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Partial/Final Business and Regulatory Impact Assessment

Title of Proposal

Land and Buildings Transaction Tax (Scotland) Act 2013, Schedule 10, Group Relief Amendment

Purpose and intended effect

Background

Schedule 10 of the Land and Buildings Transaction Tax (Scotland) Act 2013 (LBTT Act) makes provision for the availability of Group Relief. Group Relief may be available where the seller and buyer are both companies in the same corporate group. This allows companies to transfer property within a corporate group without a liability to LBTT, on the basis that there is no overall change in economic interest or benefit in such transactions

On 28 December 2017, Revenue Scotland published a view that where there is a transfer of property within a group and there is a relevant share pledge on the 'buyer' company, Group Relief would not be available and LBTT would be payable on the market value of the property transferred.

Following consideration of this issue and representations from stakeholders, the Scottish Government now intends to bring forward secondary legislation to allow for Group Relief to be available where there is a transfer of properties within a corporate group structure and there is an extant 'Share Pledge' over the transferred property.

This change will be consistent with the policy intent, expressed at the time that the LBTT legislation was going through Parliament that the Group Relief arrangements for LBTT would apply in a similar manner to those in Stamp Duty Land Tax. The change will align the arrangements for LBTT and SDLT in this regard.

Objective

The objective of the consultation is to ensure that the legislation introduced to Parliament would ensure that Group Relief for LBTT is similar in purpose, scope and availability to that available for Stamp taxes elsewhere in the UK, consistent with the original policy intent.

Global Scotland, Scotland's Trade and Investment Strategy signals our ambition to work with the public and private sectors and potential investors to take a more proactive and investor focused, and more systematic and co-ordinated approach, to attracting capital investment to large scale projects in Scotland.

If we are to compete with other projects, cities and regions across Europe and the rest of the world this must be underpinned by a strategic, unified and collaborative

approach to:

- Bring forward strong, investment-ready propositions which meet investor expectations; and
- Systematically identify and engage with potential investors.

Scotland is competing with the rest of the world to attract capital investment. In this respect, Scottish Government support for projects is in addition to other parts of the UK. By providing a similar tax relief to that available in rUK for SDLT we maintain this competitiveness and do not make Scotland a less attractive investment proposition.

Rationale for Government intervention

The Scottish Government is consulting on the proposed draft legislation to ensure that the arrangements for group relief are consistent with those in place for SDLT, consistent with the original policy intention to allow the transfer of properties within corporate group structures without attracting LBTT. As the legislation currently stands and reinforced by the published opinion from Revenue Scotland where there is a relevant share pledge on or over the 'buyer' in a group transaction Group Relief from LBTT is not available. This is because of the targeted anti avoidance rules within the relief which do not allow a claim to Group Relief where a third party out with the corporate/business group structure could obtain control of the 'buyer' company. It is important to stress that it is not when a third party obtains control but simply the fact that such an event could occur.

Share pledges are regularly used as part of an overall package of security required by lenders.

Stakeholders have explained that the current lack of availability of Group Relief where there are share pledges has prevented a number of property transactions from taking place. If the Scottish Government does not take action, it is likely that further transactions within corporate groups will not occur and the ultimate effect would be to make Scottish Properties less attractive and efficient to Corporate Groups for estate management and property investment purposes.

It is important to be aware that any changes to the availability of group relief will not adversely affect the Anti-Avoidance provisions used to tackle tax avoidance.

Consultation

Within Government

Consultation was across the Scottish Government and with Revenue Scotland, who are responsible for the collection and management of the devolved taxes.

Public Consultation

For this partial BRIA, informal consultation and engagement has taken place with various stakeholders and interested parties from the legal and property sectors and organisations with an overall interest in the operation of the tax system.

Business

We have had face-to-face discussions, telephone conversations with and received written correspondence from several key stakeholders on the relevant issue. We intend to conduct further engagement throughout the consultation period in conjunction with the current consultation.

Options

Option 1) – Amend Group Relief from LBTT to apply as it does for SDLT in rUK

Sectors and groups affected

- All corporate groups operating in Scotland, the UK and beyond which own Scottish property or may do so in future.
- Revenue Scotland as they administer LBTT

Benefits

- This option would amend the provision of Group relief from LBTT to allow relief where there are certain securities (share pledges) granted over a property. This would allow Scottish property to be moved within corporate group structures without attracting LBTT
- This option would ensure that property owned or purchased by corporate groups in Scotland have a similar relief available to those in the rest of the UK under SDLT.
- One of the current aims of government is to make Scotland an attractive place to invest and do business. This proposed amendment to the availability of Group Relief would maintain the attractiveness of Scottish Property as an investment vehicle with the rest of the UK.

