



The Scottish  
Government  
Riaghaltas na h-Alba

# Taking Forward A Scottish Land and Buildings Transaction Tax Consultation

## An Analysis of Responses

Housing, Regeneration and Planning



social  
research

**TAKING FORWARD A SCOTTISH LAND AND  
BUILDINGS TRANSACTION TAX CONSULTATION:  
An analysis of responses**

**ODS Consulting**

**Scottish Government Social Research  
2012**

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# CONTENTS

EXECUTIVE SUMMARY .....	i
1. INTRODUCTION .....	1
2. OVERVIEW OF RESPONSES .....	3
3. RESPONSES TO THE CONSULTATION EXERCISE.....	5

## ANNEX ONE CONSULTATION RESPONDENTS

### LIST OF TABLES

TABLE 2.1: DISTRIBUTION OF RESPONSES .....	3
TABLE 3.1: RESPONSES TO Q1 .....	5
TABLE 3.2: RESPONSES TO Q2 .....	7
TABLE 3.3: RESPONSES TO Q3 .....	9
TABLE 3.4: RESPONSES TO Q4 .....	11
TABLE 3.5: RESPONSES TO Q5 .....	12
TABLE 3.6: RESPONSES TO Q6 .....	13
TABLE 3.7: RESPONSES TO Q7 .....	15
TABLE 3.8: RESPONSES TO Q9 .....	18
TABLE 3.9: RESPONSES TO Q10 .....	19
TABLE 3.10: RESPONSES TO Q11 .....	21
TABLE 3.11: RESPONSES TO Q12 .....	22
TABLE 3.12: RESPONSES TO Q13 .....	23
TABLE 3.13: RESPONSES TO Q14 .....	25

# EXECUTIVE SUMMARY

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## Introduction

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.

The consultation on a replacement for Stamp Duty Land Tax in Scotland has sought views from a wide spectrum of individuals, businesses and other organisations with an interest in land and property sales and leases.

The immediate aim of the consultation was to gather views on how best to design the replacement tax on land and property transactions in a way which minimises distortions, make it as easy as possible for tax to be paid and maximises receipts.

Key changes proposed were:

- Changes to the way SDLT charges are calculated, with the proposed introduction of a progressive tax structure (so that the tax, like income tax, is only paid at the applicable rate(s) on the amount within each threshold).
- Changes to the administration of SDLT and how it links to land registration, with proposed new online arrangements.

A number of other changes have also been proposed, for example the scope of reliefs and lease charges for residential property.

This report provides an analysis of consultation responses received.

## Overview of the responses

A total of 56 written consultation responses were received. There were no identical responses although some respondents (both organisations and individuals) referred to and supported other responses. We have considered all 56 responses for analytical purposes.

Responses were submitted by 13 private individuals; 13 professional/representative or trade bodies; 11 legal and accountancy organisations and their representative bodies; 9 house-builders, developers, RSLs and their representative bodies; 6 voluntary, charitable or other private organisations; and 4 local authorities and their representatives.

In addition to written responses, feedback was gathered at four consultation events held by Scottish Government officials during July and August 2012 in Aberdeen, Edinburgh, Glasgow and Perth. The events were attended by a range of

representatives with an interest in the new tax, and involved small group discussions focusing on the areas of the consultation paper of most interest to the participants. To a very large extent the views expressed at these events were reinforced in the written responses of participants and others - but some additional points made at these events are also included in the report. Indeed, a number of those who attended events also submitted a written response to the consultation.

## **Summary of responses**

### **Structure and scope of the proposed tax**

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. Respondents argued it is more important to remain aligned with the rest of the UK in relation to commercial land and property.

There was majority support for amending LBTT in future to align with government priorities, although some respondents (from across respondent groups) were less enthusiastic than others. Concerns expressed across respondent 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 the topic of exemptions and reliefs there was a large measure of support for maintaining the current reliefs and exemptions. 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.

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. As with commercial leases, there was recognition that bringing forward required changes may not be achievable in the initial legislation.

### **Administration and implementation issues**

On the topic of anti-avoidance (or anti-abuse) measures the strength of overall view seemed to favour a General Anti-Avoidance Rule (GAAR) rather than a series of Targeted Anti-Avoidance Rules (TAAR) – but there was by no means consensus (including among those with significant experience or expertise in this area). 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 (not least

on equality grounds given limitations to broadband access). And there were some strongly held views against requiring payment of LBTT before title can be registered.

Several practical implementation issues were raised. These included the need for clear guidance and ongoing advice; resourcing of Revenue Scotland and/or Registers of Scotland to establish a robust system; and transitional arrangements from the current system to LBTT.

### **General points of principle**

A number of individual respondents who disagreed in principle with the proposed LBTT set out their counter-arguments in favour of an annual land tax as opposed to a property transaction tax. They believed that a different approach to taxation was required.

And finally, there was concern that details of proposed tax rates and thresholds were not yet known; and also that the underlying revenue assumptions needed further examination given the recent market conditions on which these had been based.

# 1. INTRODUCTION

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## About this report

- 1.1 This report provides an analysis of responses to the Scottish Government's Consultation on "Taking Forward a Scottish Land and Buildings Transaction Tax". The report provides a detailed analysis of responses to each of the consultation questions; identifies where particular views can be ascribed to specific groups of respondents; and summarises more general comments expressed.

## Background to the consultation

- 1.2 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. The consultation forms part of a wider programme including two further consultations on landfill tax and tax management. There will also be 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.
- 1.3 The consultation on a replacement 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.
- 1.4 The immediate aim of the consultation was to gather views on how best to design the replacement tax on land and property transactions in a way which minimises distortions, make it as easy as possible for tax to be paid and maximises receipts. Whilst the majority of the existing elements of the UK SDLT system will be retained, the following key changes were proposed:

## Changes to the way SDLT charges are calculated

- The consultation considers the introduction of a **progressive tax rate structure** so that the tax, like income tax, is only paid at the applicable rate(s) on the amount within each threshold. This would mean that SDLT charges would rise more proportionately in line with the purchase price or rent/lease premium paid. A progressive rate should also help to reduce market distortions and address issues of tax evasion. To reflect the fact that some businesses purchasing high-value land or property could pay more as a result of a progressive rate, the Scottish Government proposes to include a lower top rate for non-residential property than for residential property. This would

prevent a progressive rate from having a significant negative impact on Scottish businesses compared to those based elsewhere in the UK.

### **Changes to the administration of SDLT and how it links to land registration**

- This proposal is aimed at encouraging taxpayers to submit both SDLT returns and payments online at the same time by requiring that **land or property can only be registered once any tax due has been paid**. Currently, title to land or a lease can be registered after a return has been submitted, but the taxpayer has 30 days in which to pay the tax. This aims to streamline the administrative process, both for solicitors who are handling their clients' returns and for the collection agent.
- 1.5 A number of other changes were also proposed, for example to the scope of reliefs and lease charges for residential property.
- 1.6 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.
- 1.7 The responses were sorted and an initial analysis undertaken using a response matrix (based on an Excel spreadsheet). Respondents were categorised into stakeholder groups and the responses were fed into the matrix in accordance with the answer to the consultation question. An initial quantitative analysis was conducted for each question. However, the detailed analysis was mainly qualitative and drew out the themes and issues emerging within each question as well as the range of views expressed. It also explored any specific patterns between and within stakeholder groups (as defined in Table 2.1).

## 2. OVERVIEW OF RESPONSES

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### Introduction

2.1 This section provides an overview of the consultation responses received. It considers from whom the responses came, who was not represented in the responses and provides some general comments on the nature of the responses.

