

SPICe Briefing

Land and Buildings Transaction Tax (Scotland) Bill

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The Land and Buildings Transaction Tax (Scotland) Bill (the “LBTT Bill”) was introduced to the Scottish Parliament on 29 November 2012. If passed, the legislation will introduce a Land and Buildings Transaction Tax (LBTT) to replace the current UK stamp duty land tax (SDLT). The replacement tax will be introduced in April 2015. At the same time, the current SDLT will cease to operate in Scotland.

This briefing outlines the current SDLT regime and explains the main changes proposed by the LBTT Bill. The Bill represents the first of three related Bills that result from measures enacted in the Scotland Act 2012, providing for new tax-raising powers for the Scottish Parliament.



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EXECUTIVE SUMMARY

The Land and Buildings Transaction Tax (Scotland) Bill (the “LBTT Bill”) is the first of three related Bills that result from measures enacted in the Scotland Act 2012. This Bill, along with a Landfill Tax Bill and a Tax Management Bill will together provide for the introduction of two new taxes and set a framework for the collection of these taxes. If the LBTT Bill and associated regulations are passed, the Land and Buildings Transaction Tax (LBTT) will replace the current UK stamp duty land tax (SDLT) in April 2015. At the same time, the current SDLT will be disapplied in Scotland.

SDLT, and the proposed LBTT, are payable on the purchase or transfer of property or land, subject to certain thresholds, reliefs and exemptions. Both residential and non-residential transactions are liable. In 2011-12, SDLT generated revenues of £275m in Scotland, although there has been considerable variation in this total in recent years. In 2009-10, SDLT revenues were less than half their 2007-08 level.

The LBTT Bill proposes a number of changes to the SDLT regime. The main proposals relate to:

- Changing from a ‘slab’ structure of taxation to a progressive tax structure – the progressive structure is similar to the income tax system and avoids the sudden increases in liabilities that are a feature of the slab system and create distortions in the market
- Requiring payment of LBTT prior to registration of the title – so as to encourage prompt payment of the tax, but also to allow for a ‘one stop’ submission, payment and registration process
- Some modifications to reliefs and exemptions – including withdrawal of sub-sale relief arrangements which are considered to be a feature of many SDLT tax avoidance schemes
- Anti-avoidance measures – the LBTT Bill contains a number of “targeted anti-avoidance rules” which are aimed at clamping down on tax avoidance and will be supported by a “general anti-avoidance (or anti-abuse) rule” proposed for the Tax Management Bill

There are a number of areas where consultation is ongoing. These involve complex legal issues that have not yet been resolved and where more time was felt to be needed to develop appropriate legislation. The Scottish Government proposes to bring forward amendments at Stage 2 in these areas, which relate to non-residential leases; the transfer of shares in residential property holding companies; and the treatment of trusts and partnerships.

The LBTT Bill does not deal with:

- Administration and collection arrangements – these will be dealt with in the forthcoming Tax Management Bill, which will establish Revenue Scotland
- Adjustments to the block grant to reflect the introduction of the new tax-raising powers – these are the subject of ongoing discussion between the Scottish and UK Governments

- Tax bands and rates for LBTT – these will be decided nearer the time and will be introduced through subordinate legislation.

INTRODUCTION

The Land and Buildings Transaction Tax (Scotland) Bill (the “LBTT Bill”) was introduced to the Scottish Parliament on 29 November 2012. If the Bill is passed, the Land and Buildings Transaction Tax (LBTT) will replace the current UK stamp duty land tax (SDLT) in April 2015. At the same time, the current SDLT will be disapplied in Scotland by means of a Treasury order. From that date, all receipts from LBTT will be paid into the Scottish Consolidated Fund.

The Bill, as introduced, and the accompanying documents (including Policy Memorandum, Explanatory Notes and Delegated Powers Memorandum) can be accessed on the Scottish Parliament’s website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/56718.aspx>

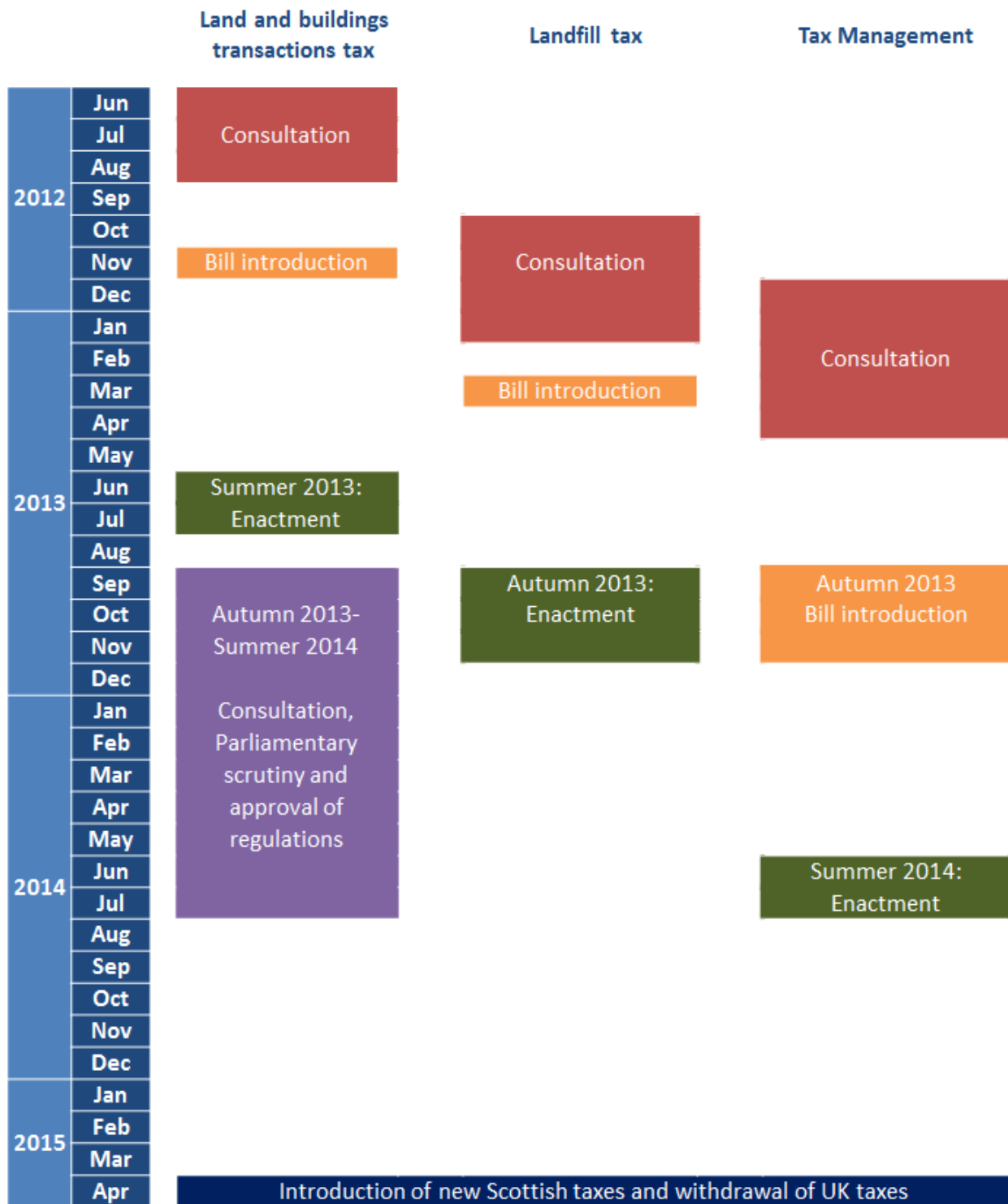
OVERVIEW

The LBTT Bill is the first of three related Bills that result from measures enacted in the Scotland Act 2012, providing for new tax-raising powers. Sections 28 and 29 of the Scotland Act 2012 provide for the devolution of taxes on transactions involving interests in land and for the disapplication of UK SDLT in Scotland. In response to these new powers, the LBTT Bill makes provision for a tax on land transactions in Scotland. A consultation on the proposed legislation was launched on 7 June 2012 and concluded on 30 August 2012 (Scottish Government, 2012a).

The Scotland Act 2012 also provided for the devolution of landfill taxes. A Landfill Tax Bill is expected to be introduced in spring 2013 and a consultation document was published on 25 October 2012 (Scottish Government, 2012b). Finally, a Tax Management Bill relating to the new tax powers will be introduced in autumn 2013 and a consultation document was published on 10 December 2012 (Scottish Government 2012c). The Tax Management Bill will deal with generic issues of relevance to both taxes, such as arrangements for administration and collection, dealing with tax avoidance and handling of taxpayer information. If passed, these three Bills will enable the Scottish Government to introduce two new taxes and provide for the collection of these taxes as well as dealing with issues relating to appeals, offences and penalties.

The LBTT legislation is not linked in any way to the forthcoming Referendum (Scotland) Bill and, subject to parliamentary approval, the introduction of the replacement tax will proceed irrespective of the outcome of the proposed referendum. The proposed timescale for this Bill and the other related Bills is set out in Figure 1.

Figure 1: Proposed timescale for introduction of legislation



Note: enactment of legislation is subject to Parliamentary approval

THE CURRENT SDLT REGIME

LBTT will replace the existing SDLT regime. The current SDLT regime has been in place since December 2003 (when changes were made to the former stamp duty system to address issues relating to compliance and rights of appeal). It is enacted in Part 4 of the Finance Act 2003.

SDLT is payable on the purchase or transfer of property or land in the UK where the amount paid is above a certain threshold. At present, a zero rate of SDLT applies for non-residential transactions under £150,000, provided that the annual rent is less than £1,000 and for residential transactions under £125,000.

