

A Consultation on Land and Buildings Transaction Tax - Property Investment Funds

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Scottish Government
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SUMMARY OF QUESTIONS

Property Investment in Scotland and the UK

Question 1: Does this chapter provide an accurate picture of the Scottish property fund and investment landscape?

Question 2: In terms of the size of managed property fund assets in Scotland, how many funds do you estimate hold Scottish property assets, what is the total value of these funds and how large (%) is their exposure to Scottish property?

Seeding Relief

Question 3: Do you consider that the Scottish Government should introduce a seeding relief for PAIF's and CoACS?

Question 4: Please briefly describe any positive or negative impacts that would accompany LBTT parity with SDLT for a seeding relief.

Question 5: With regards to a seeding relief - how would a 'do nothing' approach on the part of the Scottish Government affect your business and future business decisions?

Question 6: If the Scottish Government were to proceed with a LBTT seeding relief, are there any aspects of the SDLT arrangements which you believe should be changed if replicated for LBTT purposes?

LBTT Treatment of Co-owned Authorised Schemes

Question 7: Do you agree that the Scottish Government should introduce parity with SDLT by providing a relief for the exchange of CoACS units?

Question 8: Please briefly describe any positive and negative impacts that would accompany such a relief.

Question 9: With regards to a CoACS relief - how would a 'do nothing' approach on the part of the Scottish Government affect your business and future business decisions?

Question 10: Do you have any other comments not covered by the previous questions around providing a relief for the exchange of CoACS Units?

Tax Avoidance

Question 11: Please identify and describe any impacts on UK taxes (non-SDLT) that could occur following the proposed amendment to LBTT.

Question 12: Can you identify any potential unintended impacts or effects on the current LBTT regime through providing parity with SDLT on the treatment of CoACS or through providing a seeding relief for PAIFs and CoACS?

Question 13: If the Scottish Government introduced a relief, do you believe it should introduce GDO rules for CoACS or do you believe another test could be equally as effective in combating artificial tax avoidance?

Question 14: If the Scottish Government introduced the proposed reliefs, should it introduce general portfolio tests with the same thresholds as the UK (based on the value of pan UK property) or should a more Scottish orientated threshold/measure be used?

Question 15: If the Scottish Government introduced the proposed reliefs, should it legislate for a percentage of ownership test in the same manner as the rest of the UK?

Question 16: Should the Scottish Government, if introducing the proposed reliefs, implement the same claw back provisions as introduced under the UK's SDLT regime? If not, what conditions should be applied and how would you suggest recovery of the tax should operate?

Question 17: Do you believe that the fund managers and scheme operators should be liable for the recovery of any tax liability resulting from these potential reliefs?

Question 18: Please identify and describe any other areas of potential tax avoidance that you think could arise by amending LBTT legislation to provide a seeding relief and change LBTT treatment of CoACS?

Question 19: If seeding relief was introduced in Scotland, should it just apply to non-residential property?

Effects on Equal Opportunities, Human Rights, Island Communities, Local Government, Sustainable Development

Question 20: Would LBTT parity with SDLT regarding PAIFs and CoACS, in any way, impact upon equal opportunities, human rights, island communities, privacy and/or sustainable development in Scotland?

Chapter 1: Introduction

Purpose

1. The purpose of this consultation is to gather views from the property sector, managers of and investors in Property Authorised Investment Funds (PAIFs) – (a type of Open Ended Investment Company (OEIC)), Co ownership Authorised Contractual Schemes (CoACSs) and other interested stakeholders on the potential introduction of a relief from Land and Buildings Transaction Tax (LBTT) for the transfer of properties into such schemes under certain specified circumstances.
2. The Scottish Government is committed to ensuring that Scotland remains an attractive location for investment. Scotland can offer investors a stable and respected legal system and a well-developed financial system. Scotland is recognised internationally for its excellent higher and further education system and its highly skilled workforce. Investors benefit from good global accessibility, long term experience of supporting inward investment activity and competitive property yields.
3. In July 2015, the Scottish Government consulted on a relief from LBTT for properties held by Authorised Unit Trusts (AUTs) converting or amalgamating with an Open Ended Investment Company. Scottish Ministers laid *The Land and Buildings Transaction Tax (Open-ended Investment Companies) (Scotland) Regulations 2015* in the Scottish Parliament (which took effect from 6th October 2015) introducing an exemption, by way of a claimable relief. Seeding in this consultation means the initial transfer of property or an existing property portfolio into a new or empty fund.
4. The Scottish Government is now consulting on proposals to introduce a wider LBTT relief for seeding PAIFs and CoACS from sources other than an Authorised Unit Trust (AUT) whilst also considering providing LBTT parity between CoACS and PAIFs.
5. The Scottish Government is keen to hear views on the treatment of CoACS under LBTT. Stakeholders have asked for changes to be introduced so that an LBTT charge does not arise when there is a transaction in units. These changes would provide parity in this area between LBTT in Scotland and Stamp Duty Land Tax (SDLT) in England and Northern Ireland.
6. Reliefs in these areas are currently in place for UK Stamp Duty Land Tax, introduced through Finance Act 2016. The Scottish Government's aim is to understand the impact that introducing similar arrangements (or keeping the status quo) would have on Scotland's economy, the asset management sector and broader property sector. In addition, this consultation is intended to ensure that the introduction of any relief would be consistent with the Scottish approach to taxation.

Background

7. LBTT, which replaced UK Stamp Duty Land Tax (SDLT) in Scotland from 1 April 2015, is a tax applied to residential and non-residential land and buildings transactions (including non-residential leases) where there is an acquisition of a chargeable interest. The legal underpinning of the tax is contained in the Land and Buildings Transaction Tax (Scotland) Act 2013 ('the Act') which also came into force with effect from 1 April 2015.

8. LBTT legislation has strengthened provisions (over its predecessor SDLT) in a number of areas, better aligning the legislation with Scots law and practices and ensuring that appropriate reliefs and exemptions are available only when strong evidence supports the need for them. Scottish Ministers have also made clear that they wish to take all reasonable steps to reduce the risk of artificial avoidance of the devolved taxes, to foster a climate of tax compliance and thus help to safeguard public finances.

9. In its paper *SDLT Rules for Property Investment Funds(1)*, the UK Government recognised that the way in which SDLT was applied to certain collective investment schemes was perceived by the industry as presenting barriers to their effective use as property funds. At the 2014 UK Budget, the UK Government announced that it would consult on how PAIFs and CoACSs should be treated for SDLT purposes.

10. Following this, the *Finance Act 2016* introduced relief provisions, updating the SDLT legislation contained in the *Finance Act 2003* with the effect that properties could be seeded into a PAIF or COACS without an SDLT charge.

11. Since LBTT became operational in 2015, several stakeholders, including those in the investment management sector, law and accountancy firms have raised concerns about:

- the impact of the LBTT charge on the conversion to, or seeding of, PAIFs and CoACS where these investment vehicles hold property in Scotland; and
- concern over the impacts of not having parity with SDLT on the treatment of CoACS.

12. The Scottish Government is now interested to hear views on whether it should introduce a 100% relief for the 'seeding' of properties into an authorised PAIF or CoACS and legislate to provide parity between PAIFs and CoACS to allow for CoACS unit trading without a LBTT charge.

¹ <https://www.gov.uk/government/consultations/stamp-duty-land-tax-rules-for-property-investment-funds>

Chapter 2: Property Investment in Scotland and the UK

13. The focus of this consultation is on the LBTT treatment of properties held in PAIFs, a type OEIC, and CoACS. Alongside Authorised Unit Trusts (AUT), these are types of popular collective investment schemes authorised by the UK Government. These schemes are used predominately by institutional investors such as endowment funds, commercial banks, mutual funds, hedge funds, pension funds and insurance companies. The majority of investors in these funds represent “patient” capital looking for a steady long term return from rental income and capital appreciation. These schemes also benefit entities with special tax status such as charities, ISA’s and pension schemes.

14. The SDLT/LBTT treatment is not dependent on where a fund is based or domiciled – property situated in Scotland is subject to LBTT, whilst property situated in England and Northern Ireland is subject to SDLT and property in Wales (as of 1 April 2018) to Land Transaction Tax, regardless of where the fund itself is managed.

15. The investment management sector is of significant importance to Scotland’s economy. HM Treasury figures suggest that some £60 billion worth of UK property was held in investment funds as at July 2014 with a number of UK based funds managing overseas property assets to a much higher net worth, with others having a mix of domestic and foreign assets. We understand that the vast majority of property assets owned by these funds in the UK are non-residential and that funds generally hold properties across the UK, including in Scotland.

16. Scotland has a long established history in the asset management sector with Edinburgh and Glasgow playing a key role in the industry. Firms based here manage over £800 billion in assets, which includes Scottish, UK and international property assets amongst numerous others. It is estimated that 55% (2) of the commercial property sector is owned by institutional investors with £2.8 billion in commercial property transactions in 2017 and new construction heavily reliant on the investment fund sector.

Collective Investment Schemes

17. Collective investment schemes allow investors to pool assets and to share proportionately in the income and gains arising from them. OEIC (as a company) and Unit Trusts (in the person of its trustees) are legal persons and are taxable entities. CoACS however are a contractual arrangement between persons, which is transparent for the purposes of tax and the participants remain responsible for any tax due on their share of the income (and gains) in the fund.

