Passage of the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill 2016

SPPB 232
Passage of the

Land and Buildings Transaction Tax (Amendment) (Scotland) Bill 2016

SP Bill 85 (Session 4), subsequently 2016 asp 11

SPPB 232

EDINBURGH: APS GROUP SCOTLAND
Contents

Foreword

*Introduction of the Bill*

Bill (As Introduced) (SP Bill 85) 1  
Explanatory Notes (and other accompanying documents) (SP Bill 85–EN) 13  
Policy Memorandum (SP Bill 85–PM) 39  
Delegated Powers Memorandum (SP Bill 85–DPM) 45

*Stage 1*

Stage 1 Report, Finance Committee 51  
  Extracts from the minutes of the Finance Committee 81  
  Official Report, Finance Committee, 3 February 2016 83  
  Written submissions to the Finance Committee 121  
  Adviser briefing to the Finance Committee 344  
  Report by the Delegated Powers and Law Reform Committee 373  
    Extract from the Minutes, Delegated Powers and Law Reform Committee, 2 February 2016 386  
    Official Report, Delegated Powers and Law Reform Committee, 2 February 2016 387  
Scottish Government response to the Stage 1 Report, 22 February 2016 390  
Scottish Fiscal Commission response to the Stage 1 Report, 7 March 2016 401  
Paper for the meeting of the Delegated Powers and Law Reform Committee, 23 February 2016, incorporating Scottish Government response to the Committee’s report at Stage 1 402  
Extract from the Minutes of the Parliament, 3 February 2016 406  
Extract from the Minutes of the Parliament, 23 February 2016 407  
Official Report, Meeting of the Parliament, 23 February 2016 408

*Stage 2*

Marshalled List of Amendments for Stage 2 (SP Bill 85–ML) 418  
Groupings of Amendments for Stage 2 (SP Bill 85–G) 424  
Extract from the Minutes, Finance Committee, 2 March 2016 426  
Official Report, Finance Committee, 2 March 2016 427

Bill (As amended at Stage 2) (SP Bill 85A) 435  
Revised Explanatory Notes (SP Bill 85A–EN) 449  
Supplementary Financial Memorandum (SP Bill 85A–FM) 464  
Supplementary Delegated Powers Memorandum (SP Bill 85A–DPM) 467

*After Stage 2*

Report on the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill as amended at Stage 2, Delegated Powers and Law Reform Committee 471
**Stage 3**

Marshalled List of Amendments selected for Stage 3 (SP Bill 85A–ML) 480
Groupings of Amendments for Stage 3 (SP Bill 85A–G (Timed)) 483
Extract from the Minutes of the Parliament, 8 March 2016 484
Official Report, Meeting of the Parliament, 8 March 2016 485

Bill (As Passed) (SP Bill 85B) 499
Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available free of charge on the Parliament’s website (www.parliament.scot).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Parliament agreed, by agreeing to the variation and suspension of various Standing Order Rules, to consider this Bill on an expedited timetable. An extract of the minutes of the meeting of the Parliament on 3 February 2016, at which this was decided, is included in this volume.

The oral and written evidence received by the Finance Committee at Stage 1, including the minutes of the meeting during which the oral evidence was received, were originally published on the web only. That material is included in this volume after the Stage 1 Report.

The Finance Committee’s Stage 1 Report did not include material relating to the Delegated Powers and Law Reform Committee’s consideration of the delegated powers provisions in the Bill. All material relating to consideration by that Committee is included in this volume.
At its meeting on 23 February 2016, the Delegated Powers and Law Reform Committee considered the Scottish Government's response to its report at Stage 1. The Committee noted the response without debate and no extracts from the minutes or the Official Report of that meeting are, therefore, included in this volume.

The Delegated Powers and Law Reform Committee considered the delegated powers in the Bill after Stage 2, and agreed its report without debate. No extracts from the minutes or the Official Report of the relevant meeting of the Committee are, therefore, included in this volume.
CONTENTS

Section
1 Land and buildings transaction tax: second homes etc.
2 Consequential amendments
3 Transitional provision: application of this Act
4 Ancillary provision
5 Commencement
6 Short title
Land and Buildings Transaction Tax (Amendment) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to amend the Land and Buildings Transaction Tax (Scotland) Act 2013 to make provision about an additional amount of tax to be chargeable in respect of certain transactions relating to dwellings.

1 Land and buildings transaction tax: second homes etc.

5 (1) The Land and Buildings Transaction Tax (Scotland) Act 2013 is amended as follows.

(2) After section 26 insert—

“26A Additional amount: transactions relating to second homes etc.

Schedule 2A makes provision about an additional amount of tax chargeable in respect of certain chargeable transactions.”.

10 (3) After schedule 2 insert—

“SCHEDULE 2A

(introduced by section 26A)

ADDITIONAL AMOUNT: TRANSACTIONS RELATING TO SECOND HOMES ETC.

PART 1

OVERVIEW

Overview

1 (1) This schedule makes provision about an additional amount of tax chargeable in respect of certain chargeable transactions.

(2) It is arranged as follows—

20 Part 2 identifies the transactions to which this schedule applies,

Part 3 sets out the additional amount of tax,

Part 4 contains provision about the application of this schedule in relation to certain types of buyer,

Part 5 provides for repayment of the additional amount of tax in certain cases,
Part 6 contains special rules about the meaning of ownership of dwellings for the purposes of this schedule,

Part 7 contains general provision including powers to modify this schedule.

**PART 2**

**TRANSACTIONS TO WHICH THIS SCHEDULE APPLIES**

*Transactions relating to second homes etc.*

2 (1) This schedule applies to a chargeable transaction if the following conditions are satisfied—

(a) the main subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling,

(b) at the end of the day that is the effective date of the transaction, the buyer owns more than one dwelling, and

(c) the buyer is not replacing the buyer’s only or main residence.

(2) A buyer is replacing the buyer’s only or main residence if—

(a) during the period of 18 months ending with the effective date of the transaction, the buyer has disposed of the ownership of a dwelling,

(b) that dwelling was the buyer’s only or main residence at any time during the period of 18 months, and

(c) on the effective date of the transaction, the buyer intends to occupy the dwelling that is or forms part of the main subject-matter of the transaction as the buyer’s only or main residence.

*Transactions where buyer is a non-individual etc.*

3 (1) This schedule applies to a chargeable transaction if the following conditions are satisfied—

(a) the main subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling, and

(b) the buyer—

(i) is not an individual, or

(ii) is an individual and sub-paragraph (2) applies.

(2) This sub-paragraph applies if the acquisition is made in the course of a business of the individual that consists of or includes acquiring dwellings.
PART 3
THE ADDITIONAL AMOUNT

Additional amount

4 (1) Where this schedule applies to a chargeable transaction, the amount of tax chargeable in respect of the transaction (as determined under section 25(1) or 26(1)) is increased by the additional amount.

(2) The additional amount is an amount equal to 3% of the relevant consideration.

(3) The relevant consideration is—

(a) in a case where the transaction is a residential property transaction, the chargeable consideration for the transaction, or

(b) in a case where the transaction is a non-residential property transaction, so much of the chargeable consideration for the transaction as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of the dwelling or dwellings that form part of the subject-matter of the transaction.

PART 4
CERTAIN TYPES OF BUYER

Joint buyers

5 (1) This paragraph applies to a chargeable transaction which satisfies the condition in paragraph 2(1)(a) or 3(1)(a) if there are two or more buyers who are or will be jointly entitled to ownership of the dwelling.

(2) The conditions set out in paragraph 2(1)(b) and (c) or, as the case may be, 3(1)(b) are satisfied if they are satisfied in relation to any one of, or more than one of, the buyers.

Spouses, civil partners, cohabitants and children

6 (1) For the purposes of paragraph 2(1)(b), a dwelling which is owned by—

(a) the buyer’s spouse or civil partner,

(b) the buyer’s cohabitant,

(c) a person aged under 16 who is a child of—

(i) the buyer,

(ii) the buyer’s spouse or civil partner, or

(iii) the buyer’s cohabitant,

is to be treated as being owned by the buyer.

(2) Sub-paragraphs (1)(a) and (1)(c)(ii) do not apply if the buyer and the buyer’s spouse or civil partner have separated.

(3) For the purposes of sub-paragraph (2), the parties have separated if—

(a) they no longer live together, and

(b) they do not intend to live together again.
(4) For the purposes of sub-paragraphs (1)(b) and (1)(c)(iii), a person is the buyer’s cohabitant if the two of them live together as though married to one another.

Trustees in certain trusts

7 (1) This paragraph applies to a chargeable transaction which satisfies the condition in paragraph 2(1)(a) if—

(a) the buyer is acting as trustee of a settlement, and

(b) the beneficiary under the settlement has a relevant interest in a dwelling forming part of the trust property.

(2) In paragraphs 2(1)(b) and (c), 2(2)(b) and (c), 5, 6 and 8(1)(b) and (c), references to the buyer are to be read as if they were references to the beneficiary.

(3) In paragraphs 2(2)(a) and 8(1)(a), references to the buyer are to be read as including references to the beneficiary.

(4) A beneficiary under a settlement has a relevant interest in a dwelling forming part of the trust property if, under the terms of the settlement, the beneficiary is entitled to—

(a) occupy the dwelling for life,

(b) income earned in respect of the dwelling, or

(c) repayment of the capital value of the dwelling.

PART 5

Repayment of the Additional Amount

Repayment of additional amount in certain cases

8 (1) Sub-paragraph (2) applies in relation to a chargeable transaction to which this schedule applies by virtue of paragraph 2 if—

(a) within the period of 18 months beginning with the day after the effective date of the transaction, the buyer disposes of the ownership of a dwelling (other than one that was the main subject-matter of the chargeable transaction),

(b) that dwelling was the buyer’s only or main residence at any time during the period of 18 months ending with the effective date of the transaction, and

(c) the dwelling that was the main subject-matter of the transaction has been occupied as the buyer’s only or main residence.

(2) Where this sub-paragraph applies—

(a) the chargeable transaction is to be treated as having been exempt from the additional amount, and

(b) the buyer may take one of the steps mentioned in sub-paragraph (3).

(3) The steps are—
(a) within the period allowed for amendment of the land transaction return, amend the return accordingly, or
(b) after the end of that period (if the land transaction return is not so amended), make a claim to the Tax Authority under section 107 of the Revenue Scotland and Tax Powers Act 2014 for repayment of the amount overpaid.

(4) For the period allowed for amendment of returns, see section 83 of the Revenue Scotland and Tax Powers Act 2014.

**PART 6**

**OWNERSHIP OF DWELLINGS**

What counts as a dwelling owned by a person?

9 (1) This paragraph applies to determine what counts as a dwelling owned by a person for the purposes of this schedule.

(2) Dwellings situated outside Scotland (as well as such property in Scotland) are to be counted.

(3) A dwelling with a market value of less than £40,000 is not to be counted.

Deemed ownership: cases where title is not yet registered etc.

10 (1) This paragraph applies to determine, for the purposes of this schedule, when a person owns any dwelling where ownership of the dwelling is or has been the main subject-matter or part of the main subject-matter of a land transaction.

(2) Where the person is the buyer in relation to the transaction, the person is to be treated for the purposes of this schedule as owning the dwelling as from the end of the day that is the effective date of the transaction.

(3) Where the person is the seller in relation to the transaction, the person is to be treated for the purposes of this schedule as ceasing to own the dwelling as from the end of the day that is the effective date of the transaction.

(4) In the application of this paragraph to a dwelling situated in England, Wales or Northern Ireland, “land transaction” and “effective date” have the same meanings as they have in Part 4 of the Finance Act 2003 (stamp duty land tax).

(5) In the application of this paragraph to a dwelling situated outside the United Kingdom—

(a) “land transaction” means any transaction for the transfer of ownership of the dwelling, and

(b) “effective date” means the date of settlement or completion of the transaction (or of any event that is equivalent to settlement or completion of the transaction).

Deemed ownership: beneficiaries under certain trusts

11 (1) This paragraph applies where—

(a) a person is the beneficiary under a settlement, and
(b) under the terms of the settlement, the beneficiary has a relevant interest in any dwelling forming part of the trust property.

(2) For the purposes of this schedule, the beneficiary is to be treated as the owner of the dwelling.

(3) A beneficiary under a settlement has a relevant interest in a dwelling forming part of the trust property if, under the terms of the settlement, the beneficiary is entitled to—

(a) occupy the dwelling for life,

(b) income earned in respect of the dwelling, or

(c) repayment of the capital value of the dwelling.

Deemed ownership: joint owners and owners of shares

12 (1) This paragraph applies where two or more persons are jointly entitled to the ownership of a dwelling.

(2) For the purposes of this schedule, each of the persons is to be treated as the owner of the dwelling.

(3) In the application of this paragraph to a dwelling situated in England, Wales or Northern Ireland, “jointly entitled” has the meaning given in section 121 of the Finance Act 2003 (minor definitions).

(4) In the application of this paragraph to a dwelling situated outside the United Kingdom, “jointly entitled” means having an interest equivalent to being jointly entitled within the meaning of this Act or the Finance Act 2003.

Dwellings outside Scotland: what counts as “ownership”

13 (1) In the case of a dwelling situated in England, Wales or Northern Ireland, a person owns the dwelling for the purposes of this schedule if the person has a major interest in the dwelling within the meaning of section 117 of the Finance Act 2003 (meaning of “major interest” in land).

(2) In the case of a dwelling situated outside the United Kingdom, a person owns the dwelling for the purposes of this schedule if the person has an interest in it that is equivalent to—

(a) ownership in Scotland, or

(b) a major interest within the meaning of the Finance Act 2003.

(3) References in this schedule to “ownership” and “acquisition of ownership” are to be read accordingly.

Part 7

General provision

Power of Scottish Ministers to modify schedule

14 (1) The Scottish Ministers may by order amend paragraph 4(2) so as to substitute, for the percentage figure for the time being specified there, a different percentage figure.
(2) The Scottish Ministers may by order amend paragraph 9(3) so as to substitute, for the figure for the time being specified there, a different figure.

(3) The Scottish Ministers may by order modify this schedule so as to make provision for or about reliefs from the additional amount and, in particular, may—
   (a) add a relief,
   (b) modify any relief,
   (c) remove any relief.

(4) An order under sub-paragraph (3) may modify any other enactment that the Scottish Ministers consider appropriate.

Interpretation

15 (1) In this schedule, “settlement” means a trust that is not a bare trust within the meaning given in paragraph 19 of schedule 18.

(2) Part 6 of schedule 5 (what counts as a “dwelling”) applies for the purposes of this schedule as it applies for the purposes of schedule 5.”.

2 Consequential amendments

(1) In the Land and Buildings Transaction Tax (Scotland) Act 2013—
   (a) in section 25(3) (amount of tax chargeable), before paragraph (a) insert—
      “(za) schedule 2A (additional amount: transactions relating to second homes etc.),”,
   (b) in section 26(4) (amount of tax chargeable: linked transactions), before paragraph (a) insert—
      “(za) schedule 2A (additional amount: transactions relating to second homes etc.),”,
   (c) in section 68 (subordinate legislation)—
      (i) in subsection (2), after paragraph (j) insert—
      “(ja) paragraph 14(3) of schedule 2A,”,
      (ii) in subsection (5), after “The order is” insert “an order under paragraph 14(1) of schedule 2A or”.

(2) In section 108(3) of the Revenue Scotland and Tax Powers Act 2014 (claim for repayment if order changing tax basis not approved), in column 1 of the table, in the entry for the LBTT(S) Act 2013, after paragraph (a) insert—
      “(aa) an order under paragraph 14(1) of schedule 2A,”.

3 Transitional provision: application of this Act

(1) This Act applies in relation to a chargeable transaction where—
   (a) the contract for the transaction was entered into on or after 16 December 2015, and
   (b) the effective date of the transaction is on or after the day on which section 1 comes into force.
(2) For the purposes of this section, “chargeable transaction”, “contract” and “effective date” have the same meanings as in the Land and Buildings Transaction Tax (Scotland) Act 2013.

4 Ancillary provision

5 (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with, or for giving full effect to, this Act.

(2) Regulations under subsection (1) may—
   
   (a) modify any enactment (including this Act),

   (b) make different provision for different purposes.

(3) Regulations under subsection (1)—
   
   (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,

   (b) otherwise, are subject to the negative procedure.

15 5 Commencement

(1) This section and sections 4 and 6 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on whichever is the later of—

   (a) the day after Royal Assent,

   (b) 1 April 2016.

20 6 Short title

The short title of this Act is the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016.
An Act of the Scottish Parliament to amend the Land and Buildings Transaction Tax (Scotland) Act 2013 to make provision about an additional amount of tax to be chargeable in respect of certain transactions relating to dwellings.

Introduced by: John Swinney
On: 27 January 2016
Bill type: Government Bill
These documents relate to the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (SP Bill 85) as introduced in the Scottish Parliament on 27 January 2016

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

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill introduced in the Scottish Parliament on 27 January 2016:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government statement on legislative competence; and
- the Presiding Officer’s statement on legislative competence.

A Policy Memorandum is published separately as SP Bill 85–PM.
EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (“the Bill”) is a Bill to amend the Land and Buildings Transaction Tax (Scotland) Act 2013 (“the 2013 Act”).

   The 2013 Act imposes a tax on transactions involving the acquisition of chargeable interests in land in Scotland (for example, a standard house purchase) and the Bill will increase the amount of tax for certain transactions.

   The tax is known as Land and Buildings Transaction Tax or LBTT and is sometimes referred to informally as “Stamp Duty”\(^1\). LBTT is administered by Revenue Scotland, with assistance from the Registers of Scotland, under the Revenue Scotland and Tax Powers Act 2014 (“the 2014 Act”). LBTT is a self-assessed tax and registration of title can generally not be obtained unless a tax return has been made and arrangements satisfactory to Revenue Scotland have been made for payment of any tax.

4. Since being enacted in 2013, the 2013 Act has been amended by—

   • paragraph 9 of schedule 4 to the 2014 Act;
   • the Land and Buildings Transaction Tax (Qualifying Public or Educational Bodies) (Scotland) Amendment Order 2014;
   • the Land and Buildings Transaction Tax (Addition and Modification of Reliefs) (Scotland) Order 2015; and
   • the Land and Buildings Transaction Tax (Sub-sale Development Relief and Multiple Dwellings Relief) (Scotland) Order 2015.

5. Therefore the amendments provided for in the Bill, as further described below, are additional to these amendments already in effect. It is proposed that the new amendments will be in force for 1 April 2016 for land transactions with an effective date on or after that date, unless missives were concluded before 16 December 2015 which was the date when the Deputy First Minister announced the additional amount of tax to the Scottish Parliament as part of the Scottish Government Budget 2016-17 statement.

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\(^1\) It is important to note however that, strictly, Stamp Duty is a separate and unrelated reserved tax administered by Her Majesty’s Revenue and Customs (HMRC).
6. Since the 2014 Act already contains all of the powers required for Revenue Scotland to administer the additional amount of tax provided for in the Bill, and carry out compliance work, the Bill makes only consequential amendments to that Act. Part 5 of the 2014 Act, for example, sets out the Scottish General Anti-avoidance Rule and this would apply to tax avoidance concerning the additional tax.

THE BILL

Overview

7. The Bill comprises 6 sections, of which section 1 is the principal measure, introducing a new schedule 2A into the 2013 Act. Within schedule 2A—

- Part 2 identifies the transactions to which schedule 2A applies,
- Part 3 sets out the additional amount of tax,
- Part 4 contains provision about the application of schedule 2A in relation to certain types of buyer,
- Part 5 provides for repayment of the additional amount of tax in certain cases,
- Part 6 contains special rules about the meaning of ownership of dwellings for the purposes of schedule 2A,
- Part 7 contains general provision including powers to modify schedule 2A.

8. The drafting approach employed means that for the most standard residential property transaction – where an individual or couple replace their main residence – the 2013 Act will apply exactly as it would in the absence of the Bill, and therefore the main body of the 2013 Act is not substantively affected. Where the new provisions are in issue, tax agents will know to look to schedule 2A for all relevant provisions concerning the additional tax.

9. For more general guidance on the 2013 Act, see the Explanatory Notes to that Act as passed² and Revenue Scotland’s detailed legislative guidance for LBTT.³

Operation of additional tax provisions

Example: Operation of additional tax provisions in relation to a purchase of second home

Note: references to provisions of legislation are references to provisions of the 2013 Act as amended by the Bill

Justin and Brenda, a married couple, purchased their first home in the later part of 2015 and the transaction was subject to LBTT. Justin and Brenda now propose to buy a second home for £105,000 in the later part of 2016, of which £5,000 is apportioned to moveables such as curtains. But for the additional amount of tax there would be no LBTT payable because chargeable

consideration of £100,000 (section 17 and schedule 2) is within the nil rate band for residential property transactions\(^4\).

The additional amount applies because (i) the main subject-matter of the transaction (section 61) consists of or includes the acquisition of ownership of a dwelling (Part 6 of schedule 5), (ii) at the end of the effective date (the tax point; section 63) Justin and Brenda own more than one dwelling, and (iii) Justin and Brenda are not replacing their existing home (paragraph 2 of new schedule 2A). Because Justin and Brenda are married, the additional tax applies irrespective of whether title to the original and new houses are in the name of both Justin and Brenda, or in the name of one or the other (paragraph 6 of new schedule 2A).

The additional amount of tax applicable is £3,000, being 3% of the chargeable consideration (paragraph 4 of new schedule 2A). Therefore the total amount of LBTT payable is £3,000.

Were the chargeable consideration £200,000 for this second home purchase the calculation would be as follows:

*Standard amount of LBTT payable*

The first £145,000 falls within the nil rate band

The remaining £55,000 falls within the first tax band charged at 2%

The standard amount of LBTT payable is therefore £1,100

*Additional amount of LBTT payable*

The whole chargeable consideration of £200,000 is charged at 3%

The additional amount of LBTT payable is therefore £6,000

*Total amount of LBTT payable*

The total amount of LBTT payable is the sum of the standard and additional amounts and is therefore £7,100

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COMMENTARY ON SECTIONS

Section 1 – Land and buildings transaction tax: second homes etc.

10. Section 1(2) of the Bill inserts a new section 26A (additional amount: transactions relating to second homes etc.) into the 2013 Act. This new section will appear at the end of Part 3 of the 2013 Act (calculation of tax and reliefs) and will appear after sections 25 and 26 (which concern the amount of LBTT chargeable without reference to the additional tax), and before section 27 concerning reliefs. Section 26A simply introduces new schedule 2A (additional amount: transactions relating to second homes etc.) which is inserted by section 1(3) of the Bill. The new schedule will appear after schedule 2 (chargeable consideration) and before schedule 3 (sale and leaseback relief; the first of a number of reliefs of general application to LBTT).

11. Because schedule 2A will form part of the 2013 Act, key concepts and defined terms applying throughout that Act will also apply to the schedule. There is, therefore, no need for the Bill to repeat or re-enact these things. Key concepts are set out in Part 2 of the 2013 Act and defined terms are referenced in Part 7 and schedule 20, subject to the more specific provision in schedule 2A which is described below.

Part 1 of schedule 2A - Overview

Paragraph 1 of schedule 2A – Overview

12. Paragraph 1 provides an overview of new schedule 2A (see paragraph 7 of these Explanatory Notes above).
These documents relate to the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (SP Bill 85) as introduced in the Scottish Parliament on 27 January 2016

Part 2 of schedule 2A – Transactions to which this schedule applies

Paragraph 2 of schedule 2A – Transactions relating to second homes etc.

13. Paragraph 2 is relevant to the standard case where the buyer of a dwelling is an individual or couple. It applies where the main subject-matter of a chargeable transaction consists of, or includes, the acquisition of ownership of a dwelling in Scotland. This would cover the standard purchase of a house or flat. Since paragraph 2 refers to “ownership” it does not cover the acquisition of a “qualifying lease” as defined in paragraph 3(3) of schedule 1 to the 2013 Act. Most qualifying leases (which are a form of long residential lease) converted to ownership in November 2015 by virtue of the Long Leases (Scotland) Act 2012 and the Scottish Government understands that only a handful remain in existence, and therefore for simplicity they are disregarded for the purposes of schedule 2A. Standard residential leases such as short assured tenancies are exempt from LBTT.

14. Paragraph 2 only applies the additional tax in schedule 2A where at the end of the day that is the effective date of the transaction (the tax point; usually the date of settlement) the buyer owns more than one dwelling and the buyer is not replacing the buyer’s only or main residence. Therefore where the buyer is replacing their only or main residence the additional amount of tax does not apply even though they may own two or more dwellings at the end of the effective date.

15. The meaning of replacing the buyer’s only or main residence is provided in sub-paragraph (2). This requires the buyer to have sold their previous residence within the 18 months preceding the effective date and requires the buyer to intend to occupy the new residence as their only or main residence.

16. In most cases where paragraph 2 applies, the transaction will be a residential property transaction within the meaning of section 24(3) of the 2013 Act. However, paragraph 2 potentially also applies in cases where the acquisition of a dwelling is taxed as a non-residential property transaction in terms of section 24(4) (so called “mixed” transactions) or 59(8) (the “six plus” rule for purchases of multiple dwellings).

17. Where it has not been possible to sell a previous main residence, but that happens within the 18 months following the effective date, paragraph 8 provides that repayment of the additional tax paid may be claimed.

18. Interpretative provisions of the 2013 Act relevant to paragraph 2—

“buyer” section 7
“chargeable transaction” section 15
“dwelling” Part 6 of schedule 5
“effective date” section 63
“main subject-matter” section 61
what counts as a dwelling owned/disposed of Part 6 of schedule 2A.

5 Tables of rates and bands for residential and non-residential property transactions respectively are set out in the Land and Buildings Transaction Tax (Tax Rates and Tax Bands) (Scotland) Order 2015 (S.S.I. 2015/126).
19. “Only or main residence” is not a defined term and in most cases where there are multiple dwellings it will be straightforward to determine which is the main residence, for example where additional residences are clearly holiday homes. Revenue Scotland will publish guidance on the factors it will look to for the smaller number of cases that are less straightforward.

**Paragraph 3 of schedule 2A – Transactions where buyer is a non-individual etc.**

20. Paragraph 3 is relevant to less standard cases where the buyer of a dwelling is not an individual or couple purchasing for their domestic interests. It applies therefore to purchases by companies and sub-paragraph (2) concerns purchases by individuals acting as sole traders.

21. The key difference from paragraph 2 is that the additional amount of tax in schedule 2A is relevant even where the legal buyer only owns one dwelling at the end of the effective date. In other words, the replacement of main residence test is not relevant. This is principally for anti-avoidance reasons because if schedule 2A were to apply to individuals only there would be an incentive for individuals to purchase dwellings via a corporate “wrapper” or “envelope”.

22. Interpretative provisions of the 2013 Act relevant to paragraph 3—
   - “buyer” section 7
   - “chargeable transaction” section 15
   - “dwelling” Part 6 of schedule 5
   - “main subject-matter” section 61.

23. Paragraph 3 of schedule 17 to the 2013 Act (chargeable interests treated as being held by partners etc.) applies to schedule 2A as it applies to the rest of the 2013 Act, where the buyer is a partnership within the meaning of paragraph 2 of schedule 17. Schedule 18 concerning trusts is also relevant.

**Part 3 of schedule 2A – The additional amount**

**Paragraph 4 of schedule 2A – The additional amount**

24. Sections 25 and 26 of the 2013 Act provide for the general charge to LBTT being calculated on a “progressive” basis according to tables of rates and bands. There is a nil rate band which currently extends to £145,000, though transactions of £40,000 or above are “notifiable” and a tax return must be sent in to Revenue Scotland. As mentioned, that will continue to be the end of the matter for the most standard residential property transaction where an individual or couple purchase their main residence, (i.e. when they replace their existing one or buy their first one)

25. Where paragraphs 2 or 3 of schedule 2A bring a transaction within schedule 2A an additional amount of tax is applied by paragraph 4, calculated on a “slab” basis. For “residential property transactions” this applies to the whole of the chargeable consideration of the

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6 The singular “individual” includes the plural “individuals” by virtue of section 22 of the Interpretation and Legislative Reform (Scotland) Act 2010.
transaction, therefore the first £40,000 of chargeable consideration is relevant to the calculation. For such transactions between £40,000 and £145,000 this will mean that LBTT liability will be increased from nil. The applicable tax rate is 3%.

26. As mentioned, in some cases a transaction that is a “non-residential property transaction” will be within schedule 2A in which case sub-paragraph (3) of paragraph 4 introduces a new concept of “relevant consideration” which is the proportion of the chargeable consideration attributable to the dwellings.

27. Interpretative provisions of the 2013 Act relevant to paragraph 4—
   “chargeable consideration” section 17 and schedule 2
   “chargeable transaction” section 15
   “non-residential property transaction” sections 24(4) and 59(8)
   “residential property transaction” section 24(3).

Part 4 of schedule 2A – Certain types of buyer

Paragraph 5 of schedule 2A – Joint buyers

28. Paragraph 5 deals with the not uncommon case where a couple buy a dwelling. Where the couple each take a share of the ownership of the title they will be treated for the purposes of paragraph 2 of schedule 2A as if they 100% own the dwelling. Paragraph 12 of schedule 2A is also relevant since it deems each person that is jointly entitled to the ownership of a dwelling to be the owner of the dwelling.

29. The same also applies to other cases where there are two or more buyers, in other words to cases where the jointly entitled persons are not a couple. For example, if siblings were to inherit equal shares in the ownership of a dwelling, each sibling would be treated as the 100% owner for the purposes of paragraph 2 of schedule 2A.

30. The effect of paragraph 5 of schedule 2A is that the conditions in paragraph 2(1)(b) and (c) and 3(1)(b) will be met if they are met in relation to any one of the joint buyers, even though they may not be met in relation to others. So if two people, A and B, who each currently own a dwelling which they occupy as their main residences, jointly buy a dwelling to move into as their new joint main residence and A sells his or her existing dwelling while B retains his or her existing dwelling to rent out, the additional amount is payable on the joint purchase because B is not replacing his or her main residence, even though A is. Similarly if one of the joint buyers is not an individual, then the conditions in paragraph 3(1)(b) will be met in the same way as if there was one buyer who was not an individual.

31. Interpretative provisions of the 2013 Act relevant to paragraph 5—
   “buyer” section 7
   “chargeable transaction” section 15
   “jointly entitled” section 65.
Paragraph 6 of schedule 2A – Spouses, civil partners, cohabitants and children

32. Amongst other things, paragraph 6 ensures that spouses (including same-sex spouses) are not treated differently according to how the titles for the couple’s property or properties are registered. For the purposes of paragraph 2 of schedule 2A, the same tax position will arise whether a first or second property is registered in one spouse’s name, in the other spouse’s, or jointly. Dwellings in the name of one spouse will count against the other for the purpose of determining whether the other partner owns more than one dwelling. Sub-paragraphs (2) and (3) disapply this rule where the couple have separated. Separation in this context does not require to be formal separation, of the types referenced in paragraphs 4 and 5 of schedule 1 to the 2013 Act, but such formal separation would be relevant evidence of practical separation.

33. Paragraph 6 treats civil partners in the same way as spouses and the same tax treatment is also afforded to cohabitants who are defined as persons living together as though married (and therefore this will include same-sex cohabitants). This is consistent with the approach taken in the Family Law (Scotland) Act 2006 and other Acts of the Scottish Parliament.

34. Further, paragraph 6 brings into consideration children of the buyer (or their partner) who are aged under 16 (the age of legal capacity in Scots law). This is to reflect that such a child’s ownership of residential property is practically the responsibility of their parent(s), and as an anti-avoidance measure to dis incentivise avoidance of the additional tax by artificially registering title in such a child’s name.

35. Interpretative provisions of the 2013 Act relevant to paragraph 6—

| “buyer”       | section 7 |
| “dwelling”    | Part 6 of schedule 5 |
| what counts as a dwelling owned | Part 6 of schedule 2A. |

36. In Scots law, reference to a person’s “child” includes reference to an adopted child by virtue of section 40 of the Adoption and Children (Scotland) Act 2007, and includes situations where parentage is determined by the Human Fertilisation and Embryology Act 2008.

Paragraph 7 of schedule 2A – Trustees in certain trusts

37. Paragraph 7 concerns certain cases where the buyer is acting as a trustee of a settlement, which is a trust other than a bare trust. Currently for the purposes of LBTT, only the beneficiaries of bare trusts are treated as the buyer when a trustee enters into a land transaction. Paragraph 7 extends that treatment for the purposes of paragraph 2 of schedule 2A, so that certain other beneficiaries, namely those with substantial rights (rights to occupy a dwelling, right to income from it or right to repayment of capital used to purchase a dwelling) over a trust are treated as the buyer in a chargeable transaction for the purpose of considering whether the conditions in paragraph 2(1)(b) and (c) are met in relation to the transaction. Account also needs to be taken of paragraph 11 of schedule 2A which treats certain trust property as being owned by the beneficiary.

38. Interpretative provisions of the 2013 Act relevant to paragraph 7—
These documents relate to the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (SP Bill 85) as introduced in the Scottish Parliament on 27 January 2016

“buyer” section 7
“chargeable transaction” section 15
“dwelling” Part 6 of schedule 5
“settlement” paragraph 18(1) of schedule 2A.

Part 5 of schedule 2A – Repayment of the additional amount

Paragraph 8 of schedule 2A – Repayment of additional amount in certain cases

39. Where additional tax has been paid by virtue of paragraph 2 of schedule 2A but the buyer is able to dispose of their former main residence within 18 months from the effective date, repayment may be claimed under paragraph 8. This will be particularly relevant in cases such as the former residence being in England and, through no fault of the vendor (who will be the buyer in the Scottish transaction), the “chain” has broken down and it proves impossible to sell the former main residence before buying the new Scottish main residence.

40. Paragraph 8 operates similarly to section 32 of the 2013 Act (less tax payable where contingency ceases or consideration ascertained) and repayment is claimed either by amending the land transaction return (within the amendment period which section 83(2) of the 2014 Act sets at 12 months) or by making a claim to Revenue Scotland under section 107 of the 2014 Act (where the amendment period has ended). Schedule 3 to the 2014 Act applies to claims made under section 107 of that Act.

41. Interpretative provisions of the 2013 Act relevant to paragraph 8—

“buyer” section 7
“chargeable transaction” section 15
“dwelling” Part 6 of schedule 5
“land transaction return” section 65
“main subject-matter” section 61
what counts as a dwelling owned/disposed of Part 6 of schedule 2A.

Part 6 of schedule 2A – Ownership of dwellings

Paragraph 9 of schedule 2A – What counts as a dwelling owned by a person?

42. Paragraph 9 clarifies that dwellings situated outside Scotland are to be counted for the purposes of schedule 2A, in particular paragraph 2. This ensures that a buyer’s property holdings throughout the world are taken into account when considering if the additional amount is payable, and not only those in Scotland or the rest of the UK.

43. Paragraph 9 also provides that a dwelling with a market value of less than £40,000 is disregarded. This is relevant to the property being purchased and also to the buyer’s other property holdings. £40,000 is the notification threshold for acquisitions of the ownership of land under section 30(1)(b) of the 2013 Act. Where a second home in Scotland is bought for the bona fide sum of £35,000 there is no ordinary LBTT payable, nor is any additional tax payable.
However, as mentioned, were the chargeable consideration £45,000 the additional amount will be payable on the whole of the consideration including the first £40,000 (resulting in a tax charge of £1,350). The relevant date for whether a dwelling has a value of £40,000 is the effective date of the chargeable transaction. In the case where the buyer is not selling an existing dwelling or dwellings, for example where they are not replacing their only or main residence, they must make a reasonable estimate of the market value of the dwelling or dwellings. This will have to be an estimate since in these circumstances the dwelling or dwellings are not on the market.

44. Interpretative provisions of the 2013 Act relevant to Paragraph 9—
   “dwelling” Part 6 of schedule 5
   “market value” section 62.

Paragraph 10 of schedule 2A – Deemed ownership: cases where title is not yet registered etc.

45. In Scots law, a buyer does not own a property until the change of ownership is registered in the Land Register. The corollary is that the seller is not divested of the title until that point. 7

46. Under the 2013 Act the tax point is known as the “effective date” and for a standard residential transaction is likely to be the date of settlement which is the date on which the buyer has paid the purchase price and receives the keys and a signed disposition from the buyer. 8 At this point the buyer will for practical purposes consider themselves to be the owner of the property (they will be able to move in) and the seller (who will no longer have keys) will consider themselves to no longer be the owner. Paragraph 10 treats the practical position as a deemed ownership – or non-ownership – for the purposes of schedule 2A, notwithstanding the technical position of Scots law. This is particularly relevant for the purposes of paragraph 2 of schedule 2A and the question of how many dwellings the buyer “owns” at the end of the effective date.

47. For properties situated in the rest of the UK the appropriate definitions from UK Stamp Duty Land Tax legislation are imported in sub-paragraph (4); and for properties outside of the UK the same concepts are applied across and to be read according to the prevailing law and practice there. For jurisdictions that follow the civil law there is likely to be similarity to Scots law in terms of registration being key to transferring ownership; and for jurisdictions that follow the common law there is likely to be a similarity to English law in terms of which equitable or beneficial interests can transfer at the point of completion.

48. Interpretative provisions of the 2013 Act relevant to Paragraph 10—
   “buyer” section 7
   “dwelling” Part 6 of schedule 5
   “effective date” section 63
   “main subject-matter” section 61.

7 Section 50 of the Land Registration (Scotland) Act 2002 states; “Registration of a valid disposition transfers ownership; An unregistered disposition does not transfer ownership.”
8 E-conveyancing is not at the time of writing widely adopted so these Explanatory Notes describe the Scottish conveyancing process according to the traditional paper-based process.
49. “Seller” takes its common sense meaning here and therefore would mean “vendor” in legal systems where that is the prevailing terminology. “Settlement” also takes its common meaning for the purposes of paragraph 10, and not the meaning in paragraph 13(1).

*Paragraph 11 of schedule 2A – Deemed ownership: beneficiaries under certain trusts*

50. Paragraph 11 concerns certain beneficiaries under settlements, which are trusts other than bare trusts. In the case of a settlement having a relevant interest (as defined in the paragraph) in trust property comprising a dwelling, the beneficiary will be treated as the owner of the dwelling for the purposes of considering whether the additional amount of LBTT applies to a chargeable transaction.

51. Interpretative provisions of the 2013 Act relevant to Paragraph 11—

<table>
<thead>
<tr>
<th>Term</th>
<th>Relevant Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>“dwelling”</td>
<td>Part 6 of schedule 5</td>
</tr>
<tr>
<td>“settlement”</td>
<td>paragraph 18(1) of schedule 2A.</td>
</tr>
</tbody>
</table>

*Paragraph 12 of schedule 2A – Deemed ownership: joint owners and owners of shares*

52. Paragraph 12 is separate to paragraph 5 of schedule 2A and applies even when the new purchase does not involve joint ownership or shares, so looks at the ownership of existing properties when consideration of the additional amount of tax applies.

53. A person might own a share in existing residential property through a “shared ownership” scheme, for example an 80% share with the other share being owned by a public authority or developer. A person might also own a part share for other reasons. Paragraph 12 treats such persons as if they were the 100% owner. Under a shared ownership arrangement this will reflect the practical reality and therefore the additional amount of tax would apply where the purchase of a new dwelling is not the replacement of the buyer’s sole or main residence.

54. Interpretative provisions of the 2013 Act relevant to Paragraph 12—

<table>
<thead>
<tr>
<th>Term</th>
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</tr>
</thead>
<tbody>
<tr>
<td>“dwelling”</td>
<td>Part 6 of schedule 5</td>
</tr>
<tr>
<td>“jointly entitled”</td>
<td>section 65.</td>
</tr>
</tbody>
</table>

*Paragraph 13 of schedule 2A – Dwellings outside Scotland; what counts as “ownership”*

55. Scots property law has been subject to legislative simplification in recent years such that forms of feudal ownership no longer exist and long residential leases analogous to “leasehold” title in the rest of the UK are extremely uncommon. Therefore “ownership” is today a straightforward concept in Scots law.

56. For the legal systems of England and Wales and Northern Ireland, ownership (broadly) may be in the form of “freehold” or “leasehold”. Paragraph 13 therefore invokes the appropriate UK Stamp Duty Land Tax concept of “major interest in land” to ensure that all forms of ownership in the rest of the UK are treated as ownership for the purposes of schedule 2A, in particular paragraph 2.
57. Since schedule 2A takes a global view of a person’s property holdings, sub-paragraph (2) applies the prevailing UK concepts across to foreign legal systems to be read according to the prevailing law and practice there. For jurisdictions that follow the common law there is likely to be a similarity to English law in terms of long residential leases being treated as practical.

58. Interpretative provisions of the 2013 Act relevant to paragraph 13—
   “dwelling” Part 6 of schedule 5

Part 7 of schedule 2A – General provision

Paragraph 14 of schedule 2A – Power of Scottish Ministers to modify schedule

59. Paragraph 14 confers on the Scottish Ministers power to modify certain aspects of schedule 2A by order. Sub-paragraph (1) confers power to vary by order the 3% figure in paragraph 4 of schedule 2A. Any order is subject to the provisional affirmative procedure provided for in section 68(4) to (6A) of the 2013 Act.

60. Sub-paragraph (2) confers power to vary by order the £40,000 figure in paragraph 9(3). Any order is subject to the negative procedure.

61. Sub-paragraph (3) confers power to make provision by order for or about relief from the additional amount, including provision adding, modifying or removing a relief. A relief of this nature would have no application to any ordinary amount of LBTT payable. As per the process for claiming the existing LBTT reliefs which is set out in section 27(2) and (2A) of the 2013 Act, it is likely that an order would require relief to be claimed in the first return made in relation to the transaction or, within the amendment period of 12 months, in an amendment of that return. Any order under sub-paragraph (3) is subject to the affirmative procedure and may modify enactments other than schedule 2A.

Section 2 – Consequential amendments

62. Section 2 of the Bill makes amendments to the 2013 Act and the 2014 Act in consequence of the provisions of new schedule 2A described. In particular, sub-section (2) amends section 108(3) of the 2014 Act to provide for the legal consequences if an order increases the percentage of additional tax but that order is not approved by the Scottish Parliament.

Section 3 – Transitional provision: application of this Act

63. The amendments to the 2013 Act provided for in the Bill do not apply to a chargeable transaction where the missives for the transaction were concluded before 16 December 2015, the date of the Deputy First Minister’s announcement of the additional amount of tax. Where

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9 The provisional affirmative procedure is one of the less common Parliamentary procedures – see the Delegated Powers and Law Reform Committee’s explanation at: http://www.scottish.parliament.uk/S4_SubordinateLegislationCommittee/Guide_to_Scottish_Statutory_Instruments.pdf.
These documents relate to the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (SP Bill 85) as introduced in the Scottish Parliament on 27 January 2016

missives have been concluded on or after 16 December 2015 the new provisions will apply if the effective date is on or after the principal commencement date for the Bill.

64. Interpretative provisions of the 2013 Act relevant to section 3:
   “chargeable transaction” section 15
   “contract” section 65
   “effective date” section 63.

Section 4 – Ancillary provision

65. Section 4 confers on the Scottish Minister a power to make ancillary provision by regulations in connection with the Bill. The regulations will be subject to negative procedure unless they involve textual amendments to primary legislation in which case affirmative procedure will apply. A comparable power already exists in section 67 of the 2013 Act.

Section 5 – Commencement

66. Sections 4 and 6 (short title) of the Bill come into force on the day after Royal Assent. The other provisions of the Bill (which would include section 1 inserting new schedule 2A) come into force on the same date or – if later – 1 April 2016. This date is referred to as the “principal commencement date” in the Explanatory Note to section 3 above.
FINANCIAL MEMORANDUM

INTRODUCTION

1. This Financial Memorandum relates to the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (“the Bill”). It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament. The Memorandum summarises the financial implications of the Bill. It should be read in conjunction with the Bill and the other accompanying documents.

BACKGROUND


3. The Deputy First Minister announced in his Budget statement on 16 December 2015 that, subject to Parliament’s agreement to the necessary legislation, the Scottish Government intended to levy a 3% LBTT supplement payable on the total price of additional residential properties, such as for buy-to-let or a second home, applicable on purchases of £40,000 or more with the aim being to have this measure in place for 1 April 2016. The Bill, therefore, makes provision for this policy intent (see Policy Memorandum) through the insertion of a new schedule - schedule 2A (Additional amount: transactions relating to second homes etc.) of the 2013 Act.

OVERVIEW

4. The Bill comprises six sections of which section 1 is the principal measure, introducing a new schedule 2A into the 2013 Act. Within schedule 2A—

- Part 2 identifies the transactions to which schedule 2A applies,
- Part 3 sets out the additional amount of tax,
- Part 4 contains provision about the application of schedule 2A in relation to certain types of buyer,
- Part 5 provides for repayments from the additional amount of tax in certain cases,
- Part 6 contains special rules about the meaning of ownership of dwellings for the purposes of schedule 2A,

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1 The other two are the Landfill Tax (Scotland) Act 2014 and the Revenue Scotland and Tax Powers Act 2014
2 Official Report: Meeting of the Parliament on 16 December 2015
These documents relate to the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (SP Bill 85) as introduced in the Scottish Parliament on 27 January 2016

- Part 7 contains general provision including powers to modify schedule 2A.

GENERAL

5. The financial implications of this Bill have been considered under the following headings:
   - The financial implications for the Scottish Administration (paragraphs 6-25).
   - The costs on local authorities (paragraph 26).
   - The costs on other bodies, individuals and businesses (paragraphs 27-31).

Financial implications for the Scottish Administration

6. The financial implications for the Scottish Administration are considered under two sub-headings:
   i) The benefits to the Scottish budget which will arise as a result of the tax revenue raised from the introduction of the supplement.
   ii) The administrative and compliance costs that Revenue Scotland are likely to incur as the Tax Authority responsible for collecting LBTT.

(i) Tax revenues

7. The Scottish Government prepared and published alongside the 2016-17 Draft Budget, five-year estimates of the revenues which the LBTT supplement is expected to generate. The Scottish Fiscal Commission had reviewed this methodology and concluded in its Report on Draft Budget 2016-17\(^3\) (December 2015) that the estimates were reasonable, but emphasised “the uncertainties behind our assessment of reasonableness in terms of data available for the second homes and buy-to-let market and the challenge of estimating the size of the tax base”. Full details of the forecasting methodology are published in the Scottish Government’s *Devolved Taxes – Forecasting Methodology* paper (December 2015)\(^4\).

8. The Scottish Government estimates that the net revenue raised by the LBTT supplement in 2016-17, as proposed in this Bill, will be in the range of £17 million to £29 million. For the purposes of the Scottish Budget, a central estimate of £23 million has been assumed. The net revenue generated is expected to increase to between £41 million and £66 million by 2020-21. A summary of annual revenue estimates for the period 2016-17 to 2020-21 can be found at Table 1 below.

9. The upper and lower ranges for these estimates in respect of 2016-17 are based on two scenarios for the volume of transactions, explained further below. The estimates represent the anticipated net impact on LBTT revenues – comprising the gross revenue expected to be generated from the supplement, less an estimate of the reduction in LBTT revenues from forestalling effects resulting from transactions that would otherwise be subject to the supplement being settled before the end of 2015-16 before the supplement is due to take effect. For years

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\(^3\) Scottish Fiscal Commission: Report on Draft Budget 2016-17
after 2016-17, there will be no forestalling effect and so no allowance is made in the revenue estimates. The estimates also take account of expected behavioural responses to the introduction of the supplement where it is possible to quantify these. These behavioural effects apply in all years.

Table 1 – Estimated net revenue impact of LBTT supplement 2016-21

<table>
<thead>
<tr>
<th>Year</th>
<th>Scenario 1 – 8,500 additional property transactions £ million</th>
<th>Scenario 2 – 12,500 additional property transactions £ million</th>
<th>Central estimate £ million</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016-17</td>
<td>17</td>
<td>29</td>
<td>23</td>
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</tr>
<tr>
<td>2020-21</td>
<td>41</td>
<td>66</td>
<td>54</td>
</tr>
</tbody>
</table>

Modelling approach

10. Estimated revenues are the product of two variables – the number of taxable transactions (purchases) and the distribution of “consideration” or price across the transactions to which the tax is applied. There are no datasets available to provide reliable information on the historic number of purchases of additional properties in Scotland, so it has been necessary to identify and use proxy datasets. Additional residential properties primarily fall into two categories – buy-to-let (BTL) investments and second homes. In recognition of the uncertainty inherent in the lack of data, two scenarios have been prepared to reflect lower and upper estimates of the likely volume of transactions.

11. The volume of BTL transactions has been estimated using information on the volume of BTL mortgages issued in the UK as a whole. The Scottish share of the UK total has been estimated by applying the Scottish share of the UK private rented sector from Scottish Census data. These sources imply a range of transactions that would be subject to the supplement of between 7,000 and 11,000 in 2016-17.

12. There were 27,879 second homes in Scotland in 2014\(^5\). In order to estimate the number of second home transactions in 2016-17, it is assumed that the annual turnover rate in this segment of the market is in line with the wider residential market (around 5%), which implies around 1,500 transactions per year.

13. The total estimated range of additional property transactions in 2016-17 is therefore in the range of 8,500 to 12,500 before allowing for any behavioural effects (e.g. any reduction in the number of transactions as a consequence of applying the supplement). BTL properties form between 82% and 88% of this total. Revenue estimates based on the lower and upper bounds of this range are described here as “scenario 1” and “scenario 2” respectively.

\(^5\) Council Tax Register for Scotland
14. UK level data on the value of BTL mortgages has been used to estimate the average price of additional transactions. This suggests that BTL mortgages are on average 10% lower than the market as a whole but that the same loan to value (LTV) ratio applies to both BTL and overall mortgages. Anecdotal evidence suggests that second homes are priced at a similar or lower level than the market as a whole. Therefore, the revenue estimates assume that the price of additional transactions is on average 10% lower than the market as a whole.

15. These initial assumptions on transaction volumes and average price in respect of 2016-17 were input to the Scottish Government’s model for estimating revenues from residential LBTT. Estimates for future years assume that the initial levels for 2016-17 then grow in line with the general growth assumptions which underpin the pre-measures residential LBTT forecast in the Draft Budget and which is explained in full in the Scottish Government’s Devolved Taxes – Forecasting Methodology paper\(^6\) (December 2015).

16. Using this methodology, it is estimated that the LBTT supplement would generate revenue of between £45 million and £70 million in 2016-17, before taking account of behavioural effects including forestalling. The estimated range of revenues from the supplement before taking account of behavioural effects is expected to increase to between £65 million and £95 million by 2020-21. Five-year estimates of revenues before taking account of behavioural impacts are shown in Table 2 below (in the columns headed “static costing”).

**Behavioural analysis**

17. The LBTT supplement is expected to have a number of behavioural impacts which are likely to reduce anticipated revenues from both the new measure and from underlying residential LBTT revenues. These include one-off or temporary effects and longer-term market responses.

18. The modelling estimates the impact of three anticipated behavioural impacts which are detailed in Table 2 below—

- **Direct reduction in volume or price of additional home transactions** (estimated to reduce revenue from the supplement by between £8 million and £13 million in 2016-17) – there may be a substitution effect as a result of the supplement which results in a reduction in the number of properties purchased by buy-to-let investors, i.e. the same number of properties are purchased but some become main residences instead of purchases of additional properties. The assumption (subject to the point below regarding a 3% overall reduction in residential property transactions) is that houses put up for sale on the market will still be sold, but that they will be bought by buyers using the property as a main residence, rather than as a BTL investment. This would mean that pre 1 April 2016, LBTT residential revenues remain at existing levels, but these “substituted” transactions are not liable for the supplement and so do not generate additional revenue by the 3% charge. Separately there may also be a downward pressure on price levels in respect of additional properties, whereby the price that the buyer is willing to pay is reduced as a result of the introduction of the supplement (for which of course they would be liable). This direct reduction is labelled “behaviour change” in Table 2 below. These effects would be expected to persist in future years.

