

POLICY NOTE

THE LAND AND BUILDINGS TRANSACTION TAX (GROUP RELIEF MODIFICATION) ORDER 2018

SSI 2018/xxx

The Scottish Ministers make the following Order in exercise of the powers conferred by section 27(3)(b) and 68(1) 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.

Schedule 10 of the Land and Buildings Transaction Tax (Scotland) Act 2013 makes provision for the availability of group relief. Subject to certain rules, this provides relief from LBTT for land transactions between companies within a group that would otherwise be chargeable to tax and on which tax would otherwise be payable. The rationale for the relief is that there is no overall change in economic interest or benefit when a land transaction occurs between companies within the group. For tax avoidance purposes, there are strict conditions regarding eligibility for the relief and a targeted anti-avoidance rule in place that allows for claw back in certain instances.

On 28 December 2017, Revenue Scotland published a technical bulletin on LBTT setting out Revenue Scotland's view that where there is a transfer of property within a corporate group and there is a relevant share pledge, which means that the person holding the pledge could obtain control of the subsidiary but not the parent this is an 'arrangement' which, in accordance with paragraph 3 of schedule 10 of the Act, means that group relief would not be available and LBTT would be payable on the market value of the property transferred.

Following consideration of stakeholder representations on this issue and consultation, the Scottish Government is bringing forward an instrument to amend the Group Relief provisions to provide that relief will not be lost in relation to standard "share pledge" type arrangements and other analogous circumstances, so long as any right is not exercised.

Consultation

There is no statutory requirement to consult on this instrument.

A public consultation on the policy and draft Order was published on 19 March and ran until 13 April 2018. The consultation received 12 responses from stakeholder organisations. The

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

proposed relief was also discussed as part of the Scottish Government's regular engagement with stakeholders.

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

There was unanimous support for the introduction of legislation to allow for group relief to be available in the relevant circumstances. Stakeholders however made a number of comments about the detail of the proposed legislation, including with regard to the extent to which it would achieve an outcome equivalent to that provided for in SDLT, the use of language and terminology and the application of the legislation to relevant arrangements in jurisdictions outside the United Kingdom.

A full list of those consulted and who agreed to the release of this information is available on the Scottish Government's Consultation Hub website². An analysis of responses to the consultation will also be published separately.

The Order as amended addresses a number of the specific points raised, including to clarify the circumstances in which the relief can be claimed, make provision for analogous arrangements in jurisdictions outwith the UK and address certain comments around terminology.

Impact Assessments

Equal opportunities - This Order does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, gender reassignment, marriage and civil 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

A BRIA has been undertaken and will be published.

² <https://consult.gov.scot/fiscal-responsibility/first-time-buyers-relief/>

The Scottish Fiscal Commission has published a supplementary costing to accompany the introduction of this legislation. The Commission estimate that the change will cost on average £0.6 million per year, the equivalent of a 0.3 per cent reduction in non-residential LBTT receipts. Further details on how the Commission produced this costing are published on the Commission's website.³

Scottish Government
Directorate for Budget and Sustainability
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³ <http://www.fiscalcommission.scot/publications/supplementary-costings/>