### Who replied to the consultation?

Type	Total received	% of responses
Professional/representative/trade body	13	23
Private individual	13	23
Legal/accountancy/taxation organisations and their representative bodies	11	20
House builders/Developers/RSLs and their representative bodies	9	16
Voluntary organisation/Charity/Other private organisation	6	11
Local authorities and their representative bodies	4	7
<b>Total</b>	<b>56</b>	<b>100</b>

2.2 As table 2.1 shows, responses came from a broad spectrum of individuals, businesses and other organisations. The largest groups were professional / representative/ trade bodies and private individuals which each made up just under a quarter (23%) of respondents. There was also a significant proportion of legal, accountancy and taxation organisations (20% of total respondents) and house builders/ developers/ RSLs and their representative bodies (16% of total respondents) who responded. Responses from voluntary/charitable sectors and from local government were more limited in number (11% and 7% respectively). Within the private individuals and voluntary/charitable or other private organisations groups, the majority of respondents answered only one or two questions or replied by letter. Within all other groups most respondents answered most of the specific consultation questions.

2.3 The highest response rates (75% or more responding) were to the questions on tax structure, support of government priorities and exemptions and reliefs. Very few respondents commented on the draft impact assessments. The question on commercial leases attracted only 20 responses, although these were generally very detailed. All other questions had response rates of 50% or more.

- 2.4 In addition to written responses analysed, this consultation analysis covers four consultation events held by Scottish Government officials in July and August 2012 in Aberdeen, Edinburgh, Glasgow and Perth. Topics covered at these events included the tax structure, exemptions and reliefs, commercial leases, avoidance and administration. Those attending included solicitors and their representatives, local authorities, landowners, developers and others in the property business.

### **Who was not represented in the responses?**

- 2.5 While a significant number of individuals responded, most of these responses focused on the principle of the tax proposed or on technical aspects of the proposal. There was a low response from property owners on how the tax will affect them as individual buyers. The consultation instead relies on the comments of others (such as house-builders and the legal profession) to understand the potential impact on buyers. A possible explanation for the low response from individual property owners or aspiring owners may be because rates and thresholds are not yet known.
- 2.6 Individual small businesses (whether agricultural or property development) were largely absent, although their interests may have been well represented by other respondents. No organisations specifically representing equality groups responded.

### **The interpretation of quantitative and qualitative information**

- 2.7 The analysis used both a quantitative and qualitative approach. A quantitative approach was used to demonstrate how strongly different elements of the proposals were supported or opposed. In many cases, respondents gave a narrative response to a particular question but did not specifically say 'yes' or 'no' to the question posed. In these cases, where the comment clearly implied agreement or disagreement with the proposal, we have assumed either 'yes' or 'no' for the quantitative analysis. Where the comment was non-committal in terms of agreement or was unclear, we have included the answer as 'other comments' for quantitative analysis purposes. Given the relatively small number of respondents, quantitative analysis figures should be treated with caution as they are not a reliable indication of the extent to which the views held by respondents is representative of their wider sector.
- 2.8 A qualitative approach has been the main focus of the analysis, based on what people said and any patterns in views. This qualitative approach has involved identifying the key themes and issues emerging from the consultation. The analysis has also explored the strength of views; particular areas of agreement and disagreement within and between respondent groupings; and the reasoning behind particular view points.

### 3. RESPONSES TO THE CONSULTATION EXERCISE

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#### Introduction

3.1 This section considers the responses to the consultation questions posed in the consultation document. It incorporates some additional feedback provided at the four consultation events.

#### Question 1

**Do you agree with the Scottish Government’s view that the Land and Buildings Transaction Tax should be structured progressively?**

Type	Number of Respondents				
	Yes	No	Other	No Response	Total
Professional/ representative/ trade bodies	8	0	2	3	13
Private individuals	5	5	1	2	13
Legal/ accountancy/ taxation organisations and their representative bodies	8	0	3	0	11
House builders/ Developers/ RSLs and their representative bodies	8	1	0	0	9
Voluntary organisation/ Charity/ Other private organisation	1	0	0	5	6
Local authorities and their representative bodies	4	0	0	0	4
<b>Total number</b>	<b>34</b>	<b>6</b>	<b>6</b>	<b>10</b>	<b>56</b>
Percentage of total responses	61%	11%	11%	18%	100%
<b>Percentage of those responding to Q1</b>	<b>74%</b>	<b>13%</b>	<b>13%</b>	-	-

3.2 Eighty-two per cent of respondents answered this question. A large majority of those who responded to this question supported the proposal, with around three-quarters (74%) favouring a progressive tax structure. The main reasons given were that this was fairer and removed anomalies on either side of current threshold levels.

“[The current system] results in cautious consumers reluctant to buy a property in the next price band due to the prohibitive increase in stamp duty. It also puts downward pressure on prices of properties with market values just above threshold levels, discouraging these sellers at a time when the number of property transactions is low. A progressive taxation system would avoid these issues and create a more equitable model for tax on acquiring property.”

(Building Societies Association)

3.3 A further perspective was provided by Homes for Scotland:

“It is currently very challenging for home builders to sell homes in the £125k to £135k and £250k to £270k price ranges because buyers feel they are paying too much for very little advantage which results in a skewed pricing and product structure on new housing developments.”

(Homes for Scotland)

3.4 The majority of those who disagreed were individuals who expressed opposition to the overall LBTT proposals, mostly because they favoured a more fundamental change to an annual land tax - rather than retaining a property transaction tax. These comments are expanded under Question 17. Others expressed the view that Scotland should remain fully aligned to the UK system but lobby at UK level for a change to progressive tax.

3.5 A significant number of organisations (ten in total) who generally supported the proposals for residential transactions expressed concerns in relation to commercial properties. These were mainly private development companies and firms providing professional services to such companies.

“We have concerns that in relation to commercial properties there could be a disproportionate effect on the high value transactions liable to the top rate of LBTT. Although there are numerically fewer top end value investments these are significant in terms of the implications for Scotland.”

(Brodies LLP)

“Investors in commercial property are likely to have a wider choice as to the location in which to invest than residential property purchasers and will give consideration to the overall return (including taxes).”

(The British Land Company PLC)

3.6 The general view of this group of respondents was that (at the very least) a level playing field should be maintained with the rest of the UK on land and commercial property transactions. During the consultation events participants highlighted particular implications for working farms and businesses such as nursing homes if the tax rate moves towards ten per cent (10%).

3.7 While supporting the progressive tax proposals for residential property transactions, several respondents made the point that care needs to be taken when setting the rates to avoid an adverse impact on the fragile housing market:

“[We] generally welcome a progressive Tax as being a fairer approach to raising revenue, however the level of rates and thresholds would need to be set carefully to avoid the risk of depressing the Scottish housing market both domestic and commercial.”

(COSLA)

- 3.8 Several respondents proposed that the overall revenue “take” should be set at below SDLT rate in order to make Scotland more competitive for investors. An alternative view was that the Scottish Government should plan for slightly more than revenue neutrality because the new system would be bound to have behavioural consequences which would act to reduce revenue.
- 3.9 Some specific concerns were raised about the impact on high value purchases, such as when business owners are considering locating in or returning to Scotland. A possible impact in Border towns (where people might chose to buy on either side of the border) was also noted.

**Question 2: Do you think that the Land and Buildings Transaction Tax should be amended in future to support key Scottish Government priorities? If yes, what objectives should changes focus on and what would be the best way of doing this?**

Table 3.2: Responses to Question 2					
Type	Number of Respondents				
	Yes	No	Other	No Response	Total
Professional/ representative/ trade bodies	10	2	1	0	13
Private individuals	5	2	1	5	13
Legal/ accountancy/ taxation organisations and their representative bodies	6	0	4	1	11
House builders/ Developers/ RSLs and their representative bodies	5	1	3	0	9
Voluntary organisation/ Charity/ Other private organisation	4	0	0	2	6
Local authorities and their representative bodies	1	0	2	1	4
<b>Total number</b>	<b>31</b>	<b>5</b>	<b>11</b>	<b>9</b>	<b>56</b>
Percentage of total responses	55%	9%	20%	16%	100%
<b>Percentage of those responding to Q2</b>	<b>66%</b>	<b>11%</b>	<b>23%</b>	-	-

- 3.10 Eighty-four per cent of respondents answered this question. A majority of those responding to this question (66%) supported the amendment of LBTT to support Scottish Government objectives.
- 3.11 The level of support varied in the detailed comments provided by respondents. A number of respondents were strongly in favour of such amendments because of specific policy objectives they wished to see prioritised (for

example, energy improvements to existing private sector housing) while others were less enthusiastic but accepted that this was something that any government would be likely to do.

