

POLICY NOTE

THE LAND AND BUILDINGS TRANSACTION TAX (FIRST-TIME BUYER RELIEF) (SCOTLAND) ORDER 2018

SSI 2018/221

The Scottish Ministers are making the following Order in exercise of the powers conferred by section 27(3)(a) of the Land and Buildings Transaction Tax (Scotland) Act 2013¹ and all other powers enabling them to do so.

The instrument is subject to affirmative procedure.

Policy Objectives

The Land and Buildings Transaction Tax (LBTT), which replaced UK Stamp Duty Land Tax (SDLT) in Scotland from 1 April 2015, is a tax applied to residential and non-residential land and buildings transactions (including commercial leases) where a chargeable interest is acquired.

Since introduction of the tax, the Scottish Government's policy priority in setting the rates and bands for residential LBTT has been to help first-time buyers enter the property market and assist people as they progress through the market.

In line with that, the Cabinet Secretary for Finance and the Constitution announced plans in the draft Scottish Budget for 2018/19² for a new LBTT relief for first-time buyers in Scotland.

Whilst no changes are being made to the rates and bands directly, the relief will have the effect of raising the zero tax LBTT threshold for first-time buyers from £145,000 to £175,000. First-time buyers buying a property above £175,000 will also benefit on the portion of the price below the threshold. This will mean that around 80% of first-time buyers in Scotland will pay no LBTT at all, whilst all other first time buyers will see their tax reduced by £600. In the context of the draft Scottish Budget 18/19, the Scottish Fiscal Commission estimated that the policy will help 12,000 first-time buyers each year.³

The proposed approach to eligibility for the first-time buyer relief is set out below:

- The buyer must be a natural person, purchasing a single dwelling with a value of more than £145,000.
- The buyer must be a first time buyer, who has never had a 'major interest' in a dwelling in Scotland or an equivalent interest in a dwelling situated anywhere else in the world. This takes account of scenarios where properties have been gifted, inherited or held in trust.

¹ <https://www.legislation.gov.uk/asp/2013/11/contents>

² <https://beta.gov.scot/publications/scottish-budget-draft-budget-2018-19/pages/3/>

³ <http://www.fiscalcommission.scot/media/1196/scotlands-economic-fiscal-forecasts-publication.pdf>

- The effective date of their transaction is on or after 30 June and the contract was entered into on or 9 February.
- The buyer intends to occupy the dwelling as their main residence.
- Where there is more than one buyer, all must meet the relevant criteria.

The Order also provides that:

- Where properties are purchased by a Trust, consideration as to the beneficial owner (and therefore eligibility for relief) will be consistent with existing LBTT arrangements.
- Relief will not be available if the transaction would incur the additional dwelling supplement.
- Relief will not be available where there is a linked transaction, except in certain defined circumstances.

Subject to all buyers meeting the eligibility conditions, a first-time buyer in Scotland will not pay LBTT on purchases up to £175,000. The buyer would then pay the progressive rates of LBTT on any remaining consideration.

Consultation

There is no statutory requirement to consult on this instrument.

A public consultation on the policy and draft Order was published on 9 February and ran until 23 March 2018. The consultation received 13 individual responses and 8 responses from major stakeholder organisations representing professionals in law, tax and accounting. The proposed relief was also discussed as part of the Scottish Government's regular engagement with stakeholders.

An analysis of responses to the consultation will be published separately. There was broad support for the proposed intention of the relief, although it was noted that it would add complexity to the overall arrangements for LBTT. A number of changes to the detail of the proposal were also suggested and questions were raised as to how the relief would work in practice. The Order as amended addresses a number of the specific points raised, in particular with regard to the definition of major interest and treatment of linked transactions.

A full list of those consulted and who agreed to the release of this information is available on the Scottish Government's Consultation Hub website⁴.

In addition, Revenue Scotland was consulted upon as appropriate throughout the consultation period and subsequently.

Impact Assessments

Equal opportunities - The Scottish Government assessed the potential impacts of the Land and Buildings Transaction Tax (Scotland) 2013 Act on equal opportunities. The Order, that amends that Act, does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, gender reassignment, marriage and civil

⁴ <https://consult.gov.scot/fiscal-responsibility/first-time-buyers-relief/>

partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) either directly or indirectly.

Human rights – This Order does not infringe on or affect any subject areas of the European Convention on Human Rights (ECHR). We have not identified differential impact on human rights nor any impact on any individual’s civil liberties.

Privacy impacts – No privacy impacts resulting from this legislation have been identified.

Island communities – The Order has no identified differential impact on island and rural communities.

Local government - There are no additional responsibilities or costs for local authorities as a result of this legislation.

Sustainable development – The Order will have no impact on sustainable development.

Financial Effects

The Cabinet Secretary for Finance and the Constitution confirms that no BRIA is necessary.

The Scottish Fiscal Commission published Scotland’s Economic and Fiscal Forecasts in December 2017. These forecasts included costings for policies announced in the Draft Budget 2018-19, including the First Time Buyer Relief. The report states that: *“The policy reduces residential LBTT revenue raised by on average £6 million per year in our forecast. The impact on ADS revenues is on average a £0.3 million reduction in revenue each year”*.⁵ Further details on how the Commission produced this costing are published in Annex A of their report.

Scottish Government
Directorate for Budget and Sustainability
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⁵ <http://www.fiscalcommission.scot/media/1196/scotlands-economic-fiscal-forecasts-publication.pdf>