

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Scottish Property Federation

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Melhuish

Forename

David

2. Postal Address

20 Rutland square

Edinburgh

Postcode EH 48 2UJ

Phone 0131 220 6353

Email

dmelhuish@bpf.org.uk

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick ONE of the following boxes

Please tick as appropriate

Yes **No**

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) 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?

Please tick as appropriate

Yes

No

Key Points

Specific Consultation Questions

We support the proposals of the Scottish Government on deferred payments.

While we have no particular objection to Ministers seeking to level the playing field between certain retail licenses and leases, we warn the government that tackling supermarket concessions and the like could introduce significant complexity and administration for little, if any, revenue. In addition we remind the government that property licensees may be more readily moved around by a landlord in contrast to a lessee: thus the license will be less value compared to an equivalent lease.

We call on the government to reduce its proposed prescribed proportion (40%) for MDR purposes to 10-20% as a minimum proportion of LBTT to be paid. We would also call for greater legal clarity of the rates to be applied (commercial or residential). We question as well whether it might not be simpler to adopt a simple 1% prescribed floor given that the consideration at stake will be significant in many cases and therefore there will be less exposure to the zero/low rate thresholds (where the prescribed proportion is invoked).

We support the proposal for acquisition relief but we oppose the need for any alignment with the prescribed proportion under MDR.

We comment on other questions in our detailed replies below.

General Points

We comment in general upon the introductory text and background and add further remarks under Question 9 below.

The Scottish Government has stated it will broadly seek revenue neutrality with SDLT revenue forecasts. We call on the Scottish Government to make this analysis by commercial and residential property market yield separately, not together. The rates for the two sectors have been applied differently for some time and the markets themselves operate differently.

In relation to the rates and thresholds we repeat our call for the Scottish Government to be as competitive as possible with the rates and thresholds for SDLT. We remain wary of the forecasts for increased SDLT revenue in Scotland and question whether the weighting applied by OBR to strip out the dominance of the London markets for both residential and commercial property is as robust as it could be. We would wish to avoid being set high rates on the basis of over-optimistic 'SDLT' revenue forecasts.

We call on the Scottish Government to accelerate proposals for transitional arrangements in order to support predictability for the property investment market and wider business community.

Answers to consultation questions

Question 1 - Deferred payment

Do you agree with the Scottish Government's proposed approach in relation to deferred payment?

1. The draft subordinate legislation proposed under S41 makes provision where LBTT liability is contingent upon a future event or the consideration is not known. The taxpayer may choose to apply to delay their tax payment, amend within 12 months, or to apply for a refund of tax paid (if after 12 months). We support these measures which are particularly important to the commercial property industry where they may be greater uncertainty for property companies and the wider business community as to the course of future events related to the consideration of the property transaction.

Question 2 - Licences to occupy commercial property

Do you agree with the Scottish Government's proposed approach to licences in relation to the LBTT Act?

2. The text of the consultation suggests that the intention is for Ministers to apply LBTT to certain retail licenses (to occupy property) – airport departure lounges are considered very likely to be identified for eligible licenses, possibly department stores but and also concessions within supermarkets. While we have no particular objection to Ministers' desires to level the playing field between airport retail outlets and high streets we have argued that it will potentially introduce a number of complexities to the taxation regime, quite possibly for relatively little return in terms of revenue.
3. There is also a different basis to licenses and leases in that licensees can be easily moved around by the property owner, hence one incentive for the agreement for license rather than lease. In this sense it might be argued that the licensee is not really getting the fully accepted protection of a lease. Similarly the position of major franchise concessions with superstores could be an administrative challenge to unpick for the purposes of LBTT.

Question 3 - Multiple dwellings relief

Do you agree that setting the prescribed minimum amount at 40% of the taxation that would occur under LBTT in the absence of this relief would be the most appropriate level?

4. No. MDR was introduced into SDLT in 2011 in order to introduce fairness to the taxation of multiple dwellings so that they more fairly resembled the price of individual units and were taxed accordingly. In essence the total number of properties are tallied up by total consideration and averaged by number of properties. However, if the average falls below a chargeable rate then potentially no SDLT/LBTT is payable. Neither the UK Government, nor the Scottish Government believes this would be fair to taxpayers and therefore a minimum proportion of percentage based upon the full consideration of the transaction is required as an LBTT payment. The Scottish Government are proposing a

minimum proportion of 40% to be charged. We believe this is significantly above the levels of equivalent SDLT that would be payable in like for like circumstances. In our view the true figure is closer to a 20% proportion and probably lower again, at 10% for very large scale bulk purchases of 50 or more properties. Indeed, the disparity between the 1% rate for SDLT and even the 10% minimum prescribed proportion will be significant. We question whether for the purposes of the prescribed proportion it may be simpler to seek a 1% rate rather than prescribed proportion of as much as 10% of total LBTT payable.

Need for clarification on treatment of multiple dwellings transactions for purposes of application of LBTT (i.e. commercial or residential rates)

5. Where MDR is applied for and the average consideration of a dwelling is relatively high and therefore within a chargeable band there is little difficulty in applying MDR through simply ascribing the relevant charge to the property and multiplying by the number of dwellings being transacted. However, where the average consideration falls below a chargeable band the application of MDR is more complicated as the consideration is likely to be significant and the government will not wish to forego revenue.
6. This problem is not helped by the primary legislation where the interplay of the primary legislation between s59(8) (defining a linked transaction of 6 or more dwellings as not residential property) and Step 3 of Schedule 5, paragraph 13 (where the average consideration of a property is to be treated as residential property) is unclear for the purposes of interpretation. We note that helpfully the Scottish Government has a power under 59(9)(b) to amend 59(8) and we feel that the opportunity of this autumn's secondary legislation consultations should be taken to improve clarity in this area.
7. From our understanding of the process followed in the consultation it appears to us that the government believes that a linked transaction of six or more properties where the average consideration would fall under the chargeable bands should be charged at the non-residential rates (whatever they and their thresholds may be). However, we are not convinced that Schedule 5, paragraph 13, Step 3 supports this analysis. Whether or not it was intended that large transactions of multiple dwellings should be taxed at non-residential rates rather than residential rates is not known to us but we are not convinced that the primary legislation would at this stage support such an approach. We accept that there would be a certain logic to the approach of applying commercial rates as it is unlikely that individuals will be undertaking such transactions – indeed even for residential investors most landlords hold between one and two properties as the consultation document notes.
8. Furthermore because of the high values proposed under the residential scenarios from 2012 (9.5-10%) are much higher than the top rate of SDLT (7%) we may find that Scottish tax payments are much higher than their UK equivalents in these circumstances. We feel this would put the Scottish industry at a disadvantage.

9. We explain below that under either scenario, we believe that the 40% prescribed amount is actually significantly in excess of the SDLT equivalent and that closer to 10% is a closer alignment for large scale bulk purchases of residential properties, where residential rates of LBTT are applied for the purposes of the minimum proportion and should we be correct in our view that the legislation as it stands would not allow non-residential rates to be applied to transactions of two or more properties **where MDR is claimed**.

