

The LBTT (Relief from Additional Amount) Bill 2018



Comments by the Scottish Property Federation in response to the Call for Evidence by the Finance and Constitution Committee of the Scottish Parliament

Introduction and Overview

1. The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We include among our members: property investors including major institutional funds, developers, landlords of commercial and residential property, and professional property consultants and advisers. We are happy for our comments to be published.
2. Our comments on the Bill will be brief. We welcome the Bill's introduction which makes good the Cabinet Secretary's commitment to the Committee, to make the 2017 Order excluding taxpayers previously liable for ADS in these specific circumstances exempt from the scope of the charge. Being secondary legislation, the 2017 Order could only achieve this from its own effective date (20 May 2017), whereas this Bill will enable a retrospective application of the exclusion for eligible transactions with an effective date of 1 April 2016. It will be important to ensure that relevant taxpayers are made aware of this retrospective effect.

Key Points

3. We warmly welcome the Bill, however, we do have a concern. While we understand that policy-makers will wish to be very specific in identifying any exemption from the ADS charge to avoid the possibility of undue avoidance of the tax, it has been suggested that several other scenarios may come forward, where it may be argued that ADS should not be chargeable because they were not really intended by Parliament to become liable. The ADS legislation was introduced in a very brief space of time with very little opportunity for detailed scrutiny by either Parliament or stakeholders. It is perhaps not surprising therefore that unforeseen circumstances causing ADS occurred, such as where partners in a marriage, co-habitation or similar arrangement are moving main residence but only one partner was named on the existing title deed. Should it be the case that there are several scenarios that might have been included under exemptions from the ADS charge then this might come to be seen as a missed opportunity to deal with any such unforeseen circumstances.
4. The example of this aspect of the ADS legislation and the need for primary legislation so soon after the original legislation leads us to ask whether in this and other examples there may have been scope for a greater role by Revenue Scotland to apply administrative policy-making. As LBTT evolves, we feel that there will inevitably be a greater number of scenarios where the precise application of LBTT becomes uncertain. Indeed, there are several non-residential areas of LBTT that have been raised in Parliament with the Scottish Government in recent months that might have benefited from some greater administrative policy-making by Revenue Scotland. One of these issues, *in specie* transfers of pension funds has recently been revised by Revenue Scotland. However, there is a feeling that Revenue Scotland have adopted an overly narrow view of their ability to interpret policy intent.

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5. The problem is that while policy-making is clearly the preserve of the Scottish Ministers and the Scottish Parliament, where technical issues require policy direction, it is rare for there to be an opportunity to secure primary legislation to deal with unforeseen circumstances of the kind identified by this LBTT Bill. This lack of flexibility can on occasion lead to unfortunate delays to necessary amendments to legislation and, indeed, add further pressure to the legislative programme and scrutiny process where there is a need for legislative action in an already busy Programme for Government.
6. We understand that a formal understanding exists between HM Treasury and HMRC on areas of responsibility over SDLT policy and administrative policy. This could be something that the Committee might explore with the Scottish Government and Revenue Scotland as this and other areas of taxation evolve. We would always argue that as a tax it is vitally important that the Parliament maintains its close overview of the government's revenue policies. However, if the tax authority and Scottish Government could devise grounds for more administrative policy decision-making by Revenue Scotland, then this might avoid policy bottlenecks being created as a greater scope of activities are brought within the tax levying powers of the Scottish Parliament.
7. We would be pleased to elaborate on our comments at the Committee's convenience.

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