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The Land and Buildings Transaction Tax Additional Dwelling Supplement

A call for evidence and views

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1 – Overview and aims

- 1.1 Land and Buildings Transaction Tax (LBTT) is a tax applied to land transactions (including commercial leases) in Scotland. It is administered by Revenue Scotland, with support from Registers of Scotland (RoS).
- 1.2 The Additional Dwelling Supplement (ADS) was introduced in Scotland from 1 April 2016, in response to the UK Government's planned introduction from the same date of Higher Rates for Additional Dwellings (HRAD) to Stamp Duty Land Tax (SDLT) in England, Wales and Northern Ireland. A similar arrangement was subsequently introduced as part of the Land Transaction Tax (LTT) in Wales in April 2018.
- 1.3 The ADS applies, in general terms, when a buyer, or more than one buyer, purchases a property which results in them owning more than one residential property, and they are not replacing their main residence. It is an additional amount of LBTT, charged at 4% of the relevant consideration for a transaction where the total purchase price of an additional dwelling is £40,000 or more. The relevant consideration for these purposes is the chargeable consideration for the property.¹

Aims of this Call for Evidence and Views

- 1.4 The ADS forms part of the Scottish Government's drive to protect and support opportunities for first-time buyers in Scotland, reinforcing the progressive approach in place for LBTT rates and bands. It also raises vital revenue to support public services in Scotland. Furthermore, with similar tax arrangements in place across the UK (the HRAD in SDLT and Higher Rates of LTT), the absence of the ADS could have a destabilising impact on the Scottish property market. As such, it is an important element of the overall LBTT arrangements, and the Scottish Government intends for it to continue.
- 1.5 The available evidence indicates that the ADS operates well in most circumstances. However, taxpayers and stakeholder organisations have raised concerns about the way in which the legislation works in some specific circumstances. As examples, concerns have been raised about the timelines, the application of the ADS in various joint buyer scenarios, the way in which the "economic unit" provisions may apply and the treatment of purchases following inheritance or after a divorce or separation.
- 1.6 In light of this, the Scottish Government committed to undertake a review of the ADS in the 2021-22 Programme for Government.
- 1.7 This 12 week call for evidence and views represents the first step in the review. The Scottish Government wants to hear from taxpayers, stakeholder organisations and anyone with an interest in tax in order to:
 - build a clear and shared understanding of all the issues of concern with the ADS;
 - develop a stronger evidence base regarding the case for change; and
 - identify any proposals for legislative amendments which could address the issues of concern.

¹ [Paragraph 4\(3\); Schedule 2A; Schedule 2, Paragraph 1.](#)

- 1.8 Views and evidence are also sought on whether there are issues in relation to the ADS affecting different parts of Scotland which should be considered. The Scottish Government recognises that housing market access and performance in Scotland can vary significantly by area and that there may, for example, be particular concerns about the ADS in remote and rural areas.
- 1.9 Whilst this process is intended to be wide-ranging, views are not sought on whether the ADS should continue, or on the specific rate at which it should be charged.
- 1.10 In addition to inviting written responses, the Scottish Government intends to arrange virtual events with stakeholders and other interested parties over the next 12 weeks to discuss the ADS in more detail.

Next Steps

- 1.11 The review of the ADS will be taken forward on a phased basis, reflecting the processes and principles in the Scottish Government's Framework for Tax.
- 1.12 Following the end of the 12 week period, the Scottish Government will publish, in early summer 2022, an analysis of responses to this document and outline next steps in the process of the review.
- 1.13 We will carefully consider all available evidence and responses, taking account of the tax decision-making matrix set out in Chapter 5. If a need for change is identified, a further consultation on any proposed legislative amendments will be published.
- 1.14 In the event that legislative changes are ultimately proposed, the Scottish Government does not intend for these to have retrospective effect.

2 – When is the ADS due?

- 2.1 This chapter provides some statistics about the payment of the ADS and summarises how the legislation works in terms of determining whether the ADS is due.
- 2.2 This commentary is not intended to represent every aspect of the ADS legislation and is solely intended to provide general context for the reader. For detailed guidance, please consult the legislation, in particular at Schedule 2A of the Land and Buildings Transactions Tax (Scotland) Act 2013 (hereafter referred to as “the Act”). All footnotes referencing legislation are references to the Act unless otherwise stated.
- 2.3 The Revenue Scotland guidance² includes worked examples to illustrate how the ADS works in practice. Some of these examples are replicated, with minor edits, in this document to assist understanding in more specific scenarios. A wider range, along with detailed guidance, is available on Revenue Scotland’s website. This reflects the diverse range of situations in which the ADS may apply.
- 2.4 Throughout this document, the term “dwelling” has the same meaning as that used in Revenue Scotland guidance³.

How often is the ADS paid?

