



**Response from ICAS to the
Scottish Government's
Land and Buildings Transaction Tax
(Amendment) (Scotland) Bill**

18 February 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 20,000 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 welcomes the opportunity to comment on the proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes as announced in the Scottish Government's Draft Budget 2016-17. We are also grateful for the opportunities to meet with the Scottish Government's Bill team to discuss the proposals in the Bill.

A Relief for Scale Investors

3. In our view the Scottish Government should be clear as to the property investment activity it wishes to discourage by the introduction of the legislation. If the legislation is truly aimed at individuals acquiring second homes or one or two additional buy-to-let properties, then it seems to us that the Bill, in its current form, is likely to discourage investment from a much wider spectrum of investors, which could adversely impact investment in residential property for rent in Scotland.
4. The Bill, as currently drafted, effectively represents an additional 3% charge on all residential property purchases in Scotland other than where an individual is replacing his main residence, and even then that replacement must take place within the parameters set out in the legislation. This is much wider in scope than was originally announced in December 2015 and comes on top of LBTT rates for residential property which are already significantly higher than those in the rest of the United Kingdom for chargeable consideration of more than circa £333,000.
5. It is our understanding that acquisitions by companies have been brought within the additional LBTT charge to remove the possibility of individuals avoiding the additional charge by acquiring their second home, or buy-to-let property, in a company. It is not clear how real this risk is, as the extra cost of setting up and running a company, not to mention dealing with the regulatory matters which come with a company, may well eliminate any LBTT saving made. However, for more expensive properties, we accept this is a risk. As an alternative to the current proposals, which would avoid penalising all investors in residential property, rather than those which the legislation is apparently aimed at, the Bill could be amended so that, similar to the provisions in the 'Annual Tax on Enveloped Dwellings' regime, there were exemptions in, say, the following circumstances :
 - The property was being used for a 'qualifying property rental business' and a 'non-qualifying individual' was not permitted to occupy the property. It could be made clear that for a 'qualifying property rental business' to exist would require more than simply letting the property out for rent and would, for example, require the existence of a structure similar to that of a commercial business.
 - The property is acquired for the purposes of a 'property development trade' and is held for the purpose of developing and reselling the land in the course of a trade.
 - The property is acquired for the purpose of a 'qualifying property trading business', is held as stock of the business, and for the purpose of resale in the course of a business.
 - The property is acquired for occupation by a 'qualifying employee' for the purposes of a trade carried on by the company.
 - The property forms part of land occupied for the purposes of a qualifying trade of farming carried by the company or a person connected with the company.

These potential exemptions are all taken from Part 3, FA 2013 '(Annual Tax on Enveloped Dwellings)'. The exemptions could equally apply to partnerships and collective investment schemes.

An exemption could also be provided for individuals who are carrying on a business which comprises more than the mere letting of properties for rent, and who have created a structure similar to that required by a commercial business.

A set of exemptions as set out above would eliminate the need for an exemption for multiple purchases of property, or for scale investors, which would necessarily involve the setting of an arbitrary number of properties.

Multiple Dwellings Relief ('MDR')

6. MDR was introduced into the SDLT regime to encourage investment in residential property for letting, and was included within the LBTT regime for the same reason. It applies if a transaction, or a number of 'linked transactions', comprises interests in more than one dwelling. The Bill should set out clearly how the additional 3% LBTT charge will interact with MDR. If the 3% additional LBTT charge applies where a claim for MDR is made this would seem to negate the benefit of the relief and may be detrimental to investment in the residential property for let market.

Detailed Comments on the Bill

Para 3(2), Schedule 2A

7. This paragraph provides that the additional charge applies to acquisitions in the course of a business that consists of acquiring dwellings. Generally the business would be property investment or property trading and not a business of acquiring dwellings.

Para 4(3), Schedule 2A

8. This paragraph provides that where the transaction is a non-residential property transaction but includes residential property, there is a just and reasonable apportionment of the consideration to the residential property acquired as part of that transaction, and the tax chargeable on the acquisition of the residential property is increased by 3%. This would seem to mean that the rates of LBTT for non-residential property will apply to the consideration apportioned to the residential property, but an additional 3% will be charged as though the acquisition was an acquisition of residential property. This goes against the general principle under LBTT (and under SDLT) that residential property acquired along with non-residential property is taxed at the LBTT rates for non-residential property. It therefore changes the structure of LBTT and is likely to be disadvantageous to investment in residential property in Scotland, compared to the rest of the UK, as it seems likely that the additional 3% SDLT charge would not apply in these circumstances.
9. If the concern is that individuals would acquire (non-residential) property along with residential property as part of the same or a 'linked' transaction, solely for the purpose of avoiding the additional charge (which in practice may be unlikely as sellers may not have non-residential land which they can easily package with the residential property and buyers may not want to acquire such land in any event), would the general anti-avoidance provision not apply in such circumstances? It brings a lack of clarity to the legislation to have the basic LBTT charge calculated on one basis but for the additional 3% LBTT to be charged on a different basis (non-residential). A similar point could be made in the proposed treatment of partners and partnerships. The basic LBTT charge is on partners, but it is proposed that the additional 3% LBTT is charged on the partnership.

Para 5, Schedule 2A

10. The additional charge should only apply to the extent that the joint buyer has an additional residential property and should not penalise joint buyers who have no other residential property.

Para 8, Schedule 2A

11. It is noted that a buyer will have to pay the additional charge up-front and then reclaim it if their main residence is sold within 18 months, which could cause significant cash flow issues. Ideally, the legislation should provide that a relief can be claimed from the additional charge which is then withdrawn if the main residence has not been sold within 18 months. Failing this, we call for a 'grace period' of, say, 30 days from the effective date before the need to pay the additional LBTT charge is required. As discussed, there are many situations where a buyer may not complete his sale on the same day and significant cash flow problems may be caused if the taxpayer has to find LBTT upfront, simply to have it repaid within a few days or weeks.