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Finance Committee

Stage 1 Report on the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill

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    b. any report made by a committee setting out proposals concerning public expenditure;
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    d. any other matter relating to or affecting the expenditure of the Scottish Administration or other expenditure payable out of the Scottish Consolidated Fund.
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Introduction

1. The Land and Buildings Transaction Tax (Amendment) (Scotland) Bill ("the Bill") was introduced by the Scottish Government on 27 January 2016. The Finance Committee ("the Committee") was designated lead committee by the Parliamentary Bureau. The role of the Committee at Stage 1 is to consider and report on the general principles of the Bill.

2. The purpose of the Bill is to introduce a new "LBTT supplement on purchases of additional residential properties in Scotland (such as buy-to-let properties and second homes) over £40,000."[1] The proposed supplement is 3% of the total price of the property for all relevant transactions above this amount.

Background

3. The UK Government set out plans for a consultation on the proposed new 3% supplement for Stamp Duty Land Tax (SDLT) in its Autumn Statement on 25 November 2015. The consultation was published on 28 December 2015 and closed on 1 February. It is expected that the final policy will be announced as part of the Chancellor's Budget on 16 March. The supplement will apply from 1 April 2016.

4. The Scottish Government announced its intention to introduce a similar supplement from 1 April 2016 as part of its Draft Budget which was published on 16 December 2015. The Draft Budget stated that we "will shortly bring forward legislation to introduce this surcharge, which will be informed by close working and engagement with stakeholder groups."[2]

5. The Policy Memorandum states that it was not possible for the Scottish Government to carry out a full public consultation on the Bill given the need for full parliamentary scrutiny and the intention to introduce the supplement at the same time as the UK proposals. However, a Stakeholder Reference Group meeting took place on 8 January 2016 at which various interested parties were invited to comment on policy details.

6. The Committee published its own consultation on the proposals for a LBTT supplement on 6 January 2016 with a closing date of 29 January. Despite the limited time available we received 50 submissions and the Budget Adviser has drafted a helpful summary.[3] Given the truncated timings for our Stage 1 inquiry we were only able to hear oral evidence at one meeting on 3 February 2016. We heard from eight organisations followed by the Deputy First Minister (DFM). We would like to thank all those who contributed to our scrutiny of the Bill.

7. A number of submissions expressed concern about the limited time that has been made available by the Scottish Government for parliamentary scrutiny of this Bill. The Law Society of Scotland (LSS), for example, state in written evidence that:

> “the timescale and manner in which this proposal is being considered is not conducive to the formulation of good-quality, robust tax legislation. The implications of the proposals could be far-reaching and should be considered carefully before implementation.”[4]

8. KPMG state that the Scottish Government “should not underestimate the complexity of introducing the supplement” and strongly advise against introducing the legislation without a full consultation process. They point out that the UK Government’s relatively detailed proposals have attracted a significant amount of discussion. PWC also point out that adequate consultation is required in order to ensure that the legislative changes being proposed meet their policy objectives. Their view is that there “may be benefits to be gained from delaying and seeing how things settle south of the border.”[5]

9. The Chartered Institute of Taxation (CIOT) note their disappointment that the Bill is being introduced without a full consultation and in such a short time frame which means it is more likely that there will be unresolved complexities and unintended consequences. It will also be challenging for Revenue Scotland to implement the required changes.

10. More generally the DFM explained that there may be occasions when the Scottish Government has to take swift decisions on tax and budgetary matters meaning that the usual legislative process cannot be followed. He told the Committee that the Scottish Government’s experience “is that the approach that we have taken to the exercise of taxation powers over the past couple of years has generally worked satisfactorily, but it has thrown up some significant issues and challenges on timescale.”[6] The DFM invited the Committee to reflect on these issues.

11. The Committee recognises that as more financial powers are devolved to Holyrood there will be occasions such as with the current Bill when a tension arises between the need to take swift decisions on tax matters and the consultative principle which underpins budgetary and legislative scrutiny within the Scottish Parliament.

12. In particular, given the inevitable impact of tax policy changes at a UK level, as has already been clearly demonstrated in relation to residential LBTT, the Committee recognises the need to build an element of flexibility into the scrutiny process. In essence there is a need to balance the risk of not responding immediately to tax changes at a UK level with the risk of unintended consequences from making legislative changes without conducting a full consultation and full parliamentary scrutiny.

13. On balance the Committee is content that the need to implement the LBTT supplement from 1 April 2016 justifies the truncated timetable for scrutiny of this Bill. However, the Committee will give further consideration to the issue of parliamentary scrutiny of tax policy changes as part of its legacy paper.

Policy Objectives of the Bill

14. The Scottish Government has set out two main policy objectives for the proposed supplement. First, “to ensure that the opportunities for first time buyers to enter the housing market in Scotland remain as strong as they possibly can.”[7] Second, “to ameliorate the likely distortions”[8] from the introduction on 1 April 2016 of a similar supplement at UK level.

15. A number of submissions emphasised the need for greater clarity in relation to the policy objectives. For example, the CIOT ask whether the Scottish Government intended to introduce a supplement regardless of the UK Government’s position.

