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Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill

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The Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill was introduced by the Scottish Government on 13 November 2017. This briefing summarises the key elements of the Bill.



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The Bill

The Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill was introduced by the Cabinet Secretary for Finance and Constitution, Derek Mackay MSP, on 13 November 2017.

The Bill as introduced, and the accompanying documents (including Policy Memorandum, Explanatory Notes and Financial Memorandum) can be accessed on the [Scottish Parliament's website](#).

Background: What is Land and Buildings Transaction Tax?

Under the terms of the [Land and Buildings Transaction Tax \(Scotland\) Act 2013](#), Land and Buildings Transaction Tax (LBTT) replaced UK Stamp Duty Land Tax (SDLT) in Scotland from 1 April 2015.

LBTT is a tax applied to residential and commercial land and buildings transactions (including commercial purchases and commercial leases) where a chargeable interest is acquired. Revenue Scotland administers LBTT.

The percentage rate for each band in LBTT is applied only to the part of the price over the relevant threshold and up to the next threshold. The rates and bands for LBTT are set out in the following table.

Table 1: LBTT Rates and Bands for Residential and Non-Residential Property Transactions

Residential transactions		Non-domestic transactions		Non-residential leases	
Band	Rate	Band	Rate	Band	Rate
Up to £145,000	Nil	Up to £150,000	0	Up to £150,000	0
£145,001 to £250,000	2%	£150,001 to £350,000	3%	Over £150,000	1%
£250,001 to £325,000	5%	Over £350,000	4.5%		
£325,001 to £750,000	10%				
Over £750,000	12%				

Background: What is the Additional Dwelling Supplement?

Under the 2013 Act as amended by the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016, an additional amount of Land and Buildings Transaction Tax (LBTT) is chargeable on certain purchases of second homes. This is known as the Additional Dwelling Supplement (ADS). As a result of this legislation, from 1 April 2016 an additional amount of three per cent of the total price of the property for all relevant transactions above £40,000 was introduced.

The ADS applies to transactions where at the end of the day that is the effective date of the transaction (usually the date of settlement) the buyer owns more than one dwelling and

is not replacing their only or main residence - replacing in this context means selling a current main residence and buying a new residence.

Policy Objective of the Bill

The policy objective of this legislation is to give retrospective effect to the amendments made to the Land and Buildings Transaction Tax (Scotland) Act 2013 ('the 2013 Act') by the [Land and Buildings Transaction Tax \(Additional Amount - Second Homes Main Residence Relief \(Scotland\) Order 2017](#). If enacted, the Bill will enable qualifying buyers, who have paid the additional amount of LBTT prior to the Order being made, to claim a repayment.

So, why is legislation required when an Order is already in place?

The answer is that retrospective legislation cannot be done by secondary legislation unless there is an express power, which there is not in this case.

What does this legislation do?

In determining whether the ADS is chargeable, married couples, civil partners and cohabitants (those living as a a married couple), along with their dependent children, are treated as a 'single economic unit'. This is for the purposes of reducing the risk of property being moved between individuals for tax avoidance purposes. So, for example, ADS would be chargeable where one spouse owns the existing marital home and then the other spouse purchases another residential property.

ADS is not chargeable if the buyer is replacing the buyer's only or main residence. Before the 2017 Order came in, however, the additional amount was 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. They were subject to the ADS if only one name was listed on the title deeds. This went against the policy intention of the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016 to treat married couples, those in a civil partnership and those living as if a married couple as one economic unit for the purposes of ADS.

The 2017 Order amended the 2013 Act to provide relief from the ADS for all qualifying future transactions where buyers entered into the contract to purchase a new main residence on or after 20 May 2017, and the effective date of the transaction was on or after 30 June 2017. The changes in the 2017 Order do not apply retrospectively.

This legislation aims to give retrospective effect to the 2017 Order. It allows buyers, not already covered by the Order, who are spouses, civil partners or cohabitants to reclaim Additional Dwelling Supplement (ADS) payments where the joint buyers replaced their main residence within 18 months before or after buying their current residence and the replaced residence was only owned by one of the couple, civil partner or cohabitant. This means that where extra tax has been paid in these situations it may be reclaimed.

The Bill applies to transactions where the contract for the transaction was entered into on or after 28 January 2016 (the date when the Bill for the 2016 Act on ADS was introduced

in the Parliament) and for which the effective date (usually the date of settlement) was on or after 1 April 2016.

As mentioned above, the 2017 Order covers transactions entered into on or after 20 May 2017, with an effective date (usually the date of settlement) on or after 30 June 2017. The Bill and the costs outlined in the Financial Memorandum (FM) (see section below) therefore, covers 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.