- 2.5 As overall context, over the five year period 1 April 2016 to end March 2021, around 510,190 residential LBTT returns were submitted to Revenue Scotland. Of these 22% (112,000) included an amount of tax related to the ADS. The amount of ‘gross’ (before repayments) ADS payable over this period was £670.6 million. This means the average amount of ‘gross’ ADS paid per transaction was just under £6,000.⁴
- 2.6 The ADS is most frequently paid in areas with the largest number of property transactions. Five local authority areas – Glasgow, Edinburgh, Fife, South Lanarkshire and Highland – account for 44% of all ADS transactions.⁵

Considering whether the ADS is due.

- 2.7 For policy and operational reasons, the legislative provisions for the ADS do not simply apply where a second home or buy to let property is purchased. Instead, two tests⁶ determine whether the ADS is due on the purchase of a dwelling with a consideration of £40,000 or more. This specific amount reflects the fact that a LBTT return is not required where the chargeable consideration is less than £40,000⁷.
- 2.8 The two tests are summarised below. In addition to these, there are special rules for some transactions. These are covered in the box further below.

2 [LBTT10001 - LBTT Additional Dwelling Supplement | Revenue Scotland](#)

3 [LBTT10018 - What counts as a dwelling | Revenue Scotland](#)

4 [Table 3, 2020-21 Annual Summary of Trends in the Devolved Taxes published | Revenue Scotland](#)

5 [Figure 20, 2020-21 Annual Summary of Trends in the Devolved Taxes published | Revenue Scotland](#)

6 [Schedule 2A Para 2\(1\)](#)

7 [Section 30\(1\)\(b\)](#)

The First Test

- 2.9 The first test is that the buyer owns, anywhere in the world, more than one dwelling at the end of the day that is the effective date of the transaction. Effective date, in this context, is normally the date of completion.⁸
- 2.10 In establishing how many dwellings are owned, where two or more buyers will be jointly entitled to the ownership of the purchased property, the first test is met if it is met by **either** of the joint buyers.⁹ As will be discussed below, the rules applicable to joint buyers differ in relation to the second test or in subsequently determining whether the ADS can be reclaimed after it is paid.

Revenue Scotland Worked Example¹⁰

Roni is purchasing her first dwelling. Because she works away from home, she intends to rent it out with the view to possibly moving in there one day if her work situation allows. At the end of the day that is the effective date of the transaction, Roni owns one dwelling, so she will not pay the ADS.

Further Example

Johnny is selling the dwelling which is his main residence and purchasing a dwelling to be used as his next main residence on the same day. At the end of the day that is the effective date of the transaction, Johnny owns one dwelling, so he will not pay the ADS.

- 2.11 In addition, in counting the number of properties owned, any property owned by a spouse, civil partner or cohabitant, along with their dependent children, will count¹¹. These are known as the “economic unit” provisions.
- 2.12 The economic unit provisions have a specific anti-avoidance purpose. They prevent, for example, a couple purchasing a second dwelling without having to pay the ADS where one of the couple already own a dwelling. They apply regardless of whether or not the property is being purchased solely or jointly with a spouse, civil partner or cohabitant.

Revenue Scotland Worked Example¹²

Mr and Mrs Wainwright are married. Mr Wainwright owns a dwelling (which he purchased on his own before he was married) where the couple live as their main residence. Mrs Wainwright then buys a dwelling to be rented out.

At the end of the day that is the effective date of the transaction, Mrs Wainwright “owns” two dwellings; the newly purchased dwelling and, for the purposes of the ADS, is deemed to be the owner of her spouse’s existing dwelling (“deemed ownership”).

As Mrs Wainwright is not replacing her main residence, the ADS will apply.

⁸ [Section 63; Paragraph 2\(1\)\(c\), Schedule 2A](#)

⁹ [Paragraph 5, Schedule 2A](#)

¹⁰ Revenue Scotland Worked Example - [First-time buyer | Revenue Scotland](#)

¹¹ [Paragraph 6, Schedule 2A](#)

¹² Revenue Scotland Worked Example - [One spouse owns marital main residence, the other spouse buys a buy-to-let dwelling | Revenue Scotland](#)

- 2.13 Part 6 of Schedule 2A also deals with deemed ownership rules, what counts as a dwelling owned by a person for the purposes of the ADS and areas such as trustees and beneficiaries under certain trusts.
- 2.14 This first test means that the ADS needs to be considered in a range of transactions. These can include when:
- a second home or a buy to let property is purchased;
 - someone buys their first main residence but also owns other residential property which is rented out, or has a share in an inherited residential property;
 - a first-time buyer jointly buys with someone who already owns another residential property; or
 - a new main residence is purchased before a previous main residence is sold.

