

Finance and Public Administration Committee

21st Meeting, 2023 (Session 6), Tuesday 5 September 2023

Land and Buildings Transaction Tax (Green Freeports Relief) (Scotland) Order 2023 (SSI 2023/Draft)

Overview

1. This paper invites the Committee to take evidence on the [Land and Buildings Transaction Tax \(Green Freeports Relief\) \(Scotland\) Order 2023 \(SSI 2023/Draft\)](#) (hereafter referred to as the Green Freeports SSI) from:
 - David Melhuish, Director, Scottish Property Federation;
2. The relevant written submissions can be found in Annexe A to this paper.

Purpose of the Regulations and the scrutiny procedure

3. On 16 June 2023, the Scottish Government introduced the Green Freeports SSI which, it explains, “inserts new Schedule 16D to the 2013 Act to provide for relief from LBTT for eligible transactions within a Green Freeport designated tax site.” The draft Order and its Policy Note are attached in Annexe B.
4. This SSI is intended to provide relief from LBTT in certain circumstances to “support the Scottish Government’s objectives in delivering the Green Freeports programme by encouraging long-term investment in specified tax sites which are deemed, at the point of designation, to be underdeveloped.”
5. The schedule to the SSI provides for relief in the case of transactions relating to land in a Green Freeport tax site as follows—
 - Part 2 makes provision about the circumstances in which relief is available,
 - Part 3 defines key terms,
 - Part 4 makes provision about withdrawal of the relief, and
 - Part 5 makes provision about cases involving alternative finance arrangements.
6. The [Policy Note](#) which accompanies the SSI explains that the public consultation on the policy and draft Order was published by the Scottish Government on 17 March 2023 and ran until 12 May 2023. It adds that—

“The consultation received 10 responses from trade unions, green freeport operators and stakeholder organisations representing professionals in law, tax, and accounting. The proposed relief was also discussed as part of the Scottish Government’s regular engagement with stakeholders. A further 8 responses were received from individuals, however, these did not offer comment on the issues raised in the consultation.”

7. A [summary of the responses received](#) and the resulting Scottish Government amendments were published on 16 June.
8. The Policy Note explains that there are no impacts arising from the SSI on equal opportunities, human rights, privacy, island communities, local government (over and above their current duties) and sustainable development.
9. A Business Regulatory Impact Assessment will be “published in due course in the context of the wider Green Freeports programme, of which this relief forms part”.
10. At its meeting on 27 June 2023, the Committee agreed to issue a call for views seeking responses on 5 key questions as follows:

Q1: To what extent do you consider that the provisions in this secondary legislation are necessary and will support the government objectives as set out above?

Q2: Full and partial relief are to be available for eligible transactions within the period beginning on 1 October 2023 and ending on 30 September 2028. To what extent is this timeframe appropriate?

Q3: The schedule to this secondary legislation sets out how the relief will operate. To what extent are the following parts of the schedule appropriate:

- the circumstances and conditions under which relief would be available
- the key terms as defined in the schedule
- the circumstances under which relief may be withdrawn
- the provisions relating to cases involving alternative finance.

Q4: What, if any, impacts (such as on equalities or the environment) could arise from the operation of this secondary legislation?

Q5: Have you any other comments related to this secondary legislation?

11. Five responses were received by the deadline of 15 August and can be found on the [inquiry webpage](#).

Formal consideration and next steps

12. The Delegated Powers and Law Reform Committee, which considers the technical aspects of the SSI, considered it on [27 June 2023](#) and had [no issue to report](#).

13. As lead committee, this Committee will take evidence from the Minister for Public Finance, Planning and Community Wealth at its meeting on 12 September. Following that evidence-taking the Committee will be invited to consider whether to agree motion [S6M-09584](#), lodged in the name of the Minister for Public Finance, Planning and Community Wealth, Tom Arthur MSP—

That the Finance and Public Administration Committee recommends that the Land and Buildings Transaction Tax (Green Freeports Relief) (Scotland) Order 2023 [draft] be approved.

