

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

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the revised legislative provisions, we, as a trusted stakeholder of the Scottish Government would welcome sight of the draft guidance and be given the opportunity to comment on it before it is finalised and released.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.
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

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

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 uprated 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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