LAND and BUILDING TRANSACTION TAX STAKEHOLDER MEETING

8 JANUARY 2016 11:30- 13:00

ATTENDEES

Alistair Brown – SG Finance (Chair)	Robert Buchan SG Finance
Greig Walker - SGLD	Fiona Campbell SG Finance
Ross Lindsay SG Housing	Alistair Paddison SG Housing
John Boyle – Retties/PRS4Scotland	Ed Crockett – Aberdeen Asset Management
Isobel D'Inverno – Law Society of Scotland	Iain Doran – Law Society of Scotland
Caroline Edgar – Scottish Association of Landlords	Jonathan Gordon – RICS Scotland
David Melluish – Scottish Property Federation	Gerry More – Homes for Scotland
Jason Rust – Scottish Land & Estate	Joanne Walker - CIOT
Alexander Garden – CIOT	Lynsey Thomson (by phone) SG Housing
Malcolm Warrack – Let Scotland	Ken Wright - ICAS
Donald Carvel – Revenue Scotland	

MEETING NOTE

1. Alistair Brown welcomed attendees and thanked them for attending the meeting at short notice. He explained that the purpose of the meeting was to provide information about the Scottish Government's plans which had been set out briefly by the Deputy First Minister in his statement on the draft Budget on 16 December, and to obtain initial views from stakeholders on the proposed LBTT supplement for additional properties. The focus was on principles and how best to express them in legislation, rather than administration and operation of the supplement. He added that the Finance Committee of the Scottish Parliament had issued a call for written evidence and encouraged attendees to submit evidence. The closing date for written evidence was 28 January. Alistair added that Scottish Government officials would brief the Deputy First Minister on the discussion at the meeting, and that a summary note would be prepared, circulated in draft for comment, and published.

2. Robert Buchan set out the main points that the Scottish Government are considering in relation to the supplement on purchases of additional residential property:
    - 3% supplement on additional homes unless replacing existing main residence;
    - chargeable on purchaser, though could be reclaimed if in process of buying/selling individual's main residence ;
    - apply to all companies and similar bodies;

- married couple and civil partners would be considered as one economic unit with further consideration being given to position of cohabitees ;
- would apply in cases of part ownership if one of the parties already owned a property;
- relief from the supplement for multiple purchases of residential properties, though the threshold at which relief applies (i.e. the number of properties purchased) has still to be determined; and
- supplement will not be applied to purchases where missives are concluded before the Scottish Government announced the measure at draft Budget on 16 December 2016, but purchase not completed until after 1 April 2016. It was confirmed that HMRC's terminology of "exchanging contracts" was not applicable to the Scottish proposals.

3. Scottish Government officials advised that the timetable for the necessary Bill was still to be finally agreed, but the clear aim was to bring the legislation into force so that the supplement was applied from 1 April 2016. As well as seeking written evidence, the Finance Committee of the Scottish Parliament was expected to take oral evidence at the beginning of February. Due to the unavoidably shortened timetable, there would be no formal public consultation on the proposal. Instead, stakeholders' views were being sought through meetings such as this, and through the Finance Committee's inquiry/evidence sessions.

4. Attendees then offered views on the proposals. During the discussion the following points were made:
   - The private rented sector (PRS) market has been expanding (and continues to do so) at a fast rate in Scotland. It has more than doubled in size in recent years and plays a vital role in Scottish Government housing strategy. It was therefore important to be alert to the likely impact on the sector of the proposed supplement.
   - Large scale transactions for multiple purchases between PRS investors are expected to become increasingly common in the future.
   - However around 70% of PRS properties are owned by small-scale landlords who let out 5 or fewer properties, and these landlords account for 95% of the total number of PRS landlords.
   - There were concerns about potential impact of the supplement on small-scale landlords, whose cost of purchase will be increased, potentially wiping out first year returns. This could deter investment by this segment of the market.
   - It might be fairer not to apply the supplement if an offer to buy has been accepted prior to the draft Budget Statement on 16 December rather than if missives have been concluded before that date. It would be helpful to be as clear as possible on who the supplement is targeted at and what activities it is meant to support or disincentivise.

