

# **The Land and Buildings Transaction Tax Additional Dwelling Supplement: A Call for Evidence and Views**

**The Scottish Government's Response and  
Summary of Responses**

February 2023

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## 1. INTRODUCTION

1.1 This report sets out an overview of findings and summary of responses to the Scottish Government’s call for evidence and views on the Land and Buildings Transaction Tax (LBTT) Additional Dwelling Supplement (ADS) (hereafter referred to as the call for evidence). In addition, it sets out the Scottish Government’s response to the call for evidence and a summary of next steps.

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

1.3 Views were invited as part of a 12-week consultation period between 16 December 2021 and 11 March 2022. The call for evidence invited comments on the current ADS legislation, including specific issues which stakeholders have raised previously with the Scottish Government.

1.4 Respondents were invited to respond by post, via CitizenSpace, or by email to the Scottish Government’s Devolved Taxes Unit.

1.5 The Scottish Government held several virtual stakeholder engagement events during the consultation period. These included a virtual roundtable chaired by the Minister for Public Finance, Planning and Community Wealth.

1.6 In total, the call for evidence received 67 responses from various stakeholder groups (see Table 1).

1.7 Respondents provided a range of views on each of the issues, and while there is evidence of consensus in some areas, a number of unique concerns and proposed next steps were highlighted.

1.8 Respondents were invited to request anonymity. Twelve respondents requested that their responses not be published. Twenty-three respondents requested that their identities not be shared, and their identities are therefore anonymised throughout.

1.9 A list of respondents is available in Annex A and, where permission has been given, responses have been published in full at [www.consult.gov.scot](http://www.consult.gov.scot).

**Table 1: Breakdown of respondents by Category**

<b>Category</b>	<b>Number</b>	<b>%</b>
Individuals	28	42
Housing Providers	15	22
Legal, Tax and Accountancy	9	13
Other Organisations	15	22

## 2. SUMMARY OF RESPONSES

### A: The Timelines for the ADS

2.1 This section of the call for evidence set out the current provisions in respect of the timeframes in which a new main residence must be purchased following the disposal of a previous main residence for the ADS not to apply, or a previous main residence (PMR) disposed of after the ADS is paid, in order for it to be reclaimed.

2.2 While similar issues can arise for both, the timelines for purchase and disposal present their own unique concerns for stakeholders. The call for evidence and views considered each independently.

#### A1: Time taken to purchase a new main residence: 18-month window

##### Questions

1. Should the Scottish Government consider amending the length of time available to purchase a new main residence following the sale of a previous main residence from 18 months?
2. If so, can you provide further explanation and/or evidence regarding the circumstances in which 18 months may not be sufficient?
3. If the Scottish Government were to amend the length of time available to purchase a new main residence, what period of time should be considered and why?

2.3 Of the 34 respondents who answered question 1, 22 were in favour of amending the length of time available to purchase a new main residence, while 12 were not in favour of an amendment.

2.4 Turning to question 2, the divergence from the comparable rules in the rest of the UK, which provide 36 months for the purchase of a new main residence, was a common theme throughout the responses.

2.5 It was noted that the current arrangements for the ADS could “*disadvantage purchasers of a main residence in Scotland*” with some respondents noting that the Scottish property market does not appear to be so sufficiently different to other parts of the UK that it would justify the current divergence. It was further suggested that a differing approach elsewhere in the UK could cause confusion for Scottish purchasers who may be unaware that the ADS timelines differ from those under Stamp Duty Land Tax (SDLT) and Land Transaction Tax (LTT).

2.6 Respondents raised a number of issues which they considered could create difficulty in purchasing a new main residence within the current 18-month window. The issue of housing market supply and demand was raised by respondents as a particular issue, in addition to wider delays in the buying and selling processes during the Covid-19 pandemic. Covid-19 and EU exit were noted as causing “*particular delays in the new-build sector*”.

2.7 On the housing market more generally, respondents noted market variations across Scotland which can prevent buyers from purchasing a suitable property within 18 months. Examples provided included a lack of supply in rural areas, and significant demand for properties in Edinburgh and the Lothians.

2.8 In respect of the application of the ADS more broadly, one respondent offered the view that any purchase of a property which is “*in substance a replacement of a main residence*” which attracted a charge to ADS represented a potentially unfair outcome.

2.9 In respect of question 3, the respondents who advocated extending the 18-month window proposed timelines ranging from 24 months to an unlimited period. The most frequent suggestion was a 36-month window in line with comparable arrangements in SDLT and LTT.

2.10 Conversely, one argument in favour of retaining the current timeline was made as “[t]he current period gives buyers a reasonable time to conclude their business”.

2.11 Some respondents also requested a discretionary provision which would allow for an extension to the timeline where the purchase of a new main residence is delayed due to circumstances wholly outside a buyer’s control. A potential ‘exceptional circumstances’ provision is discussed in more detail at section D.

## **A2: Disposal of a previous main residence: 18-month window**

2.12 This section of the call for evidence set out the provisions currently in place regarding the timeline within which the disposal of a previous main residence must occur in order to qualify for a repayment of the ADS.

2.13 Under current provisions, taxpayers can apply to have the ADS previously paid on a property transaction repaid to them if the ownership of a previous main residence is disposed of within 18 months of the first transaction, that property had been used as a main residence in the 18 months prior to that transaction, and if the property in relation to which the ADS was paid is their new main residence.

2.14 On this point, the call for evidence posed the following questions:

### **Questions**

4. Should the Scottish Government consider amending the length of time in which a previous main residence can be sold in order for a repayment of the ADS to be claimed?
5. If so, can you provide further explanation and/or evidence where 18 months may not be appropriate?
6. If the Scottish Government were to amend the length of time available to dispose of the ownership of a main residence, what period of time should be considered and why?

2.15 Question 4 received 37 responses, in which 27 supported the motion to amend the timeline for disposal of a previous main residence and 10 disagreed.

2.16 In question 5, respondents were invited to elaborate on their responses to the previous question. As with earlier questions, a wide variety of issues and topics were raised in the responses.

2.17 A common theme centred around regional housing markets, where it was suggested that the current 18-month timeline for disposal is more challenging in certain areas of Scotland. Both urban for example (Aberdeen City) and rural (Highlands and Islands, West of Scotland) property market areas were highlighted in this regard.

2.18 Responses also offered commentary on the impact of the current timeline in the context of other issues raised in the call for evidence. In respect of instances of divorce or separation (see discussion at B2) one respondent noted that *“the 18-month window may not be sufficient...since the process can be significantly long”*. In highlighting issues around properties affected by cladding concerns, it was noted that even the 36-month window under SDLT and LTT rules might not be long enough.

2.19 Exceptional and difficult personal circumstances were also raised as potential barriers to meeting the 18-month timeline for disposal. It was noted that a range of circumstances could be “adversely impacted” by the current window, such as complex cases of divorce or separation.

2.20 More specifically, the distinct issue of residential properties affected by concerns related to cladding was frequently raised by respondents. This issue was seen to potentially cause significant problems for people trying to sell their properties affected by cladding concerns, and as such, the current timeline for disposal was considered inappropriate in this context.

2.21 Other responses suggested that the current window of 18 months for disposal is an “arbitrary” amount of time and should therefore be extended, with various potential timelines proposed.

2.22 Separately, some responses suggested that the current ADS provisions should align with those of SDLT and LTT by increasing the timeline for disposal of a previous main residence to 36 months.

### **Scottish Government Response**

The Scottish Government notes the high response rate to the sections of the call for evidence regarding potential amendments to the ADS timelines, which reflects the strength of respondents’ opinions on this issue.

Having reviewed these responses and following consideration of the available data, the Scottish Government proposes to amend the relevant legislation to extend the timelines for purchase and disposal from the current 18 months to 36 months.

Draft legislation in respect of these amendments will be published alongside this response for consultation.

## **B1. Inherited Property**

2.23 This section of the call for evidence set out the current LBTT position in respect of inherited property.

2.24 While no LBTT or ADS is due at the point of inheritance, the property is considered a dwelling when determining if the ADS applies at the time of any future transactions.

2.25 Stakeholders have raised concerns with existing legislation in two respects. Firstly, that joint inheritors are deemed to own the whole of the property regardless of the size of their share, and secondly that there is no the 'grace period' arrangement equivalent to that which exists under SDLT and LTT rules.

2.26 The call for evidence posed the following questions:

### **Questions**

7. What circumstances and issues should the Scottish Government take into account in considering the treatment of low value interests in inherited properties for the purposes of LBTT?
8. Should the Scottish Government consider the introduction of a grace period along the lines of that in place for SDLT in respect of inherited property? If so, what arrangements should be considered?

2.27 Of the 29 respondents who answered question 7, a common theme was the potential unfairness created by the current rules which deem an individual who inherits a part share in a property to be a 100% owner for the purposes of determining if the ADS is due. One respondent noted that this approach "*does not create a level playing field to all taxpayers particularly to this group of taxpayers who inherit a small share in a property*". Many put forward the view that where a small share of a property is held, it is only the value of the share that should be taken into consideration.

2.28 Some respondents further specified that where the value of the share is less than £40,000 then it should be disregarded entirely, in line with the £40,000 consideration threshold set out in Schedule 2A and elsewhere in the LBTT legislation. One respondent suggested that such an approach could be supported by targeted anti-avoidance provisions which would prevent property shares being artificially valued at less than £40,000.

2.29 It was highlighted that the current rules diverge from those in place for SDLT and LTT. Respondents noted that the rules for these taxes disregard an inherited property where the individual's interest is less than 50% and it is acquired in the three years prior to the effective date of the relevant transaction. It was suggested that a similar LBTT rule would "*be a fairer and more proportionate approach to the treatment of ADS liabilities*".