Costs

- Amendment to Group Relief would *not* reduce the amount of tax collected, as the relevant transactions would not be likely to happen without the availability of the relief.
- There should be no increased costs to Revenue Scotland to administer the proposed change to Group Relief, no amendment of the paper or online forms are required to affect the change

Option 2) - Do nothing

Sectors and groups affected

- All corporate groups operating in Scotland, the UK and beyond which own Scottish property or may do so in future.
- Revenue Scotland as they administer LBTT

Benefits

- This option could prevent opportunities for tax avoidance as it restricts the availability of a tax relief. Generally, where there are tax reliefs and exemptions available, for any tax, there is an increased opportunity for tax avoidance.

Note an amendment to Group Relief will not adversely affect the current Anti Avoidance provisions for Scottish Taxes.

- Promotes taxpayer certainty as there would be no change to the law.

Additional note

Current legislation does not reflect the original policy intention and is not in alignment with the SDLT provisions.

Costs

- This option could have an adverse effect on the Scottish property market. The lack of availability of relief for moving properties within a corporate structure makes the properties less flexible. Stakeholders have suggested that this could make Scottish properties less attractive to initially purchase and result in a consequential reduction in tax collected.

- Scottish property would be taxed if transferred within a corporate group structure unlike in the rest of the UK, legitimate property transactions which would have been sensible for business purposes such as estate rationalisation are unlikely to proceed. This may also result in groups disposing of Scottish properties.

Scottish Firms Impact Test

The consultation process will provide insight into the effect of the proposed draft amendment to Group Relief availability in conjunction with the Scottish Firms Impact Test that conducted as part of the BRIA in the [consultation on LBTT subordinate legislation](#).

In order to assess whether action taken by the Scottish Government in relation to Group Relief, could affect competition; the Scottish Government considered four questions:

Will the proposal directly limit the number or range of suppliers?

Will the proposal indirectly limit the number or range of suppliers?

Will the proposal limit the ability of suppliers to compete?

Will the proposal reduce suppliers' incentives to compete vigorously?

All of these can be answered in the same way. None of the proposals will have an effect on competition in Scotland. The reliefs would apply equally to all properties held in Corporate Groups. The changes to the relief are for the purpose of allowing Scottish firms to achieve a similar flexibility with their property portfolios as currently exists in rUK, therefore it will increase corporate competitive ability.

Test run of business forms

No amendment or change will be required to the existing tax return forms submitted by taxpayers.

Legal Aid Impact Test

The proposed amendment to Group Relief will not affect the use of legal aid; it is an amendment to an existing relief to increase its provision and availability.

Enforcement, sanctions and monitoring

Collection and management of LBTT is performed by Revenue Scotland, using powers set out in the Revenue Scotland and Tax Powers (Scotland) Act. When an initial land transaction takes place, taxpayers, or their agents, will submit a self-assessed LBTT return and if appropriate payment to Revenue Scotland. Should the transaction meet the criteria for Group Relief it should be claimed on the LBTT form when submitted to Revenue Scotland.

Revenue Scotland has powers to assist them in ensuring LBTT is only relieved in genuine cases. As enforcement and compliance tools, they have the ability to impose penalties to encourage compliance and use of the General Anti-Avoidance rule should there be inappropriate claims to tax relief or other errors on returns.

The Scottish Tax Tribunal is available to resolve disputes independently of Revenue Scotland and the Scottish Government.

Implementation and delivery plan

Implementation and delivery is to be considered once the consultation is complete. The consultation replies will be analysed, and only then will the Scottish Government consider whether to bring forward the draft amendment to schedule 10 of LBTT Act to the Scottish Parliament.

- **Post-implementation review**

When and how will a review of whether the legislation is still fit for purpose take place? If there is no set date for review then you must include a commitment to review within 10 years.

Summary and recommendation

Option 1 – amending group relief - is being consulted upon for the following reasons:

- To seek views as to whether the proposed draft amendment to schedule 10 allows relief from LBTT, as policy originally intended, for the movement of property within Corporate group structures where there are share pledge securities.
- To seek views on the proposed draft amendment that it provides similar tax treatment to that in the rest of the UK whilst safeguarding against potential avoidance activity.

Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1		
2		
3		
4		

Declaration and publication

The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication. Use appropriate text from choices below:

- Sign-off for Partial BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

- Sign-off for Final BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Minister's name

Minister's title

Scottish Government Contact point: