POLICY NOTE

THE LAND AND BUILDINGS TRANSACTION TAX (TAX RATES AND TAX BANDS) (SCOTLAND) ORDER 2015

SSI 2015/126

This instrument is made in exercise of the powers conferred by section 24(1) of and paragraph 3 of schedule 19 to the Land and Buildings Transaction Tax (Scotland) Act 2013 (LBTT(S)A 2013). The instrument is subject to the affirmative procedure.

Purpose of the Instrument

The purpose of this instrument is to set tax bands and percentage tax rates for land transactions that will subject to Land and Buildings Transaction Tax (LBTT). The instrument sets tax bands and percentage tax rates for each band in three tables, for residential property transactions, non-residential property transactions and, with respect to leases, tax rates for each band applicable to chargeable consideration which consists of rent.

Background

Section 24 of LBTT(S)A 2013 provides for a progressive tax structure for the tax, which requires a nil rate tax band (of 0%) and at least two other tax bands, and a tax rate for each tax band that is higher than the rate for the band below it. In the case of leases, paragraph 3 of schedule 19 to the Act provides that there must be a nil rate band and at least one other tax band.

The progressive tax structure was intended to replace the 'slab' structure of Stamp Duty Land Tax which has been shown to cause distortions in the housing market around the tax thresholds. Indeed, one respondent to the consultation on the LBTT proposals, Homes for Scotland, noted that, 'It is currently very challenging for home builders to sell homes in the £125k to £135k and £250k to £270k price ranges because buyers feel they are paying too much for very little advantage which results in a skewed pricing and product structure on new housing developments.'[1]

The Building Societies Association also noted that '[The current system] results in cautious consumers reluctant to buy a property in the next price band due to the prohibitive increase in stamp duty. It also puts downward pressure on prices of properties with market values just above threshold levels, discouraging these sellers at a time when the number of property transactions is low. A progressive taxation system would avoid these issues and create a more equitable model for tax on acquiring property.'[2]

In the Autumn Statement of December 2014, the UK Government replaced the 'slab' structure of Stamp Duty Land Tax in favour of a progressive tax structure.

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[1] 'Taking Forward A Scottish Land and Buildings Transaction Tax Consultation - An Analysis of Responses', published October 2012, page 5, available at: http://www.scotland.gov.uk/Resource/0040/00405010.pdf

[2] 'Taking Forward A Scottish Land and Buildings Transaction Tax Consultation - An Analysis of Responses', published October 2012, page 6, available at: http://www.scotland.gov.uk/Resource/0040/00405010.pdf

Tax rates and bands

The Scottish approach to taxation is based on the four maxims set out by Adam Smith – that taxes should be proportionate to the ability to pay, that there must be certainty and convenience for the taxpayer and that tax collection should be efficient. In particular, the maxim that taxes should be proportionate to the ability to pay has driven decisions taken by the Scottish Government in setting tax rates and bands.

Tax rates and bands have also been set so that the devolved taxes are revenue neutral, assessed against the one-year adjustment to the block grant agreed with the UK Government for 2015-16.

Tax rates and bands for residential property transactions

The tax rates and bands for residential property transactions are intended to redistribute the tax burden from lower to higher value transactions in accordance with the principle that taxes should be proportionate to the taxpayer's ability to pay.

These tax rates and bands also prioritise support for first time buyers and are intended to assist people moving through the property market.

Tax rates and bands for non-residential property transactions and leases

The tax rates and bands for non-residential property transactions are designed to ensure that Scotland remains a competitive and attractive location for business investment.

The tax rates and bands for non-residential leases ensure parity between the taxation of lease transactions in Scotland and the rest of the United Kingdom.

Consultation

The proposal to introduce a progressive tax structure for LBTT was included in the public consultation paper[3] on proposals for the Land and Buildings Transaction Tax (Scotland) Bill in 2012. As set out in the analysis of consultation responses[4], a large majority (74%) agreed with the proposal to introduce a progressive tax structure on the basis that this was fairer and removed anomalies on either side of current threshold levels. Most disagreement came from individuals opposed in principle to LBTT (generally because they favoured a more fundamental change to an annual land tax). A significant number of respondents (mostly private developers or their advisers) while supporting a progressive tax on residential properties were concerned about applying this to the commercial sector. The main reason was the need for a level playing field with the rest of the UK.

Proposals for tax rates and bands for LBTT have been considered by the Scottish Parliament as part its scrutiny of the 2015-16 Draft Budget.

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[3] 'Taking Forward a Scottish Land and Buildings Transaction Tax – Consultation', published by the Scottish Government, June 2012, available at: http://www.scotland.gov.uk/Resource/0039/00394544.pdf

[4] 'Taking Forward a Scottish Land and Buildings Transaction Tax Consultation: An Analysis of Responses - Research Findings', published November 2012, available at: http://www.scotland.gov.uk/Publications/2012/10/1007/0

Financial Implications

The Scottish Government estimates that these tax rates and bands of LBTT will generate revenue of around £381 million in 2015-16, comprising £235 million from residential property transactions and £146 million from non-residential property transactions, including leases. These are full-year estimates. These forecasts have been independently reviewed and endorsed as reasonable by the Scottish Fiscal Commission[5], which confirmed its position on the forecasts for revenues from residential property transactions in a letter to the Deputy First Minister dated 21 January 2015.[6]

The Scottish Government recognises that forestalling effects resulting from significant differences in tax charge between LBTT and the UK tax which it replaces are likely to result in one-off revenue losses in 2015-16. The Scottish Government intends to make an adjustment to its full-year estimate of revenues from residential LBTT to recognise such losses. The Scottish Fiscal Commission has begun its work to scrutinise the approach which the Scottish Government is taking to estimate the value of these losses.

Impact Assessments

A Business and Regulatory Impact Assessment[7] ("BRIA") has been published for the regulations and orders associated with the LBTT(S)A 2013.

An Equality Impact Assessment ("EQIA") was published[8] in December 2014. The order will have no impact on equality or environmental issues.

Scottish Government
Financial Strategy Directorate
Fiscal Responsibility Division
February 2015

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[5] 'Report of the Scottish Fiscal Commission', published 9 October 2014, available at: http://www.scottishfiscalcommission.org/media/media_364407_en.pdf

[6] Letter from the Scottish Fiscal Commission to the Deputy First Minister, 21 January 2015, published by the Scottish Parliament (see Annex) at: http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/Cabinet_Secretary_for_Finance_Constitution_and_Economy_to_the_Convener_dated_22_January_2015.pdf

[7] 'Land and Buildings Transaction Tax - Business and Regulatory Impact Assessment', published December 2014, available at: www.scotland.gov.uk/lbtt-bria2014

[8] 'Land and Buildings Transaction Tax - Equalities Impact Assessment', published December 2014, available at: http://www.scotland.gov.uk/Publications/2014/12/5671