2.30 Some respondents suggested more significant changes to the treatment of inherited properties, going beyond provisions in place under SDLT and LTT. Proposals included taking only 100% owned inherited property into account, or disregarding inherited properties entirely when determining if the ADS is due.

2.31 Issues in relation to inherited property were also raised in the context of other areas discussed in the call for evidence.

2.32 It was noted that inheritance of an interest in a residential property can create complexities in relation to the joint buyer and economic unit provisions (see discussion at B3). One respondent set out a scenario where they had inherited a part share in a property and subsequently became liable to the ADS when purchasing a main residence with their spouse. In this scenario, the ADS could not be reclaimed on disposal of the inherited interest as the spouse was not deemed to have sold this property due to the current drafting of the economic unit provisions (see B3).

2.33 A number of respondents noted that a longer time period for the purchase or disposal of a main residence could assist where an interest in an inherited property is held. Time periods for purchase and disposals are considered in sections A1 and A2.

2.34 A small number of respondents were of the view that it is the inherited property itself which is subject to the ADS. This is not the case; the ADS applies where the buyer owns more than one dwelling at the end of the effective date of transaction. LBTT and the ADS do not apply to inherited properties at the point of inheritance, because an inheritance is not treated as a property transaction for tax purposes.

2.35 It was also highlighted that the current LBTT legislation does not make clear when an inherited property is treated as owned for the purposes of establishing liability to tax on future transactions.

2.36 In addition to inviting full responses, question 8 included a poll. Of the 31 respondents who answered the poll, 80% were in favour of the introduction of a grace period, with 20% indicating they were not in favour.

2.37 The majority of respondents in favour of a grace period were of the view that this should align with the 36 month grace period which exists under SDLT and LTT rules. Under SDLT and LTT, the inheritance of a 'major interest' in a property, not exceeding 50%, is disregarded where the buyer becomes entitled to that interest within the 3-year period prior to the effective date of a new transaction.

2.38 It was also suggested that LBTT rules could go further than restricting to a 'major interest', instead allowing for a disregard of interests up to and including 100%.

2.39 Beyond alignment with the SDLT/LTT timelines, respondents also suggested other timeframes, ranging from 24 months to align with the period in which a 'deed of



variation' can be effective for Inheritance Tax purposes, to five years to allow time to comply with requirements related to crofting.

2.40 It was also noted that the introduction of a grace period could incentivise inheritors to sell an inherited property to avoid the potential tax consequences of a new property acquisition outwith the period. Conversely, it was noted that transactions which may otherwise create an ADS liability could escape the charge to tax if carried out within the grace period.

2.41 Respondents suggested aspects of conditionality to support any grace period, such as requiring evidence of intent to sell the property, or allowing a longer grace period to apply where the inherited property is in poor condition.

### **Scottish Government Response**

The Scottish Government notes the broad support from respondents for consideration to be given in legislation to the value of an inherited share in a property.

Having carefully considered responses to the call for evidence, the Scottish Government intends to legislate to disregard small shares, in the context of deemed ownership provisions, from ADS consideration where the value of the share is less than £40,000. The intention is for this to apply to both inherited and non-inherited property shares.

In respect of a proposed grace period, whilst the Scottish Government recognises the support expressed for alignment with arrangements in other parts of the UK, the current position is in line with the policy intent of the ADS and there is limited evidence and data to support the need for amendment.

However, the Scottish Government notes the issues that could arise for taxpayers where a property is inherited after missives have been signed on a new property. As such, the Scottish Government also intends to introduce a legislative amendment to provide for relief from the ADS in those circumstances.

The Scottish Government also notes the request for clarity in the LBTT legislation in respect of the precise point at which inherited property is treated as owned for the purposes of the Act. A clarifying amendment will be introduced to address this uncertainty.

Draft legislation in respect of these amendments will be published alongside this response for consultation.

### **B2: Divorce or Separation**

2.42 This section of the call for evidence discussed the circumstances in which current LBTT provisions might interact with transactions which follow divorce or separation.

2.43 For the purposes of the ADS, individuals have separated if they no longer live together and they do not intend to live together again. Where this occurs, provisions in the current legislation disapply the “economic unit” rules. This means that residential property owned wholly (rather than jointly) by a former partner does not count for the purposes of calculating the number of residential properties owned.

2.44 However, where a share continues to be owned in the former marital or shared home, it will be counted when calculating the ADS liability. Some stakeholders have argued that an exception should be made in these circumstances, particularly where children are involved, such that the ADS would not be due when a new main residence is purchased following divorce or separation

2.45 The call for evidence posed the following questions:

#### **Questions**

9. What circumstances and issues should the Scottish Government take into account in considering the tax treatment of a new property purchased following a divorce or separation, and why?
10. Do you have views on the case for a more specific legislative amendment along the lines of that available in SDLT? If so, please provide further details.
11. Separately, would increasing the length of time available to dispose of a main residence (see A2) assist in situations of divorce or separation?