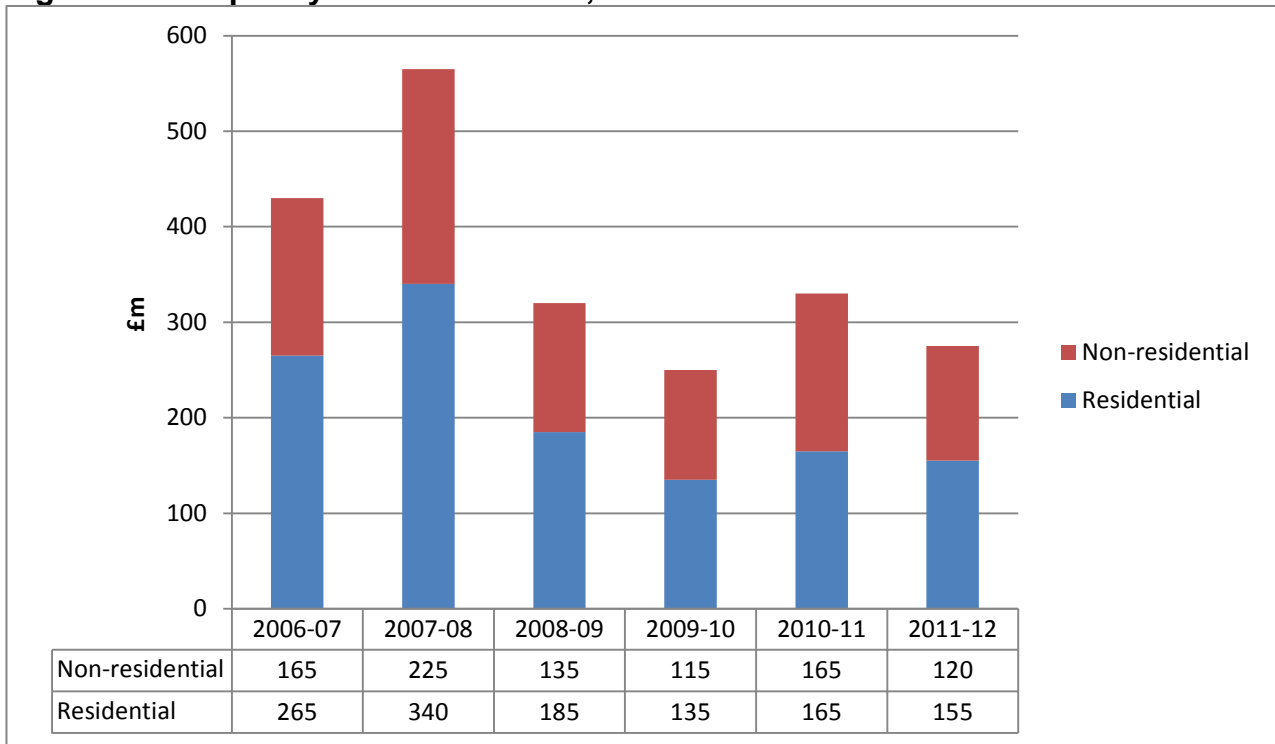
SDLT is charged as a percentage of the 'chargeable consideration'. The chargeable consideration includes everything of economic value given in exchange for the property - so as well as a payment of money, it can include a release from a debt, the transfer of an existing mortgage, or the provision of other services. For residential property purchases, the chargeable consideration to which the relevant SDLT rate is applied is simply the purchase price (excluding the value of any extras such as carpets or furniture which are not counted as fixtures and fittings). For other types of transaction or for new leases, the calculation is more complex and depends on a range of factors. Further detail can be found on the HMRC website: <http://www.hmrc.gov.uk/sdl/intro/basics.htm>.

Certain types of transactions are exempt from SDLT, or are eligible for reliefs that can reduce the amount payable. Most UK land and property transactions must be notified to HM Revenue & Customs (HMRC) on a SDLT return within a certain time limit, even when 100% relief is available. However, in addition to the reliefs available, there are a number of exemptions and some exempt transactions do not need to be notified to HMRC. Again, full details can be found on the HMRC website: <http://www.hmrc.gov.uk/sdl/intro/basics.htm>.

In 2011-12, revenue from SDLT in Scotland totalled £275m. Just over half (56%) of this total was accounted for by revenues from residential transactions, with the remaining 44% accounted for by non-residential transactions. However, the volume of residential transactions was considerably higher (at 72,000, compared with 7,985 non-residential transactions). Around half (48%) of total SDLT receipts in 2011-12 was accounted for by four local authority areas: Aberdeen City, Aberdeenshire, Edinburgh and Glasgow (HMRC, 2012a).

Revenues from SDLT show considerable fluctuation from year to year and have been significantly lower since the onset of the recession in 2008, as highlighted in Figure 2. In 2009-10, total SDLT revenues were less than half their 2007-08 level (£250m in 2009-10 compared with £565m in 2007-08).

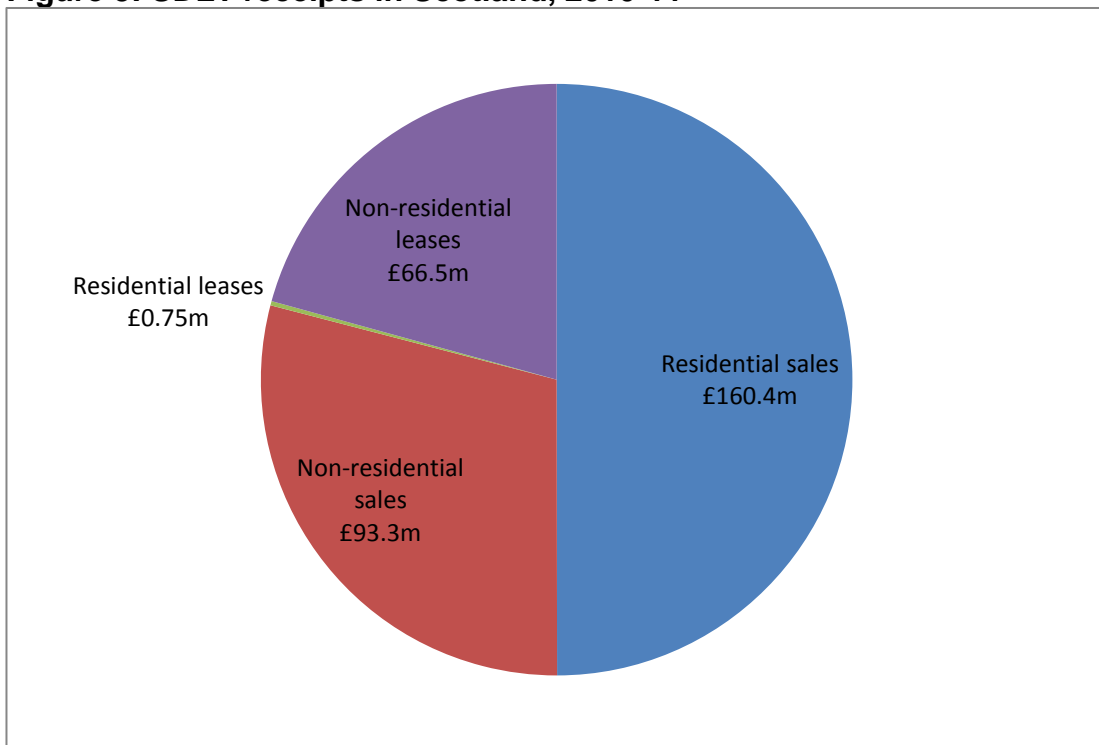
Figure 2: Stamp duty land tax revenue, Scotland



Source: Scottish Government, [Taking forward a Scottish Land and Buildings Transaction Tax: Consultation](#), June 2012; Office for Budget Responsibility, [Scottish Tax Forecasts, December 2012](#)

SDLT is charged on both sale and lease transactions. In 2010-11, residential transactions were almost exclusively sales transactions, while non-residential transactions were split between sales (58%) and lease transactions (42%).

Figure 3: SDLT receipts in Scotland, 2010-11

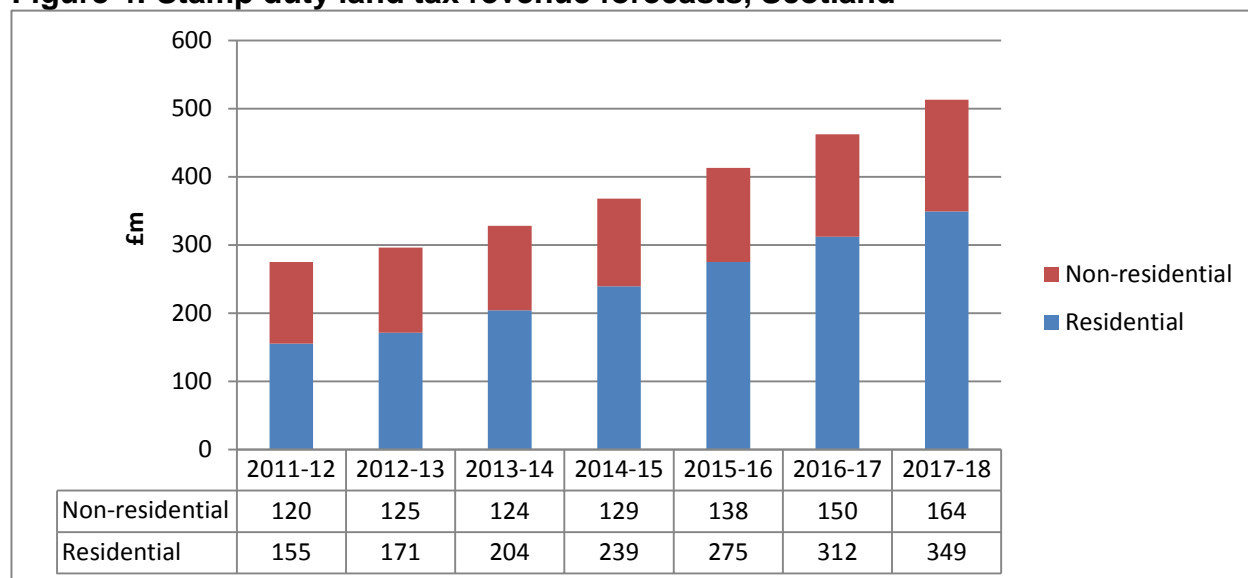


Note: excludes some transactions which are not classified as sales or leases

Source: [LBTT \(Scotland\) Bill, Explanatory Notes](#)

The Office for Budget Responsibility (OBR) has produced forecasts for SDLT revenues in Scotland through to 2017-18. As rates and thresholds for the new LBTT have yet to be set, these forecasts assume a continuation of the current SDLT arrangements and are based on the assumption of a constant Scottish share of the forecast UK receipts. As shown in Figure 4, these forecasts show steady growth in revenues although, even by 2017-18, revenues are still forecast to be below the pre-recession peak of £565m. In reality, greater fluctuation in revenues is likely than is suggested in these forecasts, but is impossible to model with accuracy.

Figure 4: Stamp duty land tax revenue forecasts, Scotland



Source: Office for Budget Responsibility, [Scottish Tax Forecasts, December 2012](#)

SDLT received strong criticism in the 2011 review of the UK tax system, led by Sir James Mirrlees (Mirrless et al, 2011). In relation to SDLT, the Mirrlees review concluded that “there is no sound case for maintaining stamp duty and we believe that it should be abolished.” In more detail, the Mirrlees review commented that:

“Stamp duty land tax, as a transactions tax, is highly inefficient, discouraging mobility and meaning that properties are not held by the people who value them most, and its ‘slab’ structure—with big cliff-edges in tax payable at certain thresholds—creates particularly perverse incentives.”

