

Final Business and Regulatory Impact Assessment

Title of Proposal

The Land and Buildings Transaction Tax (Group Relief Modification) (Scotland) Order 2018

Purpose and intended effect**Background**

Schedule 10 of the Land and Buildings Transaction Tax (Scotland) Act 2013 (LBTT Act) makes provision for the availability of Group Relief. Group Relief may be available where the seller and buyer are both companies in the same corporate group. This allows companies to transfer property within a corporate group without a liability to LBTT, on the basis that there is no overall change in economic interest or benefit in such transactions

When the Scottish Parliament considered and scrutinised the LBTT (Scotland) Bill, the Scottish Government's policy intention was that group relief would operate in a similar way to the relief for SDLT. This was to ensure that there is no competitive advantage or disadvantage created between Scotland and the rest of the UK, in this respect, and to ensure that Scotland remains an important and attractive place for companies to locate and invest in.

On 28 December 2017, Revenue Scotland published a view that where there is a transfer of property within a group and there is a relevant share pledge on the 'buyer' company, Group Relief would not be available and LBTT would be payable on the market value of the property transferred. This is because the targeted anti avoidance rules within the relief are considered not to allow a claim to Group Relief where a third party out with the corporate/business group structure could obtain control of the 'buyer' company.

"Share pledges" are regularly used as part of an overall package of security required by lenders. Following consideration of this issue and representations from stakeholders, the Scottish Government has brought forward secondary legislation to allow for Group Relief to be available where there is a transfer of properties within a corporate group structure and there is an extant 'Share Pledge' over the transferred property.

This change will provide that the Group Relief arrangements for LBTT would apply in a similar manner to those in Stamp Duty Land Tax (England and Northern Ireland) and Land Transaction Tax (Wales).

Objective

The objective of the proposed legislation is to ensure that Group Relief for LBTT is similar in purpose, scope and availability to that available for Stamp taxes elsewhere in the UK, This is consistent with the original policy intent with regard to the relief and will help to ensure that Scotland continues to be seen as an attractive location in

which to invest and do business.

Rationale for Government intervention

The Scottish Government has brought forward draft legislation to ensure that the arrangements for group relief are consistent with those in place for SDLT.

This takes account of the original policy intention to allow the transfer of properties within corporate group structures without attracting LBTT and the views of stakeholders: (i) about the lack of consistency with SDLT; and (ii) that the current position has prevented a number of property transactions from taking place. If the Scottish Government does not take action, it is considered that further transactions within corporate groups may not occur and the ultimate effect would be to make Scottish properties less attractive to corporate groups.

The Scottish Government's intention is that any changes made to the group relief provisions will not adversely affect the anti-avoidance provisions in place. In addition, they should not have consequences for tax revenues, on the basis that relevant transactions would not be likely to proceed if tax was due.

Consultation

Within Government

Consultation has been undertaken across the Scottish Government and with Revenue Scotland, who are responsible for the collection and management of the devolved taxes.

Public Consultation

This BRIA has been informed by consultation and engagement with various stakeholders and interested parties from the legal and property sectors and organisations with an overall interest in the operation of the tax system. A four week consultation on the Scottish Government's proposed approach ran from 19 March to 13 April, with 12 responses from businesses and stakeholder organisations representing the interests of companies in this issue. All respondents were in support of the proposed change.

Business

In addition to the consultation, there have been face-to-face discussions, telephone conversations with – and receipt of written correspondence from - organisations representing the interests of businesses in this application of group relief.

Options

Option 1) – Amend Group Relief provisions in LBTT to make provision for “share pledge” arrangements.

Sectors and groups affected

- All corporate groups operating in Scotland, the UK and beyond which own Scottish property or may do so in future.

-Revenue Scotland, given its responsibility for the collection and management of

Scotland's devolved taxes.

Benefits

- This option would amend the provision of Group relief from LBTT to allow relief where there are certain securities (share pledges) in place. This would allow Scottish property to be moved within corporate group structures without attracting LBTT, consistent with the current position.
- This option would align the arrangements in place for group relief in LBTT and SDLT, consistent with the current positions for transactions within groups where no pledge is in place.
- This proposed amendment would help to maintain the attractiveness of Scotland as a location for investment.

Costs

- Amendment to Group Relief should not reduce the amount of tax collected, as the relevant transactions would not be likely to happen without the availability of the relief.
- There should be no increased costs to Revenue Scotland to administer the proposed change to Group Relief. No amendment of the paper or online forms are required to affect the change.