14. The Committee will thereafter report to the Parliament setting out its recommendation on the instrument, before the deadline of 28 September 2023.
15. Subject to the approval of Parliament, this SSI will come into force on 1 October 2023.

Committee Clerking Team
September 2023

Written Submission from the Scottish Property Federation

The Scottish Property Federation (SPF) is the voice for the real estate industry in Scotland. We include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers.

1. To what extent do you consider that the provisions in this secondary legislation are necessary and will support the government objectives as set out above?

The green freeports offer an opportunity to enhance the sustainable investment propositions along the Firth of Forth and the Cromarty Firth. This is in line with the joint UK-Scottish government objectives for the Green freeports.

2. Full and partial relief are to be available for eligible transactions within the period beginning on 1 October 2023 and ending on 30 September 2028. To what extent is this timeframe appropriate?

We welcomed the government's decision to postpone the starting point of the five year period, in order to align, so far as possible, with UK tax designation policies. However, we remain concerned that a five year timespan is simply too short for the nature of long term investment in the two green freeports. In addition, we note that the green freeports will not be fully operational until at least 2024 or perhaps even 2025. We therefore suggest that the qualifying period should be extended to at least 7 years.

3. The schedule to this secondary legislation sets out how the relief will operate. To what extent are the following parts of the schedule appropriate: the circumstances and conditions under which relief would be available; the key terms as defined in the schedule; the circumstances under which relief may be withdrawn; the provisions relating to cases involving alternative finance.

Broadly, we support the eligibility criteria set out in the Schedule. We remain concerned that the arrangements may prohibit relief being achieved by developers entering into forward funding arrangements with long term investors. This could be a significant issue as developers will need the cash flow of forward funders and the possibility that relief may not be achieved will take away some of the competitive attractiveness of a development proposition. We remain concerned that this could be a barrier to investment.

4. What, if any, impacts (such as on equalities or the environment) could arise from the operation of this secondary legislation?

There is a significant requirement for investment to improve the operational and built environment of both the areas selected. More than this, the requirements associated with green freeport status mean that the investments allowed will meet strict environmental and social policy criteria. We believe on this basis there is a strong case to be made that both the environment and the economy will benefit from the policy structure of Green freeports.

5. Have you any other comments related to this secondary legislation?

We support the establishment of Green freeports but we feel it is important to maximise the opportunity of their five-year timespan. For this reason, we are concerned that given the long-term nature of major capital expenditure projects there simply may be insufficient time to attract, finance, plan and deliver the investments required to maximise the opportunity the Green freeports offer.

Draft Order laid before the Scottish Parliament under section 68(2)(c) of the Land and Buildings Transaction Tax (Scotland) Act 2013, for approval by resolution of the Scottish Parliament.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2023 No.

LAND AND BUILDINGS TRANSACTION TAX

The Land and Buildings Transaction Tax (Green Freeports Relief) (Scotland) Order 2023

<i>Made</i>	- - - -	2023
<i>Coming into force</i>	- -	<i>1st October 2023</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 27(3)(a) and 68(1) of the Land and Buildings Transaction Tax (Scotland) Act 2013^(a) and all other powers enabling them to do so.

In accordance with section 68(2)(c) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Land and Buildings Transaction Tax (Green Freeports Relief) (Scotland) Order 2023 and comes into force on 1 October 2023.

(2) In this Order, “the Act” means the Land and Buildings Transaction Tax (Scotland) Act 2013.

Green freeports relief

2.—(1) The Act is amended as follows.

(2) In section 27(1) (reliefs), after “schedule 16C (lighthouses relief)”, insert—

“schedule 16D (green freeports relief).”.

(3) In section 33 (further return where relief withdrawn)—

(a) the word “or” at the end of subsection (1)(e) is repealed,

(b) after subsection (1)(f) insert—

“or,

(g) Part 4 of schedule 16D (green freeports relief).”.

(c) after subsection (4)(f) insert—

“(g) in relation to the withdrawal of relief under schedule 16D, an event mentioned in paragraph 8(1) of that schedule.”.

