



**Submission to the Scottish Government**

**A consultation  
on an amendment to Land and Buildings  
Transaction Tax Group Relief**

**13 April 2018**

## **A consultation on an amendment to Land and Buildings Transaction Tax Group Relief**

### **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 an amendment to Land and Buildings Transaction Tax Group Relief', published by the Scottish Government in March 2018.
5. We acknowledge that the objective of the consultation is to ensure that group relief for LBTT is similar in purpose, scope and availability to that available for SDLT, and this sets out to make the LBTT(S)A 2013 consistent with the original policy intent. We welcome and support this intent.
6. We are concerned however at the use of secondary legislation because this can only be enacted prospectively. We believe this measure should be in primary legislation, and applied retrospectively, given that this was always the policy intention and that some groups have now been disadvantaged. There is a precedent for retroactive measures, in the Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill currently in the Parliament. We trust that a similar process will apply here, with an act as soon as possible.
7. Taxpayers need to know where they stand in relation to past transactions and possible incorrect LBTT returns. We trust that a communications strategy will be issued for those taxpayers affected, whether or not retroactive measures are enacted.

### **Care and maintenance process**

8. Beyond this immediate LBTT measure, 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.
9. 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.

## **Response to specific questions**

**Question 1: Do you agree that the draft instrument provided for in Annex A will achieve an outcome consistent with the equivalent group relief arrangements available under SDLT? If not, please provide comment, providing any relevant suggestions for legislative amendment.**

10. There are a number of amendments needed so that the draft legislation meets its intended outcome as discussed below.
11. The consultation document notes in paragraph 9 that LBTT legislation is designed to better align with Scots law and practices, and if this is to be the case, there are a number of changes needed in the draft legislation.
12. The draft instrument refers to 'mortgage arrangements' but this is not commonly used to refer to Scottish arrangements. The legislation should be drafted using Scots law terms.
13. Paragraph 3A sets out arrangements in (i) England, Wales and Northern Ireland, and (ii) in Scotland. Ideally, in Scottish legislation we would hope to see the Scottish provision being given priority. Also, there is a need to cover arrangements in other jurisdictions outside the UK.
14. Sub-paragraph (1)(a)(ii) refers to any arrangement that is analogous to a pledge – but we expect it should also refer to an actual pledge.

**Question 2: Do you consider that the proposed amendment to the legislation will reduce the effectiveness of existing arrangements or result in any new areas of potential tax avoidance?**

15. It is most unlikely that the proposed amendment to the legislation will reduce the effectiveness of existing arrangements or result in new areas of potential tax avoidance.
16. Most corporate groups provide security to their lenders: commercial loan arrangements under which the shares of a group company are pledged as security for lending reflect normal commercial usage, and are unconnected with tax avoidance. There is also the Scottish General Anti Avoidance Rule in place to counter avoidance. We are not aware of the UK SDLT measures being exploited.

**Question 3: Do you have any other comments, not covered by the previous questions, on the draft legislation in Annex A?**

17. With reference to paragraph 8 of the consultation document, we strongly support efforts by the Scottish Government to introduce primary legislation. In the interests of equity, no group should be disadvantaged by the original legislation when this measure has been recognised as addressing an unintended anomaly.

**Question 4: Do you think that the legislation in Annex A will, in any way, impact upon equal opportunities, human rights, businesses, island communities, privacy and/or sustainable development in Scotland?**

18. No.