Transactions of 6 or more dwellings

10. The consultation document initially concentrates on an example of six dwellings being transacted whereby the average consideration is below a chargeable threshold and where non-residential rates will be applied (Scenario 3, 2012). We explained above that we have reservations about whether this is appropriate where MDR is claimed due to the wording of Schedule 5, paragraph 13 where the legislation suggests that it should be based upon a residential transaction. We are also advised by our members that although the consultation implies that in such circumstances SDLT is levied on a non-residential basis, that in fact this is not the case (where MDR is claimed).
11. However, using the consultation's approach towards larger bulk purchases of dwellings is applied with a non-residential rate and thresholds for the purposes of MDR and setting a prescribed amount the equivalent SDLT provision would be 1% out of a typical figure of 4% for the likely level of total consideration (which would be above £500,000).
12. The basis for our disagreement is with the Scottish Government proposition that the 40% prescribed proportion is the closest to the equivalent SDLT rates is that we do not think this is necessarily the case and we believe that the examples laid out in the consultation document in fact reflect our concern. If we take the example laid out in paragraphs 7 through to 9 then although it is not mentioned the actual SDLT figure is £6,000. Thus by setting the minimum proportion at 40% (yielding £7,250) the Scottish Government is increasing the LBTT payable in comparison to SDLT. Even at a 20% minimum prescribed amount based on the Scenario 2 residential rates then this transaction would cost more in LBTT than under SDLT at about £6,450). The main concern we have is that there is in our view a major gap between the proposed LBTT liability and the current SDLT liability for multiple dwellings relief for like for like transactions because of the higher rates that may be applied under LBTT.
13. The relative premium of a prescribed amount of LBTT under MDR escalates considerably the greater the number of properties involved in the transaction. Annex 3 illustrates that for transactions of 50 dwellings and a consideration of £7.5mn the difference under the Scottish Government's proposals at 40% (£128,800) and the current system whereby £75,000 would be liable are significant – indeed this equates to nearly a 70% increase in tax take. If we then consider the relevant portions of Annex 4 where a much greater number of dwellings are transacted (500) the differential is even greater. Whereas under SDLT a transaction of 500 dwellings with an average value of £150,000 would result in a tax liability of £750,000; an LBTT liability using the 40% prescribed

amount would come to £1,316,800: this is a colossal increase in tax take of £566,800 or viewed another way, in excess of £1,000 per property transacted.

14. In our view this analysis suggests the proposed 40% relief is contrary to wider Scottish Government policy goals. At paragraph 15 of the consultation the Scottish Government states:

‘The majority of private landlords in Scotland operate on a small scale, with 70% owning one property and 95% owning one to five properties. The Scottish Government, in its strategy “a place to stay, a place to call home” (May 2013) has stated that its aim is to improve and grow the private rented sector. Therefore, the potential for institutional investment in private rental sector developments on a large scale also needs to be considered when prescribing the proportion for the purposes of multiple dwellings relief.’

15. We do not see how charging substantially more LBTT where the prescribed proportion is brought into play can help with this wider Scottish Government policy aim. We believe that based on the proposals of Scenario 3 (3/4.4% LBTT rates at 150,000/250,000 thresholds) that prescribed proportion of 23% would be the closest to the SDLT equivalent for the examples of 50 and 500 dwelling transactions provided in the consultation paper based on non-residential rates. Using the options suggested in the consultation paper, we call on the Scottish Government to therefore reduce its prescribed proportion to 10-20% to be more comparable to SDLT. Indeed should we be correct in our view that the non-residential rates cannot apply then the closer proportion would be 10% due to the potentially higher rates to apply under LBTT at the higher values.

Transactions of 2-5 dwellings / minimum prescribed proportion applied to residential rates and thresholds

16. Again using the consultation analysis where between 2 and 5 dwellings are transacted residential LBTT rates will apply. We reassert that we think where MDR is applied this is for all transactions of more than two dwellings. The Scottish Government analysis suggests that because most residential transactions are within the £80,000 to £85,000 bracket that the 40% minimum proportion is appropriate. We do not agree with this assumption and do not think that the use of the typical residential property transaction, dominated as it is by single transactions, is appropriate. We would expect that figures and characteristics for multi-dwelling transactions in Scotland should be obtained via current SDLT returns.
17. However using the figures provided we note from the Table on page 9 that where the average consideration rises to £116,000 (assuming 3 dwellings) then already the proposed LBTT charge is significantly above that of the current SDLT charge. We believe therefore that as argued earlier our proposal for the minimum prescribed amount to be reduced to 10-20% is appropriate for smaller numbers of transactions as well as the larger transactions discussed earlier.

Question 4 - Crofting community right to buy relief

Do you agree that land transactions involving the exercise of the crofting community right to buy should be exempt from LBTT?

