTTISH GOVERNMENT PRIORITIES:

Do you think that the Land and Buildings Transaction Tax should be amended in future to support key Scottish Government priorities? If yes, what objectives should changes focus on and what would be the best way of doing this?

In principle, we would agree that LBTT might be an appropriate instrument to use in support of key Scottish Government priorities in some cases.

However, it would be important to ensure that the tax remained simple to operate and administer and easily understood by taxpayers at large.

Key priorities which could be appropriate for support might include:

- Energy-efficient properties
- Development, or redevelopment, of deprived areas
- Support for key industries (subject to EU approval)

The best way to provide support would be through targeted exemptions, reliefs and reduced rates of tax, but always bearing in mind the need to maintain simplicity and fairness.

QUESTION 3 – EXEMPTIONS:

Do you agree that the proposed transaction categories should be exempt from Land and Buildings Transaction Tax, and that for these specific transactions no LBTT return should need to be submitted?

We would agree that these key exemptions should be retained under LBTT. We also agree that no return should be required where these exemptions are satisfied.

We would also suggest a considerably higher limit for the exemption for low value transactions than the current £40,000. We would suggest that a more appropriate figure might be around 90% of the threshold at which LBTT becomes payable.

QUESTION 4 – COMPULSORY PURCHASE ORDER RELIEF:

Do you agree with the proposal that the Compulsory Purchase Order relief should be expanded in Scotland to allow local authorities to benefit from the relief where they compulsorily purchase an empty home for onward sale?

Yes, but with proper safeguards to ensure that commercial property investors are not disadvantaged.

QUESTION 5 – RIGHT TO BUY / SHARED OWNERSHIP RELIEFS:

Do you agree with the proposal not to provide a Right to Buy or Shared Ownership relief for the Land and Buildings Transaction Tax, on the basis that these reliefs are not needed in Scotland?

Our view is that these reliefs will not be needed under the progressive tax structure that is currently being proposed. If a 'slab' system were to be adopted, however, then we think that these reliefs should be retained as they might then be needed at some point in the future.

QUESTION 6 – PROPOSED RELIEFS:

Do you agree with the proposed list of reliefs? Please comment on any reliefs which you think should be abolished, amended or added and give reasons.

We agree that it would make sense to initially retain these reliefs, subject to review at a later stage once LBTT has had a chance to 'settle in'.

We would like to see the addition of a 'company incorporation relief' to relieve transfers of commercial property to a company on the incorporation of qualifying trading businesses, or other transfers of qualifying trading property into companies. The current SDLT charges on such transfers act as a barrier to the growth and development of trading businesses. A relief along the lines we suggest would make sense as it would fit alongside other

tax reliefs which are available on the incorporation of qualifying businesses.

QUESTION 7 – RESIDENTIAL LEASES:

Do you agree that residential leases of 20 years or less in length should be exempt from Land and Buildings Transaction Tax in Scotland and that no LBTT return should be required?

We cannot see the purpose of a specific exemption for short leases and would, instead, prefer to see a higher value-based exemption along the lines suggested in our answer to Question 3 above (with no return required where the exemption is satisfied).

We would suggest that a blanket exemption for all short leases might encourage the development of tax avoidance schemes designed to benefit from it.

QUESTION 8 – CALCULATION OF TAX PAYMENTS FOR COMMERCIAL LEASES:

What proposals would you make to ensure that the calculation of tax payments due on commercial leases is better aligned with Scots law and practices?

No comment.

QUESTION 9 – TARGETED ANTI-AVOIDANCE RULES:

Do you agree that anti-avoidance measures as described in paragraphs 6.1 and 6.2 should be put in place for the Land and Buildings Transaction Tax, along the lines of those included in UK SDLT legislation?

Regarding the measures described in paragraph 6.1, we agree that it would be logical to initially adopt the same approach as under current SDLT legislation, subject to subsequent review at a later stage.

However, we have strong reservations regarding the imposition of a penal rate of tax on all purchases or residential property in excess of £2 million by companies and certain other 'non-natural persons' as outlined in paragraph 6.2. We believe that better targeted legislation should instead be used to levy an appropriate rate of tax on such properties when there are changes to their ultimate beneficial ownership (e.g. sales of company shares).

QUESTION 10 – GENERAL ANTI-AVOIDANCE RULES:

Do you think that a more general anti-avoidance rule should be put in place instead of or in addition to the proposed targeted anti-avoidance rules to help ensure that Land and Buildings Transaction Tax and other Scottish taxes due are paid?

We have general reservations regarding the effectiveness of any general anti-avoidance rule and the ability of revenue authorities to operate it fairly and consistently.

We are also concerned that such a rule may be detrimental to the ability of taxpayers at large to understand and comply with the tax system.

We would suggest that, before any attempt is made to legislate for a general anti-avoidance rule in Scotland, the Scottish Government should await the outcome of the UK Government's current proposal to introduce a general anti-abuse rule and then assess its effectiveness, fairness and complexity before deciding what measures might be appropriate in Scotland

QUESTION 11 – ONLINE PAYMENTS:

Do you agree that a new online system should be designed to allow for simultaneous submission of an LBTT return, payment of any tax due and registration of title to the land or property in the Land Register?

Yes, this is a logical step forward.

QUESTION 12 – COMPULSORY ONLINE PAYMENTS:

Do you agree that all LBTT returns should be submitted online or should there be an opportunity to submit paper returns?

We consider that there should initially be an option to submit paper returns, but that it should be discouraged, perhaps by charging a small submission fee.

The position should be reviewed with a view to phasing out paper returns in the future: but only when there is satisfactory provision of broadband connections throughout the whole of Scotland.

QUESTION 13 – LINKING TAX PAYMENT TO REGISTRATION OF TITLE:

Do you agree that Land and Buildings Transaction Tax must be paid before title to the land or property can be registered in the Land Register or the Register of Sasines or before a document or deed is registered in the Books of Council and Session?

This is a legal procedural matter which lies outwith our field of expertise.

QUESTION 14 – PARTNERSHIPS AND TRUSTS:

Do you agree that the Land and Buildings Transaction Tax (Scotland) Bill should be aligned to Scots Law and practices in respect of the treatment of Partnerships and Trusts? If so, what measures would you propose?

We would agree that the suggested alignment to Scots Law and practices is a logical step.

It should, however, be borne in mind that many English or Welsh partnerships and trusts acquire property in Scotland, so it will remain important to enable such purchases to be carried out with the minimum of disruption.

QUESTION 15 – BUSINESS AND REGULATORY IMPACT ASSESSMENT:

Do you have any comments on the draft Business and Regulatory Impact Assessment?

None.

QUESTION 16 – EQUALITIES IMPACT ASSESSMENT:

Do you have any comments on the draft Equalities Impact Assessment?

None.

QUESTION 17 – OTHER COMMENTS:

Do you have any other comments in relation to legislation for the Land and Buildings Transaction Tax, which are not covered by your responses to any of the other questions listed above?

In general, we would advocate that LBTT should be simple, fair and efficient to operate.

If possible, these objectives would be best served by aligning the tax rates on residential and non-residential property as closely as possible. One possible method of achieving this might be to have common rates for both types of property up to a certain threshold (say £500,000, for example), with differential rates only applying above that level (with the progressive system being retained).