Option 2) - Do nothing

Sectors and groups affected

- All corporate groups operating in Scotland, the UK and beyond which own Scottish property or may do so in future.
- Revenue Scotland, given its responsibility for the collection and management of Scotland's devolved taxes.

Benefits

- No benefits for business. However, this option could, in theory, prevent opportunities for tax avoidance as it restricts the availability of a tax relief. (However, note that the proposed amendment to Group Relief will not adversely affect the current Anti Avoidance provisions for Scottish Taxes).
- Promotes certainty as there would be no change to the law.

Costs

- This option could have an adverse effect on the Scottish property market. The lack of availability of relief for moving properties within a corporate structure could make properties less attractive to initially purchase and result in a consequential reduction in tax collected.
- Legitimate property transactions which would have been sensible for business purposes such as estate rationalisation may not be able to proceed. This may also result in groups disposing of Scottish properties.

Scottish Firms Impact Test

The relief would only apply to group structures holding property in Scotland. The changes to the relief will give all businesses operating in Scotland similar flexibility – in terms of group relief treatment - as currently exists in the rest of the UK under Stamp Duty Land Tax and Land Transaction Tax (Wales).

Forms

No amendment or change will be required to the existing tax return forms submitted by taxpayers.

Legal Aid Impact Test

The proposed amendment to Group Relief will not affect the use of legal aid.

Enforcement, sanctions and monitoring

Collection and management of LBTT is undertaken by Revenue Scotland, using powers set out in the Revenue Scotland and Tax Powers (Scotland) Act. When an initial land transaction takes place, taxpayers, or their agents, will submit a self-assessed LBTT return and if appropriate payment to Revenue Scotland. Should the transaction meet the criteria for Group Relief it should be claimed on the LBTT form when submitted to Revenue Scotland.

Revenue Scotland has powers to assist them in ensuring LBTT is only relieved in genuine cases. As enforcement and compliance tools, they have the ability to impose penalties to encourage compliance and use of the General Anti-Avoidance rule should there be inappropriate claims to tax relief or other errors on returns.

The Scottish Tax Tribunal is available to resolve disputes independently of Revenue Scotland and the Scottish Government.

Implementation and delivery plan

If the legislation is agreed, it will be implemented as part of the overall arrangements in place for Land and Buildings Transaction Tax. The Order has a coming into force date of 30 June 2018.

Revenue Scotland will include an update about the legislation in their next relevant technical bulletin and publish information on their website. The Scottish Government will also highlight the amended LBTT position to all relevant stakeholders.

Noting that the legislation is an amendment to an existing LBTT relief, it will be reviewed as part of the overall arrangements for the tax.

Summary and recommendation**Preferred Option: 1**

The Scottish Government is proceeding with Option 1, bringing forward legislation to amend Group Relief provisions in LBTT to make provision for “share pledge” arrangements. This takes account of the Scottish Government’s original policy intent with regard to LBTT Group Relief and the strong support of stakeholders for change, particularly with regard to the importance of having parity with the arrangements for SDLT. This proposed approach will also, as part of the Scottish Government’s overall approach on LBTT, help to ensure that Scotland remains an attractive place in which to invest and do business.

Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	<ul style="list-style-type: none"> - Would allow Scottish property to be moved within corporate group structures without attracting LBTT, regardless of whether a share pledge or relevant arrangement was in place. - Would align the arrangements in place for group relief in LBTT and SDLT, consistent with the original Scottish Government policy intent. - Would help to maintain the attractiveness of Scotland as a location to do business and invest in. 	<ul style="list-style-type: none"> - It is not envisaged that this option would reduce the amount of LBTT collected, as the relevant transactions would not be likely to occur without the availability of the relief. - In addition, there should be no increased costs to Revenue Scotland in administering the proposed change, or for businesses claiming group relief.
2	<ul style="list-style-type: none"> - No benefits for business. - However, this option could, in theory, prevent opportunities for tax avoidance as it restricts the availability of a tax relief. (However, note that the proposed amendment to Group Relief will not adversely affect the current Anti Avoidance provisions for Scottish Taxes). - Promotes certainty as there would be no change to the law. 	<ul style="list-style-type: none"> - Could have an adverse effect on the Scottish property market. - The lack of availability of relief for moving properties within a corporate structure could make properties less attractive to initially purchase and result in a consequential reduction in tax collected. - Legitimate property transactions which would have been sensible for business purposes such as estate rationalisation may not be able to proceed. This may also result in groups disposing of Scottish properties.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:**Date:**

**DEREK MACKAY MSP
CABINET SECRETARY FOR FINANCE AND THE CONSTITUTION**

Scottish Government Contact point: