



**Scottish Parliament
Finance Committee**

The Land and Buildings Transaction Tax (LBTT): Call for Evidence

Evidence from ICAS

26 August 2016

About ICAS

1. The following submission has been prepared by the ICAS Tax Committee. The ICAS Tax Committee, with its five technical sub-Committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 committee members. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 21,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.

General comments

2. ICAS is grateful for the opportunity to give evidence to the Finance Committee regarding the Land and Buildings Transaction Tax (LBTT) and the performance of Revenue Scotland in administering and collecting the tax, as requested in the call for evidence issued on 30 June 2016.
3. ICAS has contributed the experience of its members and their technical expertise in the development and implementation of the two devolved taxes, Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT), in the development of the proposed Air Passenger Duty, and in the establishment of the tax authority Revenue Scotland. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members in the many complex issues and decisions involved in tax and financial system design, and to point out operational practicalities.
4. As a matter of policy, ICAS does not comment on the rates of any tax.
5. Our comments below are restricted to our areas of expertise, which in this instance are in relation to forecasting and accountability, and the operational aspects of LBTT and Revenue Scotland administration. We have therefore addressed four of the questions in the call for evidence.
6. We note that the call for evidence relates to the first full year's operation of LBTT and so has made no direct reference to the LBTT Additional Dwelling Supplement that was introduced by way of the The Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016 that came into force on 1 April 2016.

The extent to which the rates and bands are consistent with the principles of "fairness, equity and the ability to pay"

7. ICAS supports the structure of LBTT, which is more progressive than the SDLT slab system which it replaced. The move away from the slab system was welcomed by ICAS and LBTT is generally considered to be fairer to taxpayers.
8. One of the four principles is 'certainty', which in our view includes both simplicity and stability. To provide certainty it would be helpful if a relatively long term view could be taken with a minimum number of changes to the thresholds and rates over time. This will enable taxpayers, both individuals and businesses, to plan ahead with confidence.
9. The principle of 'ability to pay' is generally viewed as a proportionate rise in tax rates as income increases, although this can be less clear cut in transaction based taxes such as LBTT or APD. Further, the operation of this principle can be undermined by behavioural changes such as less purchases of property; the principle itself may undermine other objectives such as stimulating the economy. This needs to be recognised, and balanced, in the matrix of policy objectives.
10. The amount of LBTT chargeable on a land transaction will impact on the availability of funds to the taxpayer, both equity and loans. For those buying property with a mortgage it simply means that 'the cake is cut in a different shape' as typically there is a limit to the funds available.

11. The Additional Dwelling Supplement (ADS), at a flat 3% rate introduced with effect from 1 April 2016, is not progressive in the same way as the main LBTT charge. It is not progressive in that it does not levy higher rates on more expensive properties (whose owners are assumed to have greater capacity to pay and therefore the relative burden of taxation may not be proportional).
12. We also receive anecdotal evidence that there can be anomalies with ADS which are perceived to be unfair. For instance, consider a person purchasing their first home who had rented previously but happens to have an interest in another property that is jointly owned but the joint owner will not sell or buy out. Consequently, ADS has to be paid on the purchase of the home.

The level of receipts for residential and non-residential transactions in relation to the forecasts

13. It is difficult to give meaningful comment about the level of receipts for LBTT for either residential or non-residential transactions relative to the forecasts at this particular stage. This is partly because this was the first year of forecasting.
14. There were further forecasting difficulties with the residential sector due to (i) the change in UK Stamp Duty Land Tax rates in December 2014, resulting in some purchases being brought forward to before April 2015; and (ii) a similar behavioural impact may have been triggered by the introduction of the 3% LBTT Additional Dwelling Supplement. So, for this particular year, 2015/16, it may be unexpectedly difficult to draw a meaningful analysis between the forecasts and the actual revenues. We agree with the commentary in paragraphs 2.2 and 2.3 of the Scottish Fiscal Commission's 'Report on Draft Budget 2016-17'.
15. There are clearly difficulties in accurate forecasting of the non-residential revenues, with discussion of this in the SFC's 'Report on Draft Budget 2016-17'. We have no further analysis or insight to offer in relation to this.
16. More broadly, however, there is a need for sound financial processes that provide useful and meaningful financial information. Such financial information is needed to allow a better understanding of tax policy and collection, how it has been used to support public finances, and to enable taxpayers to hold decision makers to account. An important part of this is being able to analyse devolved revenues against budget to assess whether policy decisions have achieved their intended effect. We support the work of the Scottish Government forecasters, and the SFC report recommendations regarding tax forecasts, to ensure meaningful provision of financial information in future budgets and thereby support accountability.

