

Finance and Public Administration Committee

7th Meeting 2024 (Session 6), Tuesday 6
February 2024

Land and Buildings Transaction Tax (Miscellaneous Amendments) (Scotland) Order 2024 (SSI 2024/Draft)

Overview

1. This paper invites the Committee to take evidence from the Minister for Community Wealth and Public Finance, Tom Arthur MSP, in relation to the Land and Buildings Transaction Tax (Miscellaneous Amendments) (Scotland) Order 2024 (SSI 2024/Draft).
2. Subject to the approval of Parliament, this SSI will come into force on 1 April 2024. Therefore, the new and amended provisions will apply to transactions with an effective date on 1 April 2024 or after this date.

Purpose of the instrument

3. Land and Buildings Transaction Tax (LBTT) is payable on transactions of residential and non-residential properties and land. Additional Dwelling Supplement (ADS) is a surcharge of 6% on purchases of additional residential properties.
4. On 19 January 2024, the Scottish Government introduced the Land and Buildings Transaction Tax (Miscellaneous Amendments) (Scotland) Order 2024, which makes various amendments to the Land and Buildings Transaction Tax (Scotland) Act 2013. The SSI and its Explanatory Note are attached at Annexe A.
5. As described in the Explanatory Note, the instrument establishes a new targeted relief from LBTT for local authorities and provides for exemptions from the LBTT ADS in certain circumstances relating to joint buyers, inherited property, ownership interest and divorce, dissolution of a civil partnership or judicial separation. The Order also increases the timelines¹ in the ADS legislation from 18 months to 36 months.

¹ The timelines referred to include the time available to purchase a new main residence after disposing of a previous main residence, the time available to dispose of a previous main residence after purchasing a new main residence, and therefore claim a repayment of the ADS, and the time period for considering whether a property was a buyer's only or main residence in the period prior to the purchase of a new main residence.

6. The [Policy Note](#) accompanying the Order explains that the Scottish Government's public consultation on the draft legislation was published on 8 February 2023 and ran until 5 April 2023. The consultation received [42 responses](#) from individual taxpayers, housing providers and tax and accountancy professionals. A [summary of the responses received](#) and the resulting Scottish Government amendments were published on 19 January 2024.
7. This followed an earlier Scottish Government consultation on the ADS, which ran from 16 December 2021 until 11 March 2022. This consultation received [67 responses](#). The Scottish Government published an [analysis of the responses received](#) on 8 February 2023.
8. The Policy Note states that there are no impacts arising from the Order on equal opportunities, human rights, privacy, island communities, or sustainable development. The Order introduces a new relief for certain transactions entered into by local authorities. The Policy Note states that "there will not be any additional administrative or compliance burdens specifically affecting local government beyond those duties local authorities are already subject to under the LBTT legislation".
9. The Note also explains that a Business and Regulatory Assessment has been published for the regulations and orders associated with the 2013 Act, and that the Scottish Fiscal Commission (SFC) has set out its assessment of the impact of these amendments on overall LBTT revenues as part of [Scotland's Economic and Fiscal Forecasts December 2023](#), which were published on 19 December 2023. The SFC is forecasting £730 million in overall LBTT revenue in 2024-25, rising to £1,072m in 2028-29.

Procedure for scrutiny

10. The draft Order, which was laid before the Scottish Parliament on 19 January 2024, is subject to affirmative procedure, which requires Parliament to approve it within a 40-day period (no account is taken of any period when the Parliament is in recess for four or more days).

Delegated Powers and Law Reform Committee consideration

11. The Delegated Powers and Law Reform Committee considered the draft Order on [30 January 2024](#) and had [no issues to report](#).

Finance and Public Administration Committee consideration

12. After the SSI was laid, the Committee wrote to those who responded to the recent Scottish Government consultations on the proposed changes to ADS to ask if whether they wished to draw any specific issues to the Committee's attention before the session with the Minister. The Committee received six responses, attached at Annexe B, from—

- The Chartered Institute of Taxation (CIOT);
- South Lanarkshire Council;
- The Institute of Chartered Accountants of Scotland;
- The Law Society of Scotland;
- Police Scotland; and
- The Scottish Property Federation.

13. The responses, though largely supportive of the draft legislation, highlighted several areas for the Committee's attention, including—

- The scope of the instrument, and whether provisions for further ADS exemptions should be considered in the future. CIOT described the draft legislation as “overly restrictive”;
- The complexity of the legislation, with several submissions calling for the Scottish Government to produce clear and well-publicised guidance for taxpayers and advisors;
- Concerns relating to potential taxpayer and legislative uncertainty arising from the absence of a transitional arrangement in relation to the extension of the relevant timescales from 18 to 36 months as provided for in the Order;
- Concerns regarding the decision to limit ADS relief involving two parties to spouses, former spouses and civil partnerships, excluding cohabitants and unmarried couples;
- General comments on the clarity of the draft legislation;
- The status of the Scottish Police Authority (SPA) within the legislation, as a body which sits outwith the qualifying criteria for a local authority, meaning that no exemption from LBTT or ADS is available for the SPA; and
- Recommendations regarding the process for maintaining and amending legislation regarding devolved taxes in the future.