Impact Assessment

16. One of the main concerns raised in the submissions received by the Committee is the lack of any impact assessment of the proposed supplement on the Scottish housing market. The LSS, for example, state:

> “we are unsure whether the property market in Scotland is comparable to that in England and Wales and as such whether there is a big enough problem for first time buyers to risk a potentially wider negative impact on the number of property transactions and the provision of new housing. That said, we can envisage situations where house prices will be reduced in order to absorb the extra charge, which would run counter to the policy objective of targeting those purchasing properties for investment purposes or second homes.”[9]

17. A related issue raised by witnesses is the lack of data in relation to the purchase of buy-to-let (BTL) and second home properties which means that it is difficult to analyse what the problem is that this Bill is supposed to address. The Scottish Association of Landlords (SAL) told the Committee that our “main concern is “about the lack of appropriate data sets that would allow us really to see what the concern is in Scotland.”[10] The Scottish Property Federation’s (SPF) view is that more “research, information and analysis of the market is required.”[11] The Royal Institute of Chartered Surveyors (RICS) told the Committee that there “is a big disparity and lack of data about what actually happens in the market, which is affecting all the decisions that policy makers are considering, including the Bill.”[12]

18. The lack of available data is evident from the Scottish Government’s forecasting methodology paper for the devolved taxes published alongside Draft Budget 2016-

17.[13] The paper states that there "is no data on the number of such properties purchased in Scotland, or the UK as a whole" and that modelling of the supplement "has been based on proxy datasets."[14]

19. A number of witnesses pointed out that there are a number of risks in introducing the supplement but that the Scottish Government seems to have focused solely on the potential impact on first time buyers. Other risks include the impact on the private rented sector (PRS) through a decrease in supply and an increase in rents. There is also considerable scepticism that the Bill will result in an increase in properties for first time buyers. For example, the supplement may have a negative impact on the number of new housing developments. These concerns are discussed in more detail below.

20. The Association of Local Authority Housing Officers (ALACHO) point out that there has been very little research on the impact of BTL and/or second home purchases on the Scottish housing market as a whole or its significant regional variations. Their view is that there is no published evidence which would indicate that the Scottish Government's policy objectives in introducing the supplement are likely to be achieved.

21. ALACHO also question whether the Scottish Government has considered possible unintended negative consequences. Aberdeen City Council believe that it would be useful to understand the evidence which supports the view that the supplement will result in an increase in the supply of houses for first time buyers. The Chartered Institute of Housing (CIH) Scotland recommend that the impact of the supplement should be monitored to ensure that the needs of people who want to buy a home are balanced with the needs of those who do not. ALACHO argue strongly for an early and comprehensive review of the impact of the supplement on the housing market.

22. The DFM responded positively when he was asked by the Committee whether he would consider an early and comprehensive review. He also explained that without "an LBTT supplement, the SDLT higher rates would make it relatively more attractive for investors to buy up homes in Scotland, particularly at the lower end of the market, thereby increasing the competition for first-time buyers."[15]

23. The DFM told the Committee that he intends to introduce the LBTT supplement regardless of whether the UK Government introduces the SDLT supplement on 1 April 2016. However, there have been discussions between the two governments in relation to their respective plans for the new supplement.

24. The Committee recommends that there needs to be much greater clarity in relation to the "likely distortions" which may arise from the introduction of a similar supplement at UK level. In particular, what type and level of investment in the housing market is the Scottish Government seeking to discourage by introducing the LBTT supplement? This needs to be clear.

25. The Committee recommends that the Scottish Government commissions research on the impact of the purchase of BTL properties and second homes on the housing market as a matter of urgency. At the same time it is also essential that the Scottish Government provides details of how it intends to improve the data on BTL and second homes.

26. The Committee notes the view of some witnesses that there should be an early and comprehensive review of the impact of the supplement. However, the Committee's experience of the introduction of LBTT suggests that developing an understanding of the impact of the supplement will be complex and will take time. For example, there will be a need to account for the impact of forestalling.

27. The Committee recommends that the Scottish Government closely monitors the impact of the supplement on the housing market and conducts a comprehensive review once sufficient data is available. The Committee also recommends that the Scottish Fiscal Commission (SFC) provides a commentary on the first 6 months of outturn figures for the supplement including an analysis of the impact of forestalling by the end of November 2016.

28. The Committee notes that the Scottish Government intends to introduce the LBTT supplement on 1 April 2016 regardless of whether the UK Government introduces the SDLT supplement. The Committee is concerned that if the LBTT supplement is introduced on 1 April 2016 but a similar SDLT supplement is not introduced then this may have a negative impact on investment in the housing market in Scotland.

Impact on the Housing Market for First Time Buyers

29. There were mixed views on the likely impact of the proposed supplement on the housing market for first time buyers. SAL do not believe that the policy will deliver its objectives and suggest that buyers will simply offer less for properties and that vendors will effectively bear the cost, particularly where the property is not attractive to home buyers. Their view is that the Scottish Government should be encouraging investment by responsible landlords "instead of seemingly doing everything it can to dissuade them."[16]

30. A number of witnesses were of the view that the supplement could have a negative impact on first time buyers as the supplement could reduce the number of new housing developments. The SPF explain that this is because BTL properties form a significant proportion of the building industry's off-plan sales and any reduction in this area of investment may lead to a reduction in new housing

being built. Their view is that the main issue is affordability due mainly to lack of supply and that the supplement will reduce rather than increase the supply of homes.

31. KPMG agree that investors in the PRS "are a key driver in ensuring that new residential properties are constructed"[17] and that the supplement could act as a deterrent to the development of new homes in Scotland. Their clients "often look to sell a lot of their properties off plan in order to forward-fund the development and secure funding." Investors will regularly buy one to three properties in a block including for BTL.

32. RICS also point out that small-scale BTL investors will often purchase properties within new developments. The SPF told the Committee that "if pre-sales are not achievable through some form of buy-to-let opportunity, a development might not start."[18]

33. However, other witnesses do believe that the supplement will be beneficial to first time buyers. RICS in Scotland believe it prudent to adopt the same approach as the UK Government "as the Scottish housing market could have seen an influx of buy-to-let investors from England and Wales if a similar regime is not introduced."[19] The National Association of Estate Agents (NAEA) recognise that if "investors are deterred by the additional tax, theoretically the first time buyer market should improve"[20] but they do not have any evidence that first time buyers are losing out to investors. They believe that the policy is likely to be most effective in Edinburgh, Glasgow and Aberdeen in releasing additional properties on the market. However, the main barriers to home ownership are the lack of finance available to first time buyers and affordability which is linked to lack of supply.

