

# **Land and Buildings Transaction Tax: First-Time Buyer Relief Consultation**

**Analysis of responses and  
Scottish Government Response**

**May 2018**



**Scottish Government**  
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## 1. INTRODUCTION

This report presents an overview of findings from the analysis of responses to the Scottish Government's consultation on the Proposed Land and Buildings Transaction Tax (LBTT) First-time Buyers Relief and associated draft Land and Buildings Transaction Tax (First-Time Buyer Relief) (Scotland) Order 2018. In addition, it sets out the Scottish Government's response to the consultation and intended approach for the relief.

The Scottish Government would like to thank all respondents for their contributions.

As the Cabinet Secretary for Finance and the Constitution had already signaled his intent to introduce the relief, by announcement as part of the 2018-19 Budget, the consultation did not seek views on whether or not the relief should be introduced or on the £175,000 threshold which will be set. Therefore, responses pertaining to these issues have not been considered as part of this report.

Similarly, this report does not take into account any comments raised in relation to other aspects of devolved tax legislation or other policy areas, such as the supply of housing stock or provision of affordable housing.

Where permission has been given, responses will be published in full on the Scottish Government Consultation Hub website. An Equalities Impact Assessment record will also be published online.

## 2. EXECUTIVE SUMMARY

The consultation received 13 individual responses and 8 responses from major stakeholder organisations, as set out at [Annex A](#).

There was broad support from respondents for the proposed intention of the relief. A number of changes to the detail of the proposal were however suggested and questions were raised as to how the relief would work in practice. The most significant of these can be summarised as:

- Proposals to include details specifying the relief in the legislation.
- Comments that the proposed introduction of a new definition around a 'major interest in land' would add unnecessary complexity.
- Calls for the Scottish Government to follow the approach taken for a similar relief in SDLT with regard to linked transactions.
- Concerns about how certain aspects of the relief would operate in practice, with calls for more detailed guidance from Revenue Scotland.
- Suggestions that that the application of the relief should be back-dated as far as possible to capture the largest number of eligible first-time buyers.

With reference to equalities, various respondents asked the Scottish Government to consider the impact of this policy on couples, divorcees and single parent households, disabled individuals, individuals previously declared bankrupt, individuals approaching state retirement age and refugees.

The Scottish Government's response to relevant issues raised in the consultation and planned future approach can be found in [Annex B](#) of this document.

### 3. CHAPTER ONE AND TWO RESPONSES

**Question 1:** Do you agree with the Scottish Government's proposed four key criteria for the relief, as described above?

**Question 2:** Do you agree that, where there is more than one buyer, all buyers must meet the relevant criteria in order for the relief to be claimed?

**Question 3:** Do you agree with the Scottish Government's proposed approach with regard to gifts, inheritance and trusts?

**Question 4:** Are there any other issues which need to be considered with regard to assessing prior ownership of a dwelling?

#### **Question 1: Do you agree with the Scottish Government's proposed four key criteria for the relief, as described above?**

Respondents agreed with the necessity of imposing eligibility criteria. There was no consensus of disagreement with any one criteria.

More specifically, all respondents agreed that the relief should only be available to natural persons and that the relief should apply to a single dwelling, the definition of 'dwelling' to be taken from the existing LBTT legislation.

The most common concerns raised related to the proposed criteria that to be eligible, the buyer must: (i) never have had a 'major interest' in a dwelling in Scotland or an equivalent interest in a dwelling situated anywhere else in the world; and (ii) intend to occupy the dwelling as their main residence.

On the former, comments were made as to the operational difficulty of proving "equivalent interest" in property outside of Scotland and generally on the cost of policing the criteria. Some further comments on the prior ownership criteria are considered in relation to Question 4. The summary of responses to Question 7 also includes more detail on respondents' concerns about the proposed introduction of a new definition around "major interest in land".