- 3.12 Of the small number of respondents who opposed this proposal, most were organisations who argued against this on the grounds of additional complexity and uncertainty.

“We suggest that the overriding objective should be to keep a tax simple for it to be effective. Complication confuses the market and risks unintended consequences.”

(Central Association of Agricultural Valuers (CAAV) & Scottish Agricultural Arbiters’ and Valuers’ Association (SAAVA))

- 3.13 A slightly larger number (23% of those responding to the question) did not state a firm preference either way. A significant number of legal and accountancy organisations who belonged to this group, questioned the effectiveness of LBTT as a tool for supporting policy priorities. Some very specific recommendations were made, that:

- empirical evidence of the effectiveness of any similar tax tools in the past should be considered before amendments are made;
- stakeholders should be consulted; and
- the future effectiveness of any amendments introduced should be monitored.

“In some circumstances, tax incentives may not be the most effective way of achieving a policy aim. Alternatives, such as a grant system or variation of business rates... may be more effective.”

(Scottish Stamp Tax Practitioners Group)

- 3.14 Both supporters of this proposal and those who were neutral on the question expressed widespread concern to keep any amendments simple. Several respondents also cited the need to bear in mind the competitiveness of the tax (in UK terms).

“Scottish Government should be wary of over-complicating the system through too many interventions...”

(Scottish Property Federation)

“An overarching objective of any change should be to keep Scotland as competitive as possible.”

(Miller Homes)

- 3.15 Most respondents commented on the kind of government priorities which could or should be supported by LBTT in future. By far the most common theme was energy efficiency – whether to promote new housing construction standards, retrofitting of existing private sector stock or support “green” industries. These comments came from across the range of respondent groups and included both organisations whose overall responses were restricted to or focused on this question and others who responded on the full range of questions in the consultation paper.
- 3.16 Several respondents also identified housing supply as a policy priority which should be supported (affordable housing for rent, for first time buyers and more generally). Other policy priorities mentioned were disadvantaged areas and derelict land; rural housing; preservation of listed buildings and infrastructure. Specific proposals included exempting Rural Housing Bodies from LBTT on land and property transactions and providing tax incentives where investment in listed buildings has resulted in their removal from the Buildings at Risk register.

**Question 3: Do you agree that the proposed transaction categories should be exempt from Land and Buildings Transaction Tax, and that for these specific transactions no LBTT return should need to be submitted?**

Type	Number of Respondents				
	Yes	No	Other	No Response	Total
Professional/ representative/ trade bodies	8	0	1	4	13
Private individuals	2	4	1	6	13
Legal/ accountancy/ taxation organisations and their representative bodies	9	2	0	0	11
House builders/ Developers/ RSLs and their representative bodies	9	0	0	0	9
Voluntary organisation/ Charity/ Other private organisation	1	1	0	4	6
Local authorities and their representative bodies	2	2	0	0	4
<b>Total number</b>	<b>31</b>	<b>9</b>	<b>2</b>	<b>14</b>	<b>56</b>
Percentage of total responses	55%	16%	4%	25%	100%
<b>Percentage of those responding to Q3</b>	<b>74%</b>	<b>21%</b>	<b>5%</b>	-	-

- 3.17 Seventy-five percent of respondents answered this question. A large majority of those responding (74%) agreed with the proposal to exempt the categories suggested. The categories set out in the consultation document are included as Annex 2. However, many of these respondents also went on to suggest some specific categories which required further consideration or clarification – or indeed which should be added or removed. In most cases these or similar suggestions were made in relation to reliefs and are therefore covered under question six.

“The proposal to keep exemptions broadly consistent with those currently applicable under stamp duty land tax seems appropriate and ensures consistency across the UK.”

(CBI Scotland)

“We agree with the broad strategy that pre-existing exemptions from SDLT should be replicated under the LBTT regime, and that compliance burdens should be minimised by dispensing with the requirement to submit LBTT returns wherever this can be done.”

(Institute of Chartered Accountants of Scotland)

3.18 Another point made in one of the consultation events was that removal of current exemptions might risk unpredictable and unintended consequences.

3.19 An alternative view on LBTT returns was:

“...that the Government consider requiring an LBTT return as this may be valuable information for local housing strategies, household estimates.etc.”

(Glasgow City Council)

3.20 Among those who broadly disagreed there was a wide range of reasons and little common ground. The points made often related more to question six (reliefs) and are covered in that section of this report.

3.21 Several respondents argued for an increase in the £40,000 threshold proposed for transfers of land and property. It was also suggested that there was potential for subdivision of transactions in order to fall within the threshold and that this would need to be monitored.

3.22 Two house builder representatives, noting the exemption of social tenancies granted by RSLs, suggested extending this to other affordable housing tenures (such as mid market rent) and to other providers of these new tenures. Two local authority respondents also proposed that the exemption applying to Scottish Government should be extended to local government (either generally or specifically for regeneration). Another respondent supported exemptions for targeted geographic areas such as town centres. Some respondents queried the definition of Crown properties.

3.23 One respondent suggested that exemption for gifts (transactions where no money changes hands) could lead to avoidance and would need to be considered under tax avoidance measures.

3.24 Several respondents felt there was currently confusion between exemptions and reliefs. Indeed some responses made in relation to this question were more relevant or equally relevant to question six. These points are discussed further under question 6. The Law Society of Scotland made some specific proposals for clarification of exemptions and also stated:

“This area {exemptions and reliefs} needs to be reviewed in detail and the LBTT legislation should not just be a carry-across from SDLT.”

(The Law Society of Scotland)

**Question 4: Do you agree with the proposal that the Compulsory Purchase Order relief should be expanded in Scotland to allow local authorities to benefit from the relief where they compulsorily purchase an empty home for onward sale?**

<b>Table 3.4: Responses to Question 4</b>					
<b>Type</b>	<b>Number of Respondents</b>				
	<b>Yes</b>	<b>No</b>	<b>Other</b>	<b>No Response</b>	<b>Total</b>
Professional/ representative/ trade bodies	3	0	1	9	13
Private individuals	4	2	0	7	13
Legal/ accountancy/ taxation organisations and their representative bodies	8	0	1	2	11
House builders/ Developers/ RSLs and their representative bodies	5	0	0	4	9
Voluntary organisation/ Charity/ Other private organisation	3	0	0	3	6
Local authorities and their representative bodies	4	0	0	0	4
<b>Total number</b>	<b>27</b>	<b>2</b>	<b>2</b>	<b>25</b>	<b>56</b>
Percentage of total responses	48%	3%	3%	45%	100%
<b>Percentage of those responding to Q4</b>	<b>87%</b>	<b>6%</b>	<b>6%</b>	-	-

3.25 Only fifty-six per cent of respondents answered this question. An overwhelming majority (87% of those responding to the question) agreed with the proposal to expand CPO relief to local authorities for this purpose.

“This would undoubtedly make the additional powers due in April 2013 to bring long term empty properties back into use more attractive to local government...”

(COSLA)

“We agree that this relief should be extended as any measure that can lower the cost of enforcement on a problem empty home is a good thing.”