The Second Test

- 2.15 If the first test is met, then the ADS will be due **unless** a main residence has been replaced.¹³
- 2.16 Three conditions¹⁴ must be met for a main residence to have been replaced. These are that the buyer must have:
- disposed of the ownership of a dwelling during the 18 month period prior to the effective date of the purchase of the new property;
 - lived in the dwelling sold as their only or main residence at some point during that preceding 18 month period; and
 - on the effective date, intended to occupy the new property as their only or main residence.
- 2.17 In considering these conditions, a critical point is therefore that a dwelling must have been owned to count as a main residence for the purposes of the ADS legislation. This means, for example, that a property in which someone has lived as a tenant will not count.

Revenue Scotland Worked Example¹⁵

Ben and Antonia live together in rented accommodation. Ben also owns a buy-to-let property.

They now decide to buy a new main residence whilst keeping Ben's buy-to-let property. At the end of the day that is the effective date of the transaction, Ben and Antonia will own two dwellings.

Although they have purchased a new main residence, they will not have disposed of the ownership of their previous main residence (as they lived in rented accommodation), therefore the ADS will apply.

¹³ [Paragraph 2\(1\)\(d\), Schedule 2A](#)

¹⁴ [Paragraph 2\(2\), Schedule 2A](#)

¹⁵ Revenue Scotland worked example [Buy-to-let owner purchasing new main residence, existing main residence was rented | Revenue Scotland](#)

- 2.18 Disposal of the ownership of a property will usually occur through its sale, but may occur in other ways. This may, for example, be through an individual selling their share in a residential property rather than the property itself.
- 2.19 For **joint buyers**, if more than one buyer is entitled to ownership of a new dwelling, and if more than one property is owned at the end of the effective date, then all buyers must satisfy the three conditions for replacing a main residence, or the ADS will apply. This is therefore different than the position for the first test.
- 2.20 This reflects provisions in the Act which apply to joint buyers in all circumstances, not just in relation to the ADS¹⁶. These provide that any obligation or liability of either buyer in terms of the Act is an obligation of them both. The effect of this is that if more than one property is owned at the end of the day and only one buyer has replaced a previous main residence, then the ADS will be due.
- 2.21 There is however a specific relief¹⁷ from this requirement for certain spouses, civil partners, or cohabitants who purchase a new main residence jointly. This provides for a relief from the ADS in the event that either buyer can satisfy the first condition (by disposing of the ownership of a dwelling in the 18 month period) and both buyers can satisfy the second and third conditions. This means that both buyers must have lived in the dwelling sold as their only or main residence in the relevant 18 month period and, on the effective date, intend to occupy the new property as their only or main residence.

16 [Section 48](#)

17 [Paragraph 9A, Schedule 2A](#)

Revenue Scotland Worked Example¹⁸

Bob and Babs are married and live in a marital home solely owned by Babs. Bob owns a separate dwelling which he lets out to a third party. Bob and Babs decide to sell Babs' property and jointly purchase a replacement main residence.

Bob will own, and Babs will be deemed to own, two dwellings at the end of the day that is the effective date of the transaction but only Babs will have sold a main residence within the previous 18 months. The ADS is not payable as the purchase qualifies for relief under Schedule 2A, paragraph 9A of the Act.

The Overall Position

2.22 In summary:

- For an individual buyer, if more than one property is owned at the end of the effective date (taking into account the economic unit provisions) and a main residence has not been replaced, then the ADS will be due.
- For joint buyers, if more than one property is owned at the end of the effective date by either buyer and both buyers have not replaced a main residence, then the ADS will be due.
- **However**, for joint buyers who are also spouses, civil partners or cohabitants in this situation, there is a relief from the requirement for both buyers to replace a main residence if:
 - one buyer has replaced a previous main residence (by disposing of its ownership);
 - both buyers had resided in the property as their only or main residence; and
 - both buyers intend to occupy the new dwelling as their only or main residence.

Exceptions, Special Circumstances and Reliefs

Whilst not intended to be the focus of this call for views and evidence, the legislation sets out a range of other provisions which must be considering in determining whether the ADS is due. Commentary on this is set out below.

This is not exhaustive, and there are also, for example, specific rules regarding the interaction of the ADS and Multiple Dwellings Relief and the application of the ADS for mixed-use transactions.

Non-Individuals

The two tests described in this chapter do not apply to purchases by a non-individual, such as a company, investment trust or any other corporate entity.

They also do not apply to purchases made by an individual acting either as a sole trader or as a partner in a partnership, for whom the sole or main business activity is investing or dealing in property.¹⁹

18 Revenue Scotland worked example: [One spouse owns main residence, joint purchase of new main residence | Revenue Scotland](#)

19 [Paragraph 3\(2\), Schedule 2A; Paragraph 3\(4\), Schedule 2A](#)

In these instances, where the transaction includes a residential property and the relevant consideration is £40,000 or more, the ADS will always apply and cannot be reclaimed.

This is intended to counter potential tax avoidance opportunities where an individual could purchase an additional dwelling via a company or business in order to avoid the ADS. The Scottish Government intends for this to remain the position.

Trusts

The ADS will apply if an individual is making the acquisition as trustee under a settlement and, in relation to the dwelling that is or forms part of the subject matter of the transaction, there is no interested beneficiary.²⁰

There is an interested beneficiary²¹ if the beneficiary has, or will have, a relevant interest in the dwelling. A beneficiary has a relevant interest in a dwelling if the beneficiary is entitled to occupy the dwelling for life or income in respect of the dwelling.²² If this is the case, they are treated as 'the buyer' for the purposes of the ADS.²³

Where a person is the beneficiary under a bare trust, or a settlement under which the beneficiary has a relevant interest in the dwelling that forms part of the trust property, the beneficiary is treated as the owner of the dwelling.²⁴

A bare trust is a trust under which the property is held by the trustee for a person who is absolutely entitled as against the trustee.²⁵

Where a person owns a dwelling as trustee or a personal representative of another, the person is not treated to be the owner of the dwelling for the purposes of Schedule 2A.²⁶

Relief for six or more purchases

A full relief from ADS applies where six or more dwellings are purchased in a single transaction.

20 [Paragraph 3\(5\), Schedule 2A](#)

21 [Paragraph 3\(6\), Schedule 2A](#)

22 [Paragraph 20\(3\), Schedule 2A.](#)

23 [Paragraph 7, Schedule 2A](#)

24 [Paragraph 13, Schedule 2A](#)

25 [Paragraph 19, Schedule 18.](#)

26 [Paragraph 14, Schedule 2A](#)

3 – Claiming a Repayment of the ADS

- 3.1 The Scottish Government recognises that some buyers may purchase a new main residence before disposing of the ownership of their previous one. As such the legislation provides that, if paid, the ADS can be reclaimed if certain requirements are met.
- 3.2 This chapter provides some statistics about the number of claims for repayment of the ADS which are made, along with some commentary on the legislative arrangements which allow for this. The points set out in paragraphs 2.2 to 2.4 apply equally to this chapter.

How often are claims made for a repayment of the ADS?

- 3.3 The LBTT return includes a box to indicate that the taxpayer intends to reclaim the ADS. This enables Revenue Scotland to understand those payments which might be reclaimed in future. There is however no requirement to indicate an intent to claim a repayment, and not doing so does not prevent a claim being made. Equally, some people who indicate that they intend to claim a repayment may eventually opt to hold on to their previous property or have done so erroneously.
- 3.4 Over the five year period from 1 April 2016 to end March 2021, the latest annual Revenue Scotland statistics²⁷ indicate that:
- 77% of those who paid the ADS did not intend to reclaim it at the time of the transaction. (85,830 transactions);
 - 23% of those who paid the ADS indicated that they did wish to reclaim it (26,170 transactions); and
 - Over each of the five years, the percentage of those who intended to claim a repayment of the ADS that went on to do so has ranged from 63.4% to 70.4%.²⁸

Considering whether the ADS can be repaid.

- 3.5 The ADS legislation provides that the ADS can be repaid if three conditions²⁹ are met:
- The buyer sells a dwelling, which was not the dwelling subject to the ADS in the first instance, within an 18 month period³⁰ from the day after the effective date of the transaction;
 - The dwelling sold was the buyer's only or main residence during the 18 month period ending with the effective date of the transaction; and
 - The dwelling that was subject to the ADS has been occupied by the buyer as their only or main residence.

²⁷ Table 4, [2020-21 Annual Summary of Trends in the Devolved Taxes published | Revenue Scotland](#)

²⁸ Taxpayers who have paid the ADS in 2019-20 and 2020-21 in particular, plus a small number of 2018-19 taxpayers, will still have been within the relevant window for selling a previous main residence on 31 March 2021.

²⁹ [Paragraph 8, Schedule 2A](#)

³⁰ Extended to 36 months through the [Coronavirus \(Scotland\) \(No.2\) Act](#) for transactions with an effective date between 24 September 2018 and 24 March 2020.

- 3.6 The 18-month period here is intended to provide a balanced approach. It takes account of the potential for sales of a property to be delayed whilst also providing certainty to the Scottish Government in terms of tax revenues.
- 3.7 For **joint buyers**, in determining whether a repayment of the ADS can be claimed, the provisions in Section 48 of the Act discussed at 2.20 are again relevant. They mean that all buyers have to satisfy the three conditions in order for the ADS to be repaid, unless specific provisions applying to spouses, civil partners or cohabitants in paragraph 8A of Schedule 2A³¹ apply.
- 3.8 These provisions work in a similar way to the provisions at paragraph 9A³². They allow for repayment of the ADS if: either buyer can satisfy the first condition by disposing of the ownership of a dwelling in the 18 month period; and both buyers can satisfy the second and third conditions. This means that both buyers must have lived in the dwelling sold as their only or main residence in the relevant 18 month period and have occupied the new property as their only or main residence.