With regard to the proposed main residence test, the Law Society of Scotland (hereafter Law Society) expressed a view that the relief could operate as intended without the requirement to prove intention, arguing that "Intention is subjective, and can change over time". In addition, both the Chartered Institute of Taxation (hereafter CIOT) and Institute of Chartered Accountants (hereafter ICAS) questioned the

practicality of demonstrating intent, particularly in circumstances where buyers are legitimately precluded from immediately occupying the purchased dwelling. The Association of Tax Technicians (hereafter ATT) also suggested: “A standard period of, say, 12 months could be set, with Revenue Scotland having the discretion to make a further extension if, for example, renovations took longer”.

Some respondents questioned whether “another use prior to occupation” could be acceptable in some circumstances. ATT commented: “Would another use prior to occupation by the owner (e.g. letting if the property would otherwise be empty) preclude the relief? Some examples of judging intention could be drawn from Private Residence Relief cases for Capital Gains Tax.”

With reference to the Scottish Government proposal that existing Revenue Scotland guidance on determining what is a main residence would be used for the relief, a number of responses indicated that this pertains to establishing what is a persons’ main residence, rather than intention to occupy. As such, it would not be directly relevant to the proposed relief.

More broadly, general concerns were raised about the operational aspect of proving eligibility and the risk of fraudulent claims.

**Question 2: Do you agree that, where there is more than one buyer, all buyers must meet the relevant criteria in order for the relief to be claimed?**

There was broad agreement with the intention of reducing complexity and acknowledgement that requiring all buyers to meet the eligibility criteria would simplify the legislation.

However, concerns were raised about whether this creates unfairness. Some comments argue that, given couples are treated as one unit for the purposes of determining whether the LBTT Additional Dwelling Supplement should apply, one person meeting all criteria should be enough and would capture the largest number of potential first time buyers. ICAS commented “It seems inequitable to deny a first-time buyer relief simply because they are investing in a property with another who is not” while PropertyMark added “Every penny is vital when buying a property and the relief if extended to couples in this situation would help contribute towards the deposit or moving costs.”

Ernst and Young (hereafter EY) suggested that the Scottish Government might consider partial relief for circumstances where only one (or some) of the buyers meet all criteria, although acknowledged this would add complexity. In general, organisations and individuals called for very clear guidance to avoid confusion and reduce the risk of fraudulent behaviour. The Law Society also noted that a property might be purchased in one name and then transferred to joint ownership at a later date.

Finally, the Scottish Government was asked by one respondent to consider whether circumstances which necessitate the disposal of a previous property (family

breakdown/ bankruptcy) by one person in a couple should preclude the relief being available. This is covered in more detail in the analysis of responses to Question 8.

### **Question 3: Do you agree with the Scottish Government's proposed approach with regard to gifts, inheritance and trusts?**

There was broad support for the Scottish Government proposal, although there were some claims of unfairness on both sides of the issue regarding gifts, inheritance and trusts.

Some respondents felt that inheritance rules were too restrictive and would preclude individuals who otherwise met the criteria on the basis of a very small inheritance, or alternatively felt that absolutely any inherited interest should get no tax relief.

The Law Society commented: "While that is a matter of policy, it would simplify the new relief if current or previous ownership through gift or inheritance were not relevant." Conversely, one individual response stated: "This seems fair as an individual could potentially have a gain from selling the property they hold an interest in, which could be used to afford a new home."

Several respondents asked whether situations where property is inherited but cannot either be used as a main residence or sold would exclude individuals from the relief. ATT commented: "Disposal may be impossible due to legal constraints (e.g. a sitting tenant) or inability of other family members to buy them out. Despite the property being unavailable to the individual, ownership would result in first-time buyer relief being denied."

Finally, some respondents noted that the draft Order did not fully address the proposals set out in the consultation document with regards to trusts. This and other technical comments are included in the analysis and responses to Question 7.

In general, whether they agreed or not with the proposals, respondents asked for clear guidance on the matter.

