



ICAS Representations
Land and Buildings Transaction Tax
17 October 2017

Introduction

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. ICAS is also a public interest body.

ICAS has contributed the experience of its members and their technical expertise in the development and implementation of the two devolved taxes, Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT), in the development of the proposed Air Departure Tax, and in the establishment of the tax authority Revenue Scotland. 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 in the many complex issues and decisions involved in tax and financial system design, and to point out operational practicalities.

As a matter of policy, ICAS does not comment on the rates of any tax.

General comments

ICAS understands that the Scottish Government intends to bring forward a Bill this Parliamentary term to give retrospective effect to the Land and Buildings Transaction Tax (LBTT) (Additional Amount - Second Homes Main Residence Relief) (Scotland) Order 2017. If a Bill is being brought forward, we believe this is an opportunity to address other concerns in the LBTT legislation, including what may be unintended consequences of the introduction of a new tax. These concerns are outlined below.

Share pledges and group relief

There are some areas of detailed policy in LBTT which lead to commercial outcomes that are different when compared with SDLT. Most notably, according to a recent Revenue Scotland opinion understood to have been given in July 2017, groups cannot get group relief essentially wherever they have bank borrowing. This is the case where the bank borrowing is secured by share pledges, as it frequently will be. There is an opportunity to remedy this by introducing a provision to allow share pledges similar to that introduced into SDLT in 2013.

Additionally, in a demerger transaction where a property is transferred out of a trading company to another group company prior to the sale of the trading company. There are provisions which deny relief where there are arrangements for the company which acquires the property to leave the group in Sch.10 LBTT (S) Act 2013. It is understood that Revenue Scotland is of the view that relief is not available in these circumstances; but this is a different approach to HMRC where relief from SDLT would be available. We suggest that this detailed area of policy should be revisited in the forthcoming LBTT Bill otherwise Scotland is left at a competitive disadvantage when compared to the rest of the UK.

Relief for pension fund transfers

ICAS recommends that the Scottish Government takes the opportunity to remove pension scheme transfers from the scope of LBTT. These are scoped out of SDLT, therefore, this has not been an issue for commercial property transactions relating to pension scheme transfers in the past. Charging LBTT on pension scheme transfers is disadvantageous for several key reasons:

- It could prevent pension scheme transfers from taking place which are in the interests of both sponsoring employers and scheme members.

- It places a new tax burden on defined benefit pensions schemes, most of which have a funding deficit.
- It could make commercial property in Scotland a less desirable investment relative to property elsewhere in the UK, with the wider implications for the Scottish economy that this could bring.

ICAS recommends that the above two concerns are addressed in the forthcoming LBTT Bill.

Seeding relief

Another example where Scotland may be put at a commercial disadvantage when compared with the rest of the UK is the lack of seeding relief for Property Authorised Investment Funds (PAIFs) and Co-ownership Authorised Contractual Schemes (ACS). ACS and PAIF 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.

We recommend that a formal consultation on this issue should be issued by the Scottish Government, with a view to examining the extent of this commercial disadvantage and how it might be addressed.