\(^6\) Scottish Government’s Devolved Taxes – Forecasting Methodology paper
These documents relate to the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (SP Bill 85) as introduced in the Scottish Parliament on 27 January 2016

- Reduction in overall transaction volumes (estimated to reduce revenue from residential LBTT rates and bands by around £7 million in 2016-17) – as well as a substitution effect, there may be a net reduction in the total number of residential property transactions as a result of the LBTT supplement, i.e. the reduction in BTL or second home purchases is not offset by new purchases of a main residence. In evaluating the impact of the introduction of the proposed higher rates of SDLT on the purchase of additional homes, the Office for Budget Responsibility estimated that overall transaction levels in England and Wales would reduce by 3% in 2016-17. This estimate has been run through the Scottish Government residential LBTT forecasting model to generate an estimated reduction in revenues of around £7 million in 2016-17. This estimated reduction in residential LBTT revenues is labelled “main LBTT” in Table 2 below.

- Forestalling (estimated to reduce total LBTT revenues by £13 million to £21 million in 2016-17 – the proposed introduction of the supplement was pre-announced in mid-December 2015 so there is an opportunity for buyers of additional properties to bring forward purchases to 2015-16 so that these purchases do not attract the supplement, thus minimising their tax burden. The Scottish Government estimates that such forestalling behaviours would reduce anticipated revenues from the supplement by between £8 million and £14 million in 2016-17 and would reduce pre-measures revenues from residential LBTT by between £5 million and £7 million in 2016-17. However, pre-measures LBTT revenue foregone in 2016-17 would be brought forward into 2015-16, increasing anticipated revenues from residential LBTT in the current financial year. Forestalling effects are one-off effects which coincide with the introduction of the tax so are calculated for 2016-17 only and shown in Table 2 below.

Total revenue estimates

19. A full breakdown of the estimated net revenue impact of the LBTT supplement from 2016-17 to 2020-21, including anticipated behavioural impacts, is provided at Table 2 below.

Table 2 – Breakdown of estimated net revenue impact of LBTT supplement 2016-21 including behavioural effects

<table>
<thead>
<tr>
<th>Estimated Final costing on LBTT Receipts from Introducing a 3% Flat Charge on Additional Property Purchases over £40,000 in 2016-17 to 2020-21 (£ Millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Scenario 1</strong></td>
</tr>
<tr>
<td>Static Costing</td>
</tr>
<tr>
<td>2016-17</td>
</tr>
<tr>
<td>2017-18</td>
</tr>
<tr>
<td>2018-19</td>
</tr>
<tr>
<td>2019-20</td>
</tr>
<tr>
<td>2020-21</td>
</tr>
</tbody>
</table>

The actual impact of the policy will depend on the behaviour of the BTL and second homes markets. In particular, a number of factors that are outwith the control of the Scottish
Government and not related to the LBTT supplement are likely to affect these markets, including any further action taken either by the Bank of England or UK financial regulators to reduce the attractiveness of BTL mortgages.

**ii) Revenue Scotland**

20. Revenue Scotland has provided estimated set-up and running costs related to the additional staff required and the non-staff products required for the implementation and subsequent collection and management of the LBTT supplement. These estimates are presented as ranges at present, subject to detailed planning work currently underway, and depend on the following assumptions—

- the supplement is introduced in April 2016.
- returns for transactions to which the supplement applies will be processed online, like existing LBTT returns.
- The proportion of returns relating to transactions to which the supplement applies that are submitted online will be the same as for all LBTT returns (i.e. at least 97.5%).
- All compliance work on the new supplement once in place will be carried out by Revenue Scotland staff.

21. The cost estimates have been prepared after applying an appropriate level of optimism bias. This is in line with good practice. For the majority of areas, a standard bias of 50% has been applied, which is consistent with other similar estimating processes carried out by the Scottish Government. A 75% bias was applied to ICT costs in recognition of the very limited period of time available to prepare cost estimates for ICT changes at this stage in the development of the change project.

22. Revenue Scotland already has in place a team of tax and compliance specialists recruited and trained to ensure the smooth collection and management of LBTT. Table 3 presents estimated set-up costs to enable Revenue Scotland to collect and manage the LBTT supplement from April 2016. Estimated ICT change costs are included, covering updates to the Scottish Electronic Taxation System (SETS) and the associated financial systems, to support online submission of returns for transactions to which the supplement applies. In addition to this, there is a requirement to update the tax calculators on the Revenue Scotland website, and change the data feed from Registers of Scotland to support compliance activities specifically relating to the new supplement.

23. Staff time will be required to develop the guidance for the new policy. Provision is also made for communications and training activities to ensure staff and stakeholders are fully informed of the changes. Finally, in addition to those staff, programme management staff will be allocated from the Revenue Scotland Change team to support the design and implementation of the introduction of the LBTT supplement. The majority of these costs are expected to fall in 2015/16, however some may fall into the subsequent financial year.
Table 3 – Set-up costs

<table>
<thead>
<tr>
<th>Function</th>
<th>Base estimate (£)</th>
<th>Optimism Bias</th>
<th>Maximum estimate (£)</th>
<th>Assumption</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICT</td>
<td>120,000</td>
<td>75%</td>
<td>210,000</td>
<td>Update required to online system (SETS); update to website calculators; data feed from RoS</td>
</tr>
<tr>
<td>Training and Comms</td>
<td>6,000</td>
<td>50%</td>
<td>9,000</td>
<td>Training and communications events/materials</td>
</tr>
<tr>
<td>Operational Design and Programme Delivery</td>
<td>110,000</td>
<td>50%</td>
<td>165,000</td>
<td>2xC2, 1xB3 1xB2, contractor (3 months)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>236,000</strong></td>
<td></td>
<td><strong>384,000</strong></td>
<td></td>
</tr>
</tbody>
</table>

24. Table 4 shows the estimated resource required each year to support the operations team (Administration, Compliance, Finance and Analysis teams) to collect and manage the supplement from 1 April 2016.

Table 4 – Running costs (annual)

<table>
<thead>
<tr>
<th>Function</th>
<th>Base Estimate</th>
<th>Optimum Bias</th>
<th>Maximum Estimate</th>
<th>Assumption</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operational Delivery costs</td>
<td>220,000</td>
<td>50%</td>
<td>330,000</td>
<td>1xA3, 2xB1, 2xB2, 0.5xC1 (and associated non-staff costs)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>220,000</strong></td>
<td></td>
<td><strong>330,000</strong></td>
<td></td>
</tr>
</tbody>
</table>

25. The additional running costs associated with administering and collecting the LBTT supplement will equate to between 0.8% and 1.9% of an estimated tax yield of £17 - £29m (2016/17). Revenue Scotland’s budget for 2016-17 has been set at a level which reflects the work associated with the LBTT supplement.

Costs on local authorities

26. Local authorities are subject to LBTT at present and will be subject to the LBTT supplement. It is not possible to estimate how much additional tax local authorities may be liable for as a result of the introduction of this supplement. Cost implications for them will depend on the extent to which they purchase residential property and the prices at which purchases are made. The Scottish Government is considering introducing relief which may be relevant to local authorities.

Costs on other bodies, individuals and businesses

27. As with local authorities, other bodies are subject to LBTT at present and will be subject to the supplement. The comments made at paragraph 26 in relation to estimating the additional tax payable are equally pertinent to other bodies.
28. As regards individuals and businesses, as set out in its Draft Budget 2016-17, the Scottish Government proposes introducing a LBTT supplement on the purchase of certain residential properties, such as BTL properties or second homes. This supplement will be 3% of the total price of the property for all relevant transactions with a price of £40,000 or above and will be levied in addition to the current LBTT rates (see Table 5 and worked example below). The supplement will be paid by individuals and businesses who enter into property transactions to which the supplement applies. Businesses will be subject to the supplement on their first purchase of a dwelling for the reasons further explained in paragraphs 12 and 13 of the Policy Memorandum. The Scottish Government is considering introducing relief which may be relevant to businesses.

Table 5 – 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>Above £145,000 to £250,000</td>
<td>2%</td>
<td>2% +3% = 5%</td>
</tr>
<tr>
<td>Above £250,000 to £325,000</td>
<td>5%</td>
<td>5% + 3% = 8%</td>
</tr>
<tr>
<td>Above £325,000 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 of £40,000 or above. The 3% supplement would be applied to the whole purchase price and not just the proportion of the price above £40,000.
**The supplement could be payable on transactions chargeable to non-residential rates that include the purchase of a dwelling.

Worked example

29. The supplement due on the purchase of a second residential property for £350,000, in comparison to the purchase of a first property for the same price, would be £10,500 (£18,850-£8,350) calculated as follows:

LBTT due on a first residential property of £350,000

£145,000 @ 0% = £0
£105,000 @ 2% = £2,100
£ 75,000 @ 5% = £3,750
£ 25,000 @10% = £2,500
Total LBTT due £8,350

LBTT due on a second residential property of £350,000

£40,000 @ 3% = £1,200
£105,000 (£145,000-£40,000) @ 3% = £3,150
£105,000 @ 5% = £5,520
£75,000 @8% = £6,000
£25,000 @13% =£3,250
Total LBTT due £18,850
These documents relate to the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (SP Bill 85) as introduced in the Scottish Parliament on 27 January 2016

The value of the supplement can also be expressed more simply as 3% of the entire purchase price of £350,000, which is £10,500.

30. The additional tax due by a purchaser, whether an individual or a business, will depend on whether the supplement is payable on the property purchase in question, and also on the price paid. Revenue Scotland’s website will be updated to include tax calculators; which will enable prospective property purchasers to obtain estimates there and then of the amount of supplement that they may have to pay in any transaction involving additional residential property.

31. The estimated average amount of the supplement per relevant transaction is subject to the same uncertainties as are discussed earlier in this Memorandum. Estimates set out above suggest that there will be between 8,500 and 12,500 transactions a year to which the supplement would apply (paragraph 13), yielding - on the basis of static costing and after applying predicted behavioural effects other than forestalling (excluded because forestalling applies only to the early part of year 1) - additional revenues of between £30m and £50m (paragraph 18). Taking midpoints of both transaction volume and estimated receipts indicates an average supplement value per relevant transaction of about £3,800. This is the closest approximation available to the average cost of the supplement to purchasers. However there will be a wide range of actual additional costs of the supplement depending on the price paid.
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 27 January 2016, the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney MSP) made the following statement:

“In my view, the provisions of the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 27 January 2016, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
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 announced\(^1\) 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
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

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</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 residential. 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.
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.

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4 A note of the meeting is available at: http://www.gov.scot/Topics/Government/Finance/scottishapproach/devolvedtaxes/LBTT/LBTTStakeholderMeeting
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.
LAND AND BUILDINGS TRANSACTION TAX (AMENDMENT) (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

BACKGROUND

3. The Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (“the Bill”) is a Bill to amend the Land and Buildings Transaction Tax (Scotland) Act 2013 (“the 2013 Act”). The 2013 Act imposes a tax on the acquisition of chargeable interests in land in Scotland (for example, a standard house purchase) and the Bill will increase the amount of tax for certain transactions concerning the purchase of a dwelling. The tax is known as Land and Buildings Transaction Tax or LBTT and is sometimes referred to informally as “Stamp Duty”\(^1\). LBTT is administered by Revenue Scotland, with assistance from the Registers of Scotland, under the Revenue Scotland and Tax Powers Act 2014 (“the 2014 Act”). LBTT is a self-assessed tax and registration of title can generally not be obtained unless a tax return has been made and arrangements satisfactory to Revenue Scotland have been made for payment of any tax.

APPROACH TO USE OF DELEGATED POWERS

4. The Government has had regard, when deciding where and how provision should be set out in subordinate legislation rather than on the face of the Bill, to:

- the need to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances (for example, changing market conditions);
- the need to make proper use of valuable Parliamentary time; and

\(^1\) It is important to note however that, strictly, Stamp Duty is a separate and unrelated reserved tax administered by Her Majesty’s Revenue and Customs (“HMRC”).
This document relates to the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (SP Bill 85) as introduced in the Scottish Parliament on 27 January 2016

- the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament (for example, tax avoidance).

5. In relation to the final bullet point is the strong stance the Scottish Government and Scottish Parliament have taken against tax avoidance, in particular through the enactment of Part 5 of the 2014 Act which provides for the Scottish General Anti-avoidance Rule (GAAR).

6. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

DELEGATED POWERS

Paragraph 14(1) within new schedule 2A inserted by section 1(3) – Power to amend percentage figure in paragraph 4(2) of schedule 2A

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: provisional affirmative procedure

Provision

7. Section 1(3) of the Bill introduces a new schedule 2A (additional amount: transactions relating to second homes etc.) into the 2013 Act. The new schedule makes provision about an additional amount of tax chargeable in respect of certain chargeable transactions, such as the purchase of a second home or a buy to let property.

8. Paragraph 4(2) of new schedule 2A provides that where an additional amount of tax is payable by virtue of that schedule (for example in a second home or buy to let situation) the additional amount is 3% of the relevant consideration (as defined in sub-paragraph (3)). The delegated power in paragraph 14(1) allows the Scottish Ministers to change that percentage figure.

Reason for taking power

9. The evolving Budgetary process within the Scottish Parliament now includes the Finance Secretary announcing within the draft Budget statement the Government’s proposals for rates and bands for the devolved taxes. At present, the devolved taxes are Land and Buildings Transaction Tax and Scottish Landfill Tax. The Parliament has provided in section 24(1) of the 2013 Act that rates and bands for LBTT to be made legally effective via Order, and the first such order was the Land and Buildings Transaction Tax (Tax Rates and Tax Bands) (Scotland) Order 2015. The Scottish Government considers that the 3% figure should also be variable on the same basis. Therefore a future Finance Secretary of a future Scottish Government could bring forward

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2 The position of local taxes and the Scottish Rate of Income Tax (which do not have the status of “devolved taxes”) is not directly relevant to this Note and is therefore not mentioned.
Choice of procedure

10. The Land and Buildings Transaction Tax (Tax Rates and Tax Bands) (Scotland) Order 2015 referred to was the first section 24(1) Order therefore, by virtue of section 68(2)(b) of the 2013 Act, it was subject to affirmative procedure. This reflected that the Parliament did not endorse any particular rates and bands on the face of the 2013 Act itself. By virtue of section 68(4) a second or subsequent section 24(1) Order will be subject to the provisional affirmative procedure, which gives a Finance Secretary a similar ability to a UK Chancellor to act quickly as is normal under UK tax practice under the Provisional Collection of Taxes Act 1968.

11. For the new power proposed, the Parliament will (if it passes the Bill with the 3% figure) have explicitly endorsed the first tax rate for the additional amount of tax. Therefore the Scottish Government considers that the appropriate procedure for orders making subsequent changes to the figure is the provisional affirmative procedure. This is provided for in the amendments made to section 68 of the 2013 Act at section 2(1)(c) of the Bill. This would allow a future Finance Secretary to combine within the same Order subject to the same procedure provisions amending the normal tables of tax rates and bands and provisions amending the 3% figure for additional amounts of tax. The Scottish Government considers it essential that a Finance Secretary should be able to act quickly in appropriate situations, for example where changes to UK tax law have distortive impacts on property market behaviour in Scotland. Whilst the provisional affirmative procedure requires parliamentary affirmation of rate changes to be given after a change has become effective, the procedure also allows a Finance Secretary to invite the Parliament’s affirmation of rate changes in advance. For example, the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014 was laid before the Scottish Parliament on 18 December 2014, approved by the Parliament on 21 January 2015 and came into force on 1 April 2015 (the principal commencement date for Scottish Landfill Tax and LBTT).

12. Section 108 of the 2014 Act already provides for the legal consequences where the Parliament is not able to affirm a section 24(1) Order that has taken legal effect. A taxpayer affected may seek repayment of tax, which is consistent with the position for Westminster taxes under the Provisional Collection of Taxes Act 1968. Section 2(2) of the Bill ensures that the same applies to Orders under the new proposed power, which delivers a fair result for taxpayers.

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3 The provisional affirmative procedure is one of the less common Parliamentary procedures – see the Delegated Powers and Law Reform Committee’s explanation at: http://www.scottish.parliament.uk/S4_SubordinateLegislationCommittee/Guide_to_Scottish_Statutory_Instruments.pdf.
Paragraph 14(2) within new schedule 2A inserted by section 1(3) – Power to amend threshold figure in paragraph 9(3) of schedule 2A

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

13. Paragraph 9(3) of new schedule 2A provides that a dwelling with a market value of less than £40,000 is not to be counted for the purposes of the schedule, which has particular relevance to paragraph 2(1)(b) which is concerned with how many dwellings a buyer owns at the end of the day that is the effective date of a transaction. Therefore if the buyer owns existing property A, which has a market value of £100,000, and exiting property B, which has a market value of £30,000, and is buying property C for £200,000, the ownership of property A is disregarded. If property C was being purchased for £30,000 then the additional amount of tax would not apply (indeed no ordinary amount of LBTT would apply).

14. The delegated power in paragraph 14(2) of new schedule 2A allows the Scottish Minister to change the £40,000 figure.

Reason for taking power

15. It is deliberate that the £40,000 figure in paragraph 9(3) of new schedule 2A is the same figure as appears in section 30(1)(b) of the 2013 Act. For the types of land transaction that are potentially within schedule 2A (acquisitions of the right of ownership), section 30(1)(b) sets the notifiability threshold at £40,000. In other words, for a standard house purchase the acquisition of a £35,000 property does not have to be notified to Revenue Scotland in a land transaction return whereas the purchase of a £45,000 property does have to be so notified even though no ordinary amount of LBTT is payable.

16. Scottish Government policy is that the threshold at which the additional amount of tax can apply to a chargeable transaction should be aligned with the notifiability threshold. The notifiability threshold is amendable by order under section 30(7) of the 2013 Act and the Scottish Government considers it appropriate for the schedule 2A threshold to be equivalently amendable. Thus, if there was a future policy to vary both thresholds at the same time a single order could contain the necessary amendments to section 30(1)(b) of and paragraph 9(3) of schedule 2A to the 2013 Act.

17. Given that circumstances could change, and changes to UK Stamp Duty Land Tax legislation could have distortive impacts on Scottish property market behaviour, the Scottish Government considers it appropriate that the new delegated power should be severable from the existing section 30(1)(b) so that potentially a different threshold can apply for schedule 2A purposes.
Choice of procedure

18. Orders under the section 30(7) power referred to are subject to the negative procedure. Given the clear synergies between the existing and new powers the Scottish Government considers it to be appropriate for the same Parliamentary procedure to apply. As mentioned, it may be that a future order to amend both the notifiability threshold and the schedule 2A threshold would be made under authority of both powers, and such an order would be subject to the negative procedure. Although the power allows for the amendment of primary legislation it only so allows to a very limited degree. Negative procedure would allow the Scottish Ministers to act swiftly if that became necessary for reasons of UK legislative changes, or otherwise.

Paragraph 14(3) and (4) within new schedule 2A inserted by section 1(3) – Power to make provision for or about relief from the additional amount

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

19. Paragraph 14(3) empowers the Scottish Ministers to modify inserted schedule 2A to make provision for or about relief from the additional amount. This could include provision adding a relief or modifying or removing any relief that had been added. It would also allow provision to be made as to the process for claiming relief. This would be a different type of relief from a relief referred to in section 27 of the 2013 Act since the ordinary reliefs in schedules 3 to 16C are relevant to the ordinary amount of LBTT. (Where the existing schedules provide for 100% relief, or a transaction is exempt from LBTT, the additional amount of tax would not be relevant; schedule 2A will not apply.)

20. Paragraph 14(4) provides that a paragraph 14(3) order may modify enactments other than schedule 2A that the Scottish Ministers consider appropriate.

Reason for taking power

21. An equivalent power for the ordinary reliefs exists in section 27(3) and (4) of the 2013 Act. This power was exercised to make the Land and Buildings Transaction Tax (Addition and Modification of Reliefs) (Scotland) Order 2015/93 and the Land and Buildings Transaction Tax (Sub-sale Development Relief and Multiple Dwellings Relief) (Scotland) Order 2015. The Scottish Government considers it to be appropriate for equivalent power to be taken in relation to reliefs that are specific to the additional amount. As property market conditions develop the Scottish Government considers that flexibility should be available to take account of evolving conditions and unanticipated developments. For example, any extension or reduction in equivalent reliefs for UK Stamp Duty Land Tax could have distortive impacts on property market behaviour in Scotland. Further, the Scottish Government would wish to have powers to swiftly react to tax avoidance should that emerge and should legislative change be amongst the appropriate responses.
Choice of procedure

22. Orders under the section 27(3) power referred to are subject to the affirmative procedure by virtue of section 68(2)(c) of the 2013 Act. The Scottish Government considers that the same procedure should apply to the new power, and this is provided for in the amendments made to section 68 by section 2(1)(c) of the Bill. This is consistent with the general principle that affirmative procedure is appropriate when primary legislation is being substantively amended. In the case of devolved tax legislation the Scottish Government considers that affirmative procedure will generally be appropriate where a legislative change effected by secondary legislation concerns exemptions or reliefs.

Section 4 – Ancillary provision

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure or affirmative procedure when textually amending primary legislation

Provision

23. This provision enables the Scottish Ministers to make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of the Bill. The power may be exercised so as to modify any enactment or make different provision for different purposes.

Reason for taking power

24. A comparable power is section 67 of the 2013 Act. It proved necessary to make use of this power to make SSI 2014/376, SSI 2014/377 and SSI 2015/71 as part of the commencement and implementation of the 2013 Act on 1 April 2015. The Scottish Government considers that it is appropriate to seek an ancillary power of equivalent breadth for the Bill. This will be particularly relevant since the UK Stamp Duty Land Tax legislation, envisaged to come into force at the same time as the Bill on 1 April 2016, is not envisaged to be published earlier than March 2016. Therefore should any new or unforeseen issues be presented by the UK legislation when it emerges the ancillary power will be available to make any ancillary provision that is necessary or desirable to address or ameliorate such issues.

Choice of procedure

25. Section 4 follows section 67 of the 2013 Act referred to in making the power subject to negative procedure unless the ancillary provision involves textual amendment to primary legislation. It is considered that this strikes an appropriate balance between allowing Parliamentary scrutiny whilst enabling the Scottish Government to be responsive in an environment where the UK Government can act very speedily indeed.
Finance Committee

Stage 1 Report on the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill
Contents

Introduction 1
Background 1
Policy Objectives of the Bill 3
  Impact Assessment 3
Impact on the Housing Market for First Time Buyers 5
Impact on the Private Rented Sector (PRS) 7
Reliefs 9
Large Scale Investors 13
New Build and Purpose Built Relief 14
Grace Periods 15
Registered Social Landlords (RSLs) and Local Authorities 16
Student Accommodation 17
Rural communities 18
  Furnished Holiday Lets 18
Transition 19
Ring-Fencing 19
SLAB Tax 20
£40,000 Threshold 20
Financial Memorandum (FM) 21
Conclusions 22
Finance Committee

1. The remit of the Finance Committee is to consider and report on-
   a. any report or other document laid before the Parliament by members of the Scottish Government containing proposals for, or budgets of, public expenditure or proposals for the making of a tax-varying resolution, taking into account any report or recommendations concerning such documents made to them by any other committee with power to consider such documents or any part of them;
   b. any report made by a committee setting out proposals concerning public expenditure;
   c. Budget Bills; and
   d. any other matter relating to or affecting the expenditure of the Scottish Administration or other expenditure payable out of the Scottish Consolidated Fund.

2. The Committee may also consider and, where it sees fit, report to the Parliament on the timetable for the Stages of Budget Bills and on the handling of financial business.

3. In these Rules, “public expenditure” means expenditure of the Scottish Administration, other expenditure payable out of the Scottish Consolidated Fund and any other expenditure met out of taxes, charges and other public revenue.

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Introduction

1. The Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (“the Bill”) was introduced by the Scottish Government on 27 January 2016. The Finance Committee (“the Committee”) was designated lead committee by the Parliamentary Bureau. The role of the Committee at Stage 1 is to consider and report on the general principles of the Bill.

2. The purpose of the Bill is to introduce a new “LBTT supplement on purchases of additional residential properties in Scotland (such as buy-to-let properties and second homes) over £40,000.”¹ The proposed supplement is 3% of the total price of the property for all relevant transactions above this amount.

Background

3. The UK Government set out plans for a consultation on the proposed new 3% supplement for Stamp Duty Land Tax (SDLT) in its Autumn Statement on 25 November 2015. The consultation was published on 28 December 2015 and closed on 1 February. It is expected that the final policy will be announced as part of the Chancellor’s Budget on 16 March. The supplement will apply from 1 April 2016.

4. The Scottish Government announced its intention to introduce a similar supplement from 1 April 2016 as part of its Draft Budget which was published on 16 December 2015. The Draft Budget stated that we “will shortly bring forward legislation to introduce this surcharge, which will be informed by close working and engagement with stakeholder groups.”²

5. The Policy Memorandum states that it was not possible for the Scottish Government to carry out a full public consultation on the Bill given the need for full parliamentary scrutiny and the intention to introduce the supplement at the same time as the UK proposals. However, a Stakeholder Reference Group meeting took place on 8 January 2016 at which various interested parties were invited to comment on policy details.

6. The Committee published its own consultation on the proposals for a LBTT supplement on 6 January 2016 with a closing date of 29 January. Despite the limited time available we received 50 submissions and the Budget Adviser has drafted a helpful summary.³ Given the truncated timings for our Stage 1 inquiry we were only able to hear oral evidence at one meeting on 3 February 2016. We heard from eight organisations followed by the Deputy First Minister (DFM). We would like to thank all those who contributed to our scrutiny of the Bill.
7. A number of submissions expressed concern about the limited time that has been made available by the Scottish Government for parliamentary scrutiny of this Bill. The Law Society of Scotland (LSS), for example, state in written evidence that:

“the timescale and manner in which this proposal is being considered is not conducive to the formulation of good-quality, robust tax legislation. The implications of the proposals could be far-reaching and should be considered carefully before implementation.”

8. KPMG state that the Scottish Government “should not underestimate the complexity of introducing the supplement” and strongly advise against introducing the legislation without a full consultation process. They point out that the UK Government’s relatively detailed proposals have attracted a significant amount of discussion. PWC also point out that adequate consultation is required in order to ensure that the legislative changes being proposed meet their policy objectives. Their view is that there “may be benefits to be gained from delaying and seeing how things settle south of the border.”

9. The Chartered Institute of Taxation (CIOT) note their disappointment that the Bill is being introduced without a full consultation and in such a short time frame which means it is more likely that there will be unresolved complexities and unintended consequences. It will also be challenging for Revenue Scotland to implement the required changes.

10. More generally the DFM explained that there may be occasions when the Scottish Government has to take swift decisions on tax and budgetary matters meaning that the usual legislative process cannot be followed. He told the Committee that the Scottish Government’s experience “is that the approach that we have taken to the exercise of taxation powers over the past couple of years has generally worked satisfactorily, but it has thrown up some significant issues and challenges on timescale.” The DFM invited the Committee to reflect on these issues.

11. The Committee recognises that as more financial powers are devolved to Holyrood there will be occasions such as with the current Bill when a tension arises between the need to take swift decisions on tax matters and the consultative principle which underpins budgetary and legislative scrutiny within the Scottish Parliament.

12. In particular, given the inevitable impact of tax policy changes at a UK level, as has already been clearly demonstrated in relation to residential LBTT, the Committee recognises the need to build an element of flexibility into the scrutiny process. In essence there is a need to balance the risk of not responding immediately to tax changes at a UK level with the risk of unintended consequences from making legislative changes without conducting a full consultation and full parliamentary scrutiny.
13. On balance the Committee is content that the need to implement the LBTT supplement from 1 April 2016 justifies the truncated timetable for scrutiny of this Bill. However, the Committee will give further consideration to the issue of parliamentary scrutiny of tax policy changes as part of its legacy paper.

Policy Objectives of the Bill

14. The Scottish Government has set out two main policy objectives for the proposed supplement. First, “to ensure that the opportunities for first time buyers to enter the housing market in Scotland remain as strong as they possibly can.” Second, “to ameliorate the likely distortions” from the introduction on 1 April 2016 of a similar supplement at UK level.

15. A number of submissions emphasised the need for greater clarity in relation to the policy objectives. For example, the CIOT ask whether the Scottish Government intended to introduce a supplement regardless of the UK Government’s position.

Impact Assessment

16. One of the main concerns raised in the submissions received by the Committee is the lack of any impact assessment of the proposed supplement on the Scottish housing market. The LSS, for example, state:

“we are unsure whether the property market in Scotland is comparable to that in England and Wales and as such whether there is a big enough problem for first time buyers to risk a potentially wider negative impact on the number of property transactions and the provision of new housing. That said, we can envisage situations where house prices will be reduced in order to absorb the extra charge, which would run counter to the policy objective of targeting those purchasing properties for investment purposes or second homes.”

17. A related issue raised by witnesses is the lack of data in relation to the purchase of buy-to-let (BTL) and second home properties which means that it is difficult to analyse what the problem is that this Bill is supposed to address. The Scottish Association of Landlords (SAL) told the Committee that our “main concern is “about the lack of appropriate data sets that would allow us really to see what the concern is in Scotland.” The Scottish Property Federation’s (SPF) view is that more “research, information and analysis of the market is required.” The Royal Institute of Chartered Surveyors (RICS) told the Committee that there “is a big disparity and lack of data about what actually happens in the market, which is affecting all the decisions that policy makers are considering, including the Bill.”

18. The lack of available data is evident from the Scottish Government’s forecasting methodology paper for the devolved taxes published alongside Draft Budget 2016-
17. The paper states that there “is no data on the number of such properties purchased in Scotland, or the UK as a whole” and that modelling of the supplement “has been based on proxy datasets.”

19. A number of witnesses pointed out that there are a number of risks in introducing the supplement but that the Scottish Government seems to have focused solely on the potential impact on first time buyers. Other risks include the impact on the private rented sector (PRS) through a decrease in supply and an increase in rents. There is also considerable scepticism that the Bill will result in an increase in properties for first time buyers. For example, the supplement may have a negative impact on the number of new housing developments. These concerns are discussed in more detail below.

20. The Association of Local Authority Housing Officers (ALACHO) point out that there has been very little research on the impact of BTL and/or second home purchases on the Scottish housing market as a whole or its significant regional variations. Their view is that there is no published evidence which would indicate that the Scottish Government’s policy objectives in introducing the supplement are likely to be achieved.

21. ALACHO also question whether the Scottish Government has considered possible unintended negative consequences. Aberdeen City Council believe that it would be useful to understand the evidence which supports the view that the supplement will result in an increase in the supply of houses for first time buyers. The Chartered Institute of Housing (CIH) Scotland recommend that the impact of the supplement should be monitored to ensure that the needs of people who want to buy a home are balanced with the needs of those who do not. ALACHO argue strongly for an early and comprehensive review of the impact of the supplement on the housing market.

22. The DFM responded positively when he was asked by the Committee whether he would consider an early and comprehensive review. He also explained that without “an LBTT supplement, the SDLT higher rates would make it relatively more attractive for investors to buy up homes in Scotland, particularly at the lower end of the market, thereby increasing the competition for first-time buyers.”

23. The DFM told the Committee that he intends to introduce the LBTT supplement regardless of whether the UK Government introduces the SDLT supplement on 1 April 2016. However, there have been discussions between the two governments in relation to their respective plans for the new supplement.

24. The Committee recommends that there needs to be much greater clarity in relation to the “likely distortions” which may arise from the introduction of a similar supplement at UK level. In particular, what type and level of investment in the housing market is the Scottish Government seeking to discourage by introducing the LBTT supplement? This needs to be clear.
25. The Committee recommends that the Scottish Government commissions research on the impact of the purchase of BTL properties and second homes on the housing market as a matter of urgency. At the same time it is also essential that the Scottish Government provides details of how it intends to improve the data on BTL and second homes.

26. The Committee notes the view of some witnesses that there should be an early and comprehensive review of the impact of the supplement. However, the Committee’s experience of the introduction of LBTT suggests that developing an understanding of the impact of the supplement will be complex and will take time. For example, there will be a need to account for the impact of forestalling.

27. The Committee recommends that the Scottish Government closely monitors the impact of the supplement on the housing market and conducts a comprehensive review once sufficient data is available. The Committee also recommends that the Scottish Fiscal Commission (SFC) provides a commentary on the first 6 months of outturn figures for the supplement including an analysis of the impact of forestalling by the end of November 2016.

28. The Committee notes that the Scottish Government intends to introduce the LBTT supplement on 1 April 2016 regardless of whether the UK Government introduces the SDLT supplement. The Committee is concerned that if the LBTT supplement is introduced on 1 April 2016 but a similar SDLT supplement is not introduced then this may have a negative impact on investment in the housing market in Scotland.

Impact on the Housing Market for First Time Buyers

29. There were mixed views on the likely impact of the proposed supplement on the housing market for first time buyers. SAL do not believe that the policy will deliver its objectives and suggest that buyers will simply offer less for properties and that vendors will effectively bear the cost, particularly where the property is not attractive to home buyers. Their view is that the Scottish Government should be encouraging investment by responsible landlords “instead of seemingly doing everything it can to dissuade them.”

30. A number of witnesses were of the view that the supplement could have a negative impact on first time buyers as the supplement could reduce the number of new housing developments. The SPF explain that this is because BTL properties form a significant proportion of the building industry’s off-plan sales and any reduction in this area of investment may lead to a reduction in new housing
being built. Their view is that the main issue is affordability due mainly to lack of supply and that the supplement will reduce rather than increase the supply of homes.

31. KPMG agree that investors in the PRS “are a key driver in ensuring that new residential properties are constructed”\(^\text{17}\) and that the supplement could act as a deterrent to the development of new homes in Scotland. Their clients “often look to sell a lot of their properties off plan in order to forward-fund the development and secure funding.” Investors will regularly buy one to three properties in a block including for BTL.

32. RICS also point out that small-scale BTL investors will often purchase properties within new developments. The SPF told the Committee that “if pre-sales are not achievable through some form of buy-to-let opportunity, a development might not start.”\(^\text{18}\)

33. However, other witnesses do believe that the supplement will be beneficial to first time buyers. RICS in Scotland believe it prudent to adopt the same approach as the UK Government “as the Scottish housing market could have seen an influx of buy-to-let investors from England and Wales if a similar regime is not introduced.”\(^\text{19}\) The National Association of Estate Agents (NAEA) recognise that if “investors are deterred by the additional tax, theoretically the first time buyer market should improve”\(^\text{20}\) but they do not have any evidence that first time buyers are losing out to investors. They believe that the policy is likely to be most effective in Edinburgh, Glasgow and Aberdeen in releasing additional properties on the market. However, the main barriers to home ownership are the lack of finance available to first time buyers and affordability which is linked to lack of supply.

34. CIH (Scotland) support the general principles behind the policy but point out that “it will be important to ensure that it does not have any unintended consequences or a negative impact on the overall housing market.”\(^\text{21}\) PWC believe that it is appropriate for the LBTT supplement legislation to be as similar as possible to the SDLT supplement legislation. Shelter Scotland believe that the supplement could add an important element of stability into a potentially unstable BTL market and reduce pressure on house prices to the benefit of first time buyers.

35. Jonathan Gordon, a letting agent, believes that it is no surprise that the Scottish Government has followed the UK Government’s proposals for SDLT. He suggests that if a similar supplement is not introduced then investment from outside Scotland “really could add heat to the housing market.” However, he also believes that the supplement is a blunt approach with little consideration of the impacts. Proper consultation is required to scrutinise the detail and uncover unintended consequences.

36. The DFM was asked whether he had considered the possible negative impact of the supplement on off-plan sales for new builds due to a reduction in BTL
investment. He responded that “we have to test those arguments and come to a conclusion about whether we consider that the evidence is valid.”\(^{22}\)

37. As noted above the Committee believes that on balance there is a need to introduce the LBTT supplement due to the potential risk from over-investment in the housing market from the rest of the UK once the SDLT supplement is introduced.

38. However, the Committee is concerned about the potential impact of the supplement on new housing developments if there is a significant reduction in the number of BTL properties being bought off-plan. The Committee recommends that the Scottish Government closely monitors the impact of the supplement on new housing developments. The Committee also recommends that consideration is given to a relief for larger scale investors. This is discussed in greater detail below.

Impact on the Private Rented Sector (PRS)

39. A number of witnesses raised concerns about the potential impact of the supplement on the PRS. RICS told the Committee that the key difficulty in the PRS is a lack of housing supply to meet demand.\(^{23}\) They believe that the PRS system "lacks consistency and stability" and that "more can be done to entice institutional investors to build purpose-built accommodation for rent."\(^{24}\) They support an approach which would encourage institutional investors to build and let new developments, not take on the landlord duties of current stock.

40. The Institute of Chartered Accountants of England and Wales (ICAEW) question the Scottish Government’s policy objective of promoting home ownership when it is inherently unsuitable for many people. Their view is that an appropriately regulated and thriving PRS would provide an alternative option which would be more attractive to many people than home ownership.

41. Some submissions pointed out that consideration needs to be given to the structure of the PRS in Scotland. For example, the CIOT understands that 70% of PRS properties are owned by small scale landlords who let out five or fewer properties. Their view is that the Scottish Government will need to consider the likely impact of the Bill on these investors. RICS suggest that the “PRS market in Scotland has been dominated by small-scale investments from individual landlords who own one to three properties.”\(^{25}\)

42. Jonathan Gordon estimates that 95% of landlords own less than five homes and 70% just a single BTL. Many of these landlords are renting out their first homes having moved in with a partner or bought a bigger family home. They may do so
as a way of saving for retirement and often don’t have a large pension. A number of witnesses pointed out that there are many “accidental” landlords who may, for example, rent out a property due to negative equity or because they can’t sell it.

43. Homes for Scotland point out that purpose built PRS developments are increasingly prevalent in England and this emerging sector is very different from the existing buy-to-let PRS. However, less than 2% of the UK Build to Rent (BTR) investment is currently being directed to Scotland. Their view is that there is, therefore, a significant opportunity for increased BTR investment in Scotland. However, the proposed supplement will “send a negative signal to investors meaning that fewer projects will come forward.”

44. Scottish Land and Estates (SLE) points out that the PRS has more than doubled in size in recent years and plays a critical part in the Scottish Government’s housing strategy. They have concerns that the supplement could potentially wipe out first year returns for small scale landlords which could deter investment in this part of the market.

45. RICS also point out that the supplement could lead to an increase in rents at a time when they continue to rise especially in already high rent areas. This is a view shared by Aberdeen City Council who suggest that any “increase in costs of acquisition will be offset potentially by higher rents to maintain yields for landlords.” The Association of Real Estate Funds (AREF) suggest that there is a risk that the supplement “will reduce the availability of rental property and so lead to an increase in rents.” Their view is that “alongside supporting home ownership, facilitating large scale professionally managed investment into the private rented sector and the build to rent sector is important.”

46. Shelter Scotland question whether private rents are likely to increase as a consequence of the supplement. Rent levels are determined by more than just the expenses incurred by private landlords. For example, local rents for comparable dwellings and the quality of accommodation. However, the Scottish Government should closely monitor the impact of the policy on private rents.

47. Some witnesses also suggested that more onerous legal obligations for the PRS in Scotland could mean investors will choose to invest in the rest of the UK. Both the SPF and SAL suggest that the Private Housing (Tenancies) Bill in particular is likely to reduce BTL investment in Scotland.

48. A number of submissions also pointed to the recent changes to tax relief on mortgage interest repayments for landlords as being likely to reduce investment in the PRS. The ICAEW highlight a recent YouGov survey for the Council of Mortgage Lenders which suggests that 34% of landlords will reduce their investment in the PRS as a consequence of the proposed tax changes while another 11% are undecided.
49. The Committee notes the concerns of some witnesses about the potential impact of the supplement on the PRS. The Committee recommends that careful consideration needs to be given to the structure of the PRS in Scotland when finalising the proposals for the LBTT supplement. While the Committee recognises the need to help first time buyers there is also a need to help those who rent whether through choice or necessity. In particular, it is essential that the Scottish Government closely monitors the impact of the supplement on rent levels especially in areas where rents are already high.

Reliefs

50. The Policy Memorandum states that the Scottish Government “wishes to fully consider and reflect on both Stage 1 written and oral evidence before confirming policy in this regard.” The Scottish Government has not indicated what if any reliefs it supports at this stage. However, the UK Government has included a number of proposed reliefs in its consultation on the SDLT supplement.

51. Numerous reliefs were suggested in the evidence received by the Committee and these are summarised below.

- Relief for larger investors and transactions for:
  - i. institutional investor and funds;
  - ii. local authorities, registered social landlords and related mid-market rental subsidiaries;
  - iii. multiple purchases in a single transaction;
  - iv. a minimum portfolio of properties, say six.

- Developer relief for those buying, developing or renovating and reselling or letting:
  - v. E&Y suggested a condition of completing development within a specified period similar to existing sub-sale relief;
  - vi. Relief based on nature of the property, eg on the market for six months or more, vacant for a specified period, un-mortgageable for some reason.

- Relief for quality letting:
  - vii. Accredited landlords;
  - viii. Registered letting agents;
ix. Rent no more than 110% of Local Housing Allowance.

- Relief for student accommodation:
  x. Purpose built (cluster) accommodation;
  xi. Where relief (iii) or (iv) above applies, count number of study bedrooms, not dwellings;
  xii. Where landlord shares dwelling with tenants (typically a student flat).

- Relief for reorganisation of property portfolios:
  xiii. Transfers from an individual to a company wholly owned by them or between companies in the same ownership;
  xiv. Sales of let property from one landlord to another.

- Relief for certain categories of property:
  xv. Properties not otherwise saleable (compare (vi));
  xvi. Holiday letting property;
  xvii. New build properties for letting;
  xviii. New build holiday homes.

- Relief for the first residential property purchased by a non-natural person (ie put companies on the same footing as individuals).

- Relief for employers purchasing accommodation where living in the accommodation is a condition of employment.

- Relief for partnerships:
  xix. As above for employee accommodation;
  xx. The tax charge to apply separately on the circumstances of each partner.

- Relief for joint ownership:
  xxii. Where a joint owner is a first time buyer, their contribution to the purchase to be exempt;
  xxiii. Where a joint owner has a de minimis interest, their other properties to be disregarded.
- Inherited property to be ignored for the first 24 months of ownership (to allow beneficiaries to agree on and make a disposal).

- Treat separated spouses individually from the tax year following the year of separation, as for Capital Gains Tax main residence exemption.

- Exempt purchases by trusts to provide a main residence for incapacitated persons.

- Where a purchase of a main residence is taxable because of ownership of other property, the supplement is to be calculated on the value of the most valuable of the other properties or on the value of the main residence, if lower.

- Ignore or exempt certain additional properties:
  - xxiv. Disregard property outside the UK;
  - xxv. Disregard or exempt one holiday property per family.

- Replacement of main residence:
  - xxvi. Drop requirement for replacement - any purchase of a main residence to be exempt;
  - xxvii. Termination of rental of previous main residence to count as disposal for purposes of the relief in the Bill;
  - xxviii. Where a joint owner purchases an additional interest in their main residence, the consideration to be exempt;
  - xxix. Extend period beyond previous 18 months for a property to qualify as a former main residence in the cases of absence for employment purpose, either generally or for military personnel (as for Capital Gains Tax main residence relief).

- Grace periods:
  - xxx. Up to 30 days from the purchase of new main residence to cover unanticipated delays in the sale of the former one;
  - xxxi. Up to 18 months where intention is to sell former main residence;
  - xxxii. Up to 36 months where intention is to sell former main residence;

- Relief for gifts of property even where the assumption of the mortgage liability or other charges is consideration for LBTT purposes.

- Transitional reliefs:
xxxiii. Exempt where purchase committed to (payment of deposit/statement of intent) before 16 December 2015 even although missives were not exchanged until after that date;

xxxiv. The 18 month disposal period for previous main residence to run from 28 January or 1 April 2016 when the purchase of the new main residence was within 18 months of those dates (to allow for circumstances where transactions were committed to before the supplement was announced or its details were known).

52. Some witnesses have suggested that there needs to be consistency between the SDLT supplement and the LBTT supplement in order to avoid complexity and uncertainty. PWC’s view is that where “exemptions are introduced in the rest of the UK, they should certainly be mirrored north of the border.”

53. The CIOT pointed out to the Committee that the inclusion of exemptions and reliefs will potentially provide more opportunity for tax avoidance. However, the view of the LSS “is that the Scottish general anti-avoidance rule is already sufficient to address any avoidance issues.”

54. The DFM told the Committee that fairness and equity will be key issues when considering what reliefs to introduce. He also emphasised that there is also a need to avoid creating loopholes. He told the Committee that “we have to consider what may be the contents of exemptions and reliefs very much with a mind to avoid any artificial behaviour emerging as a consequence of the drafting and design of the provisions.”

55. For example, he was questioned by the Committee on whether he would consider a relief on the purchase of a second property to live in while working away from the main residence. He responded that while he is open to designing reliefs which meet genuine circumstances there is a need to be careful about the creation of loopholes. The Scottish Government’s approach “combines the application of the general anti-avoidance rule and trying to get the legislation as effective and focused as possible.”

56. The Committee invites the Scottish Government to provide its view on all of the above proposals for reliefs from the supplement. The Committee also considers some of the proposals in more detail below.

57. The Committee also invites the Scottish Government to provide examples of how the general anti-avoidance rule will prevent artificial behaviour in relation to the supplement.
Large Scale Investors

58. The UK Government consultation on the proposed SDLT supplement asks whether the “bulk purchase of at least 15 residential properties or a portfolio test where a purchaser must own at least 15 residential properties are appropriate criteria for exemption?” The consultation states that the UK Government “wants to ensure that any exemption is narrowly targeted to apply only to those purchases of additional properties which significantly contribute to new housing supply and the government’s wider housing objectives.” This is not likely to include small scale investors who are more likely to purchase properties sequentially from existing housing stock, directly competing with first time buyers.

59. A number of submissions supported the introduction of a relief from the LBTT supplement for larger scale investments but for six or more properties on the basis that this would be consistent with the threshold in the LBTT legislation. Section 59(8) of the LBTT (Scotland) Act 2013 states that where six or more dwellings are the subject of a single transaction then they are treated the same as non-residential property for the purposes of the tax.

60. Section 4(3)(b) of the Bill provides that in some cases a non-residential property transaction will be subject to the supplement. Ernst and Young (EY) ask for clarification as to whether the supplement would apply to transactions under Section 59(8) of the LBTT (Scotland) Act 2013. Their view is that this would be “a significant change to the treatment of such transactions.” The CIOT also asks whether the supplement can in fact apply to such transactions. The SPF’s view is that it would be inconsistent to apply a residential supplement to non-residential LBTT rates. Both the CIOT and the LSS propose that any relief from the supplement for multiple purchases should be at the same threshold of six or more which applies to residential LBTT.

61. AREF propose that consideration is given to “exempting all large scale investors in residential property in order to support the rental sector and increase the housing stock.” They believe that this is “best achieved by considering the overall extent of investment rather than the scale of individual transactions.” This would mean the exemption is based on the size of the existing portfolio, for example, at least five existing residential properties. To avoid discriminating against new entrants, a period, say 18 months, should be allowed to reach the five property threshold. If the threshold were reached within the time limit, LBTT supplement would be refunded, as in the case of disposals of a previous main residence.

62. Both Brodies and Pinsent Masons agree that the relief should be available to both the purchase of six or more dwellings in one transaction or in relation to a portfolio of six or more properties. Brodies suggest that the relief could be conditional on “a prescribed number of properties being made available to rent in the private sector or for accommodation for employees.” If a relief for bulk purchases is included in the UK legislation but not in Scotland then this could adversely affect investment.
in the Scottish housing market. PWC propose a transaction threshold of six or more properties and a portfolio transaction of at least 15 properties.

63. EY comment on the UK Government’s proposal to allow an exemption for purchases of 15 or more dwellings in a single transaction. Their view is that the exemption should be based on a portfolio of 15 or more properties at the end of the transaction. However, they have concerns that this may discriminate against genuine property developers who will be buying to develop and sell-on rather than for BTL. They suggest a relief for all legitimate property developers which is time limited so that if the property is not developed and sold within a set period then the supplement becomes payable. The CIOT point out that housing developments can become available for purchase in phases and, therefore, consideration should be given to including phased purchases in any relief for multiple purchases.

64. The DFM was asked for his view on whether a threshold of six or 15 properties was more appropriate. He responded that it is not a perfect science and wherever the threshold is set it will be arbitrary. His view is that “we have to make a judgment about the point at which something is a commercial proposition that is investing in the private rented housing supply sector and the point at which a mechanism is being designed to avoid the impact of the Bill.”  

65. The Committee recommends that the Bill is amended at Stage 2 to include a relief for the bulk purchase of six or more properties in one transaction or in phased transactions in the same development. However, this may need to be reviewed if there is evidence of a negative impact on the number of new housing developments due to a decrease in the number of BTL properties being purchased off-plan by smaller investors.

**New Build and Purpose Built Relief**

66. A number of submissions propose that new build properties should be exempt from the supplement.

67. Homes for Scotland suggest that there is a strong case for new build properties being entirely exempt from the supplement. If not, then there may be a reduction in the supply of new homes. Their view is that the purchase of new build properties for BTL or as second homes is additional activity which does not crowd out first time buyers. SAL recommend a relief for anyone buying new build properties, even on a small scale.

68. RICS propose that consideration should be given to exempting “new build property from the supplement after all attempts to sell to owner-occupiers have been exhausted or after a set period of time.” This exemption could also include purpose built holiday home for rent; purpose built student accommodation; and purpose built units for private rent.
69. Jonathan Gordon proposes an exemption for the purchase of all brand new build homes for BTL. This has a number of advantages including increasing badly needed investment in the PRS. He questions why large scale investors should be entitled to tax relief but not small scale ones when both levels of investment lead to an increase in homes.

70. The DFM was asked whether he accepted the view that the Bill as drafted could deter the development of new homes. He responded that “I do not think that there is a disincentive in the Bill that would stop a development that involved more than a handful of new-build properties—I am talking about a development of more than about four or five new-build properties.”

71. The DFM told the Committee that he is “actively considering the particular question of new-build reliefs.”

72. The Committee does not support a relief for all new build properties.

Grace Periods

73. As currently drafted the buyer of a property is not charged the supplement if they intend to use the property as their only or main residence and have disposed of another property, which was their only or main residence, within the previous eighteen months. If at the date of purchase they still own their former or main residence, they will be charged the supplement but will be able to claim repayment if the former residence is disposed of within the following eighteen months.

74. However, a number of submissions emphasised that there may be occasions when a purchaser may temporarily own two properties simultaneously due to unintended circumstances. The UK Government consultation on the SDLT supplement recognises this and proposes that “it may be preferable to allow the normal rates of SDLT to be paid as long as the previous main residence has been sold by the time the SDLT return is filed.” This is currently 30 days but the UK Government has announced plans to consult on reducing this to 14 days. The CIOT point out that it would not be possible to have a grace period along exactly the same lines in Scotland due to the way in which sales are registered and returns made.

75. The CIOT suggests a targeted relief for house buyers who only want to own one home but where the sale of their previous home is delayed or falls through. The risk of having to pay the supplement in these circumstances may act as a deterrent to moving home. They propose a grace period of three months from the date of purchase after which the supplement would become due. LSS proposed a 30 day grace period in their written submission. However, when questioned by the

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1 Gavin Brown MSP dissented from this recommendation.
Committee they stated that this was just a starting point and that three months or longer would be better.\(^{44}\) This would both reduce the number of purchasers having to pay the supplement due to unforeseen circumstances and would reduce the administrative burden on Revenue Scotland.

76. EY propose that where the intention is to sell the previous main residence within 18 months then the supplement would not be payable unless the first property is not sold within this period. Interest could be payable on the supplement from the date of the purchase of the new main residence. KPMG’s view is that “18 months is probably all right, given how the property market is at the moment, but the market is quite cyclical, so the period might need to be extended to three years.”\(^{45}\)

77. PWC’s view is that the purchaser should be able to apply for a deferral for up to three years. SLE support a grace period but do not specify how long. They also suggest that properties which have been on the market for at least a year could be exempted from the supplement.

