

Housing, Regeneration and Planning

Taking Forward a Scottish Land and Buildings Transaction Tax Consultation

An Analysis of Responses
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This report summarises the responses to the Scottish Government's consultation "Taking Forward a Scottish Land and Buildings Transaction Tax". The consultation paper sought views on how best to design the replacement tax on land and property transactions that will minimise distortions in the property markets; make it as easy as possible for the tax to be paid; and maximise receipts.

Main Themes

- There was majority support for the move to a progressive tax for residential property, but mixed views on whether this should extend to commercial land and property. Around one third of those who favoured the approach proposed for residential property argued that it was more important for taxation of commercial land and property to remain aligned with the rest of the UK.
- There was majority support for amending Land and Buildings Transaction Tax (LBTT) in future to align with government priorities, although there were varying levels of enthusiasm. Concerns expressed within many groups included the need to avoid complexity and uncertainty; the need to review whether in all cases policy priorities were best supported through the tax system rather than in other ways; and the need for Scotland to remain and be seen to remain competitive.
- On exemptions and reliefs there was a large measure of support for maintaining the current exemptions and reliefs. There was also support however for extending reliefs to support the compulsory purchase of empty homes to bring them back into use. There were many more suggestions of new reliefs or exemptions.
- The majority supported exemptions for residential leases of 20 years or less.
- The complexities of commercial leases (in comparison with residential leases) were widely acknowledged. Some practical measures were proposed for improving the LBTT arrangements for commercial leases in future, but there was recognition that time would be needed to assess and consult on these.
- On anti-avoidance (or anti-abuse) measures the strength of overall argument seemed to favour a General Anti-avoidance Rule rather than a series of Targeted Anti-avoidance Rules – but there was by no means consensus. For many, the priority was ensuring the rules were clear whatever approach was taken.
- As far as administration of LBTT is concerned, there was majority support for a new online facility linking LBTT returns with LBTT payment and registration of title. But there was also a clear view that online returns should not be compulsory. And there were some strong views against requiring payment of LBTT before title can be registered.
- There was general support for aligning LBTT with Scots Law in relation to Partnerships and Trusts. However, this was seen as another area of complexity requiring further detailed work and consultation.
- A number of individual respondents who disagreed in principle with the proposed LBTT set out alternative taxation approaches.
- Several practical implementation issues were raised, including the need for clear guidance and on-going advice; the resourcing of Revenue Scotland and/or Registers of Scotland to establish a robust system; and transitional arrangements from the current system to LBTT.
- There was concern that details of proposed tax rates and thresholds were not yet known and that the underlying revenue assumptions needed further examination given the recent market conditions on which these had been based.

Background to the consultation

The Scottish Parliament will have new financial powers from April 2015 over taxes on land and property transactions and on disposal to landfill. This consultation is the first of three dealing with these devolved tax powers and is focused on introducing a land and property tax to replace the current UK Stamp Duty Land Tax (SDLT) system. This consultation will be followed by a consultation on tax management arrangements (covering issues like tax collection, the use of information, penalties for late payment or for tax evasions and appeals) and a landfill tax.

The consultation on a replacement for Stamp Duty Land Tax for Scotland sought views from those with an interest in land and property sales and leases, including people who may buy or sell a home in the future; businesses who may buy or lease commercial property; farmers who buy or lease land; conveyancing solicitors; estate agents; surveyors; lenders; and third sector and equalities groups.

The consultation included 17 questions.

- Questions 1-8 covered the proposed structure and scope of the tax including the move from a “slab” system to a progressive tax; future amendments to support key Scottish Government policies; exemptions and reliefs; and the treatment of both residential and commercial leases.
- Questions 9-10 related to anti-avoidance measures.
- Question 11-13 asked about proposals for online returns and linking payment of tax with registration of title.
- Question 14 sought views on the treatment of Partnerships and Trusts.
- Questions 15 and 16 covered business and regulatory and equalities draft impact assessments.
- Question 17 sought any other views. Many respondents made comments directly in response to this question or in covering letters, and these have been taken into account in the report.