2 The Economic Contribution of the Commercial Property Sector: http://workplaceinsight.net/wp-content/uploads/2018/03/The_economic_contribution_of_the_commercial_property_sector_March_2018..pdf

Open Ended Investment Companies – Property Investment Authorised Funds

18. A Property Authorised Investment Fund (PAIF) is a type of OEIC dealing in property assets, and is an investment structure introduced by the UK Government in 2008 to provide a tax efficient vehicle for collective investment in rental property.

19. PAIFs were designed to ensure that investors are taxed on rental income from the PAIF in the same way as if they had invested directly in the property themselves. This benefits tax-exempt investors, such as charities, pension funds, life companies and ISA investors, who would receive property rental income from the older Authorised Unit Trusts (AUTs) net of income tax, which they were not able to reclaim. Tax-exempt investors in a PAIF for example, do not bear any tax charge on the rental income which they receive from the fund.

20. An investment fund that invests in property cannot benefit from the PAIF regime without first converting into, or amalgamating with, an OEIC. This entails property and other assets being transferred (or seeded) from one legal entity to another.

21. In 2015 the Scottish Government introduced a seeding relief for AUT's converting to an OEIC. However, this relief is not available to other types of investment vehicles or investors.

22. While the PAIFs are currently the most likely type of OEIC to which investment funds will be seeking to convert, there are newer types of authorised schemes, such as Co-ownership Authorised Contractual Schemes (CoACSs), which are also currently the subject of conversions. AUT's often work alongside PAIF's, for example acting as feeder funds for large corporate investors (as there is 10% ownership cap for any Body Corporate investing in a PAIF).

Co-ownership Authorised Contractual Scheme - CoACS

23. CoACS were introduced by the UK Government, following publication of their March 2013 UK Investment Management Strategy, introduced in the *Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013*, and the FSA's rules for the authorisation of Authorised Contractual Schemes.

24. The principle behind the CoACS regime is to bring the UK in line with funds available in other jurisdictions and so encourage funds to be domiciled in the UK. The idea is that this would be achieved by creating a regime that puts CoACS investors in the same position with regard to income and capital gains taxes as if they had invested directly in the underlying fund assets (rather than income on the CoACS itself). This enables each investor to benefit from the same tax treatment in respect of its income and gains as they would have done if they directly invested in the asset themselves.

25. A CoACS is not a legal person and the investors remain responsible for any tax due on their share of the income (and gains) in the fund. This means that investors in a CoACS will receive full access to information about the assets held and their share of income (and gains) received by the scheme in order to meet their own tax obligations. An investor's tax liability is based on their income from the fund and not directly on the gains and income made by the fund.

26. It is a regulatory requirement that a direct investor in a CoACS must either:

- invest at least £1m, or
- be a professional institutional investor.

27. As these schemes will usually have a mix of international and domestic assets, it generally enables investors to obtain their correct rates of tax under applicable double tax treaties (which is not always the case if they invest in other pooled arrangements). The UK has an extensive network of bilateral tax treaties with 129 countries and territories and these schemes also allow international investors to benefit from double taxation arrangements.

28. The UK has removed this transparency for SDLT purposes to enable unit trading to occur, and therefore allow these schemes to invest in property located in England and Northern Ireland property.

29. The UK applies Genuine Diversity of Ownership (GDO) (3) rules to PAIFs and CoACS claiming SDLT seeding relief to ensure that narrowly held CoACS in particular cannot benefit from the reliefs and help reduce the risk of tax avoidance.

Question 1: Does this chapter provide an accurate picture of the Scottish property fund and investment landscape?

Question 2: In terms of the size of managed property fund assets in Scotland, how many funds do you estimate hold Scottish property assets, what is the total value of these funds and how large (%) is their exposure to Scottish property?

Chapter 3 Seeding Relief

30. Following changes made through the UK Finance Act 2016, a relief from SDLT is available where properties (that are predominantly non-residential) are acquired or “seeded” from other types of investment vehicles (such as un-authorised managed funds) into an PAIF or CoACS within a period of up to 18 months.

31. The Scottish Government is consulting on the proposition of providing parity with SDLT in terms of a seeding relief. This proposal would not change the fundamental point that tax will be due whenever a PAIF or CoACS acquires a new property. Seeding relief is a time-limited proposition which recognises that beneficial ownership of the property is essentially not changing. After seeding, where new properties are acquired, LBTT tax would be due.

32. PAIFs and CoACS are both authorised financial vehicles that can be used for the purposes of collective property investment. The term ‘seeding’ refers to the transfer or acquisition of properties from an existing portfolio to a new or empty fund. Often new funds need to be ‘seeded’ as they are conversions from other types of fund taking advantage of this new tax status (and therefore transfer/seed the underlying assets into the CoACS or PAIF). A fund will also require a seeding period to build up a track record of performance in order to attract new investors.

33. The UK Government rationale for this relief was primarily aimed at encouraging the growth of fund management in the UK, subject to addressing its concerns over the potential for tax avoidance. As stated in its publications ‘UK Investment Management Strategy’ and ‘UK Investment Strategy 2’(4), the approach taken to these funds represents the UK’s broader approach to relieve the burden of double taxation of income received by UK managed funds so as to encourage international investors to use UK institutions whilst reducing the risk of incurring UK tax in so doing.

34. The UK relief requires that the following conditions must be met:

- The purchaser of the new properties must be a PAIF or CoACS;
- The subject matter of the seeding transaction must be one or more interests of land;
- The only consideration for the transaction is for the vendor to issue units in the CoACS or shares in the PAIF; and
- The date of the transaction must be conducted in the seeding period which is 18 months within which seeding transactions are eligible for relief, provided that:
 - the fund has not yet been opened to investors; and
 - the sole consideration for a transfer is units in the fund acquiring the property portfolio.

4 <https://www.gov.uk/government/publications/the-investment-management-strategy-ii>

35. For the purposes of SDLT, the seeding period begins on the date that the first property is seeded and ends on the date that the first investor invests or alternatively 18 months after the first property seeding date – whichever is shorter. The provision to allow this extended period was intended to reflect the position that it may not be practical to transfer a significant property portfolio into a new vehicle at the same time. In addition, there are anti-avoidance rules in place and the UK has introduced claw back provisions, as set out in Chapter 5 below.

36. Since 2015 stakeholders have requested that the Scottish Government go beyond the current reliefs in place under LBTT in relation to property investment and replicate this seeding relief in LBTT. Whilst legislation has been introduced to allow an Authorised Unit Trust to convert into a PAIF without incurring a LBTT charge, the same is not true for other investment vehicles, or indeed AUT's converting to a CoACS.

37. Stakeholders have argued that a change to LBTT in this area is particularly important to the property investment sector as: (i) properties are currently held in investment funds on a UK wide basis; and (ii) the SDLT/LBTT treatment of these schemes is not dependent on the domicile of the fund, but rather the geographical location of the properties they contain.

38. As such, as the legislation currently stands, no SDLT will be due on any property owned in England and Northern Ireland that is seeded into a PAIF or CoACS. However, any Scottish property transferred in would be subject to an LBTT charge.

39. From stakeholder engagement to date, the Scottish Government understands that there is little appetite for paying LBTT in order to allow for these transfers, particularly given that the percentage of Scottish properties held will be relatively low when compared to the overall portfolio makeup.

40. In the immediate term, it is argued that this could make it less attractive for fund managers who are considering conversion to invest in properties in Scotland, on the basis that an LBTT charge would mean that they could not subsequently be seeded into a different vehicle.

41. In addition, whilst we understand that claw back provisions and anti-avoidance measures in the SDLT legislation have meant that seeding transfers have not occurred as extensively as expected to date, if no changes are made, our discussions with industry representatives suggest that it may lead investment and pension funds to opt to divest of Scottish properties at the point of seeding other properties into a PAIF or CoACS.

42. Once divested, there is a clear risk that investment fund and asset managers will not look again at Scottish properties, putting Scotland at a comparative disadvantage to the rest of the UK in terms of encouraging investment in the property market, particularly commercial property.

43. By contrast, if Scottish properties can be seeded in to the new investment vehicles, the companies that have engaged with the Scottish Government to date have indicated that investors would wish to maintain a broadly consistent Scottish holding in future (levels currently in the range of 7-10%). Thus, as a PAIF or a CoACS grows in size, so too would its investment in Scotland.

44. Aside from the economic and investment aspects above, in considering this issue, the Scottish Government will take into account that the LBTT regime already provides relief for other types of corporate transactions in which there is no change in the economic beneficiary, rather than the substance, of ownership. This is notably the case in relation to group relief (Schedule 10 of the Act) and reconstruction and acquisition relief (Schedule 11 of the Act).

45. Whilst stakeholders have suggested that parity with SDLT would make the administration of these funds more straightforward to manage, providing parity on PAIFs and CoACS would also increase the complexity of LBTT itself and could open up opportunities for artificial tax avoidance. In order to safeguard public finances, we are accordingly also very keen to capture views on any negative impacts associated with providing parity with SDLT in this area, including the anti-avoidance and claw back provisions discussed in Chapter 4.

46. If the Scottish Government were to introduce a relief, recognising that properties are being held on a UK basis, we would expect to mirror the UK relief in the first instance.

Question 3: Do you consider that the Scottish Government should introduce a seeding relief for PAIFs and CoACS?

Question 4: Please briefly describe any positive or negative impacts that would accompany LBTT parity with SDLT for a seeding relief.

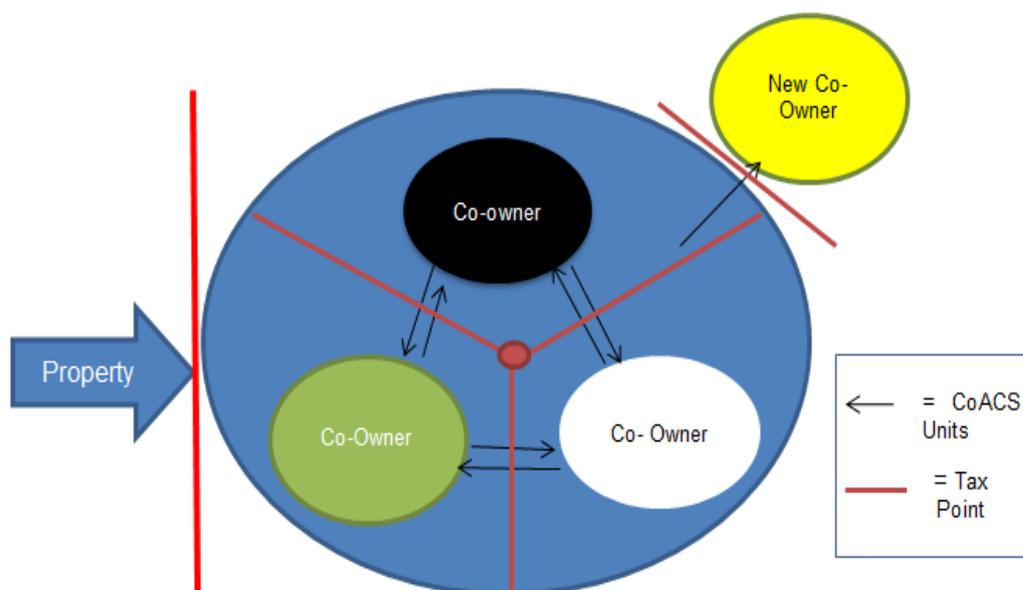
Question 5: With regards to a seeding relief - how would a 'do nothing' approach on the part of the Scottish Government affect your business and future business decisions?

Question 6: If the Scottish Government were to proceed with a LBTT seeding relief, are there any aspects of the SDLT arrangements which you believe should be changed if replicated for LBTT purposes?

Chapter 4 LBTT Treatment of Co-owned Authorised Schemes

47. As CoACS are a contractual scheme between persons, and not companies in their own right, the exchange of units in these schemes is subject to a LBTT charge due to the underlying Scottish property they are based on. As illustrated in Figure 2, the current position under LBTT legislation is that a tax liability is due every time units are exchanged.

Figure 2. CoACS - Current tax points under LBTT



48. In its paper *SDLT Rules for Property Investment Funds*⁵, the UK Government stated that the way in which SDLT was applied to certain collective investment schemes was perceived by the industry as presenting barriers to their effective use as property funds. At Budget 2014, the UK Government therefore announced that it would consult on the way property authorised investment funds (PAIFs) and co-ownership authorised contractual schemes (CoACSs) are treated for SDLT purposes.

49. Following this, changes to the tax treatment of units held in CoACS were made to SDLT through the Finance Act 2016. Trading in these units has now become “non-transparent” for UK SDLT tax purposes – meaning acquisitions into the scheme are taxed but trading in the units of the scheme are not.

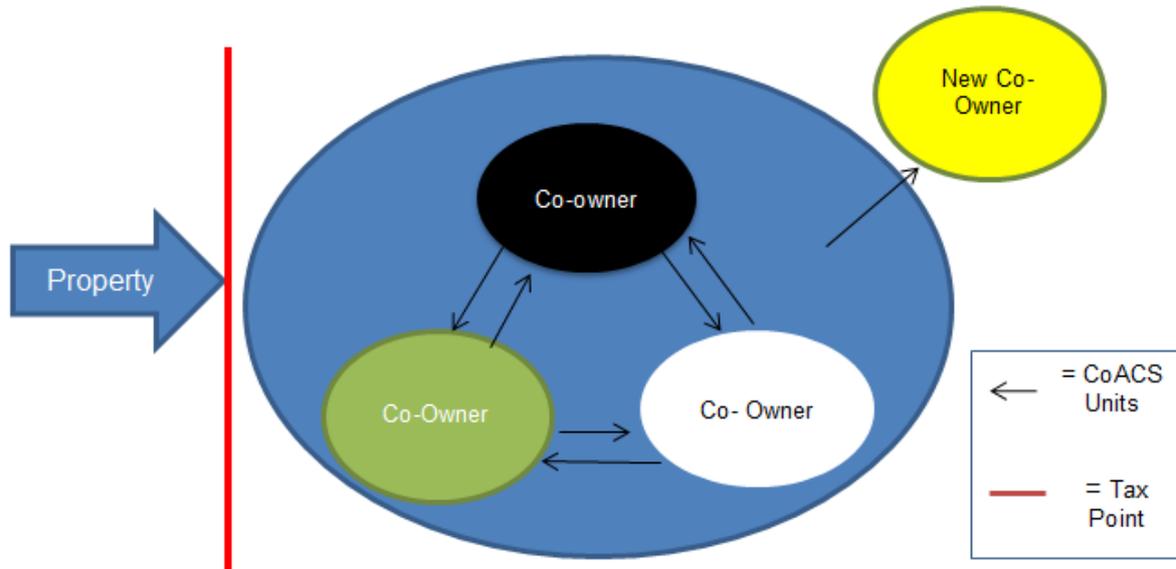
50. As discussed in Chapter 2, CoACSs were introduced into legislation in 2013 and since then a number of schemes have been launched. These schemes are ‘tax transparent’, so that income (the tax liability) accrues to investors directly as it arises. They are now however non transparent for SDLT purposes. Assets in a CoACS are legally held by a depositary on behalf of the unit holders or investors, who are the beneficial owners of the assets.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332079/Stamp_Duty_Land_Tax_rules_for_property_investment_funds.pdf

51. Section 102A of the Finance Act 2003, as introduced by the Finance Act 2016, provides a relief from SDLT when rights in a co-ownership authorised contractual scheme are transferred among participants in the scheme. This is delivered by treating the participants as shareholders in a company rather than as owners directly of the underlying real assets of the scheme, the rights in which would otherwise attract SDLT.

Figure 3 CoACS - Current tax points under SDLT



52. Figure 3 shows the current position under SDLT. It is important to note that properties that are purchased by a CoACS are subject to SDLT as normal. Trading in units however (that have an underlying value based on the land and property assets) would not be subject to the tax. If the scheme sells a property and it leaves the scheme, then the new owners of the property are also subject to SDLT.

53. To deliver the same position in Scotland would require changes to the Act through secondary legislation (subject to affirmative procedure) determining that unit holders of a CoACS should also be treated as shareholders in a company.

Question 7: Do you agree that the Scottish Government should introduce parity with SDLT by providing a relief for the exchange of CoACS units?

Question 8: Please briefly describe any positive and negative impacts that would accompany such a relief.

Question 9: With regards to a CoACS relief - how would a 'do nothing' approach on the part of the Scottish Government affect your business and future business decisions?

Question 10: Do you have any other comments not covered by the previous questions around providing a relief for the exchange of CoACS Units?

Chapter 5 – Tax Avoidance

Seeding Relief & CoACS

54. To prevent opportunities for artificial tax avoidance, the Scottish approach to taxation seeks to ensure that tax reliefs and exemptions are only introduced where they are supported by a strong evidence base and are aligned with the Scottish approach to taxation.

55. Scottish Ministers have taken a simple, clear but robust approach to tackling artificial tax avoidance for the devolved taxes. The Scottish General Anti-Avoidance Rule (GAAR), contained in the *Revenue Scotland and Tax Powers Act 2014 (RSTPA)* (6), allows Revenue Scotland to take counteraction against tax avoidance arrangements which are considered to be artificial, even if they otherwise operate within the letter of the law.

56. There are two different tests of ‘artificiality’, set out in section 64 of RSTPA:

- one which allows Revenue Scotland to consider the principles and policy objectives of the legislation (for example a scheme set up to exploit a shortfall in the tax legislation) and;
- the other based on activities that lack real economic or commercial substance.

57. Should any reliefs be introduced, these powers in the GAAR would help combat and deter their abuse. However, like the UK approach, the Scottish Government would look to introduce more targeted provisions to protect revenue.

58. It is also important that any amendment to LBTT will not result in unforeseen consequences to other UK tax regimes (which could also penalise Scottish taxpayers). It is unlikely that the proposed change would affect other UK taxes. However due to the technical nature of tax, the finance industry and property ownership in the UK, we are seeking views from stakeholders to ensure we have properly considered all the possible outcomes.

Question 11: Please identify and describe any impacts on UK taxes (non-SDLT) that could occur following the proposed amendment to LBTT.

59. As mentioned above, the UK’s approach to providing a relief for the exchange in CoACS units is to treat them as a company. This is similar to the approach taken in respect of Unit Trusts in section 45 of the Act. Sub-section (7) of the Act provides that treating the scheme as a company does not entitle them to Group relief. The Scottish Government is keen to understand whether making the proposed changes could potentially impact other LBTT reliefs and exemptions in a similar manner.

⁶ <http://www.legislation.gov.uk/asp/2014/16/part/5/enacted>

Question 12: Can you identify any potential unintended impacts or effects on the current LBTT regime through providing parity with SDLT on the treatment of CoACS or through providing a seeding relief for PAIFs and CoACS?

60. The potential for avoidance around these issues is complex, presents a real risk to revenue and needs to be considered carefully. The Scottish Government is keen to hear from stakeholders on this to ensure that the reliefs have a positive longer term overall impact on economic growth, and as a consequence tax revenues, and that any opportunities for tax avoidance to emerge are properly addressed.

61. Both SDLT and LBTT provide for a charge at market value that will apply to acquisitions of property from connected parties. SDLT also makes the operator of a PAIF or CoACS, as opposed to the unit or share-holders, responsible for filing and payment of SDLT including any tax clawed back.

62. The GDO rules that are currently applied to PAIFs are also applied for the purposes of a CoACS claiming SDLT seeding relief, as a means of ensuring that narrowly held CoACS cannot benefit from seeding relief. If the Scottish Government were to introduce similar reliefs, then it would be likely that this would also be our starting point to combat artificial tax avoidance.

Question 13 – If the Scottish Government introduced a relief, do you believe it should introduce GDO rules for CoACS or do you believe another test could be equally as effective in combating artificial tax avoidance?

63. The UK Government has also introduced a 'portfolio test' limiting the application of the relief to transactions where a minimum number of properties and a minimum value of properties are transferred, in order to eliminate the risk of enveloping (7):

- for non-residential property, the minimum value is £100 million and the minimum number of properties is ten;
- for residential property, the minimum value is £100 million and the minimum number of properties is 100; and
- for funds with a mix of both residential and non-residential properties, a percentage test applies. If the total value of residential property in a portfolio is less than or equal to 10%, then the non-residential requirements must be met. If the total value of residential property in a portfolio is greater than 10%, it is the residential requirements which must be met.

64. In order for the Scottish Government to consider introducing reliefs and given that funds usually hold property on a pan UK basis, we are keen to hear your views

7 To wrap ownership of a property within a company structure.

on whether a similar portfolio test should be applied in Scotland (based on total property assets across the UK).

Question 14: If the Scottish Government introduced the proposed reliefs, should it introduce general portfolio tests with the same thresholds as the UK (based on the value of pan UK property) or should a more Scottish orientated threshold be used?

Question 15: If the Scottish Government introduced the proposed reliefs, should it legislate for a percentage of ownership test in the same manner as the rest of the UK?

65. The UK has also introduced a mechanism to recover ('claw back') from the fund any SDLT that has been relieved, where the fund ceases to qualify as an authorised PAIF or CoACS, including meeting GDO conditions if the portfolio test is not met at any time within 3 years of the end of the seeding period.

66. The UK also recovers the SDLT that has been relieved in proportion to what was originally claimed where:

- some or all of the units received in consideration for the initial seeding are disposed of within 3 years of the end of the seeding period (a 'first in, last out' principle is applied, so that the 'seeded' units are treated as the last units to leave a fund on disposal); and
- a 'seeded' property is occupied by a person connected with the fund

67. The Scottish Government is aware from industry representations that some of the anti-avoidance measures above, including the claw back arrangements the UK has put in place, has prevented the sector from using the SLDT seeding relief as was intended.

Question 16: Should the Scottish Government, if introducing the proposed reliefs, implement the same claw back provisions as introduced under the UK's SDLT regime? If not, what conditions should be applied and how would you suggest recovery of the tax should operate?

68. In terms of liability, the Scottish Government understands that where SDLT is recovered from a PAIF, the fund itself is wholly liable for any tax when the relief is clawed back and is required to make a return of the tax due. Where SDLT is recovered from a CoACS, the scheme operator is liable. This differs from the general rule of these schemes in that the share or unit holders normally have to account for their tax liability from the income they receive from these schemes.

Question 17: Do you believe that the fund managers and scheme operators should be liable for the recovery of any tax liability resulting from these potential reliefs?

Question 18: Please identify and describe any other areas of potential tax avoidance that you think could arise by amending LBTT legislation to provide a seeding relief and change LBTT treatment of CoACS.

69. The Scottish Government is also concerned that the relief might encourage 'enveloping' of residential property within a company structure, where shares are traded to avoid paying LBTT (which would be outside the scope of the tax). Whilst the UK introduced an 'enveloping tax' in 2013, this tax is currently reserved and the Scottish Government would not want to encourage enveloping of properties artificially to avoid LBTT.

70. The Scottish Government is also mindful of potential impacts and effects on the residential property market, for example for first time buyers, if large numbers of properties were purchased by large UK and overseas institutional investors for rental purposes.

Question 19: If seeding relief were introduced in Scotland, should it just apply to non-residential property?

Chapter 6: Effects on Equal Opportunities, Human Rights, Island Communities, Local Government, Sustainable Development etc.