14. As Lead Committee, this Committee is invited to consider and vote on motion [S6M-11928](#), lodged in the name of the Minister for Community Wealth and Public Finance, Tom Arthur MSP—

That the Finance and Public Administration Committee recommends that the Land and Buildings Transaction Tax (Miscellaneous Amendments) (Scotland) Order 2024 [draft] be approved.

15. To inform the Committee's consideration of the motion, there is an opportunity to take evidence on the draft Order from the Minister and his officials before moving to formal consideration of the motion. During formal consideration of this motion, Standing Orders provide that only the Minister and Members may participate in the debate.

Committee Clerking Team
February 2024

- (a) in head (a), for “18” substitute “36”,
- (b) in head (b), for “18” substitute “36”.

6. In paragraph 6—

- (a) after sub-paragraph (1), insert—

“(1A) For the purposes of paragraph 8(1), a dwelling which is disposed of by—

 - (a) the buyer’s spouse or civil partner,
 - (b) the buyer’s cohabitant,
 - (c) a person aged under 16 who is a child of—
 - (i) the buyer,
 - (ii) the buyer’s spouse or civil partner, or
 - (iii) the buyer’s cohabitant,

is to be treated as being disposed of by the buyer.”,
- (b) in sub-paragraph (2), for “and (1)(c)(ii)” substitute “, (1)(c)(ii), (1A)(a) and (1A)(c)(ii)”,
- (c) in sub-paragraph (4), for “and (1)(c)(iii)” substitute “, (1)(c)(iii), (1A)(b) and (1A)(c)(iii)”.

7.—(1) Paragraph 8(1) is amended in accordance with paragraphs (2) to (5).

(2) In head (a)—

- (a) for “18” substitute “36”,
- (b) for “the day after” substitute “or ending with”,
- (c) after “buyer” insert “or, where there are two or more buyers who are or will be jointly entitled to the interest acquired, one of the buyers”.

(3) In head (b)—

- (a) after “buyer’s” insert “or, where there are two or more buyers who are or will be jointly entitled to the interest acquired, one of the buyers”,
- (b) for “18” substitute “36”,
- (c) omit “and”.

(4) In head (c), for “buyer’s only or main residence.” substitute “buyer’s or, where there are two or more buyers who are or will be jointly entitled to the interest acquired, all of the buyers’ only or main residence, and”.

(5) After head (c) insert—

“(d) where there are two or more buyers who are or will be jointly entitled to the interest acquired, each of whom own a dwelling or dwellings other than the subject-matter of the transaction, all of the buyers must meet the conditions specified in this sub-paragraph.”.

8. After paragraph 9A(a) insert—

“Relief for beneficiaries

9B.—(1) A chargeable transaction to which this schedule applies by virtue of paragraph 2 is exempt from the additional amount if—

- (a) at the end of the day that is the effective date of the transaction, the buyer or, where there are two or more buyers who are or will be jointly entitled to the interest acquired, one of the buyers owns two or more dwellings,

(a) Paragraph 9A was inserted by S.S.I. 2017/233.

- (b) the date of acquisition of ownership of all but the last of those dwellings is after the date on which the buyer entered into the contract for the land transaction relating to the last of those dwellings, but before the effective date, and
- (c) the buyer—
 - (i) is a beneficiary of the estate of a deceased person and acquired ownership of all but the last of those dwellings by virtue of a conveyance or transfer in their favour by the executors of that person, or
 - (ii) otherwise acquires ownership of all but the last of those dwellings as a result of the death of a person.

(2) For the purposes of paragraph (1) the date on which the buyer acquired ownership of a dwelling by virtue of a conveyance or transfer in their favour by the executor of a deceased person is the date on which the conveyance or transfer was delivered by the executor to the buyer.

Relief for separated spouses and civil partners retaining interest in former main residence

9C. A chargeable transaction to which this schedule applies by virtue of paragraph 2 is exempt from the additional amount if—

- (a) at the end of the day that is the effective date of the transaction, the buyer is the owner of two dwellings,
- (b) the first of the two dwellings was at any time before the effective date of the transaction the only or main residence of the buyer and the buyer's spouse, civil partner, former spouse or former civil partner,
- (c) the first of the two dwellings is the only or main residence of the buyer's spouse, civil partner, former spouse or former civil partner,
- (d) the buyer and the buyer's spouse, civil partner, former spouse or former civil partner do not intend to live together again, and
- (e) the buyer retains an ownership interest in the first of the two dwellings in pursuance of an order of a court or agreement of a type referred to in paragraph 4 or 5 of schedule 1."

