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The Land and Buildings Transaction Tax (Miscellaneous Amendments) (Scotland) Order 2024

Views from the Chartered Institute of Taxation

1 Executive summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our nearly 20,000 members, and extensive volunteer network, in providing our response and are a non-party political organisation.
- 1.2 Overall, we welcome the draft legislation containing the reforms to Land & Buildings Transaction Tax (LBTT) Additional Dwelling Supplement (ADS) as most of the recommendations we made in the initial consultation materialised within the proposed reforms. However, the draft legislation remains overly restrictive with only very limited changes to provisions for inherited properties, and none for discretionary powers to waive the ADS in exceptional circumstances, such as those presented by issues like cladding which impede the sale of a property.

2 About us

- 2.1 The CIOT is an UK educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities.
- 2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group, the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA' and 'CTA(Fellow)', to represent the leading tax qualification throughout the UK.

3 Introduction

The CIOT responded to two consultations concerning the ADS for LBTT, in 2022¹ and 2023²; the draft legislation contained within the second consultation confirmed many of the changes which we had originally proposed. In particular we welcome the extension of replacement timeframes to 36 months, the £40,000 threshold to apply to an owner's share of all properties (not just inherited), along with provisions for separating couples and economic units.

However, whilst the first consultation proposed a relief from ADS for buyers with inherited properties, the draft legislation now contains a rather limited provision. The first consultation also asked whether a discretionary power should be available to Revenue Scotland and the Courts to waive the ADS in exceptional circumstances. We approved of such a suggestion, but note that no such provision is included in the draft legislation.

4 Outstanding concerns

- 4.1 Our first concern lies with the provisions for purchasing a second property whilst already in possession of an inherited property. The amendments³ permit relief from ADS in respect of a property inherited between the conclusion of the missives and that of the purchase of the new property. This window could be very small to the point of being impractical to utilise. In our response to the first consultation, we had suggested that such a window/'grace period' should be three years (in common with Stamp Duty Land Tax (SDLT) and Land Transaction Tax (LTT)). Someone who inherits a property and subsequently buys their own main residence is essentially being punished for that legacy, which they may never have anticipated, or wanted. Three years is a reasonable time for relief for a purchaser who likely had no knowledge that they would be in receipt of an inherited property. Whilst a beneficiary can refuse a legacy, expecting someone to do so avoid paying the ADS is unreasonable and distortive .
- 4.2 Our other remaining concern was addressed in the first consultation, but not adopted in the second. This concerns a discretionary power within the legislation to grant a purchaser relief from ADS in exceptional circumstances. HMRC have such a power with respect to SDLT's additional property surcharge; this may be available, on a purely discretionary basis, where a purchaser has been unable to dispose of a first property within the three-year window due to unforeseen circumstances but did so as soon as they could⁴. In their response to the first consultation, the Scottish Government stated that an exception circumstances provision would *"create a significant degree of uncertainty around the application of the legislation, would be operationally difficult to administer and would attract an inherent avoidance risk"*⁵. We expressed our disagreement with this sentiment in the second response and continue to do so.

We are not aware of HMRC or the English/Northern Irish courts' experiencing such difficulties with their discretionary powers. Whilst such instances are rare, the ADS can be costly for a purchaser who, through no fault of their own, finds themselves unable to meet the statutory criteria. By increasing the ADS replacement window to 36 from 18 months, the chances of such an eventuality will (hopefully) be smaller still – but instances might still happen. Having the power to waive the charge would not compel Revenue

¹ The Land and Buildings Transaction Tax - Additional Dwelling Supplement: A call for evidence and views. Opened on 16 December 2021

² The Land and Buildings Transaction Tax Additional Dwelling Supplement: Proposals for Change. Opened on 17 March 2023

³ Section 9B of the 2024 Order

⁴ Schedule 4ZA, paragraph 3(7B) Finance Act 2003

⁵ [The Land and Buildings Transaction Tax Additional Dwelling Supplement: A Call for Evidence and Views - Summary of Responses \(www.gov.scot\)](https://www.gov.scot) paragraph 2.102

Scotland or the Courts to exercise it; it would only be a power to do so if they wished to in extreme circumstances and not be an intrusive or burdensome obligation, but one that could avoid an unjust imposition of ADS. However, we do appreciate that concerns may exist within the Scottish Government or Revenue Scotland about possessing such an important discretion. An alternative approach to consider might be the provision of prescribed/specific circumstances within which discretion may be exercised, such as cladding or covid-related issues. The Welsh Government is currently consulting on introducing such a provision, extending the three-year replacement windows when a transaction has been "*impeded by fire safety defects, and/or prevented by emergency restrictions*"⁶. Something similar for Scotland might strike the right balance between providing relief for buyers caught in extreme circumstance beyond their control, and not opening a potential floodgate of claims.

The Chartered Institute of Taxation

31 January 2024

⁶ [Land Transaction Tax Higher Residential Rates: proposals to amend the refund and exception rules | GOV.WALES](#)