Equal opportunities

71. The Scottish Government assessed the potential impacts of the *Land and Buildings Transaction Tax (Scotland) Act 2013* on equal opportunities. These regulations, which stem from the powers in the Act, do not discriminate with respect to any of the protected characteristics (including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) either directly or indirectly.

Human rights

72. The proposed reliefs do not infringe on or affect any subject areas of the European Convention on Human Rights (ECHR). No differential impact on human rights or any impact on any individual's civil liberties through the proposals have been identified.

Business Impacts

73. No negative impacts on Scottish businesses have been identified by way of the proposed reliefs.

Privacy impacts

74. The proposed reliefs, if taken forward, would be subject to other legislation that prohibits, restricts access or relates to the disclosure of that information, for example the Data Protection Act 1998 or the Revenue Scotland and Tax Powers Act 2014. As a result, there are no privacy impacts resulting by way of the proposed reliefs.

Island communities

75. The proposed reliefs have no identified differential impact on island and rural communities.

Local government

76. There are no additional responsibilities or costs to local authorities of the proposed reliefs.

Sustainable development

77. The proposed reliefs will have no impact on sustainable development.

Question 20: Would LBTT parity with SDLT regarding PAIFs and CoACS in any way impact upon equal opportunities, human rights, island communities, privacy and/or sustainable development in Scotland?

Chapter 7: Responding to this consultation

78. This consultation is your opportunity to share your views on whether the Scottish Government should introduce a seeding relief for PAIFs and CoACS to help us consider the potential impact such an amendment to the relief could have. **Please submit your response by Thursday 2 August 2018.**

79. Under certain circumstances, we can receive written submissions. Please see below for details.

Written submissions

80. You should respond to this consultation on the Citizen Space website at the following link in the first instance: <https://consult.gov.scot/fiscal-responsibility/seeding-relief/>. **Please only use Citizen Space and do not email responses.**

81. However, should you have accessibility requirements or are unable to access Citizen Space you may reply by sending your response to the Scottish Government by post **by Thursday 2 August 2018** to:

David Kerrouchi
Scottish Exchequer
Scottish Government
3D North
Victoria Quay
Edinburgh
EH6 6QQ

82. We would be grateful if you would use the consultation questionnaire provided for your response.

Handling your response

83. We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be public. Please ensure that you send a copy of your **Respondent Information Form** with any responses so that we have your details and know if you are happy for your response to be available publicly. **We cannot use your response without this.**

84. If you ask for your response not to be public, we will regard it as confidential and treat it accordingly. **All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it for information relating to responses made to this consultation exercise.**

Next steps

85. If you tell us we can make your response public, we will put it in the Scottish Government Library and on the Scottish Government consultation web pages. We will check all responses, where agreement to publish has been given, for any wording that might be harmful to others before putting them on the Consultation Hub website.

What happens next?

86. This consultation will run for a period of 12 weeks from **3 May 2018 to 2 August**. Following the closing date, all responses will be analysed and considered along with any other available evidence to help Ministers reach a decision about the potential reliefs. We will publish the analysis and governance on the Consultation Hub website: <https://consult.gov.scot/>. Should Ministers decide to make changes, then a further consultation on draft legislation will be published shortly after summer recess with a view to laying the amending legislation in the Scottish Parliament in late 2018.

Comments and complaints

87. If you have any comments, questions or complaints around this consultation exercise, please send them to:

David Kerrouchi (David.Kerrouchi@gov.scot)

Fiscal Responsibility Division
Scottish Government
Area 3D North
Victoria Quay
Edinburgh
EH6 6QQ

Scottish Government consultations

88. This consultation and all other Scottish Government consultation exercises are viewable online on the consultation web pages of the Scottish Government website at: <https://consult.gov.scot/fiscal-responsibility/seeding-relief/>.

89. The Scottish Government has an e-mail alert system for consultations. This system, called SEconsult, allows individuals and organisations to register and receive a weekly email with details of all new consultations (including web links). SEconsult complements, but in no way replaces, Scottish Government distribution lists. Designed to allow people with an interest to keep up to date with all Scottish Government consultation activity, you can register at SEconsult: <http://www.scotland.gov.uk/consultations/seconsult.aspx>

List of Abbreviations

SLfT	Scottish Landfill tax
AUT	Authorised Unit Trust
CoACS	Co-Owned Authorised Contractual Schemes
PAIF	Property Authorised Investment Fund (a type of Open Ended Investment Company with primarily property assets)
OEIC	Open Ended Investment Company (a type of company that is structured to invest in other companies and assets with a flexible make up)
LBTT	Land and Buildings Transaction Tax (Scottish property and land transaction tax)
SDLT	Stamp Duty Land Tax (UK property transaction tax)
ECHR	European Court of Human Rights
RSTPA	Revenue Scotland Tax Powers Act
GDO	Genuine Diversity of Ownership



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