Mirrlees recommended replacing council tax and SDLT on housing with an annual tax proportional to the rental value of domestic property. For non-residential transactions, he recommended replacing business rates and SDLT on business property with a land value tax for business and agricultural land, subject to confirming practical feasibility. In his response to the consultation, Andy Wightman, a vocal advocate of a land value tax system, agreed with Mirrlees conclusions and recommended that: “SDLT should be abolished and replaced with a wider, more coherent land and property tax.”

However, the Scotland Act 2012 is explicit in the requirement that any replacement tax for SDLT should be a tax on *transactions* involving interests in land. As such, the Scottish Government does not have the option of more radical reform of the system of taxation through this legislation. The Scottish Government could opt not to replace SDLT with an equivalent tax but, in this case, the block grant adjustment would still be made as a result of the devolution of the tax, so Scotland would face a reduction in its overall budget. In respect of more radical form along the lines proposed by Mirrlees and Wightman, the Scottish Government’s only option would be to do this through reform of local taxation i.e. council tax and non-domestic rates.

Another area for criticism of SDLT relates to avoidance schemes. The UK Government is aware of a range of avoidance schemes that are in operation and introduced a number of measures in the 2012 UK Budget to address these:

- A 15% rate of SDLT on residential properties over £2m which are bought via a company (this measure came into place in March 2012, but rates and thresholds set by the Scottish Government would supersede this)
- A proposed introduction of capital gains tax for overseas companies that already own UK residential property worth more than £2m (proposed for introduction as of April 2013; the LBTT legislation would not affect this as it relates to capital gains tax, which is not devolved)
- A review of “sub-sale” rules which are considered to be at the heart of many avoidance schemes. (See below for further discussion of sub-sale relief, which the LBTT Bill proposes to withdraw).

A further criticism of the SDLT regime is that it is unduly complex. Many of those who responded to the Scottish Government’s LBTT consultation commented on this and recommended that the LBTT legislation should provide a simplified framework wherever feasible. The Scottish Stamp Tax Practitioners Group commented that: “the current SDLT legislation is complex, highly technical, and in many cases unclear as the original intention of the Westminster Parliament” and considered that “the Scottish Government has an opportunity to introduce legislation which is structured in a more user-friendly manner, which is simpler to follow, and which is better aligned with Scots Law. These aims should encourage compliance with the system, and provide a fairer and more transparent tax” (Scottish Stamp Tax Practitioners Group, 2012). The Institute of Chartered Accountants in Scotland (ICAS) agreed, saying: “The current UK tax provisions are little understood or believed except by those who have spent their careers trying to navigate through the thousands of pages of legislation, guidance, forms and deadlines; a matter not to be taken as an expression of professional or intellectual arrogance, rather one of sad realisation based on sometimes painful practical experiences” and that “the opportunity to make a fresh start on the devolved taxes must be welcomed, as issues of complexity could be addressed by radical reform” (ICAS, 2012a and 2012b)

THE LBTT BILL PROVISIONS

Coverage of Bill

The LBTT Bill is structured as follows:

- **Part 1** of the Bill establishes the LBTT
- **Part 2** of the Bill deals with the key concepts underlying the tax, such as what is deemed to be a land transaction and a chargeable interest
- **Part 3** makes provision for the amount of tax payable, reliefs and liability
- **Part 4** provides for land transaction returns and payment of the tax
- **Part 5** deals with the application of the Bill in relation to particular types of buyer, including companies, partnerships and trusts
- **Part 6** makes provisions relating to the tax authority and other definitions
- **Part 7** makes further provisions, including relating to subordinate legislation

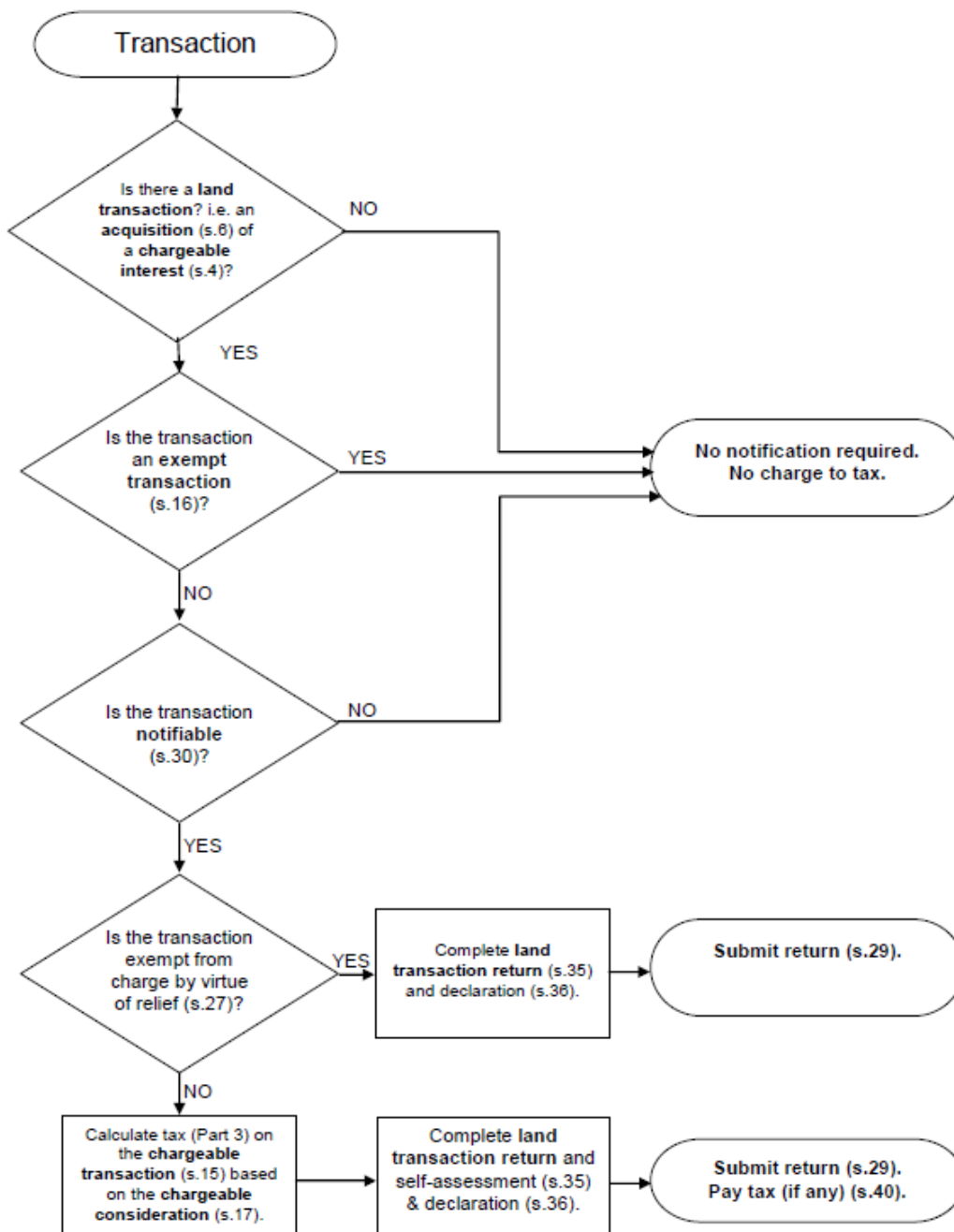
As with the current SDLT, the LBTT would impose a charge on land transactions i.e. anyone buying, leasing or taking various other rights over land or property, provided the land is not

exempt.¹ This would apply to both residential and non-residential transactions. Non-residential transactions liable for LBTT would include:

- the purchase, lease or licence of commercial property (e.g. shops, offices, factories, hotels)
- the purchase, lease or purchase of an option over land for development (e.g. for housing, commercial properties, wind farms)
- agricultural land
- forestry land
- long leases of land for the tenant’s exclusive use for sports, such as salmon fishing

Figure 5, from the Bill’s Explanatory Notes, summarises the operation of the proposed LBTT.

Figure 5: Proposed operation of LBTT



¹ The transaction must also relate to land above mean low water mark i.e. interests in the seabed are outside the scope of LBTT

At the outset, it is worth noting certain issues that are not covered by this Bill but which will have an important bearing on the operation of the new tax. These are:

- **Administration and collection arrangements:** the forthcoming Tax Management Bill will set out the arrangements for the administration and collection of LBTT (and the proposed Landfill Tax). This framework will involve Revenue Scotland (RS) and Registers of Scotland (RoS). Revenue Scotland is currently an administrative function within the Scottish Government but it is proposed that it will receive statutory status through the Tax Management Bill. The LBTT Bill (section 52) defines the tax authority as the Scottish Ministers, but provides the power for the Scottish Ministers to change the tax authority by order (with affirmative procedure). The intention would be to appoint RS as the tax authority if the Bills and subordinate legislation receive Parliamentary approval.
- **Adjustment to the block grant:** when the LBTT is introduced, the UK Government will reduce the Scottish block grant to offset the expected income from the new tax. However, the amount by which the block grant will be reduced and the approach to calculating the appropriate adjustment is the subject of ongoing discussion between the Scottish and UK Governments and does not form part of the LBTT Bill. The Scotland Bill Command Paper stated that “the resulting calculations will be transparent, published and open to scrutiny or audit by external parties and based on outturn tax receipts data as well as the tax receipts forecast carried out by the independent Office for Budget Responsibility.” (HM Government, 2010)
- **Tax bands and tax rates:** The Bill provides for the introduction of bands and rates by means of a statutory instrument. Section 24(1) of the Bill provides for the setting of a nil tax rate band and at least two other bands for both residential and non-residential transactions. However, the Bill does not provide any detail of proposed bands or rates of taxation. In the consultation document, the Scottish Government set out some indicative scenarios, but these were more to illustrate the difference between the current slab system and the proposed progressive system (see below). The rates and bands set out in these illustrative scenarios were chosen so as to present a broadly revenue neutral outcome, although the Scottish Government has not given any indication of whether it would intend to seek revenue neutrality when it decides on the actual bands and rates. The Bill’s Policy Memorandum states that: “it would be premature to set rates now for a tax that would not come into effect for over two years, particularly when the economic outlook is uncertain”. The intention is that rates and bands for LBTT would be set annually, as part of the budget process, through a statutory instrument. Section 67 of the Bill sets out that the first such order would be subject to affirmative procedure. However, subsequent orders would be subject to negative procedure. The delegated powers memorandum for the Bill explains this approach, saying that “Once the tax has been established any subsequent changes to the tax rates or bands, for example on account of a change in market conditions or Government revenue, are likely to be less significant and it is desirable to allow the change to be made quickly under the negative procedure.”

There are also a number of areas that will be covered by the LBTT legislation, but where consultation is ongoing. These areas involve complex legal issues that have not yet been fully resolved (in some cases, reflecting the need to align the legislation with Scots law and practices). The consultation process highlighted that further consideration was required and that sufficient time should be taken to address these issues adequately.

As a result, the Scottish Government proposes to bring forward amendments at Stage 2 of the Bill to reflect the outcomes of the ongoing consultation. ICAS has commented on this need for further consultation: “...it may be that lessons need to be learned in relation to process

timelines and resourcing experiences so far, if the objective of the Scottish Parliament is to pass intelligent, effective and clear legislation.” (ICAS, 2012b)

The areas affected are discussed further below, but include the taxation of:

- Non-residential leases
- Transfer of shares in residential property holding companies
- Trusts
- Partnerships

Principles of legislation

The Scottish Government has stated its intention that any legislation relating to taxation should satisfy four principles – certainty, taxpayer convenience, efficiency and proportionality in relation to ability to pay. Reflecting these aims, the Scottish Government has taken the opportunity to propose some changes to the legislation. So, while much of the LBTT Bill is based on the existing UK SDLT legislation, some important changes are proposed. ICAS has suggested that some form of comparative document would be helpful to make it easier to directly compare the existing SDLT and proposed LBTT legislation and highlight where changes have been made (ICAS, 2012b). ICAS has also warned of the risks of adopting existing tax systems with limited change:

“If early tax devolution is decided upon, it will only be practical to adopt the current UK tax system with as little change as possible, but with the administrative system costs to be borne. A fresh approach will probably take at least a decade of effort and disruption to achieve. But not to take those steps could be to compromise on principles and opportunities, for the reasons set out in this paper. That could lead voters to the stark question: is there then a real point to tax devolution?” (ICAS, 2012a)

The main changes proposed, which form the focus for the remainder of this section, are in the following areas:

- Changing to a progressive tax structure (as opposed to the current ‘slab’ tax structure for SDLT)
- Changes to payment arrangements
- Modification to reliefs, exemptions and notification arrangements
- Avoidance issues

Each of these areas is discussed below.

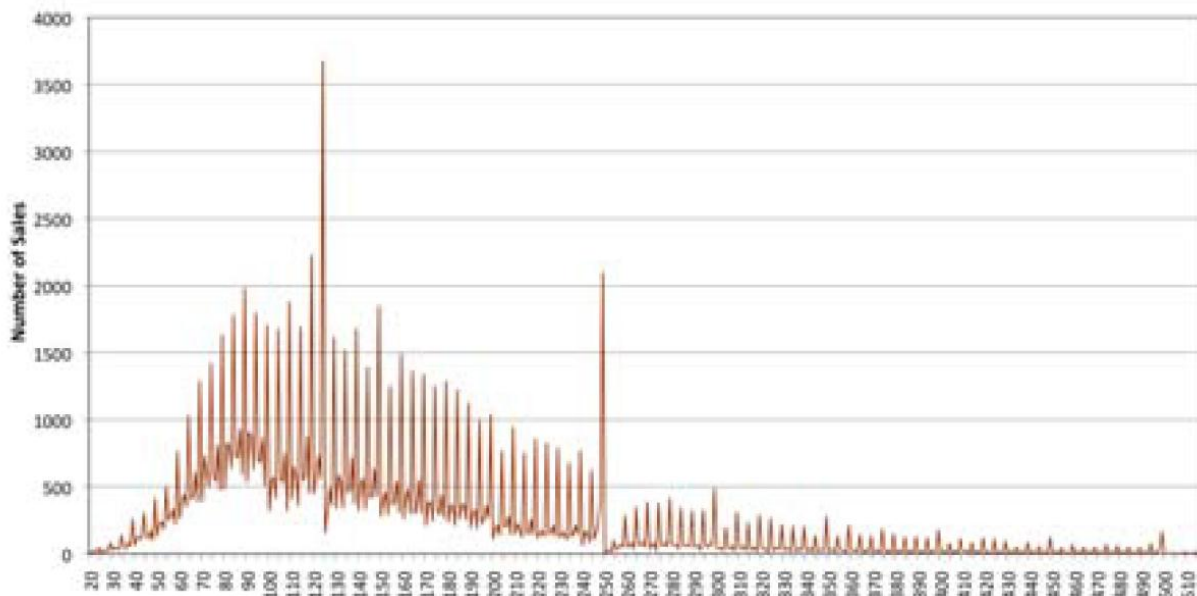
Progressive vs slab structure

An important difference between the current SDLT and the proposed LBTT is that the LBTT proposals involve shifting from a ‘slab’ tax structure to a progressive tax structure. Under a slab structure, the tax paid is calculated by applying the applicable rate to the full value of the transaction. For example, under the current system, where SDLT rises from 1% to 3% for transactions of residential properties valued at over £250,000 to £500,000, then the tax on a property valued at £250,001 would be calculated as 3% of the full value. This leads to sudden increases in liabilities from £2,500 to £7,500 with only a £1 increase in the purchase value. This feature of a slab system leads to bunching of sale prices just below the thresholds. This can be seen in Figure 6, from the consultation document, which highlights the spike in sales just below the first of the current SDLT thresholds of £125,000, £250,000 and £500,000. Commenting on the current slab structure, 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.” (Homes for Scotland, 2012)

In his review of the UK taxation system, Mirrlees described the slab structure for SDLT as “an absurd structure for any tax.” (Mirrlees, 2011)

Figure 6: House sales by value, Scotland 2007



Source: Scottish Government, [Taking forward a Scottish Land and Buildings Transaction Tax: Consultation](#)

By contrast, under a progressive taxation system, the taxes are applied in bands (as with income tax). So, in the same example of a property valued at £250,001, the 3% rate would only be applied to the amount over and above £250,000 i.e. £1, while a lower or zero rate would apply to the amount below £250,000. This leads to a more gradual increase in tax liabilities, as shown by the yellow line in Figure 7, taken from the Scottish Government’s consultation document, which reflects an illustrative example of a revenue neutral scenario using a progressive rather than a slab structure. In contrast, the current system leads to step increases in liabilities (shown by the blue line) which can distort the market by encouraging sellers to avoid setting prices that are just above the thresholds at which tax rates increase.

The rates and thresholds for residential transactions for the scenario on which Figure 7 is based are shown in Table 1, although it should be stressed that these were provided by the Scottish Government in its consultation document for illustration only.

Table 1: Current SDLT rates and illustrative LBTT rates

Current SDLT rates (slab rate, %)		Illustrative scenario (progressive rate, %)	
Below £125,000	0	Below £180,001	0
Over £125,000 to £250,000	1	Over £180,000 to £1.5m	7.5
Over £250,000 to £500,000	3	Over £1.5m	10
Over £500,000 to £1m	4		
Over £1m to £2m	5		
Over £2m ¹	7		

¹ As of 21 March 2012, properties valued at over £2 million which are purchased by certain persons including corporate bodies are subject to a 15% SDLT rate