(Scottish Empty Homes Partnership)

3.26 Of those in support, a significant number of respondents (nine) wanted to see this relief further extended beyond local authorities to all bodies with CPO powers.

3.27 A more technical point was made that in some cases a CPO does not need to be carried through fully to achieve the desired outcome, so “perhaps the trigger could be if the council has promoted a CPO but perhaps not fully gone through the entire process” (Stirling Council).

**Question 5: Do you agree with the proposal not to provide Right to Buy or Shared Ownership relief for the Land and Buildings Transactions Tax, on the basis that these reliefs are not needed in Scotland?**

Type	Number of Respondents				
	Yes	No	Other	No Response	Total
Professional/ representative/ trade bodies	3	0	1	9	13
Private individuals	4	1	0	8	13
Legal/ accountancy/ taxation organisations and their representative bodies	7	1	0	3	11
House builders/ Developers/ RSLs and their representative bodies	4	1	3	1	9
Voluntary organisation/ Charity/ Other private organisation	1	0	0	5	6
Local authorities and their representative bodies	0	1	1	2	4
<b>Total number</b>	<b>19</b>	<b>4</b>	<b>5</b>	<b>28</b>	<b>56</b>
Percentage of total responses	34%	7%	9%	50%	100%
<b>Percentage of those responding to Q5</b>	<b>68%</b>	<b>14%</b>	<b>18%</b>	<b>-</b>	<b>-</b>

3.28 Fifty per cent of respondents answered this question. The majority of those responding (68%) agreed with this proposal. In common with some other more technical questions, a significant number of respondents did not respond at all to this question.

3.29 Many of those who were in favour highlighted some qualifications – on occasion making the same point as respondents who stated that they disagreed with the proposal for the same reason. It is therefore more useful to consider the detailed points actually raised by respondents, rather than whether they broadly agreed or disagreed.

3.30 Several respondents from across respondent groups cautioned against removing reliefs just because current thresholds mean that there are few if any transactions affected. This might not be the case in future as new thresholds are set and adjusted. This could also penalise some purchasers in comparison with other parts of the UK in future.

3.31 In terms of Right to Buy, one respondent supported removal of this relief contingent on the ending of all forms of RTB.

3.32 Glasgow City Council sought clarification regarding Shared Equity (now more common than Shared Ownership) and raised the issue of “other tenure types being considered and other ownership types {which} may emerge in the future”. This point was echoed by some house builder representatives in relation to mid-market rent and other new emerging tenures.

**Question 6: Do you agree with the proposed list of reliefs? Please comment on any reliefs which you feel should be abolished, amended or added and give reasons.**

<b>Table 3.6: Responses to Question 6</b>					
<b>Type</b>	<b>Number of Respondents</b>				
	<b>Yes</b>	<b>No</b>	<b>Other</b>	<b>No Response</b>	<b>Total</b>
Professional/ representative/ trade bodies	9	0	1	3	13
Private individuals	2	4	1	6	13
Legal/ accountancy/ taxation organisations and their representative bodies	7	3	1	0	11
House builders/ Developers/ RSLs and their representative bodies	4	2	2	1	9
Voluntary organisation/ Charity/ Other private organisation	2	2	1	1	6
Local authorities and their representative bodies	1	0	1	2	4
<b>Total number</b>	<b>25</b>	<b>11</b>	<b>7</b>	<b>13</b>	<b>56</b>
Percentage of total responses	45%	20%	12%	23%	100%
<b>Percentage of those responding to Q6</b>	<b>58%</b>	<b>26%</b>	<b>16%</b>	<b>-</b>	<b>-</b>

3.33 Just over three quarters of respondents answered this question (77%). A narrow majority of those responding to this question (58%) agreed with list of proposed reliefs. However, many added qualifications or suggested additions. The list of reliefs set out in the consultation are included as Annex 3

3.34 There was no clear pattern among the many detailed comments made by respondents whether they agreed with the proposal, disagreed or were more neutral. However, a cross section of respondents did argue that restricting Charities Relief to organisations registered with the OSCR was unduly restrictive – and that this should be extended to other charities operating in Scotland.

3.35 Points made by professional/representative/trade bodies included:

- The need to keep the list under review in order for Scotland to remain competitive as the UK Government is considering new reliefs.
- Two issues in relation to timing: the need to clarify the time limit for making claims; and the suggestion that tax be paid at the point of completing a land purchase and not – as at present – when an option is

taken out. It was noted that costs can act as a disincentive to development.

- Additional relief should be considered for older people. For example, full or partial relief might be offered for older people who are downsizing their homes.
- Consideration might be given to exempting transactions aimed at preserving listed buildings
- One respondent (The Building Societies Association) questioned whether relief for sale and leaseback is still needed on the basis that this sector had essentially been closed by the FSA.

3.36 Legal, accountancy and taxation organisations provided the greatest number of detailed responses to this question. Comments made included:

- Scottish Limited Partnerships (SLPs) should be treated as bodies corporate so that assets can be transferred between sister companies owned by an SLP without an LBTT charge.
- The potential distortion caused by provisions for sub-sales and multiple dwellings should be considered.
- All proposed reliefs would benefit from economic analysis or impact assessment to test whether they will achieve the desired aims.
- Clear “stand-alone” guidance will be required – which should not assume that all those who need to understand the system will read the relevant primary legislation.

3.37 The comments from voluntary, charitable and other private organisations reflected the diverse make-up of this respondent group. Their proposals included:

- The need to recognise all forms of Islamic finance.
- A request to include relief on purchasing properties to be demolished for infrastructure projects.
- Specific proposals from the Scottish Empty Homes Partnership for relief relating to the purchase and re-use of long-term empty homes and a separate proposal to extend this to all empty high street properties to help boost local economies.
- Relief for Rural Housing Bodies and others operating Rural Housing burdens.
- One charity suggested making any new claim forms for relief much shorter and simpler than the current arrangements.

3.38 House builders representatives made a number of points not covered above:

- Their desire to see first time buyers and disadvantaged areas reliefs reinstated.
- A proposal to include all land purchases for affordable housing under reliefs.

3.39 Comments from private individuals included:

- Questioning whether average price is the fairest basis for multiple transactions.
- The suggestion that the relief in relation to crofting should include transactions under the Transfer of Crofting Estates (Scotland) Act 1997 as well as the 2003 Land Reform (Scotland) Act.
- A query as to the extent of diplomatic and sovereign reliefs currently available and whether these need to be more tightly defined.

3.40 Comments from local authorities not already covered above were:

- The suggestion that there should be a “catch-all” relief for all local authority transactions which were of public benefit.

3.41 Alongside this long list of detailed comments two further general points were raised:

- the need to avoid complexity; and
- a request from one individual to reduce the number of reliefs on the basis that these simply encouraged tax avoidance loopholes.

**Question 7: Do you agree that residential leases of 20 years or less in length should be exempt from Land and Buildings Transaction Tax in Scotland and that no LBTT return should be required?**

Type	Number of Respondents				
	Yes	No	Other	No Response	Total
Professional/ representative/ trade bodies	7	0	0	6	13
Private individuals	5	1	1	6	13
Legal/ accountancy/ taxation organisations and their representative bodies	8	2	1	0	11
House builders/ Developers/ RSLs and their representative bodies	7	0	0	2	9
Voluntary organisation/ Charity/ Other private organisation	1	0	0	5	6
Local authorities and their representative bodies	1	0	1	2	4
<b>Total number</b>	<b>29</b>	<b>3</b>	<b>3</b>	<b>21</b>	<b>56</b>
Percentage of total responses	52%	5%	5%	38%	100%
<b>Percentage of those responding to Q7</b>	<b>83%</b>	<b>9%</b>	<b>9%</b>	-	-

3.42 Sixty-three per cent of respondents answered this question and an overwhelming majority of those who responded (83%) agreed with the proposal to exempt residential leases of 20 years or less.

- 3.43 Detailed criticism however came from the Institute of Chartered Accountants in England and Wales (ICAEW) and the Chartered Institute of Taxation (CIOT).
- 3.44 ICAEW argued instead for a higher value exemption threshold across the board, and were concerned that “a blanket exemption for all short leases might encourage the development of tax avoidance schemes designed to benefit from it.”
- 3.45 CIOT’s concerns related primarily to commercial leases but counselled that: “The existing 2003 Finance Act Schedule 17A provisions are extensive and complex.... LBTT should not follow SDLT into the equivalent of Schedule 17A without reviewing alternatives”.

**Question 8: What proposals would you make to ensure that the calculation of tax payments due on commercial leases is better aligned with Scots law and practices?**

- 3.46 Twenty organisations and two individuals responded to this question (39% of respondents). There was substantial common ground across legal, accountancy and taxation professional bodies and also private organisations concerned with commercial development. All 14 such respondents supported simplification of the current (very complex) system. In most cases the need to align better with Scots law was also mentioned. Some respondents also referred to the burden on businesses of this “up-front” tax.

“The current regime does not sit well with Scots property law and practices and the tax itself is a considerable ‘up-front’ burden on businesses.”

(Scottish Property Federation)

“ ...it can be very difficult for solicitors and other tax advisers to calculate SDLT on lease rentals.....The administrative burden is severe...”

(Law Society of Scotland)

- 3.47 A number of further, more detailed problems with the existing system were identified by respondents:
- The unfairness of an “up-front” tax where businesses require to move, terminate, or assign leases mid-term.
  - The difficulties of establishing the basis for payment due to complex or unpredictable rent structures. Specific problems with wind-farm leases were mentioned more than once.
  - Anomalies in relation to England because of the different legal system.
- 3.48 It was also suggested that the estimates provided for revenue in the Consultation paper may be high given current downward pressure on rental values and lengths of leases.

3.49 Ten respondents made specific suggestions for improvement, some very detailed. Some respondents suggested a move (or a move back) to taxing rent. The Law Society of Scotland set out four detailed options for LBTT which they and several other respondents recommended should be considered:

- tax payable annually as a percentage of actual rent paid;
- tax paid on Net Present Value (NPV) but payable in instalments at the tenant's option;
- tax paid on NPV but recalculated every five years based on actual rent paid; and
- tax paid as a percentage of average rent payable under the lease.

3.50 Some respondents suggested that further discussion was needed to explore the options before the development of the legislation. They suggested it may be preferable to deal with this issue through an enabling measure until the best course of action for future primary legislation can be agreed.

“We question whether in the time available there is sufficient time before the introduction of the LBTT Bill to the Scottish Parliament for proper consideration of the radical changes which require to be made in relation to LBTT on leases. We recommend that further consideration is given after to LBTT on leases once the LBTT Bill has been introduced to the Scottish Parliament and appropriate amendments made once the LBTT lease proposals have been adequately considered.”

(Brodies LLP)

3.51 The other group of respondents who shared common ground were those concerned with agricultural leases (professional valuers, a trade body and an individual). The view was that agricultural leases need to be treated separately from commercial leases. Specific detailed proposals are set out in the responses of Scottish Land and Estates (who also recommended that agricultural tenancies be an exempt category) and in the joint response of the Central Association of Agricultural Valuers (CAAV) and the Scottish Agricultural Arbiters' and Valuers' Association (SAAVA).

**Question 9: Do you agree that anti-avoidance measures as described in paragraphs 6.1 and 6.2 should be put in place for the Land and Buildings Transaction Tax, along the lines of those included in UK SDLT legislation?**

<b>Table 3.8: Responses to Question 9</b>					
<b>Type</b>	<b>Number of Respondents</b>				
	<b>Yes</b>	<b>No</b>	<b>Other</b>	<b>No Response</b>	<b>Total</b>
Professional/ representative/ trade bodies	4	2	2	5	13
Private individuals	3	2	1	7	13
Legal/ accountancy/ taxation organisations and their representative bodies	3	7	1	0	11
House builders/ Developers/ RSLs and their representative bodies	6	2	0	1	9
Voluntary organisation/ Charity/ Other private organisation	1	0	0	5	6
Local authorities and their representative bodies	0	0	2	2	4
<b>Total number</b>	<b>17</b>	<b>13</b>	<b>6</b>	<b>20</b>	<b>56</b>
Percentage of total responses	30%	23%	11%	36%	100%
<b>Percentage of those responding to Q9</b>	<b>47%</b>	<b>36%</b>	<b>17%</b>	-	-

3.52 Sixty-four per cent of respondents answered this question. While a slightly higher number of respondents agreed with this proposal than disagreed (17 compared with 13), the majority of those in support provided fairly general comments. In particular, they noted that tax avoidance measures are needed. Many also stressed the importance of aligning with UK arrangements: this view came mainly from organisations with interests in development in other parts of the UK as well as Scotland.

“..it is important that anti-avoidance rules are in line with the rest of the UK as proposed to ensure rules are consistent and understood. We do not want Scotland to be seen as somewhere more challenging to invest in ...”

(Homes for Scotland)

3.53 The Institute of Chartered Accountants of Scotland, while supporting the proposal, stressed the importance of getting the entirety of design of the LBTT scheme right, and recommended some specific elements be incorporated, covering:

- a clear policy statement;
- a tax structure which minimises rate differences, reliefs and exemptions;
- well drafted legislation; and
- effective compliance and enforcement.

3.54 Those opposing the proposal were largely legal and accountancy bodies and professionals. There was a high level of consistency across these responses, the common themes being that:

- a well-drafted General Anti-Avoidance Rule (GAAR) was preferable to adding to the already complex layers of Targeted Anti-Avoidance Rules (TAARs);
- if TAARs were considered in Scotland for LBTT purposes these should not simply transcribe existing SDLT measures; and
- the current 15% tax on high value corporate purchases was penal and largely unnecessary. One respondent was specifically concerned about the potential (and unintended) impact on some farm transactions.

“The Scottish Government has the opportunity to introduce a simpler, easier to enforce system. It should be possible for a general anti-avoidance rule, underpinned by a system of rulings, to negate the need for targeted measures.”

(Scottish Council for Development and Industry)

**Question 10: Do you think that a more general anti-avoidance rule should be put in place instead of or in addition to the proposed targeted anti-avoidance rules to help ensure that Land and Buildings Transaction Tax and other Scottish taxes due are paid?**

Type	Number of Respondents				
	Yes	No	Other	No Response	Total
Professional/ representative/ trade bodies	6	1	2	4	13
Private individuals	2	1	1	9	13
Legal/ accountancy/ taxation organisations and their representative bodies	5	5	1	0	11
House builders/ Developers/ RSLs and their representative bodies	1	6	1	1	9
Voluntary organisation/ Charity/ Other private organisation	1	0	0	5	6
Local authorities and their representative bodies	0	0	2	2	4
<b>Total number</b>	<b>15</b>	<b>13</b>	<b>7</b>	<b>21</b>	<b>56</b>
Percentage of total responses	27%	23%	12%	38%	100%
<b>Percentage of those responding to Q10</b>	43%	37%	20%	-	-

3.55 Sixty-three per cent of respondents provided a response to this question. The majority of those responding represented legal or accountancy bodies or professionals in the tax field. These groups also responded in greatest detail. There was no clear consensus in the views expressed however, with only marginally more in favour of a General Anti-Avoidance Rule (GAAR) than against.

3.56 The Law Society of Scotland set out a clear case for a Scottish GAAR and pointed to ways in which this could improve on current proposals for a UK GAAR. Several other respondents in the groups mentioned above supported GAARs in preference to targeted measures, noting as an illustration measures in the 2003 Finance Act which were seen as ineffective.

“...if there is an effective General Anti-avoidance (Abuse) Rule, the targeted anti-avoidance measures announced this year as well as section 75A {of the 2003 Finance Act} should not be necessary.”

(Law Society of Scotland)

3.57 Reasons put forward by those who were against this proposal included:

- The very wide-ranging nature of GAARs means they were more difficult to operate in practice than targeted measures, which could more easily be tailored.
- Consistency across the UK was sought in particular by house builders. Others recommended that the Scottish Government awaits the proposed UK GAAR and review its effectiveness in practice before considering a Scottish version.

“...we think it would be premature to introduce a Scottish GAAR. It would be better to await the outcome of the UK consultation, and review how the UK GAAR operates in practice...”

(Institute of Chartered Accountants of Scotland)

3.58 Of those expressing a neutral view, the most detailed response came from the CIOT, whose members' views reflected the divergent views outlined above. The priority for a number of other respondents was simply clarity in whatever rules are agreed.

**Question 11: Do you agree that a new online system should be designed to allow for simultaneous submission of an LBTT return, payment of any tax due and registration of title to the land or property in the Land Register?**

<b>Table 3.10: Responses to Question 11</b>					
<b>Type</b>	<b>Number of Respondents</b>				
	<b>Yes</b>	<b>No</b>	<b>Other</b>	<b>No Response</b>	<b>Total</b>
Professional/ representative/ trade bodies	7	0	0	6	13
Private individuals	4	1	0	8	13
Legal/ accountancy/ taxation organisations and their representative bodies	9	1	1	0	11
House builders/ Developers/ RSLs and their representative bodies	4	1	1	3	9
Voluntary organisation/ Charity/ Other private organisation	2	0	0	4	6
Local authorities and their representative bodies	1	1	0	2	4
<b>Total number</b>	<b>27</b>	<b>4</b>	<b>2</b>	<b>23</b>	<b>56</b>
Percentage of total responses	48%	7%	4%	41%	100%
<b>Percentage of those responding to Q11</b>	<b>82%</b>	<b>12%</b>	<b>6%</b>	<b>-</b>	<b>-</b>

- 3.59 Fifty-nine per cent of respondents answered this question. The overwhelming majority of those who responded (82%) were in favour of the proposal. Only four respondents were against – but in most cases their comments made clear that what they opposed was the compulsory payment of tax before title can be registered. This is covered under Question 13.
- 3.60 Two respondents were neither for nor against. They highlighted the need to trial any new system; offer an alternative for those not online; and emphasised the challenge for Revenue Scotland to get the new system up and running.
- 3.61 Those in favour raised a number of qualifications worth noting in addition to the points above:
- the need for the development of the new system to be properly resourced;
  - the need for a “hot-line” for users to support the new system; and
  - the need to learn lessons from the very limited use of the current Automated Registration to Title to Land system currently in place.

“...it will be essential to ensure that the online system is robust so it is capable of being used by most taxpayers and agents, and the time and effort required to get the system operational should not be underestimated.”

(Ernst and Young)

“..[we] recommend a dedicated ‘LBTT hotline’ to provide users with direct access to assistance with the online system.”

(Deloitte)

3.62 Several respondents supported the need to maintain the option of a manual system at least for the time being. However, a counter view was expressed that on efficiency grounds (and to reduce the overall tax burden of government) the online system should be mandatory.

**Question 12: Do you agree that all LBTT returns should be submitted online or should there be an opportunity to submit paper returns?**

Table 3.11: Responses to Question 12					
Type	Number of Respondents				
	Yes	No	Other	No Response	Total
Professional/ representative/ trade bodies	1	8	1	3	13
Private individuals	1	5	0	7	13
Legal/ accountancy/ taxation organisations and their representative bodies	1	9	0	1	11
House builders/ Developers/ RSLs and their representative bodies	2	3	1	3	9
Voluntary organisation/ Charity/ Other private organisation	1	1	0	4	6
Local authorities and their representative bodies	0	2	0	2	4
<b>Total number</b>	<b>6</b>	<b>28</b>	<b>2</b>	<b>20</b>	<b>56</b>
Percentage of total responses	11%	50%	3%	36%	100%
<b>Percentage of those responding to Q12</b>	17%	78%	5%	-	-

3.63 Sixty-four per cent of respondents answered this question. A large majority of those who responded (78%) were opposed to compulsory online LBTT returns. Six respondents were in favour.

3.64 Those who supported the proposal offered two main reasons:

- the vast majority of returns would be prepared by businesses or professionals; and
- online returns would reduce the overall administration (and hence tax) burden and may also help counter tax avoidance.

3.65 Legal and accountancy bodies and professional/representative bodies figured prominently among those opposed to compulsory returns. Points made in support of this view included:

- IT systems can fail so a back-up paper facility is needed. One respondent suggested this was a particular risk for government IT systems.
- Access to broadband is limited, particularly in remote rural areas but also among certain groups, such as older people.
- Paper returns may be needed for any particularly complex cases.

“Given the technological challenges in some parts of Scotland, it would not be appropriate to make submissions of LBTT returns online compulsory. There would be a risk that submissions on behalf of those investing could not be guaranteed and, should this be the case, investors may be put off investing in Scotland.”

(Scottish Council for Development and Industry)

3.66 Some of those against the proposal, or who were broadly neutral, suggested that the facility for paper returns is retained on a temporary basis. This might be for a set transitional period, until universal broadband is available or until the practice of making paper returns simply comes to a natural end. One respondent suggested a small charge for those making paper returns, to discourage their use.

**Question 13: Do you agree that Land and Buildings Transaction Tax must be paid before title to the land or property can be registered in the Land Register or the Register of Sasines or before a document or deed is registered in the Books of Council and Session?**

Type	Number of Respondents				
	Yes	No	Other	No Response	Total
Professional/ representative/ trade bodies	3	4	0	6	13
Private individuals	4	0	2	7	13
Legal/ accountancy/ taxation organisations and their representative bodies	4	5	2	0	11
House builders/ Developers/ RSLs and their representative bodies	1	4	0	4	9
Voluntary organisation/ Charity/ Other private organisation	1	0	0	5	6
Local authorities and their representative bodies	2	0	0	2	4
<b>Total number</b>	<b>15</b>	<b>13</b>	<b>4</b>	<b>24</b>	<b>56</b>
Percentage of total responses	27%	23%	7%	43%	100%
<b>Percentage of those responding to Q13</b>	<b>47%</b>	<b>41%</b>	<b>12%</b>	<b>-</b>	<b>-</b>

3.67 Fifty-seven per cent of respondents answered this question. Of those responding, a small majority were in favour. Opinion was split within most groups. Those local authority representatives and individuals who expressed a firm view all supported the proposal – but most did not expand on the reasons.

3.68 Among those who supported the proposal the main reason was greater efficiency. Specifically, the proposal was seen as a way of reducing collection costs and revenue losses. However, a number of caveats were raised (even by respondents who supported the proposal). These included that:

- any dispute over the amount of tax payable (for example, in complex cases) should not hold up title registration;
- some kind of advance notice system might be needed to underpin the approach or the tax could be payable at conclusion of missives; and
- a contingency system had to be in place in event of system failure.

3.69 Those opposed to this proposal included most representatives of the legal profession, in addition to a range of other interest groups. The reasons put forward included:

- opposition to the principle of linking ownership to the administration of a tax;
- the impact on complex and significant transactions where agreement on the tax calculation could delay deals and risk or deter investment. It was suggested that this proposal underestimated the process for registering leases;
- the impact on purchasers' cash-flow and bridging finance requirement. SDLT provides 30 days to pay and removing this facility would be a retrograde step; and
- the risk of system failure.

“...there is no reason why the fundamentals of the ownership of Scottish property should be tied to the administrative or payment requirements of a tax which may be a very minor component of a significant commercial transaction.”