18. We recognise the particular importance of this area of Scottish business and society and we have no objections or further proposals to those suggested by the consultation paper.

Question 5a - Acquisition relief

Do you agree that setting the prescribed proportion for acquisition relief from LBTT at 15% would be appropriate?

19. This relief exists under SDLT and the measures proposed under this subordinate legislation to the LBTT Act will provide equivalent relief from LBTT where a company is being acquired by another company in Scotland post April 2015. Scottish Ministers are proposing a 15% minimum proportion of LBTT but are also asking whether this should be simplified and aligned with their proposals for a 40% MDR.

20. We agree with the proposal to have an equivalent relief under these circumstances to that which exists under SDLT. To have a lower relief rate would add costs to acquisitions in Scotland which would in our view be unnecessarily uncompetitive.

Question 5b - Acquisition relief and multiple dwellings relief

Do you agree that setting the prescribed proportion at 40% of the taxation that would occur under LBTT in the absence of this relief, for both acquisition relief and multiple dwellings relief, would be more appropriate?

21. We see no logic in this proposal to equalise different LBTT relief at all and we disagree thoroughly. After all,crofting and Charities relief is being set at 0% because of their particular circumstances so we do not see why MDR and Acquisitions relief should be separately identified for harmonised relief rates.

Question 6 - Charities relief

Do you agree with the Scottish Government's proposed approach in relation to the draft SSI under paragraph 15(3)(d) of schedule 15 to the LBTT Act?

22. Schedule 13 Para 15 allows Ministers to add non-UK/EU territories to the list of qualifying countries from which a charity may be eligible to claim charities relief. The intention of Ministers is to add Norway and Iceland. The relief is eligible only where the registered charity (through OSCAR) buys the property for charitable purposes or as an investment for charitable purposes. We have no objections to the addition of Iceland and Norway and we welcome the parity with SDLT.

Question 7 - Partial Business and Regulatory Impact Assessment

Do you have any comments on the draft Business and Regulatory Impact Assessment?

23. Clearly the more complicated a system the greater the compliance burden. MDR for example could more clearly be presented with perhaps a flowchart indicating at what point and in which direction a method of LBTT calculation will become relevant.

Question 8 - Equalities Impact Assessment

Do you have any comments on the draft Equalities Impact Assessment?

24.No.

Question 9 – Other comments

Do you have any other comments which are not covered by your responses to any of the other questions listed above?

General Comments on Introductory text

Expected Revenue Forecasts

25. The opening text to the consultation explains the background to the introduction of LBTT and includes commentary on the transition from the UK SDLT regime to the LBTT one from April next year. A key issue will be the rates and thresholds which are due to be proposed by the Scottish Government as part of the Budget process this autumn. The consultation paper points out that as the UK Government will withdraw an estimate for the amount of Scottish SDLT that would otherwise have been raised.

26. The question remains as to whether the Scottish Government will treat the property markets separately (i.e. commercial and residential). **We would urge the government to continue to treat the markets separately for the purposes of setting rates and thresholds, as is currently the case; and to base those rates and thresholds on their respective forecasts of revenue.** The markets are different from each other in terms of quantity and performance and indeed we are seeing a marked difference in their respective emergence from deep recessions.

Transitional arrangements

27. The consultation paper asserts that it is intended to reform the Commercial Leases working group to consider extensions and variations of leases. This will cover the transitional period between UK SDLT and the coming into force of Scottish LBTT on 1 April 2015. The transitional arrangements between the two tax regimes for this period is of major importance for members engaged in forward funding arrangements based on pre-lets and it is critical to get the process delivered in order to promote predictability for businesses potentially caught by this transitional period – a forward commitment to matching the 1% rate for commercial leases would be helpful for example for companies contemplating taking leases with effective dates after 1 April 2015. As the commercial lease rate under SDLT is effectively progressively based and there is only the 1% rate set above 0% then we would urge the Scottish Government to match this rate for the sake of competitiveness and to lose no time in announcing any such decision.

David Melhuish

**Director
Scottish Property Federation**