### **Question 4: Are there any other issues which need to be considered with regard to assessing prior ownership of a dwelling?**

A few concerns were raised about the burden of proof and the additional operational complexity for Revenue Scotland that would arise when it comes to assessing an interest in property, especially where the records relate to international ownership.

An additional point was made about mitigating risk to solicitors, tax or property professionals where individuals might not be honest about prior ownership.

One individual response suggested including an expiry clause for prior ownership (for example 10 years) would assist people who may have endured financial hardship or bankruptcy.

Other suggestions here included adding eligibility criteria relating to income and widening the prior ownership definition.

#### 4. OTHER CONSIDERATIONS – RESPONSES

**Question 5:** Do you agree with the Scottish Government’s position on linked transactions? If not, in what scenarios should relief be available where there is a linked transaction.

**Question 6:** Are there other issues, not covered in this consultation, that should be addressed in the legislation or guidance?

**Question 5: Do you agree with the Scottish Government’s position on linked transactions? If not, in what scenarios should relief be available where there is a linked transaction.**

All organisational respondents proposed that the LBTT position should mirror the UK Stamp Duty :Land Tax (SDLT) relief which allows for the relief to apply to linked transactions in two specific circumstances.

CIOT commented: “We note that the relief from SDLT for first-time buyers introduced by the UK government with effect from November 2017 has a general exclusion for linked transactions, but makes an exception in two circumstances. The UK relief will be available in cases where, either the purchase is linked to a transaction for land that is or forms part of the gardens or grounds of the dwelling, or the purchase is linked to a transaction for land that subsists for the benefit of either the dwelling or its garden and grounds, such as rights of way.”

Alternatively, there were some comments from individuals about the merits of adding complexity to the relief by including the exceptions if those linked transactions do not occur frequently in Scotland.

**Question 6: Are there other issues, not covered in this consultation, that should be addressed in the legislation or guidance?**

Those responses to Question 7 which did not contain technical comments on the draft legislation have been analysed and responded to as part of this question.

In general, respondents called for very clear guidance from Revenue Scotland to ensure that professionals are able to give their clients the best advice possible. Propertymark suggested that plans should be made to engage with and inform the industry about the relief.

The timing of implementation was also raised. Homes for Scotland felt that the Scottish Government should keep to the timeline announced during the Budget and minimise delays to the Parliamentary process in order for the relief to be in place by June 2018. While respondents differed on the exact date, most suggested it should be available to individuals whose transactions completed at a point after the announcement was made. For example, an individual comment summarised: “Anybody who would have been covered by this legislation between the date it was initially proposed and the date it is eventually implemented should be allowed to claim back the LBTT which they should have had relief on.”

General comments were made by respondents in relation to the efficacy of the relief, and some commented on unrelated policy areas which were not within the scope of the consultation.

## 5. CHAPTER THREE RESPONSES

**Question 7:** Do you have any views on the draft Land and Buildings Transaction Tax (First-Time Buyer Relief) (Scotland) Order 2018?

Question 7 Responses are grouped by theme.

### **Eligibility Criteria**

Some respondents pointed out that the eligibility criteria appear to be set out differently in the Order and the consultation document. For example, CIOT commented: “Although this sets out four criteria, these do not appear to match those set out earlier in the consultation document (paragraph 8). In particular, the draft legislation does not include the need for the buyer to be a natural person... The fourth condition in the legislation relates to linked transactions, which is not one of the four criteria referred to in the consultation document.” A similar point was made by the Law Society and by ICAS, who also suggested that the legislation should set out that recipients of the relief would also be classified as Scottish taxpayers by default.”

With regard to the criteria, the CIOT proposed a minor wording change to make it more explicit that the transaction must involve a single dwelling.

### **Definition: Major Interest**

More significantly, there was consensus among organisational respondents that the insertion of a second definition of ‘major interest in land’ into the LBTT Act 2013 would cause unnecessary confusion.