- the supplement may end up effectively as a tax on developers and investors rather than purchasers, being reflected in property prices and therefore values;
- It was noted that housing policy should aim to encourage demand for new-build homes, to increase supply. The Scottish Government could positively distinguish its approach to the supplement by offering relief for new build buy-to-let purchases as well as new large scale build-to-rent investments .
- This approach would not be expected to increase competition faced by first-time buyers, but could help attract investment into the sector and might also help to drive up the quality of PRS accommodation.
- Despite improving conditions, new builds were effectively built to order, with developments taking a considerable time to 'build out'; and house builders need confidence provided by investment to go ahead with developments. A relief from the supplement would be consistent with this.
- The proposal to provide relief on transactions involving large-scale house purchases of properties for rent was welcomed and could help turn the small scale investment discussed into larger scale funding
- It was noted that purchasers of 6 or more residential properties paid non-residential rates of LBTT on their transaction. There was potential for confusion between on one hand paying non-residential rates of LBTT and on the other being liable to pay the supplement as a result of different thresholds. One way round this would be to set the same number of houses in relation to both so when discussing the threshold that any large scale relief should apply from, some thought 6 was the logical answer whereas others considered large scale investment involved the purchase of significantly more properties (i.e. 50).
- It would be important to maintain Scotland's attractiveness as a location for investment in build-to-rent PRS properties in the face of more stringent legal requirements faced by landlords in Scotland compared to the rest of the UK (and greater security of tenure likely to be given to tenants under the proposed new tenancy regime). This could be achieved by having a more favourable tax regime for landlords in Scotland compared to the rest of the UK. This pointed to at least matching reliefs from the supplement on SDLT available in the rest of the UK.
- An issue for institutional-scale investors in PRS properties was that even if they benefited from a large investor relief from the supplement, the existence of the supplement might still be reflected in estimated selling prices and therefore in the book value of the properties bought, potentially requiring an immediate write down in value and reducing the attractiveness of the investment.
- A sub-sector of PRS was the purpose built student accommodation sector, where developments typically are of multiple bedrooms in a larger property intended for multiple occupation. A developer might well qualify for large investor relief when counting the number of individual student tenants, but not in terms of numbers of residential

properties. This could reduce the attractiveness of this kind of investment.

- The concept of a ‘reluctant’ or ‘distressed’ PRS landlord was raised. It was quite common for house owners to end up owning a main residence and a buy to let property because their original house was no longer suitable (in terms of size or location), but they were in a negative equity position and/or could not easily sell and clear the existing mortgage. It could be considered unfair to apply the supplement in these circumstances.
- A point was made in relation to those who do not sell their existing property but rent it out when they move into their new home. It would seem unfair for the supplement to apply to the price of the new home, rather than the value of the buy to let property, which could be significantly less.
- The definition of ‘main residence’ was raised and it was explained that this was expected to be a fact-based test and purchasers won’t have the option of electing which of the properties they own is their main residence;
- A query was raised as to whether it was understood for the purposes of counting the number of residences owned at the end of the effective date that ownership does not transfer until the later point of registration in Scots law; Bill team confirmed that this was understood and would be reflected in the drafting of the Bill;
- Application of supplement to purchases by trusts, and e.g. farm partnerships etc. On the face of it a farm partnership which owned farm buildings that included a main residence for the tenant farmer would be caught by the supplement if it bought another building to be used as a residence of a farm employee.
- It was noted that the supplement would apply if a purchaser of residential property in Scotland already owned residential property outside Scotland; there would be practical issues of compliance and the respective roles of the purchaser and their professional agent
- it would be important to settle clearly how the supplement would apply to mixed use properties eg flats with shops below,

5. The SG sought views on whether a large-sale investment relief with a “bulk” criterion should be applied depending on the number of properties an investor already owned, or depending on the number of individual properties being purchased in one transaction.   Attendees generally considered that the criterion for any relief should be framed by reference to the number of properties being purchased in one transaction.

6. There was some discussion about arrangements when an individual is buying/selling their main residence. Property ownership is not transferred in Scots law until registered with the Land Register. There may be a legitimate delay between purchasing a new main dwelling and selling the old one. It was suggested that there could be a “grace period” to allow sales to be completed without the supplement being payable. Many purchasers will not have the additional 3% of the purchase price required to pay the supplement,

even if it was later repaid; and a grace period would avoid the need to find this money and also would avoid the additional administration of reclaiming the surcharge when the sale of the previous home is completed. There was a balance to be struck between charging the supplement and then having to repay it shortly afterwards when the original main residence was sold (on the one hand) and ensuring that the supplement was collected in all cases where it was genuinely due (on the other). SG would give further consideration to how best to achieve this, including the "grace period" suggestion. SG officials said they welcomed proposals on the length of period. Those present also noted that further thought needed to be given to the evidence required to demonstrate that sale of the original main residence was intended and imminent.

7. Donald Carvel provided an update from the Revenue Scotland perspective. He explained that administrative arrangement would be established once the details of policy and legislation had been clarified. Revenue Scotland would then develop detailed operational guidance and would liaise with stakeholders to develop and draft this. Revenue Scotland forms, calculators etc would also be adjusted to reflect the new supplement.

8. Attendees were thanked for their input and were reminded of the importance of also providing evidence, if they wished to, to the Scottish Parliament Finance Committee. SG would continue to engage with stakeholders as proposals were being developed.

SCOTTISH GOVERNMENT
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