9. In paragraph 17(2) after "dwelling" insert ", but if the market value of the share in the ownership interest of the dwelling of any of the persons is less than £40,000, that share is not to be counted for the purposes of determining whether this schedule applies to a transaction under paragraph 2 of this schedule".

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

SCHEDULE

Article 3

“SCHEDULE 6A RELIEF FOR CERTAIN ACQUISITIONS BY LOCAL AUTHORITIES

(introduced by section 27)

The relief

1. A land transaction under which the buyer is a local authority is exempt from charge if either of the qualifying conditions are met.

The qualifying conditions

2. The qualifying conditions are—

- (a) that the transaction is entered into in pursuance of powers conferred by section 2 of the Housing (Scotland) Act 1987^(a) (powers of local authority to provide housing accommodation), or
- (b) that the transaction is funded with the assistance of a grant or other financial assistance under section 2 of the Housing (Scotland) Act 1988^(b) (general functions of Scottish Homes).”

^(a) 1987 c. 26. Section 2 was relevantly amended by section 161(2) of the Local Government and Housing Act 1989 (c. 42).
^(b) 1988 c. 43. Section 2 was relevantly amended by schedule 10 of the Housing (Scotland) Act 2001 (asp 10).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes various amendments to the Land and Buildings Transaction Tax (Scotland) Act 2013 (“the Act”).

Articles 2 and 3 establish a new targeted relief, in a new schedule 6A of the Act. The targeted relief is to provide relief from land and buildings transaction tax where the buyer is a local authority and the acquisition of land is funded by the Scottish Ministers under section 2 of the Housing (Scotland) Act 1987 or section 2 of the Housing (Scotland) Act 1988.

Article 5 modifies paragraph 2(2) of schedule 2A of the Act so that the period ending with the effective date of a transaction, during which the replacement of an only or main residence gives rise to relief from payment of the additional amount, is extended to 36 months.

Article 6 modifies paragraph 6 of schedule 2A of the Act so that properties owned by the buyer’s spouse, civil partner, cohabitant, or a child of the buyer or any of those persons, which are currently deemed to be owned by the buyer, are also deemed to be disposed of by the buyer, when disposed of.

Article 7 modifies paragraph 8 of schedule 2A of the Act so that relief from the additional amount is extended to transactions by joint buyers where either of the joint buyers disposes of their own former main residence in the relevant period before the effective date of the transaction, or where only one of the joint buyers has an ownership interest in a former main residence which can be disposed of in the relevant period. Further, it extends the relevant period to 36 months before or after the effective date of the transaction.

Article 8 inserts a new paragraph 9B and 9C into schedule 2A of the Act. Paragraph 8B adds a relief from the additional amount where a buyer is replacing their main residence but inherits an ownership interest in a second dwelling in the period after missives have been concluded for the purchase of the new main residence.

Paragraph 9C adds a relief from the additional amount where a buyer is replacing their main residence but is subject to a court order requiring them to retain an ownership interest in a second dwelling which is a former main residence, following divorce, dissolution of a civil partnership or judicial separation.

Article 9 amends paragraph 17 of schedule 2A of the Act to provide that a share worth less than £40,000 in a jointly owned property is to be disregarded for the purposes of determining whether schedule 2A applies to a transaction.

POLICY NOTE

THE LAND AND BUILDINGS TRANSACTION TAX (MISCELLANEOUS AMENDMENTS) (SCOTLAND) ORDER 2024

SSI 2024/XXX

The above instrument was made in exercise of the powers conferred by section 27(3) and paragraph 19(3) of Schedule 2A of the Land and Buildings Transaction Tax (Scotland) Act 2013. The instrument is subject to affirmative procedure.

Summary Box

<p>The SSI inserts new Schedule 6A, relating to relief for local authorities, to the Land and Buildings Transaction Tax (Scotland) Act 2013, and amends Schedule 2A of that Act in order to introduce changes to various provisions for the Land and Buildings Transaction Tax (LBTT) Additional Dwelling Supplement (ADS).</p>

Policy Objectives

The SSI seeks to provide for exemptions from the ADS in certain circumstances, through amendments to the existing legislation.

The Order will, subject to approval by the Scottish Parliament, take effect from 1 April 2024. The new and amended provisions will apply to transactions with an effective date on or after 1 April 2024.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

A public consultation on the draft legislative provisions took place from 8 February 2023 until 5 April 2023. Respondents included individual taxpayers, housing providers and tax and accountancy professionals. The Scottish Government also held a number of stakeholder engagement events during the consultation period.

Views were sought on the draft legislative clauses relating to key ADS provisions, including the timelines for reclaiming the ADS, identified issues in relation to joint buyers, and a proposed relief for local authorities.

A number of general themes and specific points were raised in response to that consultation from a range of individuals and organisations. Following an internal analysis of the responses, the Scottish Government has amended the draft legislative clauses to incorporate

some of the suggestions and recommendations communicated by stakeholders in their responses. These changes are reflected in the final version of the Order.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government's consultations webpage at www.consult.gov.scot. It includes responses from the Law Society of Scotland, the Institute of Chartered Accountants in Scotland, several local authorities and a variety of other responses from individuals and organisations.

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 – An assessment of the impact of the Additional Dwelling Supplement was made in relation to the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016. No new impacts have been identified in relation to the provisions of this Order.

Local government – The Order introduces a new relief for certain transactions entered into by local authorities. There will not be any additional administrative or compliance burdens specifically affecting local government beyond those duties local authorities are already subject to under the LBTT legislation.

Sustainable development – The Order will have no impact on sustainable development.

Business and Regulatory – A BRIA has been published for the regulations and orders associated with the 2013 Act.

Financial Effects

The Scottish Fiscal Commission has set out its assessment of the impact of these amendments on overall LBTT revenues as part of Scotland's Economic and Fiscal Forecasts December 2023, published on 19 December 2023 at:

<https://www.fiscalcommission.scot/publications/scotlands-economic-and-fiscal-forecasts-december-2023/>

Scottish Government Directorate of Tax and Revenues

January 2024



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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](#)



**Housing and Technical Resources
Executive Director Stephen Gibson
Housing and Property Services**

Kenneth Gibson MSP
Convener
Finance and Public Administration
Committee
Scottish Parliament

Our ref: SLC20240231
Your ref: SLC20240131
If calling ask for: Jonathan Read
Phone:
Date: 31 January 2024

Dear Mr Gibson

Thank you for your email to our Chief Executive's office on 24 January 2024 providing a further opportunity for South Lanarkshire Council to review the ongoing development of the Land and Buildings Transaction Tax (Miscellaneous Amendments) (Scotland) Order 2024.

As a local authority landlord with a significant Affordable Housing Supply Programme to deliver 1,300 additional council homes by 2027, we welcome the proposed amendments to the Order that will reduce taxation on any acquisitions the council will make. Not only do these acquisitions contribute to our programme in terms of numbers added, but they also give us the ability to ensure we continue to provide the right type and size of homes in the right areas that meet the needs of our tenants.

In terms of the content in the revised draft legislation, we are in agreement that the vast majority of the changes proposed appear appropriate. We would however highlight that the conditions set out in Schedule 6A (Section 2(b)) which would require the transaction to be funded by grant from the Scottish Government may be worth expanding.

Whilst we recognise the need to ensure clarity on what is exempt from the tax, we would suggest it may be beneficial to consider some flexibility in this area, particularly as current grant conditions do not cover all property acquisitions a local authority landlord may require to make to meet the changing need of its existing or prospective tenants. For example, acquisitions to meet demand of particular customer groups such as homeless households or Gypsy/Travellers where it would not be appropriate to require a Scottish Secure Tenancy be issued.

I trust this will provide the Committee with the information requested, however should you have any further questions on this area, please do not hesitate to contact my colleague

Council Offices, Almada Street, Hamilton ML3 0AA Phone: 01698 454645
Text Phone: 01698 454039 Email: Stratsupadm@southlanarkshire.gov.uk



Jonathan Read, Strategy and Policy Advisor.

Kind regards,

Stephen Gibson
Executive Director (Housing and Technical Resources)

Kenneth Gibson MSP
Sent via email

Police Scotland
Chief Financial Officer Office
2 French Street
Clyde Gateway
Glasgow
G40 4EH

31st January 2024

Dear Mr Gibson,

LBTT CONSULTATION

I note that evidence on the draft The Land and Buildings Transaction Tax (Miscellaneous Amendments) (Scotland) Order 2024 is to be taken.

I would wish to draw the attention of the Finance and Public Administration Committee and the Minister for Community Wealth and Public Finance to the following:

The Scottish Police Authority requires to provide housing in remote/island areas to enable the Chief Constable of the Police Service of Scotland to deliver operational policing.

The SPA 2022 Housing Strategy aligns with the requirements of housing associations and local authorities (EESHW and Scottish Quality Housing Standard) (“the housing standards”) and is currently engaged in refurbishment/replacement of its housing stock.

By its constitution, the Scottish Police Authority lies outwith the qualifying criteria for a local authority in Paragraph 2 (a) and (b) of Schedule 6A to be inserted by Article 2 of The Land and Buildings Transaction Tax (Miscellaneous Amendments) (Scotland) Order 2024, its acquisitions not being pursuant to a statutory duty to provide housing nor funded under housing statutes.

Closest analogy for Police housing is housing maintained by Ministry of Defence, which body is exempt by its Crown status.

Despite acting under a statutory duty [Police and Fire Reform (S) Act 2012]; seeking to comply with the housing standards; and house acquisitions being funded by Scottish Government annual grant in aid, due to the lack of direct connection with housing legislation, no exemption from LBTT or ADS is available to the Scottish Police Authority.

A copy of the more detailed submissions made to the 2023 Scottish Government Consultation is attached for your information.