The impact of forestalling and whether it is likely to have a short-term impact only or lead to longer-term changes in the market

17. The structure of LBTT and significantly higher rates at higher values were intended to be major changes and might be expected to change the property market in the longer term, for instance, with the number of house moves made over a lifetime.
18. ICAS does not have evidence around any potential trends but we would encourage independent study into the impact on changes to the concept of home ownership, for example, with projected moves over a lifetime, or a focus on extending rather than moving, and to do so by looking forward a generation at least. Potential costs of job mobility, or inward investment into more rural areas, all have wider consequences albeit for the wealthier or more aspirational purchases.

The performance of Revenue Scotland in administering and collecting the tax

19. The two devolved taxes for which Revenue Scotland has a responsibility to collect and manage are two discrete taxes with only LBTT compliance relying on the agent community. The vast majority of transactions that give rise to LBTT need a lawyer as the agent. Chartered accountants are only likely to be in an advisory position if the transaction is part of a business venture, such as purchasing or leasing commercial

premises, or in a business reorganisation for either a group of companies or a partnership.

20. As a professional body representing both its members and the public interest, ICAS has found its dealings with Revenue Scotland professional and helpful. ICAS representatives have regular meetings with Revenue Scotland and its senior staff.
21. In our meetings with staff at Revenue Scotland, they have actively engaged with us and have responded well to our comments and feedback. In terms of the Revenue Scotland approach to communications, they have been good at engaging through a number of different channels; and the website is also a good source of information and is well laid out.
22. Despite canvassing for information amongst ICAS members, both through our tax committee system and during the provision of courses on Scottish taxes, no major areas of concern have been raised. The feedback we have received is that the operational implementation has gone well and that the LBTT returns are more straightforward than the SDLT equivalents. From this, we draw the conclusion that LBTT administration is working as expected.
23. Some of our members have commented that there are occasions when Revenue Scotland could be more helpful in providing an opinion that provides certainty and that in the same scenario HMRC would have given a clearance (for instance, with an incorporation of a 'husband and wife' partnership). This also places the agent in a difficult position with their client if they cannot obtain certainty from Revenue Scotland regarding the tax treatment of a prospective transaction. And uncertainty over the tax cost of a proposed transaction may adversely affect a decision over whether to proceed.

Legislative differences between LBTT and SDLT

24. Areas that have given rise to debate amongst our members include those where the LBTT legislation is different from that for SDLT. For businesses that operate across the UK it adds to their complexities if the legislation in different jurisdictions has differences, and particularly so where these appear to be due to minor drafting changes.
25. There are also some areas of detailed policy in LBTT which lead to commercial outcomes that are different when compared with SDLT. Our members are unsure whether some of the differences in the legislation between SDTL and LBTT were purposeful decisions or if they were unintended consequences and, if the latter, whether these may be amended.
26. For example, this is the case in a demerger transaction where a property is transferred out of a trading company to another group company prior to the sale of the trading company. There are provisions which deny relief where there are arrangements for the company which acquires the property to leave the group in Sch 10 LBTT (S) Act 2013. It is understood that Revenue Scotland is of the view that relief is not available in these circumstances; but this is a different approach to HMRC where relief from SDLT would be available. We suggest that this detailed area of policy should be revisited. A proposed way to resolve this is included in the attached appendix.
27. Another example where Scotland may be put at a commercial disadvantage when compared with the rest of the UK is the lack of seeding relief for Property Authorised Investment Funds (PAIFs) and Co-ownership Authorised Contractual Schemes (ACS). ACS and PAIF vehicles have been designed to encourage onshore collective investment in property. Collective investment offers benefits to the investor by offering asset diversification and a spread of risk. It offers benefits to the property market by introducing additional liquidity which should benefit the economy as a whole. Seeding relief is generally put in place to enable a transition to a new regime so as to remove a non-commercial cost of reorganisation where there is no economic disposal. Inevitably, if the fiscal environment appears to be disadvantageous, investment decisions may be influenced and Scottish properties within a UK portfolio may be excluded from a transfer into these collective investment regimes.