78. The DFM was asked whether he would be willing to allow any grace period. He responded that it is more efficient to secure up-front payment with an opportunity for repayment. However, he also stated that he is “quite open to the issue of a grace period. We then come back to how long the grace period should be.”

79. The Committee recommends that the Bill is amended at Stage 2 to provide for a grace period.

**Registered Social Landlords (RSLs) and Local Authorities**

80. Schedule 6 of the LBTT (Scotland) Act provides relief for RSLs and Local Authorities where one of three qualifying conditions are met. A number of witnesses including the LSS and CIH Scotland suggest that providers of social housing such as local authorities and RSLs should also be exempt from the supplement.

81. ALACHO point out that since the financial crisis of 2007/8 many local authorities and RSLs have been engaged in significant house purchase activity and that this activity was significant in supporting the construction industry during the period of market recovery. Their view is that the supplement would add further costs to the delivery of affordable housing programmes and to housing regeneration programmes more generally and that both RSLs and local authorities should be exempt from paying the supplement.

82. The Scottish Federation of Housing Associations (SFHA) assume that the same exemption which applies to LBTT for RSLs and local authorities will also apply to
the supplement. However, they expressed concern that the supplement could have a negative effect on housing association subsidiaries or other bodies providing homes for mid-market rent (MMR). Housing association subsidiaries may buy homes from developers in order to provide homes for mid-market rent. SFHA are concerned that if the supplement applies to these transactions then this could lead to considerable extra costs.

83. CIH Scotland also highlighted the role of the National Housing Trust who provide mid-market rents for people who cannot afford to buy and who cannot access the social rented sector.

84. The Committee recommends that the Bill is amended at Stage 2 to provide for a relief from the supplement for RSLs and Local Authorities on the same basis as the current relief from LBTT.

Student Accommodation

85. Under Section 59 of the LBTT (Scotland) Act 2013 the residential tax applies to all student accommodation other than halls of residence. A number of witnesses proposed exempting different types of student accommodation from the supplement.

86. AREF propose that the supplement should not apply to any type of student accommodation on the basis that it is designed in such a way that it would not be purchased by anyone wanting to buy a home. Alison Louden suggested that this should include a property in which the owner lives jointly with his or her tenants, such as a student sharing with other students.

87. Other witnesses including RICS and the SPF propose exempting purpose built student accommodation. The SPF point out that cluster flats within purpose built student accommodation are not able to be let on the open market and, therefore, should not be liable for the supplement. The LSS suggest that the relief for bulk purchases should take account of the number of cluster flats in student accommodation rather than viewing this as one dwelling.

88. The Committee recommends that the Bill is amended at Stage 2 to provide for a relief for student accommodation on the same basis as the relief from LBTT.
Rural communities

89. In a number of the Committee’s external visits this session including to Pitlochry and Arran, the availability and affordability of housing in rural communities has been a major issue. In Arran the Committee heard that “apart from the supply issue, the affordability issue means that houses are beyond the reach of many people who work on the island.”

90. The Policy Memorandum specifically addresses the impact of the Bill on island communities which it states may have a higher than average proportion of second homes. The Scottish Government’s view is that 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.” Presumably this also applies to all rural communities where there is a higher than average proportion of second homes.

91. However, a number of submissions questioned whether the supplement would be beneficial to rural areas. The Caledonia Estate Agency, operating in the Cairngorms National Park, believe that the supplement will lead to a reduction in the construction of new housing which will indirectly affect the level of affordable housing development as they are inextricably linked. It will also lead to a decrease of private housing rental stock at a time when the council is not renewing their five year leases in the private sector.

92. Aberdeen City Council suggest that the experience of rural areas is that incomes are so low that “almost a collapse of prices would be needed to make a difference.” However, RICS believe that the prevalence of holiday homes in rural Scotland can result in pricing locals out of the housing market. The supplement could, therefore, assist the rural population.

Furnished Holiday Lets

93. The UK Government consultation on the SDLT proposes that “properties bought as furnished holiday lets should be treated in the same way as all other residential properties – if the property is purchased as an additional property the higher rates will apply.”

94. EY propose a relief for furnished holiday lets (FHLs) on the basis that FHLs are not the primary target of the Bill and there a very strict rules for a property to qualify as a FHL. SLE point out that FHLs make a valuable contribution to the Scottish economy through tourism and asks the Scottish Government to take into account the adverse impact which the supplement would have on this sector. RICS propose exempting purpose-built holiday homes such as chalets on holiday parks.
95. The Committee supports the Scottish Government’s policy objectives in seeking to help first time buyers in rural communities but notes that the supplement on its own is unlikely to address issues of affordability.

96. The Committee recommends that the Scottish Government closely monitors the impact of the supplement on new housing developments in rural communities.

97. The Committee does not support providing a relief for furnished holiday flats or purpose-built holiday homes.²

Transition

98. The SDLT supplement will only apply to purchases of additional residential property which complete after 1 April 2016. However, if contracts were exchanged on or before 25 November 2015 when the higher rate was announced but not completed until on or after 1 April 2016 then the higher rate will not apply.

99. PWC suggest that clarity is needed on whether the same approach will apply to the LBTT supplement. For example, will the supplement not apply where contracts were exchanged on or before 16 December 2015 when the LBTT supplement was announced but not completed until on or after 1 April 2016.

100. The Committee asks the Scottish Government to provide clarity on the transition arrangements for the introduction of the supplement.

Ring-Fencing

101. The UK Government states that it “will use some of the additional tax collected to provide £60 million for communities in England where the impact of second homes is particularly acute. The tax receipts will also help towards doubling the affordable housing budget.”⁵⁰ The Scottish Government has not indicated how it intends to use the tax revenue from the supplement.

102. Some witnesses proposed ring-fencing the revenue from the LBTT supplement for investment in the housing sector. ALACHO argue that the income derived from the measure should be reserved as additional investment in affordable housing. CIH Scotland’s view is that if the measure is to support the housing market in a meaningful way then the revenue from the supplement should be reinvested in the affordable housing sector.

² Gavin Brown MSP dissented from this sentence.
103. The Committee notes that despite the additional revenue from the supplement and the policy objective of encouraging home ownership that the Scottish Government has reduced funding for Help to Buy in Draft Budget 2016-17. The Committee asks the Scottish Government whether any consideration was given to ring-fencing the revenue from the LBTT supplement to support Help to Buy or for other areas of investment in the housing sector.

SLAB Tax

104. The Scottish Government proposes that the LBTT supplement will apply to the total purchase price of an additional residential property purchase above £40,000. A number of witnesses have questioned why the supplement will be a SLAB tax when the Scottish Government emphasised the need to adopt a different approach to LBTT.

105. The CIOT point out that the SLAB structure of the supplement “effectively creates a cliff edge for properties at the lower end of the market.”

106. The Committee asks the Scottish Government to explain why it is proposing a SLAB approach to the supplement in contrast to the more progressive approach to LBTT.

£40,000 Threshold

107. Paragraph 14(2) of the new schedule 2A within the Bill provides the Scottish Ministers with a power to amend by order the £40,000 threshold for payment of the supplement. The Delegated Powers and Law Reform (DPLR) Committee do not consider that the negative procedure is appropriate. They have recommended that the Bill is amended at Stage 2 to make exercise of the power in paragraph 14(2) subject to the “provisional affirmative” procedure.

108. The DFM told the Committee that he would reflect carefully on this point.

109. The Committee support the recommendation of the DPLR Committee that any changes to the £40,000 threshold should be subject to the provisional affirmative procedure.
110. The Scottish Government estimates that between 8,500 and 12,500 transactions would be liable for the new tax before allowing for any behavioural effects and that this would generate income of between £45m and £70m in 2016-17 before allowing for any behavioural effects. A number of potential behavioural responses are identified in the Scottish Government’s methodology paper on the devolved taxes:

- A substitution effect where purchases of additional homes are replaced with the purchases of main residences and downward pressure on price levels;
- Overall reduction in the number of transactions;
- Forestalling;
- Tax planning or avoidance.  

111. The substitution effect and downward pressure on prices is estimated to reduce revenues by £8m to £13m in 2016-17. The overall reduction in the number of transactions is estimated to reduce revenues by around £7m and forestalling is estimated to reduce revenues by £13m to £21. The Scottish Government states that it has not been possible to quantify the likely impact of avoidance at this stage but will seek to minimise such opportunities. The total loss of revenue due to behavioural effects is, therefore, estimated at £28m to £41m for 2016-17. This means that the revenue forecast for the LBTT supplement for 2016-17 is between £17m and £29m. However, an estimated £5m to £7m of the forestalling revenue is estimated to be brought forward to 2015-16.

112. The SFC state that these forecasts should be treated with a great deal of caution but that:

> “we are prepared to endorse these forecasts as reasonable although we would stress the very significant uncertainties inherent in assessing the impact of such a tax change given the lack of data describing the behaviour of the Scottish buy-to-let and second home markets.”

113. The DFM was asked whether the forecast includes consideration of the loss of revenue if reliefs are introduced. He responded that the forecasts reflect the Bill as drafted so do not take account of any potential reliefs although they do err on the side of caution.

114. The Committee is disappointed that, while the SFC identifies very significant uncertainties in the forecast, it does not make any recommendations regarding how the forecasting methodology can be improved.
115. The Committee recommends that the SFC provides details of improvements that it would like to see to the Scottish Government’s forecasting methodology for the LBTT supplement.

116. On a similar basis the Committee is also disappointed in the lack of detail provided by the Scottish Government regarding how it intends to improve the forecasting methodology for the LBTT supplement. There is an emphasis on the considerable uncertainty in the forecasts which have been published but little indication as to how the Scottish Government intends to address this uncertainty.

117. The Committee recommends that the Scottish Government provides details of how it intends to address the considerable uncertainty in the forecasts for the LBTT supplement.

118. The Committee notes that forestalling is estimated to reduce revenues in 2016-17 by £13m to £21m. The Committee asks the Scottish Government to explain why it estimates that only £5m to £7m will be brought forward to 2015-16.

Conclusions

119. The Committee’s view is that while the proposal to introduce a 3% LBTT supplement appears relatively straightforward there are a number of potentially complex issues which need careful consideration at Stage 2 and Stage 3. In particular, there is a need to ensure that appropriate reliefs are introduced which balance the needs of first time buyers with the needs of those who rent their home and with the interests of house builders and investors. This will not be easy especially given the lack of sufficient data on the current structure of the market in Scotland. It is, therefore, essential that the impact of this Bill is closely monitored and that a comprehensive review is carried out once sufficient data is available.

120. The Committee supports the general principles of the Bill.

2 http://www.gov.scot/Publications/2015/12/9056/3
5 Finance Committee, 3 February 2016, OR Col. 26
6 Finance Committee, 3 February 2016, OR Col. 70
FINANCE COMMITTEE

EXTRACTS FROM THE MINUTES

5th Meeting, 2016 (Session 4)

Wednesday 3 February 2016

Present:
Jackie Baillie
Lesley Brennan
Gavin Brown
Kenneth Gibson (Convener)
John Mason (Deputy Convener)
Mark McDonald
Jean Urquhart

Land and Buildings Transaction Tax (Amendment) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

John Blackwood, Chief Executive, Scottish Association of Landlords;
Paul Curran, Vice Chairman, Scottish Property Federation;
Daryl McIntosh, Business Development Executive, National Association of Estate Agents;
Marian Reid, Deputy Director, Chartered Institute of Housing Scotland;

and then from—

Jonathan Gordon, Chair, PRS Forum, Royal Institution of Chartered Surveyors;
Isobel d'Inverno, Convener, Tax Law Committee, Law Society of Scotland;
Jo Joyce, Senior Manager, Stamp Taxes, KPMG LLP;
Susannah Simpson, Tax Partner, PricewaterhouseCoopers LLP;

and then from—

John Swinney, Cabinet Secretary for Finance, Constitution and Economy, Robert Buchan, Senior Principal Tax Specialist, Greig Walker, Solicitor, and Sean Neill, Acting Deputy Director of Finance, Scottish Government.

6th Meeting, 2016 (Session 4)

Wednesday 10 February 2016

Present:
Jackie Baillie
Lesley Brennan
Gavin Brown
Kenneth Gibson (Convener)
John Mason (Deputy Convener)
Mark McDonald
Jean Urquhart
1. Decision on taking business in private: The Committee agreed to take item 5 in private.

5. Land and Buildings Transaction Tax (Amendment) (Scotland) Bill: The Committee considered and agreed a draft Stage 1 report.
Land and Buildings Transaction Tax (Amendment) (Scotland) Bill: Stage 1

The Convener (Kenneth Gibson): Good morning, and welcome to the fifth meeting in 2016 of the Finance Committee of the Scottish Parliament. Our only agenda item is stage 1 consideration of the Land and Buildings Transactions Tax (Amendment) (Scotland) Bill, on which we will hear from three separate sets of witnesses this morning.

First of all, I remind everyone present to turn off mobile phones, tablets and other electronic devices.

Before we start, I invite Lesley Brennan MSP to declare any relevant interests.

Lesley Brennan (North East Scotland) (Lab): I have no relevant interests to declare.

The Convener: Thank you very much.

Our first witness panel on the bill consists of John Blackwood of the Scottish Association of Landlords, Paul Curran of the Scottish Property Federation, Daryl McIntosh of the National Association of Estate Agents, and Marian Reid of the Chartered Institute of Housing Scotland. I intend to allow 75 minutes or so for this session. I welcome our witnesses to the meeting. Committee members have received the submissions from each of our witnesses. We will go straight to questions.

Obviously, we are tight for time this morning—we have only about four hours in total for the three panels, and we have the stage 1 budget debate this afternoon. I will ask questions of individual panel members. Other panel members can comment on those questions if they wish to do so, but I will not necessarily go around all four members with each question, otherwise we will be here all day and my colleagues will not have an opportunity to come in—and I am sure that many of them have questions. I will set the scene, if you like, and then members will come in.

My first question is to Mr Blackwood. In point 2 of your submission, you talk about the proposed 3 per cent rate for the supplement and the impact that that might have on inward investment. You say:

“this will help to attract investment to Scotland despite the less favourable legal framework. For this reason we believe the tax rate should be lowered and the purchase price threshold raised”.

How much investment in buy to let, as a percentage of the market, comes from outside Scotland?

John Blackwood (Scottish Association of Landlords): That is something that we are not aware of. We are certainly aware that we need to encourage investment here in Scotland, and that is exactly what we would like to be doing.

As you are aware, there is a different framework of regulation on the private rented sector, which is about to change even more through the Private Housing (Tenancies) (Scotland) Bill. We feel that investors will perhaps view Scotland in a different light in the future. In order to meet the Scottish Government’s aims of increasing investment and growth in the PRS, we want to attract investment, and if it is to be from outwith Scotland, we want to do that.

The Convener: In paragraph 7 of its submission, the Scottish Property Federation says:

“Currently less than 2% of build-to-rent PRS investment is being directed to Scotland.”

The current situation is not having much of an impact in Scotland. We are going to have a level playing field with the rest of the United Kingdom after the legislation, so how will the bill make life more difficult in Scotland?

John Blackwood: We will not have a level playing field because of the framework of regulation that we will have in Scotland, so investors will view it differently. My colleagues who represent institutional investors can tell you more about that than I can—they can express their attitudes about investing long-term in Scotland compared with the situation at the moment. We are concerned about the future. We know that we need to increase investment, however we do that, and that Scotland needs to become a more attractive place to invest.

The Convener: The Scottish Property Federation also says in its submission:

“This will have a consequence for the house-building industry itself as buy-to-let purchasers are a significant proportion of their off-plan sales.”

Other witnesses have said the opposite—that more private houses will be freed up for other people to buy.

John Blackwood: Our main concern is about the lack of appropriate data sets that would allow...
us really to see what the concern is in Scotland. Obviously, we are going only on feedback from our members and the concerns that they have raised. We know that we want increased investment, including in new-build properties, but the question is how we do that. We do not have information that would allow us to see how much of a problem there is. The Cabinet Secretary for Finance, Constitution and Economy is keen to ensure that first-time buyers have an incentive—if not an advantage over private landlords. However, we do not believe that there is a concern or an issue in Scotland but—as I said—there is a lack of appropriate data to quantify that.

**The Convener:** Paragraph 12 of the Scottish Property Federation’s submission states:

“The supplement will be imposed as a slab tax, exactly the same approach that the Scottish Government was keen to move away from when it took responsibility”

for stamp duty land tax. Will you expand a wee bit on your concerns about that?

**Paul Curran (Scottish Property Federation):**

We were referring to having a more progressive taxation system. The changes when LBTT was introduced removed the threshold point of £250,000, which had meant that everything was priced at around £249,995. It is about trying to get away from that and avoiding the slab tax approach. There is the question whether the measure should be introduced at all. However, from an institutional investment perspective, there should be more exemptions. In the bill as drafted we do not have any exemptions or any trigger points for the tax to come into force.

**The Convener:** You say that there are no exemptions, but our esteemed adviser, Professor McEwen, has written, for the committee, an excellent paper that looks at the potential to ride a coach and horses through the legislation. He mentions potential ways in which people, particularly companies, could avoid paying the tax. If we were to add a lot of exemptions, would the legislation not become virtually worthless?

**Paul Curran:** We are thinking about how we keep Scotland competitive and attract the global capital and investment that we have talked about. The large majority of private development finance now comes either from overseas or from large United Kingdom institutions. The waterfall effect of funding into Scotland, particularly on things such as large-scale PRS developments, will be impacted on if we do not have exemptions for some developments. Given the scale of developments and the unit numbers that could be planned, we really have to get exemptions in there. We have to be competitive in respect of the scale of development that is possible in Scotland compared to the scale that is possible down south.

That is looking at things from the institutional side. From a development perspective, small and medium-sized enterprise housing provision or smaller-scale developers require some funding; that funding is dependent on an element of pre-sales. In smaller-scale developments, if pre-sales are not achievable through some form of buy-to-let opportunity, a development might just not start.

**The Convener:** From Daryl McIntosh’s submission, it seems to me that you do not think that that would necessarily be a bad thing. In paragraph 5, you state:

“Fewer people entering the buy-to-let market is encouraging for first-time buyers because they won’t be in competition with as many individuals looking to invest in buy-to-let properties or second homes.”

Are you saying that, without the competition from the theoretical big investors that we have talked about, house prices would be kept at a more reasonable level for first-time buyers, for example?

**Daryl McIntosh (National Association of Estate Agents):** If investors are deterred by the additional tax, theoretically the first-time buyer market should improve. However, we are finding that the main stumbling block will always be the lack of finance that is available to first-time buyers. We do not have any evidence that first-time buyers are losing out to investors and we are not hearing that from our members. They are not being priced out of properties; they just cannot purchase them at the moment because of the lack of finance being available to them.

**The Convener:** Fair enough.

In your submission, you also express a concern that

“For those people who do decide to invest in second homes or in particular buy-to-let property after April, it is likely that may see rent rises as landlords attempt to recoup the cost of paying the additional homes supplement.”

Is that a real concern for you?

**Daryl McIntosh:** Yes. If investors have to pay additional tax, it basically comes out of their budget so either they will not be able to make any improvements to rental properties—that is a big concern—or they will increase the rents.

**The Convener:** Before I go on to the Chartered Institute of Housing Scotland, what general margins are landlords in the buy-to-let sector working to at the moment? I know that we have about 150,000 and that the average landlord has only about 2.5 properties—some have only one or two and some have many. Does anyone have information on that?

**John Blackwood:** The only thing that I can add is that it obviously depends on the kind of marketplace that one is investing in. We have some small-scale landlords with one or two
properties who might be investing in property in the region of £200,000 or thereby for houses in multiple occupation. The yield for that might be higher than it would be for a small one-bedroom flat in the centre of Edinburgh, for instance. It depends what one’s motivation is as an investor. Many people are, as I am, looking at the situation longer term. They are not looking at short-term gain, but at capital appreciation, which they see as part of a pension pot, in effect.

It is difficult to assess average yields because of the variety of the marketplace and the different motivations of individual landlords.

The Convener: Okay.

The CIHS basically says in paragraph 2.3 of its submission that

“It is our understanding that the policy will not directly impact the build to let market”

and that

“the build to let market in Scotland remains small”.

Could you expand on that a wee bit?

Marian Reid (Chartered Institute of Housing Scotland): That is not the main thrust of our submission, so—

The Convener: It is not, but we touched on the subject, so I wanted to hear your view.

Marian Reid: I probably have less detail on the build-to-let market than colleagues have. That is not the area that we are primarily concerned about, particularly in relation to our members.

The Convener: Fair enough. I will ask you about something else.

In paragraph 1.3 of your submission, under the “General comments” heading, you say:

“We agree with the general principles behind the policy. However, it will be important to ensure that it does not have any unintended consequences or a negative impact on the overall housing market.”

What unintended consequences concern you?

Marian Reid: There is a range of potential unintended consequences that relate partly to the private rented sector, which other colleagues have been highlighting, but also to the housing association sector and local authorities. Housing associations and local authorities both buy properties out of the owner-occupied market for a number of reasons. In the case of local authorities, it may be where homeowners are struggling with mortgage payments; there is a scheme whereby local authorities can buy those properties and the homeowners then rent them.

There is also mid-market renting through the national housing trust. Mid-market renting is an important part of the market at the moment. It provides affordable housing for people who cannot afford to buy but do not fall within the remit of the social rented sector or cannot be housed through it because of pressures in that sector.

We recently did a member survey in relation to evidence that we put together for the fairer Scotland submission. We and local authorities are keen to increase our capacity to build, but there are restrictions such as land supply and the cost of land, and there are sometimes planning issues in respect of the length of time that it takes to get things through. It was identified that being able to buy properties on the open market is filling a niche in terms of being able to provide affordable housing.

The Convener: Thank you very much.

Gavin Brown (Lothian) (Con): I understand that a stakeholders reference group has been set up by the Scottish Government. Very quickly, are any of you on that group?

John Blackwood: No.

Marian Reid: No.

Daryl McIntosh: No.

09:15

Paul Curran: I think that the SPF is.

Gavin Brown: The other three organisations are not, however.

You will have seen in the policy memorandum that a policy objective of the bill is

“to ensure that the opportunities for first time buyers to enter the housing market in Scotland remain as strong as they possibly can”.

The benefit to first-time buyers here is that it is less attractive for buy-to-let properties but the disadvantage to first-time buyers, at least according to some of your submissions, is there might be a reduction in the amount of new house building and activity on the market. Taking those two factors—the pros and the cons for first-time buyers—into account, will the bill ultimately make life better for first-time buyers, is it neutral or will it make life trickier for them? I am happy for anyone to answer that question first.

John Blackwood: I will start. I suppose that the bill will at best be neutral and at worst be detrimental to first-time buyers.

Perversely, something else could happen, though. I referred earlier to landlords investing around the £160,000 to £200,000 mark. Although their overall pot of money is still the same, because of the increase in taxation they would need to think about investing in something smaller, which might take them into the same bracket as first-time buyers—the £145,000 bracket. We are
concerned that the supplement might push some investors who are not competing against first-time buyers at the moment into competing with them. To be honest, though, we have not seen any evidence that that is already happening.

**Gavin Brown:** Do other panel members have views on that?

**Paul Curran:** The key issue in the first-time buyer market is affordability, which is impacted by supply of housing. If anything makes it more difficult for developers—especially SMEs—to obtain development funding, that might reduce the availability of houses for people to buy at the lower level.

**Marian Reid:** Housing markets are not just national—they are also very local. The consequence of the supplement will depend on the locality. There is also the rural-urban difference. There might be a scarcity of property anyway in rural areas. If a consequence of the supplement is that some private sector landlords are squeezed out, that may have a negative impact. It may be that, because of the economy, first-time buyers are struggling anyway, even within those localities. That is why we recommend that it is important to have a peer review and to monitor how the supplement works on the ground.

**Gavin Brown:** One of the issues that has been put before us is that there is likely to be what is called forestalling; in other words, lots of activity could take place before 1 April in order to avoid the 3 per cent tax. I am sure that we do not have figures, but have your organisations seen any evidence of that on the ground since the announcement in the middle of December? Is it too difficult to say at this stage?

**Daryl McIntosh:** According to feedback from our members, they have noticed a spike already. They also noticed a spike with the introduction of LBTT.

**Gavin Brown:** My next question is on the second policy objective. The policy memorandum says:

"The supplement is ... necessary to ameliorate the likely distortions which will arise in Scotland when new SDLT higher rates ... are introduced".

Obviously, this is happening south of the border as of 1 April, too. That is one of the reasons for introducing the policy. On the face of it, it seems like a plausible policy objective. Is it? Are we likely to see an influx of buy-to-let investors from south of the border if we do not do this by 1 April?

**Marian Reid:** That is quite hard to measure. We have a different regime in the private rented sector. A lot of work has been done to support the sector and to raise standards, but that includes additional regulation and a new tenancy regime. That might deter such investors.

Dealing with different countries and regimes is not always entirely straightforward at the best of times, and we in Scotland are moving in a very particular way. I am afraid to say that what you ask is hard to quantify.

**Gavin Brown:** I will refer to some individual papers, if I may. I will start with the Scottish Association of Landlords and John Blackwood.

In your submission, you set out the association’s position and give a range of potential exemptions and reliefs that you would call for if the legislation were to proceed. You refer to exemptions for those buying six or more properties, which is similar to the threshold for multiple dwellings relief; those buying new-build properties; properties that are subject to joint purchase; houses that are not suitable for mortgages; properties that are on the market for more than six months; and existing buy-to-let holiday homes. That is a fair number of exemptions. Do not give us chapter and verse, but can you briefly outline the consequences of not having exemptions in some of those situations?

**John Blackwood:** Our biggest concern is that not having an exemption will discourage investment. We want to encourage investment; in fact, we want more people—institutional investors as well as individual investors—to invest in the private rented sector.

The approach that we took in our submission was to look at what the consequences will be if the legislation proceeds—and we all know that that is happening in other parts of the UK—and what we could do to mitigate them. We looked at specific areas with the thought that there may be an argument for exemptions and that they would help to alleviate the potential negative impact of the proposal.

**Gavin Brown:** For my own benefit, what does the expression that a property is “not suitable for mortgage” mean?

**John Blackwood:** We have some properties of non-standard construction. There is nothing wrong with the properties and they are perfectly habitable but, perhaps because of when they were built or the kind of construction they are—such as timber-framed—they can be a concern for some mortgage lenders. Those properties are not in the mainstream, as it were. We need to encourage them to remain in the marketplace and to be turned over if the seller wants to get rid of them. We want to encourage that—and maybe that is something that we can look at, too—but first-time buyers are not competing in that marketplace.

**Gavin Brown:** I guess that the idea of discouraging investment could apply to a few of
the exemptions or reliefs that you have called for. You also suggest exempting properties that have been on the market for longer than six months. What is the explanation for that exemption?

**John Blackwood:** Our rationale behind that is that, although there seems to be an assumption that there is competition in which first-time buyers are vying against private landlords for the same properties, we do not see evidence of that. I think that it is evident that, if a property has been lying there for months and nobody is buying it, landlords are not interested in it. Rather than having a property potentially lie empty and not turn over in the marketplace, is it not better to shift it? If that shifts it into the PRS, it is providing more housing for people to live in. We therefore saw an exemption as a positive step.

**Gavin Brown:** The paper from the Scottish Property Federation talks about some similar exemptions, but the main exemption that it seems to call for is an exemption where the transaction involves more than six properties. Mr Curran, can you expand on that?

**Paul Curran:** There are two aspects to such transactions.

The first aspect is large-scale PRS investment. We want to avoid a position in which there is no exemption on that type of investment as it is one of the main opportunities to deliver a lot of the housing requirement. If we do not have that exemption, or a level of exemption, it will put us in a less competitive position—certainly against the UK—when it comes to attracting institutional or overseas investment in these large-scale projects, in which there is definitely a huge appetite to invest. The more costly it becomes to do that, the less attractive it is for investors to tick the box with their investment committees.

The other aspect to consider is smaller properties and—again—SMEs. We need to remember that a large proportion of the property market was decimated back in 2008 and 2009. A lot of SME house builders ceased to exist because of the crash in the property market, and we want to encourage entrepreneurial organisations of that type to support and deliver a large proportion of the new-build property that is required to meet demand.

The introduction of an exemption at a level of six properties on an individual new-build development would provide an opportunity to be slightly more competitive than the rest of the UK. Given the scale of development in Scotland, it would enable developments to be funded. Small SME-type organisations are heavily dependent on funding, and funding on such sites very much depends on achieving a level of pre-sales, which tend to be to buy-to-let landlords.

**Gavin Brown:** The Scottish Property Federation has a sister organisation, the British Property Federation, which I presume is involved in the consultation on the change to stamp duty land tax. From your discussions with the British organisation, do you think that there are things that we could be learning from the consultation, which might speed things up and help us to avoid making mistakes up here?

**Paul Curran:** From my knowledge of the discussions with the UK Government, the exemption levels that people are looking at are higher—they are looking at an exemption level of 15 units, which is regarded as key in retaining attractiveness for institutional and other types of investment.

The reason why we are looking for something lower is that we recognise the scale of the Scottish market compared with that of the rest of the UK, given our smaller investors and smaller developments. We do not have London-scale developments all over Scotland; we tend to depend heavily on smaller schemes of 20 or 30 units, so six units is a reasonable level.

**Gavin Brown:** Thank you.

**The Convener:** We have been joined by Jackie Baillie, but the next questions will be from John Mason.

**John Mason (Glasgow Shettleston) (SNP):** If someone is sitting in London with a spare half a million pounds and is thinking of buying a second home in Scotland for £200,000, then whether the house costs £206,000 or £220,000 will not really affect them, will it? They are not going to go to Birmingham to save a few thousand and pay £190,000, are they? I suppose my question is whether we need to worry about what is happening down south. Do we not have a separate market up here?

**Paul Curran:** I do not think that we have a separate market; there is very much a competing UK market. Whether we are talking about small or large-scale investment, people are looking at how each individual city competes. In the larger-scale property market we are very much competing with Manchester, Birmingham, London and all the regional cities. An individual investor who has £500,000, £200,000 or whatever will look at the yields that they can achieve on their investment, so the minute that we apply additional taxation the investment becomes less attractive.

**John Mason:** If they are buying a home for themselves, the yield is not an issue, is it? Location would be the issue.

**Paul Curran:** Yes, but if someone is looking at location, it is very much a personal purchase, so it is not an investment decision.
John Mason: Yes, but as I understand it, the bill covers personal purchases as well as investments.

Paul Curran: It does, but in the buy-to-let market, which is where the bill will probably have the biggest impact, it is the investor view that is more relevant. I cannot talk about individuals’ personal purchase decisions.

John Mason: A lot of villages in Scotland are being gobbled up by people who are making personal decisions, are they not?

Paul Curran: Well, yes, potentially.

John Mason: You said that there is one market in the UK and there is not a separate market in Scotland. I do not know whether the other witnesses agree. I suppose that I still feel that some people actually want to live in Scotland and the price is not the only factor for them.

Would it be a good idea for us to wait for a year, see what happens and then legislate if there is a problem? The question is for anyone to answer.

John Blackwood: I think that that would be a more sensible approach. We need to do more research, so that we understand the dynamics of the issue in Scotland. Is there a need for a surcharge and, if so, where?

I completely take your point about second homes. The Parliament and the Government should take into consideration the fact that that is a completely different marketplace. The people who we are representing are investing in providing primary homes for people. They should be seen differently and not tagged as the same as people who just want to have a nice little bolthole somewhere in Scotland.

09:30

John Mason: But they are still competing with first-time buyers. If someone cannot afford to buy a house, they are forced into the private rented sector. I know that some people want to be in that sector, but others want to buy and their second choice is to rent in that sector. If we unfairly advantage the big companies by giving them exemptions, will that not disadvantage the first-time buyer even further?

John Blackwood: We would need to look at the motivation for the investment. I know that it is difficult to analyse and regulate that but, at the end of the day, if someone wants to invest in a property for the purpose of renting it out, whether as an institutional investor or a private landlord, they should be encouraged to do so. We need more of that. The Scottish Government has said clearly that its objective is to grow and develop the PRS, so we want to see that happen. In my view, that is not—

John Mason: But presumably we do not want to help the private rented sector at the expense of the bought sector. We want to help both—we want more investment. Giving an exemption to someone who has six properties—or 15 properties—is like giving the supermarket a cheaper rate than the corner shop, which disadvantages the corner shop. Would creating such an exemption not disadvantage the first-time buyer?

John Blackwood: I do not know. We need more research to understand the issue; our concern is that we do not understand exactly what is happening here in Scotland. Research has been done in the south-east of England in particular, but we do not think that that correlates to what is happening here in Scotland. We could be wrong—we just do not have the data sets that we need to understand the issue properly.

The average house price that first-time buyers are paying is around £133,000. We do not think that there is a major issue with first-time buyers being pushed out of the marketplace by people with second homes, or private landlords in the PRS, who are my main concern.

John Mason: Surely it is unfair to give more exemptions to a company with six or 15 houses than to an individual who is trying to get on to the property ladder. Do any of the other witnesses have thoughts on that?

Paul Curran: I do not think that that disadvantages people, because we are talking about housing supply and affordability. The more houses that are built, the lower prices should be. Encouraging an increase in supply and affordability, whether in the PRS or in homes for sale, will be beneficial to everyone.

John Mason: This point goes a bit wider, but in my constituency there is loads of empty land that nobody wants to build on. The builders are guilty of not doing as you suggest: there is demand and they could build more. However, that is perhaps another issue.

We have not touched on the issue of purpose-built student accommodation. I do not know whether any of you have expertise in that. It has been suggested that such accommodation should be treated separately. Do you support or oppose that?

Paul Curran: That accommodation is in a slightly different asset class—it is not property that is on the open market for letting. We say in our submission that we support it being exempt as well.
John Mason: I dealt with a case in my constituency in which property was built for students but was then sold off by mistake to individuals who were not students. How strong are the categories? Even if we say that accommodation is purpose built for students and we should treat it differently, presumably at some stage it could be sold off separately.

Paul Curran: That is more a question for planning departments as it is about the classification of buildings, what they have been constructed for and what consents they have.

John Mason: Both Lesley Brennan and I are on the Delegated Powers and Law Reform Committee, which generally does not look at the policy, but one point that came up for us was the question of valuation of properties.

Is that a concern for anyone? I did not pick that up from the meeting papers, although I confess that I read them fairly quickly. Will it be clear from the legislation how properties are valued, or is that a concern? Related to that, will there have to be frequent valuations if somebody has a property that is near a boundary such as £40,000?

If nobody has any comment on that I have lots of other things to ask.

Another area, which some of you may have experience of, is the question of paying up front and then reclaiming later if the property is sold. Some people in Scotland are buying before they sell—they may be trying to sell first, but they do not manage to for various reasons. There are also other reasons why someone might pay the tax up front and then have to reclaim it. Concerns have been raised about that; is it something that any of you have concerns about, or is it not an issue?

Daryl McIntosh: That concern has been raised because of people accidentally falling into that situation through no fault of their own. For example, as you hit on, if somebody has already purchased a property but their sale then falls through with their purchaser, they have to complete their purchase and they then have two homes, which they never intended to have. They are unfairly penalised: they probably do not have the finance—or they are scraping it together—to pay a bridging loan and then, unfairly or unjustly, they have to pay the extra tax as well and then claim it back.

John Mason: Is there a better way of working?

Daryl McIntosh: I do not know.

John Mason: From my point of view the fear would be that, if people could just say that their intention was to sell the house and lots of people did that, the whole system would start to fall apart. People would have to be chased up a year later to find out whether they did sell the property. It is tidier to proceed in the way that is proposed, but, as you have said, for some people that would be quite an issue.

Daryl McIntosh: Yes. I do not know what would be the best way.

John Mason: Another specific example was that if a family bought a property for their children they would be charged. Is that really a problem?

Daryl McIntosh: I think so, yes. We see that a lot, certainly in the university cities. People are purchasing for their children, or with the children on the mortgage as well, to get them on the ladder—in effect, helping them to be first-time buyers. That is going to be an issue as well.

John Mason: Could they not just lend their children the money—or do they not trust their children? [Laughter.]

Daryl McIntosh: I will not touch that one.

John Mason: My final point is on housing associations. I realise that none of you represents housing associations, but we do not have anyone from a housing association coming before the committee today. I ask any of you who are comfortable in the area whether housing associations should be treated any differently. Is there an issue? Should they just be treated like everyone else?

Marian Reid: The concern with housing associations is in the mid-market rent area where housing associations have subsidiaries and they deal in a slightly different way or under a different regime. If they were subject to the tax, it would affect their operation in terms of what they were able to do and their flexibility. They are meeting a housing need in what are sometimes quite pressurised areas for people who—as I was saying earlier—cannot afford to buy but who do not fall under the eligibility criteria for social housing because there is such a squeeze on those waiting lists. There are definitely implications.

John Mason: Housing associations are competing more with the normal private rented sector, but they are slightly cheaper, as I understand it.

Marian Reid: Yes. They are mid-market rent. I am not an expert on the rates or where they sit, but it is mid-market.

John Mason: A level of 80 per cent has been mentioned, but I think that it varies.

Marian Reid: Yes, so there is a concern.

John Mason: Should housing associations be treated in the same way as the normal private rented sector, or do you think that they should be
treated more favourably because of that social aspect?

Marian Reid: They are meeting a slightly different market, potentially. They are meeting a market that cannot go out into the marketplace and say that they want private lets and have a range of choice because they have the income. The housing associations are filling a niche; that is why they are there and why local authorities are involved as well.

The housing system is quite complicated at the moment. There are a lot of things going on and there is a need to balance all the different bits so as not to have unintended consequences on parts of the market that are meeting need that might not be met elsewhere. It is important to get the balance right.

John Mason: You have raised an important point about things being complex. My hope had been—and I think that we achieved it—that LBTT would be a fairly straightforward tax. Will what is now proposed complicate things?

Marian Reid: The points that we are raising are more about thinking through what the potential consequences are. We are all probably struggling because we do not yet have all the data to let us know that, so it is hard to say.

John Mason: Mr McIntosh, are estate agents going to have to ask a lot more questions, or is it a solicitor who does that?

Daryl McIntosh: It will be the solicitor's job to do that.

John Mason: So it should not complicate your efforts.

Daryl McIntosh: Agents will still market the property at the relevant valuation.

Lesley Brennan: I should perhaps have mentioned that I did a study for the Scottish Government in 2009 on the baseline of the private rented sector in Scotland. One of the things that came up then was the lack of data, so it is disappointing that the data has not improved since that report was published in 2009. What I have heard is quite a lot of anecdotal evidence, but there is not much robustness there. I have also done a number of private rented sector studies in England, and have conducted focus groups with landlords, but what I missed is what you are describing—the philanthropic landlords. You are suggesting that landlords are investing to give people housing, whereas the landlords whom I spoke to across the country were investing because there was a good rental yield.

John Blackwood: I want them to be investing to provide more housing. That is the whole point and the whole thrust of what we are doing. We need more housing in Scotland so we should encourage investment, but yes, they are doing it as businesspeople. They might not be doing it for a short-term gain, and the yield might be negligible in some scenarios, to be perfectly honest, but of course, as businesspeople, they are looking at long-term gain. We are trying to encourage them to see Scotland as a place to do business and to see investing in property as something attractive that they can do, although there is regulation that they must follow because they need to provide a good service. We want them to see it as a business that is worth doing, and the consequence of that in the long term is that we provide housing for people, which is something that we should be encouraging here in Scotland.

Lesley Brennan: In your submission, you suggested that the biggest impact of the proposals will be on vulnerable tenants, as less money will be spent on improving stock.

John Blackwood: If there is less money to go around, there is less money to spend on improving the properties that people are investing in. If they have purchased a property, they have a finite pot of money to invest, which has to cover capital costs, taxation and the cost of meeting all forms of regulation. That continues; it is not just at the point of purchase. Landlords could find—inadvertently, as a result of all this, not just one aspect of regulation—that they have less money in the longer term to invest in their properties, and we do not want that either. We want them to be putting the money back into their properties.

Lesley Brennan: Shelter has said that large landlords crowd out first-time buyers because they can access cheaper credit. What is your view on that?

John Blackwood: I cannot talk about larger investors or institutional investors, as that is not my field. I cannot say whether they can access better sources of funding. From an individual investor's perspective, which is my area, it is not more attractive for them to access funding than it is for a first-time buyer.

Lesley Brennan: I would like Ms Reid to comment on the CIHS submission, paragraph 1.4 of which states:

“In addition, we feel that if the measure is to support the housing market in a meaningful way, the additional funds raised should be reinvested into the housing sector.”

Marian Reid: Yes. By that, we mean the affordable housing sector. We must keep supporting and maintaining the aspirations that we all currently have to increase affordable housing supply. That does not mean that we must always invest the money in local authority housing or housing associations. It can also go towards...
Carrying on improving the standards in the private rented sector.

There are a great deal of smaller landlords in Scotland. You see the term “accidental landlords”. I cannot remember whether we mentioned it in our submission, but it refers, for example, to people who inherit property and rent it out or two people who move in together and do not sell the second property. Those people rent the property out as an investment, but it is also important that they get the help and support that they need to be the best landlords that they can be. Therefore, we feel strongly that it is important that the money be reinvested, especially if there is a potential for an adverse impact on parts of the market that provide social housing.

09:45

Lesley Brennan: As John Mason mentioned, paragraph 4.1 of your submission says:

“Local authorities and registered social landlords … should not be subject to the charge if purchasing homes on the open market”.

You mentioned mid-market rents. I am a councillor in Dundee. Dundee City Council bought housing on the open market, which it is renting out as social housing.

Marian Reid: Yes. There are different reasons why that happens. I do not know the specific example to which you refer or why it happened but, sometimes, there are blocks in which the local authority might have some properties but others have been sold through the right to buy and, if they come up on the market and the price is appropriate, the local authority might choose to bring them back into its stock. If it all stacks up financially, it is easier to do than it is to start from scratch and build something else, and it can create a more coherent community and make more sense for maintenance. That is one example, but there are several rationales for why local authorities might buy housing on the open market.

Lesley Brennan: So you are looking for an exemption for registered social landlords.

Marian Reid: Yes.

Mark McDonald (Aberdeen Donside) (SNP): The notion has been raised that the surcharge could hamper new-build development because a lot of such development is predicated on advance sales in the buy-to-let market. Does anybody have any detail on the percentage of new-build properties that are purchased as buy-to-let properties? I see a lot of blank expressions. The reason why that is a concern for me is that it appears that certainty is being inferred from supposition. If we do not know what percentage of new-build properties are sold as buy to let, it is difficult to infer what the impact on new-build properties would be were the surcharge to have a behavioural impact. Is that a fair assessment?

Paul Curran: The point that you raise is one of timing and the information and research that are required to consider the measure properly. That is one of the issues with the pace that we are going at in reviewing the bill. More research, information and analysis of the market is required.

Mark McDonald: Are any house builders saying to the CIHS that their ability to access the capital to develop is predicated on the buy-to-let market being part of their advance sales?

Marian Reid: We do not work so closely with house builders. We work more with the social rented sector. I am sorry, but I do not have that information.

Mark McDonald: How about the SPF?

Paul Curran: Such sales are key for the small and medium-sized enterprises—the entrepreneurial organisations that do the smaller-scale developments—to secure equity funding or bank funding. Banks still need a level of certainty about how they will get their money back, which is delivered by achieving a small number of pre-sales on sites. Again, there is no evidence about the impact.

Mark McDonald: I was away to say that. I presume that there is no evidence that those pre-sales could not be undertaken by people upsaling into a new property or first-time buyers entering the market.

Paul Curran: There is no evidence on that either way. Developers do not have a preference about who they sell to, but the issue is the need for early sales in a development to enable the development to go ahead. The key things is that first-time buyers will not have certainty on funding, so they will not be able to commit to a contract in advance of construction.

Mark McDonald: I am trying to think of the best way to word my next question. What level of advance sales do developers have to achieve in most developments in order to be able to access that capital?

Paul Curran: With a small-scale development, we would be talking about a level of about 20 per cent. A small-scale development would be one of 30 units, so that is where our proposal of six units as the level for an exemption for new-build properties comes from. Some lenders might seek a higher level of forward purchase, depending on the type of property. With an apartment scheme, they might seek a higher percentage of forward purchase, such as 30 or 40 per cent but, in
general, a level of 20 to 25 per cent is enough to enable a development to commence.

Mark McDonald: Mr Blackwood, you mentioned the difficulty in attracting inward investment. I think that it was suggested that the percentage of capital that is invested in the buy-to-let market that comes from furth of Scotland is 2 per cent. If that is the situation at present, would maintaining the status quo really have that much of an impact in attracting investment from outside Scotland? Given that the level of investment that has been attracted from such investors has not gone beyond 2 per cent, is it likely that that figure would shift dramatically if the proposed surcharge were not to be introduced?

John Blackwood: Our point is that we want to see an increase in the level of investment from within and outwith Scotland. The figure of 2 per cent is low; we want it to be higher. Why do we want that? We want that because there is not enough housing for people. We need to encourage such investment across the board in the private rented sector.

Mark McDonald: But surely the flip-side of that is that, if there were to be such an increase in investment, that increased investment would purchase properties that could otherwise be purchased by first-time buyers. Is that not the case?

John Blackwood: That could happen. We do not know what the situation might be, because we are working only with proxy data sets. At the moment, we do not have evidence of that. At present, we do not have the surcharge. I know that it is early days, because it has been introduced in other parts of the UK only recently. Are first-time buyers being pushed out of the market? Do we have evidence that house prices are going up? No, we do not. That has not been the case in recent times in Scotland.

If prices were to go up, that would mean that that was an issue. Why would it be an issue? There might be more competition in the marketplace. I do not believe that that is the case at the moment. That is not to say that that would not happen in the future—I appreciate that—but we seem to be guessing what is going to happen and implementing a surcharge based on supposition.

Mark McDonald: I think that it is the SPF that has called for an exemption from the supplement to be introduced at a significantly lower level than the one that has been introduced south of the border. I presume that we have an idea of the number of entrepreneurs or companies out there that are purchasing in bulk or purchasing a number of properties. What percentage of the market would be impacted if there were to be a 15-property exemption, as there is south of the border, as opposed to a six-property exemption, as the SPF has recommended?

Paul Curran: I think that we need to look at the issue from the point of view of institutional investment. There is £30 billion of large-scale institutional investment in the UK. The figure of 2 per cent has been mentioned. That is where the volume would come from. Without such an exemption in place, Scotland would be uncompetitive from the point of view of investment in comparison with the rest of the UK.

If we look at smaller new development sites, which I think is what you are getting at in your questioning, it is hard to put a number on it. It is more a case of timing. We need to have time to do analysis and to produce proper stats.

Mark McDonald: If I hear someone saying, “We need to set the exemption threshold at six properties,” for example, I assume that there is some hard data underneath to show that there is a market distortion beyond that point. You seem to be suggesting that there could be a market distortion, but you are not very sure.

Paul Curran: We simply propose bringing the threshold in line with what would be considered a commercial transaction under existing legislation.

Mark McDonald: Out of curiosity, why do you think that the exemption threshold has been set at 15 for stamp duty land tax? You say that it should be set at six, beyond which it would enter the commercial realm. Why has the threshold for stamp duty land tax been set so much higher?

Paul Curran: It simply recognises the scale of the housing market in the rest of the UK in comparison with Scotland. We must recognise that the market and the scale of development in Scotland are smaller. That is the reality.

Mark McDonald: Presumably that is true in some locations but not in others. For example, one could imagine 15 properties or more being purchased in one go in Edinburgh, Glasgow or Aberdeen, but perhaps less so in Irvine or Arran—just to pick two examples, for no reason whatsoever. [Laughter.]

The Convener: One of those is in my constituency, but the other one is not.

Mark McDonald: Would that be fair?

Paul Curran: It will be different in different locations, but it would be very difficult to produce a threshold that reflected that.

The Convener: That concludes questions from the committee members, but I have one or two further questions on an area that has not really been touched on.
Mr Blackwood, you said just now that “there is not enough housing for people.”

Surely, in many areas of Scotland, there are enough houses for people. In Arran, which has just been mentioned, there are plenty of houses, but 42 per cent of them are second homes. People may visit them for three or four weeks a year and then rent them out for three or four months. For seven or eight months, particularly in winter, they lie empty. They are often bought by people from outwith the island. The same applies to many places in Scotland; in Cumbrae, the figure for second homes is 50 per cent. The economy is weakened in winter because there is not much spend in the local shops and so on. Local indigenous islanders find it very difficult to compete for housing, and it is very difficult to attract teachers, national health service professionals and so on to the island and to other rural parts of Scotland, because they have to pay well over the odds for housing.

Surely, the 3 per cent charge will have a positive impact and allow at least some respite for people who want to buy their own home without having to compete with second-home owners.

John Blackwood: To be honest, I agree with what you have said. Our organisation represents private landlords who are in the business of buying properties to provide principal homes for people to live in; I am not here to advocate for people who wish to buy second homes and use them as holiday homes, as you suggest.

The Convener: I understand that, but—

John Blackwood: A distinction should perhaps be drawn between the two, and there is currently no such distinction in legislation, from council tax all the way through. That is wrong. The legislation should focus on the nature of the property use as opposed to the type of ownership.

The Convener: I was trying to make the point that you are not keen on the bill progressing, but there are positive aspects to it, including the one that I described.

Mr McIntosh, what is the view of the National Association of Estate Agents on the provisions relating to second homes?

Daryl McIntosh: Again, it all depends on the circumstances, and how one justifies the purchase of a second home. We have already highlighted that some second homes are accidental, where people have been pushed into them, and that people may purchase a second home with or on behalf of their children simply to get them on the housing ladder. A majority of second homes are purchased in that way to get first-time buyers on the ladder. We are constantly saying that the lending criteria and access to finance must be improved.

10:00

The Convener: I will return to Mr Blackwood, on the issue of reliefs. Under section 4 of your submission, you pointed out a number of areas where you would like reliefs to be applied to the legislation. Which of those reliefs should be prioritised?

John Blackwood: We thought that if we put down a few reliefs, you would at least pick one or two of them that might be of use, so we had a bit of a brainstorming session on that. To be honest, I think that they should be prioritised in the order that they appear in the submission—it is perhaps no accident that they are listed in that order.

There was the issue of joint purchases in which one of the parties is a first-time buyer. We discussed cases in which parents buy the property but, for a number of reasons, it is not in their name. However, often it is in their name, so they are joint owners. You could say that it is a first-time purchase for one of the purchasers as part of that transaction. That could be taken into account.

We have touched briefly on one of our biggest concerns, which is how this charge is administered and how we can make sure that there are no loopholes, so that it does the job that it is intended to do, which is to help first-time purchasers. That is our concern, and we feel that we can justify so many exemptions, but is it really going to help the people that the policy is intended to help?

The Convener: Thank you for that. That is a good response.

Gavin Brown: I want to come back to an issue that John Mason mentioned, which is worth exploring a bit more. That is the idea of an accidental second-home owner—someone who buys a new home and whose current home is not selling, so they have to pay money up front for the new home. I think that Mr Mason was correct when he said that that is the clearer and simpler approach, and that it is clearly the best solution administratively. However, it will be challenging for a lot of potential home owners to stump up that money up front.

What impact do you think that that issue will have on market activity? Some people are naturally cautious. Personally, it would put me in a position where, before I ever considered buying the new home, I would sell my current home. There must be lots of people who are naturally cautious. Would that not lead to a slow-down in activity? If so, what level of slow-down would there be?
That question is for anyone. Mr Blackwood, you were making eye contact, but you do not have to kick off on this.

John Blackwood: I think that it is a potential unintended consequence of that measure. We do not want the market to slow down. It is important that it is flexible and meets market conditions when they change.