Yours sincerely

James Gray
Chief Financial Officer

Copy Submission made to Consultation April 2023

Local Authorities /Proposed Change

The Scottish Government intends to provide relief from Land and Buildings Transaction Tax (LBTT) and the Additional Dwelling Supplement (ADS) for local authorities where a purchase funded under Section 2 of the Housing (Scotland) Act 1988.

The Scottish Government considers this proposal to be in line with wider Scottish Government housing policy to support the provision of affordable housing. In this respect, the proposal seeks to align broadly the tax treatment of local authorities with that of Registered Social Landlords under Schedule 6 of the Land and Buildings Transaction Tax (Scotland) Act 2013 (the Act).

The Scottish Government acknowledges that there is currently no legislative definition of affordable housing for LBTT purposes and invites stakeholder views on this point.

The proposed amendment inserts new Schedule 6A to the Act providing relief for certain acquisitions by local authorities.

13. Do you think that the proposed amendments provide for the Scottish Government's intended change?

14. If not, what amendments would you propose to the draft legislation and on what basis? Please give us your views

Proposed SPA Response to Question 14:

"The intention to broadly align the tax treatment of local authorities with that of Registered Social landlords under Schedule 6 of the LBTT (A) 2013 is noted. While not strictly in point, it is requested that application of LBTT to dwelling houses purchased by the Scottish Police Authority (SPA) for the benefit and assistance of operational police officers (and their families if relevant) is further considered.

The SPA requires to maintain a stock of housing for use by the Chief Constable of the Police Service of Scotland to secure operational policing in more remote / island locations where housing supply is limited (to assist recruitment and retention of officers) [*statutory basis: Police and Fire Reform (S) Act 2012 Section 3(1) (b)*]

SPA's current ownership comprises an ageing housing stock, some of which is in a poor condition and / or well below current recommended levels for energy efficiency and would require considerable capital outlay to bring up to standard and the SPA has an identified

requirement to improve existing fabric and energy infrastructure to discharge its duty as housing provider.

By its constitution, and by operation of the 2012 Act, the SPA falls outwith the legislative framework of local authorities, registered social housing providers and further has no entitlement to the benefits /exemptions accruing to Crown Estate.

[SPA does not fall within exclusions of “relevant person” in Clause 83(8) Antisocial Behaviour (S) Act 2004 (requiring registration as a private registered landlord.) Notwithstanding this, tenancies granted by SPA are not private registered tenancies under Private Housing (Tenancies) (S) Act 2016 Section 1 (1) (c)/ Schedule 1, Paragraph 1 (12)]

[Said constitution similarly prevented recovery of VAT in the initial years following creation of the SPA.]

- Whilst not a registered social landlord, the SPA has undertaken to align itself, in principle, with the requirements of housing associations and local authorities and has committed to working towards achieving the Energy Efficiency Standard for Social Housing (EESH2) and the Scottish Quality Housing Standard (“the Standards”) for its housing stock.
- Funding of a house purchase will be from allocated funds from the Police Capital Budget received from Scottish Government by way of our annual grant in aid, albeit not from same source as social housing. It is submitted that such funding equates to exercise of power of Scottish Ministers [Section 1 (3) (a) and (d) Housing (S) Act 1988 in providing and assisting in provision of, finance to persons or bodies intending to provide... Housing / promoting provision and improvement of housing”] albeit funding source differs from source under Section 2.
- While rent for police housing was historically not imposed to ensure exemption from secure tenancies [under now repealed Schedule 2 Housing (Scotland) Act 1987 as per Housing (Scotland) Act 2001 (which required occupancy by police constables without payment of rent or rates)] consultation regarding proposed imposition of rent at affordable housing levels similar to registered social housing, is being undertaken.
- Closest analogy of police housing is military housing [*also excluded from being private residential tenancies under said 2016 Act, Schedule 1, Paragraph 1 (13)*]

Under the **SPA National Housing Strategy, approved by the SPA Full Board Meeting of 23 March, 2022**, one element of said strategy determines that: where no leasing opportunities for housing exist with local housing associations/authorities, an SPA owned house is to be either refurbished to meet the Standards, or if uneconomic to do so, such house is to be substituted with purchase of modern or new build house and existing asset disposed of. A number of house purchases are envisaged.

Application of LBTT, and in particular, ADS at level introduced in December 2022, adversely affects SPA’s ability to deliver its housing strategy [*Example: proposed purchase of 4 houses in Orkney will incur LBTT of £5,600 per house plus ADS of £19,200 per house.*]

Purchase of similar housing properties by Secretary of State for Defence, as Crown Estate, would be exempt from LBTT.

The statutory basis of the SPA's provision of housing to support operational policing and its clearly declared intention (and policy) to do so at levels comparable with local authorities and registered social landlords makes said provision of housing by the SPA a ready fit within the wider Scottish Government housing policy to support the provision of affordable housing. It is submitted that there is clear merit in inclusion of the SPA within the proposed amendments which are the subject of this consultation whereby the tax treatment of local authorities and the SPA should be aligned with that of Registered Social Landlords."