The response

Fifty-six (56) responses to the consultation were received. Responses came from a broad spectrum of individuals, businesses and other organisations. Not surprisingly, businesses and organisations involved in property transactions and development and their professional or representative bodies made up the majority. A significant number of private individuals

also responded. Responses from voluntary/charitable sectors and from local government were more limited in number. The report also takes account of feedback from four stakeholder consultation events held in Aberdeen, Edinburgh, Glasgow and Perth.

The views of respondents

Question 1 – Should LBTT be structured progressively?

Over 80% of respondents gave their views. A large majority (74%) agreed, on the basis that this was fairer and removed anomalies on either side of current threshold levels. Most disagreement came from individuals opposed in principle to LBTT (generally because they favoured a more fundamental change to an annual land tax). A significant number of respondents (mostly private developers or their advisers) while supporting a progressive tax on residential properties were concerned about applying this to the commercial sector. The main reason was the need for a level playing field with the rest of the UK.

Question 2 – Should LBTT be amended in future to support key Scottish Government priorities?

As with question 1, over 80% of respondents answered this question. Two-thirds of these supported this proposal, although some respondents at the same time cautioned on grounds of complexity or future uncertainty. A number of legal and accountancy organisations questioned the evidence that using tax in this way was actually effective in furthering the policy aim concerned. People were asked about which policy priorities this might apply to. The most common theme was energy efficiency (new construction and existing homes). Affordable housing supply was also proposed in several cases.

Question 3 – Do you agree with the proposed exemption categories for LBTT?

Three-quarters of respondents indicated their view. Of these, a similar proportion agreed with the proposed categories, which broadly maintain existing UK Stamp Duty Land Tax (SDLT) arrangements. Consistency across the UK was cited among the reasons. Several respondents argued that the £40,000 threshold for exemption should be increased. Suggested additions to the list of exemptions were affordable housing tenures provided by Registered Social Landlords (RSLs) and others (at present only RSL social tenancies are exempt); and widening those exemptions applying to local authorities. It was noted that exemptions and reliefs were an area of confusion and needed clarity.

Question 4 – Should CPO relief be expanded to compulsory purchase by local authorities of empty homes for onward sale?

Only 56% of respondents answered this question. However, an overwhelming majority agreed with this proposal. One third of these went further, saying this relief should be extended to all bodies with CPO powers.

Question 5 – Should there be no relief for Right to Buy or Shared Ownership, on the basis that these reliefs are not needed in Scotland?

Only half of the respondents expressed a view. Of these, nearly 70% agreed, although some argued against removing reliefs just because few if any transactions are affected at present. It was felt that this might not be the case in future as new thresholds are set and adjusted. It was also argued that support for removal of Right to Buy relief should be conditional upon all forms of Right to Buy being ended. The possible impact on emerging new tenures provided by RSLs and others was again noted.

Question 6 – Do you agree with the proposed list of reliefs?

Just over three-quarters of respondents indicated their view. A narrow majority agreed with the proposals. But many respondents (including those agreeing) also suggested additional categories. Several respondents considered that restricting charities relief to those charities registered with OSCR was too restrictive and that this should extend to other charities operating in Scotland. While many suggested new reliefs (generally where these would help their particular business), several respondents also sought to limit and simplify the list. Most reiterated the need for clearer rules on whatever exemptions and reliefs are decided.

Question 7 – Should residential leases of 20 years or less be exempt?

Nearly two-thirds of respondents answered this question. However, an overwhelming majority agreed. Some counter arguments were put forward on technical grounds. For example, because of the need to prevent this being used for tax avoidance purposes.

Question 8 – What would you propose to ensure that the calculation of tax on commercial leases is better aligned with Scots law?

This question attracted a response from 20 organisations and two individuals, a significant

number of whom provided detailed comments. There was widespread agreement that this was a problem which needed to be addressed. Many supported the way forward proposed by the Law Society of Scotland. It set out four detailed options for assessment and future consultation. It was suggested that the necessary improvements required further exploration in advance of developing necessary legislation. A number of respondents also made the case here for treating agricultural leases separately.