I am not an expert in this field, but I think that there may be a way round that. When a buy-to-let investor is going to invest in new property, the source of the money to do that is checked as part of the money laundering processes. At the conveyancing stage, it would be evident whether they were intending to sell a property to get that money, or whether they were buying with savings or with money that they had inherited. Therefore, from an administrative point of view, it might not actually be so difficult to track that. However, I have colleagues in other fields who would be far better than I am at answering that question. That might alleviate some of the fears that people have about having to sell their home before buying something else.

Without question, I think that there would be a negative consequence in the marketplace.

Gavin Brown: That is something that we can explore with the Government later.

The Convener: I thank our witnesses for answering our questions. I realise that this has been a truncated process, so I appreciate you coming in at short notice and making substantial contributions. I also thank my colleagues for their questions.

10:04

Meeting suspended.

10:10

On resuming—

The Convener: We continue our consideration of the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill by taking evidence from our second panel of witnesses this morning. I welcome to the meeting Jonathan Gordon of the Royal Institution of Chartered Surveyors, Isobel d’Inverno of the Law Society of Scotland, Jo Joyce of KPMG and Susannah Simpson of PricewaterhouseCoopers. We have your submissions and will therefore go straight to questions.

My first question is for Mr Gordon. In paragraph 3 of your submission, you say:

“it was prudent of the Cabinet Secretary for Finance, Constitution and Economy to match the UK levy, as the Scottish housing market could’ve seen an influx of buy-to-let investors from England and Wales if a similar regime is not introduced.”

You may have heard a number of the earlier witnesses say that an influx of additional investors was exactly what they wanted, given that only 2 per cent of institutional investment in buy to let in the UK is in Scotland. Will you expand on why you hold your view?

Jonathan Gordon (Royal Institution of Chartered Surveyors): The RICS has a duty under its royal charter to look out for everybody’s interests. Although the members of my PRS forum are mainly letting agents who work in the sector, looking after investors and landlords, they obviously look after tenants as well—that is part of our process. I have some personal views on the sector, but there are also the views of the RICS to represent as a whole, and those are exactly as stated in the submission. Those who follow Twitter, property groups and so on will have seen some chatter about the announcement of the change after it had been made, with people thinking about investing in Scotland. I have anecdotal evidence that clients from England who had invested here and down south were thinking about their next investment being here.

The Convener: Is your concern about that additional investment that it would push up house prices and make things difficult for first-time buyers?

Jonathan Gordon: Personally, I think that the evidence is not that clear on that, but there is a risk—you have perhaps to copy the policy and explore it further as it develops. The risk is quite high—that was the key reason stated by the finance secretary.

The Convener: So you do not think that the finance secretary could have waited a year to see how things developed and then introduced the legislation if necessary.

Jonathan Gordon: There is probably a range of views in the forum on that. Some people feel that we could attract more inward investment and that it would not affect the market. The balance of opinion in the RICS was just that it was safer to copy the policy now.

The Convener: I do not think that Isobel d’Inverno would agree with that. In her submission, she says:

“the timescale and manner in which this proposal is being considered is not conducive to the formulation of good-quality, robust tax legislation.”

Isobel d’Inverno (Law Society of Scotland): It goes without saying that if you have to do something in a hurry there is a risk that you will make mistakes or at least that you will not address all the issues that need to be addressed. It is a
very truncated timescale, but we make that point with a view to the future—and I do not think that this will be the only time that Scotland will want to introduce a measure quickly because one has been introduced in the UK. We perhaps need to think a little about the process for introducing such policy, because it will be quite an effort to get the legislation through in the timescale.

10:15

**The Convener:** One of our earlier witnesses, Mr Blackwood, said that it is important to ensure that such legislation has no loopholes. I was intrigued by the Law Society of Scotland’s submission in which, at section 4, the myriad suggestions for reliefs goes on to such an extent that I expect the £17 million to £29 million that the Scottish Government hopes that it will get from the supplement to decline as I turn from page to page. However, when it comes to section 5—the potential for tax avoidance under the supplement and how that should be addressed—the submission says “No comment”. I was quite surprised by that.

**Isobel d’Inverno:** Our view is that the Scottish general anti-avoidance rule is already sufficient to address any avoidance issues. Our larger concern is about some of the situations where the legislation in its current form may have quite capricious results.

Circumstances might arise in which it does not seem fair that the supplement should have to be paid. Dealing with those is probably our main concern and the concern of our members. One example is of someone inadvertently ending up with two houses because something has gone wrong with the transactions and they have not managed to settle both on the same day. That happens quite a lot—that point was raised in the earlier evidence session.

We think that there ought to be a grace period—we suggest 30 days—in which, if one transaction does not complete when expected, the person does not have to pay the 3 per cent up front, even though they have two houses for a short period of time. If they have not sold one property by the end of the 30 days, the return has to be amended and the supplement paid. We think that a 30-day period would be sufficient to deal with quite a number of cases in which people have not intended to have two houses but there has been a hiccup somewhere along the line.

**The Convener:** I will ask you the same question that I asked Mr Blackwood. How would you prioritise the reliefs that you list? You have already mentioned one—would that be your number 1 priority?

**Isobel d’Inverno:** That one is quite important. If there is no such relief, some solicitors may take the view that they will have to tell clients that they need to budget for paying the 3 per cent supplement, because it will have to be paid if anything goes wrong and the purchase and sale are not completed on the same day. It is quite important.

**The Convener:** Jo Joyce takes the opposite view from the RICS in relation to investment. She says in her submission:

“Investors in the private rental sector ... are a key driver in ensuring that new residential properties are constructed, whether by way of direct investment into new developments, or in ensuring that house builders are confident that there will be a buoyant market for their product.”

I ask her to give us some more information on that.

**Jo Joyce (KPMG LLP):** A lot of our information on that is anecdotal and comes from our clients. We have been gathering information in response to both the LBTT supplement and the introduction of the surcharge in the UK—a lot of our clients are nationally based. Particularly in the small and medium-sized market, clients look to sell a lot of their properties off plan in order to forward-fund the development or to secure bank funding. They often have people buying one, two or three apartments in a block, and obviously at least two of those will be for buy-to-let investment. Without that, our clients will struggle to get funding going forwards. We do not have hard data on that; it is just what our clients have been telling us.

**The Convener:** I move on to Susannah Simpson. You say in your submission that you are concerned that unless the legislation is brought in there will be “distortions” in relation to the UK market. Some of the previous witnesses might say that those distortions would mean that Scotland had a competitive advantage, given that only 2 per cent of inward investment in buy-to-let properties is directed at Scotland. Would they not give Scotland that competitive advantage? Why do you have concerns about that?

**Susannah Simpson (PricewaterhouseCoopers LLP):** Like Jo Joyce, in canvassing our clients we hear that any uncertainty or inconsistency between the rest of the UK and Scotland causes additional complexity. That is our main driver. Coming out of our client base is a wish to keep the rules as consistent, clear and simple as possible. However, to take up Isobel d’Inverno’s point, we should not focus on that at the risk of bringing legislation through too quickly and without proper consideration. There may be benefits to be gained from delaying and seeing how things settle south of the border.
The Convener: Okay, that is fine.

Under the heading “Scope of charge and requirement to be disposing of an existing main residence”, you raise some concerns. You talk about “inconsistencies in the treatment of taxpayers who are in similar positions.”

You go on to say:

“For example, where someone owns a buy-to-let property and is moving out of rented accommodation (their main residence) into their first home, they will pay the extra 3%, whereas a buy-to-let investor who already owns their own home and is replacing it would not.”

Susannah Simpson: Yes, there are a number of anomalies that will come through. Just as Isobel d’Inverno said, we should also be concerned about people who are in that reluctant landlord position. Our example relates to people who own a buy-to-let property. It seems inequitable that someone who has an existing main residence and is replacing it should not pay the additional charge, whereas another person who is buying their first main residence would be caught by the charge.

The Convener: You also say:

“We agree with the policy of providing an exemption from the additional 3% for investors who will contribute to the growth of the housing stock.”

You say that “an acquisition by any investor of 6 or more residential properties” should be catered for. However, in terms of a portfolio threshold, you also talk about “an acquisition by any investor of one or more residential properties, where that investor ... will own at least 15 residential properties following the transaction”.

Is that right?

Susannah Simpson: The concern behind that goes back to the point that the RICS made, which is that the rules should not prejudice the private rented sector more generally. Although it is difficult for Parliament to discriminate against different types of investor—particularly if we look at European Union law—we have considered whether it is possible to introduce exemptions. Those were a couple of the ideas that we came up with.

An investor who is buying more than six properties in one transaction would suggest a more widely held portfolio—that goes against the avoidance that the legislation is trying to target. Equally, there could be an exemption—this is similar to the one that has been suggested down south—for an investor who already has a number of residential properties and the acquisition takes them above the residential property threshold of 15. In the same way, the non-resident capital gains charge has an exclusion for diversely held acquirers. Again, that moves us away from the example of a husband and wife who buy a property and then buy their second property through a company to work their way around the rules. Those are suggestions as to how those situations might be distinguished, keeping the private rented sector going.

The Convener: Mr Gordon, I was about to ask you a question on that, but I think that you wanted to comment anyway.

Jonathan Gordon: My point relates to the original question. Although the RICS thinks that there is a need to be careful and consider matching the stamp duty changes because of the risk, that does not mean that I consider LBTT overall, or the additional homes supplement, to be a good idea. Regardless of how you frame it, LBTT is not a progressive tax. The changes were welcome in terms of how the thresholds move and the non-slab structure, but overall it is a tax that does not target wealth or income; LBTT taxes people who happen to own an asset or have the ability to buy one.

Sometimes real-life examples are quite useful. I am 45 years old, have virtually no pension and have a large mortgage on a relatively modest family home in Portobello. If I need to move to a bigger home to accommodate my family, I would pay a much higher price for a similar but larger house in the same area. I do not have the LBTT money available to do that, let alone the extra deposit money that would be required. I am not a wealthy person with a huge income. However, a wealthy person with a huge income can buy a bigger house, perhaps in Fife or the Highlands, and they would pay the same tax as me. In that regard, LBTT is not a progressive tax.

The additional homes supplement has unintended consequences for the affordability element in all sectors. I will give a specific example. We have a number of clients who buy or trade in properties that are licensed as houses in multiple occupation. Sometimes those properties have emergency lighting, fire escapes or sprinkler systems and are not particularly suitable for individuals to own and live in as their home—sometimes they do not even have a lounge—although they are suitable for multiple occupation. From late last year, an investor buying such a property under the new LBTT structure will pay a fairly high—or penal—rate for a property that costs around £300,000 or £400,000. Under the old structure, if they had bought three or four properties of a lower value, they would have paid no stamp duty. Under the new structure, they become even more incentivised towards buying smaller properties, which are exactly the type of properties that first-time buyers are trying to buy.
There may well be the unintended consequence of pushing people to invest in the lower end of the market rather than the upper end.

The Convener: That is interesting. At paragraph 17 of your submission, you say:

“more can be done to entice institutional investors to build purpose-built accommodation for rent; not only by providing a stable policy and legislative environment, but creating a financial framework that would encourage them to do so.”

Will you tell us a wee bit more about the type of financial framework you are thinking of?

Jonathan Gordon: As well as representing the RICS at the committee today, I represent it on a number of other groups. Next month, I will join the joint housing policy delivery group. I am on the PRS working party, which supports the PRS champion who, for those who do not know, is funded by the Scottish Government and employed by Homes for Scotland. The champion is specifically tasked with encouraging such investment in build-to-rent homes. A number of those developments are on areas of land that would not otherwise be developed for homes. They bring in significant institutional investment from high-quality landlords such as Standard Life and Aberdeen Asset Management—companies that have reputations to protect. It is extremely important that such landlords enter the market. The PRS champion is working with the working party to deliver a set of recommendations for the Scottish Government, and the responsible cabinet secretary is amenable to most of the recommendations; indeed, some of them, including those that relate to planning or guidance to councils, are already being implemented.

The Homes for Scotland submission includes comment from the PRS champion and gives specific reasons and explanations about why an exemption for such investment is important. Only a small percentage of the investment in the UK in the sector comes to Scotland, and some of that is to do with the risk around uncertainty over changes in regulation, such as those in the Private Housing (Tenancies) (Scotland) Bill. There is a feeling that some of that uncertainty is perhaps to do with investors only making their decision once the legislation is finalised and in place. That decision might be positive, but introducing at this stage a tax change to disincentivise investment will produce further uncertainty and recalculation that may not then produce investment.

The Government published its strategy on PRS in 2013, and since 2007 it has done a lot to improve safety and security in the sector. We have a repairing standard that includes mandatory elements on electrical and gas safety and fire alarms. Throughout the rest of the UK, the majority of those elements are covered by guidance only, so Scotland is a very good, safe and secure place for tenants.

The Government is creating the right environment to create a better sector, but if nobody is buying new houses to put into the sector, the majority of homes will continue to be the old stock that is perhaps in poorer repair than some of the new builds. A key recommendation in my submission is to exempt all new builds from the additional homes supplement.

The Convener: Thank you for that. I will open out the session to colleagues around the table, who are all champing at the bit. First is Gavin Brown, to be followed by Jean Urquhart.

Gavin Brown: My first question is to Isobel d’Inverno. The Law Society submission talks about a grace period of 30 days. In my view, having a grace period would be far better than having no grace period. Is 30 days not a bit tight? My fear is that that would put huge amounts of pressure on the seller, who may then be tempted by—and vulnerable to—lower offers late in the day in order to avoid the taxes. Is a 30-day grace period fair or is that just a starting point?

10:30

Isobel d’Inverno: The 30-day period was just a starting point. The best position would be if purchase of one’s main residence did not attract the supplement. However, it is quite difficult to implement that because, if someone already has a house, the question arises whether they are going to sell it. We were trying to develop an approach that would not be too problematic and would not let too many things slip through.

You are right that 30 days is too tight; three months or longer would be better, because so many things can and do go wrong. People are on quite tight budgets these days, so another 3 per cent is quite a lot to have to play into the equation from the beginning.

Gavin Brown: You are saying that people are finding things financially tight these days. From your experience as a property lawyer, do you think, considering your clients and the market as a whole, that it would have a detrimental market impact if the bill is not changed in this area? Would people hold back and only ever purchase once they had already sold? What do you think would happen?

Isobel d’Inverno: It is difficult to say exactly what would happen. Our members would need to ensure that people appreciate the emerging danger of the 3 per cent. When they are going through the transactions, everybody thinks that it will all work out. Often, for one reason or another,
it does not work out. People need to be able to fund that if there is not some sort of grace period.

The 30 days also aligns with the time limit. It is a matter of having something that oils the wheels.

Gavin Brown: That is helpful. Thank you.

I turn to the RICS paper. Jonathan Gordon spoke about when the UK measure was first announced. You saw it on social media, with various tweets saying how people were going to start investing in Scotland and so on. On the marketplace as you have seen it since the Scottish announcement was made around mid-December, have you seen a spike in buy-to-let properties being purchased so that people can avoid the April cut-off?

Jonathan Gordon: My company looks after buy-to-let properties. Unfortunately for me and our company, we have not seen a massive spike. However, John Gell, who used to be the chair of the PRS forum in the RICS, runs a letting agency in Inverness, and he has seen a significant spike in people trying to buy to let.

We have some anecdotal evidence about this. At the moment we sell only properties that have been rented out and that people want to sell on the market. We have a few properties available on the market and off market, and we have seen a little spike in people buying second homes, rather than in buy-to-let investors, where there is actually very little interest—or rather, there is similar interest in terms of investors.

That spike in second homes is not necessarily for holiday lets. Some cases involve people who live in London whose families are here—they have children and grandchildren living in Edinburgh, for example, and need somewhere to live when they come up here.

Gavin Brown: So, for clarity, your company has not experienced a spike in buy to let, but there has been an increase in interest in second homes.

Jonathan Gordon: Yes.

Gavin Brown: Some of your colleagues—one, at least, in Inverness—have said to you that they have seen a spike. Is that a fair summary?

Jonathan Gordon: Yes.

Gavin Brown: In your submission, you express concern about discouraging smaller landlords. Can you expand on that a tiny bit?

Jonathan Gordon: I cannot remember the exact term for this at the moment, but there are a lot of things that people think about landlords that are not true.

Only a small number of landlords do not try to look after their tenants, or try to push rents to the extreme. As with any civil or criminal matter, legislation exists to catch the people at the extreme end, so we need measures in place to cover that. However, rents in Scotland are not rising at the rates that people are talking about. What is happening is that there is a large increase every year in the number of people having to rent in the sector, and there is no supply to meet that demand. For that reason, rents for advertised properties are rising.

We do an annual review of rents for our properties with existing tenants and compare them with the market. Some of our tenants have been in properties for five years or more. We ask landlords if they want to increase the rent incrementally on the tenants who have been there for a long time, but they know by that stage that those tenants pay the rent and look after the properties. We carried out an exercise last year in which we emailed 100 landlords in areas where the rent levels had changed significantly, and not a single one wanted to increase the rent by any incremental amount that we suggested. There is a big disparity and lack of data about what actually happens in the market, which is affecting all the decisions that policy makers are considering, including the bill.

Gavin Brown: The convener asked you a couple of questions about exemptions. You suggest in your submission that there should be an exemption for new build if owner-occupiers fail to buy after a period of time. We had a suggestion earlier that the period should be six months. What period would be appropriate?

Jonathan Gordon: No, I do not suggest that. That example came from within the forum—it was not one of my comments.

With regard to the sort of payment that we are discussing, many people—particularly people who are trying to sell their homes and cannot—will not have the money either to pay the stamp duty on one house, let alone on two houses, in the first place, or to pay the additional charges. It is hard enough these days to find a deposit. At whatever level of the housing market, it is very difficult to get a mortgage that requires a low deposit and also has a decent interest rate.

Lesley Brennan asked about the interest rates that buy-to-let landlords pay. The rates are fairly comparable; sometimes buy-to-let landlords have a bigger deposit when they get a mortgage on another property and can get a better rate for that reason, rather than just get better rates in the market overall.

There are other interesting consequences that I want to mention. One of the difficulties with the speed of the change is that every time I read somebody else’s submission or think again about what I am going to talk about, more potential
issues pop up. What we are discussing is not simply a minor adjustment to LBTT—it is really a new tax that will affect the market in unknown ways.

We set up in 2008, and a majority of our first hundred landlords in 2008-09 were people who had been unable to sell their homes when they moved in with their partner or when they moved to a family home as they were getting married and having children. They rented out their other property and were lucky enough to be able to afford to move, but the negative equity if they had had to sell their property would have wiped out all their savings.

That will continue to be the case; we still have new landlords coming to us who are unable to sell their own home in areas where the market has not improved—places such as Clermiston, or ex-council areas—and have to rent the property out so that they can buy a family home in an area where they need to move to for a bigger home or for work. They will have to pay the stamp duty on the higher-value property, which is fairly penalising.

Gavin Brown: That is helpful—thank you. I will move on to Jo Joyce and the KPMG paper. The main thrust of the paper, in my view, is that you—or your clients—are concerned that the legislation could be a deterrent to the development of new homes. Can you expand on that?

Jo Joyce: As I said earlier, a lot of the concern is what we have been hearing anecdotally from our clients. There are two sides to the issue. There are the small and medium-sized businesses in which individuals buy one, two or three properties off-plan and the guaranteed future income helps them to secure the financing for the development, then there are the large-scale institutional investors, which forward fund big developments. Although an exemption is proposed for large-scale investors, which forward fund big developments, then there are the large-scale institutional investors from the SDLT surcharge, we do not have any details on whether there will be a similar exemption from the LBTT surcharge. In addition, if there is not a similar exemption north of the border, that will make south of the border a more attractive place to invest in. It is vital that when the new surcharge is introduced there is clarity on exemption and how it will be applied in order to provide certainty for taxpayers and for developers that look for forward funding.

Gavin Brown: For accidental second-home owners—people who cannot sell their residence after they have bought a new property—you suggest an up-front relief. Will you expand on KPMG’s thinking on that? How could we tackle the issue?

Jo Joyce: There are a couple of ways to do that. The submissions from Isobel d’Inverno and Susannah Simpson address the issue. Instead of having an end-of-the-day approach to when the 3 per cent rule applies, there could be a main-purpose test to establish whether someone is buying their next residential property to live in as their main residence. If so, they would get a relief on the 3 per cent surcharge, regardless of whether they had been able to sell their previous residence. That relief could be clawed back in 18 months or three years—we think that 18 months is probably all right, given how the property market is at the moment, but the market is quite cyclical, so the period might need to be extended to three years. When that relief was claimed, all the information would be on an LBTT return, so Revenue Scotland would easily be able to pick up on whether the person had made the amendment that they needed to make or whether they needed to pay the additional 3 per cent.

Gavin Brown: Would guidance or regulations be necessary? I think that we need such a relief, because I am worried about the state of the market. However, if people wanted to get round the supplement, they could put their house on the market at an unreasonable price and refuse to accept any offers on it. I presume that regulations would be necessary to make the system absolutely watertight.

Jo Joyce: That is fair, but as Isobel d’Inverno said, there is the Scottish general anti-avoidance rule, so if someone does something purely for the purpose of avoiding tax, they will be caught. It is quite a strict and strong measure.

In the majority of instances, people need to sell their previous home in order to move forward. When people buy a second home, it is quite obvious that it is not their main residence. I accept that there are grey areas, but it is very hard to legislate for those without putting out reams and reams of regulations, which is definitely not what we want. Guidance would be very helpful.

There are precedents for a relief with other taxes—for example, the principal private residence relief for capital gains tax—on which we could draw.

Gavin Brown: I turn to Susannah Simpson’s submission. You have already been asked about investors’ contribution to growth, so I will skip that subject and stick to accidental second-home owners. You made a specific proposal on how PWC thinks that could be tackled. Will you expand on that?

Susannah Simpson: I will go back to the time period—we have suggested three years. Our preference is that acquisition of an only or main residence should be excluded from the tax. Although I accept that that would allow people multiple times to buy a main residence, live in it,
do it up and sell it on, our view and the view of our clients is that the practical inconvenience of doing that means that such cases will be relatively few and far between. There is the back-up of the GAAR to deal with intentional avoidance.

If the tax had to be paid within a specific period, we suggest that, rather than having to lodge the tax, people should be able to submit a request for a deferral application, which could be revisited within three years. In our view, that would mean that a positive application would have to be made to Revenue Scotland, so Revenue Scotland could monitor the situation and would be able to pick up on the fact that a further return had not been made within the three-year period.

10:45

**Gavin Brown:** You made a fairly comprehensive submission to the SDLT consultation, alongside your submission to us. Is it your view that the committee and the Scottish Government ought to liaise pretty closely with that consultation to try to ensure that there are not unintended consequences on either side of the border?

**Susannah Simpson:** As I understand it from releases from HMRC and Revenue Scotland, the intention is for the rules to promote first-time buyers. The two intentions are aligned and the timing of the introduction of the taxes is similar. Our clients have said that any inconsistency between the rest of the UK and Scotland increases complexity and uncertainty. It is therefore a good idea for the two to liaise in framing similar sets of rules. Where exemptions are introduced in the rest of the UK, they should certainly be mirrored north of the border. Otherwise, we will end up with a distortion in the markets, which can never be good.

**Gavin Brown:** Thank you.

**Jean Urquhart (Highlands and Islands) (Ind):** I want to follow on from the point that Gavin Brown has just raised and your explanation in response. I am interested in the fact that your recommendations are that there should be no difference.

You say that people should understand the market and the tax, that it should be clear and that there should be no difference, but there is a huge difference between the markets. We heard in evidence earlier that we attract far less inward investment. Whether or not we think that is a good thing, the point is that it is a different market. House prices have been dramatically different over the years—we are not stepping into that situation now.

In time, there will of course be differences. Why do you not recognise any of those circumstances? Why are you so determined that the rest of the UK and Scotland should maintain similarity on the tax?

**Susannah Simpson:** In our view and our clients’ view, the paramount point is simplicity. Most of our clients trade north and south of the border and they include SMEs and large diversely held property investors. There might well be differences north and south of the border, but we have not carried out any research to understand that, and that is not what I am here to advise on.

Interestingly, the difference in the threshold for LBTT up here and that for SDLT in the rest of the UK—it is £145,000 up here—means that the 3 per cent supplement will arguably impose a larger burden in Scotland than in the rest of the UK, because of the hike in rates and the lower thresholds as you work up through the bands. Therefore, the 3 per cent will be a much heavier burden north of the border. Parliament might want to take that into account when taking a decision on the issue.

**Jo Joyce:** The big issue for our clients is simplicity. LBTT is a complex tax, as is SDLT. As the RICS paper sets out, we are talking about another incredibly complex add-on to the tax—in effect, it is another tax—and that is the case in both systems. Given all that, it is incredibly difficult for taxpayers to manage all these changes.

Another point is that the policy objectives of both Governments seem closely aligned on the issue. I realise that the markets are very different, but even in the rest of the UK we have incredibly different markets. The market in London and the south-east bears no resemblance to the market in the north-west. We have very different investor types and purchasers.

That is why the legislation is so complex and why the UK and Scottish Governments need to ensure that any legislation that is introduced is robust and fit for purpose. If that means that there is a divergence in Scotland because that is the best way of achieving the policy objective, that is fair enough, as long as both Governments have thought that through and the legislation is introduced on a sound basis.

**Isobel d’Inverno:** There are already quite significant differences between the two systems. The treatment of mixed purchases in the bill that we have appears to be different from the approach that will be taken down south. For example, if someone is buying a residential property with a commercial property—the shop with the flat above it—our LBTT legislation will apply the 3 per cent surcharge to the flat, whereas from the UK consultation that does not appear to be the case in
the SDLT legislation. Again, purchases of six or more dwellings are taxed at the commercial rate, and it looks as though the SDLT surcharge will not apply to such transactions, whereas the LBTT one will do.

We already have quite a different approach—and there are other differences between SDLT and LBTT—and I am not sure that it would be terribly easy to align the two systems totally. We need to ensure that there is clear guidance about LBTT, so that taxpayers are aware of how it works and the fact that the systems are different.

Jean Urquhart: Thank you.

Jonathan Gordon: I can say from my background in land economics, rather than my RICS perspective, that the difficulty about whether to match a policy that the UK Government introduces is one that the Scottish Parliament will face multiple times.

The devolution of a small number of taxes leaves little flexibility for altering the approach to taxation here. The larger partner in the group decides on tax for England and Wales, where there are 50 million people, who are all potential investors in the market here in Scotland, which has 5 million people. That type of competition here is far too big a risk to ignore.

The same problem will arise in decisions about income tax and everything else. When the Scottish Government has only a small number of taxes on which it can make decisions, it might copy UK tax changes or introduce changes here not because it is a good idea to change income tax or LBTT rates but because there are no other options, in that there are no other taxes to alter or introduce.

Jean Urquhart: I am sure that the Deputy First Minister will be listening to your comments on that.

In paragraph 9 of the paper from the RICS, you acknowledged that Scotland’s rural population is in decline and that there is a lack of housing in rural areas, but in paragraph 26 you recommended an exemption for holiday homes.

In the rural Highlands and Islands, which I represent, there are many communities where as many as 40, 50 or indeed 60 per cent of homes are holiday homes, which brings huge problems for the community. If you were to ask people in those communities, I think that a lot of them would say that they would like people to pay a higher tax, with no exemption for holiday homes, because that is one of the most significant problems that we have to deal with.

Jonathan Gordon: I guess that that is why it is good to give oral evidence. The RICS proposal is to exclude purpose-built holiday homes, so we are talking about things like holiday cabins, chalets on holiday parks and so on. The exemption is specifically for purpose-built homes for rent. We made the same recommendation for purpose-built student accommodation, which is not suitable for individuals to own in their own right.

In Aviemore and other places in the Highlands there are purpose-built holiday villages. People stay for a couple of weeks and rent the accommodation out when they are not there. Such homes are not suitable for people to live in full time.

Jean Urquhart: I hear what you are saying. You suggested in your submission that your proposed approach would incentivise investment and advance tourism, but why would we single out that particular aspect of tourism for tax relief, when no other aspect of tourism is singled out?

Jonathan Gordon: I will provide some anecdotal evidence. If it snows a lot this week and I want to go skiing at the weekend and I try to book a chalet, it will be difficult to do that. Anyone from London to Inverness trying to do that would find it difficult to book accommodation and go there as a tourist. Specific purpose-built holiday accommodation is not the same as homes for local residents to live in.

Jean Urquhart: I think that we will have to disagree about that statement, but I suppose that that is a discussion to be continued.

Jackie Baillie (Dumbarton) (Lab): I want to look at some of the assumptions that have been made on transactions and yield, if that is possible. The Scottish Government estimates the number of transactions to be from 8,500 to 12,500. I am keen to get a view, given your experience, on whether you think that that is a reasonable assumption.

The Government estimates the yield to be between £45 million and £70 million without any unintended consequences but, once it applies a behavioural response, the yield drops to between £17 million to £29 million. Again, in your view, given your experience, is that a reasonable assumption to make?

Susannah Simpson: I am afraid that I cannot comment on that because we have not carried out the research and we do not have enough evidence to comment on it.

Jo Joyce: I think that our response would be the same. That is not the angle that we have come at it from.

Isobel d’Inverno: I am afraid that we cannot comment on that either.

Jackie Baillie: I am striking out.

Jonathan Gordon: I can always try.

Jackie Baillie: God loves a trier.
Jonathan Gordon: I believe that, since LBTT was introduced, the income from it has not met targets or the planned budget. One reason is the unintended consequences of the Government trying to make property more affordable at the bottom level by exempting a large proportion of the purchases from LBTT altogether.

That relates back to the example that I gave of my situation. If I do not move into a slightly bigger house, my house is not available for the next person to move up the ladder; nor can the first person on the ladder move up from their one-bedroom flat and afford to buy my family home when they start a family. Their home is therefore unavailable to the person at the bottom.

There are fewer transactions at the top because a lot of the people who live in the high-value properties that are subject to the penal rates at the top end are not in those properties because they are wealthy or because they have high incomes. They are there because the value of their properties has grown with a rising property market. They may well have an asset that is worth a lot to them but, if they cannot move on to the next property because of the new penal rates, it will not free up the next properties down the line for, eventually, the first-time buyers. There is a lack of supply at the moment because property prices in Edinburgh and in other hot spots around Scotland are rising extremely fast—although perhaps not in Aberdeen.

The problem is not a shortage of supply of homes; it is a shortage of the right type of homes in the right location at the right price.

Jackie Baillie: Okay. There is an assumption that the yield is going to rise in the next four years by 87 per cent. I know that you have not looked in detail at the maths but, given your experience, is it reasonable to assume that there will be that size of rise?

Jonathan Gordon: I do not know.

Isobel d’Inverno: It is very difficult to say. As regards the yield from LBTT, it is probably appropriate to point out that there is a difference between the commercial and residential yields. The effect of the residential rates has certainly had an impact. There was indeed a lot of activity before LBTT was introduced, which therefore brings things out of the equation. One would not have thought that there would necessarily be the same sort of timescale for that to happen in relation to the supplement under the bill, but we are in the early days of forecasting tax revenues.

Jackie Baillie: It might be more wishful thinking than reality, but we can only wait and see.

I will touch on the likely effects of forestalling. Mr Gordon was asked about it earlier. Are any of you seeing evidence of a rush to buy or indeed sell properties? Is what is happening more down to the changes to the UK income tax regime that are coming in, or is it down to the supplement? I am keen to get your views as to the balance of what you think is the causal effect.

Susannah Simpson: I agree with the RICS that we have not seen a huge amount of evidence of that happening so far, but it will inevitably happen when a date is fixed. I therefore expect to see some increase in transaction activity before April if the bill proceeds as planned, so that should be taken into account in budget forecasts. I do not have much more to add than that.

11:00

Jo Joyce: From my perspective, although we do not really deal with individual transactions, the majority of queries that I have been getting, both north and south of the border have been from people who are clients but who are ringing up with personal queries about buying second homes or investing with parents or children. Given the uncertainty around the tax, the advice can only be, “If you’re going to do it, do it before 1 April, because we don’t know how this is all going to work yet.”

Isobel d’Inverno: There has not yet been a huge amount of information about the proposed LBTT supplement in the public domain, so people have a lot of queries about it and I suspect that in the next couple of weeks how it works will become clearer, which may well trigger greater activity as people try to buy things before the date. The timescale for starting from scratch and completing transactions may mean that it is just not possible, but there will certainly be some people trying to do that.

Jonathan Gordon: Eighty per cent of our new landlords are people who are moving out of their home. They are not purchasing a home to rent it out. One of the immediate failings in the discussions around the new tax is a misunderstanding of how the market creates itself and develops. Those are just normal people, and they often keep the property because they do not have a pension and the property will be their pension. I have only minor anecdotal evidence, but I have a couple of clients who are getting rid of all three of their properties, rather than just one, because of the changes to the mortgage tax relief that are coming in.

The majority of our landlords are completely unaware of most of the legislative changes to do with smoke alarms, electrical safety and the new tenancy regime that will give tenants security of tenure. We write blogs and send people links to the information, and they open the email but do
not click on the links, so they are unaware of the changes. They rely on us to look after everything for them and they get on with their daily lives because they are just normal working people; the majority of them are not wealthy investors.

**Jackie Baillie:** That is interesting. There is something that I would like to pursue with Ms Simpson. KPMG suggested that, because of forestalling, people might end up overextending themselves in the rush to buy. Your suggestion is that lead-in time should be extended, but surely that increases the chances of forestalling. If you were to extend the lead-in time, by how much would you extend it?

**Susannah Simpson:** Extending the lead-in time would indeed increase the chance of forestalling. It gives the Scottish property sector the ability to see how the charge hits and lands south of the border, and it goes across the overarching view held by us and our clients that certainty north and south should be promoted, whatever happens.

I would add to my earlier comments that the upcoming removal of interest relief on mortgage payments, which is not devolved and therefore takes effect for the whole of the UK in April 2017, could combine with the additional charge to create more forestalling than perhaps has happened in relation to other tax changes in recent years. It may be that combination of the two that is worth taking into account.

**John Mason:** Before I go on to my main question, I want to follow up on that last point. Words such as “consistency”, “distortion”, “simplicity” and “complexity” have been used, and it seems that some of those things are in tension with one another.

Correct me if I am wrong, but you seem to be favouring consistency across the UK, presumably because that is where your clients are, but having a simpler system in Scotland—which we have tried to achieve with LBTT—might advantage first-time buyers and smaller buy-to-let landlords. Am I right in thinking that that would be less important to you because of your client base?

**Susannah Simpson:** Not particularly, because our client base extends to cover SMEs and smaller buyers and investors in property as well. You are right that a balance has to be struck between having simplicity and pushing on and helping the PRS in Scotland. The point was made earlier that there are differences between the two markets and we simply have not carried out the research to be able to understand that in enough detail.

**John Mason:** In the longer term, is it not a good thing—indeed, it was one of the reasons for devolution—for the Scottish tax system to compete with the English tax system?

**Susannah Simpson:** That is a policy decision for Government; it is not something that I am here to comment on.

**John Mason:** But competition is part of life. Apparently, KPMG and Ernst and Young compete with each other.

**Susannah Simpson:** Apparently they do.

**John Mason:** So you are in favour of competition.

**Susannah Simpson:** Competition is a good thing.

**John Mason:** The main area that I want to touch on is whether there should be different reliefs for different kinds of purchaser, which we discussed with the previous panel.

The convener raised the issue of exemptions for purchasers of six properties or 15 properties. I am struggling to get my head around whether any number should be applied and, if so, whether those numbers are appropriate. Given that both we and the UK Government are trying to help first-time buyers in their competition against the conglomerates, surely it is a good thing that anybody with more than one property pays a bit extra, as that will inevitably shift the balance towards the first-time buyer. Can anyone expand on why the numbers six or 15 should be favoured?

**Jo Joyce:** The whole question of six or 15 properties is a bit strange. There is no rationale for why the UK Government plucked the number 15 out of the air.

If the figure six or more was applied, it would bring a transaction within the non-residential rates system and it would be recognised as a commercial transaction. It is my understanding that, in the early days of SDLT, the British Property Federation lobbied for that approach, because it has sound reasoning behind it. That is why the same rule was introduced for LBTT. There is a clear acceptance that the purchase of six or more properties is not a residential purchase but a commercial transaction.

The second point is whether big conglomerates, as opposed to individuals, should have relief at all. We probably need more data on that, but I do not think that the larger investors are competing with first-time buyers; they are buying and investing in very different things. The larger investors will potentially buy numerous flats in a big apartment complex to rent out, whereas first-time buyers might be looking to buy existing property stock. That is a key difference.

From what you have said, it seems that there is a real problem with second homes and holiday homes, which is not the area that the big investors are looking to invest in; such investors are looking
to invest in new builds—the purpose-built rental sector.

John Mason: I will switch to asking you about new builds, Mr Gordon. I think that you suggested that we should favour new builds as against older properties. Is that correct?

Jonathan Gordon: Yes. The Scottish Government’s strategy from 2013, “A Place to Stay, A Place to Call Home”, talked about ensuring fairness, security and safety and about encouraging more investment in the sector. We are probably all aware of house builders in the 1980s and 1990s developing a site and selling all the properties before they even started building them. When they were built and came on the market people would flip them and sell them at a profit, because the market was moving so fast.

There is a development next to our office in Broughton in Edinburgh, which is a very popular area for rentals, where Barratt Homes has been building 300 or so flats over the past five years. The builder has built them gradually; the number of sales coming through the door has given it the confidence to build one block after another. In such a development, there is no competition between first-time buyers and investors buying a single flat.

The house builders all have to have a certain amount of land banking in order to plan for the next few years ahead and run their company. Whether it is the right amount of land that they control is skewed a bit, because it is difficult to have the confidence to build on a site. They cannot build any more cheaply and they cannot reduce the price that they paid for the land, so they cannot sell the houses at lower than a certain level and still have it be profitable.

The confidence to build houses along with faster build-out—there will be an increase in sales if investors are all pushed towards the new-build market—would encourage new builds to be completed more quickly. That would bring more houses on to the market and more confidence to start new sites, which house builders are keen to do—new sites may already be in, or past, planning. That would improve the supply and drive up the quality in the private rented sector by introducing new-build properties into the market in the right areas, rather than people having to rely on existing properties with electric heating or old single glazing in poor areas.

John Mason: I would question the quality. I have just been visiting new properties in my constituency, which happen to have been built by Persimmon, and the quality is just awful. An investor—either an individual or a company—would be better off buying existing stock like my 1950s flat, where the walls do not move.

Would we not be distorting the market away from existing properties if we favour the new properties?

Jonathan Gordon: The key difficulty in the private rented sector at the moment is the lack of housing supply to meet the demand. Often, we do not take on a property because it does not meet our repair standard or is just not in a good enough condition—for example, it might need new carpets. If a landlord says to me, “Why will you take my property on only if we replace the kitchen and put in new carpets? That would cost £5,000. Will I get that money back in a higher rent?”, I say, “No, probably not.” There is a shortage of supply, and tenants have to take what they can get. If a landlord rents a property at £500 per month, they will get that regardless of whether they put in a new kitchen.

Although you have specific experience of a development in your area, I have wide experience of visiting flats in the existing stock that I would not want to live in. It is much more common to be in the existing stock than in the new stock.

John Mason: Another specialist area that it has been suggested should be treated differently is purpose-built student accommodation. Is that generally the feeling? Presumably a lot of students rent in blocks that are always going to be for students, so it is not those places that we are thinking about; I guess that we are thinking about people buying student flats that are outwith a main campus setting.

Isobel d’Inverno: One point about student accommodation is that a lot of the purpose-built stuff is cluster flats, with a central dining room that has a kitchen and five bedrooms clustering around it. In the context of looking at relief for bulk purchases, the point is that such a flat is treated as one dwelling for, for example, multiple dwellings relief, although it is actually five bed spaces, so maybe it ought to be treated as five dwellings.

Another point that is being made about student accommodation—

John Mason: Can you clarify who is buying that kind of place? Presumably it is not individuals.

Isobel d’Inverno: Investors.

John Mason: So it is not the students or their families.

Isobel d’Inverno: Not generally, no.

John Mason: The whole block is not owned by one investor; they are still bought individually.

Isobel d’Inverno: No, it is.

John Mason: The whole block is bought by one investor.
Isobel d’Inverno: Yes. I was looking at it from the angle of relief for investors.

Jonathan Gordon: That type of flat is in a different planning class.

John Mason: Is it not possible to buy and sell those flats individually? Do they have to be bought and sold as a block?

Isobel d’Inverno: No, they do not have to be.

Jonathan Gordon: In theory, those flats could be split up in future, but it is not the intention of any investment companies to do that.

John Mason: I had not quite understood that.

Isobel d’Inverno: It can happen, in some cases. There is a vague development of people, after they graduate, thinking that they might quite like to live in something like that, although I certainly would not. [Laughter.] Well, maybe it would be more fun. However, those developments are designed for students to live in, so the point is to make sure that there is not a slowdown in developing them.

The PRS probably needs a relief partly because if there is a relief from SDLT—it sounds as though there will be—it would be unfortunate if there was not a relief in Scotland as well, although it would not necessarily need to be exactly the same.

11:15

John Mason: You seemed more relaxed earlier about differences between Scotland and England because there are so many already. Are we being too slavish in following England?

Isobel d’Inverno: Well, I think that the figure of 15 was plucked from the air, as Jo Joyce said. That is what we understand—there is not necessarily any science behind it. However, the scale of investment in student accommodation and the PRS in Scotland is different, so there are different considerations.

Jonathan Gordon: It is important to understand who the investors in the PRS are. They are companies such as Standard Life and Aberdeen Asset Management. They are the type of company that invests in multifamily homes in America or in building blocks of flats to rent in Germany, Holland or elsewhere in Europe where more people live in private rented accommodation than here and the accommodation is potentially more affordable and of higher quality than in the private rented sector here.

Two key things have been stopping that investment in this country over the past 25 years compared to other countries: there is a lack of land available for investors to get, and building houses has been profitable over the years with the growth in house prices. The investors are not wealthy conglomerates that are making vast profits; the margins that I see on specific developments that are planned for Edinburgh, Aberdeen and Glasgow are right on the cusp of whether it is possible for the investor to develop the house and make a yield that is anywhere near competing with the commercial investments that they make. Such companies are either investing in building another shopping centre such as that at the Gyle or building 300 flats for people to live in.

If there is a desire to improve the quality of accommodation for people in the private rented sector, it is essential that such investors are not disincentivised from investing in the UK or Scotland. If the LBTT supplement is charged at 3 per cent of the value of the investment either at the beginning when an investor buys a new development that they have arranged with the developer to develop for them to buy or when it is traded on later, it will make the difference between achieving a gross or net yield that is profitable and one that is not profitable.

John Mason: Do most of those companies operate only in the UK, or are you suggesting that they operate throughout Europe and even throughout the world?

Jonathan Gordon: The Royal Bank of Scotland is trying to create £1 billion of investment in the sector. Legal & General, M&G Investments and lots of other UK-based investment companies—the companies that run the pensions for most people—are looking to diverge from commercial into residential property at this stage when they have not done so in the past. It is probably 50:50. There are pension companies that look to invest here that will not develop but will buy property from a developer.

John Mason: Do they invest only in UK property, or do they invest in Spanish property too?

Jonathan Gordon: Aberdeen Asset Management invests throughout Europe, I think. In Holland, far more people rent their homes than here.

John Mason: My point is: are those companies used to dealing with multiple tax regimes and legal systems? If the same company invests in Spain, Ireland, England and Scotland, the system does not matter because they are used to dealing with lots of different systems.

Jonathan Gordon: Different tax rates are not an issue but penal tax rates are. They have not invested here because it has not been cost effective.
John Mason: Because the tax rates in the UK are much higher than those in Holland or Germany.

Jonathan Gordon: I think that it is more to do with the ability to get land at the right price to build houses.

John Mason: So tax is not a big part of that.

Jonathan Gordon: It is essential because it is the other consideration.

John Mason: But the cost of land is the main one.

Jonathan Gordon: In my experience, it is all in the mix. If you increase the tax that investors have to pay, you make it even more difficult to invest.

Isobel d’Inverno: The point is that, if an investor is considering Edinburgh and somewhere down south and there is a relief from the 3 per cent down south but not up here, it will stop thinking about investing up here.

John Mason: My point is that if the companies are also investing in Spain, for example—I understand that a lot of British individuals do that—we should also consider how our tax rate compares with the Spanish tax one. Although it is our main neighbour, I feel that we are too fixated with what is happening in England. If what Mr Gordon says about international competition is correct, should we not also look at Spain and Ireland and others as well? We do not have time to do that and I do not expect an answer.

My final question is on housing associations. Should we favour housing associations in any particular way?

Isobel d’Inverno: One point to make is that—as I understand it—all the normal reliefs from LBTT will also be relevant for the 3 per cent supplement. For example, if a housing association is a charity, it will not pay the 3 per cent supplement because it will not pay LBTT on a purchase.

John Mason: I think that the example that was given before was mid-market rent, where there may be a subsidiary that is not a charity. Do you feel that such a body may need to be favoured a bit?

Isobel d’Inverno: It would be helpful, but it has been mentioned that, as more reliefs are added on, there will be nothing left to collect.

John Mason: That is a good point to finish on.

Lesley Brennan: I think that we are hearing that there are still questions to ask, and maybe some more evidence to be gathered.

I will go back to Mr Gordon. A number of times, you mentioned a lack of supply in the private rented sector in Scotland. I will join up a couple of points that you made. You mentioned a lack of supply in the private rented sector, which is pushing up rent. You also mentioned that there is a lack of inward investment in this sector in Scotland. Is that correct? Did I hear you right?

Jonathan Gordon: Yes.

Lesley Brennan: I am just playing devil’s advocate. Susannah Simpson and Jo Joyce referred to simplicity. If the decision was taken not to apply the 3 per cent supplement, would there be an opportunity to expand the private rented sector in Scotland?

Jonathan Gordon: The difficulty is the risk of too much inward investment to Scotland, particularly from other parts of the UK.

Lesley Brennan: Could you expand on that? What is the risk?

Jonathan Gordon: Inward investment from outside the UK is different from other parts of the UK. It is much easier for somebody sitting in London or Manchester to consider buying a flat in Aberdeen or Edinburgh. Somebody in China or the far east will not look at the tax changes that are made in Scotland to encourage investment. Somebody might see the opportunity to market things to them and, if that happened and we did not have the rate in Scotland, it might attract more inward investment here. However, that is a risk.

Lesley Brennan: A risk to who?

Jonathan Gordon: There is a risk to the people that the policy is intended to help. That is first-time buyers or anybody who is trying to buy a home that they can afford. As more people try to buy on the market, the price rises.

Lesley Brennan: You also talked about a situation in which there was an exemption for purpose-built rented accommodation. In that situation, where would the risk of not applying the 3 per cent be?

Jonathan Gordon: I do not think that there would be any risk in not applying the 3 per cent in that situation. If the UK Government chose not to exempt purpose-built private-rented sector build-for-rent developments at scale, I think that there would be a fantastic opportunity for the Scottish Government to attract inward investment and to meet the aim that the Scottish Government has set the PRS champion in Scotland—a role that it funds.

There are two separate issues. I favour the idea, which is another opportunity, to differentiate by focusing on new builds all together. I am a member of committees of the SPF, RICS and the PRS working party. Across those groups—and among many other people—there is a consensus about the requirement to exempt purpose-built
accommodation at scale. There is a much smaller number of people—such as me—who think that the idea of exempting new builds to encourage more new builds to be built, and better quality PRS to enter the sector from new suppliers or landlords at the individual level, would remove the penalisation of small landlords who are set against large-scale investors. I think that large-scale investors are needed, but why should small landlords be excluded from investing if that means an increase in homes?

We would need strong tracking of the data on what happens with the prices of new house builds. One could argue that, if everything was pushed into that market, the house builders’ prices would rise in key hot spots. At present, there is no competition in the market because they are building as the houses are sold. With such an exemption, builders would build more and sell more quickly, and that may affect prices, which would have to be tracked. However, it could be a safe exemption to put in place as an interim measure for a year.

Lesley Brennan: Paragraph 7 of your submission states:

“If this supplement is enacted, we would urge the Scottish Government to consider ring-fencing revenue generated from the 3% ... for investment in housing”.

Jonathan Gordon: I apologise—I made my own submission as well as looking at the RICS submission.

On ring fencing, I think that it is important that any taxes that are raised from the property sector are ring fenced and spent in the area, particularly if the tax is additional, as this charge is intended to be. That revenue could be targeted at affordable homes in particular.

Lesley Brennan: Lastly, I have a general question for whoever wants to answer it. It is about the workability of the measure for second, or more, homes.

Part 6 of the proposed new schedule 2A to the 2013 act is headed:

“What counts as a dwelling owned by a person?”

Paragraph 9(2) states that

“Dwellings situated outside Scotland (as well as such property in Scotland) are to be counted.”

If the bill is implemented, how workable is that provision?

Isobel d’Inverno: We have concerns about that, and good guidance will be needed. The point is that the bill refers to ownership of dwellings and properties overseas being counted if the interest that someone has is similar to ownership of a dwelling in Scotland.

Obviously, Scottish solicitors are not familiar with the real-estate systems in other countries. How will someone in Scotland necessarily be able to tell whether a person has something in Spain that is similar to ownership in Scotland? There will be quite difficult cases, and it will be important to have guidance from Revenue Scotland that tells people what counts and what does not, with a list of the things that are in or out. It will not be fair to leave it to taxpayers or their agents to try to fathom whether someone’s interest in a property in Spain is the same as ownership of a dwelling in Scotland.

It is probably inevitable that properties all over the place will have to be looked at if we are going to look at properties in the rest of the UK, which it would seem sensible to do if the provision is being introduced. We see some issues with the provision.

Susannah Simpson: It comes down to enforceability. Ultimately, we will be relying on taxpayers to self-assess, as with many of the taxes that are currently in place. There are exchange agreements between countries, but we will be relying on that working. The issue is whether it is discoverable that a second home has been missed in another territory. That is something to take into account.

Jo Joyce: That is why we favour a main residence purpose test, because it would not matter what someone owned in the rest of the world. If they were buying a house with the intention of using it as their main residence in Scotland, they would not pay the 3 per cent charge. If they were buying a holiday home or buying to let, they would pay the 3 per cent supplement irrespective of what else they owned globally. That would make things clearer for inward investment, and it would also be much easier to administrate. As Isobel d’Inverno said, the legalities are different all over the world, and it will be very difficult for people to determine their position.

Jonathan Gordon: For once, I was going to say, “No comment,” but, with regard to our general view on the risks around investment from the rest of the UK if we do not have the provision, I suppose that a main residence test would potentially remove the risk of people looking for a flat to buy or rent in Edinburgh because it is cheaper to do so here. If they have to come and live in it, they will not do it, so that is a potential change that could remove some of the risk.
Isobel d’Inverno: As others have said, the main residence exemption would be the best approach, if it can be made to work. It is worth mentioning that the capital gains tax main residence test comes at the other end: it is a sale-based test, so it is possible to look back and see what has happened, whereas what we are talking about looks forward and at the intention. It could perhaps be linked with incredibly high penalties if someone said that a property was their main residence and they were telling an untruth. However, intention is always a problem. We would need a period of time after which the penalty would apply if it turned out not to be someone’s intention to use the property as their main residence. People’s intentions change—life happens and different things come into play. A main residence exemption would be a much simpler approach, rather than go through all the hoops of the 18 months, holiday homes and so on.

Susannah Simpson: The other point that should be tied into that is about aligning the residence definition with both the capital gains tax principal private residence exemption and the Scottish resident income tax. That goes back to my point on complexity and ensuring certainty across the taxes. If we have one test for one tax and a different test for another, that will just confuse matters.

Mark McDonald: I am interested in the main residence exemption. How easy would it be to administer that? Also, how easy would it be to get around it? For example, someone could purchase a property and declare that it was their main residence and then, for whatever reason—perhaps employment—they could argue that it has ceased to be so. If someone chose to be untruthful, as Isobel d’Inverno has suggested, how easy would it be for them to manipulate that exemption?