(Law Society of Scotland)

3.70 A system for submitting LBTT returns in advance (but paying on completion of sale) was suggested. Another suggestion was that the proposal could be workable if restricted to residential property already registered on the Land Register.

**Question 14: Do you agree that the Land and Buildings Transaction Tax (Scotland) Bill should be aligned to Scots Law and practices in respect of the treatment of Partnerships and Trusts? If so, what measures would you propose?**

<b>Table 3.13: Responses to Question 14</b>					
<b>Type</b>	<b>Number of Respondents</b>				
	<b>Yes</b>	<b>No</b>	<b>Other</b>	<b>No Response</b>	<b>Total</b>
Professional/ representative/ trade bodies	7	0	0	6	13
Private individuals	3	1	0	9	13
Legal/ accountancy/ taxation organisations and their representative bodies	8	0	2	1	11
House builders/ Developers/ RSLs and their representative bodies	4	0	1	4	9
Voluntary organisation/ Charity/ Other private organisation	1	0	0	5	6
Local authorities and their representative bodies	2	0	0	2	4
<b>Total number</b>	<b>25</b>	<b>1</b>	<b>3</b>	<b>27</b>	<b>56</b>
Percentage of total responses	45%	2%	5%	48%	100%
<b>Percentage of those responding to Q14</b>	86%	3%	10%	-	-

3.71 Just over half (52%) of respondents answered this question. The overwhelming majority of those responding (86%) agreed the need for alignment to Scots law and many identified issues which should be addressed in any new measures.

3.72 Several respondents referred to the complexity of and flaws in current SDLT provisions designed to prevent partnerships being used for perceived tax avoidance purposes - but which were considered to be ineffective. There was a broad consensus in favour of a fundamental review of partnership provisions, with a specific separate consultation with the property industry and professions.

“The SDLT provisions of the Finance Act 2003...relating to partnerships...are so complex as to be virtually unworkable in practice.”

(Institute of Chartered Accountants of Scotland)

3.73 Respondents identified a number of issues which needed to be addressed including:

- There is a need for clarification on partner to partner and partner to connected company transactions.
- There is a need for different rules for different types of partnership. For example, property funds set up using partnership structures operate

quite differently from family farming partnerships.

- The definition of the treatments of Trusts needs to be clarified to take account of Scots Law.

3.74 Several respondents pointed to the case for a General Anti-avoidance Rule (GAAR) to underpin any new, simplified provisions for partnerships. A number of respondents also noted that provisions for LBTT would need to have regard to English law as well as Scots law, as many partnerships operate UK-wide. And it was also suggested that provisions governing partnerships and trusts are deferred for further detailed consultation.

“Assuming that a GAAR is included in the Scottish tax legislation, it should be possible to draft the LBTT rules without many of the complexities which have been included in the SDLT partnership code....”

(Brodies LLP)

3.75 Some of the points outlined above were also made by those respondents who were broadly neutral on this question. The one individual stating opposition was concerned about farms owned via family partnerships and proposed separate treatment for such cases.

#### **Question 15: Do you have any comments on the draft Business and Regulatory Impact Assessment?**

3.76 Only six respondents made comments on the draft Business and Regulatory Impact Assessment. Two agreed with the rationale for government intervention and that “doing nothing” was not an option. Others made points such as:

- There is a need for further consideration once thresholds and rates are confirmed.
- There is a need for further consideration once the final Business and Regulatory Impact Assessment is published.
- The probability of behavioural and market impacts are not known at this stage.

#### **Question 16: Do you have any comments on the draft Equalities Impact Assessment?**

3.77 Only two respondents commented here. In both cases the concern related to the move to compulsory online submission of LBTT returns. It was noted that this could impact on older people, those who are not computer literate and those in remote areas with poor broadband. It was proposed that there should always be an alternative to online submissions.

**Question 17: Do you have any other comments in relation to legislation for the Land and Buildings Transaction Tax, which are not covered by your responses to any of the other questions listed above?**

3.78 About half of all respondents took the opportunity to comment either under Question 17 or in covering letters. Most of the points made have already been reported in detail under previous questions but some are worth reiterating here. Respondents highlighted:

- The importance of clarifying proposed rates and thresholds and reviewing the basis for the desired revenue neutrality given the abnormal market conditions in recent years.
- The ambitious timetable proposed, given the complexities of some aspects of the suggested legislation. Issues such as commercial leases, partnerships and anti-avoidance rules require more detailed consultation and should be dealt with later in order to get the legislation right. It was also recognised that Scottish Government needs to make it clear that LBTT will be introduced, regardless of the referendum and its outcome, to remove any confusion on this point.
- Transitional arrangements are critical. For example, where returns made under the current system need amended, or where other variations or claw-backs arise.
- Guidance needs to be clear, forms simplified and Revenue Scotland and the Registers of Scotland resourced with the necessary expertise to operate the system and provide high quality advice. One respondent also queried whether the comparative cost of using HMRC had been evidenced in best value terms.

3.79 The implications for farming businesses and agricultural tenancies were reiterated, in order to ensure no adverse impact on Scottish Government aims in relation to this sector.

3.80 Finally, it is worth noting the fundamental concerns raised by seven individual respondents regarding the principle of a land transaction tax. These views are encapsulated in the following quotes:

“Stamp duty tax, by contrast [with Council Tax and business rates], is a tax on transactions based on the value of the property, but does not recur. Its main advantage is that it raises revenue, and for that reason alone, caution is needed in amending it. However the economic arguments against it are quite strong....A rational system of property taxation would have as its broad general base principle the taxation of all real property...”

(Private individual)

“...it is disappointing to note that no account appears to have been taken of the significant review undertaken by Professor James Mirrlees. The Mirrlees Review advocates the abolition of

business rates and stamp duty land tax on non-domestic property and their replacement with a land value tax on non-domestic property and agricultural land...”

(Private individual)

“Land is one of the most valuable assets that Scotland has. As shown in the supporting documentation currently land transfers are dropping therefore the tax return from such transfers will fall rather than increase. Would it not be sensible now that the Scottish Government has a chance to do so to move from a one-off transaction tax to an annual tax on land? This would encourage unused or underused land to change hands, become productive and fulfil a real benefit to get Scotland going again.”

(Private individual)

## **ANNEX ONE – CONSULTATION RESPONDENTS**

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### **List of Respondents**

The following organisations and individuals responded to the consultation:

#### **Private individuals:**

13 private individuals

#### **Professional/ representative or trade bodies**

Built Environment Forum Scotland

CBI Scotland

Central Association of Agricultural Valuers (CAAV) & Scottish Agricultural Arbiters' and Valuers' Association (SAAVA)

CIH Scotland

Council of Mortgage Lenders

Existing Homes Alliance Scotland

RICS Scotland

Royal Town Planning Institute Scotland

Scottish Council for Development and Industry (SCDI)

Scottish Grocers' Federation (SGF)

Scottish Land and Estates

Scottish Stamp Tax Practitioners Group

The Building Societies Association (BSA)

#### **Legal/accountancy/taxation organisations and their representative bodies**

Brodies LLP

Chartered Institute of Taxation (CIOT)

Deloitte

Ernst and Young

Grant Thornton UK LLP

ICAEW Members in Scotland

The Institute of Chartered Accountants in Scotland (ICAS)

Law Society of Scotland

Legal Knowledge Scotland

Macroberts

PWC

#### **House builders/developers/RSLs and their representative bodies**

D.J. Laing Homes Ltd

Homes for Scotland

Miller Homes

National Federation of Property Professionals

NHBC

Places for People

Scottish Property Federation

Scottish Federation of Housing Associations (SFHA)

The British Land Company PLC

**Voluntary organisations/charities/ other private organisations**

Carnegie UK Trust

Network Rail Infrastructure Limited

Scottish Empty Homes Partnership

The Church of Scotland Housing and Loan Fund for Retired Ministers and Widows and Widowers of Ministers

The Energy Saving Trust

The Islamic Finance Exchange Limited

**Local authorities and their representative bodies**

Convention of Scottish Local Authorities (COSLA)

Falkirk Council

Glasgow City Council

Stirling Council

## ANNEX TWO – EXEMPTIONS

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### Exemptions

The consultation sought views on the proposed transaction categories that should be exempt from a Land and Buildings Transaction Tax. The Scottish Government proposes to provide the following exemptions, which already exist under SDLT:

- Transfers of property on divorce, separation or the end of a civil partnership.
- Property transactions where no money or other contribution that has a monetary value changes hands.
- Land or property which is transferred under succession in law when the previous owner dies.
- Social tenancies granted by Registered Social Landlords.
- Where the purchaser is the Scottish Government, the Scottish Parliamentary Corporate Body or another designated Crown organisation.
- Transfers of land and property where the purchase price or lease value is less than £40,000.

