



Submission to the Scottish Government

**Land and Buildings Transaction Tax –
Property Investment Funds**

2 August 2018

About ICAS

1. The following submission has been prepared by the ICAS Tax Board. The ICAS Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 board and committee members. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 21,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.
2. ICAS has contributed the experience of its members and their technical expertise in the development and implementation of the two existing devolved taxes, Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT), in the development of the proposed Air Departure Tax, and the establishment and ongoing development of the tax authority Revenue Scotland. ICAS has also contributed to the development of both Scottish Rate of Income Tax and the Scotland Act 2016 measures for Scottish Income Tax rates and bands.
3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and financial system design, and to point out operational practicalities.

General comments

4. ICAS welcomes the opportunity to respond to 'A consultation on Land and Buildings Transaction Tax – Property Investment Funds', published by the Scottish Government on 3 May 2018.
5. We acknowledge that the objectives of the consultation are to provide (i) a seeding relief for Property Authorised Investment Funds (PAIFs) and Co-ownership Authorised Contractual Schemes (CoACS) from Land and Buildings Transaction Tax (LBTT), and (ii) a relief for when units in a CoACS are traded. We welcome and support this intent.
6. Our comments are restricted to our areas of expertise which in this instance are the operational aspects of LBTT and behavioural responses to the tax. We have not responded to all the specialist questions set out in the consultation but have instead noted below the main concerns raised by our members.
7. We would support the introduction of these LBTT reliefs being similar in purpose, scope and availability to those available for SDLT, in accordance with the reliefs introduced in Finance Act 2016. Such alignment would provide greater simplicity and certainty for the taxpayer, who may or may not be located in Scotland, and would provide a welcome streamlining of tax administration for these types of investments. Such investments tend to invest across the UK and anecdotal evidence suggests that they are discouraged from investing in Scotland if the Scottish tax regime is both more costly and has different administrative requirements compared to the rest of the UK.
8. At present, Scotland may be put at a commercial disadvantage when compared with the rest of the UK due to the lack of seeding relief for PAIFs and CoACS. These vehicles have been designed to encourage onshore collective investment in property. Collective investment offers benefits to the investor by offering asset diversification and a spread of risk. It offers benefits to the property market by introducing additional liquidity which should benefit the economy as a whole. Seeding relief is generally put in place to enable a transition to a new regime so as to remove a non-commercial cost of reorganisation where there is no economic disposal. Inevitably, if the fiscal environment appears to be disadvantageous, investment decisions may be influenced and Scottish properties within a UK portfolio may be excluded from a transfer into these collective investment regimes.
9. The proposed reliefs should remove a current barrier to investment and a charge to LBTT that creates illiquidity, in order to encourage investment. At present, the lack of relief is providing a barrier on entry, which precludes Scottish properties from being included in

investment decisions. Also, our members tell us that, currently, clients are being advised to minimise their investment portfolios in Scotland to reduce risk

10. If avoidance is of real concern, it should be dealt with using the legislation in the RSTPA 2014 that provides for a Scottish General Anti Avoidance Rule.
11. We trust that an appropriate communications strategy will be issued for those taxpayers affected.
12. Beyond these immediate LBTT measures, a process is needed in which to address issues such as this. There is a need for 'care and maintenance' measures in the existing tax law so that if stakeholders such as Revenue Scotland find parts of the legislation do not work as intended, or the legislation does not work as taxpayers may wish from a commercial perspective, there is an opportunity to revisit the law. To date, possible amendments to tax law need to be raised on an ad hoc basis. To maintain and improve the Scottish devolved taxes a regular, formal, tax process is needed. This will allow anomalies to be addressed quickly, effectively and collectively.