Isobel d’Inverno: Most people only really live in one place. Under the Scottish taxpayer test, if someone has two houses, they have to decide which one is the main one. Revenue Scotland has issued lists of things that could be taken into account, such as where someone’s family lives, where their credit card bills go or where any clubs that they belong to are. Anecdotally, where your dog lives is also a good indicator. It is possible to determine that as a matter of fact, but a person’s intention is slightly more difficult to establish. The question is really whether, when someone buys a property, it is going to be the one that they live in and, if not, they will have to amend their tax return and pay the 3 per cent.

Mark McDonald: Would you expect there to be a length of time for which an individual would have to say that a property would be their main residence? Otherwise, potentially, it could be their main residence for six months and they could then flip it, as a means of avoiding the 3 per cent surcharge. That is entirely hypothetical but, at the end of the day, that type of situation would merit some probing if that exemption were to be introduced.

Jo Joyce: We already have clawback provisions for other reliefs, and those could be introduced in this case. If someone claims the relief on the 3 per cent and, six months later, they get another main residence and claim the relief again and they have disposed of that previous main residence within either the 18-month period or the three-year period, the relief that they claimed should be clawed back—they would have to pay the money back. Clawback is in place for group relief, certain transactions under charities relief and relief for multiple dwellings, so there is already a precedent.

I appreciate that it might be easier for people to be fraudulent. However, fraud is fraud and if people are being criminal they are being criminal. I do not think that the majority of people would behave that way.

Mark McDonald: That flows into the other questions that I want to ask. First, there has been a lot of talk about the potential for market distortion, either by introducing the 3 per cent charge or by not introducing it. It has been suggested that we should perhaps have held back for a year and waited to see what impacts there were. Is there a risk that, if there were significant displacement as a result of the change being introduced in England and Wales but not in Scotland, it would be difficult to undo that displacement a year later and put the 3 per cent charge on? If everybody has rushed to make those purchases in the intervening period, it would be impossible to put that genie back in the bottle.

Susannah Simpson: I think that you are right. If the 3 per cent was delayed for that period, there would be a distortion. Ultimately, though, once it was introduced, things would sort themselves out over time. It would not necessarily harm things in the more distant future or the medium term, although there would be a risk for the period in which there was a difference.

Jo Joyce: I agree that that is definitely a risk. Our approach is that it is far more risky to introduce hastily put together legislation, with collateral damage and unintended consequences, which takes years to unpick, than to put together something that is fit for purpose and does what you want it to do.

Isobel d’Inverno: There are quite a lot of points that we have not bored you with in relation to partnerships, trusts, joint ownership and so on.
There are a lot of technical areas in which it may be necessary to make improvements to the legislation so that things work as intended.

Mark McDonald: The cabinet secretary is coming up next, so if there are technical questions that you think we should ask, if we get them on the record it at least allows for that discussion to be had. You suggest that it might bore us. I cannot speak for everybody, but if there are specific questions that need to be put, I think that the committee should be advised of them.

Isobel d’Inverno: We need to be sure exactly how trusts will be treated. For example, if a trust that has a corporate trustee buys a house, will that automatically be treated as subject to the 3 per cent charge, even though the trust does not have any other residential properties? That would be for a discretionary trust, where there is no one with a life interest and so on.

Similarly, where the trustees are individuals, one would not have thought that their purchases in their capacity as trustees should be affected by what they personally own. The house that the trustee owns as an individual should not affect purchases by the trustee as a trustee. Also, what is the situation for trustees of more than one trust? What is the intention in all of those cases?

Mark McDonald: Are you asking whether the purchase will be assessed in relation to the trust as an entity rather than in relation to the interests of individual trustees?

Isobel d’Inverno: Trustees are either individual or corporate. We have to think about how it ought to work. One would think that, if the trustees are individuals buying as trustees, the fact that they personally own a house should not affect whether the trust buying a house has to pay the 3 per cent. I am talking about those sorts of questions.

In partnerships, too, partners are individuals. It appears that, if any of the partners has a house as an individual and the partnership buys a residential property, it would be automatically caught. However, that is not necessarily appropriate in some cases, because it might be a farming partnership buying a house for employees to live in. It is not clear that that follows the policy. Those are the kind of things that perhaps need to be explored a little further.

The Convener: I thank colleagues for their questions and, most of all, I thank our witnesses.

Next, we will take evidence from the cabinet secretary. As we are 15 minutes behind schedule and Parliament is considering the Budget (Scotland) (No 5) Bill this afternoon, we will just have a brief break. We will reconvene at 11.45 sharp.
market to purchase a main residence. For example, someone who buys a property as their main residence for £100,000 will not pay LBTT, whereas someone who buys the same property as an investment or as a second home will pay £3,000.

As is noted in the draft budget, it is estimated—after taking account of behavioural effects, including the impact on underlying LBTT revenues—that the supplement will raise between £17 million and £29 million in 2016-17. The Scottish Fiscal Commission, which recognises the uncertainties that are posed by the lack of Scottish data on such transactions, has endorsed that estimate as reasonable.

The Convener: Thank you very much for that opening statement.

The draft budget states—you touched on this—that the supplement “targets the lower end of the market, where demand for properties for investment purposes or second homes could make it difficult for new entrants to the market to purchase a main residence.”

You said that the new SDLT higher rates in the rest of the UK could have a “potentially distortive effect” on investment, but the Scottish Property Federation pointed out to us that only 2 per cent of all investment in the UK comes to Scotland.

The Institute of Chartered Accountants in England and Wales has said that, in “copying the UK’s proposals”, the Scottish Government has “missed ... an opportunity to distinguish Scotland as an attractive location to live, work and do business”.

The ICAEW goes on to say that a YouGov survey for the Council of Mortgage Lenders found that 34 per cent of landlords will reduce investment in the private rented sector following the announced income tax changes and the introduction of the SDLT additional rate. Do you not have concerns that, as has been said, we have missed a trick, because it is not as though we actually get much investment in the sector anyway and Scotland perhaps needs a bit more of it?

John Swinney: There will always be conflicting ambitions and aspirations in the marketplace. One issue that is very much in my mind and was in my mind when I designed the land and buildings transaction tax legislation in the first place is the importance of ensuring that I create the right investment opportunities for individuals to get on the property ladder, principally as first-time buyers. The evidence of stimulation of that market has been clear to see from the performance of land and buildings transaction tax since the start of the current financial year.

The danger in taking up the market opportunity that your witnesses have suggested is that, although that could have attracted investment into Scotland, it could have attracted investment that crowded out the opportunities for first-time buyers to gain access to the property market in Scotland. That would simply be because of the ability of financially stronger individuals and institutions to invest in the Scottish market in a fashion that made it more difficult for new entrants to access the property market.

When the proposition in the United Kingdom emerged, the judgment that I arrived at was that there was a potential for the policy approach that I had taken on land and buildings transaction tax—it is consistent with the Government’s wider policy agenda on home ownership, in which we have taken significant steps to try to strengthen the ability of individuals to gain access to the property ladder—to be undermined had I not acted to ensure that those opportunities were open and available for members of the public in Scotland.

The Convener: PricewaterhouseCoopers, for example, said that there is no competition between first-time buyers and institutional investors. There is a consensus that the bill should exclude purpose-built new build in order to attract those investors and that that would not have an effect on first-time buyers. The Council of Letting Agents and the Scottish Association of Landlords have said that the less-favourable legal framework in Scotland is already a disincentive to investment in housing and therefore, if the bill becomes legislation, the threshold and rates should not be the same as those in the rest of the UK.

John Swinney: I remain open to those questions in the light of the evidence that the committee has taken on the question. There is certainly an argument, which I am exploring, about the extent to which reliefs should be formulated in relation to the application of the legislation. I am actively considering the particular question of new-build reliefs. I have reflected on the issues and I will do so further once I see the committee’s report when it is published in due course. There is undoubtedly an argument to be made in that respect and I will give it careful consideration.

The Convener: Our call for evidence closed only on Friday. This morning, we have heard from two panels and you, and we have to produce a report next week. The Law Society of Scotland said that considering the bill with such haste is “not conducive to the formulation of good-quality, robust tax legislation.”

Would it not have been better to wait a full six months or a year from the introduction of the measure in the rest of the UK before considering whether it could be applied in Scotland, as that
would have allowed more time to create more “good-quality, robust ... legislation”, as the Law Society suggests?

**John Swinney**: The challenge for the Government and, I suppose, the test for the committee and for Parliament is the extent to which we can create robust legislation at whatever moment we decide to so, and according to whatever timescale.

I can think of some proposed legislation that Parliament has laboured its way through, giving it its greatest consideration. Having been considered by absolutely everybody, it has been found to be flawed. We can give these things all the time in the world but then find that we have missed something when they come to be tested. That has happened to Parliament on a few occasions after it has devoted an extensive timescale to a bill.

I will not now try to persuade the committee on all occasions that we should condense the timescales for the consideration of legislation; that is an observation on what has happened in certain cases.

One of the issues that I have discussed with the committee on previous occasions is the fact that our legislative process as a Parliament, which has been carefully constructed over many years and which takes a long time to consider and assess all the relevant factors in bills, may not be able to be applied when we have to take swift decisions on tax and budgetary issues. We have seen some of those interactions already. We saw them over the introduction of land and buildings transaction tax, when our careful, thoughtful preparatory timescale was overtaken by the actions of the United Kingdom Government, and I had to act accordingly.

The interaction of wider factors with our legislative process is not always all that simple. I have taken a great deal of time over the course of the formulation of the tax responsibilities of the Parliament to consult extensively with organisations such as the Law Society of Scotland—and there are many others—which give willingly and voluntarily of their time to help us in the process of creating good legislation. I want to encourage that.

We adopt a particular approach to the formulation of tax legislation, which is as thoughtful and comprehensive as we can make it. There will, however, be circumstances where I judge that there is a necessity for us to act. In this circumstance, and referring to some of my earlier answers, I would be concerned that, if we had left these measures for a year before being implemented or if we had waited for them to be considered—which might mean having to leave them for longer than a year, as some issues will take time to resolve—we might have found the market opportunities for first-time buyers in Scotland to be eroded as a consequence of the differential between Scotland and the rest of the United Kingdom.

**The Convener**: Okay—although we have not seen any hard evidence on that so far this morning.

The Association of Local Authority Chief Housing Officers has suggested that there should be “an early and comprehensive review of the impact” of the proposed legislation on the housing market, both nationally and locally. Is that something that the Scottish Government would want to do?

**John Swinney**: I would certainly give consideration to that, yes. Given the fact that we are undertaking the legislative process in an expedited timescale, that is a reasonable request to consider.

**The Convener**: I have a couple of further points to make before opening out the questioning to the rest of the committee.

First, the issue of loopholes has been raised this morning by the Scottish Association of Landlords and one or two other organisations. The Law Society has basically said that any loopholes would be covered by the general anti-avoidance rule. Do you believe that to be the case?

**John Swinney**: Yes, I do. The Law Society has basically said that any loopholes would be covered by the general anti-avoidance rule. Do you believe that to be the case?

**The Convener**: Yes. The Law Society is correct that there is a catch-all key test in the general anti-avoidance rule. Do you believe that to be the case?

**John Swinney**: Yes, I do. The Law Society is correct that there is a catch-all key test in the general anti-avoidance rule. Do you believe that to be the case?

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**John Swinney**: Yes, I do. The Law Society is correct that there is a catch-all key test in the general anti-avoidance rule. Do you believe that to be the case?
many circumstances as possible where people are trying to pursue loopholes.

Our approach combines the application of the general anti-avoidance rule and trying to get the legislation as effective and as focused as possible.

Exemptions and reliefs are an entirely legitimate part of taxation legislation, and there will be circumstances in which we will wish to design exemptions and reliefs to deal with certain circumstances, but they must also pass the test of not being designed to create loopholes. Therefore, we have to consider what may be the contents of exemptions and reliefs very much with a mind to avoid any artificial behaviour emerging as a consequence of the drafting and design of the provisions.

**The Convener:** The Chartered Institute of Taxation has helpfully provided an example of a way in which the tax could be avoided. To quote from our adviser’s briefing:

>“Mr A lives in a flat worth £100,000; he buys a house worth £300,000 to move into and his elderly mother moves into the vacated flat; LBTT supplement £9,000 ... Mr B lives in a house worth £300,000 and buys a flat worth £100,000 for his mother to live in”.

The supplement then would be only £3,000. The point that is being made is that someone with greater resources can manoeuvre the system to ensure that they pay less.

How would the Scottish Government address such matters? I am not asking you to comment specifically on that example, as I have just given it to you; I am trying to emphasise the fact that there are still concerns about the legislation at present, and I am looking to see how the Scottish Government will look at that, perhaps at stage 2, to ensure that it is tightened up.

**John Swinney:** We will certainly look at those circumstances. As part of our routine preparations for tax legislation, of course, we established the tax consultation forum and the devolved tax collaborative, which enable us to hear the views of stakeholders as part of the process. We have had a very helpful discussion with a whole range of stakeholders that has covered a variety of different sectors and interests, and that has given us a great deal of food for thought. We will, of course, continue to look at any scenarios that are put to us.

Fundamentally, the legislation is designed around the simple test that in any circumstance in which somebody is purchasing an additional property, they are liable for the LBTT supplement. That strikes me as the correct way to go about the matter, through identifying the very lowest common denominator of test that can be applied and then applying it. The Government will, of course, look at other given scenarios to determine whether that test remains robust in fulfilling the purpose of the legislation.

**The Convener:** Thank you for that. I will now open out the session.

**John Mason:** As the cabinet secretary probably knows, one of my privileges is to be a member of the Delegated Powers and Law Reform Committee. Ms Brennan and I are both members of it. I suspect that you have seen its report, which I want to start with, if I may, before I move on to the more interesting side of things.

Under paragraph 14(2) of proposed new schedule 2A to the Land and Buildings Transaction Tax (Scotland) Act 2013 as inserted by section 1(3) of the bill, which relates to the power to amend the threshold figure in paragraph 9(3) of the same schedule, Government ministers basically have the power to vary the £40,000 limit. It has been argued that, in other places, the £40,000 is just an administrative figure for notification; however, as far as the bill is concerned, the figure is effectively a tax band in that properties below it are ignored and on properties above it people will have to pay 3 per cent. That is fair enough, but the Delegated Powers and Law Reform Committee felt that the negative procedure should not be used here; instead, the affirmative or probably the—

**Lesley Brennan:** The provisional affirmative.

**John Mason:** Indeed. Thank you.

Instead, the affirmative or the provisional affirmative procedure should be used, given that they are normally used for changing tax bands and tax rates. Has the Government been able to consider that?

**John Swinney:** We have not yet considered that issue in full, but I understand the point that has been made. Of course, we must consider the exercise of order-making powers carefully in any legislative process, and I will reflect on the conclusions of the Delegated Powers and Law Reform Committee to determine whether any changes require to be made.

I should point out that we exercise order-making powers only with the Parliament’s consent that it is reasonable for them to be undertaken in a particular way, which means that we have to take parliamentary consent with us with regard to the theoretical exercise of the powers in question. I will certainly reflect carefully on the point that the Delegated Powers and Law Reform Committee has made.

**John Mason:** That is appreciated.

Another relevant point came up at the Delegated Powers and Law Reform Committee but was not included in its report, as it related
more to policy. Basically, someone buying a property below £40,000 is effectively ignored for the purposes of the legislation. Of course, valuations can go up and down. Elsewhere in the bill, the issue is the price that someone has paid, but a valuation could be affected by, say, whether a property was tenanted and could at different times move above or below the £40,000 level. How would that issue be treated? Are you going to look at that?

John Swinney: We would have to go on the basis of the purchase price, which would have to be above £40,000 to—

John Mason: But what about someone who had been living in a house for, say, 20 years?

John Swinney: My answer would rest on the issue of the purchase price, which I feel is the key test for arriving at this particular judgment. After all, a test has to be applied for notification of a property for LBTT purposes; £40,000 is the point at which a return has to be made, and that will be driven by the purchase price. That said, I am just looking at the contents of part 6 of proposed new schedule 2A to the 2013 act, as inserted by section 1(3), in which the issue of “market value” is referred to.

My sense is that the bill’s clear intention is to capture properties at £40,000, and that has to be the test for making the notification to Revenue Scotland. That is the point at which individuals will have to register for the payment of a charge in this respect.

John Mason: Thank you. I will leave that for now.

A lot has been made of the comparison with the UK; indeed, the convener has already asked you about that. I remain unconvinced, however, that we are dealing with the same market. After all, for someone in London with half a million pounds of spare money who is thinking of buying a holiday college in Arran, Ullapool or somewhere like that, 3 per cent will make little difference to them, and I wonder whether not having the 3 per cent supplement will lead to more people suddenly rushing in to buy houses. Even if it was higher—say, 10 per cent—would that be enough to discourage such people? A witness has suggested, not today but on paper, that a supplement of 10 per cent would have more impact in discouraging second homes. Have you thought of going higher than 3 per cent for second homes?

John Swinney: I have not. The 3 per cent charge will be applied differently from LBTT, for which we have previously legislated and, comparatively speaking, it will raise a larger charge. As a consequence, there will be very different charges on, let us say, a property worth £100,000 as a main residence and a property worth £100,000 as a second home.

The differential remains significant, and it will be part of the calculation that an individual will have to make in determining whether they wish to buy a second home. It will not necessarily prevent people from doing that, because people may be in the financial circumstances that Mr Mason mentioned and they may be quite happy to pay the charge, but it is a relevant consideration. It puts up more of a disincentive to making the purchase than would otherwise exist.

I return to the point that I made to the convener in response to earlier questions. Without such a provision being in place, first-time buyers, whom we are keen to motivate, would be at a disadvantage in the market.

John Mason: That is fair enough. I totally agree. I am very much in favour of trying to help first-time buyers, or local buyers, as against people with lots of money coming in from outside to buy a second home.

We heard quite a lot of persuasive evidence this morning that the second-homes market, about which there is probably broader agreement that we need to do something, is different from the private rented sector investment market, where on the whole we probably want more investment. We want companies to come into that market and invest, and in some cases it has been suggested that that includes the international companies that are looking at England, Spain and Germany. Do we need to treat individual second-home buyers differently from larger investors who will create jobs and new buildings in Scotland?

John Swinney: We have to look carefully at the points that have been made in evidence about the larger-scale private rented market, because it involves more substantial investment in the provision of a wider housing supply contribution within the marketplace, as opposed to simply the acquisition of additional properties in housing markets that are already congested. Different sets of circumstances may well exist there, and that is one of the issues that I am considering in relation to the bill.

I will be interested in the feedback that the committee has received on the matter, because there are different characteristics to the market between the objectives of boosting housing supply versus protecting market opportunities for individuals to be able to gain access to the property market.

John Mason: I totally agree with that answer and am encouraged by it.

Another view that was expressed this morning is that landlords with either more than six or more
than 15 properties should be treated differently. The argument is that they are serious commercial organisations, whereas someone with just two, three, four or five properties presumably is not. However, we were also told that 15 is a pretty arbitrary number. I think that it comes from down south. Do you have any thoughts on those numbers?

12:15

**John Swinney:** There is a debate to be had about those numbers. The number is not a matter of perfect science; wherever it is set, it will be set arbitrarily. Ultimately, we have to make a judgment about the point at which something is a commercial proposition that is investing in the private rented housing supply sector and the point at which a mechanism is being designed to avoid the impact of the bill. That is why the question that the convener asked at the outset is important. What is the purpose of the bill and how can we construct legislation as robustly as possible, in order to avoid such circumstances prevailing?

**Jackie Baillie:** I would like to explore with you a possible exemption that was raised by a constituent who, for reasons of employment, lives in Aberdeen during the week. Their second home is clearly not a buy-to-let property or a holiday property; it is entirely related to their employment. Has any consideration given to exemptions in such circumstances?

**John Swinney:** The nature of this type of bill means that a multiplicity of scenarios will be put to us. I understand the circumstances that Jackie Baillie raised. My general response is that I am open to designing reliefs that can meet genuine circumstances that are legitimate in the process. However, as we go into that territory we must be very careful about the fine line between that intent and the creation of the loopholes that the convener questioned me about. I acknowledge those circumstances and, in the light of their being raised with me, I will look carefully at them, as I will look carefully at all the arguments that the committee puts to me during its evidence gathering.

**Jackie Baillie:** Thank you. In their written submission, one of our earlier witnesses questioned whether the bill’s purpose was to raise revenue or to protect housing supply for first-time buyers. Clarify on that point would be helpful.

**John Swinney:** The bill’s purpose is to protect the market for first-time buyers, but I cannot deny that a financial implication and benefit will arise from it.

**Jackie Baillie:** I will explore yield with you. I accept that there are limitations in data. What steps are being taken to improve data collection? Data collection will be valuable to forecasting.

**John Swinney:** Forecasting in relation to what?

**Jackie Baillie:** Forecasting the likely yield.

**John Swinney:** We will monitor that very carefully in the financial year, when there will be actual practice. With the estimations that underpin the financial memorandum, we have tried to construct a picture based on available data that we have through Registers of Scotland transactions that give us the best available data that we can have on the annual volume of second-home purchases and applications for buy-to-let mortgages. Those two pretty substantial pieces of data underpin the assessments that we have made.

Because we are exercising these responsibilities in a Scotland-only scenario, we are able to see the pattern of our transactions. That applies across the whole LBTT area and to landfill tax, into the bargain. The quality of our data is improving with every transaction.

Although undoubtedly there will be a level of estimation, I am confident that the data that we are using is as robust as it can be. If Parliament passes the bill and the provisions come into force, data will emerge that will enhance the quality of information that we have at our disposal.

**Jackie Baillie:** The Finance Committee always likes to request data so that is pleasing to hear.

Without any unintended consequences, the estimate of yield was £45 million to £70 million. When you apply a series of assumptions about behavioural responses, that drops to £17 million to £29 million, which is a more realistic assessment. You then make an assumption that yield will rise in four years by 87 per cent. That is quite optimistic and I wonder what you base that assumption on.

**John Swinney:** Jackie Baillie’s numbers are correct but there is a substantial explanatory factor, which is forestalling in year 1. The year 1 to year 4 comparison does not compare apples with apples.

If there is a forestalling effect in year 1, on that precious occasion the Scottish consolidated fund will be its beneficiary, which is always pleasing to the finance secretary. However that forestalling effect will only come in year 1. If we take that factor into account, the growth in the LBTT supplement follows the same assumptions base as the growth in LBTT in general and those assumptions have been tested and scrutinised by the Fiscal Commission.

**Jackie Baillie:** I am sure that you will take the opportunity to reflect on the evidence that we have heard today but it is interesting to note that,
anecdotally, people were not seeing evidence of forestalling and they noted that there might actually be a limited period before 1 April in which people could complete the transactions. That is interesting because it is different to the experience of LBTT. Will you bring forward a set of revisions on that basis? Anecdotally, there was no evidence of a rush to buy. There was uncertainty in the market because people were not aware of the proposals that were being brought forward.

John Swinney: It is early days. I announced this on 16 December and that will have given people only a few weeks to have considered the issues.

I am just trying to recall the timescales around the explanation of the interaction of the LBTT changes that I proposed and the SDLT changes that the Chancellor of the Exchequer made. I must have announced the LBTT rates in October 2014 and the chancellor would have announced his SDLT changes in December 2014.

The chancellor therefore made the announcement that sparked off the forestalling at around the same point as I made my announcements here, and we have clearly seen forestalling in the introduction of vanilla LBTT, if I can call it that. In our assumptions, we have made an assessment of and taken account of forestalling but if that forestalling does not materialise, the Scottish consolidated fund on vanilla LBTT will not get the benefit but we will see it coming through in the LBTT supplement if the pattern of property acquisitions takes the form that I estimate it will.

Jackie Baillie: Thank you.

Gavin Brown: Cabinet secretary, I have no inside information but, for the sake of argument, let us say that the UK Government had heard some of the concerns that we have heard this morning and decided to delay implementation of the SDLT supplement by six months, to pick a number at random. What would your response be to that? Would you follow suit or do you want to apply it on 1 April regardless?

John Swinney: I would apply it on 1 April.

Gavin Brown: Regardless of what the UK Government does.

John Swinney: Yes, assuming that the Parliament agrees. It is a minor assumption but that would be my plan.

Gavin Brown: Obviously, it is a devolved power and Parliament is perfectly at liberty to ignore what goes on south of the border, but in terms of the practical impact on the marketplace in Scotland I would caution against ignoring it entirely. Are you having discussions with the UK Government about the consequence of its consultation, to get a feel for what it is doing, and are you giving the UK Government some idea of what your thought process is, so that nobody is hugely disadvantaged, or are you not discussing it?

John Swinney: We are looking carefully at what the UK Government has consulted on, of course. We have looked at the consultation document that the UK Government has produced and at the various issues that it has considered. There are discussions between officials. Although I am at the front of the queue to demand access to information from the UK Government, I accept that we are in the territory of tax provisions and tax regulations, and that it is difficult to have an open book on some of those questions. Nevertheless, we are having those discussions with the UK Government and looking at its announcements.

Gavin Brown: One issue that came up quite a lot this morning was the idea of somebody who does not want to become a second-home owner in any meaningful way. They may be selling a property that is their main residence and looking to buy a new property that will become their new residence, and they purchase a new main residence but, for whatever reason, the sale breaks down or they do not get a buyer. My understanding of the bill as it is drafted is that they would have to pay the 3 per cent up front, but would have the ability to claw it back on the day of sale of the main residence. Are you open to some sort of change to that, so that there does not have to be an up-front fee, or are you fixed in your view?

John Swinney: On that point, I have weighed up the arguments, because I do not think that it is an absolutely black and white case, and I think that the most efficient way to do it is to secure that up-front payment, given that there would be an outstanding liability that we would have to try to recover at a later stage, and it could be more challenging to the public purse to recover that. For reasons of tax collection efficiency, the argument is balanced in favour of the up-front payment with an opportunity for repayment.

Gavin Brown: Administratively, it is definitely simpler and poses less risk to the public purse. I presume that you are speaking to a stakeholder group at the moment; the policy memorandum explicitly mentions that.

John Swinney: We are.

Gavin Brown: If you get evidence in the coming weeks from stakeholders who have concerns about the economic impact of that, would you be open to dialogue?

John Swinney: I appreciate that the legislation that I am proposing is being considered in an expedited timescale, but I always try my level best to listen carefully to the feedback that I get from
stakeholders and particularly from committees, and I do not want in any way to suggest that my mind is closed to those questions or that I am unwilling to consider points put forward by the committee or by the stakeholder community. As I said, I am grateful to the stakeholder community for its input so far.

**Gavin Brown:** I am pleased to hear that. I am no expert at all, but I feel instinctively that a lot of buyers could become more cautious about taking the lead, and that if that is reflected in the marketplace as a whole there could be a slowdown, the magnitude of which is unclear. However, if you are open to stakeholder views, I can leave that issue there.

You are listening closely on the issue of reliefs and exemptions and you have not ruled them out; in the financial memorandum, you mention a couple that you are openly considering. The central projection in the financial memorandum is £23 million. Is that correct?

**John Swinney:** Yes.

**Gavin Brown:** Does that assume that there are no reliefs and no exemptions, or have you factored into that £23 million the fact that there may be some exemptions?

12:30

**John Swinney:** We start off at a range of £45 million to £70 million and we come down to a range of £17 million to £29 million, so we are operating within a broad range of cost estimates. There is lots of scope for difference.

The proposition that I have put forward is based on the bill as it stands. I think that that is the standard that would be expected of me for the financial memorandum. No reliefs have been included in the headline assumptions, but I have erred on the side of caution in relation to the scale of factors that I have applied against the baseline proposition. I could have set up another baseline proposition of somewhere around £55 million. I am well away from that.

Of course, in any tax provision, reliefs must be at the margins. It is not the wisest of decisions if reliefs predominate in tax provisions.

**Gavin Brown:** Is it a fair comment that the figures in the financial memorandum reflect the bill as drafted?

**John Swinney:** Yes.

**Gavin Brown:** Today, a number of witnesses put forward the point that the bill as drafted could deter the development of new homes and properties. Do you dismiss that, or do you accept that there could be something in it and that you should therefore try to amend the bill to minimise any deterrent?

**John Swinney:** It depends on what scale we are talking about. I do not think that there is a disincentive in the bill that would stop a development that involved more than a handful of new-build properties—I am talking about a development of more than about four or five new-build properties. However, I want to listen carefully to the feedback from the market to make sure that that is the case.

**Gavin Brown:** Finally, out of interest, do you view this as a new tax or an amendment to an existing tax?

**John Swinney:** It depends on who is asking the question and in what capacity they are asking it. If the question is being asked so that a Conservative website can tot up the new taxes that are being introduced, I would call it a new tax. [Laughter.] It is a supplement to the existing tax arrangement.

**Gavin Brown:** Thank you.

**Mark McDonald:** One of the suggestions that has been made in the evidence is that the committee has taken so far is that many new-build developments rely on the advance sale of properties, and that the buy-to-let market is a key component of that. However, when we probed witnesses for the numbers that lie behind that, those figures were not forthcoming.

The suggestion was made that the 3 per cent supplementary charge might act as a deterrent to investment in new builds and that it might therefore restrict the ability of companies to finance new-build developments. Have you been made aware of that concern? Did you consider it when you drafted the proposal?

**John Swinney:** In the evidence that has been put forward, a number of points have been advanced in that respect. We have to test those arguments and come to a conclusion about whether we consider that the evidence is valid. We will go through all the evidence that the committee has taken and the dialogue that we undertook with the stakeholder community to test how valid we consider all that evidence to be.

**Mark McDonald:** One of the other suggestions that was made this morning was that Scotland should step back and wait to see what happens as a result of the chancellor’s introduction of a surcharge in the rest of the UK. However, I think that it is fair to say that PricewaterhouseCoopers agreed that there is an inherent risk that the surcharge could lead to significant market distortion in Scotland, which would already have taken place by the time we got round to doing anything. Is that one of the reasons why you think...
that a supplement needs to be introduced here simultaneously? Is the intention to prevent that potential market distortion from occurring?

**John Swinney:** That is precisely my rationale, and it is also my rationale for the timescale.

Those judgments do not come in one neat little compartment. The Government looked at the question as part of our agenda on housing supply. It is clear that Parliament views the securing of opportunities for first-time buyers to gain access to the marketplace as important. We clearly need to act swiftly when an issue is a priority for Parliament and it reflects the Government’s agenda on housing supply.

We have gone through a reform on LBTT that has improved accessibility to the marketplace for first-time buyers. I do not want that to be set back by a change that takes place in the rest of the UK that has implications in Scotland from which we do not have the opportunity to recover. That is exactly why I have taken the action that I have taken.

**Mark McDonald:** Earlier, we took evidence from the Law Society of Scotland, and Isobel d’Inverno put forward an issue that she felt should be probed, which concerns the role of trusts. You might not have information on that at your fingertips; you might have to come back to us on it.

When a trust that has not property portfolio and which has not previously owned properties makes a purchase and some of its corporate or individual trustees have property interests, would those be assessed against the purchase and therefore make the trust liable for the supplementary charge or would the trust be treated as an entity making its first purchase?

**John Swinney:** Off the top of my head, in that scenario the trust would be judged to be undertaking its first purchase, but I am a bit loth to give definitive responses on scenarios that are put to me at committee today. That is how it strikes me, but such a scenario will be one of a number that we will look at.

**Mark McDonald:** I appreciate that answer. The point was made to the committee on the record, so I wanted to put it to you.

You responded to the convener on the way in which we approach budgeting in the Parliament. Another example of what I see as an inflexibility of approach compared to that which is afforded to Westminster is on our ability to make changes in relation to tax policy.

Could the way in which we approach tax policy implications be improved, or is it for the Finance Committee to consider in our legacy paper how the budget process works with the tax powers that we now have and the greater tax powers that we might have in the future?

**John Swinney:** We need to look at that issue. I encourage the Finance Committee—which observes the same issues and challenges that I do on the process—to reflect on those. I would welcome the committee’s thoughts and deliberations, and I am sure that its reflections would be considered by ministers after the election in May.

Our experience is that the approach that we have taken to the exercise of taxation powers over the past couple of years has generally worked satisfactorily, but it has thrown up some significant issues and challenges on timescale. There is a question to be considered here, and the Finance Committee is best placed to do that.

**Jean Urquhart:** I will follow a familiar theme. Did you consider not introducing this tax?

**John Swinney:** I actively considered whether to introduce it, so I suppose that I thought about not introducing it.

**Jean Urquhart:** In your opening remarks and in answer to members’ questions, you have said that the feeling that first-time buyers are being disadvantaged is part of the principle behind the introduction of the new tax. Is that your biggest concern?

**John Swinney:** My biggest concern was Parliament turning round to me—quite reasonably—in light of the chancellor’s announcement and asking, “Given what the chancellor has done in England, what are you doing to protect first-time buyers and their access to properties?” That would, as I have said, have been a pretty reasonable question for Parliament to ask me.

When I heard the chancellor’s announcement, I began to think about the implications, because I have to think about the comparative impact of taxation decisions in other parts of the United Kingdom now that I exercise some of those taxation responsibilities. As I work my way through the very difficult issues of the fiscal framework, it becomes ever clearer to me that we need to be mindful of the implications of decisions taken elsewhere and their potential impact on our policy objectives here in Scotland. When I looked at what the chancellor set out, it became clear to me that the policy objectives that I would wish to pursue with regard to first-time buyers and access to the market might be constrained by his decisions and that I had to look at this particular proposition.

**Jean Urquhart:** You might not agree, but it seems to me that there are other ways of protecting first-time buyers. If first-time buyers
were the principal reason for bringing in the tax, did you look at any alternatives in that respect?

John Swinney: I have to look at the implications of this definitive proposition for the marketplace and for market conditions and at what I think will be the most focused and targeted measure to address all that, and that is what I have done.

Jean Urquhart: A couple of questions have been raised about larger rather than smaller developments. Do you agree that, because larger developments might be eligible for different forms of finance, they should be seen in a different light from, say, a one-bedroom flat that someone might rent out or a small flat that might be made available to an aged parent? What is the fairness in that system?

John Swinney: We have to look at very different scenarios in considering whether any exemptions should be put in place. The fairness in the system is that, as the bill is currently written, the measure applies across the board—that is how equity is delivered. When we get into the territory of exemptions and reliefs and consider such questions, we have to be acutely aware of the issues of fairness and equity and be mindful of a whole range of different scenarios. Jackie Baillie has already highlighted one such scenario, and the committee will have heard about other scenarios such as people who are already living in a property creating an extra property for an elderly parent or disabled child or sibling. When we consider any exemptions that might be put in place, we have to work our way through all those scenarios, including any major buy-to-let schemes that might exist, and think about a range of different issues as we go through that process.

Jean Urquhart: So we can take it from what you are saying that the two basic principles behind this measure are, first, protection of, encouragement for and availability of properties to first-time buyers so that they can get on the ladder and, secondly, fairness.

John Swinney: Yes.

Jean Urquhart: You said that when a lot of time is allowed for legislation, it sometimes turns out to be no better than legislation that is just rushed through. I hear what you say, but comments have been made on the matter. I presume that, in an ideal world, you would have given more time to it.

John Swinney: I suppose that more time is always nice to have, but I have a problem that will start to crystallise on 1 April and I want to be able to act to deal with that and to protect the market for first-time buyers. I would be leaving myself open to a problem crystallising that would not be beneficial to the market in Scotland. I come back to my answer to the convener on the issue: we have to be sure. This is our opportunity to test the parameters of the bill and the preparation that my officials and I have done to ensure that we make it as effective as possible.

12:45

Jean Urquhart: It is also a test of legislation being made at Westminster and how we react to it. Potentially, legislation could be made within months of a new tax year and there would simply not be time for us to respond. We need to be prepared for that kind of scenario in any case, do we not?

John Swinney: Absolutely, which is why the committee needs to look at the issues raised by Mr McDonald.

Lesley Brennan: I support the principle of protecting first-time buyers. Ensuring that we get the solution right is always in the detail. Today, we have heard about the concerns of the Law Society of Scotland, KPMG and PricewaterhouseCoopers. In the written responses to the consultation, we have read about people’s concerns about unintended consequences and the fact that it may not be until the legislation is in place that any small technical details will come to light.

You have mentioned the lack of data and the potential for crowding out first-time buyers if you do not put the supplement in place. What evidence do you have of that?

John Swinney: This is my first opportunity to welcome Lesley Brennan to Parliament. I wish her well in her time in Parliament.

The holy grail of legislation is how to avoid unintended consequences. This bill is no different from any other bill that Parliament wrestles with. We have had the benefit of input from a wide range of stakeholders. The benefit of having such conversations is that they throw up scenario after scenario and we have to think about how the proposed legislation relates to those scenarios. I do not question any of the scenarios of the type that Jackie Baillie raised. We have got to think, “How does the legislation capture that? Is that what we really want to do?” We must be mindful of that and take it seriously. That is why we have taken seriously the feedback from the stakeholder community, and it is why we will take seriously the evidence that the Finance Committee has heard.

On the issue of the evidence, I have to assess the implications of the legislation south of the border for the market in Scotland. The conclusion that I have come to is that there would be an incentive for people who would incur a charge south of the border to come to Scotland and not incur a charge. That is most likely to happen in the market that first-time buyers are trying to get
access to, which is properties that currently attract no LBTT—properties below £145,000.

As in all such situations, I cannot definitively prove that we will have an upsurge of cases, but I can foresee the circumstance emerging in which that will be the case. It is therefore necessary to act to ensure that we do not find that the market is skewed by that factor.

Lesley Brennan: I would like to ask about second homes. Part 6 of the bill refers to “Dwellings situated outside Scotland”. Will you talk us through how you see those provisions being enforced?

John Swinney: When a transaction is undertaken, Revenue Scotland will require a declaration to be made, as part of the return, about whether the individual owns a property elsewhere. That will be part of the administrative process when a solicitor undertakes a transaction. If somebody lives outside Scotland and has a Scottish solicitor acting for them to purchase a property, the solicitor will have to ensure that the information that we require to substantiate a Revenue Scotland return is made available. One of the points that will require to be confirmed is whether that person who lives outside Scotland owns a residence elsewhere. The reason why solicitors are involved and professional standards are required is to ensure that those questions are answered properly and effectively.

Lesley Brennan: A couple of today’s witnesses suggested a main residence test. Do you think that such a test is needed?

John Swinney: There will be one that will have to be passed in terms of the information that will be required in the return to Revenue Scotland.

Let me consider that point further. It is clear that we will require individuals to disclose whether they have a main residence. That will be the trigger for the supplement. If we require to do any further scrutiny on that point, we will certainly do it.

Lesley Brennan: I have one last point, which goes back to something that Gavin Brown mentioned. If someone has a second home accidentally, because they cannot sell the other one, would you consider introducing a grace period? A period of 30 days or 90 days has been suggested.

John Swinney: I am quite open to the issue of a grace period. We then come back to how long the grace period should be. I have heard that evidence and I would certainly not want to close the door on it at this stage.

The Convener: I thank all my colleagues who have asked questions today. Cabinet secretary, do you have anything further to add?

John Swinney: No, other than to reinforce my appreciation to the committee for its willingness to consider the bill on an expedited basis in what I know is a very congested timetable for the committee.

The Convener: Thank you. Before we wind up, I give my particular thanks to Professor Gavin McEwen for his briefing, which has been provided to members today. It is an excellent and extremely detailed piece of work.

Meeting closed at 12:53.
Written submissions to the Finance Committee

Aberdeen City Council
Adrian Alderton
ALACHO
Alison Loudon
Alistair Wood
Association of Real Estate Funds
ASSC
Barry Burton
Brodies LLP
Caledonia Estate Agency
CIH Scotland
CIOT
Colin Miller
Council of Letting Agents
Council of Mortgage Lenders
Craig Nicolson
Cyrenians
David Sinclair
Edward D Conway
E&Y
Highland Park Development
Homes for Good
Homes for Scotland
ICEAW Scotland
ICAS
John Brown
Jonathan Gordon
Kay Linton
KPMG LLP
Law Society of Scotland
Lindsays
Mahri Tawse
Mark Neil
Martin & Co Cupar
Martin & Co Kirkcaldy
Martin Payne
McCash and Hunter
Morag Shaw
National Association of Estate Agent
North Ayrshire Council
Paul Matthews
Perth & Kinross Council
Pinsent Masons LLP
PwC
RICS
S. Grant
Scottish Association of Landlords
Scottish Borders Council
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from the ABERDEEN CITY COUNCIL

Response

Comments from ACC officers concerning these proposals:

1. Is there an opportunity in implementing the LBTT and the supplement to localise the collection of the tax and thereby increase the extent of revenue raised locally for Local Government funding?

2. Whether this measure will result in an increase in the supply of houses or, primarily, raise additional tax will be questioned. It would be useful to understand the evidence that the effect will be to increase availability for those seeking to purchase their only or main home. Previous experience in rural areas (which schemes are often targeted at helping) is that incomes are so low that the multipliers are so high that almost a collapse of prices would be needed to make a difference.

3. Second homes are purchased for a number of different reasons e.g. when bought as holiday homes or available to rent to support the Tourist industry, as investments and left empty, as investments and available for private rent, as second homes to support employment away from the main family house. In Aberdeen City we do not traditionally have many homes deliberately left empty although the current downturn in the oil industry has led to a substantial increase in empty properties. This should be resolved in the short term.

   The holiday home market is not directly affecting the City. There will be some benefits from the market in Aberdeenshire, but the extent of this is not clear.

4. Aspects that could cause some concern are the impact on the private rented sector and homes bought to support employment. Traditionally (setting aside the current oil position) this has been a vital sector to support the economy. Any increase in costs of acquisition will be offset potentially by higher rents to maintain yields for landlords. In the Chancellors recent budget statement he has already made significant changes to the tax position for ‘buy to let’ so this will result in a double hit to landlords. Similarly any increase in costs to support employment may prove to be a tax on employment.
5. The impact on the discount on second homes would need to be clear as these funds are important to support the delivery of affordable houses by Councils and Housing Associations through the SG’s SHIP program. Any loss of capacity would need to be met from additional Grant.

6. In Aberdeen we currently have a significant issue with a shortage of key public sector workers, largely due to the relatively high cost of housing locally. Tax breaks within the LBTT scheme may go some way towards increasing the disposable income of such key workers and may then attract additional entrants into the Aberdeen workforce.

28.01.16
Background

I have worked in the housing sector for over 35 years primarily in the social and housing association sector as well as the private rented sector. As an individual I have a portfolio of properties in Northumbria, North England and have been a private sector landlord for 10 years. I am a member of the Institute of Housing, an accredited landlord with the local Council and National Landlords Association (NLA).

Prior to comments on specific consultation questions I would like to stress a few general points on the Governments current policy. The context is that the private rented sector has grown significantly over the past 10 years to meet demand. A primary reason is the sale and limited new build of social housing under various governments. The private sector has filled that gap.

The nature of the sector is that it consists of many ‘small-scale’ providers often working with qualified lettings/management agents. For example when I carried out work for Doncaster Metropolitan Council in 2010 in implementing mechanisms to work better with and raise standards in private sector housing. Analysis of available records indicated that 92% of landlords were ‘small-scale’ (4 properties or less) and provided 55% of properties in the area. These landlords, therefore, provide a substantial local housing resource and the Governments current policy will squeeze them out of the sector through clause 24 income tax regulations and additional SDLT (stamp duty land tax). This will have a major impact on local housing markets in terms of available property and increasing rent levels.

I would like to make the following general points in relation to policy:

1. **Small can mean a better more personalised service.**

   Small scale landlords doesn’t necessarily mean bad landlords. I provide family accommodation to a high standard, meet all legal and health and safety regulations, I am accredited with public and professional bodies, and provide a ‘hands-on’ responsive service to my tenants who I treat as customers. I have never had to serve notice or evicted a tenant nor raise rents whilst a tenancy was ongoing.

   Landlords like me will be squeezed out of the market by this Government's policy in favour of the big corporate players. I have extensive experience of these businesses and can assure you that they are solely interested in one thing, unfortunately not tenants, just PROFIT. It is a very black day for private
tenants when the Government pushes the sector into the hands of these corporate players.

My recommendation is to link proposed penalties (clause 24 income tax) to raise standards and exclude poor performers rather than blanket penalties to the sector. **Link taxation to non-accredited players or those not meeting specific Government standards.**

2. **Private landlords provide local housing choice**
Private landlords provide much needed housing and greater choice for many clients. I have provided housing for vulnerable and homeless families in partnership with the local Council, currently house a person with learning disability, a physically disabled gentleman with a family of three children, young families and retiree. These are long-term secure homes let and maintained to a high standard. The supply of such local housing from local landlords will reduce in favour of faceless profit-orientated corporations.

3. **Most Investor landlords are running a professional business with all that entails.**
My property portfolio is run as a professional ‘hands-on’ business which entails extensive risk, in particular, financial risks. The financial penalties being imposed through clause 24 and SDLT will result in many such businesses being financially non-viable. This is simply because they are structured as sole traders rather than limited companies. This has been the most advantageous structure for most investor landlords as advised by ALL accountants with any property knowledge.

The ability to transfer to new corporate structure immediately is severely restricted by financial contracts. Refinancing and redemption penalties (5-7%) make this financial suicide in the short-term. Good, experienced investor landlords should not be penalised simply because they are structure in the best way as advised by professional advisors nationally.

The clause 24 income tax and SDLT explicitly targets the smaller landlords. These are the vast majority of providers in the UK. Many have taken considerable risk and financial commitment. They provide much needed local housing usually to a good standard which is much more regulated now (a good thing) providing a service, a home and seeking to retain tenants.

The pretence that clause 24 will only affect the few is unjustifiable, just attend any landlord/investor event throughout the country and you will see that around 80% of attendees will be negatively affected.
Why is the smaller business being treated differently from all other professional businesses and the already wealthy corporate sector being favoured?

SDLT Recommendation

Existing landlords should not be penalised with SDLT if they transfer existing owned properties (pre 1/4/16) into a different corporate structure eg limited company, in the future. These properties should be exempt from SDLT to enable existing professional investor landlords to remain in the sector if they so wish.

4. Markets and First Time buyers

It should be recognised that there are many different housing markets in England and Wales. London and S East is very different from most other areas of the country with high prices and shortages.

I am based in the north of England with lower house prices and most people with a stable income could service a mortgage with the exception of hotspots like Harrogate and York. The issue isn’t availability of housing or even prices in most areas, the issue is stable jobs and access to mortgage finance plus 25% funding of deposits. Although the Governments first time buyer initiatives are welcome, they will not be enough. **Mortgage finance is still too difficult to obtain and too low a percentage of value.**

I know a tradesman running his own successful business for over 2 yrs and now employing staff and still can’t get mortgage plus has the 25% deposit barrier.

I do not believe I have ever deprived a first time buyer of a property. I have bought properties at auction that no-one wants, a property that sat empty for over 5 years, houses that need a lot of work and are simply unwanted. These require significant investment of cash funds up to £20k to bring them up to a good standard with all the associated work and risk. These properties have been raised to a high standard and brought back for family use.

I understand the pressures in the south east however your additional taxation (clause 24 and SDLT) will have a serious impact on investor landlords elsewhere in the country reducing sector supply and the choice and availability of tenure. It won’t make more properties accessible to first time buyers because in this region the properties are already there!

**The Government needs a targeted approach to London and the S East markets not these negative blanket policies.**

Points relating to specific questions in the SDLT consultation.
Q2&3 Main residence – a close family relative eg mother/ father, grandfather/mother should be allowed to assist a child to get on the property ladder and be party to the deeds (joint owner). This should not be classified as a second property in addition to their main residence. Limited to only one property per sibling. In view of the difficulty obtaining mortgage finance and a deposit, many children are reliant on such financial assistance and this should not be discouraged, however, a relative should be able to protect their financial interest with a share of the ownership and named on deeds.

When joint owners divorce they should be exempt from the additional SDLT on their next purchase if they retain a part ownership of the matrimonial home. It is quite common for one party and the children to remain in the matrimonial home which promotes their stability and wellbeing. The other party who has had to leave should not be penalised further with SDLT.

Q10 Main residence includes global property.

I can’t afford and don’t have a property abroad however some more successful people than I have a home abroad or in Scotland and elsewhere in the UK. I fail to see why they should be penalised for this although they could probably afford the tax. I suggest having one home abroad should be exempt.

Q13 -16 Exemptions

The exemption of a corporate body with a portfolio of 15 or more properties is highly questionable.

I recommend that this is significantly lower at 6 - 10 properties. This number of properties will involve a significant financial investment and risk which should be recognised. This scale will require business acumen and a conscious strategy to invest in the sector.

Further exemptions should apply to:

- **Properties that do not attract a mortgage.** These properties invariable require high capital/cash outlay and are not suitable for or accessible by first time buyers.

- **Properties that have been on the housing market for 6 months or more.** If there is limited interest for whatever reason, usually condition and refurbishment investment needs, then these properties should be accessible to investors without the additional SDLT penalty and will maintain property supply and often improve property conditions.

- **Properties requiring significant levels of refurbishment** should also be exempt to ensure that they do not sit empty deteriorating and impacting on the local area for long periods. These properties commonly have restricted mortgage finance and require high levels of capital/cash investment. This will encourage improving property conditions.
- **Properties that have been empty for 12 months or more**
  Again this will encourage improving property conditions and bringing them back into use.

Leaving these types of property empty for long periods can have a serious negative impact on overall environment of an area as well as house conditions and are more suitable for investors to upgrade and bring back into use.

Finally, why are already wealthy investors/developers being favoured with a multi property exemption as opposed to smaller investors? A further example of the Government unreasonably favouring the larger players against the smaller who have committed to taking on greater risk in the sector.

**Q17 Transfers to a limited Company**

As highlighted in point 3 above, existing landlords should not be penalised with additional SDLT in transferring to a limited Company status. They have demonstrated commitment to the sector and taken on a substantial package of risks, in particular, financial risks. Often these properties cannot be financially repackaged in the short-term without excessive financial penalties.

Many such owners are experienced landlords providing good quality long-term housing for local people. This approach will also help reduce the loss of supply to the sector which is an inevitable outcome of current policies.

**I highly recommend that properties owned (pre 1/4/16) which are transferred to a different corporate structure eg limited company, in the future should definitely be Exempt from additional SDLT.**

**Q19 SDLT Payment**

Property investment and letting is a business like others and subject to annual tax calculations and submissions. I recommend that SDLT payment is annually in accordance with annual submissions and not out of step with this annual cycle. This makes financial management and accounting much simpler for all concerned.

As an aside my next investment project was planned for Scotland and my medium term plans were to move with my family to live in Scotland. Well these plans are scuppered as my property business will have to be scaled down or closed following implementation of clause 24.

Regards,
Adrian Alderton
28/01/16
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from ALACHO

29 January 2016

Introduction

As the representative body for Scotland’s Local Authority chief housing officers ALACHO welcomes the opportunity to respond to the Finance Committee’s call for evidence on the proposed changes to Land and Building Transaction Tax on the purchase of second (or additional) homes.

Scotland’s councils have a significant interest in the impact of this measure arising from:

our role as strategic housing authorities with an interest in the functioning of the local housing market and its impact on housing needs and demands;

the operation of local second hand house purchase programmes to support policy delivery in relation to both private and public sector housing;

the use of “off the shelf” purchases of completed homes within the affordable housing supply programme;

our participation in the Scottish Government’s Home Owners’ Support Fund (Mortgage to Rent) programme aimed at avoiding repossessions in the owner occupied sector; and

the need to support mid market rent providers through the NHT and Council variant NHT.
We note that the primary purpose of the measure is to:

- ensure that opportunities for first time buyer to enter the market remain as strong as they can; and
- avoid the displacement of second hand property purchase from England and Wales to Scotland following the introduction of a similar measure in those jurisdictions.

However we are concerned that no robust assessment of the impact of the measure has been carried out in the context of the Scottish Housing market.

In addition we believe that the application of this measure to local authorities will have an impact on the delivery of the Scottish Government’s affordable housing supply programme and will impact adversely on the delivery of other national and local housing policy objectives and programmes.