2.46 28 responses were received to question 9, and a common theme among them was that of fairness. Respondents highlighted that instances of divorce or separation are often stressful, emotional, and expensive for both parties, especially in more complex cases. One respondent described the ADS as an “obviously unfair” tax to charge in such circumstances.

2.47 Several responses highlighted cases of divorce or separation where non-adult children are involved. Some argued that the ADS should not be charged in these cases at all, whereas others suggested that, where separation agreements or other legal instruments are active, that shares in the original ‘marital’ home should not be factored into ADS calculations.

2.48 The individual financial positions of the separating partners was raised, and it was claimed that the current provisions discriminate against the ‘poorer’ of the two individuals. It was suggested that they would be less likely to either afford the additional tax or buy the other individual’s share in the former property.

2.49 Responses identified a link between this issue and that of joint buyer provisions. In light of these provisions, ADS refund applications are often unsuccessful following an individual’s departure from the jointly-owned home as a result of divorce or separation. This is because the individual who left the original property has not replaced an only or main residence at the time the additional property is purchased, or may not have lived in the PMR in the 18 months prior to purchasing the new property, thereby not fulfilling the necessary requirements.

2.50 On a similar note, other responses noted that the divorce and separation provisions are connected to those of timelines for reclaiming the ADS. It was suggested that the 18-month deadline is too restrictive in cases of divorce or separation, as legal proceedings can exceed this period of time.

2.51 A number of responses also highlighted more sensitive cases of divorce or separation, including those in which domestic violence is a factor. It was suggested that these specific personal circumstances could be taken into account when determining the tax liability.

2.52 Responses to question 10 were varied. The question asked whether the Scottish Government should bring a specific legislative amendment to current provisions, which could resemble how Schedule 4ZA to Finance Act 2003 amended SDLT higher rate for additional dwellings provisions.

2.53 Several responses agreed with the proposition to consider personal circumstances in determining tax liability, including one which described the relevant legislative provisions for SDLT as “reasonable”. By contrast, this respondent considered the current application of the ADS as “unequitable”, especially when divorce or separation proceedings can be expensive.

2.54 Another response supportive of applying comparable SDLT provisions to the ADS legislation suggested that such provisions should be both “replicated” and “perhaps even expanded”.

2.55 Other responses questioned the application of relevant SDLT provisions to those of the ADS. One response suggested that while the SDLT provisions for divorce and separation may make sense in England and NI, they may not harmonise with the “clean break” principle of Scottish family law. For context, a “clean break” order legally separates the finances of both individuals following the divorce or separation, allowing them to live without any further dependence on one another.

2.56 Separately, another response considered the SDLT provisions “too specific” to apply to the ADS in the suggested way.

2.57 Question 11 opened with a poll, which asked whether increasing the length of time available to dispose of a previous main residence would assist in situations of divorce or separation. Of those who responded, 57% agreed with the proposal while 43% opposed it.

2.58 Some responses in favour of the proposal considered any increase to the timeline for disposal could only benefit taxpayers in the process of a divorce or separation. More specifically, a number of responses suggested increasing the timeline for disposal from 18 to 36 months, in line with other areas of SDLT legislation.

2.59 Other responses argued that, while an increase to the timeline for disposal would be welcomed, in practice it may not assist many taxpayers. This is because some “complex and difficult” divorce or separation proceedings can have extended and unpredictable durations. A specific scenario raised involved circumstances

where separating parents agree to keep the property title in joint names until their children reach adulthood.

### **Scottish Government Response**

Whilst the Scottish Government recognises that many cases of divorce and separation are difficult for those involved, it does not consider that it would be appropriate to legislate to provide a full relief from the LBTT or ADS when a new main residence is purchased in these circumstances. In particular, this would result in an inconsistency of approach relative to other buyers.

The Scottish Government also does not intend to introduce a specific relief to consider the consequences of lengthy divorce proceedings of an individual's ability to dispose of a previous main residence.

Taking all relevant information into account, the Scottish Government proposes to amend the legislation so that a retained interest in a previous main residence which results from a court order or equivalent legal agreement related to a divorce or separation is disregarded in determining if the ADS is due. This would provide, in general terms, for consistency of approach with the arrangements in place for SDLT and LTT.

Separately, the Scottish Government notes that some respondents suggested taking a taxpayer's financial position into account where the ADS applies in instances of divorce or separation. LBTT (including any amount of the ADS) is however charged on property transactions, and therefore the financial background(s) of people involved in relevant transactions is not considered when determining the tax liability.

Draft legislation will be published alongside this response for consultation.

### **B3: Joint Buyers/Economic Unit Provisions**

2.60 This section of the call for evidence set out complexities in the existing ADS rules where two or more people own or buy a property together.

2.61 The call for evidence posed the following questions:

#### **Questions**

12. Are there other issues of concern regarding the treatment of joint buyers which the Scottish Government should consider? If so, can you provide further explanation and evidence regarding these?
13. Do you have any proposals as to how the legislation might be amended in response to these scenarios, in a way that would ensure consistency with the application of the ADS for an individual buyer?

