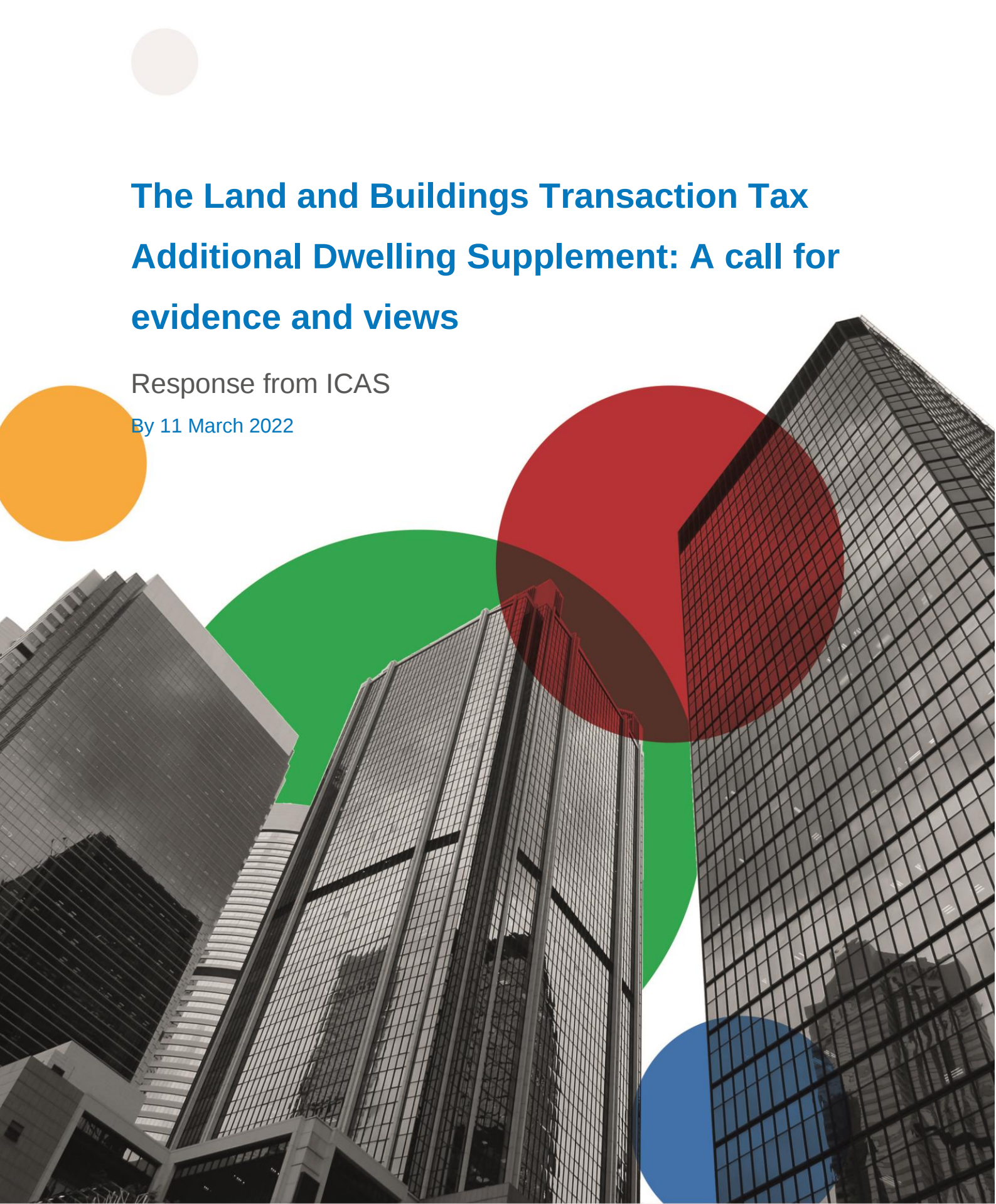




The Land and Buildings Transaction Tax Additional Dwelling Supplement: A call for evidence and views

Response from ICAS

By 11 March 2022

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 22,000 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.
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.
3. 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 into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments

4. ICAS welcomes the opportunity to give its views and to respond to this call for evidence ['Land and Buildings Transaction Tax Additional Dwelling Supplement'](#) which was issued on 16 December 2021.
5. We note that this call for evidence specifically excludes any questions about the Additional Dwelling Supplement (ADS) being abolished or about the rates at which the tax is charged.
6. In the main, ADS is a tax that is payable by individuals purchasing a second home. ICAS members do not tend to have widespread experience of advising clients on ADS and, therefore, this response to the call for evidence offers some general comments on the most common issues arising with ADS and which have been brought to our attention.
7. Nevertheless, anecdotal feedback is that more accountants are being asked to give advice on LBTT than was traditionally the case with SDLT – with clients wanting advice on how to minimise the costs and reduce the risk of non-compliance.
8. ADS was legislated for in a truncated bill process and shows the consequences of a lack of full and proper consultation: it may be a tax that is relatively straight forward for the majority, but there are cases where it is felt to be unfair and wrongly charged.
9. Legislation to levy a tax needs to be precise – what exactly is to be taxed, when will it be taxed, etc. Drafting defects in the legislation result in either an inability to raise the tax, or what might be viewed as an unfair tax that is charged on unexpected transactions, as has happened with the Additional Dwelling Supplement (with questions around the definition of who should be chargeable) and the subsequent need to revise the provisions. However, the revisions made by the Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Act 2018 arguably do not go far enough.
10. There are differing views as to what should be an 'economic unit' and this can cause a sense of unfairness in some situations where couples get together, or when they split up. With the rate at 4% of the purchase price of the property, it can heighten the sense of unfairness, as illustrated in a number of first tier tribunal cases. A sense of unfairness can undermine trust in the tax.
11. The legislative provisions can also be complicated. Whilst LBTT is charged on a particular transaction, ADS is an overlay that may be charged on the same property but on a different basis dependent on the purchaser's personal circumstances. The charging basis also differs - LBTT is 'progressive' in its charging structure, but ADS is a 4% slab tax in all cases where the transaction is over £40,000.
12. In defining the tax base there has to be boundaries – and those taxpayers who are close to the boundaries will always test the boundaries and, if falling on the 'wrong' side, be dissatisfied with

them. The issue with ADS is whether the boundaries are properly defined (i.e. do taxpayers agree with the policy of what is being charged) and are they clearly defined (i.e. do taxpayers understand where the boundaries are).

13. There also needs to be an ability to be flexible for exceptional circumstances. For instance, issues around cladding, flooding and other unforeseen issues can mean that property holders cannot sell their property; it would seem unjust if they are trying to move to, say, a larger family home and also had to pay ADS due to an inability to sell the previous property. Currently, the difficulties relating to Brexit and Covid-19 also represent demonstrable exceptional circumstances.
14. Due consideration should be given to whether it might be sufficient for the taxpayer to demonstrate their "intention to occupy" the new property, which would need to be clearly demonstrated by the purchaser in terms of setting out the exceptional circumstances which prevented them from doing so.
15. In terms of the timeline for disposal, this should be extended to 36 months to avoid taxpayer confusion in terms of what is available in the rest of the UK (and widely reported in the media). The position for buyers and sellers is not so radically different across the UK so as to lend itself to the necessity for a much shorter timeline in Scotland. In the spirit of fairness in taxation, an 18-month timeline would appear to impose an element of unfairness towards the Scottish property market, regardless of whether the market is buoyant or depressed.

Specific questions

16. ICAS has decided not to respond to the specific questions as set out below.

A1: Time taken to purchase a new main residence: 18-month window

Question 1. Should the Scottish Government considering amending the length of time available to purchase a new main residence following the sale of a previous main residence from 18 months?

Question 2. If so, can you provide further explanation and/or evidence regarding the circumstances in which 18 months may not be appropriate?

Question 3. If the Scottish Government were to amend the length of time available to purchase a new main residence, what period of time should be considered and why?

A2: Disposal of a previous main residence: 18 month window

Question 4. Should the Scottish Government consider amending the length of time in which a previous main residence can be sold in order for a repayment of the ADS to be claimed?

Question 5. If so, can you provide further explanation and/or evidence where 18 months may not be appropriate?

Question 6. If the Scottish Government were to amend the length of time available to dispose of the ownership of a main residence, what period of periods of time should be considered and why?

B: Specific Scenarios

B1. Inherited Property

Question 7. What circumstances and issues should the Scottish Government take into account in considering the treatment of low value interests in inherited properties for the purposes of LBTT?

Question 8. Should the Scottish Government consider the introduction of a grace period along the lines of that in place for SDLT in respect of inherited property? If so, what arrangements should be considered?

B2: Divorce or Separation

Question 9. What circumstances and issues should the Scottish Government take into account in considering the tax treatment of a new property purchased following a divorce or separation, and why?

Question 10. Do you have views on the case for a more specific legislative amendment along the lines of that available in SDLT? If so, please provide further details.

Question 11. Separately, would increasing the length of time available to dispose of a main residence (see A2) assist in situations of divorce or separation?

B3. Joint Buyers/Economic Unit Provisions

Question 12. Are there other issues of concern regarding the treatment of joint buyers which the Scottish Government should consider? If so, can you provide further explanation and evidence regarding these?

Question 13. Do you have any proposals as to how the legislation might be amended in response to these scenarios, in a way that would ensure consistency with the application of the ADS for an individual buyer?

C: Transactions Involving Housing Providers

C1. Transactions involving Local Authorities – Affordable Housing

Question 14. What circumstances and issues should the Scottish Government consider in assessing the case for a broader relief for local authorities where properties are acquired for affordable housing purposes, and why?

C2. Housing Co-operatives and other approaches

Question 15. Are there grounds for the Scottish Government to consider the introduction of a relief from the ADS for housing co-operatives, or any other approaches intended to deliver housing which is affordable? Please provide further explanation and evidence regarding this.

D. Exceptional Circumstances

Question 16. Is there a case for the Scottish Government to consider legislating for an exceptional circumstances provision along the lines discussed above?

Question 17. If so, what circumstances should be considered, and on what grounds?

Additional Questions

Question 18. Is there any other issue regarding the operation of the ADS legislation which you would wish the Scottish Government to consider as part of the overall review? If so, please provide explanation and commentary on any available evidence about this.

Question 19. Are there any other points you would wish to raise regarding the operation of the ADS in different parts of Scotland?

Question 20. The Scottish Government has a duty:

- to eliminate discrimination, advance equality of opportunity and foster good relations between different people; and
- to have regard to the impact on island communities in carrying out its functions.

Are there any issues relevant to the content of this consultation that you believe the Scottish Government should consider in order to assure performance of these duties?

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