(4) In section 58 (connected persons), after paragraph (ha) insert—

“(hb) schedule 16D,”.

(5) After schedule 16C (lighthouses relief) insert schedule 16D contained in the schedule of this Order.

(6) In schedule 19 (leases), in paragraph 27(3) (cases where assignment of lease treated as grant of lease), after sub-paragraph (f) insert—

“(g) schedule 16D (green freeports relief).”.

Interest where relief is withdrawn

3.—(1) The Revenue Scotland and Tax Powers Act (Interest on Unpaid Tax and Interest Rates in General) Regulations 2015(a) are amended as follows.

(2) In regulation 3—

(a) the word “or” at the end of paragraph (f) is revoked,

(b) at the end of paragraph (g), for “and” substitute “or”,

(c) after paragraph (g) insert—

“(h) in relation to the withdrawal of relief under schedule 16D of the LBTT(S) Act 2013, an event mentioned in paragraph 8(1) of that schedule; and”.

(3) In regulation 4, in the Column headed ‘Relevant date’ corresponding with Land and buildings transaction tax—

(a) the word “or” at the end of paragraph (vi) is revoked,

(b) at the end of paragraph (vii), insert—

“, or

(viii) Part 4 of schedule 16D (green freeports relief) of the LBTT(S) Act 2013,”.

Name

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
Date

SCHEDULE

Article 2(5)

“Schedule 16D (introduced by section 27) Green Freeports Relief

PART 1

Introductory

Overview

1.—(1) This schedule provides for relief in the case of transactions relating to land in a green freeport tax site.

(2) It is arranged as follows—

Part 2 makes provision about the circumstances in which relief is available,

Part 3 defines key terms,

Part 4 makes provision about withdrawal of the relief,

Part 5 makes provision about cases involving alternative finance arrangements.

PART 2

The relief

Full relief

2.—(1) This paragraph applies to a land transaction if—

- (a) at least 90% of the chargeable consideration for the transaction is attributable to qualifying green freeport land, and
- (b) the effective date of the transaction is within the period beginning on 1 October 2023 and ending on 30 September 2028.

(2) The transaction is exempt from charge.

Partial relief

3.—(1) This paragraph applies to a land transaction if—

- (a) the proportion of the chargeable consideration for the transaction that is attributable to qualifying green freeport land (“the relevant proportion”) is less than 90% but at least 10%, and
- (b) the effective date of the transaction is within the period beginning on 1 October 2023 and ending on 30 September 2028.

(2) The tax chargeable in respect of the transaction is reduced by the relevant proportion.

Attributing chargeable consideration to land

4.—(1) For the purposes of this schedule, the chargeable consideration for a land transaction that is attributable to qualifying green freeport land must be determined on a just and reasonable basis.

(2) Sub-paragraphs (3) and (4) apply if less than 100% of the chargeable consideration attributable to transaction land situated in a green freeport tax site (the “freeport consideration”) is attributable to land that satisfies the condition in paragraph 6(1)(b).

(3) If at least 90% of the freeport consideration is attributable to land that satisfies the condition in paragraph 6(1)(b) then, for the purposes of this schedule, all of the freeport consideration is to be treated as being attributable to qualifying green freeport land.

(4) If less than 10% of the freeport consideration is attributable to land that satisfies the condition in paragraph 6(1)(b) then, for the purposes of this schedule, none of the freeport consideration is to be treated as being attributable to qualifying green freeport land.

PART 3

Key terms

Transaction land

5. In this schedule, “transaction land”, in relation to a land transaction, means land a chargeable interest in which is the subject matter of the transaction.

Qualifying green freeport land

6.—(1) For the purposes of this schedule, transaction land is “qualifying green freeport land” to the extent that, on the effective date of the transaction—

- (a) it is situated in a green freeport tax site, and
- (b) the buyer intends it to be used exclusively in a qualifying manner.

(2) In this schedule, “green freeport tax site” means an area in Scotland which—

- (a) is within an area which is identified as a freeport in a document published by, or with the consent of, the Treasury for the purposes of section 113 of the Finance Act 2021 (and not withdrawn), and
- (b) has been designated by regulations made under that section.

Use of land in a qualifying manner

7.—(1) For the purposes of this schedule, transaction land is used in a qualifying manner if it is used in one or more of the following ways—

- (a) it is used by the buyer or a connected person in the course of a commercial trade or profession,
- (b) it is developed or redeveloped by the buyer or a connected person for use (by any person) in the course of a commercial trade or profession,
- (c) it is exploited by the buyer or a connected person, in the course of a commercial trade or profession, as a source of rents or other receipts (other than excluded rents).

(2) But land is not used in a qualifying manner to the extent that it is—

- (a) used as a dwelling or as the garden or grounds of a dwelling (including any building or other structure on such land),
- (b) developed or redeveloped to become residential property,

- (c) exploited as a source of rents or other receipts payable by a person using the land as a dwelling or as the garden or grounds of a dwelling, or
- (d) held (as stock of the business) for resale without development or redevelopment.

(3) For the purposes of this paragraph, use of land in the course of a commercial trade or profession includes use of land for a purpose that is ancillary to the use of other land which—

- (a) is situated in a green freeport tax site, and
- (b) is being used, or developed or redeveloped, in the course of a commercial trade or profession.

(4) The references in this paragraph to doing something in the course of a commercial trade or profession include doing something in the course of a property rental business.

(5) In this paragraph—

“commercial”, in relation to a trade or profession, means carried on—

- (a) on a commercial basis, and
- (b) with a view to profit,

“excluded rents” means rents within any of classes 2 to 6 in the table in section 605(2) of the Corporation Tax Act 2010(a),

“property rental business” means a property business as defined in Chapter 2 of Part 3 of the Income Tax (Trading and Other Income) Act 2005(b).

PART 4

Withdrawal of relief

Withdrawal of relief

8.—(1) The relief is withdrawn if, at any time during the control period, the qualifying green freeport land is not used exclusively in a qualifying manner.

(2) But the relief is not withdrawn where, because of a change in circumstances that is unforeseen and beyond the buyer’s control, it is not reasonable to expect the qualifying green freeport land to be used exclusively in a qualifying manner at that time.

(3) Where, at a time during the control period, the use of all or part of the qualifying green freeport land in a qualifying manner has not yet begun, that land (or that part of the land) is to be treated as being used exclusively in a qualifying manner if reasonable steps are being taken to ensure that it is used in that manner.

(4) Where, at a time during the control period, the use of all or part of the qualifying green freeport land in a qualifying manner has ceased, that land (or that part of the land) is to be treated as being used exclusively in a qualifying manner if reasonable steps are being taken—

- (a) to ensure that it is used in that manner, or
- (b) to dispose of all chargeable interests in that land (or that part of the land) that are held by the buyer and connected persons in a timely manner.

(5) Where the relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the transaction but for the relief.

(a) 2010 c. 4
(b) 2005 c. 5.

The control period

9.—(1) In this schedule, the “control period”, in relation to a land transaction, means the shorter of—

- (a) the period of three years beginning with the effective date of that transaction, and
- (b) the period beginning with the effective date of that transaction and ending with the effective date of the final transaction.

(2) For the purposes of this paragraph, a land transaction is the “final transaction” if, immediately after the effective date of the transaction, neither the buyer nor a connected person holds a chargeable interest in the qualifying green freeport land (whether as a result of that transaction alone or as a result of that transaction and other land transactions).

Disposal of interest in part of qualifying green freeport land during control period

10.—(1) This paragraph applies where the buyer ceases to hold a chargeable interest in part of the qualifying green freeport land during the control period.

(2) The references in paragraphs 8 and 9 to the qualifying green freeport land are to be treated as references only to the part of the qualifying green freeport land in relation to which the buyer still holds a chargeable interest (whether the chargeable interest acquired in the land transaction in respect of which relief was allowed under Part 2 of this schedule or another chargeable interest).