2.62 A recurring theme in the responses to question 12 was the potentially unfair outcomes created by the legislation in its current form. A key concern among

respondents was those scenarios where it is not possible to reclaim the ADS due to the personal circumstances of the taxpayer.

2.63 Respondents put forward views that the rules are inflexible, creating “considerable uncertainty” for taxpayers, “unfairness and [a] disproportionate tax liability”. Some respondents also noted that the legislation in its current form could discriminate against couples who did not previously live together in a PMR, and also against married couples as the economic unit provisions treat an additional dwelling owned or purchased by one party as a property owned or purchased by both.

2.64 One respondent highlighted an issue with the rules where joint buyers each own a PMR, with one being disposed of before the new property is purchased and one being disposed of afterwards. In this scenario, the rules cannot be met as both properties must be disposed of after the effective date of the new property purchase in order for the ADS to be reclaimed.

2.65 One respondent also raised the issue of partial ownership of an additional dwelling (also discussed in relation to inherited property at B1), suggesting that an interest valued at less than £40,000 should be disregarded in determining if the ADS applies.

2.66 Respondents put forward potential solutions in answering question 13. Many were of the view that the disposal of a PMR by either or both parties to the transaction should be sufficient to reclaim the ADS, with one respondent proposing that if both buyers “*would not pay the ADS if they were buying the property alone, they do not pay the ADS if they buy the property together*”.

2.67 One respondent noted a previous amendment to the ADS rules allowing the ADS to be reclaimed where both buyers lived in the PMR, suggesting that this be extended to allow the same treatment for buyers who did not previously live together. It was also suggested that any such change should apply retrospectively.

2.68 Some respondents suggested apportioning the amount of ADS due where one party to a transaction owns an additional dwelling but the other does not, with the buyer who owns an additional property, or properties, being liable to the charge.

2.69 One respondent suggested that an extended period of time to purchase/dispose of a PMR could assist, suggesting that this could help prevent depopulation of island communities.

2.70 It was also noted that the SDLT provisions are potentially clearer in that they do not extend to cohabitants in the same way that the LBTT rules do.

### **Scottish Government Response**

The Scottish Government notes the strong support from respondents in favour of amendments to the joint buyer and economic unit provisions.

Having carefully considered responses to the call for evidence and all available data, the Scottish Government will seek to amend these provisions to provide clarity and certainty for taxpayers.

Draft legislation will be published alongside this response for consultation.

## **C: Transactions Involving Housing Providers**

### **C1. Transactions involving Local Authorities – Affordable Housing**

2.71 This section of the call for evidence set out the LBTT provisions currently in place for transactions involving Local Authorities.

2.72 At present, a relief is provided from LBTT for Local Authorities when a transaction occurs in order to comply with a planning obligation or a modification of a planning obligation.

2.73 However, it has been noted that other transactions may incur an ADS liability. In particular, the ADS may be due in a range of potential scenarios where properties are purchased in order to provide affordable housing. This includes, for example, the purchase of 'off the shelf' properties from home builders.

2.74 Current provisions have, according to some stakeholders, highlighted a disparity in treatment between Local Authorities and Registered Social Landlords (RSLs), who are, subject to defined conditions, relieved from LBTT when buying land or property associated with the delivery of affordable homes.

2.75 The call for evidence posed the following question:

#### **Questions**

14. What circumstances should the Scottish Government consider in assessing the case for a broader relief for local authorities where properties are acquired for affordable housing purposes, and why?

2.76 In total, 33 responses were received to this question.

2.77 Some responses argued that no property transactions specifically made to increase the availability of social housing should be liable to either LBTT or the ADS, regardless of whether these transactions involve Local Authorities or RSLs. It was suggested that funds spent to cover ADS liabilities could instead be used in pursuit of affordable housing.

2.78 Other responses pointed out that some proportion of the grants to build social housing received by Local Authorities from the Scottish Government may be used to pay the ADS due on relevant transactions. These responses suggested that a circular funding model is ineffective and could be resolved by a broader relief from the ADS.

2.79 Comparisons were drawn between provisions in place for new-build properties purchased under Section 75 of the Town and Country Planning (Scotland) Act 1997, which are not subject to the ADS, and other transactions. Some responses considered this arrangement imbalanced and without a “clear rationale” for the differential tax treatment.

2.80 In particular, it was stressed that the current ADS provisions, coupled with the arrangements for Section 75 of the Town and Country Planning (Scotland) Act 1997, may act as a disincentive for local authorities to purchase second-hand and individual properties. As a result, policy aims for the Affordable Housing Supply Programme regarding the use of existing housing stock may be impacted.

2.81 Several responses underlined the perceived “inequity” between how Local Authorities and RSLs are treated under the current ADS provisions. On this point, it was argued that no contributing partners to the Scottish Government’s Housing to 2040 commitments should be liable to the ADS.

2.82 Some other responses suggested that no property purchases by local authorities should be subject to either LBTT or the ADS. One respondent raised a concern that the tax charge could be passed down to residents within the local authority area(s) or contribute to a cut in local services.