Law Society
of Scotland

Response to the Finance and Public Administration Committee

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

31 January 2024



Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Tax Law sub-committee welcomes the opportunity to write to the Finance and Public Administration Committee in relation to its consideration of the Land and Buildings Transaction Tax (Miscellaneous Amendments) (Scotland) Order 2024 (the “**Order**”).¹ The Order makes amendments to the Land and Buildings Transaction Tax (Scotland) Act 2013 (the “**2013 Act**”). The sub-committee has the following comments to put forward for consideration.

General Comments

We generally welcome the Scottish Government’s proposed legislative amendments to the Land and Buildings Transaction Tax (“**LBTT**”) Additional Dwelling Supplement (“**ADS**”). We have previously highlighted – in our responses to the Scottish Government’s consultations on this area in March 2022² and April 2023³ – a number of issues which have arisen with the application and implementation of the ADS, which would benefit from resolution or clarification. We therefore welcome progress being made to address such issues.

The law relating to the ADS is complex and nuanced. We do not consider that the amendments in and of themselves will simplify the law in this area – and in some cases may complicate the position for certain taxpayers depending on their circumstances.

Whilst we recognise the complexities and welcome the preceding stakeholder consultation on the proposed changes, we note that the initial consultation was launched in December 2021, and regret that intended changes could not have been achieved within a shorter timeframe. We also regret that the proposals do not go further in some areas.⁴

¹ [The Land and Buildings Transaction Tax \(Miscellaneous Amendments\) \(Scotland\) Order 2024](#)

² [The Land and Buildings Transaction Tax – Additional Dwelling Supplement: A call for evidence and views](#). Our response is accessible [here](#).

³ [Additional Dwelling Supplement: Proposals for Change](#). Our response is accessible [here](#).

⁴ For further commentary on areas that we consider would also merit amendment, please see our response to the first consultation dated March 2022.

It is important that the law is clear so that individuals and businesses can guide their conduct accordingly. We highlight the importance of any changes to the policy and legislative position in this area being accompanied by an appropriate awareness-raising campaign and clear guidance to assist taxpayers and their professional advisers. We consider it essential that guidance is published in advance of the proposed changes taking effect, to allow a sufficient lead-in time for taxpayers and their professional advisers to familiarise themselves with the updated provisions. In particular, given that the changes will not be retrospective and will therefore apply in relation to purchase transactions settling (on current plans) on or after 1 April 2024, this should be highlighted, including on the Revenue Scotland website – as such transactions will be in progress but not settled well in advance of that date, and clients and their advisers require to be aware of forthcoming changes at a time when they might have an influence on the details to be agreed in such forthcoming transactions. We comment further on this below with particular reference to the extension(s) to 36 months of periods affecting the relief for replacement of a main residence.

We also consider that there may be some unintended consequences arising from the amendments, or further clarification required in due course. Particularly in this context, we highlight that there would be merit in there being a process that allows for regular maintenance of and amendment to the devolved taxes, including LBTT. We suggest that this would form part of the budget process, including formalising a regular timetable and mechanism for stakeholders to give input on any operational and policy concerns with the tax legislation – including so-called “care and maintenance” matters as well as substantive changes to tax policy and to rates and bands. With particular reference to the Order, we consider that further amendments to the amended legislation will be required at the very least to improve clarity on certain issues. While this is not a reason to delay the very welcome main amendments, we urge strongly that sight should not be lost of the need for further work in this case, both specifically and generally. Please see our further comments in this context below.

We remain committed to working with the Scottish Government and Revenue Scotland on these points, and would be pleased to provide further information or examples if helpful to the Committee.

Specific Comments

Articles 2 and 3 – Relief for certain acquisitions by local authorities

We particularly welcome the changes provided for at articles 2 and 3 of the Order, which introduce a targeted relief from LBTT where the buyer is a local authority and the acquisition of land is funded by the Scottish Ministers under section 2 of the Housing (Scotland) Act 1987 or section 2 of the Housing (Scotland) Act 1988. We anticipate that this targeted relief will be greatly welcomed by those working in this area.

Extension of relevant timescales from 18 to 36 months – Transitional arrangements

We have concerns over potential taxpayer and legislative uncertainty arising from the absence of a transitional arrangement in relation to the extension of the relevant timescales from 18 to 36 months as provided for in the Order, including at article 5.

Firstly, we consider that that the Order as drafted could cause taxpayer uncertainty and confusion over the effect of the changes. For example, we consider that there may be a risk that taxpayers misinterpret this as meaning that from 1 April 2024 (subject to parliamentary approval) the relevant timescales will be extended with retrospective effect. It is important that there is clear messaging and awareness-raising to avoid taxpayer and other stakeholder misunderstanding – in advance of the changes taking effect, to allow taxpayers to make informed decisions.