In this respect, CIOT commented that: “We think that having two different, albeit similar, definitions of the same phrase within one piece of legislation is highly likely to cause confusion and add to complexity. Consideration should be given as to whether this new definition is actually required or whether different terminology could be used, particularly given the consultation refers to a ‘major interest in a dwelling’ rather than a ‘major interest in land’.”

These comments were supported by the ATT in their response, whilst ICAS set out their view that the proposed definition required further attention. They commented that: “The proposed definition of “major interest” requires some further attention: “Ownership or an interest other than ownership with a market value that is or would be above the nil rate band for LBTT” is confusing. In particular, the meaning of “an interest in land other than ownership” needs to be clarified.

CIOT also noted that: “The condition as set out in chapters one and two of the consultation refers to a ‘major interest in a dwelling’. This means that individuals who have held or currently hold interests in non-residential property may benefit from the relief.”

In addition to comments around the complexity that having two separate definitions of “major interest” could create, the Law Society and EY additionally commented on the application of the proposed definition with regard to lease arrangements.

With regard to this, the Law Society made the point: “In relation to Scottish leases, it is likely that the tenant’s interest would be outwith this threshold. However, that is not certain and it seems unfortunate that any tenant’s interest in residential property should require consideration.”

EY noted that the differing definition of “major interest” in its use within LBTT legislation could cause significant confusion. They raised concerns that proceeding with the current draft Order could cause different tax results in comparable situations: “If the buyer had previously purchased a house with the value of £100,000 and then purchased a new house, first-time buyer relief would not be available. However, if they had previously acquired a leasehold interest in a dwelling for the same value, it appears the relief may be available for purchase of the new house”.

### **Definition: Buyer**

ATT requested clarity on the definition of a “buyer”, asking whether this was sufficient, taking account of existing legislation and guidance, to deliver the proposed approach on defining a first time buyer. It was suggested that the term “beneficial owner” may have broader applicability.

### **Liferent**

Both the Law Society and ATT also made proposals relating to liferent situations. The Law Society commented that while the proposed rules on bare trusts and beneficiaries under settlement trusts were seen as logical, in relation to qualification for the new relief, they are were less logical in relation to disqualification based on previous deemed ownership through such a settlement, with potentially unfair consequences for some liferenters.

In discussion of the “major interest” definition, as covered above, ATT also suggested that consideration be given to whether the relief should be restricted only if the individual still has a liferent (or life interest under English law) in residential property held by a trust at the time of their purchase, or if they have ever had a liferent/life interest.

### **Alternative Finance**

Regarding alternative finance arrangements EY noted that relief for alternative finance arrangements within paragraph 7 Schedule 7 LBTT (S)A 2013 (land sold to financial institution and a person in common) appeared to have been omitted.

### **Rates/Thresholds/Claiming**

The Scottish Government consultation noted that the draft consultation instrument would need to be refined to detail the level of relief available. The absence of this detail was picked up by some respondents.

## 6. EQIA RESPONSES

**Question 8:** Do you think that the planned first time buyer relief will in any way impact upon equal opportunities, human rights, businesses, island communities, privacy and/or sustainable development in Scotland?

While no respondents indicated intrinsic concerns about equalities with either the policy intention or the legislation, some respondents asked the Scottish Government to consider the impact of this policy on the following groups: couples, divorcees and single parent households, disabled individuals, individuals previously declared bankrupt, individuals approaching state retirement age and refugees.

Some respondents urged the Scottish Government to consider whether there are certain groups who would not meet the eligibility criteria of first-time buyer yet might be considered for a relief from LBTT in certain circumstances. For example, it was suggested that the Government might consider whether to apply the relief to individuals who for reasons beyond their control (such as family breakdown) might have needed to dispose of a previous property.

Another suggestion was to add a time limitation clause to the ownership criteria. For example if an individual has not owned a property for ten years, they should be considered first-time buyers again. This, it was argued, might assist the Scottish Government to meet the socio-economic duty of the Equality Act by supporting individuals who had previously been bankrupt or in other financial difficulty.

Additionally, the Scottish Government was asked to consider whether the relief discriminates against individuals with disabilities who cannot remain in their existing home due to it no longer meeting their needs.

## **ANNEX A – List of Respondents\***

13 Individuals responded – full responses published online

Aberdeenshire Council

Association of Taxation Technicians

Chartered Institute of Taxation

Ernst & Young LLP

Homes for Scotland

Institute of Chartered Accountants

Law Society of Scotland

NAEA Propertymark

\*Some respondents asked that direct quotes from comments not be published

## **ANNEX B - Scottish Government Response**

The Scottish Government would like to thank all those who took the time to respond to this consultation. We welcome all information from stakeholders and individuals regarding views and perceptions of the Proposed Land and Buildings Transaction Tax (LBTT) First-time Buyers Relief. The technical comments obtained have helped form an evidence base to inform the Scottish Government's approach to the proposed relief. The consultation has also added to the evidence concerning equalities and will inform the Equality Impact Assessment which will be published online.

Having given due consideration to the consultation responses, the Scottish Government has made a number of changes to its proposed approach. These are set out below and are reflected in the legislation laid before Parliament.

The Scottish Government has decided to remove the proposal to introduce a new definition of a "major interest in land" and instead rely on the definition set out in Section 60 of the Land and Buildings Transaction Tax (Scotland) Act 2013.

The Scottish Government also amended its approach on linked transactions, such that relief will be available where there is a linked transaction involving land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds, or that subsists, or is to subsist, for the benefit of a dwelling, so long as the relief is being claimed in relation to that dwelling. However, where there is a linked transaction that does not fall within these categories the relief is to be withdrawn.

The draft Order has also been amended to confirm that relief will not be available if the transaction would be subject to the Additional Dwelling Supplement. In addition, the final proposed legislation reflects fully the Scottish Government's position on trusts and on alternative finance and specifies that the relief consists of the tax not being chargeable in respect of the first £175,000 of consideration payable in respect of any chargeable transaction.

Aside from these changes, the Scottish Government is content that no other changes are required in relation to the position set out in the consultation document. In particular, the Scottish Government is content that where there is more than buyer each must be a first-time buyer who intends to occupy the dwelling as the buyer's only or main residence. In considering whether or not a taxpayer is a first-time buyer, it is also considered appropriate to maintain a position on gifts, inheritance and trusts that is consistent with that in place for the Additional Dwelling Supplement.

Comments and queries raised by respondents regarding the operation of the relief and the production of guidance on relief are a matter for Revenue Scotland. The Scottish Government has however discussed its planned approach with Revenue Scotland.

As the Land and Buildings Transaction Tax is a self-assessed tax, the intention is for this relief to be calculated and claimed by individuals, and it is the responsibility of the taxpayer to complete and submit an accurate return. Equally, it is accepted practice that Revenue Scotland publish updated guidance and technical bulletins to assist taxpayers in complying with their statutory duties when changes are made to devolved taxes.

Following the results of the consultation Scottish Ministers intend to lay draft legislation in the Scottish Parliament to put in place the proposed relief.

Subject to the usual process of scrutiny and consideration by the Scottish Parliament, the relief will be available in relation to relevant transactions which occur after 30 June 2018. In keeping with the approach taken for other amendments, the legislation also includes a transitional provision. This sets out that, in addition to the effective date requiring to be after the relevant legislation comes into force, the relief will only be available for transactions where the contract is entered into after 9 February 2018. This is the date that the Scottish Government consultation on the proposed relief was published.

If approved by the Scottish Parliament, the Scottish Government and Revenue Scotland will carry out a range of activity through various channels to highlight the availability of the relief to stakeholder organisations and the wider public.



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