

Response ID ANON-Y9CM-GKMS-M

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

Submitted on **2018-04-13 15:37:14**

Questions

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?

No

If not, please provide comment, providing any relevant suggestions for legislative amendment.:

We welcome the proposed Statutory Instrument which is a positive response to representations made on Group relief for intragroup property transfers where share pledges are required as security for property. But it is not retrospective and cannot therefore be said to be consistent to the SDLT regime, because it will not deal with intragroup restructuring of property involving companies which have granted share pledges and which has occurred between the introduction of LBTT in April 2015, and this proposed Statutory Instrument coming into force.

This lack of retrospection is a significant concern. We feel this will unfairly expose taxpayers who have undertaken intragroup transfers since April 2015 to potentially significant LBTT liabilities. We would wish to underline that intragroup transfers where share pledges have been granted are not unusual business activities.

We recognise that policy with retrospective measures will incur a need for primary legislation. Nonetheless, we do urge the Scottish Government to introduce legislation to make this clarification of LBTT Group Relief policy (where share pledges are required) retrospective to the introduction of LBTT in April 2015.

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?

No

Comments::

No because we are dealing with internal group arrangements only where lenders have introduced a requirement for share pledges. We do believe there is an issue of fairness however unless the matter of retrospection can be addressed. We do not see that these proposals undermine wider safeguards against tax avoidance.

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

Comments::

As we said in answer to Question 1, we urge the government to introduce retrospective measures as soon as practically possible in order to align group restructuring of property assets by companies which have granted share pledges since the introduction of LBTT in April 2015 with the SDLT equivalent. This would be consistent with the policy intention of this statutory instrument.

We are also aware of some expert legal concerns with the terminology and detail of parts of the SI. One concern raised with us by expert members is that the SI appears to suggest that the group relief should not be obtainable if a bank had decided not to exercise their share pledges in circumstances that suggested they could have done so. We are not sure why this should deny the taxpayer Group relief and would urge the government to reconsider this part of the legislation.

Legal experts within our membership have also raised further queries with the proposed revisions to Schedule 10 where there is a suggestion that Group relief is only available where a lender has transferred the shares to the borrower. The implication of this legislative drafting is that the relief is only supported once the share pledge has effectively been removed and we do not think this is the policy intent of the SI.

The Law Society of Scotland have shared their draft response with us and we support the technical concerns they have explained in their submission.

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?

Yes

Please explain your answer::

This legislation is intended to provide businesses based or investing in Scotland with a level playing field with the rest of the UK SDLT arrangements for Group relief for property transfers within their business. While the SI achieves this for such situations going forward from the date the measures are brought into force, we remain concerned that taxpayers who have claimed group relief since April 2015 may be caught for unexpected LBTT liabilities. We believe this would be unfair. Our concern is also supported we think, by the fact that it is only recently that Revenue Scotland guidance on this aspect of the LBTT regime was published.

This clarification of Scottish Government policy towards LBTT Group Relief where share pledges are incurred will help to ensure a competitive regulatory environment. This will support investment in the Scottish real estate sector and the wider business community.

About you

What is your name?

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Scottish Property Federation

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Very satisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Very satisfied

Please enter comments here.: