LAND AND BUILDINGS TRANSACTION TAX
(AMENDMENT) (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill introduced in the Scottish Parliament on 27 January 2016. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 85–EN.

POLICY OBJECTIVES OF THE BILL

Policy objectives

2. The Scotland Act 2012 contained provision, which was brought into force by the UK Government at the end of March 2015, to disapply Stamp Duty Land Tax (“SDLT”) to land transactions in Scotland. Land and Buildings Transaction Tax (“LBTT”) was introduced by the Land and Buildings Transaction Tax (Scotland) Act 2013 (“the 2013 Act”) and came into effect for land transactions in Scotland from 1 April 2015. LBTT legislation differs from SDLT in a number of areas, better aligning the legislation with Scots law and practice and ensuring appropriate reliefs and exemptions are applied.

3. The 2013 Act provides for the rules and structure of LBTT and imposes a tax on anyone buying, leasing or taking other rights (such as options to buy) over land and property in Scotland and inter-operates with the Revenue Scotland and Tax Powers Act 2014 (“the 2014 Act”) which, amongst other things, establishes the collection and management framework for all devolved taxes.

4. In setting out the Scottish Government’s tax proposals in the 2016-17 Draft Budget, the Deputy First Minister announced¹ that legislation would be introduced before the Scottish Parliament proposing a new LBTT supplement on purchases of additional residential properties in Scotland (such as buy-to-let properties and second homes) over £40,000.

5. The Scottish Government’s policy objective in introducing the supplement is to ensure that the opportunities for first time buyers to enter the housing market in Scotland remain as

¹ Scotland’s Spending Plans and Draft Budget 2016-17
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strong as they possibility can, aligning with LBTT policy on rates and bands. The supplement is also necessary to ameliorate the likely distortions which will arise in Scotland when new SDLT higher rates of tax for the purchase of additional residential properties are introduced in the rest of the UK from 1 April 2016. The absence of a similar LBTT supplement could make it more attractive to invest in buy-to-let properties and second homes (and in particular those properties at the lower end of the market) in Scotland compared to other parts of the UK, making it difficult for first time buyers in Scotland to purchase a main residence.

6. Subject to approval by the Scottish Parliament, the LBTT supplement will come into effect from 1 April 2016 and apply to the total purchase price of an additional residential property purchase above £40,000 (the point at which a buyer is required to make an LBTT return). An additional home purchased for £35,000 would therefore attract no LBTT, but an additional home purchased for £40,000 or more would pay 3% on the total purchase price. The table below provides a full breakdown of the current LBTT rates as well as the new supplement:

Table 1 - Residential property rates

<table>
<thead>
<tr>
<th>Property value</th>
<th>LBTT rate**</th>
<th>LBTT rate + supplement*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to £40,000</td>
<td>0%</td>
<td>0% + 3% = 3%</td>
</tr>
<tr>
<td>£40,000 to £145,000</td>
<td>0%</td>
<td>0% + 3% = 3%</td>
</tr>
<tr>
<td>£145,000 to £250,000</td>
<td>2%</td>
<td>2% +3% = 5%</td>
</tr>
<tr>
<td>£250,000 to £325,000</td>
<td>5%</td>
<td>5% + 3% = 8%</td>
</tr>
<tr>
<td>£325,00 to £750,000</td>
<td>10%</td>
<td>10% +3% = 13%</td>
</tr>
<tr>
<td>Over £750,000</td>
<td>12%</td>
<td>12% +3% =15%</td>
</tr>
</tbody>
</table>

* Supplement only payable on transactions above £40,000. The 3% supplement would be applied to the whole purchase price and not just the proportion of the price above £40,000.

** the supplement is capable of applying to transactions to which non-residential rates apply

7. The LBTT supplement will be chargeable if, at the settlement of a transaction involving the purchase of a dwelling in Scotland, the buyer owns more than one dwelling (whether in Scotland or another country). If the buyer does, and unless the additional dwelling purchased is a replacement of the buyer’s existing main residence, then the supplement will apply to the property just purchased. For example, if individual A owns a dwelling in which they live (their main residence) and then buys a new buy to let property, then the supplement will apply. If individual B owns both their main residence and a buy to let property then sells their main residence and purchases a new main residence, the supplement will not apply to the purchase of the new residence even though after settlement of the transaction the buyer owns two residential properties.