Interpretation of the law and lack of certainty

28. There are a number of areas where the technical guidance on LBTT does not give Revenue Scotland's views on the interpretation of the LBTT legislation whereas, in contrast, HMRC has given guidance in relation to SDLT. The published interpretation of the SDLT provisions is quite extensive, giving practitioners certainty as to the correct application of law. The vast majority of LBTT provisions are duplicates of SDLT ones. Despite this, it is unclear whether LBTT, and Revenue Scotland, follow the existing interpretation in the UK. It would be helpful from the practitioner's perspective to receive some sort of acknowledgement from Revenue Scotland of whether the interpretation and guidance for SDLT, at least in certain areas, is to be followed when interpreting LBTT provisions. Alternatively, if Revenue Scotland agrees with the interpretation of law in the UK, a similar guidance (such as manuals, tax bulletins etc) relating to LBTT could be replicated by Revenue Scotland. The current situation creates uncertainty for taxpayers who, when the LBTT legislation is identical to the equivalent SDLT legislation, might reasonably assume that a similar interpretation would apply.

The LBTT Additional Dwelling Supplement

29. The LBTT Additional Dwelling Supplement (ADS), which was introduced earlier in 2016 was delivered within a challenging timeframe and lessons could be learned from this in establishing future processes, and making sure that the introduction of any future tax legislation has had the benefit of going through a full and robust consultative process by interested stakeholders.
30. The ADS guidance issued in March 2016 is, on the whole, very helpful. It deals with many situations and gives clear guidance on how Revenue Scotland views matters. There were some gaps though, and in particular where there was a mix of non-residential and residential property and multiple dwellings where the new ADS applied. There appeared to be confusion on how this operated and, as noted in paragraph 23 above, the opinion service was not particularly helpful at a stage when clarity of treatment was sought.

Appendix

Proposed legislative change (see para 26 of our submission above)

Relief is denied in a demerger transaction where a property is transferred out of a trading company to another group company prior to the sale of the trading company and there are arrangements for the company which acquires the property to leave the group in Sch 10 LBTT (Scotland) Act 2013. It is understood that Revenue Scotland is of the view that relief is not available in these circumstances; but this is a different approach to HMRC where relief from SDLT would be available. We suggest that this detailed area of policy should be revisited.

This issue could be resolved simply by amending paragraph 7, schedule 10, LBTT(S)A 2013 to state that paragraph 5(b) does not apply to arrangements to which paragraph 9 applies. The arrangements to which paragraph 9 apply are those to which section 75 Finance Act 1986 (UK stamp duty) apply and for that section to apply the relevant acquisition must be effected for bona fide commercial reasons and must not form part of an arrangement of which the main purpose, or one of the main purposes, is avoidance of liability to stamp duty, income tax, corporation tax or capital gains tax. A paragraph 9 arrangement must therefore be carried out for bona fide commercial reasons and consequently it is difficult to understand why paragraph 7, schedule 10, LBTT(S)A 2013 should not be amended as suggested.

Clarity sought in the interpretation of the law (see para 28 of our submission above)

There is an apparent conflict between section 22, LBTT(S)A 2013 (which imposes an LBTT charge by reference to market value where property is transferred to a company which is connected with the seller) and the partnership provisions in Part 4, schedule 17, LBTT(S)A 2013 when a property is transferred from a partnership (comprising individuals) to a connected company, when the chargeable consideration is based on the market value of the property but takes account of the fact that there may be no ultimate change in ownership by the individuals. In relation to SDLT HMRC have confirmed that the partnership provisions have precedence however, so far as we are aware, Revenue Scotland have not confirmed their views.