We have set our concerns in relation to the measure under these two broad headings.

**Likely impact of the measure on the housing market as a whole**

The received wisdom on the impact of buy to let (BTL) purchasers and second home buyers is that they push up prices and as a result make it more difficult for first time buyer to enter the market. The CML for example has estimated that the BTL purchase activity has added 7% to UK house prices\(^1\). However, very little research has been focused on either the Scottish housing market as a whole or its significant regional variations. As things stand evidence suggests that during a period of rising BTL activity over recent months house prices have remained relatively flat in many local authority areas (and declined in some) and that the number of first time buyers entering the market has also risen\(^2\).

In addition the number of transactions across the Scottish housing market, though rising over recent years remains significantly below its 2007 peak\(^3\). As a result BTL purchasers are likely to have played a significant role in supporting the industry as a whole by maintaining both transaction volumes and house prices since the financial crisis of 2007/08. And in doing so will have helped many so called “second

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steppers” to sell their homes and move to more suitable accommodation in the owner occupied sector.

The point of these comments is no more than to demonstrate that the evidence of the impact of BTL purchasers in Scotland isn’t as clear cut as is often assumed and measures to dampen the BTL market may not have a wholly positive impact on the owner occupied market or make any significant difference to the prospects for first time buyers to enter the market..

There is also no evidence that buy to let purchasers from England and Wales will as a matter of course, or in significant numbers turn to Scotland as an alternative investment market with all the added difficulties that managing homes at a distance and in a jurisdiction where the regulatory framework is both significantly different and subject to change.

The Scottish government has acknowledged the limitations in the data. In its own statement on forecasting methodology it makes the following comment:

“Modelling of the LBTT supplement has been based on proxy datasets due to the lack of datasets available to provide reliable information on the historic volume of purchases of “additional” properties in Scotland”

In the same publication the Scottish Government has acknowledged that its projections in this area are “high uncertainty” but makes no attempt to identify possible unintended consequences of the measure.

We would argue that among the possible unintended consequences is the risk that the additional tax burden will discourage investment in so called “new build for private rent” developments to provide new private rented accommodation. This sector has been identified as a priority for the Scottish Government and has shown some signs of growth in recent months. Changes to the tax system on top of anticipated changes to the tenancy framework may result in delay or the cancellation of planned investment.

In the light of this, and on the assumption that the Scottish Government is likely to be unwilling to delay the proposed measure to wait for more robust data on how likely it is to achieve the policy purpose set for it, we would argue strongly for an early and comprehensive review of the impact of the changes to LBTT on the Scottish Housing market (and BTL activity in particular) at national and local housing market level.

Such a study could also provide useful additional evidence for the development of the Housing Needs and Demand Assessment Tool in relation to the private rented

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sector and improve local housing planning in relation to housing needs and the role of the private rented sector more generally.

As a hedge against unintended adverse impacts we would also argue that the income derived from the measure should be reserved as additional investment in affordable housing.

Financial consequences for local authority and RSL house purchase programmes

Since the financial crisis of 2007/08 many Local authorities and RSLs have been engaged in significant house purchase activity. These programmes will typically include:

- “off the shelf” purchases of completed but unsold homes from developers;
- Targeted purchases to support the long-term management of particular blocks of flats;
- one off purchase to resolve specific local housing management problems;
- the purchase of properties through the Scottish Government’s “Home Owners’ Support Fund (Mortgage to Rent) to prevent owners in mortgage default losing their home; and
- larger scale purchase programmes to address problems of area decline or support area regeneration programmes.

It should be noted that in the period immediately after the financial crash of 2007/08 “off the shelf” purchases were a specific target of both the social housing and NHT mid market rent programmes. Aside from allowing a rapid growth in the investment programme this approach played a significant role in supporting the house builders and construction employment, avoiding company liquidations and ensuring that newly built homes didn’t lie during the period of market recovery.

The Scottish Government hasn’t published a full breakdown of how the 35,000 new affordable homes delivered over the past five year were procured however the Commission on Housing and Wellbeing reported that in 2013/14 around 545 homes were purchased as part of the social housing supply programme and a further 113 for mid market rent. Over the life of the programme the total could be as high as 3,300 units or close to 10% of the overall affordable housing programme.

By applying this measure to the local authority sector and other social housing providers the Scottish Government will add further costs to the delivery of affordable housing programme and to housing regeneration programmes more generally. It will
also limit the number of home owners that can be help through the “Home Ownership Support Programme”.

In the light of this we would recommend that this measure shouldn’t be applied to Local Authorities or Registered Social Landlords.

Summary

The Scottish Government has acknowledged that the data available on the likely impact of this measure is limited and that its own forecasts are “highly uncertain. What data analysis has been published relates to the income derived from the additional tax with only very limited and unquantified references to the impact on the housing market as a whole or the risk of investment displacement.

We would go further and say that there is no published evidence to support the claim that the proposed increase in Land and Building Transaction Tax will support owner occupation as intended nor is there any evidence to suggest that there is a significant risk of investment displacement from England and Wales if the measure isn’t introduced.

The published material makes no reference to possible unintended negative consequences from the measure nor does it acknowledge the impact on public investment programmes.

The application of the measure to Local Authorities and RSLs will impact on existing affordable housing programmes and restrict the overall capacity of the sector to meet the Scottish Government’s target of 50,000 new affordable homes over the life of the next parliament.

Other unintended consequences may include a reduction in the number of home owners helped through the Home Owner Support Fund and discouraging investment in the New Build for Private Rent sector.

In the light of this we would argue that, if the measure can not be delayed until more robust evidence is available on it’s likely impact and unintended consequence, the Scottish Government should:

- Exempt Local Authorities and RSLs;
- Reserve the full income from the measure for investment in affordable housing;
- Work with the Private Rented Sector Champion and others to find an appropriate approach to reducing the impact of the measure on the New Build for Private Rent sector; and
- Give a commitment to an early review of the impact of the measure on the Scottish housing market as a whole and at the level of local housing market areas and on affordable housing investment programmes.
We hope these comments are of help to the committee in its consideration of the Scottish Government's proposals. We understand that the scheduled oral evidence session is on 3 February. Unfortunately we will not be able to attend on this day but will be happy to make someone available for a more detailed discussion at another time if this is considered desirable.

Tony Cain

ALACHO Policy Manager

January 2016
I understand the sentiments behind this legislation, but cannot understand how it is going to work. I fear it will lead to good landlords leaving the market.

I have some examples and I am not sure how they would be treated.

Property bought as private residences and when personal circumstances changed, rented out either due to inability to sell them or because it suited the owners personal circumstances to hold on to them. Some of the properties may go for HMO but many do not need to do so - how would the change of use be picked up?

There is also the alternative. A property bought with tenants in it which will be taken back by the owner for personal use.

You may say you can trace through mortgages, but many are using cash to purchase such properties.

It is also being forgotten that many are depending on property rental income for a form of pension. Savings have been hammered as have many pensions as well as share investments. The government has taken the feet from underneath people on their private residences due to increased stamp duty/property duties meaning properties over £500K just cannot be sold. The market is at a stand still so they cannot move to realise capital to help with moving on to the next stage of their lives when they should be enjoying themselves. They have saved all their lives and now are faced with huge problems in downsizing in their personal residencies. Even now the governments are going to heap mansion taxes on this group that are struggling and stuck in these properties due to huge property taxes of 10% upwards.

Good landlords invest in the rental properties and additional costs on extra property duties up front will take away from their ability to keep the properties to a high standard.

There are huge parts of the market that need rental properties like students and they desire them in particular areas that work for them for their Universities. In fact some try and get on property market early and buy and then rent to help pay for it by renting out with friends. How is it fair that they are not on an equal footing to other buyers just because they are letting some rooms out in their flat by way of meeting mortgage costs.
If good landlords leave the market there will be huge shortages of properties in many university intensive areas and consequently rents will be under even more pressure and it may be filled by people operating under the radar, so not keeping their properties up to high standards.

This is a politically driven policy that is going to hurt many good people with small portfolios who are just trying to survive.

There should be exemptions if owner is living in property if it is for the student or specialised market for owners with small portfolios of up to 5 to 10 properties rather than large pension/ trading based companies/organisations that have professionalised it.

if rental income from property is below a certain level overall/per room as this would be better way of encouraging rents in line with reasonable market conditions

This is a flawed strategy and very damaging to many who are just trying to survive and still recovering from credit crises.
Firstly can I say that I was highly disappointed when the Scottish Government chose to follow the UK government and implement what appears to be a near copy of the proposals brought forward by the Conservative Party in proposing a 3% surcharge on second properties.

This is an additional measure on top of the changes already being implemented in the UK Finance bill, specifically Clause 24 which restricts finance cost relief for individual landlords and was proposed by George Osborne in his Summer Budget on 8 July 2015.

I am a professional landlord providing high quality rental homes throughout the Fife area, an activity I believe the Scottish Government wishes to encourage. Many of my tenants are not in a position to buy a property and these changes will do nothing to help them achieve that even if they wanted to, and many in my experience don't. It will however through a combination of factors cause me to begin selling the properties I own and very reluctantly evicting tenants. This is not something I do lightly as I know all my tenants personally and have a good relationship with them. I also know I am not alone in feeling I am forced into this course of action and believe the removal of high quality rental homes will cause significant issues such as rising rents and a rise in homelessness.

So why is this impacted further by a surcharge on second properties? Sadly it's a combination of the two factors. Firstly the withdrawal of interest payments being allowed fully as a cost means, especially as interest rates rise I will be paying tax on a profit which is not actually a real profit. The way clause 24 works, taxable profit is calculated after removing the largest cost of running that business, namely interest. Until recently one approach to this was to move properties into a Limited company where interest is still recognised fully as a cost. However the implementation of the new 3% LBTT surcharge makes moving the properties to a Limited company cost prohibitive as taking property from my own personal ownership into a Limited Company is considered a sale, even though the ownership is essentially still myself. As it's considered a sale I have to pay Capital Gains Tax as well as LBTT at the new higher rate. This surcharge is the tipping point meaning my only choice, if implemented as suggested will be to sell the properties and evict the tenants. As I said, this is not something I do lightly but what business can operate when paying tax that may amount to more than the profits?
I also buy properties in a poor state of repair which are not mortgageable or suitable for a first time buyer; I then renovate these properties to a high standard and sell to a home buyer or provide them as high quality rental homes. The 3% surcharge will again make this activity non-viable and those homes may be left empty as a result.

Firstly I would urge you to consider not applying the 3% LBTT to company purchases or those operating a rental business with more than 10 properties in their own name or a company.

I would also urge you to consider not applying it to developers who purchase, renovate and sell properties or retain for rental, therefore improving the housing stock, especially where properties are in a state of disrepair.

Lastly I would add that the length of time for consultation, given that the Scottish Government has not even put forward detailed proposals is ill advised with an issue that could have such a significant impact on housing and the families in that housing. With that in mind I would suggest that you at least delay the measures so all these factors can be fully considered.

Regards,

Alistair Wood
29 January 2016

Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from the Association of Real Estate Funds

Dear Sir/Madam

Scottish Government call for evidence: Proposed LBTT supplement on additional residential homes

The Association of Real Estate Funds (AREF) welcomes the opportunity to respond to the Scottish Government’s call for evidence on a proposed land and buildings transaction tax (LBTT) supplement on additional residential homes.

Our response focuses on the need for exemption for significant investors in residential property, including collective investment schemes. As such, we do not comment on the government’s overall policy objectives.

We understand that the government wishes to help people buy their own home. However, alongside supporting home ownership, facilitating large scale professionally managed investment into both the private-rented sector and the build to rent sector is important. There are significant segments of the population who need or choose to rent. These include young people who wish to remain fairly mobile and do not wish to commit to living in a particular area, and people moving, perhaps for job reasons, from one area to another (or even from another country) and who need to rent at least on an interim basis. There is a risk that the proposed LBTT supplement will reduce the availability of rental property and so lead to an increase in rents.

Institutions are keen to invest in the residential market and are prepared to invest in both new builds and existing housing stock. Investing in new builds can be simpler due to the opportunity for bulk purchase. Institutions typically buy off-plan and this simultaneously benefits developers by significantly reducing risk.

The Association of Real Estate Funds (AREF) represents the UK real estate funds industry. It has about 65 members with a collective net asset value of around £60 billion under management on behalf of investors. This includes around £20 billion in UK authorised retail funds and similar amounts in various forms of UK unregulated collective investment vehicles (CIVs) and in offshore domiciled funds. Member funds represent about two-thirds of UK commercial real estate held in CIVs.
Institutions invest in property for the long-term and need a level of certainty as to likely returns over that period. Various factors influence the decisions made by institutions as regards whether to invest in residential property. However, stability of rules and regulations, including tax, is crucial. For example, many institutions who had long held substantial rented portfolios exited, or significantly reduced their exposure to, the residential market during the 1970s due to legislative interference in the market in the form of rent controls and overly prescriptive tenure protection. Without an exemption from the proposed LBTT supplement, large scale investors may choose to limit or reduce investment in the residential market. Conversely, an exemption would support the building of additional homes via investment in the build to rent sector.

**Exemption for significant investors**

Certain reliefs are currently available to investors (as well as to others):

- Six or more dwellings purchased in a single transaction are treated as non-residential and subject to non-residential rates of LBTT (Land and Buildings Transaction Tax (Scotland) Act 2013 s59(8)).
- Multiple dwellings relief is available where at least two dwellings are purchased together (Land and Buildings Transaction Tax (Scotland) Act 2013 Sch 5).

However, in addition to these existing reliefs, a complete exemption from the LBTT supplement should be available to all institutional investors. This would enable institutions to continue to:

- support individuals who cannot or choose not to buy homes
- invest in build to rent thereby increasing the overall level of housing stock.

Such an exemption might be available by reference to tests which ensure that an investor is widely held or owned by institutions which are themselves widely held. A two step test could be used:

- the genuine diversity of ownership (GDO) test used for authorised investment funds (SI 2006/964 Part 1A) – this test ensures that units of a fund are widely available to attract a large number of investors
- the non-close test for REITs (CTA 2010 s528) – a company which is not close (ie, broadly, not controlled by five or fewer persons) or which would be close only by virtue of having an institutional investor as a participator.

Alternatively the Scottish Government might consider exempting all large scale investors in residential property in order to support the rental sector and increase housing stock. Facilitating large scale professionally managed investment into both the private-rented sector and the build to rent sector would be best achieved by considering the overall
extent of investment rather than the scale of individual transactions. In this case the test might be by reference to the size of the existing portfolio. For example, the exemption could be available for all transactions where the existing portfolio comprises at least five residential properties. This would align with the current legislative approach that a purchase of six or more dwellings is a commercial activity.

In conjunction with a portfolio test to demonstrate that a particular investor is large scale, investors should be allowed a period of time in which to build up a portfolio. A minimum suitable period could be 18 months. This would align with the suggested period in which an individual may sell a previous main residence after purchasing a new main residence. Once the portfolio threshold had been exceeded, the investor should be able to reclaim the 3% LBTT supplement paid in relation to purchases made during the previous 18 months. Without such a mechanism, investors in residential property seeking to build up a portfolio but entering the market for the first time would be discriminated against.

Scope of property subject to the LBTT supplement

Residential property is defined to include residential accommodation for students other than halls of residence for students in further or higher education (Land and Buildings Transaction Tax (Scotland) Act 2013 s59). However, the proposed LBTT supplement on certain purchases of residential property should not apply to any type of student accommodation. The design of student accommodation is such that it would not be purchased by people wanting to buy a home. Quite a number of funds invest in student accommodation and additional LBTT costs could be detrimental to the fund, the fund’s investors and the students being accommodated.

Conclusion

In summary, institutional investors have a key role to play in solving the UK’s housing crisis. This should not be jeopardised by subjecting those investors to a supplementary rate of LBTT on residential property purchases.

I am available at your convenience to discuss anything in this letter.

Yours faithfully

John Cartwright
Chief Executive
The Association of Real Estate Funds
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from ASSC

The Association of Scotland’s Self-Caterers represents the self-catering sector in Scotland, a key sector which contributes substantially to the Scottish Tourism industry which is worth over £4bn to the Scottish economy, or £11bn counting day trips. A self-catering holiday offers visitors an authentic experience of the country, be it in a farm cottage or city apartment. The ASSC has 625 members representing over 2,500 properties throughout Scotland. The ASSC is an active member of the Scottish Tourism Alliance Council.

The proposed 3% levy on the purchase of additional residential property will have a significantly adverse effect on the self-catering sector. The ASSC is concerned that the Scottish Government is to single out and penalise a valued part of the Scottish tourism industry. It is particularly disappointing that the Government intends to introduce a new tax that will result in a barrier to growth. The National Tourism Strategy Tourism Scotland 2020, which the Industry and Government supports, emphasises the importance of continued growth in the tourism sector as vital to the Scottish economy.

Properties are defined by recent tax rules as a Furnished Holiday Let business if the property is available for 210 days and let for at least 15 weeks of the year. In addition, properties available for let for 140 days plus pay business rates, not Council Tax. This clearly demonstrates that properties associate with our sector are businesses, and should not be classified as residential.

We request that the Scottish Government considers using the thresholds of Furnished Holiday Lets, as defined by the tax rules, to exempt residential properties to be used as Furnished Holiday Lets from the proposed Land and Buildings Transaction Tax (LBTT) supplement of 3% on purchases of additional residential properties.
We are happy to provide any additional information on value and the importance of the self-catering sector, or discuss how an exemption for FHL businesses might work in practice.

David Smythe
Chairman

Fiona Campbell
Chief Executive

4th February 2016
I am writing in with regard to your request for evidence regarding the proposed 3% surcharge on 2nd home/BTL ownership.

I will try to add, to the questions outlined on your document and request:

1. The Scottish Government’s overall policy objectives in introducing the supplement and, in particular, whether it—
   - Is likely to “complement the Government's commitment to supporting home ownership in a balanced and sustainable way.”
   - “helps to ensure that the tax charge is proportionate to the taxpayer’s ability to pay.”

I believe wholeheartedly that both the Holyrood and Westminster Governments are creating a time-bomb of under investment and higher rents. I am a teacher (supply), a letting agent and a small portfolio landlord. I feel that I am well-placed to discuss the merits, or otherwise of the proposals. Furthermore, as I cannot a place where I wish to live, I have chosen, since 2010 to rent – despite owning property.

The Restriction on Mortgage interest relief is already frightening landlords and I have lost two landlords already who have decided to sell – I have had to evict tenants to enable this. The properties, once the full force of the tax grab, would have lost the landlord money and without the ability to Double gear, the landlords was left with no option. And, the choice to sell on the 3% levy announcement was made to open the possibility to sell to an investor.

Furthermore, I have not noticed councils building new council houses and the plans to build more are woefully inadequate. Many landlords will sell (and potentially to first time buyers); however, there will still be large swathes of the country that mortgage lenders will not touch – with the new regulations regarding home ownership, buying a property with a residential mortgage has never been harder; it is this regulation that is making people rent – not landlords.

With regards to the taxpayers ability to pay - well, yes, that’s a problem too. Last year (yes, I have completed my tax return) and for 2014/15 I made a loss from my properties – this was due in large part to expensive finance but also due to voids, non-payment and damage done by tenants. I am unsure why I – if I wish to continue
to invest in sustainable, safe, Scottish housing, why I should be penalised for doing so.

I worked out that on an average £100,000 property, under the proposed guidelines, even if I bought the property for 97,000, I would still need an extra £3000 nearly in cash deposits. Doesn’t sound like a level playing field to me. If you would like the sums – let me know.

2. The proposed 3% rate for the supplement and the £40,000 purchase price at which it is proposed to take effect. -

So, 1,200 LBTT on a £40,000 property. At this level, if people cannot afford to get on the housing ladder, it is either because they don’t want to or that they are not able to due to adverse credit etc. It is not the competition with landlords – not a chance and I think everyone knows that. It is simply that landlords are the new bankers!

3. The Scottish Government’s estimate that the measure will raise between £17 million and £29 million in 2016-17.

Perhaps – however, for such a small amount of money (considering what you blow on every other facet of the economy) you are unfairly attacking the industrious, the ambitious and those who are doing the job the Government should be doing – namely, housing society’s most vulnerable.

4. Any reliefs or exemptions that you consider should form part of the legislation.

Okay, this is the big one.

As mentioned previously, I am currently renting my home but have a small portfolio rental properties. I live and work in and around Edinburgh but I cannot afford the property that I want (I teach supply so few mortgage companies – under the new stringent guidelines will lend to me for residential purchases) and, to be frank, Edinburgh prices are a bit crazy – whereas the rental prices, despite what people say, are, at the moment, more reasonable than purchase prices.

So, from the rest of the UK consultation, I see that when I manage to save a deposit for my family to move into our own property to live, we will be subject to the 3% levy as we have other property. That is patently unfair. How can I, as a potential residential purchaser, compete with other home buyers, (many of whom will be eligible for 5% mortgages and help to buy, whereas we are ineligible for these offers due to ownership of other properties. It appears that, everywhere I look, I am being attacked for being prudent – creating an income for my retirement, saving, creating homes, teaching others’ young people. Successive governments have frittered away pension contributions and to be frank, the public sector pension scheme is an enormous Ponzi scheme. If only the UK and Scottish Governments were more like the Canadian Teachers’ Pension (who now own Camelot etc) or the Norwegian
Government who has created a enormous trust for its population due to oil exploration tax – nope, we spent it all!

So, my exception would be for people buying a residential property to live in. Full stop. Because, if I am to pay 3% on top of my residential home, I feel that I would be unfairly treated – like-for-like – against other home buyers. This clearly goes against the policy of increasing home ownership and I will be destined to live in rented accommodation for ever. You can see how this is unfair, surely. How about ex-pats coming home to look after family etc. Perhaps they sold the family home when they moved and/or bought a ‘buy-to-let’ in order to keep on the UK property ladder; aren’t they be unfairly punished too. Perhaps they could assign their buy-to-let as their main residence?

As an aside, you do know that Interest Rates will go up and you really do not want to be in power when that happens! That is when all of these unfair tax grabs will really cause mass civil unrest, evictions, a property crash and all the deluded people who cannot remember 2007 are being encouraged to buy property with their pensions etc! Catastrophe!

5. The potential for tax avoidance under the supplement and how this should be addressed!

Obviously both government are not desirous of home ownership but a more regulated PRS. Please be honest and say so. The entry costs for a rental property are going up – Legionella, EICR, PAT, Linked Fire Alarms etc – why are these not legislated in private homes? With large companies, banks, pensions etc – the ones that will be buying the housing stock that will be sold haphazardly – ask yourself whether these corporate entities really care. The surge in separate SATs and ASTs in include in HMOs and the huge popularity of the social fabric destroying student pods will lead to individuals so socially inept and lacking in soft skills that I really dread the future of this country. Remember, I teach – I see this social ineptitude most days! With single living and no communal areas – how will they ever develop? Anyway – the tax avoidance – once again, it is the corporates and the funds based overseas which will benefit!

Any other comments!

Student accommodation and the no fault clause – really? Serious? Wow! What happens to listening to what the tenants want? Student tenants like to leave in the summer and the accommodation is needed for our guest from afar during the festival! Please think.

If, like me, and you work with property every day, you’ll have seen a surge in Ltd co formations (in order to avoid the Mortgage Interest Relief tax grab going forward. You’ll have seen a surge in Holiday rentals! Ask yourself why?
We are not to blame for the enormous mess, just like overseas nurses are not to blame for the mess in the economy. We appear to be handing over everything to large companies with no soul that really do not care about anything but profit. This is all to be done in the name of fairness – really!???

Anyway, have a think and make the right decision.

Yours without hope or expectation,

Mr Barry Burton

Teacher, Letting Agent, Landlord and future emigrant!
Proposed LBTT supplement on additional residential homes - Call for Evidence

We welcome the opportunity to respond to the call for evidence on the proposed LBTT supplement on additional residential homes.

Investment in residential development must be encouraged and incentivised if the shortage of housing in Scotland is to be addressed. Against this background and the increasing levels of interest in investment in the Private Rented Sector in Scotland, we would suggest that relief from the supplement must be given to bulk purchasers of residential property. For LBTT purposes, the purchase of 6 or more residential properties is treated as the purchase of non-residential property. It would therefore make sense for any relief from the proposed supplement for bulk purchases of residential properties to apply to the purchase of 6 or more properties as part of one transaction. The relief should also extend to those investors who build up a portfolio of 6 or more residential properties. If development of the PRS is to be encouraged, this relief could be conditional on a prescribed number of the properties being made available to rent in the private sector or for accommodation for employees.

We are disappointed to note that the draft Bill amending to the LBTT legislation to include the supplement does not include any type of relief for bulk purchases of residential property. As the Committee will be aware, the UK Government is currently consulting on the SDLT supplement on additional homes in the remainder of the UK and has specifically requested views on whether there should be a relief from the supplement for bulk purchases of residential properties. If such a relief is made available in the rest of the UK but not in Scotland, investment in Scottish residential property could be adversely affected if the tax bill at the entry point is much higher.

In line with the vast majority of those seeking to protect and encourage investment in housebuilding and expansion of the PRS in Scotland, we hope that the omission of the relief for bulk purchases will be addressed.

Brodies LLP
January 2016
Dear Sirs,

It has only recently come to our attention that The Scottish Parliament proposes to implement an additional 3% tax to be levied on the purchase of all homes within Scotland which are not a person’s main residence. It would appear, determined by the relative few people who were aware of this new tax, that there has been minimal publicity surrounding same.

As a rural estate agency business, we are gravely concerned that should this tax actually be applied, it will lead to a decrease of private housing rental stock at a time when the council is not renewing their five year leases in the private sector, which, in turn, will create even more homelessness.

Working within the Cairngorms National Park, second homes have been a significant factor since Victorian times and a decrease in this sector will create less housing, less spend and increased adversity for many small, rural businesses dependent on the influx of more prosperous consumers.

Local builders will struggle to justify the construction of new housing as the additional tax will lead to a guaranteed fall in sales to the private rented and second home market, which will have a prejudicial effect on the provision of more homes. A lack of new build will indirectly affect the level of affordable housing development as they are inextricably linked.

In general terms, you will be looking at house price reductions throughout rural Scotland, generating negative equity, loss of jobs and closure of local businesses with a lack of affordable homes for local people.
Whilst urban areas may fare better, we urge you to consider the fate of trade and commerce and the lives of residents within the less populated areas of Scotland, who are the lifeblood of our smaller communities.

Yours faithfully,

Allan Munro
Owner
CIH Scotland’s submission to
Finance Committee

Evidence submitted by CIH Scotland
Proposed LBTT supplement on additional
residential homes
29 January 2016

About CIH

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple – to provide housing professionals with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse and growing membership of people who work in both the public and private sectors, in 20 countries on five continents across the world including 2,300 in Scotland.

Further information is available at: www.cih.org

CIH contact:

Ashley Campbell, Policy & Practice Manager

ashley.campbell@cih.org
1. **General comments**

1.1 CIH Scotland welcomes the opportunity to submit our views on the proposal to charge a supplement on the purchase of additional residential properties as outlined in the Scottish Government’s draft budget for 2016-17.

1.2 It is our understanding that the introduction of a charge on additional residential purchases is intended to support first time buyers by ensuring they have access to homes coming onto the market, particularly given the introduction of similar measures by the UK Government which could potentially distort the market in Scotland.

1.3 We agree with the general principles behind the policy. However, it will be important to ensure that it does not have any unintended consequences or a negative impact on the overall housing market.

1.4 In addition, we feel that if the measure is to support the housing market in a meaningful way, the additional funds raised should be reinvested into the housing sector.

2. **Overall Policy Objectives**

2.1 The proposals may help to compliment the Government’s commitment to, “… supporting home ownership in a balanced and sustainable way.” If the additional fee discourages some potential purchasers from buying a second home or a home to be let in the private rented sector (PRS) this would mean that first time buyers would potentially have more homes to choose from making it more likely that they may find a home to suit their needs within their budget.

2.2 However, we do have some concerns with the lack of evidence available to support this assumption and the potential for discouraging investment in the PRS. As stated in A Place to Stay a Place to Call Home¹, one of the Scottish Government’s strategic aims for the PRS is to, “enable growth, investment and to help increase overall housing supply.”

2.3 It is our understanding that the policy will not directly impact the build to let market. This market does have the potential to increase overall housing supply rather than purchasing existing homes on the open market as many smaller landlords do. However, the build to let market in Scotland remains small and with a number of significant changes to PRS regulations in Scotland already underway, it will be important to ensure that potential investors are not discouraged by changes to taxation.

2.4 It is more likely that the measures will discourage small landlords from increasing their portfolios through buy to let. While the rapid increase in ‘accidental landlords’ or those who manage just one or two properties has caused some issues with management and standards within the sector, the Scottish Government is making progress in improving the sector through a number of measures including discretionary powers for local authorities, regulation of letting agents and the introduction of a new tenancy currently being developed. It is important to recognise that small landlords do provide an important service, particularly in rural areas where housing options may already be limited.

2.5 We recommend that the Scottish Government monitors the impact of the surcharge on the housing market as a whole to ensure that the needs of people who want to buy a home are balanced with the needs of those who do not.

2.6 The Scottish Government's commitments to support first time buyers and to improve the PRS would be strengthened if the funds raised were ring-fenced and reinvested back into the housing sector. Additional funding could be used to increase the supply of affordable housing, to support first time buyers to purchase on the open market or to support the provision of information, advice or training, maintenance, repairs or energy efficiency work in the private sector.

3. Estimated Income

3.1 As the Scottish Government acknowledges in its forecasting methodology for devolved taxes, there is no data available on the number of additional purchases in Scotland. The assumptions regarding the cost of additional purchases are based on UK level mortgage data and anecdotal evidence. Given that there is no data available, it seems that the Scottish Government has made the best estimate that current circumstances will allow.

3.2 However, in recognition of the level of uncertainty, we would expect the impacts of the scheme to be closely monitored and for the rate and threshold to be reviewed if necessary. Regardless of the actual additional income raised, we would again call for this to be reinvested back into the housing sector. £17 - £29 million, increasing in later years, would have a significant positive impact on the housing sector and would support Scottish Government objectives in this area.

4. Reliefs or exemptions

4.1 Local authorities and registered social landlords (RSLs) should not be subject to the charge if purchasing homes on the open market to increase the supply of affordable housing.

5. Conclusion

5.1 We support the general principles of the policy but call on the Scottish Government to:

- Monitor the impact on the housing market as a whole and specifically the PRS;
- Review the rate and threshold for the surcharge if the policy is found to be having a negative impact on the housing market;
- Ring-fence additional funds raised to be invested back into the housing sector; and
- Exempt local authorities and RSLs from the surcharge when purchasing additional homes for use as affordable housing.

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Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from the Chartered Institute of Taxation

1 Introduction

1.1 This is a response by the Chartered Institute of Taxation (CIOT) to the Finance Committee of the Scottish Parliament’s call for evidence: Proposed LBTT supplement on additional residential homes. We welcome the opportunity to offer our comments on the proposal for a Land and Buildings Transaction Tax (LBTT) supplement to take effect from 1 April 2016; we would be pleased to amplify our points orally or in writing.

1.2 The CIOT is an educational charity concerned with promoting the education and study of the administration and practice of taxation. For more details see the statement about us at section 10 below.

1.3 The CIOT would like to assist in ensuring that the tax system in Scotland is effective and efficient for taxpayers, agents and the tax authorities.

1.4 Our response was prepared prior to the publication of the draft legislation on 28 January 2016.

2 Executive summary

2.1 While we welcome the opportunity to respond to the Finance Committee’s call for evidence, we note our disappointment that the proposed supplement will be introduced without full consultation and within such a short timeframe.\(^1\) When legislation is brought in in such a way, it is more likely that there will be unresolved complexities and unintended consequences. It will also prove

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\(^1\) The measure was announced on 16 December 2015; the call for evidence was published on 6 January 2016 with a deadline of 29 January 2016. Legislation was published 28 January 2016, with the intention of it being passed by the Scottish Parliament prior to its dissolution on 24 March 2016 for the Scottish Parliament election. It is proposed that the measure will take effect on 1 April 2016.
challenging for Revenue Scotland to implement the changes required.

2.2 We think that due regard should be given to Adam Smith’s four principles in respect of this policy. We are concerned that the proposal will lead to uncertainty and not necessarily be convenient to pay.

2.3 One means of mitigating the uncertainty for many ordinary house buyers, simply moving house, (by selling their only home and buying a new sole residence) would be a targeted relief. Otherwise, most purchasers will have at the very least to address the risk of having to pay the supplement, for example if their buyer pulls out.

2.4 It is likely to prove difficult for Revenue Scotland to police compliance in respect of properties owned outside Scotland, and more particularly outside the UK; this is especially the case where the purchasers are non-resident and non-domiciled.

2.5 There are a number of areas of potential complexity, unfairness or confusion, such as the different definition of a main residence for LBTT from capital gains tax, the treatment of married couples and civil partners, and the rules for joint purchases and part sales.

3 1. The Scottish Government’s overall policy objectives in introducing the supplement and, in particular, whether it –
   - is likely to ‘complement the Government’s commitment to supporting home ownership in a balanced and sustainable way.’
   - ‘helps to ensure that the tax charge is proportionate to the taxpayer’s ability to pay.’

3.1 We acknowledge that the measure has been proposed in response to the announcement by the UK Government of a similar measure for Stamp Duty Land Tax (SDLT). It would be helpful for the Scottish Government to confirm the policy objectives of the proposed supplement, and consider its impact, given the Scottish Government suggests that the main aim of the measure is to prevent distortions as a result of the UK Government’s measure, rather than indicating that they would have introduced such a proposal independently.

3.2 The Scottish Government has committed itself to a tax system that has regard to Adam Smith’s four principles: certainty; the burden proportionate to the ability to pay; convenience; efficiency of collection. The CIOT agrees that

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3 For example, we understand that c. 70% of private rental sector properties are owned by small-scale landlords, who let out 5 or fewer properties – thus the Scottish Government will need to consider the likely impact on such investors and whether or not that meets the policy objectives.

these are important principles for a sound tax system. In view of this, we think it is key that due regard is given to all of these principles, not only ability to pay, in developing this LBTT policy.

3.3 Unfortunately, we can see difficulties in this policy reflecting Adam Smith’s principles. As regards certainty, all purchasers of residential property will have to factor the supplement into their considerations, unless they are buying a property from the position of non-ownership. For many people simply moving house,\(^5\) there will be uncertainty as to whether or not the supplement applies to their purchase at the time of the transaction.

3.4 It is unlikely that the tax charge will be convenient, since in respect of many transactions, the falling through of a sale or the delay of a sale will mean the supplement applies to the purchase, yet there will be no sale proceeds to assist with the financing of the payment of the supplement.

3.5 In respect of whether or not the supplement is proportionate to the taxpayer’s ability to pay, we recognise that in principle, this is the case. The inclusion of a relief or exemption for certain acquisitions, such as for multiple purchases of residential properties, may mean that the supplement does not always correspond to the taxpayer’s ability to pay.

3.6 The LBTT is a transaction tax. At present, the tax requires a purchaser to consider whether an acquisition concerns residential or non-residential property. The proposed supplement will mean a need to make judgements concerning the quality of occupation and even the intention to occupy a property as a main residence at the date of the transaction. This creates considerable complexity and uncertainty around the application of the supplement.

4 2. The proposed 3% rate for the supplement and the £40,000 purchase price at which it is proposed to take effect.

4.1 The CIOT does not generally comment on the setting of rates of tax, as these are decisions for politicians. In our view, the setting (and changing) of rates and bands should flow from policy decisions as to the aims of the Scottish Government and the Scottish Parliament.

4.2 As a general comment, however, we note that one of the progressive steps taken when creating LBTT was the move away from the ‘slab’ structure of SDLT. While acknowledging that the £40,000 threshold has been chosen for administrative purposes,\(^6\) the structure for the proposed supplement effectively creates a cliff edge for properties at the lower end of the market.

\(^5\) We refer to people who only own one property, sell it and buy another property.
\(^6\) Land transactions where the chargeable consideration is less than £40,000 are not notifiable – an administrative saving for Revenue Scotland, agents and taxpayers – section 30, Land and Buildings Transaction Tax (Scotland) Act 2013: http://www.legislation.gov.uk/asp/2013/11/section/30
3. The Scottish Government’s estimate that the measure will raise between £17 million and £29 million in 2016-17.

This is not our area of expertise and we make no comment.

4. Any reliefs or exemptions that you consider should form part of the legislation.

To a large extent, the inclusion of reliefs and exemptions should follow the policy objectives. In addition, consideration should be given to the Adam Smith principles – in particular, ideally it will be clear to a taxpayer whether or not a relief or exemption applies in their case. Reliefs and exemptions should also be straightforward to operate such that they do not introduce unnecessary complexity. One possible model for reliefs could be Schedule 4A Finance Act 2003, which sets out some reliefs from the higher rate of UK SDLT.\(^7\)

One relief that has been proposed is for the simultaneous purchase of multiple properties (whether new build or not). In the UK consultation, the threshold that has been suggested is 15 properties. Given that there is another LBTT relief in respect of multiple property transactions, and that that relief uses a threshold of six properties, it would appear more sensible to align any relief from the supplement for multiple purchases with the current LBTT relief.\(^8\) Different thresholds could result in purchasers paying commercial rates of LBTT and also being liable for the residential LBTT supplement, offering a source of confusion. Given the wording of section 59, it would also be helpful to have confirmation that the supplement can in fact apply to such transactions in the first place.\(^9\)

The Scottish Government will need to consider and clarify whether the multiple purchase test applies to the purchase of properties that form part of the same sale and purchase agreement or linked transactions, or both. Given developments may become available for purchase in phases, consideration should also be given to taking account of phased purchases for the purposes of determining eligibility for a scale purchase relief. In addition, it has been suggested that relief might only apply where a purchaser already owns a specified number of properties, although this would seem to unfairly disadvantage those investing in their first tranche of properties compared to existing investors.

There would also need to be consideration as to how such a relief would

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\(^7\) http://www.legislation.gov.uk/ukpga/2012/14/schedule/35/paragraph/4

\(^8\) Section 59 (8) Land and Buildings Transaction Tax (Scotland) Act 2013.

\(^9\) Section 59 (8) Land and Buildings Transaction Tax (Scotland) Act 2013: ‘Where six or more separate dwellings are the subject of a single transaction involving the transfer of a major interest in, or the grant of a lease over, them, then, for the purposes of this Act as it applies in relation to that transaction, those dwellings are treated as not being residential property.’ http://www.legislation.gov.uk/asp/2013/11/section/59
operate in respect of purpose-built student accommodation, for example, where a development may consist of properties intended for multiple occupation.\textsuperscript{10} Should the relief take into account not only the number of properties, but also the number of occupants within each property?

6.5 Consideration should be given to an exemption for purchases by providers of social housing in Scotland,\textsuperscript{11} such as local councils and housing associations (registered social landlords), or clarification that such purchases will not fall within the ambit of the supplement if this is already the intention. It would not be possible for such purchasers to rely on a multiple purchase relief, since not all transactions would consist of multiple properties.

6.6 Consideration should be given to a targeted relief for house buyers who are intending to simply move house by selling their only home and buying a new sole residence – therefore there is no intention to own two properties simultaneously (see paragraph 9.1). Otherwise the risk of having to pay the supplement for such purchasers may deter them from moving house completely. Although there may be relatively few purchasers who actually end up having to pay the supplement, far more purchasers will have to address the risk, just in case their sale falls through or is delayed. It would be possible to include anti-avoidance measures, for example disclosure of the property to be sold, and a requirement for the original property to be sold within a specified time period, such as three months; otherwise the LBTT supplement would become due.\textsuperscript{12}

6.7 Our understanding is that the intention is to charge the 3% supplement on all purchases of residential properties by a partnership, where one partner owns a property already. Consideration should be given to a relief for partnerships where they purchase a residential property to be occupied by an employee of the partnership as a condition of their employment.\textsuperscript{13}

7 5. The potential for tax avoidance under the supplement and how this should be addressed.

7.1 The inclusion of exemptions and reliefs will potentially provide more opportunity for tax avoidance.

7.2 It should be noted that it might be possible for the order in which properties are bought to affect whether or not the purchaser pays the supplement. Thus a purchaser with sufficient funds to plan their affairs might be able to avoid the

\textsuperscript{10} Typically such properties would consist of a number of private (lockable) bedrooms, a shared living / dining area, a shared kitchen and shared bathroom facilities.

\textsuperscript{11} For example, to increase social housing stock for letting or as part of an economic regeneration project.

\textsuperscript{12} We note that the UK Government might consider a grace period, such that the additional charge would only apply if the old main residence was not sold by the time the SDLT return was filed. It would not be possible to have a grace period along exactly the same lines in Scotland, due to the way in which sales are registered and returns made. However, a targeted relief as suggested would allow delayed sales to go through, reduce the number of purchasers faced with paying the supplement, and also reduce the administration of reclaiming the supplement for both the purchaser and Revenue Scotland.

\textsuperscript{13} This might typically affect farming partnerships.
A cause for concern must simply be that of compliance in respect of properties owned outside Scotland, and more particularly outside the UK; in addition, there is a similar concern in respect of non-resident and non-domiciled purchasers. It is unclear how Revenue Scotland will be able to police compliance in terms of the declaration of ownership of properties overseas.

The fact that all residential purchases by companies and similar entities will be subject to the supplement is a key anti-avoidance provision. We note that there are also likely to be extensive deeming provisions in relation to trusts. Both of these approaches will help to address some possible routes for avoidance, as will the GAAR.\(^1\)

### 8 6. The likely impact of forestalling.

We are not experts on the property market. Nevertheless, where investors have the opportunity and means to purchase buy-to-let property and second homes prior to April 2016, it appears likely that this will be the case, meaning a potential increase in buyer activity in the first quarter of 2016.

### 9 7. Any other comments you may have on the proposed supplement.

Although the general perception may be that this proposed supplement will not affect the majority of transactions, (and indeed, many purchasers will not have to pay the supplement), in fact most purchasers will have at the very least to address the risk of having to pay the supplement, for example if their buyer pulls out or their sale is delayed. Thus a purchaser has to bear in mind that they may have to arrange bridging finance to complete their own purchase, and in addition pay the 3% supplement, on top of their expected LBTT charge.

We understand that there is an intention for an 18 month window for the replacement of a main residence that has been sold. Thought will need to be given as to when the 18 months window commences for purchasers who have already sold their main residence (prior to the announcement on 16 December 2015) and those who sell prior to 1 April 2016. Will their 18 month

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\(^1\) For example, a purchaser could sell their main residence (1), then purchase a buy-to-let property (2), and finally purchase a new main residence (3) within 18 months of the sale at stage (1) – they would not be liable to pay the supplement. A further example, is that a purchaser who owns a buy-to-let property (but no main residence) will be liable to the supplement if they purchase a main residence; whereas someone who already owns a main residence and a buy-to-let property will not be liable to the supplement, if they sell their main residence within 18 months of buying a new main residence.

window commence on 1 April 2016 (when the supplement is introduced) or does it commence on the date of sale of their old main residence? In the case of those who sold prior to the announcement of the supplement, it would appear to be inequitable for the replacement window to commence at the date of sale of the old main residence.

9.3 Further, in relation to transitional provisions, it is proposed that transactions where missives were concluded prior to 16 December 2015 will not be subject to the supplement. Given Scottish property law, it might be more appropriate to consider transactions for transitional relief where an offer to buy has been made and accepted prior to 16 December 2015.

9.4 The proposal is for the definition of a main residence to be based on the facts. This means that unlike capital gains tax, it will not be possible to elect one’s main residence for LBTT purposes. This is a possible source of confusion. In addition, for taxpayers resident in Scotland, there are further complications with the need to consider their residence position for the purposes of the statutory residence test and Scottish taxpayer status. It will be essential for the guidance to address this clearly.

9.5 We note that the buy-to-let sector will also face potentially higher tax bills as a result of changes being introduced from April 2017 by the UK Government in respect of tax relief for finance costs. In effect, this means that relief for interest on loans taken out to purchase assets that generate taxable income will be restricted. By way of example, buy-to-let landlords could have a taxable profit in respect of buy-to-let properties, even where they have actually generated a loss. Thus, when considering the likely impact of the proposed LBTT supplement on the Scottish housing market, the Scottish Parliament and Scottish Government need to take into account the likely impact of the change to relief for interest on loans too.

9.6 It is our understanding that married couples and civil partners will only be entitled to one main residence between them. Where they separate, they will continue to be treated as a couple until there is a court order or formal deed of separation. At the same time, the intention is for a main residence to be determined as a question of fact (see paragraph 9.4). We can envisage two difficulties here. Firstly, the rules differ from those for capital gains tax, which treat couples as separate individuals in the tax year following separation. As a result, where a member of the separated couple purchases a new residence prior to the court order or formal deed of separation, they will be exposed to the LBTT supplement. Secondly, there is potentially a tension between determining a main residence on the facts and the rule for married couples and civil partners, since the facts may not point to the same main residence for each member of the couple or partnership, particularly in the case of separation.

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17 Section 1011 Income Tax Act 2007 as applied to capital gains tax by section 288(3) Taxation of Chargeable Gains Act 1992. One option would be to add the alternative circumstance that applies to capital gains tax, so that couples are not treated as living together when they are in fact separated in circumstances in which the separation is likely to be permanent. Alternatively, a refund could be allowed if separation is formalised (under a court order or formal deed of separation) within a certain time period, for example 18 months.
9.7 Where there is a joint purchase, we understand that the likely position will be that if one of the joint purchasers already owns a residential property, the LBTT supplement will apply to the whole purchase, even if one or more of the joint purchasers is buying their main (and only) residential property. This could be viewed as inequitable for the purchaser(s) that do not hold any other property. Options that could be explored, while acknowledging that there would probably need to be targeted anti-avoidance rules, include only charging the supplement on those joint purchasers who already own a property and having a *de minimis* equity holding exemption by reference to the property value at the transaction date, for example where parents purchase a home for a child. Alternatively, one could consider the nature of the purchase, such that if one of the purchasers is replacing a main residence (or buying a new sole residence), then the supplement does not apply at all or does not apply to their interest in the property.

9.8 Consideration needs to be given as to whether and how the supplement will apply in cases where a purchaser buys an interest in a property, becoming a joint-owner with the existing owner(s). Will the position of all owners have to be considered, even though only a part-interest in the property is being purchased? Would it be equitable for the supplement to be payable by a purchaser who owned no other properties (only the share it is buying), just because the existing owner(s) holds other residential property?

9.9 From a practical point of view, it will be essential to set out clearly the respective roles and responsibilities of purchasers and professional agents. Equally, it is important that administrative arrangements are thought about as the policy is developed and that in due course, Revenue Scotland consults widely on the operational guidance. In particular, the refund mechanism must operate smoothly to ensure that purchasers do not pay additional finance charges due to delays in processing their reclaims. One option might be to include notification of the intention to claim a refund in the original LBTT return, such that Revenue Scotland is put on notice.

9.10 As a final point, the proposed supplement appears to be following the policy design of the higher rates of SDLT proposed by the UK Government. Scottish property law differs considerably from the law in the rest of the UK. It is important that the drafting of the legislation to implement the proposed policy takes account of the Scottish legal system, for example, ownership does not transfer until the point of registration with the Land Register.\(^\text{18}\) However, there is a further complication in that worldwide properties will be taken into account when determining whether or not the purchaser owns more than one residential property at the end of the day of the transaction. The Scottish Government therefore needs to consider the rules that will apply to overseas properties – will ownership be determined according to Scottish law principles or according to the law in the other country?

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\(^\text{18}\) This would need to be taken into account in an equivalent manner for looking at the property being purchased and the property being sold.
10 The Chartered Institute of Taxation

10.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT’s 17,500 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

The Chartered Institute of Taxation
1 February 2016
Finance Committee
Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes
Submission from Colin Miller

I wish the Committee to have regard to my comments on the proposed LBTT supplement on additional residential homes.

My first point is a general one. The Scottish Government should be congratulated on having a more balanced housing policy than the Westminster Government, who have an unhealthy obsession with encouraging home ownership. For example, it is helpful that the Scottish Government has no plans to allow RSL tenants to buy at a large discount and that there are no plans to change the definition of affordable housing. Furthermore, the decision to cease the sale of council homes from 1 August 2016 will help reverse the decline in the supply in social rented housing.

That said, it is disappointing that the Scottish Government intends to follow the Westminster Government’s lead and impose a 3% levy on buy to let and second homes from 1 April 2016. Furnished holiday lets contribute to tourism and the Scottish economy. The 3% levy will have an adverse impact on the sector.

In terms of the buy to let sector, this sector is already being badly affected by Westminster tax changes.

Clause 24 restricts finance cost relief for individual landlords and was proposed by George Osborne in his Summer Budget on 8 July 2015.

Landlords are currently able to offset all their finance interest against their rental income, before calculating their rent profits and therefore their tax bill. This is quite normal in business as the general taxation principle is that tax is applied on profit.

The Government proposes to break this normal taxation practice and require landlords to pay tax on part of their turnover. By the year 2021, it will still be possible to get a deduction for finance interest, but the amount will be capped at 20%. This is a very significant change because in most cases, finance costs will be the landlord’s largest cost. No other business is taxed in this way. No other business is taxed on interest on loans taken out to buy assets that generate taxable income.

There is high demand for private sector rented accommodation in Scotland. The sector plugs the gap for those who can’t afford to buy (or choose not to buy) and for those who are not able to access social housing. It is likely that the supply of private rented housing will diminish as a direct result of Westminster’s Clause 24.
The Clause 24 tax change has very serious consequences for the private rented sector. Some landlords could face a tax bill even if their buy to let property makes a loss; some could pay tax in excess of 100% of their actual rental profit; many lower rate tax payers will move into the higher rate tax bracket as a result of the change. Existing sustainable rental businesses will become unsustainable over the next few years.

The knock on consequences for the housing market are alarming. Some landlords are already passing on costs by raising rents; others are considering selling properties to reduce debt and risk. Unfortunately, some tenants will be evicted and could be made homeless.

It is disappointing that Scottish Government is rushing through legislation without full and proper consultation. Whilst there is a ‘Call for Evidence’, there is no detail for people to comment on unlike the position in England, Wales and Northern Ireland where a detailed consultation document has been published by HM Treasury setting out how the Higher Rates of Stamp Duty (SDLT) on purchases of additional residential properties could be implemented.

The Westminster and Scottish Governments both wish to increase housing supply. However, the policies on higher rates of SDLT and LBTT will be a disincentive to investment in housing and will have a negative impact on housing supply.

In the Call for Evidence paper the Scottish Government is asking what the likely impact of forestalling would be. My view is that this would be beneficial as it would allow the impact of other legislative changes to be monitored and the affects assessed. The introduction of the 3% LBTT may prove to be not necessary to encourage home ownership and/or undesirable because of the adverse consequences which would result.

The private rented sector is facing enormous change with new tenancy legislation being introduced, new compliance requirements and punitive taxation measures being imposed from Westminster. There is a risk that the private rented sector will become unstable as a consequence of the cumulative impact of change and thousands of landlords will exit the sector. This will be bad for tenants who will face eviction and be made homeless.

In the absence of a detailed consultation paper from Scottish Government, I have based the remainder of my comments on the Westminster Government’s consultation on Higher Rates of Stamp Duty Land Tax on the basis that the Scottish Government is likely to be considering implementing the LBTT changes in a similar way.

In my view, a 3% LBTT levy should not be imposed on all joint purchases. In particular, where a parent is helping a child get on the housing ladder by purchasing jointly, I believe such transactions should be exempt from the higher rates of LBTT.
Such transactions assist first time buyers and should be encouraged, not discouraged (see question 2 of SDLT consultation).

The 3% LBTT levy should not apply to all furnished holiday lets as these type of properties make an important contribution to local economies. My proposal is that the sale of an existing furnished holiday to a purchaser who continues to use the property as a furnished holiday let should not attract the higher rates of LBTT. My reasoning for this is because the transaction does not reduce the supply of owner occupied houses (see question 11 of SDLT consultation).