34. CIH (Scotland) support the general principles behind the policy but point out that "it will be important to ensure that it does not have any unintended consequences or a negative impact on the overall housing market."[21] PWC believe that it is appropriate for the LBTT supplement legislation to be as similar as possible to the SDLT supplement legislation. Shelter Scotland believe that the supplement could add an important element of stability into a potentially unstable BTL market and reduce pressure on house prices to the benefit of first time buyers.

35. Jonathan Gordon, a letting agent, believes that it is no surprise that the Scottish Government has followed the UK Government's proposals for SDLT. He suggests that if a similar supplement is not introduced then investment from outside Scotland "really could add heat to the housing market." However, he also believes that the supplement is a blunt approach with little consideration of the impacts. Proper consultation is required to scrutinise the detail and uncover unintended consequences.

36. The DFM was asked whether he had considered the possible negative impact of the supplement on off-plan sales for new builds due to a reduction in BTL

investment. He responded that "we have to test those arguments and come to a conclusion about whether we consider that the evidence is valid."[22]

37. As noted above the Committee believes that on balance there is a need to introduce the LBTT supplement due to the potential risk from over-investment in the housing market from the rest of the UK once the SDLT supplement is introduced.

38. However, the Committee is concerned about the potential impact of the supplement on new housing developments if there is a significant reduction in the number of BTL properties being bought off-plan. The Committee recommends that the Scottish Government closely monitors the impact of the supplement on new housing developments. The Committee also recommends that consideration is given to a relief for larger scale investors. This is discussed in greater detail below.

Impact on the Private Rented Sector (PRS)

39. A number of witnesses raised concerns about the potential impact of the supplement on the PRS. RICS told the Committee that the key difficulty in the PRS is a lack of housing supply to meet demand.[23] They believe that the PRS system "lacks consistency and stability" and that "more can be done to entice institutional investors to build purpose-built accommodation for rent."[24] They support an approach which would encourage institutional investors to build and let new developments, not take on the landlord duties of current stock.

40. The Institute of Chartered Accountants of England and Wales (ICAEW) question the Scottish Government's policy objective of promoting home ownership when it is inherently unsuitable for many people. Their view is that an appropriately regulated and thriving PRS would provide an alternative option which would be more attractive to many people than home ownership.

41. Some submissions pointed out that consideration needs to be given to the structure of the PRS in Scotland. For example, the CIOT understands that 70% of PRS properties are owned by small scale landlords who let out five or fewer properties. Their view is that the Scottish Government will need to consider the likely impact of the Bill on these investors. RICS suggest that the "PRS market in Scotland has been dominated by small-scale investments from individual landlords who own one to three properties."[25]

42. Jonathan Gordon estimates that 95% of landlords own less than five homes and 70% just a single BTL. Many of these landlords are renting out their first homes having moved in with a partner or bought a bigger family home. They may do so

as a way of saving for retirement and often don't have a large pension. A number of witnesses pointed out that there are many "accidental" landlords who may, for example, rent out a property due to negative equity or because they can't sell it.

43. Homes for Scotland point out that purpose built PRS developments are increasingly prevalent in England and this emerging sector is very different from the existing buy-to-let PRS. However, less than 2% of the UK Build to Rent (BTR) investment is currently being directed to Scotland. Their view is that there is, therefore, a significant opportunity for increased BTR investment in Scotland. However, the proposed supplement will "send a negative signal to investors meaning that fewer projects will come forward."[26]

44. Scottish Land and Estates (SLE) points out that the PRS has more than doubled in size in recent years and plays a critical part in the Scottish Government's housing strategy. They have concerns that the supplement could potentially wipe out first year returns for small scale landlords which could deter investment in this part of the market.

45. RICS also point out that the supplement could lead to an increase in rents at a time when they continue to rise especially in already high rent areas. This is a view shared by Aberdeen City Council who suggest that any "increase in costs of acquisition will be offset potentially by higher rents to maintain yields for landlords."[27] The Association of Real Estate Funds (AREF) suggest that there is a risk that the supplement "will reduce the availability of rental property and so lead to an increase in rents." Their view is that "alongside supporting home ownership, facilitating large scale professionally managed investment into the private rented sector and the build to rent sector is important."[28]

46. Shelter Scotland question whether private rents are likely to increase as a consequence of the supplement. Rent levels are determined by more than just the expenses incurred by private landlords. For example, local rents for comparable dwellings and the quality of accommodation. However, the Scottish Government should closely monitor the impact of the policy on private rents.

47. Some witnesses also suggested that more onerous legal obligations for the PRS in Scotland could mean investors will choose to invest in the rest of the UK. Both the SPF and SAL suggest that the Private Housing (Tenancies) Bill in particular is likely to reduce BTL investment in Scotland.

48. A number of submissions also pointed to the recent changes to tax relief on mortgage interest repayments for landlords as being likely to reduce investment in the PRS. The ICAEW highlight a recent YouGov survey for the Council of Mortgage Lenders which suggests that 34% of landlords will reduce their investment in the PRS as a consequence of the proposed tax changes while another 11% are undecided.

49. The Committee notes the concerns of some witnesses about the potential impact of the supplement on the PRS. The Committee recommends that careful consideration needs to be given to the structure of the PRS in Scotland when finalising the proposals for the LBTT supplement. While the Committee recognises the need to help first time buyers there is also a need to help those who rent whether through choice or necessity. In particular, it is essential that the Scottish Government closely monitors the impact of the supplement on rent levels especially in areas where rents are already high.