Figure 7: Progressive vs slab rate structure, illustrative example

Amount of tax due by house price

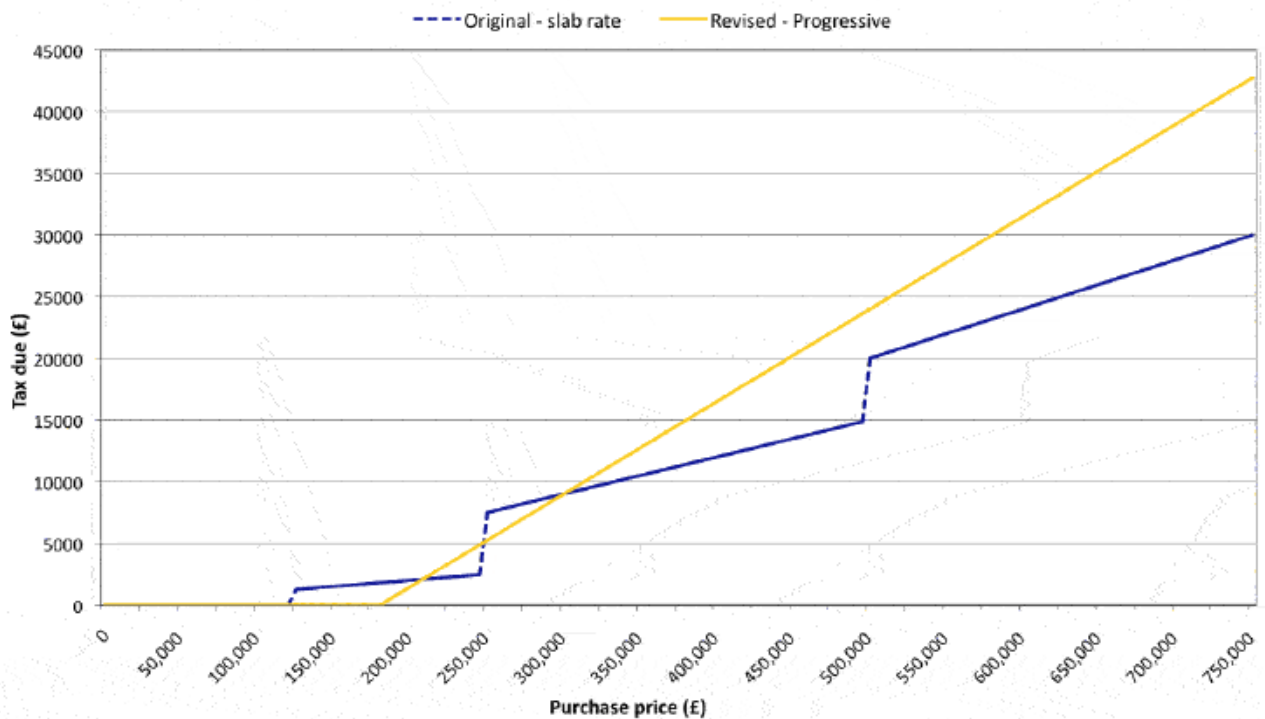


Table 2: Progressive vs slab rate structure, illustrative example

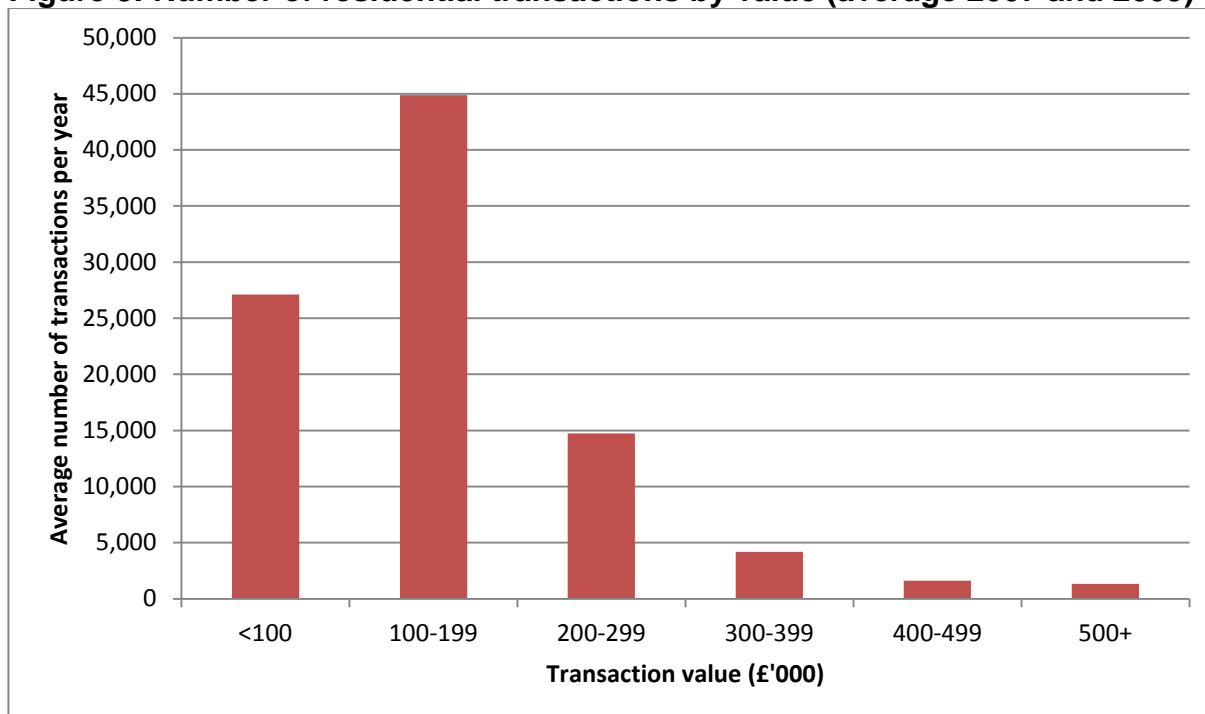
House Price	Tax under current system	Tax under Scenario 1
£125,001	£1,250	£0
£150,000	£1,500	£0
£180,000	£1,800	£0
£190,000	£1,900	£750
£200,000	£2,000	£1,500
£250,001	£7,500	£5,250
£300,000	£9,000	£9,000
£350,000	£10,500	£12,750
£400,000	£12,000	£16,500
£450,000	£13,500	£20,250
£500,001	£20,000	£24,000
£550,000	£22,000	£27,750
£600,000	£24,000	£31,500
£650,000	£26,000	£35,250
£700,000	£28,000	£39,000
£800,000	£32,000	£46,500
£ 900,000	£36,000	£54,000
£1,000,001	£50,000	£61,500
£1,250,000	£62,500	£80,250
£1,500,000	£75,000	£99,000
£1,750,000	£87,500	£124,000
£2,000,001	£140,000	£149,000
£2,500,000	£175,000	£199,000

Source: <http://www.scotland.gov.uk/Resource/0039/00394544.pdf>

In the above scenario, which was designed to be revenue neutral, LBTT liabilities are higher than SDLT liabilities for all properties valued at above £300,000. There will be some properties in the range £200,000-£250,000 where LBTT liabilities in this particular scenario exceed SDLT liabilities under the present regime. It is generally the case that in shifting from a slab to a progressive rate, those just below the slab thresholds are most likely to pay more, but the exact outcome will depend on the details of the new rates and thresholds.

As shown in Figure 8, around half (48%) of residential transactions in Scotland (averaged across 2007 and 2009) were in the £100,000-£199,000 price bracket. Only 1% of sales were over £500,000.

Figure 8: Number of residential transactions by value (average 2007 and 2009)



The proposal to shift to a progressive tax structure received widespread support from those responding to the Scottish Government’s consultation on LBTT. Homes for Scotland said that: “Structured well, [a progressive tax] approach has the potential to reduce some of the disincentives to buying and selling and remove current market distortions around stamp duty thresholds” (Homes for Scotland 2012).

However, although most supported a progressive tax structure in relation to residential transactions, some expressed concerns about a progressive tax structure in relation to commercial properties, with the potentially disproportionate impact on high value commercial property transactions (although this would depend on decisions on thresholds and rates that have yet to be taken). These respondents emphasised the need for Scotland to remain competitive as a location for investors and expressed concern about the effect of having a system that was not in alignment with the rest of the UK.

Payment arrangements

Another important change proposed in the LBTT Bill is that an LBTT return and associated payment should be made prior to, or at the same time as, the registration of the title. The aim is to enable a ‘one stop shop’ for registration and LBTT return/payment. At present, although an SDLT return is required prior to registration, the actual payment of SDLT is not required prior to registration. However, property registration plays a more important role in the Scottish legal system and the Scottish Government believes that by requiring payment prior to registration, the new approach will encourage solicitors to pay tax due promptly on behalf of their clients. As with SDLT, the tax will have to be paid within 30 calendar days of the ‘effective’ date (usually when the sale or lease is concluded). Views expressed in response to the consultation on this proposal were mixed and many from the legal profession and private development interests were opposed to the proposal. The Law Society commented that:

“The committees consider this to be a retrograde step that will give rise to considerable practical difficulty and consequently are very much opposed to this proposal. It could give rise to a risk to the transfer of ownership to the purchaser not being completed due to an

LBTT payment not being processed and it could potentially act as a significant disincentive for English and other inward investors.” (Law Society, 2012)

In response to these concerns, the draft legislation refers to “arrangements satisfactory to the tax authority” in relation to payment, which allows for certain forms of payment such as solicitors’ direct debit instructions to be treated as cleared funds. The Scottish Government believes that this will allay the concerns expressed at consultation and reflects wording adopted in the Land Registration etc. (Scotland) Act 2012.

The Scottish Government also consulted on the idea of making electronic submission and payment of LBTT compulsory. However, following feedback from the consultation process, the Scottish Government decided against this proposal and will still allow for paper returns. Concerns relating to compulsory online payment reflected internet access issues for certain groups/areas as well as negative experiences with existing online registration systems. Reflecting these concerns, stakeholders stressed the need for a well-designed system with adequate time built in for system testing.

Modification of reliefs, exemptions and notification arrangements

Reliefs

At present, there are over 30 separate reliefs available under the stamp duty regime. In 2011-12, under the present SDLT regime, the various reliefs available cost a total of £131.9m (see Table 3). The majority of this (87%) was accounted for by non-residential transactions and, within the non-residential relief total of £114.6m, just over £100m was accounted for by group relief, which applies when land or property is transferred between two connected companies within a corporate group structure. Due to the nature of group relief, it can be highly volatile and influenced by a small number of large transactions. In the previous year, group relief totalled a much lower £24.2m out of a total of £57.5m.

The Scottish Government is keen to simplify arrangements for LBTT and remove any reliefs which are not relevant to Scotland, as well as any which are considered to be ineffective and/or which create scope for tax avoidance. As noted above, many respondents to the consultation recommended a simplification of the current SDLT arrangements, whose complexity in part arises from the wide range of reliefs and exemptions. However, few respondents were keen to recommend withdrawal of reliefs or exemptions and indeed many made suggestions for new reliefs or exemptions.

Table 3: Cost of SDLT reliefs in Scotland, 2011-2012

Relief	Non-residential/ mixed £m	Residential £m
Group	100.1	0.9
Other	3.9	1.3
Charities	5.5	2.9
First Time Buyers (<i>UK Government ended 25 March 2012</i>)	n/a	8.6
Certain acquisitions by Registered Social Landlords	<0.1	0.2
Acquisition	1.3	nil
Certain acquisitions-part exchange (house building company)	n/a	2.2
Alternative property finance	1.1	<0.1
Disadvantaged Area (<i>UK Government will end April 2013</i>)	<0.1	0.7
Certain acquisitions - relocation of employment	n/a	0.5
Compulsory Purchase Facilitating Development	0.8	<0.1
Transfers involving public bodies	0.4	nil
Acquisition by bodies established for national purposes	<0.1	nil
Reconstruction	0.4	nil
Incorporation of limited liability partnerships	0.7	nil
Complying with Planning Obligations	nil	nil
Zero Carbon Homes (<i>time limited 1 Oct 2007 to 1 Oct 2012</i>)	n/a	<0.1
Combination of reliefs	n/a	nil
Unknown reliefs	n/a	nil
Bulk buyers relief	0.4	<0.1
Total cost (excludes <0.1 entries)	114.6	17.3

Source: HMRC

The majority of reliefs are being retained (in some cases with modifications). However, the LBTT proposals suggest removing some reliefs. The consultation document outlined proposals for the withdrawal of four reliefs and the rationale for their withdrawal:

- *“Right to Buy relief* – this relief, which means a purchaser only pays SDLT on the discounted value of their home, rather than the full value, is not currently claimed in Scotland as only a small proportion of Right to Buy homes are valued at more than £125,000. The Scottish Government will shortly be consulting on proposals to further restrict the Right to Buy.
- *Shared Ownership relief* – this relief from SDLT on the lease element of shared ownership is not needed in Scotland because, like other residential leases, shared ownership leases (known as occupancy agreements) can only last for a maximum of 20 years, although a new lease can be entered into when the old one ends if the owner and housing association agree. As a result, in Scotland the occupancy payment is never high enough to require SDLT to be paid.
- *Bodies established for national purposes relief* – only one of the bodies which can claim this relief operates in Scotland (NESTA) and it is expected to be eligible for charities relief in future.
- *Collective enfranchisement by leaseholders relief* – this is only available where leasehold owners of flats jointly purchase the freehold for their building. Leasehold ownership is not used in Scotland.”