In relation to question 12 of the SDLT consultation, I have a number of proposals for the Scottish Government to consider.

Firstly, if a property is not suitable for mortgage purposes, the purchase of such properties should not attract the higher rates of LBTT as such properties are unlikely to appeal to first time buyers. Such properties are usually targeted by property trading companies or by buy to let investors who have the experience and financial resources to bring the properties back into use. This type of investment in housing should be encouraged, not discouraged by higher rates of LBTT.

Secondly, if a property has been on the market for 6 months or more, the purchase of the property as an additional purchase should be exempt from the higher rates of LBTT. In such cases, first time buyers have had ample opportunity to make an offer. If there is only interest in a property from property trading companies and/or buy to let investors, it is in the interests of the seller to get a sale. Applying the higher LBTT rates in such circumstances, could result in the sale not concluding. It is better to have churn in the housing market, than have properties remaining unsold for long periods.

Thirdly, the current proposal disadvantages existing landlords who may wish to restructure their portfolios. This is because selling to a company would attract higher rates of LBTT. I propose that if a property is owned by an individual in their own name and the property is being purchased by a company owned by that same individual, such transactions should be exempt from the higher rates of LBTT because such transactions will not reduce the supply of owner occupied houses.

Fourthly, I wish to propose that if a property is already a buy to let property, the sale of the property to a buy to let investor should be exempt from the higher rates of LBTT because such transactions will not reduce the supply of owner occupied houses. In particular, HMO properties being sold to another landlord should be exempt as these types of properties are not suitable for first time buyers.

Fifthly, it appears that the Westminster Government has not considered the impact on property trading companies. Such companies buy derelict and run down properties, refurbish and improve them and then sell them for a profit. Sometimes these sales will be to first time buyers. Such activity should be encouraged as it brings empty homes back in to use and improves the quality of the housing stock.
Applying the higher rates of LBTT to such activity will be a disincentive and will reduce investment in housing at a time when the Scottish Government has acknowledged that there is a need to increase supply.

My overall impression of the consultation published by the Westminster Government is that it seeks to favor large scale investors over small scale investors. I believe that the Scottish Government should not follow Westminster’s lead. I believe that the Scottish Government’s overall aim of accelerating housing supply would be better achieved if it also incentivized small scale investors to invest in housing. The cumulative contribution from small scale property businesses to housing supply should be acknowledged by Scottish Government and encouraged.

In relation to question 13 of the SDLT consultation, I believe that an exemption should be available to individual investors with an existing residential property portfolio of at least 15 properties at the time of a transaction. This would recognize the contribution that such individual investors make as housing providers to the thousands of people who choose to, or must, rent privately. Non-natural persons with at least 15 properties at the time of a transaction should also be exempt as should the bulk purchase of at least 15 residential properties. These exemptions will help accelerate housing supply.

To conclude, I believe that the Scottish Government should not follow Westminster’s lead on a 3% levy on buy to let and second home purchases and should delay consideration of the issue until the impact of other legislative changes that will impact on the private rented sector are understood.

If the Scottish Government decides to proceed and introduce legislation which will become effective from 1 April 2016, the exemptions I have proposed should be included in the legislation to lessen the adverse consequences of the tax change.

Yours faithfully,

Colin Miller
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from the Council of Letting Agents

28th January 2016

Council of Letting Agents
Hopetoun Gate
8b McDonald Road
Edinburgh
EH7 4LZ

www.counciloflettingagents.com
The Council of Letting Agents (CLA), the letting agent division of the Scottish Association of Landlords (SAL), represents Scotland’s leading letting agents and is at the head of the lettings industry in Scotland. It is the largest body of subscribing letting agents committed to adhering to core principles via a code of practice. CLA members offer a service that can be trusted by all consumers.

The CLA welcomes the opportunity to respond to the Finance Committee’s Call for Evidence on the proposed LBTT supplement on additional residential homes. LBTT impacts on our members’ clients when they are considering further investments and will also affect them at the point they sell their investments by adding to the overall cost of the asset to prospective purchasers.

**The Committee would welcome views on—**

1. **The Scottish Government’s overall policy objectives in introducing the supplement and, in particular, whether it—**
   - Is likely to “complement the Government’s commitment to supporting home ownership in a balanced and sustainable way.”
   - “helps to ensure that the tax charge is proportionate to the taxpayer’s ability to pay.”

We doubt that these effects will be achieved because in practice what will happen is that purchasers will offer less for properties to offset their additional purchase costs. So the impact will be felt more by the vendor than the purchaser, particularly for properties which, due to their characteristics, are not attractive to home owners/first time buyers.

First time buyers are less likely to face competition from investors in Scotland as the more onerous legal obligations placed on landlords in Scotland (as opposed to in the rest of the UK), particularly once the new tenancy regime comes into force, mean that it is likely landlords will choose to invest elsewhere in the UK rather than in Scotland.

2. **The proposed 3% rate for the supplement and the £40,000 purchase price at which it is proposed to take effect.**

Due to the less favourable legal framework facing landlords in Scotland, we believe that the Government should introduce tax policies which are more favourable to landlords than in the rest of the UK; this will help to attract investment to Scotland despite the less favourable legal framework. For this reason we believe the tax rate should be lowered and the purchase price threshold raised rather than the figures being as proposed which are identical to those planned for the rest of the UK.
3. The Scottish Government’s estimate that the measure will raise between £17 million and £29 million in 2016-17.

We are not in a position to comment on these figures, but caution that due to the less favourable legal framework for landlords in Scotland it is likely that investors will choose to invest elsewhere in the UK unless there are tax advantages to investing in Scotland. We believe that this will mean very few choose to invest in Scotland and consequently proceeds from the higher rate of LBTT will be small.

4. Any reliefs or exemptions that you consider should form part of the legislation.

For the reasons stated in point 7 below we do not consider that this legislation should be introduced. However, if the Government is minded to proceed then we believe that there should be exemptions for:

- anyone buying at scale (the threshold for this should be six properties in order to align it with the threshold for multiple dwellings relief (MDR));
- anyone buying new build properties, even on a small scale – this will encourage more house building in Scotland;
- a joint purchase where one of the parties is a first time buyer, e.g. where a parent is helping a child get on the housing ladder by purchasing jointly. Such transactions assist first time buyers and should be encouraged, not discouraged;
- the purchase of properties which are not suitable for mortgage purposes. These are unlikely to appeal to first time buyers and such properties are usually targeted by buy to let investors who have the experience and financial resources to bring the properties back into use. This type of investment in housing should be encouraged, not discouraged by higher rates of LBTT;
- properties which have been on the market for 6 months or more. In such cases, first time buyers have had ample opportunity to make an offer. If there is only interest in a property from buy to let investors, it is in the interests of the seller to get a sale. Applying the higher LBTT rates in such circumstances, could result in the sale not concluding. It is better to have turnover in the housing market, than have properties remaining unsold for long periods;
- a property owned by an individual in their own name being purchased by a company owned by that same individual as part of a restructuring exercise. Such transactions will not reduce the supply of owner occupied houses;
- where a property is already a buy to let or holiday let property. Such transactions will not reduce the supply of owner occupied houses. In particular, HMO properties being sold to another landlords should be exempt as these types of properties are not suitable for first time buyers.

5. The potential for tax avoidance under the supplement and how this should be addressed.

We are not in a position to comment on this question.
6. The likely impact of forestalling.
For the reasons given in point 7 below we believe that the proposal should not only be forestalled, but shelved. However, forestalling will allow for more analysis of the likely impact of the proposal and will allow time to assess the impact on the private rented sector of other legislation, namely the proposed new tenancy regime and restrictions on finance relief, which we anticipate will exacerbate the shortage of properties the sector and increase rent levels.

7. Any other comments you may have on the proposed supplement.
We believe that the supplementary tax on the purchase of second homes will have a huge impact on the buy-to-let market and exacerbate an already serious shortage of properties in many areas. We firmly believe that the biggest losers will be the most vulnerable tenants who will now find it even harder to get the accommodation they want at a price they can afford, as rents rise in response to a shortage of properties and increasing business costs that need to be met by landlords.

As laid out by the Commission on Housing and Wellbeing, landlords have a major part to play in solving Scotland’s housing crisis precisely because of the investment they can provide at all levels of the market. The Scottish Government should be encouraging more investment by responsible landlords whilst ensuring the highest standards are met, instead of seemingly doing everything it can to dissuade them.

Reducing investment will only lead to less being spent on improving housing stock across Scotland and create a space for rogue landlords and letting agents who operate outside of the high standards that the overwhelming majority of the sector are rightly held to.

The Scottish Government should take into account that legal obligations on landlords in Scotland are much more onerous than in the rest of the UK (in particular repairing obligations), and will become significantly more so when the new tenancy regime takes effect. This, combined with the forthcoming restrictions on finance relief and proposed changes to LBTT will, we believe, have a significant impact on investment in the Scottish PRS and will jeopardise the stated aim of the Scottish Government (in its publication “A Place to Stay, A Place to Call Home”) to enable growth and investment in the PRS.

Many CLA members, as letting agents running businesses which rely on landlords purchasing properties to rent out, are likely to find the viability of their business impacted if landlords reduce investment in light of changes to LBTT and the other changes to taxation and tenancy reform outlined above. Several are already reporting a significant reduction in the number of properties under management as a result of landlords leaving the sector in advance of the implementation of these various requirements.
It is also likely that the increased costs associated with purchasing a property will lead to landlords trying to save money elsewhere and this could mean them:

a) trying to manage their property themselves rather than paying an agent to do so – this is likely to result in a deterioration in the quality of management across the sector;

b) reducing the money they spend improving their newly acquired property. This will lead to a deterioration in the quality of PRS properties and will also have a huge impact on local tradespeople like plumbers, electricians and decorators who rely on landlords for work.

A healthy PRS is vital to the Scottish economy, providing homes for those unable to secure accommodation in social housing and providing labour and housing market flexibility. Rather than discourage investment through increases in LBTT, we believe that the Scottish Government should in fact introduce tax policies which encourage investment, to offset the more stringent legal framework that landlords are exposed to in Scotland, prevent disinvestment and improve Scotland’s competitive advantage in attracting investment to its PRS.
Proposed LBTT supplement on additional residential homes

Response by the Council of Mortgage Lenders to the Scottish Parliament Finance Committee call for evidence

Introduction

1. The Council of Mortgage Lenders (CML) is the representative trade body for the residential mortgage lending industry. Its 133 members currently lend over 95% of the residential mortgages in the UK mortgage market and account for the vast majority of Buy to let mortgage activity.

2. The CML welcomes the opportunity to respond to the Finance Committee’s call for evidence on proposals for a Land and Buildings Transaction Tax (LBTT) supplement on the purchase of additional residential homes.

3. Given the potential impact on the housing market of the proposed changes, we feel that a longer consultation period would have been welcome. This would have allowed the Finance Committee sufficient time to gather and fully reflect upon stakeholder views, ahead of oral evidence sessions, due to commence in the first week of February.

Summary CML position

4. The proposals in their current form create some presumably unintended consequences, such as constraining how parents can help their children get onto the housing ladder.

5. We urge the government to fully assess the implications of the proposals at regional and local level, reflecting varying housing market conditions. Imposing an extra 3% LBTT on purchases at or above £40,000 will make property purchases up to £145,000, which are currently exempt, subject to LBTT for the first time. According to our Buy to let mortgage survey, nearly four fifths (79%) of properties bought with a Buy to let mortgage in the first three quarters of 2015 were for sums between £40,000 and £145,000, which would mean that thousands of properties each year would be subject to LBTT, where previously they would have been below the lower threshold for taxation.

6. The CML has long questioned the efficacy of taxes such as residential stamp duty in England and the new LBTT in Scotland, as their contribution to high transaction costs can have a detrimental impact on activity levels, market liquidity, labour mobility and how we use our existing housing stock.
7. Any measure that seeks to add materially to transaction costs runs the risk of further undermining market liquidity. Turnover of the Scottish housing stock is already only two-thirds the level of a decade ago.

8. It is also worth noting that the proposals would require the introduction of a factual definition of main residence, which might be at odds with the treatment for capital gains tax. The main residence test would need to be documented during the conveyancing process, potentially adding to house purchase costs. This would ultimately represent a self-declaration by the purchaser, which heightens the possibility of confusion, error or deliberate fraud.

9. The proposal might also create additional barriers to ownership for first-time buyers whose parents wish to help them purchase their first home, but who are not in a position to act as guarantors or “gift” large sums of money. It appears that where home-owning parents will own any part of their child’s future home, the higher LBTT will apply in full to that transaction. In pursuit of the wider government policy of fairness and support for first time buyers, we suggest that minority equity stakes in house purchase could, for example, be disregarded when determining the LBTT liability; or at least any higher rate liability could be restricted to the portion of the purchase that represents an investment by parties who already own a property.

10. The overall policy approach of levying the tax up-front, with the prospect of an eventual rebate as much as 18 months down the line also appears insensitive both to market realities and individual circumstances. There are likely to be a range of scenarios which entail unplanned and temporary ownership of more than one property. It is relatively common, for example, for housing chains to break down. In such cases, the ability for the chain to proceed can depend upon the willingness of one household in the chain to proceed with its planned property purchase, even although the sale of its current home is delayed unexpectedly. The ability and willingness of such a household in future to source and finance a significant extra LBTT payment – albeit one that may ultimately be rebated – could exacerbate an already stressful situation and may be a catalyst for some sales not to complete.

11. We recommend that, rather than levy the tax up-front with the prospect of an eventual rebate, buyers be allowed to defer the payment of higher LBTT for up to 18 months, in order to allow for such temporary situations to unwind.

12. In terms of the buy to let market, the CML notes the demographic, social and economic factors which have underpinned the transformation in the housing market over the past 20 or so years; and we maintain a tenure neutral stance.

13. The latest figures available (2014) suggest that 14.8% of Scottish households live in private rented accommodation. Policy measures that are directed at landlords will affect not just their investment decisions, but also the rental options available to current and prospective renters. As such, we note that the policy touches on issues affecting the distribution of incomes and wealth, in addition to access to home ownership. For example, a policy of higher rates of LBTT for those purchasing rental properties could potentially add to landlords’ up-front costs, and could in some instances deter such investments.
Furthermore, any increase in rental costs as a result of increased LBTT/ house purchase costs, could reduce the ability of would-be homeowners to save for a deposit on their first home.

14. We also note that this proposal cannot be seen in isolation. The cumulative impact of this proposed change, together with the forthcoming reductions to mortgage interest relief; uncertainty about the nature and timing of any macro-prudential interventions for Buy to let; as well as changes for landlords and lenders arising from the Private Tenancies Bill – all risk having a significant indirect effect on investor sentiment. Our latest market forecasts already feature less house purchase activity by landlords this year and next.

29 January 2016
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from Craig Nicolson

The Committee would welcome views on—

1. The Scottish Government’s overall policy objectives in introducing the supplement and, in particular, whether it—

   • Is likely to “complement the Government’s commitment to supporting home ownership in a balanced and sustainable way.”

Aside from raising revenue, the under-riding policy objective is presumably to ensure that first-time buyers are not prevented from getting on the property ladder either because cheaper properties aren’t available or because they are being priced out of the market by wealthier purchasers who have the benefit of access to cheap capital (due to low interest rates). However, the policy would have the unintended consequence of penalising second-time buyers who are attempting to move up the property ladder to acquire a moderately priced family home. This could happen if these buyers choose to move up the property ladder by re-mortgaging and retaining their first home for a period of time in order to finance the purchase of their second-home (rather than selling their first-home and disrupting their family by having to find temporary accommodation). The supplement appears to apply at the point of any purchase if the purchaser already owns a property (regardless of size of use).

If the concern is entry-level homes for first-time buyers, then it would make more sense to only charge a supplement on the purchase of second-homes at the level that first-time buyers would be considering (i.e. below £200,000). This would mean that a second-time buyer wouldn’t be unfairly penalised by deciding to retain their first-home temporarily to avoid the stress of buying as part of a chain, or those second-time buyers who don’t have time to sell their home before the (very near) date of 1 April 2016.

Separately, the policy appears to be copying the proposal introduced by the Tory Government in Westminster, which is responding to a very real issue in the South of England where first-time buyers are unable to get on the market due to vastly inflated property prices and a higher concentration of buy-to-let properties. In Scotland, the market is very different as property prices are much lower and more affordable. If anything, there is a shortage of rental property in Edinburgh and it is very difficult to find a rental property in a city which has over 50,000 students and many EU nationals seeking rental accommodation.
• “helps to ensure that the tax charge is proportionate to the taxpayer’s ability to pay.”

No comments to add.

2. The proposed 3% rate for the supplement and the £40,000 purchase price at which it is proposed to take effect.

The rate seems fairly high – a 3% rate on the purchase of a main residence at a price of £250,000 would incur an additional tax of £7,500. This is likely to hurt purchasers of family homes, particularly young families who are attempting to move up the property ladder to purchase their second property (before they have the time to sell on their first property or if they want to retain their first property for a short time period to reduce the stress associated with moving home). It wouldn’t harm people who currently own a second property (or multiple properties) or who own a portfolio of rental properties and so it appears to be placing the burden of taxation on the younger generation, who are already disadvantaged due to existing high property prices. The supplement would act as a disincentive to prevent younger buyers obtaining more than one property (a privilege that many people born in the 1950s, 1960s or even 1970s have been able to take advantage of).

The threshold seems very low – very few properties would not be subject to the supplement.

3. The Scottish Government’s estimate that the measure will raise between £17 million and £29 million in 2016-17.

I’m unable to comment on whether the estimate is accurate. It appears to be a relatively small amount in overall revenue terms and so I would question the wisdom of the restricting liquidity (by discouraging the purchase of buy-to-let property and holiday homes) in the property market for a fairly small gain in revenue terms.

4. Any reliefs or exemptions that you consider should form part of the legislation.

The proposal appears to apply to the purchase of any second property, even if the intention is for that new property to be the principal residence, rather than a buy-to-let property or a holiday home. The tax would therefore be charged on the property acquired, even if the first property (the one already owned) was of very low value. It would therefore make sense for there to be an exemption if the property being purchased was to be the principal residence (rather than an investment property).

Alternatively, but with the same effect, the legislation could be structured so that tax could only be chargeable if the property being acquired was a holiday home or buy-to-let property (and not a principal residence).
There should be a relief if the purchaser concluded missives prior to 1 April 2016. It is very unfair to be taxed if, prior to the ministerial announcement, a purchaser had concluded missives for a purchase that is not due to complete until after 1 April 2016. Even if someone concluded missives after the ministerial announcement, it would still be unfair to tax a person in that position as the legal profession currently (as at 26 January 2016) has absolutely no certainty as to what the change in law will mean and many firms are not aware of the proposed changes. I concluded missives for a purchase of a property on 15 January 2016 (which is to be a principal residence rather than a buy-to-let property) and neither I nor my solicitors were aware of the proposed change in tax law at that point. As such, and through no lack of caution (offers of finance being in place at the point of conclusion of missives), I am legally bound to complete a purchase but am several thousand pounds short and unable to pay the supplement, as I will not have time to sell my current property before 1 April 2016.

The legislation appears to have been pushed through at an alarming speed and has not even been published at the date of this response (26 January 2016), only two months prior to the proposed change in law. There should at least be an exemption for missives concluded prior to publishing of the legislation in Parliament, as there is no certainty or transparency in such a rushed process.

Given how imminently it is proposed that the legislation is enacted, there should be a grace period of at least eight weeks following 1 April 2016 to allow for a first property to be sold (in respect of any second property acquired following 1 April 2016) before the Supplement was chargeable. This would allow people who currently own a property some time to market and sell their first property to avoid paying a tax that wasn’t in place (or even well-publicised) when they contractually agreed to purchase a second property.

Generally, it would be sensible to have a grace period of 8 weeks so that someone trying to buy and sell homes at the same time would have a small amount of leeway to complete the sale of their property (i.e. up to 8 weeks) after the purchase of their new property. There are all sorts of factors which create complications when buying and selling property and the proposal would clearly harm people who had taken out short-term bridging loans to cover an interim period before sale of their first home or people who hadn’t been able to sell their first home for reasons beyond their control. An absence of a short and reasonable grace period could lead to people selling their homes for a lower price than fair value or to other market-distorting behaviour.

There should also be the ability to reclaim the supplement if you sell one of your additional properties within a set period. As most mortgages have an early repayment charge if they are redeemed within 24 months, this period should be at least 30 months long. This would allow someone to finance the purchase of a principal residence / family home by re-mortgaging their original home, and would then allow them to sell their original home without incurring early repayment charges.
The Government may want to consider an exemption for a property acquired by a beneficiary of a will / bequest, as that does not appear to have been considered.

5. The potential for tax avoidance under the supplement and how this should be addressed.

I’d imagine that the potential for tax avoidance is low given that property sales and the payment of tax would continue to be channelled through the solicitors undertaking the conveyancing.

6. The likely impact of forestalling.

No comments to add.

7. Any other comments you may have on the proposed supplement.

The Scottish Government would do well to avoid adopting the proposals put forward in England and Wales. The proposal in England and Wales seems particularly clunky and it will have unfair and unintended consequences. For example, if a new house is purchased, and an existing house has not yet been sold, the supplement would need to be paid on the date of purchase of the new house. This could impact any property purchase, when the buyer is also selling. Unless there is a grace period, this would mean a person purchasing on one day but not completing their sale until only a few days later would need to pay the supplement. This could clearly create massive cash-flow issues for people attempting to buy and sell homes. Assuming that it would be possible to reclaim the tax, it is also administratively inefficient and burdensome for tax to be paid, only for it to have to be re-claimed at a later date.

The Scottish Government should not attempt to rush through the changes in two months – there are no published details, no published consultation and no published draft legislation for people considering buying a property in the next few months to follow. Aside from the clear lack of time for public engagement and the fact that the proposal has not appeared in the Scottish Government’s manifesto, it’s not clear whether MSPs will even have sufficient opportunity to debate the proposals in Parliament. Presumably an expedited legislative process / emergency legislation will be required in order to get the (currently unpublished) Bill through Parliament by 31 March 2016.

The purchase of a home is largest purchase the ordinary person makes in their lifetime. It would make far more sense to wait to assess the implementation of the legislation in England and Wales and to engage widely with the public instead of rushing through legislation “on the hoof” before the start of a tax year and before an election.
Cyrenians is a charity based in Edinburgh. Our mission is to support people excluded from family, home, work or community on their life journey. Tackling homelessness has been at the heart of our work since the charity was founded in 1968. Today we offer practical housing advice for all and supported housing for young people.

Cyrenians is currently in discussions with a major social investor interested in purchasing a significant portfolio of properties in and around Edinburgh. These properties would be leased to Cyrenians to create secure, affordable homes for people who are at risk of homelessness and who face barriers in accessing tenancies in the private rented sector (PRS).

Growth in private renting in recent years has created challenges for many people in vulnerable situations. Cyrenians welcomes the Scottish Government’s recognition of this in its strategy for the PRS, A Place to Stay, A Place to Call Home. In particular, we welcome the Scottish Government’s commitment to improving the quality of property conditions in the PRS, strengthening regulation and enforcement of tenants’ rights and attracting investment to increase the supply of PRS housing.

Cyrenians understand that the Scottish Government is concerned to ensure that first time buyers are able to enter the housing market and are not disadvantaged relative to buy-to-let investors. However, we are concerned that the proposed LBTT supplement will have the unintended, negative consequence of creating disincentives to social investment in the PRS. Additional upfront costs for social investors will make it more difficult for them to generate a mix of financial and social return.

While we are not in a position to comment on the Scottish Government’s revenue generation forecasts, we believe full consideration should also be given to the potential costs associated with dis-incentivising social investment in the PRS. Significant savings are generated for the public purse by preventing homelessness, relieving the need for temporary accommodation and supporting people to use a secure home as the basis for progression in employment, financial management, community engagement and other parts of their lives.
The savings to public spending achieved by social investment to enable our clients to access secure, quality housing in the PRS will far outweigh the revenue generated of, for example, £3,000 on a £100,000 property.

Cyrenians would welcome consideration of an appropriate exemption or relief social investments. Criteria and safeguards could be developed using existing definitions of social investments and social enterprises, or by restricting their application to particular institutional forms, for example, Community Interest Companies and Scottish Charitable Incorporated Organisations.

28 January 2016
It is with sadness that I see you are proposing yet another tax against the property sector and especially against Investors. Whilst I do appreciate that you are in a very hard predicament with savings you must make and trying to generate new revenue I do feel that you are taking the ‘Easy’ way rather than tackling the real causes of over spending, i.e. unemployment benefit, NHS, all these things run hand in hand. The more people who sign up to benefits do not pay into the system but still take out, that’s where the focus should be not squeezing more out the people who already prop up the taxation side of the country. All I am trying to do is build a business pay my taxes and hope that maybe it can flourish and help employ people. All I see is me getting targeted because it is the easiest way whilst I watch as people play the system, getting housing, health paid for and not even put in a penny towards it, this has become a social class all by its self......it was not always like that. But i do not see the hard decisions being made there instead it is the people who are already paying their taxes, helping the local economy that are being hit because you know we do not have a choice. Shame on you

Also if you implement this tax and has the desired effect of stopping property investors buying, which is really what this is going to do, who is then going to buy the houses, has it been lost on the government how hard it is for the normal working person to get a mortgage....even with the help to buy, take a snap shot, Buy to Let has actually had the single biggest hand in helping the housing market move. Even when house repossessions were at their peak Buy to let had a very, very small percentage of that side. All I see this doing is chase investors away to something else, there will then be swathes of property no one can buy or move on so they can’t get up the ladder, supply will outstrip demand and you will end up with another housing debacle, prices tumbling, repossessions all these things are possible this is not scare mongering.

Focus on where you are losing the most, the places where there is less money going in than coming out, Health, Social benefits. Oh and dare I say 3 quarters of a billion pounds on a tram system, that would have been a life line to a lot of sectors that were far more deserving of the focus, time and money than Trams.

Yours in complete frustration

David Sinclair
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from Edward D Conway

I am writing to the committee on the above subject which will affect me personally.

I am a 66 year old Grandfather living in East Dumbartonshire, and throughout my working years since the age of 16 paid UK taxes.

I have now retired and used some of my pension to purchase a New Build Holiday Apartment in St. Andrews for use by my Children and Grandchildren. I exchanged contracts with the Builder in July 2015, and the completion date will be May or June 2015. My understanding at this moment is that I may be due to pay the supplement.

I would ask that the Finance committee look at this supplement details and judge if they consider it fair that an individual who has signed a legal document to buy a property back in July 2015, at an agreed price, should be penalised because the completion of the property is not until after the 1 April.

If I back out of this contract, I will personally lose almost £9000 and the Government will lose all of the LBTT. I am not a Buy to let person owning several properties but only my Main residence and this one Holiday Apartment being built.

I am not against helping first time buyers and understand the need to do this, but surely it is only fair to give individuals who have exchanged a contract and paid a deposit prior to the Budget in December should not be penalised and most certainly given more notice than the 16 Weeks or so between the Budget and the implementation of any change of taxation.

I believe the UK Government have given the rest of the UK more notice as the UK Budget was weeks before the Scottish Budget and that they are considering a Transitional Time period to make cases such as mine fairer.

Is it also the case that Companies or Organisations with buy to let in their portfolio’s as a trust fund may be exempt if they have a number of properties, again is this fair to individuals who have only bought one second property for their own family

Finally, this new development of apartments has a large number of Affordable Apartments in the same development and many of them are already occupied. Is it not the case that the Builder would have had to partly pay for these homes in order for him to be granted permission to build my Apartment and the others in the development? No doubt this reflected on the price that I have paid for my apartment
and therefore I have already assisted first time buyers and others in obtaining a home at a reduced price or rent.

To summarise, I do not mind assisting those less fortunate than myself but it has to be carried out fairly and ask you to consider the following:

1. Individuals who have bought only one Family Holiday home or apartment should be exempt from the supplement
2. Individuals who have exchanged legal contracts before the Budget date, but the Sale not completed until after the April 1 should be exempt from the supplement.

Edward D Conway
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from the E&Y

EY Response to the Finance Committee of the Scottish Parliament’s call for evidence in respect of the proposed land and buildings transaction tax (LBTT) supplement on additional residential properties

Introduction

We welcome this opportunity to comment on the proposed 3% LBTT supplement on purchases of additional residential properties and have included comments on the draft Land and Buildings Transaction Tax (Amendment) (Scotland) Bill, which was published on 28 January 2016.

Replacing main residence

In terms of the draft Bill we note that the supplement will not apply where the buyer is replacing his only or main residence. We understand that a buyer will be treated as replacing his only or main residence if:

(a) during the period of 18 months ending with the effective date of the transaction, the buyer has disposed of the ownership of a dwelling,

(b) the dwelling was the buyer’s only or main residence at any time during the period of 18 months, and

(c) on the effective date of the transaction, the buyer intends to occupy the dwelling that is or forms part of the main subject-matter of the transaction as the buyer’s only or main residence.

We also note that the draft Bill provides for repayment of the supplement to be claimed, broadly, where a former main residence is disposed of within 18 months after the effective date of the transaction.

In our view the test for determining whether a buyer is replacing his only or main residence may cause practical difficulties in certain situations. For example, where an individual owns a property but is required by his or her employment to reside elsewhere (perhaps overseas) due to secondment, it is usual for the individual to live in rented accommodation during their period of secondment but not dispose of their ‘home’. When the secondment ends, there may be a variety of reasons why they may
need to sell their original home and move into a new home but are unable to move back into their original home in the interim. For example, they may have to relocate to another area, or the old home may be unsuitable due to changes in the family unit and/or the original home may be let on a long lease.

Where the original home cannot be sold prior to acquiring the new home they will suffer the additional 3% rate but will not be able to reclaim it even if the original home is sold in the 18 month period. This is on the basis that the original home does not qualify as their main residence as they were not living there at the time. The position could be improved by allowing for periods during which the property is treated as a main residence even though it may not be occupied as such – in line with the provisions in s.222B TCGA for private residence relief from capital gains tax.

Main residence test

We note that the draft Bill does not set out a statutory test for determining an individual’s main residence or any facility for electing a dwelling as a main residence. In the absence of a statutory test, in order to give certainty to taxpayers, we believe that it will be important that Revenue Scotland give clear guidance on how this test will be applied, for example, confirming that Revenue Scotland will interpret this test in accordance with capital gains tax case law or setting out the relevant factors that should be considered.

Refund mechanism

We believe that the refund mechanism may cause undue hardship and penalise a section of the market that the Scottish Government wishes to protect. There may often be legitimate reasons for a delay between purchasing a new residence and selling a former residence. For example, as set out in the explanatory notes to the draft Bill, this situation can arise where the relevant buyer’s former residence is in England and the “chain” has broken down through no fault of the taxpayer. Although we understand that bridging finance is available to fill the gap in these situations, we understand that banks are often unwilling to lend money for the payment of tax and this will necessarily lead to serious cash flow implications for the buyer.

An alternative proposal would be that appropriate boxes are added to the LBTT return asking whether the buyer intends to sell their previous main residence in the next 18 months, and providing for an undertaking to notify Revenue Scotland when the first main residence is sold. If they intend to sell, and provide the relevant undertaking, then LBTT would be paid in the normal way and the additional LBTT would not be payable at that time.

In the event the first property is not sold within the prescribed time period (or, as the case may be, the intention of the individual changes within the prescribed time period) the buyer is required, at that time, to pay the additional LBTT. Interest and penalties could be levied if payment is not then made.
Meeting the notification deadline could be the responsibility of the taxpayer but we would prefer to see some form of monitoring to keep track of the situation and, say, a system which sends regular reminders (as appropriate). If necessary a tax demand could be sent to the buyer for the additional LBTT when the time limit has expired in the event that the buyer has not notified Revenue Scotland that they have sold their original main residence in the required period. Again, interest and penalties could be levied if payment is not then made.

A possible alternative, if the previous main residence is not sold within the relevant 18 month time period, would be for the tax to become payable at the end of that period, but have interest running from the date of the original transaction. Penalties could be levied if the tax is not paid on time.

**Joint purchases**

The draft Bill provides that, in the case of joint purchases, the supplement will apply if the relevant conditions are satisfied in relation to one of the buyers. We consider that a fairer way to deal with joint purchases would be to apply the additional 3% only to that part of the property which is to be held by the person(s) who already owns any residential property (and who are not replacing their main residence). For example; if Person A and Person B (who are not married or in a civil partnership) acquire property jointly, say in the proportion 60:40 but Person A already owns a property, the additional 3% should only apply to 60% of the purchase.

**De minimis**

We would also suggest that a de minimis test of the percentage interest in another property be applied to determine whether that property would count as an additional residential property. This would allow, for example, for situations whereby a number of beneficiaries inherited property where one, or more, of the beneficiaries only holds a small interest but cannot force the other beneficiaries to sell. Otherwise, they would be unfairly disadvantaged (by being unable to acquire a main residence themselves without paying the additional 3% rate).

**Inherited property**

We consider there should be a time period during which inherited property would not count for the purposes of determining an individual’s residential property interests. For example, a period of 24 months could be allowed during which time the property could be sold (the 24 month period allowing for time to settle estates). We understand that there are quite often differences of opinion between beneficiaries over how to proceed with inherited property which is to be jointly held, and it can take time for the beneficiaries, or a court, to agree whether the property(ies) should be sold. If the property is retained after the, say, 24-month period, it is likely that it would be exploited commercially for rent, so it would be reasonable to deem it an additional residential property (subject to the de minimus interest test mentioned above).
Purchases by non-natural persons

In terms of the draft Bill the 3% supplement will apply to any acquisition of the ownership of a dwelling if the relevant buyer is not an individual. We recognise that it is important to ensure that the supplement cannot be avoided by individuals simply arranging for properties to be acquired in a corporate wrapper. However, to put non-natural persons (NNPs) on the same footing as individuals, we consider that this could be achieved by providing that the additional rate should only apply to first purchases by NNPs of residential property where they are connected to an individual or another NNP that holds at least one residential property. The connected person test in s58 LBTT(S)A 2013 could be used.

Purchase of six or more dwellings

The draft Bill provides that where the transaction is a ‘non-residential property transaction’, the 3% supplement will apply to so much of the chargeable consideration for the transaction as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of dwellings comprised in the transaction. It would seem that, in a case where a six or more dwellings are purchased in a single transaction, which would be deemed under current rules to be a non-residential property transaction, the 3% supplement may apply to that purchase. We would welcome clarity on whether it is intended that the 3% supplement would apply in this scenario as this is a significant change to the treatment of such transactions. As a related point, we would welcome clarity regarding the way in which the additional 3% rate will interact with multiple dwellings relief (MDR).

We note that this would be a different approach to that outlined by the UK Government in their Consultation Document on the corresponding stamp duty land tax (SDLT) measures, which would be to allow the purchaser to choose whether MDR, with the higher rates, will apply, or apply the non-residential property rates to the entire consideration. As discussed in more detail below, we believe that the Scottish Government should consider an exemption from the supplement for bulk purchases.

Exemptions

We note that no specific exemptions have been included in the draft Bill. We believe that consideration should be given to introducing an exemption for large scale investors and/or bulk purchases similar to that being considered by the UK Government in respect of the additional 3% SDLT rate. As noted in the HM Treasury Consultation Document, significant investments can help to facilitate development and positively contribute to an overall increase in housing supply.

One option being considered by the UK Government is an exemption for bulk purchases of at least 15 residential properties. In our view, the test should not be based solely on the number of properties purchased in a single transaction but on the aggregate number of properties they hold at the end of the transaction. In effect, a person who owns one property but then purchases 15 should be treated the same as a
person who owns 15 but then purchases one more – at the end of the day of the transaction they both own 16 properties.

An alternative test might be to provide an exemption where:

- either the person owns a portfolio containing a minimum number of properties (e.g. 15); or

- they purchase a minimum number of properties in one transaction (perhaps 6 or more, in common with the current test for a non-residential purchase).

One concern with the UK Government’s proposal is that it discriminates against smaller, but equally genuine, property developers, who will not be purchasing for buy-to-let, but purely to develop and sell on. By setting the bar at such a high level they may simply be forced out of the market. As the sort of deals/projects in which they might be involved may be considered too small for the larger investors this might create a gap in the market (which might in fact harm the Scottish Government’s wider housing objectives). To address this, perhaps there could be a relief for all property developers, who acquire to develop and sell on the property, as long as they are legitimately developing.

We recognise that it is not desirable to create a loophole for persons who are not genuine developers to exploit and accept that there may be difficulties in policing this sort of exemption. As a possible solution, we suggest a time limit might be appropriate, so that if a developer does not develop the property and sell it within a certain time frame, or their intentions change within that time period, the LBTT supplement becomes payable at that point. This is similar to the approach taken in relation to sub-sale development relief under LBTT.

Alternatively the relief could apply only where the proceeds from the sale of the property would be treated as trading income.

Furnished holiday lets

We believe, based on the UK Governments’ prior approach to furnished holiday lets (FHLs), that the UK Government treats these differently from standard buy-to-let properties and values their contribution to the economy. We believe that a similar case can be made for FHLs in Scotland. We also believe that purchasers of FHLs are not the primary target of the proposed legislation. Given that there are very strict rules in order for a property to qualify as a FHL, it does not seem to us that exempting purchases of FHLs would create a loophole or be an area which would easily be open to avoidance. As such we consider that FHLs should be carved out of the additional 3% supplement.
If you wish to discuss any of our comments, please contact either Ken Wright or Gordon Foster.

Ken Wright  
Executive Director

Gordon Foster  
Manager
By way of introduction, my wife, Heather Tuck, and I are the developers of the Highland Park 14-house residential development in Killin and now full-time residents on the development.

The fourteen homes were conceived & designed and are being sold as primary and second residences and holiday homes. Our marketing is directed primarily to retirees or 'soon to be retirees', to people seeking a ‘bolt hole in the country’ and to those wishing to augment their incomes through ownership of holiday let properties. We have made a substantial personal investment in the construction of the development over the past two years and are just now beginning to bring completed homes onto the market (with all homes to be completed by the summer of this year.)

John Swinney’s announcement of the SNP’s proposed Additional Homes Supplement to LBTT Rates has caused us significant concerns. We believe it to be exceptionally ill-conceived due to its extremely negative impact on small developers, tourism in the rural areas of Scotland and, particularly, retirees or soon-to-be retirees who wish to lock-in their future retirement homes prior to moving out of their existing homes and/or as a means of supplementing limited retirement funds. In the price range of our homes at about £250,000, the Supplement effectively quadruples the tax having to be paid to the government at close of sale (that is, from approximately £2,000 to over £9,000). At this point, our marketing and potential sales already have been seriously compromised by the Mr Swinney’s announcement.

Within our immediate area, which encompasses parts of Perthshire and Stirlingshire in the vicinity of Loch Lomond & The Trossachs National Park, the scope and availability of holiday let properties have been major contributors to the economic viability of local businesses and communities. Obviously, any hopes or plans to expand tourism within these communities can be achieved only if available accommodation keeps pace with those aspirations. The Proposed Supplement will be a serious detriment to outside investment in holiday let properties by individuals, which I suggest represent the majority of holiday let property owners. Very few of these individual investors are ‘fat cats’ that can easily or should prop up the government’s finances. The increase in tax payments to be imposed on purchasers of low to medium priced properties is certainly disproportionately high and places an unfair burden on middle income families and retirees seeking a second home, for whatever purpose.
We strongly request that you not support the proposed Supplement or, at least, not in its current form.

Best Regards,

Bill Tuck

Director & Secretary

A&H Developments (Killin) Ltd

Highland Park Development
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from the Homes for Good (Scotland) CIC

Currently, there are more households in Scotland living in the private rented sector than in the homes provided by Scotland’s housing associations. It is the only sector which is growing. It is therefore a significant and much needed element of the housing infrastructure in the country, and continues to grow year on year. The vast majority of landlords (75%+) in Scotland own one or two properties, and there is a recognised minority of bad landlords providing poor quality homes. However, individuals and companies are increasingly investing in and improving property for rent within the private sector. Current proposed legislation to change the tenancy regime in Scotland, and to introduce the regulation of letting agents, is a significant step forward in improving quality, security and stability for PRS tenants.

Homes for Good was established in 2013 as Scotland’s first social enterprise letting agency – with the core aims of improving quality of property and management within the private rented sector, leading by example, innovation to improve the PRS across Scotland, and increasing access to quality homes for vulnerable people within the PRS. It was founded by Susan Aktemel, herself an experienced landlord, who recognised the need and opportunity for a letting agency with an operating model based on ethics, transparency and reinvesting profits in its social aims. We manage over 220 properties, across 9 local authorities in central Scotland.

In 2014, our sister company, Homes for Good Investments was created. A joint venture with Impact Ventures UK, we have to date secure £6 million investment and backing from IVUK, Charity Bank and Big Society Capital to provide high quality furnished homes in the West of Scotland, for people who are extremely limited in their housing choice at an affordable rent. To date we have invested in 92 poor quality properties, and brought them back to life for over 200 tenants, many of whom who are disadvantaged with multiple needs.
Proactive investment in private rented sector homes currently comes from the following groups:

1. People with funds keen to invest long term in their future for their families / pension. They are buying several properties and understand their legal and moral responsibilities as landlords, as well as looking to create a decent financial return.

2. Institutional investors such as pension funds and larger landlords looking to create long term housing supply as a relatively low yielding, low risk investment.

3. Increasingly - SMEs and social enterprises / charities and housing associations (such as HFGI, Edinburgh Cyrenians, Building Futures, Places for People Scotland) who are committed to providing quality housing and treating tenants well, in a way that is financially sustainable in the longer term for the organisation to fulfil its social objectives.

For the last few years, the growth of the buy to let market / PRS has been fuelled in part by the sluggish housing market – people unable to sell at the price they require have resorted to letting, often called accidental or reluctant landlords. A combination of the improvement in the market and, more importantly, the impending tax changes at a UK level in terms of interest relief mean that, for this group, renting is less appealing and they will take the opportunity to sell when they can in the near future. This is itself will greatly reduce supply of private rented sector homes and put more supply into the homeowner market.

Demand for PRS housing in all sectors of the market is high. At the lower, more affordable end of the market this is acute - with requests and applications from tenants far outweighing available supply. Given that there is a widening gap between the number of homes required in Scotland annually, and the sluggish rate of building in the social housing sector, steps to curb the PRS will result in two things – increased rents through supply / demand market forces, and for people who are on lower incomes and benefits, greatly increased risk of homelessness. Unless the government can guarantee the replacement of each PRS home taken out of the market by the provision of a social one, this will only contribute to what is already a national crisis. We need investment in the PRS until we have enough social supply to suggest otherwise.

We fundamentally disagree with the basic principle of this proposed levy that it will enhance the playing field for first time buyers through reducing the ability of investors to compete. The key factor in whether a first time buyer can progress to home ownership or not is availability of finance - both in terms of ability to provide sufficient deposit and meeting lending criteria / credit rating, not competition from landlord investors.
Furthermore, if this levy is applied, it will simply become another cost that investors require to absorb – either affecting purchase price, or resulting in increased rents for tenants. The latter will be detrimental to the very age group and demographic the government wants to help – given that renting is often the first step prior to buying - and will make it harder for people on lower incomes / housing benefit to be able to afford to rent at all.

Our views on the specific aspects of the call for evidence are outlined below each point.

1. The Scottish Government’s overall policy objectives in introducing the supplement and, in particular, whether it—

   • Is likely to “complement the Government’s commitment to supporting home ownership in a balanced and sustainable way.”

   As we explain in more detail below, the 3% levy will not make a difference to serious investors of any size in the private rented market, who will adapt their business model. It will therefore not contribute to supporting home ownership through deterrent for this group = resulting in advantage for first time buyers. Other initiatives, such as first time buyer exclusivity on new homes developments, would be much more effective.

   • “helps to ensure that the tax charge is proportionate to the taxpayer’s ability to pay.”

   Investors, whether small, corporate or social enterprises will require to work to a business model providing an adequate return. Payment of this level will be factored into the overall costs of a purchase, and will either reduce the purchase price offered to the seller, or reduce the funds available to make an investment property a quality home within the required budget. Therefore where the market is sluggish, which is still in many parts of the country, it will effectively be the seller who pays this 3% levy.

   If this levy is blanket, regardless of type of investor or organisation, social enterprises and charities who are committed to operating within the PRS will have their limited funds diverted away in additional tax rather than investment in their core business.

2. The proposed 3% rate for the supplement and the £40,000 purchase price at which it is proposed to take effect.

   £40,000 is far too low. Most property at this level is either distressed and requiring upgrading works, or ex-local authority stock, which mortgage lenders will be wary of lending against. Often first time buyers do not have the available funds to purchase and then additionally invest in significant
improvements. If this levy is applied for the purposes stated, it must therefore only apply in the sectors of the market where first time buyers are active. Anything below £50,000 is simply penalising investor landlords and companies and reducing affordable PRS supply in the areas and property types where first time buyers will not be purchasing anyway.

3. The Scottish Government’s estimate that the measure will raise between £17 million and £29 million in 2016-17.

It would be helpful to understand how this amount has been calculated these funds will be raised (from which price brackets within this market) and tailor the levy appropriately. Is this levy is ringfenced to build additional affordable homes?

4. Any reliefs or exemptions that you consider should form part of the legislation.

There is an ongoing need for provision of PRS homes at a greater level than is currently available, to cater for the increasing numbers of projected households in coming years, and to close the gap that the slower rate of social housing newbuild is creating.

We do not agree with the implementation of the levy but would suggest the following exemptions:

Individual landlords who have their properties managed by registered letting agents and who comply fully with all PRS legislation – doing both ensures safe quality housing; perhaps by way of a refund once the above is demonstrated;

Landlords (individual or corporate) whose rent levels are set at no more than 110% of LHA rates in a given area – ensuring rents are kept within an affordable range

Companies, (social or profit-making) whose main purpose is the provision of housing or support of people with housing need – SMEs. Social Enterprises and Housing Associations

5. The potential for tax avoidance under the supplement and how this should be addressed.

Do not know

6. The likely impact of forestalling.
7. Any other comments you may have on the proposed supplement.

While the imposition of this levy may raise much needed funds for Government, it will not do what it is set out to, which is make it easier for first time buyers. It will disadvantage home-sellers, and result in increased rents for tenants.

Homes for Good would be very happy to provide oral evidence if requested.
ABOUT HOMES FOR SCOTLAND

Homes for Scotland is the voice of the home building industry.

With a membership of some 200 organisations together providing 95% of new homes built for sale in Scotland each year as well as a significant proportion of affordable housing, we are committed to improving the quality of living in Scotland by providing this and future generations with warm, sustainable homes in places people want to live.

Visit www.homesforscotland.com for further information and follow us on twitter @H_F_S
1. **Introduction**

1.1 Homes for Scotland is the voice of the home building industry in Scotland, with a membership of some 200 organisations together providing 95% of all new homes built for sale across the country as well as a significant proportion of affordable housing.

1.2 Homes for Scotland makes submissions on national and local government policy issues affecting the industry. Its views are informed by members, including through various committees and advisory groups established to utilise the skills and expertise of key representatives from our member companies.

1.3 Homes for Scotland welcomes the opportunity to respond to the Finance Committee’s call for evidence on the proposed LBTT supplement. In addition to reflecting the views of our members, this response incorporates the views of the Private Rented Sector Champion, Gerry More.

1.4 Mr More was appointed in October 2014 by Homes for Scotland (with funding from Scottish Government), with a remit to take forward the recommendations of a major research project, launched by then Deputy First Minister in November 2013, aimed at encouraging the emergence in Scotland of new Build To Rent (BTR) PRS at scale. The PRS Champion has also had an opportunity to set out the views of the new build industry through his involvement in the LBTT Stakeholder Group established at the beginning of 2016 by the Scottish Government.

2. **Impact of Uncertainty on Sales**

2.1 In announcing the proposal, the Scottish Government indicated that the LBTT supplement would be levied on the purchase of additional residential properties, such as for buy-to-let properties or second homes. Commentary in the associated budget documentation indicated that the supplement would impose a “…greater tax burden on those purchasing residential property as an additional purchase, for investment or recreational purposes, compared to those seeking to purchase the property as a main residence.”
2.2 Since the announcement, a number of our members have been in touch to
highlight the difficulties caused by the associated uncertainty as to how the
supplement will work in practice. Consideration of the UK consultation,
alongside their own experience, suggested a range of potential scenarios
which could be treated differently.

2.3 This uncertainty has very much been a live issue, with HFS members
reporting that sales of homes which would have been due to occur post April
2016, but where missives have not yet been signed, are on hold until the
position is clear.

2.4 Further detail has now been set out on various scenarios in the Bill and
associated documentation and we note the Government’s position that the
proposals will not apply where missives for the transaction were concluded
before 16 December 2015. This is welcome. However, we would encourage
consideration of an amendment to extend this exemption to properties where
a reservation had been placed, but missives not yet concluded, prior to 16
December for a home that would complete after 1 April. This would prevent
the risk of transactions falling through as a result of the supplement.

2.5 Notwithstanding this, the HFS view is that there is a strong case for new build
being exempted entirely from the supplement. This is discussed below.

3. **Reliefs and Exemptions: Additionality of New Build and the Build to Rent
Private Rented Sector (PRS)**

3.1 In considering the LBTT proposal, Homes for Scotland’s starting point is that
increasing the supply of new homes, across all tenures, boosts economic
growth, supports greater choice, creates and supports jobs and helps to build
thriving communities.

3.2 We also believe that the purchase of new build properties for e.g. buy to let
purposes or as second homes represents additional activity, which does not
“crowd out” the purchase of homes by first time buyers. There is a distinction
here compared to the position in the wider market, where we understand the
Government’s policy rationale.

3.3 At a time when the industry continues to face a number of challenges, we are
accordingly concerned that the financial implications of the proposals could
impact on future investment in new build, reduce confidence in the market and
overall levels of supply, without supporting any additional activity by first time
buyers. We share the SG objective of ensuring that first time buyers have the
greatest possible chance to enter the housing market, but do not believe that
the proposals will assist this in terms of new build.
3.4 On a specific aspect of this, concern has been expressed about the impact of proposals on the sale of new build homes which are purchased as holiday homes in rural areas. Should the changes proceed this could potentially prevent such sales, but without benefiting first time buyers, with a knock on impact for wider development in rural areas and longer term population growth.

3.5 With a view to supporting the industry and Government’s shared ambition to increase supply, we therefore propose the introduction of an exemption for new build homes from the supplement.

3.6 If this is not possible, then we believe that there should be some alternative treatment of new build purchases within the LBTT arrangements which reflects the contribution that these make to Scotland’s economy and overall housing supply. We do not believe that either approach would present any risks in terms of distortion within the UK or run counter to the Government’s policy ambitions.

**Build to Rent PRS**

3.7 Large scale PRS developments funded by institutional investment from pension schemes and life insurance funds are already commonplace in other countries, including amongst others the USA, Canada, Germany, Netherlands and Switzerland. Purpose built PRS developments are now also increasingly prevalent in England – the British Property Federation’s recent Build to Rent (BTR) manifesto noted significant activity in London and the South East and developments either complete or in the pipeline in Liverpool, Manchester, Sheffield and Birmingham.

3.8 At the moment, there is however very little new Build to Rent (BTR) PRS development in Scotland, with figures suggesting that less than 2% of UK build to rent PRS investment is currently being directed to Scotland.

3.9 This represents a significant source of opportunity. With the right conditions and support for investment, there is scope to quickly deliver thousands of new additional purpose built and professionally managed PRS homes in Scotland in the years ahead, making a significant contribution to the Scottish Government’s ambition to increase housing supply. Developments can be built and completed quickly, providing additional choice to the public.