Reliefs

50. The Policy Memorandum states that the Scottish Government "wishes to fully consider and reflect on both Stage 1 written and oral evidence before confirming policy in this regard."[29] The Scottish Government has not indicated what if any reliefs it supports at this stage. However, the UK Government has included a number of proposed reliefs in its consultation on the SDLT supplement.

51. Numerous reliefs were suggested in the evidence received by the Committee and these are summarised below.

- Relief for larger investors and transactions for:

    i. institutional investor and funds;

    ii. local authorities, registered social landlords and related mid-market rental subsidiaries;

    iii. multiple purchases in a single transaction;

    iv. a minimum portfolio of properties, say six.

- Developer relief for those buying, developing or renovating and reselling or letting:

    v. E&Y suggested a condition of completing development within a specified period similar to existing sub-sale relief;

    vi. Relief based on nature of the property, eg on the market for six months or more, vacant for a specified period, un-mortgageable for some reason.

- Relief for quality letting:

    vii. Accredited landlords;

    viii. Registered letting agents;

ix. Rent no more than 110% of Local Housing Allowance.

- Relief for student accommodation:

x. Purpose built (cluster) accommodation;

xi. Where relief (iii) or (iv) above applies, count number of study bedrooms, not dwellings;

xii. Where landlord shares dwelling with tenants (typically a student flat).

- Relief for reorganisation of property portfolios:

xiii. Transfers from an individual to a company wholly owned by them or between companies in the same ownership;

xiv. Sales of let property from one landlord to another.

- Relief for certain categories of property:

xv. Properties not otherwise saleable (compare (vi));

xvi. Holiday letting property;

xvii. New build properties for letting;

xviii. New build holiday homes.

- Relief for the first residential property purchased by a non-natural person (ie put companies on the same footing as individuals).

- Relief for employers purchasing accommodation where living in the accommodation is a condition of employment.

- Relief for partnerships:

xix. As above for employee accommodation;

xx. The tax charge to apply separately on the circumstances of each partner.

- Relief for joint ownership:

xxi. Treat each joint owner separately;

xxii. Where a joint owner is a first time buyer, their contribution to the purchase to be exempt;

xxiii. Where a joint owner has a *de minimis* interest, their other properties to be disregarded.

- Inherited property to be ignored for the first 24 months of ownership (to allow beneficiaries to agree on and make a disposal).

- Treat separated spouses individually from the tax year following the year of separation, as for Capital Gains Tax main residence exemption.

- Exempt purchases by trusts to provide a main residence for incapacitated persons.

- Where a purchase of a main residence is taxable because of ownership of other property, the supplement is to be calculated on the value of the most valuable of the other properties or on the value of the main residence, if lower.

- Ignore or exempt certain additional properties:

  xxiv. Disregard property outside the UK;

  xxv. Disregard or exempt one holiday property per family.

- Replacement of main residence:

  xxvi. Drop requirement for replacement - any purchase of a main residence to be exempt;

  xxvii. Termination of rental of previous main residence to count as disposal for purposes of the relief in the Bill;

  xxviii. Where a joint owner purchases an additional interest in their main residence, the consideration to be exempt;

  xxix. Extend period beyond previous 18 months for a property to qualify as a former main residence in the cases of absence for employment purpose, either generally or for military personnel (as for Capital Gains Tax main residence relief).

- Grace periods:

  xxx. Up to 30 days from the purchase of new main residence to cover unanticipated delays in the sale of the former one;

  xxxi. Up to 18 months where intention is to sell former main residence;

  xxxii. Up to 36 months where intention is to sell former main residence;

- Relief for gifts of property even where the assumption of the mortgage liability or other charges is consideration for LBTT purposes.

- Transitional reliefs:

xxxiii. Exempt where purchase committed to (payment of deposit/statement of intent) before 16 December 2015 even although missives were not exchanged until after that date;

xxxiv. The 18 month disposal period for previous main residence to run from 28 January or 1 April 2016 when the purchase of the new main residence was within 18 months of those dates (to allow for circumstances where transactions were committed to before the supplement was announced or its details were known).

52. Some witnesses have suggested that there needs to be consistency between the SDLT supplement and the LBTT supplement in order to avoid complexity and uncertainty. PWC's view is that where "exemptions are introduced in the rest of the UK, they should certainly be mirrored north of the border."[30]

53. The CIOT pointed out to the Committee that the inclusion of exemptions and reliefs will potentially provide more opportunity for tax avoidance. However, the view of the LSS "is that the Scottish general anti-avoidance rule is already sufficient to address any avoidance issues."[31]

54. The DFM told the Committee that fairness and equity will be key issues when considering what reliefs to introduce. He also emphasised that there is also a need to avoid creating loopholes. He told the Committee that "we have to consider what may be the contents of exemptions and reliefs very much with a mind to avoid any artificial behaviour emerging as a consequence of the drafting and design of the provisions."[32]

55. For example, he was questioned by the Committee on whether he would consider a relief on the purchase of a second property to live in while working away from the main residence. He responded that while he is open to designing reliefs which meet genuine circumstances there is a need to be careful about the creation of loopholes. The Scottish Government's approach "combines the application of the general anti-avoidance rule and trying to get the legislation as effective and focused as possible."[33]

56. The Committee invites the Scottish Government to provide its view on all of the above proposals for reliefs from the supplement. The Committee also considers some of the proposals in more detail below.

57. The Committee also invites the Scottish Government to provide examples of how the general anti-avoidance rule will prevent artificial behaviour in relation to the supplement.

Large Scale Investors

58. The UK Government consultation on the proposed SDLT supplement asks whether the "bulk purchase of at least 15 residential properties or a portfolio test where a purchaser must own at least 15 residential properties are appropriate criteria for exemption?"[34] The consultation states that the UK Government "wants to ensure that any exemption is narrowly targeted to apply only to those purchases of additional properties which significantly contribute to new housing supply and the government's wider housing objectives."[35] This is not likely to include small scale investors who are more likely to purchase properties sequentially from existing housing stock, directly competing with first time buyers.

59. A number of submissions supported the introduction of a relief from the LBTT supplement for larger scale investments but for six or more properties on the basis that this would be consistent with the threshold in the LBTT legislation. Section 59(8) of the LBTT (Scotland) Act 2013 states that where six or more dwellings are the subject of a single transaction then they are treated the same as non-residential property for the purposes of the tax.

60. Section 4(3)(b) of the Bill provides that in some cases a non-residential property transaction will be subject to the supplement. Ernst and Young (EY) ask for clarification as to whether the supplement would apply to transactions under Section 59(8) of the LBTT (Scotland) Act 2013. Their view is that this would be "a significant change to the treatment of such transactions."[36] The CIOT also asks whether the supplement can in fact apply to such transactions. The SPF's view is that it would be inconsistent to apply a residential supplement to non-residential LBTT rates. Both the CIOT and the LSS propose that any relief from the supplement for multiple purchases should be at the same threshold of six or more which applies to residential LBTT.

61. AREF propose that consideration is given to "exempting all large scale investors in residential property in order to support the rental sector and increase the housing stock."[37] They believe that this is "best achieved by considering the overall extent of investment rather than the scale of individual transactions."[38] This would mean the exemption is based on the size of the existing portfolio, for example, at least five existing residential properties. To avoid discriminating against new entrants, a period, say 18 months, should be allowed to reach the five property threshold. If the threshold were reached within the time limit, LBTT supplement would be refunded, as in the case of disposals of a previous main residence.

62. Both Brodies and Pinsent Masons agree that the relief should be available to both the purchase of six or more dwellings in one transaction or in relation to a portfolio of six or more properties. Brodies suggest that the relief could be conditional on "a prescribed number of properties being made available to rent in the private sector or for accommodation for employees."[39] If a relief for bulk purchases is included in the UK legislation but not in Scotland then this could adversely affect investment

in the Scottish housing market. PWC propose a transaction threshold of six or more properties and a portfolio transaction of at least 15 properties.

63. EY comment on the UK Government's proposal to allow an exemption for purchases of 15 or more dwellings in a single transaction. Their view is that the exemption should be based on a portfolio of 15 or more properties at the end of the transaction. However, they have concerns that this may discriminate against genuine property developers who will be buying to develop and sell-on rather than for BTL. They suggest a relief for all legitimate property developers which is time limited so that if the property is not developed and sold within a set period then the supplement becomes payable. The CIOT point out that housing developments can become available for purchase in phases and, therefore, consideration should be given to including phased purchases in any relief for multiple purchases.

64. The DFM was asked for his view on whether a threshold of six or 15 properties was more appropriate. He responded that it is not a perfect science and wherever the threshold is set it will be arbitrary. His view is that "we have to make a judgment about the point at which something is a commercial proposition that is investing in the private rented housing supply sector and the point at which a mechanism is being designed to avoid the impact of the Bill."[40]

65. The Committee recommends that the Bill is amended at Stage 2 to include a relief for the bulk purchase of six or more properties in one transaction or in phased transactions in the same development. However, this may need to be reviewed if there is evidence of a negative impact on the number of new housing developments due to a decrease in the number of BTL properties being purchased off-plan by smaller investors.

New Build and Purpose Built Relief

66. A number of submissions propose that new build properties should be exempt from the supplement.

67. Homes for Scotland suggest that there is a strong case for new build properties being entirely exempt from the supplement. If not, then there may be a reduction in the supply of new homes. Their view is that the purchase of new build properties for BTL or as second homes is additional activity which does not crowd out first time buyers. SAL recommend a relief for anyone buying new build properties, even on a small scale.

68. RICS propose that consideration should be given to exempting "new build property from the supplement after all attempts to sell to owner-occupiers have been exhausted or after a set period of time." This exemption could also include purpose built holiday home for rent; purpose built student accommodation; and purpose built units for private rent.

69. Jonathan Gordon proposes an exemption for the purchase of all brand new build homes for BTL. This has a number of advantages including increasing badly needed investment in the PRS. He questions why large scale investors should be entitled to tax relief but not small scale ones when both levels of investment lead to an increase in homes.

70. The DFM was asked whether he accepted the view that the Bill as drafted could deter the development of new homes. He responded that "I do not think that there is a disincentive in the Bill that would stop a development that involved more than a handful of new-build properties—I am talking about a development of more than about four or five new-build properties."[41]

71. The DFM told the Committee that he is "actively considering the particular question of new-build reliefs."[42]

72. The Committee does not support a relief for all new build properties.[1]

Grace Periods

73. As currently drafted the buyer of a property is not charged the supplement if they intend to use the property as their only or main residence and have disposed of another property, which was their only or main residence, within the previous eighteen months. If at the date of purchase they still own their former or main residence, they will be charged the supplement but will be able to claim repayment if the former residence is disposed of within the following eighteen months.

74. However, a number of submissions emphasised that there may be occasions when a purchaser may temporarily own two properties simultaneously due to unintended circumstances. The UK Government consultation on the SDLT supplement recognises this and proposes that "it may be preferable to allow the normal rates of SDLT to be paid as long as the previous main residence has been sold by the time the SDLT return is filed."[43] This is currently 30 days but the UK Government has announced plans to consult on reducing this to 14 days. The CIOT point out that it would not be possible to have a grace period along exactly the same lines in Scotland due to the way in which sales are registered and returns made.

75. The CIOT suggests a targeted relief for house buyers who only want to own one home but where the sale of their previous home is delayed or falls through. The risk of having to pay the supplement in these circumstances may act as a deterrent to moving home. They propose a grace period of three months from the date of purchase after which the supplement would become due. LSS proposed a 30 day grace period in their written submission. However, when questioned by the

[1] Gavin Brown MSP dissented from this recommendation.

Committee they stated that this was just a starting point and that three months or longer would be better.[44] This would both reduce the number of purchasers having to pay the supplement due to unforeseen circumstances and would reduce the administrative burden on Revenue Scotland.

76. EY propose that where the intention is to sell the previous main residence within 18 months then the supplement would not be payable unless the first property is not sold within this period. Interest could be payable on the supplement from the date of the purchase of the new main residence. KPMG's view is that "18 months is probably all right, given how the property market is at the moment, but the market is quite cyclical, so the period might need to be extended to three years."[45]

77. PWC's view is that the purchaser should be able to apply for a deferral for up to three years. SLE support a grace period but do not specify how long. They also suggest that properties which have been on the market for at least a year could be exempted from the supplement.

78. The DFM was asked whether he would be willing to allow any grace period. He responded that it is more efficient to secure up-front payment with an opportunity for repayment. However, he also stated that he is "quite open to the issue of a grace period. We then come back to how long the grace period should be."

79. The Committee recommends that the Bill is amended at Stage 2 to provide for a grace period.

Registered Social Landlords (RSLs) and Local Authorities

80. Schedule 6 of the LBTT (Scotland) Act provides relief for RSLs and Local Authorities where one of three qualifying conditions are met. A number of witnesses including the LSS and CIH Scotland suggest that providers of social housing such as local authorities and RSLs should also be exempt from the supplement.

81. ALACHO point out that since the financial crisis of 2007/8 many local authorities and RSLs have been engaged in significant house purchase activity and that this activity was significant in supporting the construction industry during the period of market recovery. Their view is that the supplement would add further costs to the delivery of affordable housing programmes and to housing regeneration programmes more generally and that both RSLs and local authorities should be exempt from paying the supplement.

82. The Scottish Federation of Housing Associations (SFHA) assume that the same exemption which applies to LBTT for RSLs and local authorities will also apply to

the supplement. However, they expressed concern that the supplement could have a negative effect on housing association subsidiaries or other bodies providing homes for mid-market rent (MMR). Housing association subsidiaries may buy homes from developers in order to provide homes for mid-market rent. SFHA are concerned that if the supplement applies to these transactions then this could lead to considerable extra costs.

83. CIH Scotland also highlighted the role of the National Housing Trust who provide mid-market rents for people who cannot afford to buy and who cannot access the social rented sector.

84. The Committee recommends that the Bill is amended at Stage 2 to provide for a relief from the supplement for RSLs and Local Authorities on the same basis as the current relief from LBTT.

Student Accommodation

85. Under Section 59 of the LBTT (Scotland) Act 2013 the residential tax applies to all student accommodation other than halls of residence. A number of witnesses proposed exempting different types of student accommodation from the supplement.

86. AREF propose that the supplement should not apply to any type of student accommodation on the basis that it is designed in such a way that it would not be purchased by anyone wanting to buy a home. Alison Louden suggested that this should include a property in which the owner lives jointly with his or her tenants, such as a student sharing with other students.

87. Other witnesses including RICS and the SPF propose exempting purpose built student accommodation. The SPF point out that cluster flats within purpose built student accommodation are not able to be let on the open market and, therefore, should not be liable for the supplement. The LSS suggest that the relief for bulk purchases should take account of the number of cluster flats in student accommodation rather than viewing this as one dwelling.

88. The Committee recommends that the Bill is amended at Stage 2 to provide for a relief for student accommodation on the same basis as the relief from LBTT.

Rural communities

89. In a number of the Committee's external visits this session including to Pitlochry and Arran, the availability and affordability of housing in rural communities has been a major issue. In Arran the Committee heard that "apart from the supply issue, the affordability issue means that houses are beyond the reach of many people who work on the island."[46]

90. The Policy Memorandum specifically addresses the impact of the Bill on island communities which it states may have a higher than average proportion of second homes. The Scottish Government's view is that this Bill will therefore "prevent first time buyers in such communities being disadvantaged by investors seeking to purchase a residential property there as an additional residential home."[47] Presumably this also applies to all rural communities where there is a higher than average proportion of second homes.

91. However, a number of submissions questioned whether the supplement would be beneficial to rural areas. The Caledonia Estate Agency, operating in the Cairngorms National Park, believe that the supplement will lead to a reduction in the construction of new housing which will indirectly affect the level of affordable housing development as they are inextricably linked. It will also lead to a decrease of private housing rental stock at a time when the council is not renewing their five year leases in the private sector.

92. Aberdeen City Council suggest that the experience of rural areas is that incomes are so low that "almost a collapse of prices would be needed to make a difference."[48] However, RICS believe that the prevalence of holiday homes in rural Scotland can result in pricing locals out of the housing market. The supplement could, therefore, assist the rural population.

Furnished Holiday Lets

93. The UK Government consultation on the SDLT proposes that "properties bought as furnished holiday lets should be treated in the same way as all other residential properties – if the property is purchased as an additional property the higher rates will apply."[49]

94. EY propose a relief for furnished holiday lets (FHLs) on the basis that FHLs are not the primary target of the Bill and there a very strict rules for a property to qualify as a FHL. SLE point out that FHLs make a valuable contribution to the Scottish economy through tourism and asks the Scottish Government to take into account the adverse impact which the supplement would have on this sector. RICS propose exempting purpose-built holiday homes such as chalets on holiday parks.

95. The Committee supports the Scottish Government's policy objectives in seeking to help first time buyers in rural communities but notes that the supplement on its own is unlikely to address issues of affordability.

96. The Committee recommends that the Scottish Government closely monitors the impact of the supplement on new housing developments in rural communities.

97. The Committee does not support providing a relief for furnished holiday flats or purpose-built holiday homes.[2]

Transition

98. The SDLT supplement will only apply to purchases of additional residential property which complete after 1 April 2016. However, if contracts were exchanged on or before 25 November 2015 when the higher rate was announced but not completed until on or after 1 April 2016 then the higher rate will not apply.

99. PWC suggest that clarity is needed on whether the same approach will apply to the LBTT supplement. For example, will the supplement not apply where contracts were exchanged on or before 16 December 2015 when the LBTT supplement was announced but not completed until on or after 1 April 2016.

100. The Committee asks the Scottish Government to provide clarity on the transition arrangements for the introduction of the supplement.

Ring-Fencing

101. The UK Government states that it "will use some of the additional tax collected to provide £60 million for communities in England where the impact of second homes is particularly acute. The tax receipts will also help towards doubling the affordable housing budget."[50] The Scottish Government has not indicated how it intends to use the tax revenue from the supplement.

102. Some witnesses proposed ring-fencing the revenue from the LBTT supplement for investment in the housing sector. ALACHO argue that the income derived from the measure should be reserved as additional investment in affordable housing. CIH Scotland's view is that if the measure is to support the housing market in a meaningful way then the revenue from the supplement should be reinvested in the affordable housing sector.

[2] Gavin Brown MSP dissented from this sentence.

103. The Committee notes that despite the additional revenue from the supplement and the policy objective of encouraging home ownership that the Scottish Government has reduced funding for Help to Buy in Draft Budget 2016-17. The Committee asks the Scottish Government whether any consideration was given to ring-fencing the revenue from the LBTT supplement to support Help to Buy or for other areas of investment in the housing sector.

SLAB Tax

104. The Scottish Government proposes that the LBTT supplement will apply to the total purchase price of an additional residential property purchase above £40,000. A number of witnesses have questioned why the supplement will be a SLAB tax when the Scottish Government emphasised the need to adopt a different approach to LBTT.

105. The CIOT point out that the SLAB structure of the supplement "effectively creates a cliff edge for properties at the lower end of the market."[51]

106. The Committee asks the Scottish Government to explain why it is proposing a SLAB approach to the supplement in contrast to the more progressive approach to LBTT.

£40,000 Threshold

107. Paragraph 14(2) of the new schedule 2A within the Bill provides the Scottish Ministers with a power to amend by order the £40,000 threshold for payment of the supplement. The Delegated Powers and Law Reform (DPLR) Committee do not consider that the negative procedure is appropriate. They have recommended that the Bill is amended at Stage 2 to make exercise of the power in paragraph 14(2) subject to the "provisional affirmative" procedure.

108. The DFM told the Committee that he would reflect carefully on this point.

109. The Committee support the recommendation of the DPLR Committee that any changes to the £40,000 threshold should be subject to the provisional affirmative procedure.

Financial Memorandum (FM)

110. The Scottish Government estimates that between 8,500 and 12,500 transactions would be liable for the new tax before allowing for any behavioural effects and that this would generate income of between £45m and £70m in 2016-17 before allowing for any behavioural effects. A number of potential behavioural responses are identified in the Scottish Government's methodology paper on the devolved taxes:

- A substitution effect where purchases of additional homes are replaced with the purchases of main residences and downward pressure on price levels;
- Overall reduction in the number of transactions;
- Forestalling;
- Tax planning or avoidance. [52]

111. The substitution effect and downward pressure on prices is estimated to reduce revenues by £8m to £13m in 2016-17. The overall reduction in the number of transactions is estimated to reduce revenues by around £7m and forestalling is estimated to reduce revenues by £13m to £21. The Scottish Government states that it has not been possible to quantify the likely impact of avoidance at this stage but will seek to minimise such opportunities. The total loss of revenue due to behavioural effects is, therefore, estimated at £28m to £41m for 2016-17. This means that the revenue forecast for the LBTT supplement for 2016-17 is between £17m and £29m. However, an estimated £5m to £7m of the forestalling revenue is estimated to be brought forward to 2015-16.

112. The SFC state that these forecasts should be treated with a great deal of caution but that:

> "we are prepared to endorse these forecasts as reasonable although we would stress the very significant uncertainties inherent in assessing the impact of such a tax change given the lack of data describing the behaviour of the Scottish buy-to-let and second home markets."[53]

113. The DFM was asked whether the forecast includes consideration of the loss of revenue if reliefs are introduced. He responded that the forecasts reflect the Bill as drafted so do not take account of any potential reliefs although they do err on the side of caution.[54]

> 114. The Committee is disappointed that, while the SFC identifies very significant uncertainties in the forecast, it does not make any recommendations regarding how the forecasting methodology can be improved.

115. The Committee recommends that the SFC provides details of improvements that it would like to see to the Scottish Government's forecasting methodology for the LBTT supplement.

116. On a similar basis the Committee is also disappointed in the lack of detail provided by the Scottish Government regarding how it intends to improve the forecasting methodology for the LBTT supplement. There is an emphasis on the considerable uncertainty in the forecasts which have been published but little indication as to how the Scottish Government intends to address this uncertainty.

117. The Committee recommends that the Scottish Government provides details of how it intends to address the considerable uncertainty in the forecasts for the LBTT supplement.

118. The Committee notes that forestalling is estimated to reduce revenues in 2016-17 by £13m to £21m. The Committee asks the Scottish Government to explain why it estimates that only £5m to £7m will be brought forward to 2015-16.