Secondly, we consider that the drafting of the Order does not provide clarity in respect of the transitional arrangements for property purchases and disposals before 1 April 2024. For example, on the relevant timescales for ADS purposes in relation to a property purchase on 31 March 2024. We consider that it would be helpful for the policy position and intended effect of such changes to be made clear.

Article 7 – Changes to paragraph 8, schedule 2A, 2013 Act

We note that article 7 modifies paragraph 8 of schedule 2A of the 2013 Act. We have concerns that the insertion of sub-paragraph 8(1)(d) – as provided for at article 7(5) – is unclear in its effect and policy basis. We consider that it would be helpful for greater detail to be provided on these points.

An example (perhaps the prime example) of this is in relation to the interaction between the revised sub-paragraph 8(1)(b) and the inserted sub-paragraph 8(1)(d). We observe that sub-paragraph 8(1)(b) appears to provide that it is sufficient if the residence disposed of had been the residence of only one of the joint buyers. However, sub-paragraph 8(1)(d) provides that all of the joint buyers must meet the conditions in the paragraph – which would seem to imply that both must have disposed of previous main residences and that these residences must have been the residences of both of them. We would add that if the position described above in respect of sub-paragraph 8(1)(d) governs, this may in fact be a restriction on the present position.

We also consider that it is very difficult – or perhaps impossible – to reconcile the unchanged provisions of paragraph 8A of schedule 2A with the revised paragraph 8. We think that paragraph 8A may now simply be superfluous; and if so, or if revision is required, this is a good example of the legislative “tidying-up” which will in any event remain to be done, as mentioned in our General Comments above.

Article 8 – Insertion of paragraphs 9B and 9C, schedule 2A, 2013 Act

We welcome the insertion of paragraph 9B, and particularly the inclusion of inheritance by survivorship – especially on the death of a proper liferenter, which is outwith the control of a purchaser. We would highlight that there are situations other than a death on which a purchaser may receive ownership of a dwelling, and although they are rare, they may too be a subject for further revision.

We note the insertion of paragraph 9C. We would have welcomed the proposals to address the position of cohabitants who split up, noting that the proposed relief only applies to separated spouses and civil partners retaining an interest in their former main residence. We consider that further consideration of this area would be welcomed, as there is no corresponding provision for situations where cohabitants who own property together separate. This could give rise to perceived unfairness in the treatment between affected taxpayers.⁵

Article 9 – Amendments to the deemed ownership provisions

We welcome the broadening of the existing position in relation to the disregard of shares of a dwelling (paragraph 17, schedule 2A), to provide that the disregard applies where the share in the ownership of a dwelling – rather than the whole of the dwelling – is valued at less than £40,000.

⁵ We discussed this concern in further detail at question 9 of our April 2023 response.

For further information, please contact:

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31 January 2024

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Dear Convener

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

In advance of your Committee's evidence session with the Minister for Community Wealth and Public Finance on 6 February and in response to a call for comments on specific issues by the Committee, please find below some brief comments by the Scottish Property Federation.

We welcome the introduction of this draft Scottish Statutory Instrument which will deliver key elements of the Additional Dwelling Supplement reforms mooted in consultation in early 2022. In particular we welcome the alignment of the period for disposing of a main residence with wider UK policies at 36 months rather than 18 months. This reform was indeed the key ask of stakeholders in a stakeholder meeting convened by the Minister on ADS reforms and we welcome the fact that it has been adopted.

A further feature to highlight is the extension of both ADS and LBTT relief to local authorities when purchasing dwellings. In fact, the proposed secondary legislation goes further than the consultation on draft clauses which closed in April 2023. The Order now includes both purchases funded by grants under section 2 of the Housing (Scotland) Act 1987 and also purchases under powers conferred by section 2 of the Housing (Scotland) Act 1988. We assume this is in response to feedback from stakeholders and local government experts.

While we do therefore welcome these amendments to the Additional Dwelling Supplement, we do highlight that wider reforms have not made it through to the draft Statutory Instrument and we feel this could be an opportunity missed at this stage.

The amendments the government chose not to proceed with from the 2022 consultation included proposals for a relief in circumstances of divorce or separation, as well as extending an ADS relief for housing co-operatives. In addition, the government decided to not introduce

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an "exceptional circumstances" provision that could allow extended time limits to be applied to the replacement of main residence rules on a discretionary basis in exceptional circumstances. This is contrary to the position in the wider UK. Tax legislation will rarely cover each and every eventuality and given the potentially high taxation burden of ADS we continue to feel that a power to enable a relief for exceptional circumstances, to be applied on the discretion of Revenue Scotland, could bring additional fairness to the ADS system.

We recognise that the Scottish Parliament cannot seek any changes to the draft secondary legislation it is scrutinising in the context of government intentions to introduce these reforms (which we reiterate we do welcome) ahead of 1 April. However, we feel there is something of a missed opportunity to address these wider concerns which we raise. Legislative opportunities to improve taxes such as the Additional Dwelling Supplement are infrequent and therefore, we ask the Committee to press the government that if not now, then if it would consider the potential for a further reform of ADS in the near future.