(Scottish Government, 2012a)

Following further consideration of the reliefs, and feedback from the consultation on the Bill, the Scottish Government decided to withdraw a number of additional reliefs. This reflects a desire on the part of both the Scottish Government and many stakeholders to simplify the legislation as well as a view (again, both on the part of the Scottish Government and certain stakeholders) that tax reliefs could be potential “gateways” for tax avoidance. The following extract from the Bill’s Policy Memorandum sets out those additional reliefs that are proposed to be withdrawn and the Scottish Government’s rationale for their removal:

- *“Certain acquisitions of residential property* – Acquisition by property traders from personal representatives of a deceased individual; and acquisition by employer or property trader in cases of relocation of employment. The Scottish Government is not persuaded that these activities would not occur without these reliefs and therefore does not intend to make these reliefs available under LBTT.
- *Demutualisation of an insurance company or a building society* - The Scottish Government considers that these reliefs relate to a previous time when there was a significant level of demutualisation activity in the financial sector. It is no longer relevant to make provision for such reliefs under LBTT.
- *Reorganisation of UK Parliamentary constituencies* – This allows for relief where parliamentary constituencies change and, in consequence of that change, the previous local constituency association transfers a chargeable interest to a new local constituency association. This may be needed, for example, where an old constituency is split into two and two new associations are formed, or where two previous constituencies merge and one is formed. The Scottish Government does not consider it is appropriate to provide such a relief within the LBTT system. Whilst this relief from SDLT relates only to Westminster parliamentary constituencies, the Scottish Government has no plans to introduce a similar LBTT relief for Scottish Parliament constituencies.

- The Scottish Government does not intend to include the current SDLT *sub-sale provisions* (which are often combined with other reliefs) in the LBTT. These rules apply where Party A contracts to purchase land from Party B who might, for example, be a land value speculator, but Party B sells the land to Party C on the same day as the completion of the formal contract with Party A. In this case, there will only be one transaction where there is a requirement to pay SDLT. As the sub-sale rules are not considered a relief as such, no claim is submitted through an SDLT return so there are no records of the amount of tax foregone by the tax authority as a result of these rules. There is, however, strong evidence to suggest that the sub-sale rules act as a gateway to a significant amount of avoidance activity.
- *New zero-carbon homes relief* - After further careful consideration, including taking account of comments made by stakeholders through the LBTT consultation paper and at the public consultation events held in July and August 2012, the Scottish Government does not intend to include within LBTT the new zero-carbon homes relief, which was available under the SDLT system for a time-limited five-year period from 1 October 2007. There is little evidence to suggest that this relief achieved its stated objectives of helping to kick-start the market for zero-carbon homes, encourage microgeneration technologies, and raise public awareness of the benefits of living in zero-carbon homes. The Scottish Government does, however, welcome further representations from interested parties on whether alternative arrangements could be devised which would help support Scotland's climate change targets."

(Scottish Government, LBTT Policy Memorandum)

The proposed changes to sub-sale provisions are likely to attract the most interest. These provisions are believed to be linked to significant levels of avoidance. However, because the provisions are not classified as a relief, there is no requirement for those benefitting to notify HMRC. As such, there are no data available on the cost of these provisions and they are not included in the estimated cost of reliefs shown in Table 3. Some are likely to argue against blanket withdrawal of the provisions and might make a case for targeted provisions for commercial developments so as to avoid an uncompetitive situation arising between Scotland and the rest of the UK, or to allow for genuine cases where such arrangements are necessary to still benefit from relief. The UK Government has recently conducted a consultation on revisions to the sub-sale provisions (HMRC, 2012b).

Another proposed change is the extension of access to relief for local authorities purchasing land or property through a compulsory purchase order (CPO). Under the present SDLT regime, local authorities do not pay SDLT if they purchase land or property through CPO with the intention of transferring it directly to a third party to facilitate development. Under the LBTT Bill proposals, CPO relief will be available to local authorities transferring land or property to third parties following CPO, regardless of whether this is aimed at "facilitating development". Commenting on this proposal in its consultation response, COSLA said: "This would undoubtedly make the additional powers due in April 2013 to bring long term empty properties back into use more attractive to local government" (COSLA, 2012). Others, including the Law Society and ICAS, argued that the extension of CPO relief should go beyond local authorities and should include other bodies with CPO powers.

Full details of the reliefs to be retained, modified or removed are given in the Policy Memorandum (pp18-22). Section 27(3) of the Bill contains provision for the Scottish Government to add, modify or remove reliefs through use of a statutory instrument (subject to affirmative procedure).

As with the current SDLT regime, it is proposed that an LBTT return should be submitted in order to qualify for relief (even if it is 100% relief). This is in order to allow for monitoring of the uptake of reliefs; to assess the legitimacy of claims for relief; and to enable information on linked transactions to be gathered.

Exemptions

There are also a range of exemptions from SDLT and many of those are proposed to be carried forward into the LBTT regime. Although a relief can sometimes result in no liability for tax, it differs from an exemption in that a relief must be claimed in a land transaction return. If a transaction is exempt, no notification is required.

The LBTT Bill proposes continuing the current exemptions from the SDLT regime:

- transfers of property on divorce, separation or the end of a civil partnership;
- property transactions where no money or other contribution that has a monetary value changes hands (e.g. a gift);
- grants of certain leases (social tenancies) by Registered Social Landlords;
- land or property which is transferred under succession law when the previous owner dies; and
- acquisitions by the Crown
- transfers of land and property where the purchase price of lease value is less than £40,000 (the Scottish Government can vary this amount through secondary legislation, subject to negative procedure).

The LBTT Bill proposes some changes to the current SDLT exemptions:

- Licences to occupy property would no longer be exempt, reflecting some difficulties in distinguishing between licenses and leases in Scotland
- The majority of residential leases will be exempt, reflecting the small number of leases currently affected. The exception will be ultra-long leases, as these qualify for conversion to ownership under the Long Leases (Scotland) Act 202.

Section 5(4) of the Bill contains provision for the Scottish Government to add, modify or remove exemptions through use of a statutory instrument (subject to affirmative procedure).

Anti-avoidance measures

As highlighted earlier, SDLT is known to be the subject of a range of avoidance measures. In some cases, these can be quite simple measures, such as assigning a higher proportion of the sale value to fixtures and fittings (which are not part of the chargeable consideration) so as to bring the purchase price below a given SDLT threshold. In other cases, avoidance measures can involve transfer of property to an offshore company or complex schemes involving trust arrangements.

The LBTT Policy Memorandum defines tax avoidance as follows:

“...tax avoidance takes place when someone (including a company or partnership) seeks to reduce, delay, or avoid altogether their liability for tax by taking action which may be legal but which can reasonably be regarded as a

contrivance not in keeping with the spirit or intention of the law. Tax avoidance arrangements are often highly artificial and often exploit areas of the tax system, such as tax thresholds, reliefs, allowances or exemptions, to reduce or avoid tax liability in circumstances where the purpose originally intended by Parliament in granting the reliefs, etc. is not fulfilled by the taxpayer.”

Tax avoidance is distinct from tax evasion in that avoidance exploits loopholes in the law, while evasion entails illegal activity. The nature of both types of activity makes them difficult to measure in terms of their impact on receipts.

The Scottish Government is keen to tackle the issue of avoidance through legislation and proposes a number of approaches, some of which are specific to LBTT, others of which are more general issues that are proposed for the Tax Management Bill:

- Modification and/or removal of certain reliefs and exemptions – under the SDLT regime, reliefs and extensions are often a feature of avoidance measures.
- Progressive tax structure – under a progressive system, the incentive to reduce transaction prices so as to fall within a lower taxation threshold is reduced, as the impact of moving into a higher tax bracket is less severe.
- Inclusion of specific anti-avoidance measures within the legislation – known as ‘targeted anti-avoidance rules’ (TAARs) and a ‘general anti-avoidance rule’ (GAAR)

The Scottish Government proposes both the inclusion of TAARs in the LBTT legislation and the inclusion of a GAAR in its Tax Management legislation. An example of a TAAR within the LBTT legislation can be found at Schedule 10, paragraph 8(b) in relation to group relief which says that relief is not available if the transaction “forms part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.” The Scottish Government proposes to support such targeted measures with a more general anti-avoidance (or anti-abuse) rule in its Tax Management legislation, and is currently consulting on this issue.

Responses to the consultation exercise on the issue of anti-avoidance measures were mixed. While most agreed that some form of anti-avoidance measures were desirable, there was a range of views on the format of these measures. The proposed use of both types of measures represents a “belt and braces” approach which some stakeholders consider unnecessary. For example, the Law Society and Scottish Council for Development and Industry both supported the introduction of a GAAR but felt that if the GAAR was effective, there should be no need for TAARs (Law Society 2012 and SCDI 2012). Some of the opposition to TAARs is likely to reflect the complexity of existing TAARs within the SDLT legislation (section 75A) which are viewed as excessively complex and – largely as a result of this complexity – ineffective in tackling avoidance. There was a clear view that if TAARs were to be included, they should not simply copy those in the SDLT legislation. Accordingly, s75A is not replicated in the LBTT Bill.

The Law Society did also note the complexity of drafting an effective GAAR and cautioned that sufficient time would need to be allowed. The UK Government is also considering the introduction of a GAAR. Homes for Scotland stressed the need for consistency across the UK to avoid confusion and so as not to make Scotland less attractive as a destination for investment.

Issues to be dealt with at Stage 2

As referred to above, there were a range of issues that, following consultation, were felt to be in need of further consideration. As a result, the Scottish Government proposes to introduce amendments at Stage 2 in the following areas:

- Non-residential leases
- Companies
- Trusts
- Partnerships

Non-residential leases

The Scottish Government's intention is that LBTT will be levied on anyone leasing land or buildings, but only as regards non-residential transactions (i.e. leases of commercial and agricultural property).

The Policy Memorandum indicates that the taxation of non-residential leases is a complex area and that existing SDLT legislation does not fully recognise how such leases operate under Scots law.² According to the Policy Memorandum, there is broad consensus among stakeholders that detailed consideration should be given to the issues raised by the taxation of non-residential leases in Scotland so as to ensure that the replacement system is efficient/effective.

Accordingly, the Scottish Government has taken the view that the issues related to non-residential leases need to be addressed in more detail. The Scottish Government has therefore convened a working group, the [Non-residential Leases Working Group](#), whose broad goals are to analyse the best way of taxing non-residential leases and to ensure that the new rules are better aligned with Scots law and practices. Membership of the group includes bodies such as the Law Society of Scotland, the Institute of Chartered Accountants of Scotland, the Chartered Institute of Taxation and the Confederation of British Industry. The group met for the first time on 18 December 2012 and most recently on 9 January 2013.

The Scottish Government has indicated that the group's views will be fed into the Ministerial decision-making process and that its intention is to bring forward draft legislation on non-residential leases by Stage 2, either in the form of amendments to the Bill or statutory instruments. Given this approach, the Bill does not currently contain detailed provisions on non-residential leases, but instead includes an order making power (section 55).

Companies

The Scottish Government has indicated that the rules determining a company's liability for LBTT largely replicate the existing rules under SDLT, including provision for group relief.³ The aim behind this approach is to ensure a degree of continuity with the existing regime and to maintain a 'level playing field' between Scotland and the rest of the UK.

The Scottish Government does, however, intend to bring forward detailed proposals at Stage 2 for the taxation of transfers of interests in companies that hold or deal in residential property.

² For more details on problems which were identified with the current system see paragraphs 93–96 of the Policy Memorandum

³ See Schedule 10 of the Bill for the group relief provisions

These provisions will primarily be an anti-avoidance measure aimed at the use of corporate structures to acquire residential property, thus potentially avoiding liability to LBTT. They will constitute a change to the existing UK regime. The Bill does not currently contain details on the substance of the Scottish Government's approach, but instead includes an order making power (section 47). The Scottish Government has indicated that it will test the details of its new approach with stakeholders and tax practitioners, before presenting draft provisions to the Parliament. It appears that this will occur either through secondary legislation or by means of amendments to the Bill itself.

Trusts

According to the Policy Memorandum, the current provisions on trusts in the Bill (Schedule 18) simply replicate the existing provisions under SDLT.⁴ The Scottish Government has, however, explained that, at Stage 2, it wishes to bring forward simpler and clearer legislation on the treatment of trusts under LBTT. For this purpose the Scottish Government plans to engage with key stakeholders during Stage 1 and notes in its Policy Memorandum that it expects the committee to hear evidence at Stage 1 which will assist the committee in coming to a view on possible improvements.⁵

Partnerships

The Bill's approach to partnerships is similar to trusts. Currently the provisions on partnerships (Schedule 19) replicate the existing provisions under SDLT. However, the Policy Memorandum notes that a broad consensus exists among stakeholders that the current legislative framework is overly complex and is in need of simplification. On this basis, the Scottish Government has indicated that it plans to work with stakeholders to prepare simpler and clearer legislation on partnerships and LBTT which will be brought forward at Stage 2.

Transitional arrangements

The Bill's Policy Memorandum states that:

"It will be important that, during the transitional period when SDLT is withdrawn and LBTT is introduced, it is clear, particularly in relation to leases, which tax is due and when. There are transitional rules in section 29(6) of the 2012 Act and the UK Treasury is empowered to make consequential and transitional amendments in respect of the new regime by order under section 42(3) of the 2012 Act. The Scottish Government will liaise closely with the UK Treasury to ensure that the arrangements for the transitional period work effectively."

A number of stakeholders have expressed concerns about the need for effective transitional arrangements. The Chartered Institute of Taxation commented that:

"There are transitional provisions in the Act that refer to SDLT ceasing to apply in Scotland for any transaction with an 'effective date' on or after a given day. As a transitional measure, section 29(5) determines that any contract 'entered into and substantially performed' before the date will remain liable to SDLT, subject to certain exceptions listed in section 29(6) dealing with subsequent variations, etc.

⁴ Paragraph 105. For some brief background information on trusts see paragraphs 106–108 of the Policy Memorandum

⁵ In particular, the Policy Memorandum indicates (paragraph 111) that, where a trustee in a so-called 'bare trust' holds the trust property as a nominee for someone else, the trustee will be liable for LBTT. Provisions dealing with this specific matter will also be brought forward at Stage 2.

The concern is that similar transitional provisions caused problems when SDLT was introduced in 2003.” (Chartered Institute of Taxation 2012)

The Law Society and ICAS have also expressed similar concerns. (Law Society 2012 and ICAS 2012b).

FINANCIAL MEMORANDUM

The Financial Memorandum (FM) accompanying the Bill sets out the anticipated costs relating to the introduction of LBTT within three categories:

- Costs for the Scottish Administration
- Costs for local authorities and other public sector bodies
- Costs for other bodies, individuals and businesses

Costs for the Scottish Administration

In respect of the Scottish Administration, three areas are covered by the FM:

- LBTT receipts
- Tax administration costs – Revenue Scotland
- Tax administration and compliance costs – Registers of Scotland

The FM does not include any estimate of the one-off costs that will be incurred by HMRC as a result of disapplying SDLT in Scotland. These one-off costs will be charged to the Scottish Government and HMRC has indicated that they will exceed £0.5m but has not yet provided a final figure. (BIB no. 54051). Similarly, potential savings to HMRC as a result of no longer operating SDLT in Scotland have not yet been estimated and are not included in the FM.

LBTT receipts

The net effect on the Scottish budget as a result of the introduction of LBTT will be the total LBTT receipts less the block grant adjustment. As discussed earlier in this paper, the block grant adjustment has yet to be determined. In addition, LBTT receipts will depend on the tax rates and thresholds and the availability of reliefs and exemptions, which are also yet to be determined. Economic conditions – and their impact on the volume of residential and commercial transactions – will also impact on receipts and are difficult to forecast with accuracy. All of these factors, combined with the known volatility of SDLT receipts highlighted earlier in this paper, make it difficult to predict the likely level of receipts from LBTT. As a result, the FM focuses on discussion of historic levels of SDLT receipts in Scotland, as presented earlier in this paper.

In relation to exemptions and reliefs, the majority of the reliefs proposed for withdrawal currently have a zero or negligible cost in Scotland (which is largely the rationale for their removal). There are two exceptions. The first is the proposed removal of relief for property traders acquiring dwellings from the personal representatives of a deceased person. This is currently estimated to cost £0.5m, so its removal would potentially lead to a £0.5m increase in receipts, assuming no behavioural change.

A more significant financial impact would be expected from the proposed removal of sub-sale relief. As explained above, this currently applies where three parties are involved in

simultaneous transactions relating to the same property – Party A contracts to purchase land or property from Party B but sells it onto Party C prior to completion of the former contract. In this situation, only one transaction is currently liable for SDLT. The Scottish Government proposes to cease this arrangement, so that both transactions would be liable for LBTT. However, the potential impact on receipts has not been estimated as there is no estimate of the amount of SDLT currently foregone through sub-sale relief. This is because sub-sale relief is not statutorily classified as a relief and so HMRC do not gather information on the value of the relief. However, the Scottish Government states in the Policy Memorandum that “there is...strong evidence to suggest that the sub-sale rules act as a gateway to a significant amount of avoidance activity.” This would suggest that a positive financial impact would be anticipated as a result of the proposed changes in the sub-sale rules. The UK Government is also proposing reforms to sub-sale relief, also reflecting concerns about the way that this relief features in SDLT avoidance schemes.

Overall, the FM states that it is reasonable to assume revenue neutrality as a result of the introduction of LBTT although, as noted above, this depends on the level of the block grant adjustment and the determination of LBTT rates and thresholds, neither of which have yet been decided.

Revenue Scotland

On 7 June 2012, the Cabinet Secretary for Finance, Employment and Sustainable Growth announced the intention to establish a tax administration function to administer both LBTT and Landfill Tax in Scotland. He said:

“We will establish a tax administration function for assessing and collecting both the taxes here in Scotland. The function, which I propose to name Revenue Scotland, will be established this year. By 2015, in line with international best practice, it will be operationally independent and its governance enshrined in legislation.” (Scottish Parliament 2012)

Revenue Scotland (RS) was subsequently set up, as an administrative function within the Scottish Government. The intention is that it will receive independent statutory status in 2014 through the passing of the Tax Management Bill. The intention is that RS will be set up as a Non-Ministerial Department within the Scottish Administration, which would make it independent of Ministers and accountable to the Scottish Parliament.

RS will oversee the administration of both LBTT and Landfill Tax, supported by Registers of Scotland (RoS) and SEPA respectively. The FM makes no attempt to split the RS cost estimates between LBTT and Landfill Tax.

The total set up costs (covering the period June 2013 – March 2015) as set out in the FM are summarised in Table 4. Total costs are estimated at £1.7m, although the FM notes that there may be additional costs incurred prior to June 2013. During the set-up phase, a total of 19.3 full-time equivalent (FTE) posts are assumed to be required, although 10 of these are only costed for the 6 month period from October 2014 to March 2015.

Table 4: Revenue Scotland set-up costs

Function	Total cost (£000)	Assumptions
Staff costs (June 2013-March 2015 unless otherwise specified)		
Senior Management	240	Head of Revenue Scotland (0.3 fte SCS Pay Band 2), Chief Operating Officer (SCS Pay Band 1)
Tax Administration Programme	210	Programme Manager (Band C) and Programme Officer (Band B)
Revenue Scotland Development	425	2 Teams, each 1 Band C and 1 Band B, developing internal systems, procedures, policies, capacity and communications
Revenue Scotland Appeals, Disputes & Compliance	240	Costed on assumption of around 10 staff, averaging Band B. (October 2014 to March 2015)
Administrative support	85	2 Band A staff providing administrative support to all above teams.
Total staff costs	1,200	
Non-staff costs		
Systems	80	This cost includes the hardware set-up costs for the staff together with the costs of establishing the website but assumes a tax collection system design which does not require central database development at Revenue Scotland. A different design may be chosen and costs will only be known following detailed design and procurement.
Communications and branding	75	Need to promote awareness of Revenue Scotland and devolved taxes.
Standard running costs for unit Jun 2013-31 Mar 2015	200	Training, travel and subsistence and accommodation costs for staff.
Contingency	100	Allowance for underestimates in above figures.
Total non-staff costs	455	No VAT chargeable on this.
Total set-up costs	1,655	

The FM provides estimates of annual running costs from April 2015, as summarised in Table 5. Annual running costs are estimated at £2.2m, with an assumption of 26 FTE staff.