Question 9 – Should anti-avoidance measures be put in place along the lines of UK SDLT legislation?

Nearly two-thirds of respondents answered this question. Opinion on this question was fairly evenly split, with more detailed arguments against than in favour. Legal and accountancy firms generally argued against, on the basis that a well drafted General Anti-avoidance Rule at UK level would be preferable instead of adding to already complex layers of Targeted Anti-avoidance Rules.

Question 10 – Should a more general anti-avoidance rule be put in place?

Nearly two-thirds of respondents provided a response to this question. The majority of these represented legal, accountancy or taxation interests. While there was a consensus that current UK arrangements were complex and flawed (in particular the operation of the 2003 Finance Act), there was no consensus on whether such flaws would be better addressed by a new General Anti-avoidance Rule (GAAR) for Scotland or by awaiting the proposed improved GAAR at UK level and then reviewing its effectiveness in Scotland before considering further measures.

Question 11 – Should a new online system be designed to integrate LBTT returns, tax payment and registration of title?

The overwhelming majority of the two-thirds of respondents who indicated a view agreed with this proposal. However, those agreeing did raise some words of caution, to ensure that system development is well resourced, the system itself is properly tested and robust and that a hot-line for advice is maintained. Only a small number of respondents suggested that the use of this facility should be mandatory.

Question 12 – Should all LBTT returns be submitted online?

Nearly two-thirds of respondents expressed a view, of which a large majority were against mandatory online

returns. Arguments for mandatory use were that the vast majority of returns would actually be made by businesses or professionals and that a mandatory system would be more efficient. Arguments against included the risk of IT system failure; the difficulty of accommodating complex cases; and (the point most commonly made) that this would limit access for people in remote rural areas with poor broadband access and for other groups such as older people.

Question 13 – Do you agree that LBTT must be paid before title can be registered in the Land Register/Sasines (or in the case of leases, documents/deeds registered in the Books of Council and Session)?

Opinion was fairly evenly split among the 57% of respondents to this question. Local authorities and private individuals were prominent among those agreeing. Legal interests and others disagreed. Respondents put forward a fundamental argument that legal title should not be dependent on an administrative tax process. Other arguments against included the risk of system failure; the need to accommodate complex cases where computation of tax actually might need more time; and potential cash-flow risks or bridging finance implications for purchasers. Many who agreed did not expand on reasons. Several mentioned efficiency of tax collection but several also acknowledged the need for contingency arrangements (for example for system failure or complex cases).

Question 14 – Should the LBTT Bill be aligned to Scots law in its treatment of Partnerships and Trusts?

Just over half of respondents answered this question. Legal firms and their representatives figured prominently in the responses to this question. The overwhelming majority of respondents agreed and many gave examples of specific issues to be

addressed. As this was an area of much complexity, it was suggested that specific proposals were required and separate consultation then carried out. Some suggested that this needed to be considered in conjunction with an appropriate General Anti-avoidance Rule.

Questions 15 and 16 – Do you have any comments on the draft Business and Regulatory and Equalities Impact Assessments.

There were very few responses to these questions. In the case of Business and Regulatory Impact, respondents were keen for further more detailed consideration once tax rates and thresholds are published. It was also noted that there was a probability of unintended behavioural or market consequences which are not yet known. Both responses on equalities cited the need for an alternative to online returns.

Question 17 – Any other comments

A number of points were reiterated here, including the need to clarify tax rates and thresholds; the challenging timescale in relation to commercial leases and partnerships; transitional arrangements; and proper resourcing of any new online systems. The case for separate treatment of agricultural leases was also made. A significant number of individual respondents argued the case against a transaction tax and in favour of an annual land tax.

This document, along with full research report of the project, and further information about social and policy research commissioned and published on behalf of the Scottish Government, can be viewed on the Internet at: <http://www.scotland.gov.uk/socialresearch>. If you have any further queries about social research, please contact us at socialresearch@scotland.gsi.gov.uk or on 0131-244 7560.

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