Conclusions

119. The Committee's view is that while the proposal to introduce a 3% LBTT supplement appears relatively straightforward there are a number of potentially complex issues which need careful consideration at Stage 2 and Stage 3. In particular, there is a need to ensure that appropriate reliefs are introduced which balance the needs of first time buyers with the needs of those who rent their home and with the interests of house builders and investors. This will not be easy especially given the lack of sufficient data on the current structure of the market in Scotland. It is, therefore, essential that the impact of this Bill is closely monitored and that a comprehensive review is carried out once sufficient data is available.

120. The Committee supports the general principles of the Bill.

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[1] http://www.scottish.parliament.uk/S4_Bills/Land%20and%20Buildings%20Transaction%20Tax%20(Amendment)%20(Scotland)%20Bill/SPBill85PMS042016.pdf
[2] http://www.gov.scot/Publications/2015/12/9056/3
[3] http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/LBTT_supplement_adviser_briefing_02.2016.pdf
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[6] Finance Committee, 3 February 2016, OR Col. 70

[7] http://www.scottish.parliament.uk/S4_Bills/Land%20and%20Buildings%20Transaction%20Tax%20(Amendment)%20(Scotland)%20Bill/SPBill85PMS042016.pdf
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[15] Finance Committee, 3 February 2016, OR Col. 54
[16] http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/Scottish_Association_of_Landlords_02.2016.pdf page 3
[17] Finance Committee, 3 February 2016, OR Col. 26
[18] Finance Committee, 3 February 2016, OR Col. 4
[19] http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/RICS_02.2016.pdf paragraph 3
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[28] http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/AREF_02.2016.pdf page 1
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[31] Finance Committee, 3 February 2016, OR Col. 25
[32] Finance Committee, 3 February 2016, OR Col. 59
[33] Finance Committee, 3 February 2016, OR Col. 59
[34] https://www.gov.uk/government/consultations/consultation-on-higher-rates-of-stamp-duty-land-tax-sdlt-on-purchases-of-additional-residential-properties/higher-rates-of-stamp-duty-land-tax-sdlt-on-purchases-of-additional-residential-properties
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[47] http://www.scottish.parliament.uk/S4_Bills/Land%20and%20Buildings%20Transaction%20Tax%20(Amendment)%20(Scotland)%20Bill/SPBill85PMS042016.pdf paragraph 26
[48] http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/Aberdeen_City_Council_02.2016.pdf paragraph 2
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[53] http://www.fiscal.scot/media/media_437935_en.pdf paragraph 7.10
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Annexe A

ANNEXE A: INDEX OF ORAL EVIDENCE SESSIONS

5th Meeting, Wednesday 03 February 2016

John Blackwood, Chief Executive, Scottish Association of Landlords; Paul Curran, Vice Chairman, Scottish Property Federation; Daryl McIntosh, Business Development Executive, National Association of Estate Agents; Marian Reid, Deputy Director, Chartered Institute of Housing Scotland; Jonathan Gordon, Chair, PRS Forum, Royal Institution of Chartered Surveyors; Isobel d'Inverno, Convener, Tax Law Committee, Law Society of Scotland; Jo Joyce, Senior Manager, Stamp Taxes, KPMG LLP; Susannah Simpson, Tax Partner, PricewaterhouseCoopers LLP;

John Swinney, Cabinet Secretary for Finance, Constitution and Economy, Robert Buchan, Senior Principal Tax Specialist, Greig Walker, Solicitor, and Sean Neill, Acting Deputy Director of Finance, Scottish Government.

ANNEXE B: INDEX OF WRITTEN EVIDENCE

- Aberdeen City Council (68KB pdf)
- Adrian Alderton (167KB pdf)
- ALACHO (680KB pdf)
- Alison Loudon (10KB pdf)
- Alistair Wood (10KB pdf)
- Association of Real Estate Funds (116KB pdf)
- ASSC (76KB pdf)
- Barry Burton (551KB pdf)
- Brodies LLP (16KB pdf)
- Caledonia Estate Agency (93KB pdf)
- CIH Scotland (655KB pdf)
- CIOT (238KB pdf)
- Colin Miller (26KB pdf)
- Council of Letting Agents (34KB pdf)
- Council of Mortgage Lenders (528KB pdf)

- Craig Nicolson (57KB pdf)
- Cyrenians (36KB pdf)
- David Sinclair (14KB pdf)
- Edward D Conway (13KB pdf)
- E&Y (203KB pdf)
- Highland Park Development (12KB pdf)
- Homes for Good (41KB pdf)
- Homes for Scotland (161KB pdf)
- ICAEW (74KB pdf)
- ICAS (204KB pdf)
- John Brown (14KB pdf)
- Jonathan Gordon (51KB pdf)
- Kay Linton (13KB pdf)
- KPMG LLP (27KB pdf)
- Law Society of Scotland (484KB pdf)
- Lindsays (19KB pdf)
- Mahri Tawse (13KB pdf)
- Mark Neil (16KB pdf)
- Martin & Co Cupar (10KB pdf)
- Martin & Co Kirkcaldy (12KB pdf)
- Martin Payne (114KB pdf)
- McCash and Hunter (353KB pdf)
- Morag Shaw (468KB pdf)
- National Association of Estate Agent (236KB pdf)
- North Ayrshire Council (48KB pdf)
- Paul Matthews (9KB pdf)
- Perth & Kinross Council (128KB pdf)

- Pinsent Masons LLP (74KB pdf)
- PwC (169KB pdf)
- RICS (82KB pdf)
- S. Grant (7KB pdf)
- Scottish Association of Landlords (156KB pdf)
- Scottish Borders Council (46KB pdf)
- Scottish Federation of Housing Associations (259KB pdf)
- Scottish Fiscal Commission (196KB pdf)
- Scottish Land and Estates (51KB pdf)
- Scottish Property Federation (94KB pdf)
- Shelter Scotland (39KB pdf)
- South Lanarkshire Council (10KB pdf)
- Squadron Leader Gareth Jones (74KB pdf)