In line with the current SDLT approach, the Government proposes that Scottish Ministers should be able, through regulations to add further exemptions to this list, subject to Parliamentary approval. The Scottish Government would consult on any proposals to amend the list in future.

## ANNEX THREE – RELIEFS

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### Reliefs

The consultation sought views on the proposed changes to reliefs on a Land and Buildings Transaction Tax (LBTT).

The Scottish Government proposes to introduce a range of reliefs broadly in line with the current SDLT reliefs that offer up to a 100% discount on the taxpayer's Land and Buildings Transaction Tax payment. They also plan to amend or remove reliefs where changes are required to the Scottish system or where the relief is not used within the Scottish system.

They proposed to:

- Provide an amended **Compulsory Purchase Order (CPO) relief**. At present, the position is that a local authority does not pay SDLT if it purchases land or property through a CPO with the intention of transferring it directly to a third party to facilitate development. The third party remains liable for SDLT if the property exceeds the minimum threshold. The Government proposes to amend the relief so that it will be available in respect of all CPOs where the local authority transfers land to a third party, without being limited to situations where this will facilitate 'development'. This will enable local authorities to use CPOs to purchase long-term empty homes, where the home will not be structurally altered after it is resold (and so would not attract CPO relief under the current definition of 'development') without having to pay Land and Buildings Transaction Tax. In practice many empty homes are likely to be purchased for less than the minimum threshold at which SDLT currently is payable, but this will not always be the case. The proposal to widen the relief will therefore remove one potential obstacle to local authorities seeking to bring empty homes back into use. This extension of CPO relief would be available for compulsory purchases by local authorities only, and not by other bodies with CPO powers.
- Further simplify the approach to Land and Buildings Transaction Tax by **not** providing the following existing reliefs, which are currently not used in Scotland - either because SDLT is not normally due on these transactions or they do not operate in Scotland:
  - Right to Buy relief – this relief, which means a purchaser only pays SDLT on the discounted value of their home, rather than the full value, is not currently claimed in Scotland as only a small proportion of Right to Buy homes are valued at more than £125,000. The Scottish Government will shortly be consulting on proposals to further restrict the Right to Buy.
  - Shared Ownership relief – this relief from SDLT on the lease element of shared ownership is not needed in Scotland because, like other residential leases, shared ownership leases (known as occupancy agreements) can only last for a maximum of 20 years, although a new lease can be entered into when the old one ends if the owner and

housing association agree. As a result, in Scotland the occupancy payment is never high enough to require SDLT to be paid.

- Bodies established for national purposes relief – only one of the bodies which can claim this relief operates in Scotland (NESTA) and it is expected to be eligible for charities relief in future.
  - Collective enfranchisement by leaseholders relief – this is only available where leasehold owners of flats jointly purchase the freehold for their building. Leasehold ownership is not used in Scotland.
- Continue to provide a relief for the **bulk purchase** of residential housing. In order to encourage large-scale investment in the private rented sector, thus providing more homes for rent, it is fair and appropriate that landlords should be charged Land and Buildings Transaction Tax on the basis of the average purchase price of each home bought, rather than the total price of a bulk purchase.

The Scottish Government proposes the following reliefs would be carried forward from SDLT:

- **Group relief** will apply where land or property is transferred between two connected companies within a corporate group structure because there is in effect no change in the economic ownership of the land or property.
- **Acquisition relief** will apply where land is transferred between companies in the same corporate group as part of a reconstruction or acquisition.
- **Charities relief** will apply to land acquisitions by charities registered with the Office of the Scottish Charity Regulator (OSCR). This is a change to the current position under SDLT where charities must be recognised by HMRC to qualify for charities relief.
- **Registered Social Landlords relief** will apply to purchases by RSLs in certain circumstances where their purchases are part-funded with public sector funding.
- **Certain acquisitions by property traders relief** will apply where property is bought from the personal representatives of a deceased person or from an individual and the chain of transactions breaks down, or in part exchange for a new residential property.
- **Certain acquisitions by developers relief** will apply where residential property is bought by developers in part exchange for a new residential property.
- **Certain acquisitions by an employer relief** will apply where a purchase of residential property is made by an employer where an employee needs to change residence due to relocation of his/her employment.
- **Educational bodies partial relief** will apply to certain sale/long lease and leaseback arrangements involving further and higher education organisations.

- **Alternative property finance relief** will apply to ensure that where e.g. mortgages are structured to comply with Islamic (Shari'a) law only one Land and Buildings Transaction Tax payment is made.
- **Alternative property investment bonds relief** will apply to ensure no additional Land and Buildings Transaction Tax charges arise on the issue of certain Shari'a compliant property investment bonds.
- **Incorporation of limited liability partnerships (LLP) relief** will apply where an interest in land is transferred by a partner in an LLP to an LLP in connection with its incorporation.
- **Multiple dwellings relief** will apply to bulk purchases so the purchaser only pays Land and Buildings Transaction Tax based on the average purchase price of each home, not the total combined price.
- **Compulsory Purchase Order relief** will apply so that local authorities do not need to pay Land and Buildings Transaction Tax when they compulsorily purchase land or property and then sell it on.
- **Complying with Planning Obligations relief** will apply where a land transaction is entered into in order to comply with a planning obligation.
- **Demutualisation of an insurance company/building society reliefs** will apply to land transactions carried out at the time of the demutualisation.
- **Public bodies relief** will apply in cases where, as a result of Scottish legislation, there is a transfer of functions from one public body to another.
- **Reorganisation of UK Parliamentary constituencies relief** will apply where a local constituency association transfers land or property to another as a result of a reorganisation of UK Parliamentary constituencies.
- **Crofting Community Right to Buy relief** will apply to the purchase of two or more crofts under Crofting Community Right to Buy provisions in the Land Reform (Scotland) Act 2003.
- **Overlap relief** will ensure that there is no double charge of Land and Buildings Transaction Tax in the overlap period when a further lease has been granted.
- **Subsale relief** will apply where A contracts to purchase land from B, but sells it on to C before the completion of the former contract. In this case, there will only be one transaction where there is a requirement to pay Land and Buildings Transaction Tax.
- **Sale and leaseback relief** will apply to the leaseback element of a sale and leaseback arrangement.

- **Transfers under specified legislation relief:** this refers to various miscellaneous provisions - see <http://www.hmrc.gov.uk/manuals/sdltmanual/SDLTM29600.htm>
- **Zero Carbon Homes relief** will continue the temporary relief to provide full or partial relief for homes certified as meeting zero carbon standards (although the Scottish Government will consult on changes to the required standards, which will be set out in future regulations).
- **Diplomatic premises relief** will apply where premises are purchased or leased by foreign governments.
- **Sovereign bodies and international organisations relief** will apply where headquarters are purchased or leased by these bodies.

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