8. The supplement may apply to transactions involving the purchase of a dwelling where non-residential rates apply. Non-residential rates could apply to a purchase that includes a dwelling because such rates apply if the subject matter of a transaction consists of or includes an interest in land that is not residential2. For example, non-residential rates could apply to the purchase of a shop with a flat above it as the shop is an interest in land that is not residential.

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2 Section 24 of the 2013 Act.
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Non-residential rates might also apply because the buyer is purchasing 6 or more dwellings\(^3\). This means that it is sufficient for the subject-matter to include a dwelling; it does not have to consist solely of a dwelling. Where non-residential rates apply, the additional amount is equal to 3% of the chargeable consideration for the transaction which is attributable to the dwelling purchased.

9. The Bill follows the approach of previous devolved tax Bills in seeking to adhere to Adam Smith’s four maxims with regards to taxes: certainty, convenience, efficiency and proportionate to the ability to pay. The Bill also reflects the Scottish Government’s strong opposition to tax avoidance. The Bill has been drafted with the specialities of Scots law and practice in mind, for example the recognition of cohabitees by the Scottish Parliament in the Family Law (Scotland) Act 2006.

**Alternative approaches**

10. The Scottish Government considered three alternative approaches: (i) do not introduce a supplement; (ii) introduce a supplement of more than 3%; and (iii) introduce a supplement of less than 3%. Whilst alternative approach (i) may attract increased investment in the buy-to-let market in Scotland – particularly from purchasers in the rest of the UK where a new SDLT surcharge of 3% will apply from 1 April 2016 to purchases of additional residential properties over £40,000 – this approach could adversely impact on the availability of properties for first time buyers to purchase. Alternative approach (ii) may result in a reduction in investment in the buy-to-let market in Scotland as investors look to the UK property market out-with Scotland where the tax charges could be lower. This could have a detrimental impact on housing supply in terms of the private rented sector in Scotland. Alternative approach (iii) may have resulted in behaviour not dissimilar to that outlined in alternative approach (i) and could lead to the same outcome.

11. The Scottish Government decided not to proceed with any of these alternative approaches.

**Application of the supplement when the buyer is not an individual**

12. The LBTT supplement will apply to all purchases of residential properties by companies and other such non-natural persons, irrespective of whether or not they already own a residential property. A potential tax avoidance opportunity would be created if companies and similar bodies were allowed to purchase one residential property without the supplement applying to it, in the way individuals can.

**Alternative approaches**

13. An alternative approach would be to have no special rules for companies and non-natural persons. This would have simplified the measure but introduced an avoidance loophole whereby an individual buying a second residential property through a company could have avoided the supplement. This would also cut across the transparency of the Land Register. The Scottish Government decided not to proceed with this option.

\(^3\) Section 59(8) of the 2013 Act.
Married couples, civil partners and cohabitants

14. Married couples, those in a civil partnership and cohabitants (those living as if a married couple), along with their dependent children, will be treated for the purposes of the LBTT supplement as one economic unit. The supplement will therefore apply in a scenario where one spouse owns the existing marital home and then the other spouse purchases an additional residential property. In this scenario the married couple would end up with the same LBTT liability as a married couple jointly owning the home they currently live in and then jointly buying an additional residential property together.

Alternative approaches

15. The Scottish Government considered two alternative approaches in relation to rules for married couples, civil partners and cohabitants: (i) having no rules at all; and (ii) not including cohabitants in the definition of an economic unit.

16. In relation to approach (i), this would allow a married couple, civil partners and cohabitants to effectively own one residential property in one name and a second home in another without the supplement applying. In one respect this would allow each individual person the right to own one property without the supplement applying. However, this would lead to a significant amount of buy-to-let properties jointly owned by a husband and wife not being liable to the additional supplement, or would exclude them in the future when couples realised it was more beneficial for one person to buy one home and the other the second home rather than buying them both jointly (in which case the supplement would apply to the second purchase).

17. In relation to approach (ii), this would mean that those living together for a number of years (i.e. those living as if a married couple without formalising this relationship) would have beneficial treatment compared to those who did formalise their relationship. Not including cohabitants would have the benefit of simplifying the legislation slightly and cutting down the need for additional guidance and possible compliance, but the Scottish Government considers that foregoing this potential simplification is a price worth paying to ensure the equality of treatment between those who formalise their relationship and those who do not. The approach adopted is consistent with the Scottish Parliament’s recognition of cohabitee status in the Family Law (Scotland) Act 2006.

18. The Scottish Government decided not to proceed with either of these alternative approaches.

Reliefs

19. Representations have been made to the Scottish Government concerning reliefs from the supplement for various types of investment. The Scottish Government wishes to fully consider and reflect on both the Stage 1 written and oral evidence before confirming policy in this regard.
CONSULTATION

20. Given that the higher SDLT rates for additional homes are due to come into effect from 1 April, the policy objective of minimising any distortion brought about by the introduction of those higher rates of SDLT and the need for full Parliamentary scrutiny of this Bill, it was not possible to carry out a full public consultation.

21. A Stakeholder Reference Group has been convened and the first meeting took place on 8 January. Attendees took the opportunity to express their views on policy details and will be invited to provide similar input once the Bill is published. Attendees included representatives from Homes for Scotland, the Chartered Institute of Taxation, the Scottish Property Federation, the Law Society of Scotland, Scottish Land and Estates, Let Scotland, the Scottish Association of Landlords and the Royal Institution of Chartered Surveyors in Scotland.4

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

22. An Equality Impact Assessment document will be published separately by the Scottish Government in early course.

23. The Scottish Government considers that the Bill’s provisions do not discriminate on the basis of age, sex, race, gender reassignment, pregnancy and maternity, disability, marital or civil partnership status, religion or belief or sexual orientation. In particular relevant provisions have been drafted to ensure equality of treatment between married couples, civil partners and cohabitants. Any impacts arising from revised tax returns, guidance or other documentation, or IT or other systems relating to the supplement will be a matter for Revenue Scotland in terms of its duties under the Equality Act 2010. Revenue Scotland has a Staffing and Equalities Committee5.

Human rights

24. The Bill amends the Act and does not give rise to any human rights issues beyond the original Act. LBTT legislation already provides for a variable charge to tax depending on factors such as the legal nature of the transaction and the availability of reliefs. The Bill simply increases the tax liability in particular defined cases. ECHR jurisprudence affords the widest margin of appreciation to States in terms of their taxing function, save for cases where tax measures are of a penal, discriminatory or otherwise significantly disproportionate nature.

25. Revenue Scotland’s compliance and enforcement powers to administer the Bill’s provisions are already set out in the 2014 Act and these are not extended or otherwise modified by the Bill.

4 A note of the meeting is available at: http://www.gov.scot/Topics/Government/Finance/scottishapproach/devolvedtaxes/LBTT/LBTTStakeholderMeeting
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Island communities

26. Some island communities may have a higher than average proportion of second homes (i.e. they contain residential properties that are not the primary residence of the owner). This Bill will therefore prevent first time buyers in such communities being disadvantaged by investors seeking to purchase a residential property there as an additional residential home (i.e. a second home or a buy-to-let investment).

Local government

27. Local authorities will be subject to the LBTT supplement. There will not be any additional administrative or compliance burdens specifically affecting local government beyond those duties local authorities are already subject to under the 2013 & 2014 Acts to send in a tax return, keep records and such like.

Sustainable development

28. The effect of the Bill on the environmental, social and economic aspects of sustainable development are described below—

- Environmental effects: The Bill introduces an LBTT supplement on the purchase of certain dwellings and the environmental effect will be minimal as no overall incentives or reliefs from existing taxation for purchasing property have been provided for.
- Social effects: A strong and sustainable home ownership sector supports stable communities and reduces pressure on affordable housing. The Bill prevents first time buyers (and those replacing their existing main residence) from being disadvantaged by buyers of second homes and buy to let investors.
- Economic effects: The supplement provided for in the Bill could affect the short term return on investment for certain investors though longer term there will be no significant impact. Purchasing a second home will become relatively more expensive.

Privacy Impact

29. The Scottish Government does not anticipate any new privacy impacts arising from this Bill. There are existing data sharing arrangements arising out of the Scotland Act 2012 (Part 2 of Schedule 3) and the 2014 Act (Part 3; and article 4 of S.I. 2014/3294) that are likely to be used by Revenue Scotland, the Registers of Scotland and where appropriate HMRC to carry out compliance work relating to the proposed supplement.
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