Revenue Scotland Worked Example³³

Jim and William are purchasing a dwelling jointly which is intended to be their main residence. They each already own a dwelling, which they (separately) used as a main residence. Neither previous main residence was sold at the time of purchase.

Upon purchase, as they will each be deemed to own three dwellings and they will not (yet) have replaced their main residence, the ADS will apply. Jim then sells his previous main residence 5 months later. But they will not yet be able to claim a repayment of ADS, as the joint buyers have not replaced their main residence. William then sells his old house 13 months later. At this point, Jim and William will be eligible to claim a repayment of the ADS they paid.

Revenue Scotland Worked Example - Paragraph 8A³⁴

Marc and Ava currently live together in their main residence solely owned by Ava. They decide to jointly purchase a new main residence which will replace their previous main residence. Unfortunately, the previous main residence does not sell prior to the effective date.

Therefore, the ADS is payable on the purchase of the new main residence as at the effective date the couple own or are deemed to own more than one dwelling and they have not sold their previous main residence.

The previous main residence sells 5 months later. Although only one of the joint buyers (Ava) has actually replaced or sold their previous main residence paragraph 8A, Schedule 2A of the Act applies and a repayment of the ADS already paid can be claimed.

31 [Paragraph 8A, Schedule 2A](#)

32 [Paragraph 9A, Schedule 2A](#)

33 Revenue Scotland Worked Example: [Reclaiming ADS paid after all joint buyers sell main residences | Revenue Scotland](#)

34 Revenue Scotland Worked Example: [Repayment of ADS already paid on sale of previous main residence solely owned by only one buyer | Revenue Scotland](#)

4 – Issues of Concern Raised

- 4.1 This chapter summarises and seeks views on key issues of concern for the operation of the ADS which taxpayers and stakeholders have raised to date.
- 4.2 It is included to help ensure that the Scottish Government obtains evidence and views on the most frequently raised points, but is not intended to be exhaustive. Respondents are invited to highlight and provided evidence on any other issues which they would like the Scottish Government to consider as part of this review.
- 4.3 Equally, the inclusion of any issue is not intended to signal a commitment that the Scottish Government intends to amend the legislation to address it in future.
- 4.4 For all issues, the Scottish Government seeks evidence of their frequency and impact, along with proposals as to how they might be addressed, whether through legislation or other measures. Further commentary on the criteria that the Scottish Government will take into account in considering calls for change is set out in chapter 5.
- 4.5 The issues are grouped into four broad themes:
- A. The timelines for the ADS
 - B. Specific issues including in relation to:
 - Inherited Property
 - Divorce or Separation
 - Joint Buyers/Economic Unit ProvisionsJoint Buyer related scenarios are the most complex and can be relevant to both whether ADS is due or can be repaid.
 - C. Transactions involving Housing Providers
 - D. Exceptional Circumstances
- 4.6 For each issue, a reference to any relevant legislation is provided along with commentary on how this works in practice and on the concerns which have been raised. Relevant questions are then set out for consideration.

A. The Timelines for the ADS

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

Relevant Provisions: Paragraph 2, Schedule 2A

- 4.7 When more than one residential property is owned at the end of the effective date of a transaction, consideration must be given as to whether a previous main residence has been “replaced”.³⁵
- 4.8 This is covered in chapter two, but for ease of reference it requires that the ownership of a property must, among other things, have been disposed of in the 18 months prior to the relevant transaction, and that this property was used as an only or main residence at some point during that period.
- 4.9 This recognises that some people will sell their main residence before going on to purchase a new one. The legislation provides 18 months for the subsequent purchase, on the basis that the process of finding a new home may take time. The length of the window mirrors the length of time available to dispose of the ownership of a previous main residence after the ADS is paid, which is discussed below (see A2).
- 4.10 If a new main residence is purchased after 18 months then, if any other property is owned at the effective date of a new purchase, the ADS will be due, regardless of whether a new main residence is being purchased or not.
- 4.11 Some stakeholders have argued that 18 months is not enough in some circumstances and that the timeline should be extended, potentially to 36 months to align with the arrangements in place for SDLT and LTT.
- 4.12 However, aside from some concerns highlighted early in the pandemic period, no conclusive evidence has been presented as to the specific case for this.

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?

35 [Paragraph 2\(2\), Schedule 2A](#)

A2. Disposal of a previous main residence: 18 month window

Relevant Provisions: Para 8(1), Schedule 2A

- 4.13 If the ADS is paid following the purchase of a new main residence, it may be reclaimed if a previous main residence is sold within 18 months of the effective date of the purchase.
- 4.14 As set out in chapter two, this presents a balanced approach and the current data available indicates that at least two-thirds of buyers who intend to reclaim their ADS go on to do so.
- 4.15 Some stakeholders have called on the Scottish Government to increase the time available for a previous main residence to be sold, and that this should ideally align with the 36 month period in place for SDLT and LTT.
- 4.16 The Scottish Government recognises that there may be circumstances in which sales may take longer than 18 months, particularly in relation to the specific circumstances of housing markets in remote and rural areas. However, there is a clear risk that any extension could encourage people to hold onto properties longer than would otherwise have been the case, to allow for its use as a rental property and/or in anticipation of capital appreciation over time.
- 4.17 As a specific issue, the Scottish Government recognises that there are unfortunate cases where taxpayers have been unable to sell a previous main residence due to issues associated, in particular, with the lending market's current approach to cladded properties, and where the 18 month repayment window has either ended, or will come to an end, before the necessary works or assessment to allow for a sale can be completed. It may be that this situation could be addressed through the introduction of an exceptional circumstances provision (please see D below).