We also stress the need for very clear guidance to be made available to taxpayers and agents in advance of the introduction of the new ADS rules, so that taxpayers are fully aware of the implications of the changes. In particular we believe there is a risk that taxpayers may mistakenly believe that the new extended time limits apply to disposals of former main residences after 1 April 2024, whereas the new 36-month time limits will only apply when the new main residence is purchased after 1 April 2024.

We would be pleased to explain our comments in greater detail at your request.

Kind regards,

David Melhuish
Director, Scottish Property Federation

By 31 January 2024

Call for evidence on the LBTT

(Miscellaneous Amendments) (Scotland)

Order 2024



Scottish Parliament call for evidence: Call for evidence on the LBTT (Miscellaneous Amendments) (Scotland) Order 2024: ICAS response

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ICAS response to Scottish Parliament call for evidence:

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 23,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 10,000 of our members are based in Scotland and 10,000 in England. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good.
2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.

General comments

3. ICAS welcomes the opportunity to feed into the Scottish Parliament's work in respect of the LBTT (Miscellaneous Amendments) (Scotland) Order 2024. We generally welcome the proposals to amend the current legislative provisions. However, despite the attempt to simplify, the legislation is still complex and there is a risk that some taxpayers will misunderstand it, and although the proposals will affect most taxpayers positively, some will not be so affected.
4. If guidance is to be produced in respect of the revised legislative provisions, we, as a trusted stakeholder of the Scottish Government would welcome sight of the draft guidance and be given the opportunity to comment on it before it is finalised and released.
5. We consider it essential to ensure that the guidance is well publicised to the public and to those providing professional services to their clients in good time. Historically we have found that generally speaking, awareness of Scottish taxes is not high in Scotland¹ and there is a need for improvement of communications by the Scottish Government to ensure this improves, in line with the Scottish Government's own Framework for Tax principles.

¹ [ICAS joins forces with CIOT to call for review of the Scottish tax system | ICAS](#)

6. ICAS, along with other professional bodies and stakeholders, continues to call for care and maintenance provisions in the form of a regular fiscal Bill which allows for a point in time at which all amendments to legislation are carried out rather than undertaking piecemeal changes to tax legislation, which the public as well as tax and legal professionals find difficult to follow and locate. It is much easier to refer to a Finance Act or equivalent when researching legislative updates than it is to have to search through different provisions and SSIs to ensure one has a correct understanding of the current law.

There have been various examples of ad-hoc changes being made to LBTT in the years since it was introduced, but a current example is the Scottish Aggregates Tax and Devolved Administration (Scotland) Bill, which contains two parts – part one dealing with Aggregates Tax and part two dealing with amendments to Revenue Scotland powers and LBTT-related amendments – i.e. a different tax to Aggregates. If all the changes made in 2023/24 were wrapped up in one Finance Bill, there would be no need to search elsewhere for them, which is more transparent. The more devolved taxes which are introduced, the greater the need for fiscal transparency.

7. We have a small number of what we consider to be important points to make in relation to the amendments to Schedule 2A, as follows:
 - i. Whilst we welcome the extension of the timescales at Schedule 2A relating to the effective date of a transaction in relation to the replacement of an only or main residence from 18 to 36 months, we have some concerns around the clarity of this extension insofar as transitional provisions go. There does not appear to be any reference to transitional provisions in the draft legislation, which one might usually expect to see when considering a material change which affects property transactions (and other taxation issues involving changes).

It is important to point out clearly whether retrospection is to be permitted or not – if it is, what the key dates and application of the law is, and if it is not, that this is stated unequivocally, so there is no misunderstanding. ICAS considers that without retrospection, there may be a possibility that some claims of discrimination by taxpayers might arise or representations made at the Tax Tribunal – especially given the LBTT legislation is less than a decade in the making. The net ADS collected of around £172m in 2022/23, which is bound to contain elements of ‘effective date’ transactions, reflects the recently updated 6% levy but it should be borne in mind that this is still not a huge number in relation to the overall revenue raised in Scotland, and the taxpayers affected may consider that a decision to apply the effective date changes retrospectively would not materially affect the tax collected.

- ii. Is there a substantive reason why 9C refers specifically to spouses, former spouses and civil partnerships but excludes unmarried partners or cohabitants? We acknowledge that in the Scottish Government's response to the ADS consultation on 19 January 2024, it stated that "extending the relief to include cohabitants would represent a significant departure from the policy aim of the legislation, and could result in unintended outcomes." This seems to be rather out of date with current lifestyles and may be detrimental to people who are not or have not been married or in a civil partnership, nor wish to be. We note that other sections refer to cohabitants. The response statement does not go into any detail about why including cohabitants would represent a significant departure from the policy aim, or what the unintended outcomes might be. ICAS would welcome the opportunity to further explore the options on this before any decisions are finalised.




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