



Submission to the Scottish Government

**A consultation
on the proposed Land and Buildings Transaction Tax
First-Time Buyers Relief**

27 March 2018

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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 the consultation on the proposed Land and Buildings Transaction Tax First-Time Buyers Relief, published by the Scottish Government in February 2018.
5. We note that a decision has been made by the Scottish Government to introduce a first-time buyer relief into the Land and Buildings Transaction Tax (LBTT) legislation and that views are not sought on this policy, or the threshold of £175,000.
6. LBTT has been designed using the equivalent UK legislation as a starting point but this tax was refashioned on a 'progressive' basis rather than its equivalent SDLT 'slab' basis and this was warmly welcomed. So much so, SDLT has also been amended to become a 'progressive' charge. In November 2015, when the UK Government proposed a 3% supplement to SDLT on second homes, the Scottish Government did likewise with the Additional Dwelling Supplement. Now the Scottish Government intends to mirror the UK relief for first-time buyers, albeit with different amounts of relief. This leads to a number of questions, including how much can, or should, each tax be different from its counterpart in the rest of the UK? It may be that taxes on both sides of the border gravitate to a common position but, if so, the reasons for this need to be clearly articulated.
7. ICAS questions the need for this relief. Research by the Scottish Fiscal Commission indicates that this proposed measure will affect up to 12,000 buyers and offer each first-time buyer a maximum saving of £600. However, the amount of LBTT chargeable on a land transaction impacts on the availability of funds to the taxpayer, both equity and loans. For those buying property with a mortgage it simply means that 'the cake is cut in a different shape' as typically there is a limit to the funds available. This measure may well simply increase the price of a first-time purchase by up to £600.
8. Any targeted tax relief inevitably introduces further definitions and restrictions, which introduces further complexity. We also have concerns about some of the proposed definitions, some of which are subjective and are discussed below. It may be that guidance could assist in such cases, although it begs questions around the policy intent if guidance is required for a relief which, at its most, will be £600 for up to 12,000 buyers per annum. This relief should be simple and clear.
9. ICAS believes that transparency within the legislation and policymaking of taxation is paramount for taxpayers to understand and comply with their obligations. In this context, we would prefer this type of change to the tax laws to be by way of primary legislation. We continue to encourage the Scottish Government to introduce a regular legislative process, such as an annual act, to provide for measures such as this.

Response to specific questions

Question 1: Do you agree with the Scottish Government's proposed four key criteria for the relief, as described above?

10. Given the aims of targeting a relief at first-time buyers the key criteria, in broad terms, appear sensible. However, there may be some practical implementation issues with them. For example, a 'main residence' test may be subjective and may lead to compliance issues. There is existing guidance (<https://www.revenue.scot/land-buildings-transaction-tax/guidance/lbtt-legislation-guidance/lbtt10001-lbtt-additional-dwell-16>) but it does not address the intentions of the purchaser. There may be questions around whether the property needs to be occupied by the first-time buyer from the outset, or there may be a need for an occupation period in order to qualify. This adds to the complexities of the tax. There may also be a need for the LBTT charge to be revisited within a certain period to retest the qualifications for the relief.
11. The proposed definition of a 'major interest' requires some further attention. There is already a test of 'major interest' in land in the LBTT(S)A 2013, section 60, so it is confusing to now have a proposed test of 'major interest in a dwelling'. Should there be a distinction between dwelling and land in this relief?
12. We note that the criteria includes the requirement that a first-time buyer does not have any other property in the world, but this may lend itself to compliance problems as it is not clear how this could be policed.
13. There are also a couple of drafting queries in the proposed paragraph 3 which we have raised under question 8 below.

Question 2: Do you agree that, where there is more than one buyer, all buyers must meet the relevant criteria in order for the relief to be claimed?

14. It seems inequitable to deny a first-time buyer relief simply because they are investing in a property with another who is not. This test should be similar to the Additional Dwelling Supplement test in the circumstances where a couple get married, purchase a property together, but one of the couple has previously owned a property. Denying first-time buyer relief in such circumstances may be viewed as unfair.

Question 3: Do you agree with the Scottish Government's proposed approach with regard to gifts, inheritance and trusts?

15. This is a reasonable approach in view of the amount of potential relief and the overall intention of the policy.
16. However, we would encourage the Government to give further consideration to whether a gift, inheritance or income from a trust should be counted as a property 'purchase'. If a person inherits a property, they have not necessarily personally been responsible for, or a party to its original purchase. Simply because someone inherits the title to land and property does not mean they can afford to keep, maintain or even live in the property as their main dwelling. A distinction should be drawn between a person who inherits a property that they have no intention of living in and a person who wishes to take it up as their main residence.

Question 4: Are there any other issues which need to be considered with regard to assessing prior ownership of a dwelling?

17. It may be worthwhile considering whether a divorcing couple who previously jointly owned a property are each receiving a share of the sale proceeds. In some cases, this does not happen and one party is left having to start again. In such cases, it would seem equitable where that individual has no other property interests to allow them to claim this relief as if they were a first-time buyer.

Question 5: Do you agree with the Scottish Government's position on linked transactions? If not, in what scenarios should relief be available where there is a linked transaction.

18. We agree with this approach, although it may make sense to include the same reliefs that have been provided for in the new SDLT first-time buyer relief (see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/661728/8274_guidance_note SDLT_relief_for_first_time_buyers.pdf) which notes that:
'Normally relief only applies to the purchase of a dwelling, but the relief can apply to transactions which do not consist of the purchase of a dwelling, if such a transaction is linked with the purchase of a dwelling. Relief can be claimed in respect of such a linked transaction if:
- the main subject matter of the transaction is gardens or grounds in relation to the purchased dwelling, or interests subsisting for the benefit of the purchased dwelling, and
 - there are no purchasers in relation to the linked transaction who were not purchasers of the dwelling.'

Question 6: Are there other issues, not covered in this consultation, that should be addressed in the legislation or guidance?

19. We have no comments here.

Question 7: Do you have any views on the draft Land and Buildings Transaction Tax (First-Time Buyer Relief) (Scotland) Order 2018?

20. The wording of the legislation should be clear that not only is the locus of the property in Scotland but that as the purpose of the relief is for main dwellings for first-time buyers, that recipients of the relief will also be classified as Scottish taxpayers by default.
21. The draft Order, paragraph 1, indicates that it will come into force on 1 April 2018 however the consultation suggests that this should be June 2018.
22. Schedule 4A paragraph 1 has four items that need to be met for the relief but these do not mirror those in the consultation document. In particular, the draft regulation does not say that the first time buyer needs to be a natural person.

Schedule 4A Paragraph 3 (b)

23. The proposed definition of "major interest" requires some further attention: "Ownership or an interest other than ownership with a market value that is or would be above the nil rate band for LBTT" is confusing. In particular, the meaning of "an interest in land other than ownership" needs to be clarified.
24. Is the monetary LBTT nil rate band (£145,000) referred to in Schedule 4A (3)(b) per person, or per property? If it is per property, what percentage of ownership (or interest other than ownership) does a "major interest" represent?

Question 8: Do you think that the planned first-time buyer relief will in any way impact upon equal opportunities, human rights, businesses, island communities, privacy and/or sustainable development in Scotland?

25. The relief may be discriminatory depending on the definition of 'first-time buyer' as we discuss in question 4 above.