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?

B. Specific Scenarios

B1. Inherited Property

Relevant Provisions: Paragraphs 12 and 14, Schedule 2A

- 4.18 Individuals do not pay LBTT on residential property that they inherit and no ADS will be due if this occurs. However, in determining whether or not the ADS is due, any inherited property owned is counted in calculating the overall number of dwellings owned.
- 4.19 The Scottish Government is aware of two separate concerns in this area.
- 4.20 The first occurs where individuals inherit a small share of a property which is owned jointly, for example when a group of siblings inherit a share of a property from a parent. In this instance, the deeming rules on joint ownership in the legislation mean that each person with a share in the property is treated as owning the whole of the inherited property, regardless of how small their individual share is. If the overall value of the property is £40,000 or more, then it will count as a dwelling owned by the individual for the purposes of the ADS, even if the individual share is worth less than £40,000.
- 4.21 Separately, some stakeholders have suggested the introduction a grace period along the lines of that in place for SDLT and LTT where the ADS would not apply for a period following an inheritance. For SDLT, where a person inherits a share of 50% or less of a residential property in the three years before the purchase of a new main residence, this can be ignored for the purposes of the higher rates if: the beneficiary became a joint owner of the interest by inheritance; and the beneficiary and any spouse or civil partner's combined interest has not exceeded half of the major interest in the three years before the effective date of the chargeable transaction.
- 4.22 The Scottish Government seeks views on the case for introducing a similar, or more targeted, arrangement for LBTT. One approach in this regard might be to consider situations where a buyer inherits a property after missives have been signed for the purchase of a new main residence.

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?

B2. Divorce or Separation

Relevant Provisions: Paragraph 6, Schedule 2A

- 4.23 The economic unit provisions referred to in 2.11 – 2.12 do not apply if a couple have separated³⁶. For the purposes of the ADS, individuals have separated if they no longer live together and they do not intend to live together again. 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.
- 4.24 All other legislative arrangements for the ADS apply as normal however. As such, if a share continues to be owned in the former marital or shared home it will count as an owned property.
- 4.25 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.
- 4.26 A change along these lines would however create an obvious difference in treatment for certain buyers, allowing more than one property to be owned – albeit in specific circumstances – without the ADS being due.
- 4.27 As a more specific approach, the Scottish Government notes that the SDLT legislation includes provisions to address a scenario where a divorcée or ex-civil partner is required by court order to retain an interest in a former home.³⁷

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?

³⁶ [Paragraph 6\(2\), Schedule 2A](#)

³⁷ [Section 40 and Schedule 11, Finance Act 2018](#) amended [Schedule 4ZA to Finance Act 2003](#)

B3. Joint Buyers/Economic Unit Provisions

Relevant Provisions: Section 48, Paragraph 6 and 8A, Schedule 2A,

- 4.28 There are many situations where two or more people may own or buy a property together. Stakeholders and taxpayers have indicated that, where this occurs and more than one property is owned at the relevant effective date, additional complexity may exist for the ADS.
- 4.29 A particular concern expressed, and discussed earlier in this document, is that while one of the buyers can determine whether the ADS is due in the first instance³⁸ both buyers must meet the requirements in order for the ADS to be repaid.
- 4.30 This means, for example, that the disposal of the ownership of a previous main residence by one party does not count as a disposal by the other if they had not lived in that property as their main residence (taking into account the provisions at 8A and 9A of Schedule 2A discussed earlier in this document).
- 4.31 The joint buyer scenario most frequently raised with the Scottish Government is highlighted below, using “A” and “B” to illustrate the two buyers. To aid understanding, a relevant Revenue Scotland worked example is also provided.
- 4.32 The Scottish Government recognises that there are various other scenarios involving joint buyers where the application of the ADS legislation may cause concern and seeks views and evidence on these.

Repayment of ADS not available following sale of only one buyer’s previous main residence

- A and B purchase a property together, but do not currently live together.
- A owns a main residence, but B does not own any other property.
- A does not sell the main residence before the effective date of the transaction for the joint property.
- A and B must pay the ADS as more than one property is owned and a main residence has not been replaced.
- A and B cannot reclaim the ADS even if A’s previous main residence is sold as they do not both meet the conditions at Paragraph 8(1)(b) (as B never lived in A’s property as their main residence) -a condition that needs to be satisfied by virtue of Paragraph 8A(2)(b).