2.83 More specifically, a response stated that purchases of buy-to-let properties by local authorities should not be liable to the ADS to increase the availability of rental property.

### **Scottish Government Response**

The Scottish Government notes the range of responses to this question and has considered all proposed solutions.

Following a review of all available evidence, the Scottish Government proposes to extend relief from LBTT, and by consequence the ADS, for local authorities to cover a broad range of scenarios where affordable housing is acquired.

This will broadly provide parity with the LBTT and ADS treatment of RSLs and support the Scottish Government’s affordable housing commitments.

Draft legislation will be published alongside this response for consultation.

### **C2. Housing Co-operatives and other approaches**

2.84 This section of the call for evidence set out concerns expressed on the application of the ADS to housing co-operatives in addition to recent changes to the tax treatment of housing co-operatives under SDLT, namely relief from the 15% flat rate of SDLT and relief from UK-wide Annual Tax on Enveloped Dwellings (ATED) for qualifying co-operatives.

2.85 Under the present arrangements, housing co-operatives may be eligible for LBTT (and hence ADS) relief in two circumstances:

2.86 Firstly, for housing co-operatives registered with the Scottish Housing Regulator (SHR) as Registered Social Landlords, Schedule 6 of the LBTT Act provides that relief may apply where a purchase meets the relevant conditions of that Schedule.

2.87 Separately, if the co-operative has charitable status, Schedule 13 relief ('Charities Relief') may also apply to qualifying transactions.

2.88 Any residential land transactions carried out by non-SHR registered or non-charitable housing co-operatives are however subject to LBTT and the ADS. No specific relief or exemption from LBTT/ADS exists, and the tax treatment under LBTT is aligned with that under SDLT and LTT.

2.89 The call for evidence posed the following question:

#### Questions

15. Are there grounds for the Scottish Government to consider the introduction of a relief from the ADS for housing co-operatives, or any other approaches intended to deliver housing which is affordable? Please provide further explanation and evidence regarding this.

2.90 Of the 36 respondents to question 15, a third of which represented co-operatives, 83% indicated support for consideration of introducing a relief from the ADS for housing co-operatives, with 17% indicating they were not in favour.

2.91 Respondents put forward the view that the ADS adds an *"an unnecessary layer of cost"* for both new and existing co-operatives, estimating that the ADS could increase monthly rents by 8%. Respondents were of the view that the ADS could create a disincentive to expand existing co-operatives, or to invest in new co-operatives. An example was provided of a failed purchase of property for a student co-operative *"due in part to the large burden of LBTT and ADS"*.

2.92 One respondent noted that purchases of 6 or more residential properties in a single transaction is exempt from the ADS. The respondent noted that an exemption should apply to any number of properties where the purpose was the supply of affordable housing. It was suggested that this would be of benefit in remote and rural areas where *"the purchase of one home as affordable can make a substantial difference [in meeting] local housing need"*.

2.93 Respondents noted that relief would support the Scottish Governments wider affordable housing objectives and that the ADS may represent a barrier to delivery of affordable housing, though it was also put forward that *"such relief should be equitable across the sector"*, particularly with regard to local authorities (see discussion at C1).

2.94 Responses varied in respect of what relief might look like. A number of respondents suggested that the tax treatment of housing co-operatives under LBTT



should align with SDLT rules. For clarity, the Scottish Government notes that the tax treatment of housing co-operatives under LBTT and SDLT is broadly consistent.

2.95 Others suggested an exemption from the ADS, with a partial or complete exemption from LBTT and ADS for housing co-operatives also proposed.

### **Scottish Government Response**

The Scottish Government notes the range of views presented in response to this section.

Having carefully considered responses to the call for evidence and all available data, the Scottish Government does not intend to legislate at this time to seek to amend the current tax treatment of housing Co-operatives under the LBTT and ADS rules. Further consideration will be given to the case for change in the context of the overall Programme for Government commitment to explore ways in which further support can be provided for housing co-operatives.

### **D. Exceptional Circumstances**

2.96 This section of the call for evidence sought views to inform the Scottish Government's consideration of the case for legislating to allow Revenue Scotland to apply discretion where they agree truly exceptional circumstances apply. The call for evidence set out the example of the impact of cladding on a taxpayer's ability to sell their previous main residence and referred to the position in other parts of the UK.

2.97 The following questions were posed:

#### **Questions**

16. Is there a case for the Scottish Government to consider legislating for an exceptional circumstances provision along the lines discussed above?  
17. If so, what circumstances should be considered, and on what grounds?

2.98 Of the 27 respondents to question 16, 96% indicated that they thought there was a case to legislate for an exceptional circumstances provision, with the remainder indicating that they did not consider there to be a case to legislate.

2.99 More detail was provided in response to question 17. In respect of cladding, a number of respondents shared their experiences of the impact of cladding on their ability to dispose of a property. Respondents noted that remedial work to address the issue can take a significant amount of time and, where UK government funding to assist is not available homeowners will *"have to pay for remedial work...in addition to being penalised with the [ADS]"*.