PART 5

Alternative finance arrangements

Cases involving alternative finance arrangements

11.—(1) This paragraph applies where schedule 7 applies.

(2) This paragraph applies for the purposes of determining—

- (a) whether relief is available under Part 2 of this schedule for the first transaction,
- (b) whether relief allowed for the first transaction is withdrawn under Part 4 of this schedule.

(3) For those purposes this schedule has effect as if—

- (a) references to the buyer were references to the relevant person,
- (b) the reference in paragraph 7(2)(d) to land held (as stock of the business) for resale without development or redevelopment were a reference to land held in that manner by the relevant person.

(4) The first transaction does not qualify for relief under Part 2 of this schedule except where it does so by virtue of this paragraph.

(5) In this paragraph—

“the first transaction” has the same meaning as in schedule 7,

“the relevant person” means the person, other than the financial institution, who entered into the arrangements mentioned in schedule 7.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Land and Buildings Transaction Tax (Scotland) Act 2013 to insert a new schedule 16D which provides for a new relief in connection with the acquisition of interests in land that are located in Green Freeport tax sites.

POLICY NOTE

THE LAND AND BUILDINGS TRANSACTION TAX (GREEN FREEPORTS RELIEF) (SCOTLAND) ORDER 2023

SSI 2023/XXX

This Order is made in exercise of the powers conferred by sections 27(3)(a) and 68(1) of the Land and Buildings Transaction Tax (Scotland) Act 2013 (“the 2013 Act”). The making of this order is subject to affirmative procedure.

Purpose of the instrument. This Order inserts new Schedule 16D to the 2013 Act to provide for relief from LBTT for eligible transactions within a Green Freeport designated tax site.

Policy Objectives

This instrument inserts new Schedule 16D to the 2013 Act to provide for relief from LBTT for eligible transactions within a Green Freeport designated tax site.

This relief is intended to support the Scottish Government’s objectives in delivering the Green Freeports programme by encouraging long-term investment in specified tax sites which are deemed, at the point of designation, to be underdeveloped.

Subject to the approval of Parliament, the instrument will come into force on 1 October 2023.

Consultation

There is no statutory requirement to consult on this instrument.

A public consultation on the policy and draft Order was published on 17 March 2023 and ran until 12 May 2023. The consultation received 10 responses from trade unions, green freeport operators and stakeholder organisations representing professionals in law, tax, and accounting. The proposed relief was also discussed as part of the Scottish Government’s regular engagement with stakeholders. A further 8 responses were received from individuals, however, these did not offer comment on the issues raised in the consultation.

An analysis of responses to the consultation will be published separately.

Impact Assessments

Equal opportunities – This Order does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) either directly or indirectly.

Human Rights – This Order does not infringe on or affect any subject areas of the European Convention on Human Rights (ECHR). We have not identified any differential impact on human rights nor any impact on any individual’s civil liberties.

Privacy impacts – No privacy impacts resulting from this legislation have been identified.

Island communities – No impacts have been identified in relation to the provisions of this Order.

Local government – There will not be any additional administrative or compliance burdens specifically affected local government beyond those duties local authorities are already subject to under the LBTT legislation.

Sustainable development – While this Order will have no impact on sustainable development, the overall Green Freeport programme objectives include promoting regeneration and high quality job creation and promoting, decarbonisation and a just transition to a net zero economy.

Business and Regulatory – A BRIA will be published in due course in the context of the wider Green Freeports programme, of which this relief forms part.

Financial Implications

The Scottish Fiscal Commission has set out its assessment of the impact of LBTT Green Freeports relief as part of their report, Scotland’s Economic and Fiscal Forecasts, published in May 2023 at: [Scotland’s Economic and Fiscal Forecasts – May 2023 | Scottish Fiscal Commission](#). The report states that “[SFC] have assumed this policy will be below our materiality threshold and we have made no formal costing”. The SFC materiality threshold is £5m.

As with all reliefs, Revenue Scotland will monitor the level and value of claims throughout the availability period.

Scottish Government Directorate of Tax and Revenues
June 2023