³⁸ [Paragraph 6, Schedule 2A](#)

Revenue Scotland Worked Example³⁹

Rebecca owns her current main residence and she will be buying a new main residence with her partner, Owen, who currently lives in separate rented accommodation.

Rebecca cannot sell her previous main residence before her joint purchase of her new main residence with Owen. Therefore at the end of the day that is the effective date of the transaction, Rebecca and Owen own or are deemed to own one or more dwellings, and as they have not replaced their main residence the ADS will apply.

Rebecca sells her previous main residence three months later and they now wish to claim a repayment of the ADS. However, as both buyers did not occupy that property as their previous main residence, Schedule 2A, paragraph 8A of the Act does not apply and as such repayment of the ADS cannot be claimed.

- 4.33 In this instance, the final outcome in terms of the legislation is the same as it would be if B (Owen in the example above) **does** own another property, such as a buy to let property, which does not qualify as a previous main residence, and did not sell this prior to the end of the effective date of the purchase of the new main residence.
- 4.34 The same situation applies if both buyers had each owned a property, but only one of them sold their only or main residence by the end of the effective date.

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?

³⁹ Revenue Scotland Worked Example: [Repayment of ADS not available following sale of a buyer's previous main residence | Revenue Scotland](#)

C. Transactions Involving Housing Providers

C1. Transactions involving Local Authorities – Affordable Housing

Relevant Provisions: Schedule 6 and Schedule 15

- 4.35 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. For the purposes of the legislation, this means an agreement made under section 75 of the Town and Country Planning (Scotland) Act 1997.
- 4.36 In addition, Schedule 14 of the Act provides relief for certain compulsory purchases by local authorities. As with all transactions, full relief from the ADS is also available where six or more residential properties are acquired in a single transaction.
- 4.37 It has been highlighted that this arrangement means that LBTT, in particular the ADS, may be due in a range of potential scenarios where properties are purchased by local authorities in order to provide affordable housing. This includes, for example, the purchase of “off the shelf” properties from home builders.
- 4.38 Concerns have been expressed that this results in differential treatment relative to housing associations. In this regard, Schedule 6 of the Act provides for relief from LBTT for a land transaction that is partially or fully funded by public subsidy, where the buyer is a Registered Social Landlord and where one or more of the relevant qualifying conditions are met. This means that Registered Social Landlords are relieved from LBTT when buying land or property associated with the delivery of affordable homes.

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?

C2. Housing Co-operatives and other approaches

- 4.39 The Scottish Government is aware that different approaches may be used to support the delivery of housing that is intended to be affordable, and that concerns have been expressed recently about the application of the ADS in relation to housing co-operatives.
- 4.40 The Scottish Government announced in the Programme for Government 2021-22 an intention to “...*explore ways in which we can provide further support for housing cooperatives, including potentially through LBTT relief*”.
- 4.41 Views are accordingly sought on the case for changes to be made to the legislation as it applies to housing co-operatives. Views are also welcome on the treatment of any other form of affordable housing provision not otherwise covered in this document.
- 4.42 As context, the UK Government made changes to the tax treatment of housing co-operatives in Finance Act 2021⁴⁰. This relieved qualifying co-operatives from the 15% flat rate of SDLT, which does not exist within the LBTT arrangements in Scotland. The HMRC guidance notes that SDLT will instead be charged at the higher rates which apply to dwellings purchased by companies. In addition, relief was provided from the Annual Tax on Enveloped Dwellings (ATED)⁴¹, which applies throughout the UK.

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.

40 [Section 89, Finance Act 2021, amending Schedule 4A to Finance Act 2003](#)

41 [Sections 90 and 91, Finance Act 2021, amending Part 3 of Finance Act 2003](#)

D. Exceptional Circumstances

- 4.43 The Scottish Government recognises that very exceptional events and circumstances may arise that are beyond the taxpayer's control, and which may prevent them from satisfying the conditions in the ADS legislation. As an example, issues around cladding are highlighted in paragraph 4.17.
- 4.44 At present, the legislation does not provide Revenue Scotland with any discretion to not apply the ADS provisions in the event that circumstances which they would agree are exceptional occur.
- 4.45 For SDLT HRAD a legislative provision is in place⁴², and HMRC has also published guidance⁴³, on exceptional circumstances for claiming an SDLT refund outside of the normal time limits. This followed a written statement from the then Financial Secretary to the Treasury, in the context of the impact of the pandemic on the housing market. The HMRC guidance notes that where a purchaser acquires a new main residence on or after 1 January 2017, they may still be eligible for a refund if exceptional circumstances prevented them from selling their previous main residence before the expiry of the 3-year time limit that applies in SDLT. The previous main residence must be sold before HMRC will consider whether the circumstances are exceptional.
- 4.46 Separately, the Welsh Minister for Finance and Local Government released a written statement on 16 November 2021⁴⁴, stating an intention to bring forward legislation in due course that will allow taxpayers to claim a refund of the higher rates of LTT *"...where they are replacing their main residence and have sold their previous main residence more than three years after purchasing the new property, if truly exceptional circumstances related to issues with unsafe cladding prevented the sale being completed more quickly."*
- 4.47 Views are sought as to whether the Scottish Government should consider legislating to provide Revenue Scotland with a discretionary power to disapply the ADS provisions in response to truly exceptional circumstances, whether in relation to the specific issue of cladding, or in other areas that raise similar issues, where this might be considered appropriate.