2.100 While the example provided in the call for evidence focussed on a potential provision to address cladding issues, respondents highlighted a number of other scenarios where such a provision may be of benefit. These scenarios include supply/demand issues (with the response noting that such circumstances are not necessarily exceptional), instances of domestic violence preventing a property being

sold, and instances where armed forces personnel are prevented from complying with the legislation due to the nature of their role.

2.101 Respondents also made the case for a broader discretionary provision, with some noting that there should be a high bar for what is considered an exceptional circumstance, and that any provision should address circumstances outwith taxpayer control.

2.102 Other suggestions included supporting guidance published alongside any potential provision and a right of appeal to a tax tribunal where such a provision is deemed not to apply.

### **Scottish Government Response**

The Scottish Government notes the broad support from respondents for the introduction of an exceptional circumstances provision.

While the Scottish Government notes the preference from respondents to introduce such a provision, an exceptional circumstances provision will not be introduced. This is on the basis that such a provision would create a significant degree of uncertainty around the application of the legislation, would be operationally difficult to administer and would attract an inherent avoidance risk.

The Scottish Government notes that the proposed amendments set out elsewhere in this document will assist in many cases which might otherwise be considered 'exceptional'.

### **Additional Questions**

2.103 This section invited respondents to raise any concerns they may have with current ADS provisions, which were not otherwise addressed elsewhere in the call for evidence.

2.104 Respondents were also asked whether they perceived any regional variance in the operation of ADS provisions in different areas of Scotland.

2.105 On this point, the call for evidence posed the following questions:

18. Is there any other issue regarding the operation of the ADS legislation which you would wish the Scottish Government to consider as part of the overall review? If so, please provide explanation and commentary on any available evidence about this.

19. Are there any other points you would wish to raise regarding the operation of the ADS in different parts of Scotland?

20. The Scottish Government has a duty:

- to eliminate discrimination, advance equality of opportunity and foster good relations between different people; and

- to have regard to the impact on island communities in carrying out its functions.

Are there any issues relevant to the content of this consultation that you believe the Scottish Government should consider in order to assure performance of these duties?

2.106 Question 18 received 42 responses in which a wide variety of topics were raised.

2.107 Several responses considered the application of the ADS on subsidiary dwellings or 'granny flats' and suggested that these and similar annexes should be given an exemption.

2.108 Some more specific examples of scenarios not directly covered by ADS provisions were included in responses. These included property purchases of next-door properties for amalgamation and those by private residential landlords for rehousing tenants, as well as cases of accidental or assisted ownership.

2.109 Other responses suggested that the ADS rate could be adjusted under certain circumstances. One response advocated for additional ADS to be charged on short-term lets and second homes to control overheated markets and temper their impacts on local markets. Another response stated that the ADS should be tapered on a descending scale, reaching 0% at 6+ properties per transaction.

2.110 A number of respondents highlighted the interaction of Multiple Dwellings Relief (MDR) and ADS provisions and called for changes to be brought forward to address concerns about how the relevant calculations work in practice. Apportionment of MDR between residential and non-residential properties is set out in legislation.

2.111 In terms of property value, one response argued that an exemption should be considered when the value of additional dwelling that is being kept has fallen by a certain percentage. Another response suggested that clear independent criteria for valuation purposes could be established to control valuation for tax calculation purposes.

2.112 Other responses flagged potentially "*unclear*" official guidance for specific scenarios. These ranged from the status of bed and breakfast properties to the definition of property destruction for tax purposes, and when parties to property transactions pass away during the conveyancing process. These points have been highlighted to Revenue Scotland for consideration in terms of its guidance.

2.113 Another response suggested that properties owned outside the UK should not be considered when calculating the ADS liability, especially when the individual is registered as a resident in Scotland.

2.114 One respondent stated that the Devolved Taxes Legislation Working Group should be restored to "*facilitate wider scrutiny and potential overhaul*" of devolved taxes in general, including LBTT and the ADS.

2.115 Finally, one response argued that ADS tax revenues should be hypothecated and the revenue spent on targeted rural affordable housing.

2.116 Question 19 centred around the application of the ADS in different regions of Scotland and received 35 responses.

2.117 Many of the responses focussed on the perceived divide between rural and urban properties' interaction with the ADS. In terms of urban regions, the general North East of Scotland area (including the cities of Aberdeen and Dundee, as well as their hinterlands) were described as having "challenging" current market conditions.

2.118 Several responses raised the topic of housing supply and availability in rural areas, with particular emphasis given to those in the Highlands and Islands. It was noted that the ADS has "clearly not" reduced second home ownership or short-term lets in these areas. One respondent suggested that a fiscal mechanism through enhanced ADS rates could be more effective.

2.119 Some respondents suggested local variations of ADS. Suggestions included the application of ADS exemptions in local areas in response to weaker housing markets and increasing timelines for reclaiming the ADS in these areas.

2.120 By contrast, other respondents support maintaining common ADS provisions across Scotland. One response put forward the view that ADS provisions should continue to be equally applied across Scotland, in order to "*reduce any confusion in the application of the rules*".

### **Scottish Government Response**

The Scottish Government acknowledges the wide range of topics raised by respondents in this section.

Although there are no proposed amendments to current provisions in respect of this section, the Scottish Government will keep these issues under review.

Additionally, it is noted that some of the proposals detailed elsewhere in this submission may assist with these potential issues, particularly those relating to timelines.

### **3. SUMMARY OF PROPOSED AMENDMENTS**

The Scottish Government intends to consult on legislation to provide for the following amendments to the Land and Buildings Transaction Tax (Scotland) Act 2013:

3.1 Inherited property – provisions in respect of inheritances of properties where missives have been signed in respect of an additional property, and a clarifying amendment in respect of when an inherited property is considered 'owned' for LBTT purposes.

3.2 Small shares – a provision to exempt interests in property from consideration for ADS purposes where the value of that interest is less than £40,000.

3.3 Divorce or Separation – a provision disregarding a retained interest in a property for ADS purposes, where the interest is required to be retained by court order or equivalent legal agreement.

3.4 Joint Buyers and Economic Units – provisions to provide certainty and clarity for taxpayers.

3.5 Local Authorities – provisions to provide parity of treatment, as far as necessary, between Local Authorities and Registered Social Landlords for LBTT and ADS purposes.

3.6 Extending relevant timelines for the ADS from 18 months to 36 months.

#### **4. NEXT STEPS**

On the basis of responses to the call for evidence and available data, the Scottish Government will publish, alongside this response, draft legislation for comment in respect of the proposals set out at 3.1 to 3.6 above.

## 5. ANNEX A: LIST OF RESPONDENTS

	<b>Respondent</b>	<b>Category</b>
1	Anonymous	Individuals
2	Anonymous	Individuals
3	Anonymous	Individuals
4	Balfour+Masons Solicitors	Legal, Tax and Accountancy
5	Angus Council	Housing Providers
6	Anonymous	Individuals
7	Anonymous	Individuals
8	Anonymous	Individuals
9	Anonymous	Individuals
10	Mr William Mykura	Individuals
11	Stirling Council	Housing Providers
12	Anonymous	Individuals
13	Stuart Smith	Individuals
14	Anonymous	Individuals
15	Anonymous	Individuals
16	The Association of Local Authority Chief Housing Officers	Other Organisations
17	Scottish Association of Landlords	Other Organisations
18	Anonymous	Individuals
19	Anonymous	Individuals
20	South Lanarkshire Council	Housing Providers
21	Anonymous	Individuals
22	KPMG	Legal, Tax and Accountancy
23	Redcurrant Housing Co-operative	Housing Providers
24	Bruadair Housing Co-operative	Housing Providers
25	Anonymous	Individuals
26	Chartered Institute of Taxation	Legal, Tax and Accountancy
27	Anonymous	Individuals
28	Ventura Co-op	Housing Providers
29	CIPFA Directors of Finance	Other Organisations
30	DTAS	Other Organisations
31	Anonymous	Individuals
32	Student Co-operative Homes	Housing Providers
33	Glasgow Student Housing Co-operative	Housing Providers
34	Redcurrant Housing Cooperative Ltd	Housing Providers
35	Vanilla Cohousing Community Ltd	Housing Providers
36	Cohousing Scotland	Other Organisations
37	Highland Council	Housing Providers
38	ICAS	Legal, Tax and Accountancy
39	CIOT	Legal, Tax and Accountancy
40	Glasgow City Council	Housing Providers
41	COSLA	Other Organisations
42	Anonymous	Individuals
43	Anonymous	Individuals

44	Edinburgh Student Housing Co-operative	Housing Providers
45	Rural Housing Scotland	Other Organisations
46	Army Families Federation	Other Organisations
47	Tim Macdonald	Individuals
48	Co-operatives UK	Other Organisations
49	Propertymark	Legal, Tax and Accountancy
50	Aberdeenshire Council	Housing Providers
51	Royal Institution of Chartered Surveyors	Other Organisations
52	Liam Faulkner	Individuals
53	Community Land Scotland	Other Organisations
54	Anonymous	Individuals
55	Highlands and Islands Enterprise	Other Organisations
56	Anonymous	Individuals
57	Scottish Property Federation	Other Organisations
58	Ernst & Young LLP	Legal, Tax and Accountancy
59	Plockton & District Community Trust	Other Organisations
60	Anonymous	Individuals
61	Anonymous	Individuals
62	Law Society of Scotland	Legal, Tax and Accountancy
63	Stamp Taxes Practitioners Group	Legal, Tax and Accountancy
64	Homes for Scotland	Other Organisations
65	East Renfrewshire Council	Housing Providers
66	Anonymous	Individuals
67	David Barnes	Individuals



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