Finance Committee Consultation

The Finance Committee [issued a call for evidence on the Bill](#), asking for general views on the proposed legislation. Five responses were received, and came from:

- The Chartered Institute of Taxation (CIOT).
- The Institute of Chartered Accountants of Scotland (ICAS).
- The Law Society of Scotland.
- Revenue Scotland.
- The Scottish Property Federation (SPF).

This section covers some of the key points from the submissions.

There was a concern expressed in some of the submissions received 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.”

The annex to the [Law Society submission](#) gives a number of examples where Law Society members have identified areas where legislative change is needed to the LBTT ADS regime overall (as opposed to changes to this particular piece of legislation). The Law Society and ICAS also wish to see changes to allow LBTT group relief to be granted where share pledges are in place. The full Law Society and ICAS submissions outlining their proposed changes to LBTT are available on the Finance and Constitution Committee's website ¹.

Given the likelihood that there may be and often are unintended consequences arising from tax legislation, there was a view expressed (by CIOT; the Law Society and the SPF) that it would be helpful to have an annual Scottish Finance or Tax Bill brought to Parliament. The submissions argue that an annual bill would allow any technical issues arising in the devolved tax system to be regularly looked at and addressed. ICAS makes a similar argument in its submission stating that it considers the budget process to date to be "expenditure focused and so possible amendments to tax law need to be raised on an ad hoc basis." ICAS concludes 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.”

Linked to that, submissions also stated that while tax policy making is clearly the preserve of Scottish Ministers, technical changes are usually much more administrative in nature and there should be a role for Revenue Scotland in feeding into this. The Scottish Property Federation argue 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.”

The Law Society writes 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. ”

There was a clear view expressed in the submissions that it is important that relevant taxpayers are made aware of this retrospective policy. Revenue Scotland in its 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, and what information taxpayers will need to provide to make a repayment claim. Revenue Scotland states that it aims to deal with all claims for repayment within 10 working days of receiving them.

Financial Memorandum

The Financial Memorandum (FM) only covers the costs associated with the Bill's enactment, and does not cover the additional costs associated with the 2017 Order.

The FM notes the following criteria for triggering the repayment of the additional amount as a consequence of the Bill. These are:

1. Spouses, civil partners or cohabitants bought a dwelling in circumstances in which—
 - 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;
2. The dwelling sold was both individuals' main residence at any time during the 18 months prior to the effective date, and;
3. Spouses, civil partners or cohabitants had only one owner on the title deeds of their previous residence and under the 2016 Act—
 - had to pay the additional amount despite disposing of their previous main residence in the 18 months prior to the effective date, or
 - have not been able to reclaim the additional amount after disposing of their previous main residence in the 18 months after the effective date.

The financial implications arising from the bill relate to a reduction in LBTT revenues as a result of certain taxpayers becoming eligible for a repayment of ADS.

Assumptions behind FM costings

Revenue Scotland has noted a 1.8% increase in buyers intending to reclaim the ADS since the 2017 Order came into place, and this assumption has been used to arrive at the estimated costs of the Bill.

The Scottish Government has rounded the Revenue Scotland figure to 2% for the purposes of the FM and used this a lower range limit. They have used a higher range limit of 5%.

The estimated number of cases and repayments are presented in table 1 and include the following assumptions:

- an estimated number of transactions involving joint buyers over the period 1 April 2016 to introduction of 2017 Order of 12,869
- an estimated 29% of joint buyers indicating an intention to claim a repayment (3,783)
- an average value of the ADS payment by joint buyer purchases of £8,231.

Table 2: Estimated costs of tax reclaims

% rise in Joint Buyers intending to reclaim	Estimated number of cases	Total possible Tax reclaim (£)
2%	76	£625,000 (rounded)
5%	189	£1,555,000 (rounded)

These costs assume that all joint buyers who could reclaim the ADS are able to do so. Only those that are able to dispose of their previous main residence within 18 months of purchasing the new one are able to reclaim the tax, which may or may not be the case.

The FM states that it is likely that the majority of repayment claims stemming from the Bill will arise in financial years 2017-18 and 2018-19. This is because, based on current transaction patterns, the highest proportion of repayment claims are made to Revenue Scotland between two and four months after the date the LBTT return was originally submitted. However, taxpayers have five years from the date of their tax return to make a claim for repayment to Revenue Scotland. As a result, there may be residual claims being made as late as financial year 2022-23.

The FM states that there are no additional costs for Revenue Scotland arising from the legislation and that any additional costs will be absorbed using existing resources. It is noted that the number of relevant transactions is expected to be very low relative to overall activity.

Bibliography

- 1 Finance and Constitution Committee. (2018). Written submissions on LBTT (Relief from Additional Amount) (Scotland) Bill. Retrieved from <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/107648.aspx>

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