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?

⁴² [Section 76, Finance Act 2020](#)

⁴³ [SDLTM09807 - Stamp Duty Land Tax Manual - HMRC internal manual - GOV.UK \(www.gov.uk\)](#)

⁴⁴ [Written Statement: Land Transaction Tax higher residential rates refund period extension where exceptional circumstances apply \(16 November 2021\) | GOV.WALES](#)

5 – Additional 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.

21. 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?

6 – Criteria for Considering Change

- 6.1 The Scottish Government recognises that there are a number of areas where there may be proposals for change in response to this call for evidence and views.
- 6.2 Careful consideration will be given to all views expressed, supporting evidence and propositions for change offered. In assessing any proposals, the Scottish Government will be guided by the matrix for tax decision making in the Framework for Tax, set out below. Whilst not all aspects of the matrix will be relevant, respondents should take this into account when submitting responses.
- 6.3 In addition, as set out in the Framework for Tax, the Scottish Government is committed to designing taxes that minimise opportunities for tax avoidance practices. It is widely recognised that the introduction of new exemptions and reliefs can have the potential to introduce complexity and result in loopholes and opportunities for tax avoidance. The Scottish Government will carefully consider this in assessing potential options for change.

Fiscal Impacts

Proposals must be accompanied by a policy costing, including an estimate of the impact on our funding position and, where appropriate, an analysis of the distributional impacts. This should include the potential for long-term economic impacts, as well as any impacts on future budgets and the tax base.

Principles and Objectives

Policy options should be considered against the Principles of Good Tax Policy Making, with a clear rationale for any deviation, as well as our strategic objectives and the core policy objectives of the proposed change, identifying any conflicts or trade-offs.

Policy Alignment

Proposals should be considered in the round alongside: other devolved and local tax policies; our economic strategy; spending plans; social security commitments; wider devolved and local government policies; and UK tax and fiscal policies. Analysis should seek to identify any conflicts or trade-offs.

Affordability and Value for Money

Policy costings should be assessed for affordability and value for money, particularly if tax reliefs or exemptions are being considered.

Impact Assessment

The policy development process should surface and consider potential impacts, including unintended consequences, and include applicable impact assessments. For example, in relation to equalities, business and regulation, the environment, human rights and the Fairer Scotland Duty.

Deliverability and Administration

Issues pertaining to delivery, administration and collection should be identified and considered at the earliest opportunity, in consultation with the relevant tax authorities, including consideration of the administrative burden on taxpayers and other delivery partners. Assessment should also be given to any legal, operational or political concerns and impact on the Fiscal Framework or in relation to devolution. Timing of a proposed intervention should be considered in relation to fiscal and economic cycles.

7 – Summary of Questions

A. Timelines for the ADS

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

1. Should the Scottish Government considering 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 appropriate?
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?

A2. Disposal of a previous main residence: 18 month window

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 periods of time should be considered and why?

B. Specific Scenarios

B1. Inherited Property

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?

B2. Divorce or Separation

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?

B3. Joint Buyers/Economic Unit Provisions

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?

C. Transactions Involving Housing Providers

C1. Transactions involving Local Authorities – Affordable Housing

14. What circumstances and issues 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?

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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.

D. Exceptional Circumstances

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?

Additional 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.
21. 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?

8 – How to have your say

We are inviting responses to this consultation by the end of Friday 11 March 2022.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space (<http://consult.gov.scot>).

You can view and respond to this consultation online at:
<https://consult.gov.scot/taxation-and-fiscal-sustainability/additional-dwelling-supplement>

You can save and return to your responses while the consultation is still open.

Please ensure that consultation responses are submitted before the closing date of 11 March 2022.

If you are unable to respond online, please complete the Respondent Information Form (see “Handling your Response” below) to:

LBTT ADS Call for Evidence and Views

Tax Division
Scottish Government
3D North
Victoria Quay
Edinburgh
EH6 6QQ

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document. If you ask for your response not to be published, we will regard it as confidential and will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the 14 provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>.

If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to Devolvedtaxes@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

RESPONDENT INFORMATION FORM

Please Note: this form **must** be completed and returned with your response if you are unable to respond online.

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name of individual or organisation:

Address (including postcode):

Email:

Phone number:

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No



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