Table 5: Revenue Scotland annual running costs

Function	Annual Running Cost (£000)	Assumptions
Staff costs		
Senior Management	220	Chief Executive SCS Pay Band 2, Chief Operating Officer SCS Pay Band 1.
Compliance	350	Team of 8 staff, assume 2 band C, 6 band B.
Disputes and Appeals	280	2 band C solicitors plus band B support.
Communications and complaints	240	Band C plus 5 band B staff to manage web and print communications, limited helpline and complaints. This may need to be revised once further development work is done on communications.
Planning and Development	125	Band C plus 2 band B staff covering planning and reporting and further system development.
Administrative support	100	4 Band A staff supporting all above teams.
Contingency	155	Allowance for underestimates in all above figures.
Total	1,470	No VAT charged on this.
Non Staff costs		
Standard running costs	170	Travel training and accommodation.
IT systems support	50	Assume that receipts will be remitted direct to Scottish Government by collection agents; systems required for case management, appeals administration, performance management of contracts
Website maintenance and production and updating of on-line guidance	50	
Appeals against LBTT charges	120	Costed on a basis comparable to SEPA costing for landfill tax appeals; assumption of up to 20 appeals per year. Non-staff cost
Legal outsourcing/debt recovery contracts	100	Non-staff cost.
Contingency	250	Allowance for underestimates in all above figures
Total	740	No VAT charged on this.

The Scottish Government opted to set up a new body to handle the administration of LBTT and Landfill Tax, rather than contracting out collection activities to HMRC. In setting out the reasons for this decision, the Cabinet Secretary for Finance, Employment and Sustainable Growth said:

“I have given careful thought to the appropriate arrangements for administration of [LBTT and Landfill Tax], by weighing up the considerations of flexibility, cost and risk. In taking forward our proposals for taxation, I am determined to ensure that we have a system that is fit for purpose—now and in the future.” (Scottish Parliament 2012a)

Referring to comments made by HMRC in evidence to the Finance Committee, the Cabinet Secretary also expressed concerns about how HMRC would react if Scotland adopted a different framework or rates from the current SDLT. He concluded that:

“It is clear to me that, if we ask HMRC to operate land and buildings transaction tax on behalf of this Parliament, the freedom of this Parliament to take forward its full taxation responsibilities could be inhibited.” (Scottish Parliament 2012)

And further added that:

“It is a sign of the costliness of HMRC that we will establish Revenue Scotland and implement and collect both the replacement taxes for less than HMRC would charge us to deliver what it terms a like-for-like system within the United Kingdom. I estimate that, in the period to 2020, start-up and operational costs in pursuing that approach will be at least 25 per cent lower than they would be had I asked HMRC to deliver the status quo.” (Scottish Parliament 2012)

It is not meaningful to compare the HMRC estimates for SDLT alone with those for RS as the latter will handle both LBTT and Landfill Tax. HMRC’s combined estimates of providing a “like for like” replacement for both SDLT and Landfill Tax are therefore compared with the Scottish Government’s estimates for RS, RoS and SEPA in Table 6.

Table 6: Comparison of HMRC and Scottish Government estimates for administration of SDLT and Landfill Tax replacement

	HMRC	Scottish Government (RS/RoS/SEPA)
Set-up costs (£'000)	2,424	2,530
Annual running costs (£'000)	3,435	2,836

On the basis of this comparison, set up costs are higher for the Scottish Government model, but annual running costs are £600,000 per year lower.

In addition, under the HMRC scenario, the Scottish Government estimated that it would incur certain costs relating to management of the HMRC contract. The Scottish Government estimates these costs at £500,000 during the set-up phase and £435,000 annually during the operational phase. These estimates represent 30% and 20% respectively of the costs of the Scottish Government operating the system itself. No detail is given as to how these estimates have been calculated.

It is difficult to directly compare the HMRC estimates with the Scottish Government estimates as the presentation of the information differs. The following observations can be made:

- In the HMRC estimates, all the set up costs are treated as non-staff, while in the Scottish Government estimates, the majority (61%) of the set up costs are considered to be staff costs.
- The HMRC set up costs attribute the majority of the costs to IT development costs (£2.3m for both taxes). By comparison, the Scottish Government estimates appear to attribute a much lower amount to IT development (around £0.5m, although it is unclear how much of the SEPA non-staff costs relate to IT). It is possible that the HMRC figures include staff costs, although this is not clear. Furthermore, the Scottish Government estimates note that the system set up costs: “assume a tax collection system design which does not require central database development at Revenue Scotland. A different design may be chosen and costs will only be known following detailed design and procurement”. A range of stakeholders have highlighted the critical nature of the design of IT systems with sufficient time for testing prior to introduction, including SCDI who said

in responding to the consultation: “the design of a system which is compatible with conveyancing and tax practitioners in time for the introduction of LBTT would be challenging and costly, and thorough testing and training would be needed before it became operational” (SCDI 2012).

- In relation to running costs, the HMRC estimates appear to attribute virtually all costs to staff costs, although it is unclear how other non-staff costs have been treated. For RS and RoS, around 75% of costs are staff costs (the proportion for SEPA is only 19% and it is unclear why).
- In the RS staff costings, around a quarter of staff costs (8 FTE staff) are attributed to the compliance function. The proposed changes to sub-sale rules could require substantial compliance activity, especially initially.
- The RS staff costings also assume 6 staff (16% of total staff costs) dealing with communications and complaints. The assumptions state that this would involve a ‘limited helpline’ facility, but also note that the costings in this area “may be revised once further development work is done on communications”.
- The RS non-staff costs incorporate a significant contingency allowance (£250m, equivalent to a third of total non-staff costs). It is unclear why the contingency is so high in this area.

Alongside these general observations, ICAS has cautioned that: “It is not clear that the comparative costs were based on the same set of assumptions. Whether that’s right or not, both transparency of costings and or progress on the design of a Scottish tax system, are needed before anyone can reach a clear conclusion on the impact.”

ICAS also noted the critical nature of the compliance and enforcement role to be undertaken by RS: “What is clear is that the fair and efficient operation of any tax system requires a focused compliance and enforcement regime, which works best when it is operated by those with extensive practical experience and knowledge of their area. Registers of Scotland don’t do this at the moment. So, Revenue Scotland is likely to be in the hot seat” (ICAS 2012c).

Registers of Scotland

The Scottish Government intends that RoS will have operational responsibility for the collection of LBTT. RoS already has responsibility for collection of a proportion of SDLT under a service level agreement with HMRC and also manages the land registration process. The costings assume a basic compliance role for RoS, but the FM notes that “further planning work is required to decide on the respective roles that RS and RoS will have in relation to compliance activity”. The FM also assumes that 90% of LBTT will be processed online. It is unclear whether this is a realistic assumption and – if not achieved – there would be implications for the costings.

Table 7: Registers of Scotland set-up costs

Function	Set-up Costs (£000)	Details	Comments
Staff costs			
Staff costs of planning, overseeing, and implementing changes prior to April 2015	250	1.5 Grade 7 (C1 equivalent), 1 SEO (B3 equivalent), 1 HEO (B2 equivalent) and 0.3 EO (B1 equivalent)	Includes system preparation, project planning and management costs, and covers work-package effort for legislation and policy, IT, Finance, Registration and implementation. It does not include costs for preparing for compliance and enforcement work - assumed under RS start-up costs
Total	250		Excluding VAT – chargeable and recoverable
Non staff costs			
Familiarisation of solicitors with new systems	10		Training and publicity for solicitors and other users to ensure full and effective take up
Build cost of new LBTT system	75		This represents the capital costs of building the system
Total	85		Excluding VAT – chargeable and recoverable

Table 8: Registers of Scotland annual running costs

Function	Running Cost (£000)	Details	Comments
Staff costs			
e-Services Helpdesk	130	1 EO (B1 equivalent) and 3 x AOs (A4 equivalent)	Estimate is based on providing administrative advice (but not tax advice) to 100 calls per day.
Provision of complex enquiry helpdesk	60	1 SEO (B3 equivalent)	Referral point from e-Services Helpdesk for complex cases.
Additional costs associated with system support and new chargeable transactions	20	0.5 HEO (B2 equivalent)	Figure is an estimate to cover system support and possible tax changes.
Intake process cost	30	1.3 AA (A3 equivalent)	Cost of intake processes in respect of paper applications
Total	240		Excluding VAT: chargeable and recoverable.
Non Staff costs			
Additional IT maintenance and support costs	20		Costs associated with IT and e-Services support.
Annual cost of providing data to HMRC	15		UK Government requirement.
Additional costs associated with new chargeable transactions	50		Figure is an estimate to cover possible changes.
Total	85		Excluding VAT: chargeable and recoverable.

Set-up costs for RoS are estimated at £335,000, while annual running costs are estimated at £325,000. It is not clear from the FM how these costs relate to the current costs of the services delivered on behalf of HMRC, but the FM notes that the costs are lower than might otherwise be the case due to the existing knowledge and experience within RoS. In addition, system changes are being made as a result of the Land Registration etc. (Scotland) Act 2012 and these can be adapted so as to incorporate the requirements resulting from the introduction of LBTT, thereby minimising costs. A total of £75,000 has been allowed for development of the new LBTT system, which is much lower than the £2m allowed in the HMRC estimates, although it is unclear whether these estimates are directly comparable.

In response to the consultation, the Law Society said that: “it is vital that Registers of Scotland (ROS) has sufficient resources to be able to set up the systems for and to administer LBTT effectively (and cost-effectively) in order to overcome an existing negative perception that has been caused by difficulties with the Automated Registration of Title to Land (ARTL) system [the current RoS system which allows for simultaneous submission of an SDLT return and registration of title]” (Law Society 2012). Problems with delivery of IT contracts at RoS, including ARTL were recently the subject of an Audit Scotland report, and were considered by the Scottish Parliament’s Public Audit Committee (Audit Scotland 2012 and Scottish Parliament Public Audit Committee 2012).

Costs on local authorities and other public bodies

The FM notes that liability for LBTT will depend on the extent to which public bodies buy or lease land and property, with the ultimate liability dependent on the (as yet undetermined) structure of rates and bands and the availability of exemptions and reliefs. As such, the impact of the introduction on LBTT cannot be determined at this stage.

The Scottish Government does not anticipate any additional costs in relation of administration and compliance with LBTT as compared with the current SDLT regime.

The FM notes that the proposed changes to CPO relief could have the effect of reducing local authority costs. This would depend on the extent to which individual local authorities undertake purchases that would be eligible for this relief.

Costs on other bodies, individuals and businesses

As with the costs to public bodies, the FM notes that liability for LBTT will depend on the extent to which these bodies or individuals buy or lease land and property, and that their liabilities will depend on the ultimate structure of rates and bands and the availability of exemptions and reliefs. As such, the impact of the introduction on LBTT cannot be determined at this stage.

The Scottish Government does not anticipate that professional fees in relation to land and building transactions will be significantly different from at present. Nor does it expect that administrative costs for agents dealing with such transactions will be significantly different.

A draft partial Business and Regulatory Impact Assessment (BRIA) for the Bill was published with the consultation paper. A final BRIA is due to be published shortly.

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