3.10 This emerging new rental sector is very different from the existing buy-to-let PRS, which is dominated by small amateur landlords and relatively small scale. The PRS Champion’s view is that, with the proper encouragement and interventions to the institutional funding market, 10,000 additional rental homes could be quickly delivered over the remainder of the decade equivalent to an investment value of at least £1bn from the BTR PRS.
3.11 As proposed, the LBTT supplement will however immediately reduce the gross development value of build for rent projects by 3%, impacting on land value and project viability. This will send a negative signal to potential investors, meaning that fewer projects will come forward. This is particularly likely in the context of the proposed SDLT changes in the rest of the UK (where a relief is proposed for larger scale purchases), which will create a viability gap between investing in Scotland and in the rest of the UK.

3.12 Questions have also been raised about the potential impact of the proposed change on affordable housing and student accommodation portfolios in the event that these are sold.

3.13 Having considered the Bill, the PRS Champion’s view is accordingly that, to ensure that the new arrangements do not deter investment in this area of emerging opportunity, there is a need to introduce a relief that applies to all scale residential investments traded as a whole. The exemption for new build that we propose would not be sufficient for various reasons, including the fact that the investment model is dependent on large scale portfolios being tradeable. This means that, without any relief, the valuation on day one for any project would have to take account of the proposed supplement.

3.14 Any approach should at least match the arrangement proposed for Stamp Duty Land Tax (SDLT) in England, where the UK Government has suggested that the purchase of at least 15 residential properties would trigger an exemption. Consideration could however be given to setting a lower limit, with a view to positively differentiating Scotland from the rest of the UK in order to attract much needed investment.

4. Proposed Financial Arrangements

4.1 The Committee has sought views on the proposed 3% rate for the supplement and the £40,000 purchase price at which it is proposed to take effect.

4.2 Setting aside the points raised above, members have noted that the flat 3% rate runs counter to the progressive approach put in place for the “core” LBTT and noted that the £40,000 threshold is low, such that it will impact on all new build transactions in the absence of any exemption or relief.

4.3 In addition, concerns have been expressed about the implications for individual and household finances in situations where, despite intent, a previous main residence has not been sold by the time a new purchase concludes. The Bill provisions provide for the additional tax paid to be reclaimed if a previous main residence is sold within 18 months, but there may be difficult financial pressures to cope with in the interim. Risks
associated with this may result in people opting not to move, with implications for the overall market.

4.4 We have no comment on the Scottish Government’s revenue estimates for the LBTT supplement, although we recognise that the proposals set out above would reduce the amount collected.

Prepared by:

Homes for Scotland
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from the ICAEW Scotland

ICAEW welcomes the opportunity to provide a submission to the Scottish Parliament’s Finance Committee call for written evidence on a proposed LBTT supplement on additional residential homes issued on 7 January 2016 and which is available from this link.

ICAEW Scotland has over 1,500 members who live and work in Scotland. ICAEW Scotland represents the views of ICAEW members who work in Scotland for local, national and international organisations across the private and public sectors.

We would be happy to discuss any aspect of our comments and to participate in further consultations on this topic.
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ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

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RESPONSES TO SPECIFIC QUESTIONS

Q1 The Scottish Government’s overall policy objectives in introducing the supplement

1. We are disappointed that the Scottish Government has chosen to substantially replicate the proposal from the UK Government to introduce broadly the same measure in relation to Stamp Duty Land Tax (‘SDLT’).

2. The proposal to replicate the UK SDLT charge highlights the serious policy conflict posed by devolved taxes, namely the conflict between following a policy that may be coherent and consistent at the UK level but which may not be the best solution when considered from a devolved tax perspective. If the Scottish Government simply adopts broadly the same proposals as the UK Government this brings into question the justification for devolved taxes and he benefit of introducing a separate Scottish revenue authority with all the consequent costs which are being borne by the Scottish taxpayer.

3. We believe that the UK Government’s proposals for a 3% SDLT charge, as set out in a consultation document published on 28 December 2015, are fundamentally flawed, run counter to the policy and will result in considerable extra complexity and burdens. In ICAEW’s draft response to that consultation we have said that given the policy aim is to provide affordable homes to first time buyers, it is wrong that first time buyers will be subject to the higher rate if:

   - their parents need to take a share in the property in order to secure a mortgage;
   - they are buying jointly with somebody else who owns another property (possibly otherwise unconnected);
   - they have a small share in a multiple ownership family property passed down through a couple of generations that they could not occupy as their main home;
   - they are a partner in a partnership (e.g., a farming partnership or a veterinary practice) that provides accommodation for its employees
   - there has been a forced inheritance of a property abroad due to the forced heirship laws of that country.

4. Further, we consider that the UK Government’s SDLT proposals are unfair to smaller scale investors as it is proposed to provide an exemption from the higher rates for bulk purchases of 15 or more properties: we believe this is wrong in principle.

5. Given the above concerns with the UK’s Government’s proposals, we believe that substantially copying the UK’s proposals represents a missed opportunity for the Scottish Government to consider critically whether these proposals are justified in policy terms and that this is an opportunity to distinguish Scotland as an attractive location to live, work and do business by not introducing what we believe is a fundamentally flawed proposal.
6. We also question the overall justification for promoting home ownership at the expense of other methods for the provision of residential accommodation. What evidence exists to support the supposition that home ownership is preferable, especially when it is inherently unsuitable for a great many people, including students and migrant workers?

7. In ‘Scotland’s Spending Plans and Draft Budget 2016-17’, the Scottish Government clearly recognises the importance of all forms of tenure in the provision of residential accommodation: “we will also take forward further plans with our partners to help address the development, financing, infrastructure and collaboration issues constraining increased housing supply across all tenures”.

8. With appropriate regulation, a thriving private rented sector offers an alternative approach to the provision of safe, high quality, living accommodation than many will find more attractive option than home ownership.

9. The Scottish economy would benefit from a thriving private rented sector since landlords who are subject to appropriate regulations to safeguard standards and quality of accommodation will need to spend money on maintenance as well as investing in property improvements, something which may private home owners may not do.

10. The Scottish government will also benefit from a healthy private rented sector through the tax revenue which it generates. It should be borne in mind that individual investors based in Scotland will pay the Scottish rate of income tax from April 2016 onwards whereas corporate investors will not be paying any tax to the Scottish government on their profits. Any measure which encourages corporate investment at the expense of individual investors will therefore reduce the Scottish government’s revenue receipts.

11. According to a recent YouGov survey commissioned by the Council of Mortgage Lenders (CML), 15% of buy-to-let landlords plan to stop or reduce their investment in the private rented sector as a result of recent tax proposals. A further 13% plan to sell off some or all of their portfolio and 6% will review the mix of properties that they own.

12. These results are based on changes proposed for the UK as a whole, including:

   i) The restriction of tax relief for interest and finance costs borne by individual landlords to basic rate only
   ii) The abolition of the wear and tear allowance for furnished lettings
   iii) The proposed higher rates of SDLT on purchases of additional residential properties in England, Wales or Northern Ireland.

13. Points (i) and (ii) apply equally in Scotland and are already placing a considerable strain on the private rented sector. Introducing an LBTT supplement would broadly replicate point (iii) and hence can be expected to lead to a similar effect in Scotland to the results indicated by the CML survey.
14. The survey suggests that a total of 34% (over a third) of landlords will reduce their investment in the private rented sector as a consequence of proposed tax changes. This does not take account of a further 11% who are currently undecided on their future plans, so the final total could be as high as 45%.

15. Reductions in investment at this sort of level could have a severe impact on the availability of affordable residential accommodation, a policy outcome which is the opposite of what is needed. The CML’s view is that the overall impact of the proposed UK tax changes ‘will be to lift rents higher and to narrow the availability of homes in the private rented sector’. Replicating broadly the same tax changes is likely to have the same effect in Scotland.

16. The private rented sector is an essential element in the provision of residential accommodation to students, migrant workers and many other individuals with little or no interest in purchasing property. The availability of affordable, high quality, rented accommodation is essential to make Scotland an attractive place to come to live and work. Measures which significantly reduce the availability of such accommodation therefore run the risk of damaging the Scottish economy.

17. There is an opportunity here to differentiate Scotland from the rest of the UK. By refraining from introducing any LBTT supplement, the Scottish Government could distinguish Scotland as a more beneficial environment for property investment, thus encouraging the growth of high quality, affordable, rented accommodation in Scotland with consequent benefits to the Scottish economy, workforce, student population and overall quality of life.

Whether it is likely to complement the Government’s commitment to supporting home ownership in a balanced and sustainable way

18. We do not agree that the measure would complement the Government’s commitment to supporting home ownership in a balanced and sustainable way.

19. Home owners on low incomes are far less likely to invest in their properties to improve safety standards or energy efficiency than are landlords within a well-managed and appropriately regulated private rented sector such as already exists in Scotland. We consider that the measure is more likely to lead to the long-term deterioration in the quality of housing stock at the lower end of the market.

Whether it helps to ensure that the tax charge is proportionate to the taxpayer’s ability to pay

20. Any form of transaction-based tax levied on the capital value of property carries inherent difficulties regarding the taxpayer’s ability to pay.
21. This becomes most relevant to the current proposals when we begin to look at some of the areas covered below, such as individuals who face a delay in selling their current home and migrant workers.

22. For example, a worker relocating to Scotland with a large family will necessarily need to purchase a reasonably large property. It does not follow that this implies an ability to bear an increased tax charge.

Q2 The proposed 3% rate for the supplement and the £40,000 purchase price at which it is proposed to take effect

23. We are disappointed to note that the current proposals include a partial return to the previous 'slab' system applying to Stamp Duty Land Tax on residential property prior to December 2014: with a rate of 3% applying to the entire purchase price on property with total consideration in excess of £40,000.

24. This creates a 'cliff edge' with an immediate charge of £1,200 applying as soon as the purchase price of a property exceeds £40,000.

25. ‘Cliff edges’ of this type create artificial distortions in the property market. We welcome the general approach to LBTT which precludes such ‘cliff edges’ but are concerned by this partial return to a ‘slab system’ under the current proposals.

26. We believe the current proposals are therefore not in line with the Scottish Government’s stated commitment to a progressive tax system. (“The Scottish Government is committed to a progressive taxation system and has applied this to decisions on existing tax powers” – ‘Scotland’s Spending Plans and Draft Budget 2016-17’).

27. The proposed 3% rate of supplement leads to prohibitive rates of LBTT at the higher end of the market, with overall rates of 13% on property worth in excess of £325,000 and 15% on property worth in excess of £750,000.

28. Such high rates may deter senior executives and entrepreneurs considering potential relocation to Scotland (see paragraphs 57-60 for further comments regarding individuals potentially relocating to Scotland). This is contrary to the Scottish Government’s stated desire to ‘ensure that Scotland remains a competitive and attractive location for business’ (‘Scotland’s Spending Plans and Draft Budget 2016-17’).

29. We also consider that applying the proposed 3% supplement to purchase consideration in excess of £250,000 is unnecessary within the context of the stated policy intention of 'supporting home ownership in a balanced and sustainable way'. We cannot see how applying a supplement on consideration in excess of this level will assist first-time buyers or the vast majority of other home owners in Scotland.
30. Limiting the supplement to the first £250,000 of purchase consideration would ensure that it “targets the lower end of the market, where demand for properties for investment purposes or second homes could make it difficult for new entrants to the market to purchase a main residence” as stated in ‘Scotland’s Spending Plans and Draft Budget 2016-17’.

Q3 The Scottish Government’s estimate that the measure will raise between £17 million and £29 million in 2016-17

31. We cannot comment on the validity of this estimate without sight of the evidence on which it is based.

32. We are concerned, however, that this estimate does not take account of behavioural changes arising as a result of the supplement, for example:

- A reduction in the level of investment within the private rented sector
- Decisions made to purchase property elsewhere (including overseas) as a consequence of the supplement
- Decisions made to purchase cheaper property, or to refrain from making any purchase at all, as a consequence of the supplement
- Forestalling (see paragraphs 68-69 for further comments).

33. The first three examples above will also have the added result of reducing the level of receipts from LBTT at the existing ‘normal’ rates.

34. The first example above will additionally lead to a reduction in receipts arising from the Scottish rate of income tax. The UK government would also see a reduction in receipts from other taxes, including capital gains tax, inheritance tax and, depending on which reliefs are introduced, corporation tax.

Q4 Any reliefs or exemptions that we consider should form part of the legislation

35. We consider that the following exemptions and reliefs, considered further below, should form part of the legislation:

- Main residence relief
- Rollover relief
- Transfers with no change in the ultimate beneficial ownership of the property
- Transfers with no consideration other than the assumption of debt
- Exemption for accredited landlords
- Furnished holiday lettings
- Relocation for work or business purposes

36. It would also be appropriate to extend all existing LBTT reliefs to ensure that the supplement is covered by the relief, including:

- Multiple dwellings relief
Main Residence Relief

37. The HM Treasury consultation on ‘Higher rates of SDLT on purchases of additional properties’ suggests that purchases of a replacement main residence should be exempt from the higher rates. This is achieved by:

a) Exempting any purchase of a main residence which replaces another property used as a main residence at any time within the previous 18 months where that other property has been disposed of at the time of the new property’s purchase
b) Providing a refund mechanism where the new property is purchased as a main residence and the former main residence is then disposed of within 18 months

38. We consider that the refund mechanism under (b) is inappropriate for the LBTT supplement as it will place an undue burden on those unable to sell their former main residence before (or at the same time as) purchasing their new main residence. It will be extremely difficult in many cases for such purchasers to fund an additional 3% of the new property’s purchase price under these circumstances and this would prevent many such transactions from proceeding.

39. Such an approach is also particularly inappropriate in Scotland where missives are typically concluded some time before the date of entry, creating a legal obligation on the purchaser to proceed with the transaction. A purchaser who is then unable to fund an additional 3% cost on the purchase will be faced with penalties arising under the purchase contract. Such an outcome must be regarded as extremely unfair.

40. We therefore consider that all purchases of property should be provisionally exempt from the LBTT supplement where the purchaser:

(i) Intends to occupy the new property as their main residence, and
(ii) Has disposed of, or intends to dispose of, their current or former main residence

41. Full exemption should then apply when the conditions at (i) and (ii) have been satisfied.
42. If the conditions at (i) and (ii) are not satisfied within a specified period then the LBTT supplement would become chargeable at that point (subject to any other exemptions or reliefs which apply).

43. We also consider that main residence relief should extend to exempt the acquisition of an additional interest in an individual’s current main residence.

Rollover Relief

44. It is iniquitous that an individual who buys a small property (for any purpose) and then subsequently purchases a larger property (but without selling their first property) should suffer a higher tax charge than an individual who buys a larger property first and then subsequently buys a small property.

45. There are also many cases where individuals may have a minor interest in a property which it is not practical for them to sell. This often happens in the case of inherited property owned jointly by several siblings or cousins; or in the case of minor legal or equitable interests in property overseas.

46. We would therefore suggest that any individual who already holds an interest in another residential property should have the option to claim partial relief from the supplement. This relief would enable them to pay a reduced supplement based on the value of their existing property interest.

47. Where an individual already holds interests in two or more residential properties, the relief should be based on the most valuable of those property interests.

Transfers with no change in ultimate beneficial ownership

48. At present, a transfer to a company under the control of the transferor or their associates may attract an LBTT charge. We consider that such transfers should be fully exempt from LBTT, including the proposed supplement, as there is no change in the ultimate beneficial ownership of the property.

49. Such a relief would need to be subject to appropriate anti-avoidance measures (considered further in paragraphs 62-63).

Transfers with no consideration other than the assumption of debt

50. Applying LBTT to gifts of property is unnecessary within the context of the stated policy intention of “supporting home ownership” since there is no possibility of potential first-time buyers or other home owners being in competition for the purchase of such properties. We also consider that it is unfair to impose any tax charge on a gift of property.

51. Gifts of property should therefore be fully exempt from LBTT, including the proposed supplement. This should include cases where the transferee assumes responsibility for
a mortgage or other charge over a property (currently treated as deemed consideration).

52. Such a relief would need to be subject to appropriate anti-avoidance measures (considered further in paragraphs 64-65).

**Accredited Landlords**

53. In order to maintain the quality of Scottish housing stock and to meet the ever-increasing demand for housing, we consider that it would be appropriate to provide an exemption from the supplement for accredited landlords. Existing accreditation schemes could be developed incorporating appropriate criteria.

54. We consider this approach to be more appropriate than the suggested approach for the higher rates of SDLT set out in HM Treasury’s consultation on ‘Higher rates of SDLT on purchases of additional properties’ as it allows for a qualitative approach to the benefits of individuals, companies or other entities investing in Scottish housing rather than an approach based purely on quantity or legal structure. We do not see how a purely quantitative approach will guarantee the quality of Scottish housing stock and nor do we see the relevance of legal structure.

55. Furthermore, for the reasons explained in paragraph 10, any measure which encourages corporate investment at the expense of individual investors would have the effect of reducing the Scottish government’s revenue receipts.

**Furnished Holiday Lettings**

56. Tourism represents a significant and important part of the Scottish economy. The industry relies on the availability of high quality holiday accommodation for tourists and other visitors. Property purchased for the purposes of furnished holiday letting should therefore be exempt from the supplement.

**Relocation Relief**

57. Individuals who relocate for work or business purposes and purchase a property in their destination location may not wish to sell their existing home, especially if the relocation is intended to be temporary or if the individual is uncertain about their long-term intentions. Individuals may also need to retain their existing home for family reasons.

58. Imposing the supplement under these circumstances will act as a deterrent to potential migrants from overseas or elsewhere in the UK and will be detrimental to the Scottish economy as it will inhibit Scottish businesses attempting to recruit the most talented individuals to join the Scottish workforce.
59. It is also unfair that a worker intending to relocate to Scotland who must retain a property elsewhere (e.g. as a family home) should be placed at a disadvantage compared with another migrant worker without such a property.

60. For these reasons, we consider that it is appropriate to include an exemption for individuals relocating for work or business purposes.

Q5 The potential for tax avoidance under the supplement and how this should be addressed

61. Some of the reliefs outlined above and the approaches outlined in paragraphs 71-83 would require anti-avoidance legislation to prevent them from being abused.

Transfers with no change in ultimate beneficial ownership

62. We would suggest that the relief should be withdrawn if the transferee company is sold on to an unconnected party within a specified period (e.g. within twelve months).

63. A sale of some of the shares in the company to an unconnected party within this period should lead to a partial withdrawal proportionate to the number of shares sold (as a proportion of total shares issued).

Transfers with no consideration other than the assumption of debt

64. This relief should be subject to restrictions in order to prevent abuse. We would suggest that the relief is not available where:

i) The debt has been in existence for less than twelve months, and
ii) The debt was taken on in order to secure a tax advantage

65. An alternative might be to restrict this relief to gifts to a defined class of relatives or into a settlement for the benefit of a defined class of relatives.

Joint Owners

66. Under our suggested approach to joint owners outlined in paragraphs 74-75, we would suggest that any subsequent lifetime transfer of an interest from a joint owner who was not subject to the supplement to a joint owner who was subject to the supplement should lead to an LBTT charge on the transferred interest. This charge should be equal to the supplement which would have been charged on the transferred interest at the time of the original purchase.

67. Where there is any consideration for the transfer of a joint interest, double tax relief should be available to prevent a double charge.
Q6 The likely impact of forestalling

68. Some degree of forestalling is likely to occur. This will lead to a temporary increase in the level of property transactions taking place in the period immediately preceding the introduction of the supplement; followed by a period of reduced activity thereafter.

69. The recent transition from SDLT to LBTT for Scottish property purchases taking place on or after 1st April 2015 appears to have led to a significant reduction in the level of Scottish property transactions for several months after the change. We would suggest that the available data relating to this transition should be reviewed in order to provide the best indication of the probable level of forestalling arising as a consequence of the introduction of an LBTT supplement.

Q7 Other comments

70. The legislation will need to address a number of other key issues, as outlined below:

Additional Property

71. It is important to define when an individual will be considered to be acquiring an additional property. We would suggest that the initial ‘default’ test should be that an individual will be deemed to have acquired an additional property where:

i) They either:
   a. already had an interest in another residential property prior to the purchase of the new property, or
   b. they acquire two or more residential properties simultaneously, and

ii) They have an interest in two or more residential properties on the due date for submission of the LBTT return

72. In a case falling within (i)(b) but not (i)(a), one of the newly acquired properties should not be treated as an additional property. The purchaser should be able to nominate which property is not an additional property.

73. In the interests of fairness, it is important that any interest in another residential property anywhere in the world should be taken into account. This should, however, be subject to the rollover relief described in paragraphs 44-47 - which is important to prevent individuals from being disadvantaged by minor property interests overseas.

Joint Owners

74. Two or more individuals may purchase property jointly for a variety of reasons. In some cases, it will be driven by necessity, such as in order to satisfy a lender’s requirements. In such cases, it would be unfair to impose the supplement on a joint purchaser who has no interest in any other residential property.

75. We consider that the fairest approach is to treat each joint owner on an individual basis. Hence, for example, where two individuals acquire a property jointly (on an
equal basis) and only one of them has a pre-existing interest in another residential property, then the supplement should only apply to half of the purchase consideration.

Married Persons and Civil Partners

76. We cannot see any logic for treating married persons and civil partners differently to other individuals.

77. We would suggest that the simplest and fairest approach is to treat each person on an individual basis.

Trusts

78. Provision will need to be made for purchases made by trusts. In this specific regard, we consider the approach outlined in the HM Treasury consultation on 'Higher rates of SDLT on purchases of additional properties' to be appropriate for the LBTT supplement also.

Companies and other Corporate Entities

79. The legislation will need to make provision for the treatment of companies and other corporate entities.

80. Subject to the reliefs outlined in paragraphs 35-36, we would suggest that all purchases of residential property by companies and other corporate entities should be subject to the supplement.

Partnerships

79. The legislation will also need to make provision for the treatment of partnerships.

80. We would suggest that, for property purchases made by a partnership, individual partners are treated in the same way as we have suggested for joint owners, as described above.

81. For subsequent transfers of interests in partnership property, the existing rules should be extended to cover the proposed supplement.

82. This is subject to the proposed rollover relief described in paragraphs 44-47 being available in respect of any interest in partnership property.

83. In the interests of fairness, the legislation should be framed in such a way that it applies equally to partnerships constituted under Scottish Law or English Law or to any arrangements under the laws of any other territory which are similar to a Scottish or English partnership.
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from ICAS

About ICAS

1. The following submission has been prepared by the ICAS Tax Committee. This Committee, with its five technical sub-Committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 committee members. The Institute of Chartered Accountants of Scotland (‘ICAS’) is the world’s oldest professional body of accountants and we represent over 20,000 members working across the UK and internationally. Our members work in all fields – predominantly across the private and not for profit sectors.

2. ICAS has a public interest remit – a duty to act not solely for its members but for the wider good. Evidence provided by ICAS aims to inform in a positive and constructive manner. ICAS is apolitical and will not take a stand for or against a particular political position. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in the design and implementation of fiscal measures, and to point out operational practicalities. Our representatives also contribute based on the collective experience of decades of work which ICAS members and staff have undertaken with both the UK and Scottish Parliaments and tax authorities, and other European and worldwide institutions, on a shared agenda that seeks better outcomes for all stakeholders.

General Comments

3. ICAS welcomes the opportunity to comment on the proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes as announced in the Scottish Government’s Draft Budget 2016-17. Similar measures are proposed by the UK Government in relation to SDLT and therefore we attach the ICAS Tax Committee’s comments to HM Treasury on its consultation on “Higher rates of Stamp Duty Land Tax (SDLT) on purchases of additional residential properties”. In general, the same points are relevant here.

4. The additional tax charge will apply to much more than an individual acquiring a second home. For example, it appears that any acquisition of residential property by a company will be subject to the additional charge, subject to any relief for bulk purchases. It is not clear what will be the impact on the property market with an LBTT supplementary charge of 3% on property sales.
5. The LBTT supplement may have an effect on the supply of new private rental accommodation in Scotland as potential landlords are discouraged by the LBTT supplement and existing landlords do not expand their portfolios. Other changes to the tax system to be introduced by the UK Government will have an impact on landlords.

6. The ICAS Tax Committee has not yet had time to fully review and consider the ‘Land and Buildings Transaction Tax (Amendment) (Scotland) Bill’ that was published on 28 January 2016, but should it have comments or concerns in relation to this Bill these will be raised in due course.

7. Should there be a policy decision to encourage investment in Scottish bulk purchases of residential property, then to avoid Scotland being disadvantaged to the rest of the UK it will be important that there is a relief for bulk purchases. This is not currently included in the draft Bill published on 28 January 2016. The proposal under SDLT, subject to consultation, is that the relief applies where 15 or more properties are acquired.

8. The arrangement for repayments of LBTT where a property is sold within 18 months will increase the workload of Revenue Scotland in checking and processing the repayment claims.
ICAS response to the HM Treasury consultation

‘Higher rates of Stamp Duty Land Tax (SDLT) on purchases of additional residential properties’

1 February 2016
About ICAS

1. The following submission has been prepared by the ICAS Tax Committee. This Committee, with its five technical sub-Committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 committee members. The Institute of Chartered Accountants of Scotland (‘ICAS’) is the world’s oldest professional body of accountants and we represent over 20,000 members working across the UK and internationally. Our members work in all fields – predominantly across the private and not for profit sectors.

General Comments

2. ICAS welcomes the opportunity to comment on the HM Treasury consultation higher rates of Stamp Duty Land Tax (SDLT) on purchases of additional residential properties, issued on 28 December 2015.

3. The proposals for higher rates of SDLT on additional residential properties are likely to add to the considerable complexity which already exists around the taxation of residential property purchases.

4. In these proposals little consideration appears to have been given to aligning definitions and exemptions across different taxes. Looking solely at the SDLT regime itself there were already complications in determining the rates applicable to residential property, for example the multiple dwellings relief or the possibility of applying non-residential rates on purchases of 6 or more properties; the current proposals compound these. This does not sit well with the government’s aim to simplify the tax system.

5. There may also be unintended consequences. Landlords affected by these proposals and other forthcoming changes to the treatment of property, such as the restriction of interest relief for unincorporated property businesses, may seek to increase rents. In the short term, blockages may be created in the housing market.

6. The proposed implementation date of April 2016 leaves limited time for consultation to ensure that the new rules are properly thought through and any exemptions targeted in a way which will support the government’s aim of increasing the housing supply. It is also hard to see that the proposed new system for refunds can be designed and built before April so that it is functioning properly when large numbers of claims for refunds become part of the SDLT regime.

Specific questions

Question 1: Are there any difficult circumstances involving family breakdown which mean that treating married couples and civil partners as one unit until they are separated is not appropriate? If there are, how would you suggest those circumstances are treated?
7. Some aspects of the consultation proposals are similar to the approach used for the CGT main residence relief but there are some differences which are likely to lead to unnecessary complexity and uncertainty. For the purposes of the SDLT higher rates it appears that married couples and civil partners will cease to be treated as one unit from the date of separation under a court order or by formal deed of separation. Therefore if an additional property is acquired as part of the separation process prior to the ‘date of separation’ it will be subject to the higher SDLT rates. It would be sensible for the rules to mirror the CGT rules so that the couple would be treated as separate individuals in the tax year following separation.

Question 2: Do you agree that, where property is purchased jointly, if any of the purchasers in a transaction are purchasing an additional residential property and not replacing a main residence, the higher rates should apply to the whole transaction value? If not, how would you suggest the government treats joint purchasers?

8. As the consultation notes this is a simple approach to joint purchasers. However it is also clearly unfair to those purchasers in a joint transaction who do not already own a residential property. It may be a deterrent factor for some individuals who are buying with assistance from a family member, where the family member already owns another property. The family member’s contribution to the joint purchase may be relatively small but the entire value of the transaction will be subject to the higher rates. This would appear to conflict with one of the stated aims of the changes which is to help first time buyers. A fairer approach would be to charge the higher rate only on the proportion relating to the purchaser(s) who already owned another property.

Question 3: For the first stage of the test for determining whether a purchaser is replacing an only or main residence, does considering previously disposed of property in the way presented above cause practical difficulties or hardship in particular cases?

9. As noted in the response to Question 1 there are some areas in the proposals where the rules for the higher SDLT rates differ from the CGT treatment leading to unnecessary complexity and uncertainty. For CGT purposes where an individual or a married couple/civil partnership own more than one residence an election can be made for one of the properties to be treated as the main residence. Such an election for SDLT is specifically ruled out in paragraph 2.8 of the consultation because ‘it would be open to abuse’. It is unclear why the scope for abuse is considered to be greater than for CGT, particularly if the rules provided that any election would apply for both CGT and SDLT purposes.

10. The assertion in paragraph 2.8 that in most cases the position will be clear may be correct but without the possibility of an election for SDLT purposes uncertainty and the possibility for disputes will be introduced. An individual might own a property in the town where they work and another home in the countryside. Using the factors noted in the consultation, which are similar to those used for determining the main residence for CGT, there
could be indicators pointing to either property being the main residence. For CGT this could be resolved by an election; for SDLT, when one of the properties is disposed of, it may be unclear whether it is the main residence which has been disposed of or not. This will cause uncertainty and give the potential for a dispute with HMRC.

11. There may be even greater uncertainty for married couples and civil partners. The consultation gives a very straightforward example of a married couple owning two properties, one of which is convenient for their work and their children’s school and where they spend most of their time, and a holiday home which they visit occasionally. It is clear that the first property will be their main residence. However it could be much harder to determine where they own two residences, one of which is convenient for one spouse’s workplace in town and where that spouse spends considerable time. The other property could be out of town and close to the other spouse’s workplace and/or the children’s school. The factors to be considered might point to the first property as the main residence for one spouse but to the second for the other. Again for CGT this could be resolved by an election but for SDLT it could lead to uncertainty and potential disputes.

12. We suggest that the possibility of an election for one property to be treated as the main residence should be reconsidered with the election determining the position for both CGT and SDLT.

Question 4: For the second stage of the test, do you agree that the rule should require the purchaser to intend to use the newly purchased property as their only or main residence?

13. See our response to Question 3. The consultation gives examples where the position is clear cut. As noted in our response to Question 3 it may sometimes be very unclear, especially for married couples or civil partners, whether the property disposed of was the main residence. It follows that there may be similar problems determining whether the new property is a replacement main residence or not.

Question 5: Do you agree that 18 months is a reasonable length of time to allow purchasers a period between sale of a previous main residence and purchase of a new main residence that allows someone to claim they are replacing their only or main residence and therefore not pay the higher rates of SDLT?

14. In general 18 months is likely to be a reasonable period. We can however envisage difficulties where the sale of the previous residence is delayed by unexpected factors which arise after a commitment to buy the new residence has been made, for example, planning blight or flooding. Is there scope to allow an extension of the period in exceptional circumstances? Looking at capital gains tax private residence relief, ESC D49 suggests a possible approach. It allows relief in certain circumstances for a delay in taking up residence, for a period up to 12 months, but allows for the 12 month period to be extended to 24 months where there are good reasons which are outside the individual’s control.
For additional SDLT purposes the standard period within which the previous main residence has to be disposed of would be 18 months but with a possible extension to, say, 24 or 36 months in cases where sale of the previous residence was delayed due to circumstances beyond the individual’s control.

15. There may be a case for a transitional rule for those who owned a main residence and, say, a holiday home and had already sold their main residence before the announcement of the proposed higher rates of SDLT in the Autumn Statement ie at a time when they did not know that there would be an 18 month period to purchase a new main residence to avoid the higher rates. Instead of the 18 month period beginning on the date of the sale of the previous residence it could begin from either the date of the Autumn Statement or from 1 April 2016.

16. We also envisage that there may be an adverse impact on some internationally mobile workers. A worker might be on an overseas assignment for, say, three years. Before leaving they sell their main residence but retain a rental property (on which, under the new regime, they will have paid the additional rate of SDLT). Whilst abroad they live in employer provided accommodation. On their return they buy a new main residence but because the gap is more than 18 months and they still own the rental property they will be liable to pay the additional rate of SDLT. Could an extension to the 18 month period to acquire the new main residence be permitted where the delay arises from a work related assignment?

Question 6: Do you agree there should be a refund mechanism in place for those who sell their previous main residence up to 18 months after the purchase of a new main residence? Are there any other cases where a refund of the additional SDLT paid should be given?

17. We can see the logic behind the proposal to make purchasers pay the higher rate of SDLT and then claim a refund when the previous main residence is sold. It would be unrealistic to defer collection of the additional SDLT until 18 months has elapsed. It is however likely to place considerable strain on some purchasers, especially where the delay in the sale arises unexpectedly perhaps due to the last minute breakdown of a chain. There could be significant cash flow issues for purchasers already taking on bridging loans and fees. There could also be problems where the previous residence unexpectedly becomes difficult to sell quickly (for example due to flooding) as noted in our response to Question 5 above.

18. The consultation document notes that currently the number of refunds of SDLT is small. A new online system is proposed – with consultation on the design of the refund process. We are concerned that it will be very challenging to have this process in place in time for the introduction of the higher rates from 1 April 2016, particularly as other major IT projects are currently being undertaken by HMRC. As noted above some purchasers are likely to have cash flow problems so it is important that the refund system works effectively, with refunds made promptly, right from the start.
Question 7: Can you suggest any other actions the government could take to mitigate the cash flow impact on those who only temporarily own two residential properties?

19. As the consultation document notes it is likely to be burdensome for individuals to pay the higher rate of SDLT and then claim a refund where the two properties are only held for a short period of time. The consultation suggests that the vast majority of residential property transactions will not pay the higher rates of SDLT but the risk that the higher rate could apply will affect many transactions involving chains, which could break down at a late stage meaning that the sale of the old residence and purchase of the new one cannot take place on the same day. It could adversely impact on borrowers’ ability to obtain finance if lenders are concerned about the risk. Insurance against the risk might become available but at additional cost.

20. The proposal to allow the normal rates of SDLT to be paid as long as the previous main residence has been sold by the time the SDLT return is filed is likely to be of limited assistance. Firstly the government has already proposed that the time limit for filing the returns will be reduced to 14 days from the current 30. Secondly mortgage lenders are unlikely to accept any delay in filing the SDLT return so many purchasers will be unable to benefit. One possible alternative option would be to establish the liability to the additional SDLT but to allow purchasers to request deferral of payment for a limited period – perhaps 30 days to tie in with the current SDLT filing limit. The deferred SDLT would be due for payment at the end of the period if the previous property had not been sold by that date.

Question 8: Are there any other situations regarding main residences which require further consideration?

Question 9: Would there be a benefit to a significant number of purchasers if the test for whether someone owns one, or more than one, residential properties, were undertaken at the time of submitting the SDLT return, rather than at the end of the day of the transaction?

21. See the response to Question 7.

22. This may be an issue for some internationally mobile workers coming to work in the UK. They might wish to retain their residence in their home country to return to after the UK assignment. If they then purchase a property in the UK, which is occupied as their main residence whilst they are working in the UK, it will be a second property and subject to the additional rates of SDLT. This may be an intentional policy decision by the government but could present problems for companies making use of internationally mobile mobile employees.
Question 11: Do you agree with the proposed treatment of furnished holiday lets?

23. Yes.

Question 12: Are there any other cases which the government should consider?

Question 13: Do you agree that an exemption should be available to individual investors as well as all non-natural persons? Alternatively, is there evidence to suggest any exemption should be limited to only certain types of purchaser? If so, which types of purchaser?

24. In view of the forthcoming changes to the rules on interest deductions for property businesses (which do not apply to companies) it is perhaps unlikely that there will be many bulk purchases of 15 properties or more by an individual investor in future. An individual investor might however already hold 15 properties in a portfolio; if they purchased an additional individual property this could be in competition with first time buyers as noted in the consultation. This might suggest that if the exemption is framed around the bulk purchase of 15 or more properties in one transaction the inclusion of individual investors would make little difference but if it is based on a portfolio approach the conclusion could be different. We do not have any evidence on which to base a more detailed answer but it is not clear to us how the portfolio approach would assist with the aim of increasing housing supply.

25. The ATED rules include an exemption for property developers but none appears to be contemplated for SDLT, unless a developer qualifies for the proposed bulk purchase exemption. Multiple dwellings relief might assist developers in some cases, as set out in Example 37 in the consultation. However we are unsure whether this approach and the lack of an exemption will support the aim of increasing housing supply. We assume that the government will be discussing the precise framing of any exemptions with property developers to ensure that it does.

Question 14: Do you think that either the bulk purchase of at least 15 residential properties or a portfolio test where a purchaser must own at least 15 residential properties are appropriate criteria for the exemption? Which would be better targeted?

26. See the response to Question 13.

Question 15: Are there better alternative or additional tests that could be used to better target an exemption and fulfil the government’s wider housing objectives?

27. See the response to Question 13.

Question 16: Are there any other issues or factors the government should take into account in designing an exemption from the higher rates?
Question 17: Do any specific kinds of collective investment vehicle or other non-individuals need to be treated differently to companies?

Question 18: Do you agree with the proposed treatment of trusts, including the higher rates of SDLT applying to trusts purchasing residential property except where a purchase is a first property or replacement of a main residence for a beneficiary?

Question 19: Do you think that purchasers are more likely to give accurate answers to main residence questions if HMRC provides specific questions for the conveyancer to ask the purchaser?

28. Where the circumstances are straightforward, as in the examples given in the consultation, it may assist conveyancers to have some specific questions to ask but as stated in the consultation the ultimate responsibility remains with the purchaser. As noted in the responses to questions 3 and 4 it may not always be easy to determine whether a property is a main residence or not, particularly in the absence of any option to make an election. Where there is considerable uncertainty purchasers may want some form of clearance from HMRC to avoid the risk of possible substantial penalties and interest if they reach the wrong conclusion.

Question 20: Would a formal declaration by the purchaser that the answers to any such questions are accurate help to increase compliance without creating undue burdens for conveyancers? How do you think such a declaration should work?

29. See the responses to questions 3, 4 and 19. There would need to be a mechanism for dealing with genuine uncertainty about whether a property was a main residence or not.

Question 21: Besides normal publicly available guidance, are there any additional products that HMRC can provide to help purchasers understand what rates of tax they will be paying on a planned purchase?

30. Given the complexity of the rules which will apply, it is hard to see that purchasers contemplating anything other than a straightforward sale of their main residence and replacement with a new main residence will be able to avoid taking advice. Even in these straightforward cases advice may be needed on financing because of the risk that the higher rate will apply if the sale of the previous residence and purchase of the new one cannot be completed on the same day.
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from John Brown

The financial implications of the increased LBTT levels make Scotland a more expensive place to buy a home. It has wide implications for the Scottish market in the sector over £350000. This has already reduced sales levels and Tax take. The market reacts by not purchasing assets reluctant or unwilling to paying additional tax on purchase out of equity. Those moving to Scotland for work on short term contracts will rent rather than buy. Job flexibility in the higher paid employment sectors will allow commuting rather than making a move was more traditional.

Transactions reduced the market stumbles as the effects of cost of moving are scrutinised with LBTT and fees a major consideration. Staying put and adding improvements to an existing home more likely when costs are considered in depth. Avoiding property as an investment is now a reality with Scottish Government consideration of proposed rental controls. You are creating a perfect storm to stop private investment in Housing rentals. This at a time when there is need.

There may be merit in additional tax on a second property when it suits. Taking the lead from Westminster better if the rates on stamp duty/LBTT were also aligned. LBTT levy at rates in excess of SDLT in England is wrong judgement. Adding the 3% will simply for second home or letting markets mean less investment in Scotland by private investors.

Typically a flat in Marchmont, Edinburgh with three bedrooms and with an HMO licence sells around 350k, costs to buy add 13% for tax 1% fees, no value return for the costs. Income is taxed without higher rate mortgage tax relief from April onward. To recover the cost of investment the flat has to increase in value by 13% plus interest to stay equivalent before any gain can be realised. The income derived therefore has to be key reason to purchase. Taking account of repairs and management this is unlikely to be more than 3%.

The result will be less investment in property leading to less accommodation availability. A massive social Housing programme can be commenced the costs of that should be considered against what loss in real terms private accommodation means. If the private sector shrinks by 15% you simply add a greater burden to housing requirements elsewhere.

John Brown
Turning a threat into an opportunity

Plans by the UK and Scottish Governments to add a supplemental 3% tax on the purchase price of any residential property being bought as someone’s second home, whether for holiday use, as a buy to let or any other reason were a surprise for most investors and landlords. Many investors were already considering how changes to mortgage interest tax relief would affect their investments. The snappily named Stamp Duty Transaction Tax (SDTT) Additional Rate in England, Wales and NI and the Land and Building Transaction Tax (LBTT) Additional Home Supplement in Scotland are due to come into force for all purchases concluding contracts or missives after 1 April 2016.

It’s a substantial tax. Anyone buying a second home at £200,000 will now be faced with an additional tax of £6,000; probably half to three quarters of the first year’s income from a typical buy to let.

Stamp Duty Transaction Tax (SDTT) Additional Rate in England Wales & NI

The UK Government introduced this additional tax rate of 3% against the full price of a second residential property being bought by anyone in England, Wales & NI.

The key reason given is to help those purchasing their main residence afford to buy a home more easily by applying a tax charge to others which they hope will reduce the number of landlord investors (or second home buyers for any reason) competing with them in the housing market.

The UK government consultation on this additional SDTT rate says “the government is aware that some purchases of additional properties can positively contribute to an overall increase in housing supply and support the government’s wider housing strategy, helping to facilitate the development and quality of the housing stock across tenure types” and that “in designing any exemption a careful balance needs to be struck to ensure that the higher rates of SDLT support home ownership and first time buyers, and do not discourage those significant investments in residential property.”

The UK Government is considering an exemption for bulk purchases of 15 or more properties in a single transaction.

Land & Building Transaction Tax (LBTT) Additional Home Supplement

There was already quite a bit of discussion amongst investor groups about the opportunity for Scotland to “benefit” from the SDTT additional rate as investors may consider investing in Scotland instead.
It is no surprise, therefore, that the Scottish Government has matched the SDTT change by introducing an identical Additional Home Supplement (LBTT AHS).

If they had not then the potential increase in investment from buyers outside Scotland really could add heat to the housing market in sales and make it harder for those buying their main residence.

The Scottish Government is also considering an exemption for bulk purchases of property by investors.

**Disadvantages of SDTT & LBTT in General**

The move, first by the Scottish Government and followed by the UK, to make these taxes more progressive last year was a welcome one. By reducing the tax paid on lower value homes it made the tax theoretically more progressive although it would also increase competition initially at least by helping more people “afford” to enter the market and may actually push prices at the lower level up.

It was a particularly welcome improvement to make each increasing band rates apply only to that band and not the whole value as that was often distorting the market around the change point for each band.

It remains the case, however, that these taxes are not in any way based on income or ability to pay. It is a straightforward tax on home ownership and makes homes less affordable which goes directly against stated aims of both governments: to make housing more affordable.

Although many first time buyer homes will now be exempt the higher band rates will make it harder for many to move up the ladder. If they don’t move then their current home is not being made available to those needing their first home restricting supply. They may only be able to afford to sell it at a higher price to ensure they can afford their bigger home.

**Benefits of the LBTT AHS**

It is likely that LBTT AHS will achieve its stated aim of discouraging investors and helping those buying their main home. We have already seen examples of investors pulling out of plans to invest due to this and other recent tax changes.

**Disadvantages of LBTT AHS**

The new charge will, however, work very strongly against the Scottish Government’s key strategy for the Private Rented Sector (PRS) which was set out in 2013: A Place to Stay, A Place to Call Home: A Strategy for the Private Rented Sector in Scotland.

This strategy’s primary aim is “to improve and grow the PRS by enabling a more effective regulatory system, targeting tougher enforcement action and attracting new investment”.

LBTT is a clumsy tax at best and so is the Additional Home Supplement. It takes no account of wealth or individual circumstances. A typical landlord is a normal working individual, couple or family. 95% of landlords own less than 5 homes and 70% just a single buy to let. Many landlords rent out their first home when they move in with a partner or buy a bigger family home. They often do so because they don’t have much of a pension and see this as something to help in retirement. Many of those investors who buy a home specifically to let are just the same – normal families buying an investment as part of their pension or
retirement plans. LBTT AHS will dramatically impact on the ability of most “normal” landlords and investors to afford to enter the buy to let market.

Unintended Consequences

Carefully planned, considered and consulted on tax measures for the right reasons can be a good idea and have good impacts on markets but these changes seem to be blunt changes with little consideration of the impacts. Proper stakeholder engagement and the usual public consultations on significant tax changes like these provide the opportunity to scrutinise the detail and uncover unintended consequences on individual circumstances that can literally ruin people’s lives. What about the couple stuck in a small flat unable to sell because they paid too much in 2007 and it’s now worth less than they paid? 8 years later they have two babies and badly need to move. They can’t sell but by working hard they’ve managed to save enough for a new deposit on a family home which they were planning to buy this year and then rent out their original flat. They’ll now be hit, not with a 3% tax charge on the low value flat they don’t really want and can’t afford to sell, but on the whole value of the new family home which is a much more penal charge. That cannot be right and must not be dismissed as unusual. As a letting agent we have many similar examples from the last eight years.

Growing PRS Sector – Demand Outstripping Supply

The PRS sector has doubled in the last ten years. Whilst many of these new tenants would prefer to buy but can’t afford to that’s not the whole story. There is evidence that much of this growth is from changing demographics with more young people settling down later in life or moving around to work more.

There’s a large disparity between demand and supply in the sector and this is getting much worse in hotspots like Edinburgh City Centre over the last year or so. A longstanding problem exists around quality and standards with much of the PRS supply being older properties and many not in a good state of repair. Many landlords are reluctant landlords with big mortgages and/or often negative equity left over from paying too much for it just before the financial crash in 2008 from being unable to sell their property and cannot afford to properly maintain them. Many are also in poor condition but the landlord won’t invest to improve standards because they know that due to high demand and low supply they will not achieve enough extra rent by doing so to pay back on the investment.

More investment in PRS housing is essential to bring supply closer to demand which could also improve standards by ensuring competition between properties/landlords.

Exemption for Bulk Purchases by Investors such as Build to Rent

An exemption from the Additional Home Supplement for investors buying at scale is a sensible one. With the Scottish Government appointed, and funded, PRS champion tasked with helping to drive new investment in build to rent developments the additional home supplement would make this task far more difficult. It is not clear why 15 is chosen as the limit for this, however, and consideration of the appropriate level should involve discussions with institutions investing in the sector. It is important that the exemption does apply to not just the purchase of a new build block or development but to the future sale/purchase.

Exemptions should be focused on purchases of properties in a single site or development which meet the threshold. If the supplement is intended to make more properties available for those buying their main home, and to be consistent and fair to both small and large
investor, then portfolios of properties which are just a collection of individual properties not in
the same development should not be exempted.

These investors are not competing with those buying their own home and are often
developing homes which would not otherwise be built.

**Opportunity to Differentiate LBTT from Stamp Duty**

The Scottish Government has a chance to take this threat to investment in the PRS sector
and turn it into an opportunity. Remember these three things:

1. The supplement is intended to reduce competition from investors and help those
buying their main home, rather than bring in higher tax receipts.
2. Investment in the PRS sector is badly needed. The sector is growing in demand
growing, supply is already failing to meet that demand by a growing margin demand,
rents are rising sharply in some areas and the quality in many let homes is poor.
3. New build development is slow or still stalled in some areas and although confidence
to build is growing as sales pick up, builders are very much building on demand.
Sites are sold out over a number of years with no direct competition between buyers.
Clearly prices could rise if demand rose but equally it could be argued that there are
many sites ready to go that could be brought on stream if sites sell out quicker.

The Scottish Government therefore has a great opportunity to exempt all purchases of brand
new build homes for buy to let from the new additional home supplement, potentially without
impacting on their intention to reduce competition for those buying their main home. This
could:

1. Allow investors to continue badly needed investment in the PRS sector
2. Attract welcome new inward investment from overseas or rest of UK
3. Improve quality in the PRS sector by encouraging investment in new build
4. Help drive up standards in existing stock as competition from new build lets kicks in
5. Increase speed of completion on new build sites in areas of high demand
6. Increase confidence of house building sector to start new sites
7. Help prevent the increased rental prices predicted due to the additional home
supplement
8. Potentially drive down or stabilise rents due to increased inward investment

The key point to focus on is the idea is that focusing all buy to let investment in new
build will mean that demand can potentially be met by increased housebuilding
activity rather than taking property away from those buying their own home.

The Scottish Government should ensure that a full stakeholder engagement and
consultation process follows the start of this new tax and ensure proper research on the
impacts is carried out regularly to monitor to effect of the supplement and exemptions or
reliefs such as those suggested.
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from Kay Linton

I would like to comment on the proposed additional 3% charge on LBTT as follows:

Buy to let properties

1. This sector is already being badly affected by UK tax changes. At present landlords are currently able to offset all their finance interest against their rental income, before calculating their rent profits and therefore their tax bill. The UK Government proposes to forgo this relief giving landlords a higher tax bill, even if their property makes a loss thus making it less attractive for landlords to purchase a residential property.

This is already causing problems. Some landlords will pass on costs by raising rents; others will try to sell properties to reduce debt and risk. This may lead to tenants being evicted and homeless.

2. The private rented sector is facing enormous change with new tenancy legislation being introduced, and new compliance requirements in addition to those already in place. While much of the legislation is perhaps fair these additional administrative measures are off-putting for many landlords.

3. The Scottish Government wishes to increase housing supply. In the present economic market some individuals are disinclined or simply cannot afford to become home owners. The residential letting market is imperative for these people.

4. Edinburgh, our capital is renowned for its festival in August. Accommodation in the city is already difficult at that time of year. If the Scottish Government take away a healthy letting market those who would come to the city and boost the economy, simply wont come.

5. Similarly housing students in the university cities is at bursting point. Many of them cannot find accommodation and are housed in hostels. This has an impact on their education which the Scottish Government is trying to promote. If the Scottish Government continues with these disincentives rather than promote investment the consequences are more far reaching.

In summary, Scotland needs a healthy private rented sector. The above tax changes and administrative changes are causing existing investors to leave the market. There is already a disincentive for investors to buy new buy to let property and an additional 3% addition on the rate of LBTT will make it an even less attractive proposition. Instead of having a
healthy private rented sector the Scottish Government are in danger of losing investment and gaining a larger homeless population which the government will in turn have to try to house.

**First time buyers**

The Scottish government is trying to promote first time buyers. Some of these first time buyers are helped by their parents, who rightly may wish joint ownership. An additional levy on this type of purchase is not going to help young people get onto the housing ladder.
Finance Committee Call for Evidence

Land and Buildings Transaction 3% supplement
Submission from KPMG LLP

Introduction
KPMG LLP ("KPMG") is a global network of professional firms providing audit, tax and advisory services. KPMG’s Scottish offices are located in Aberdeen, Edinburgh and Glasgow.

We welcome the opportunity to participate in the Finance Committee's call for evidence in relation to the proposed introduction of the LBTT supplement on additional residential homes.

Call for evidence
The Committee is seeking views on the following:

1) The Scottish Government’s overall policy objectives in introducing the supplement and, in particular, whether it
   - Is likely to “complement the Government’s commitment to supporting home ownership in a balanced and sustainable way.”
   - “helps to ensure that the tax charge is proportionate to the taxpayer's ability to pay.”

We understand that the introduction of the 3% supplement is intended to help achieve the Government’s objective to support home ownership in Scotland, by deterring purchasers other than those replacing a main residence from the acquisition of additional residential properties.

When introducing the 3% supplement, the Scottish Government should consider how the application of the supplement could act as a deterrent to the development of new homes in Scotland, as those wishing to purchase buy-to-let properties and second homes will face a significant additional cost. Investors in the private rental sector (being both individuals and corporate bodies) are a key driver in ensuring that new residential properties are constructed, whether by way of direct investment into new developments, or in ensuring that house builders are confident that there will be a buoyant market for their product. A key driver in achieving the Scottish Government's objective of affordable home ownership will be the availability of suitable housing stock. We therefore recommend that the Scottish Government provide relief from this supplement for genuine property investment businesses (whether operated by corporate entities or individuals), to ensure that the introduction of the supplement does not act as a deterrent for investment into, and so development of, new residential developments in Scotland. The scope of the relief requires careful consideration to ensure that it
is effective. The proposed exemption in the consultation document for the equivalent SDLT has a number of problems and is likely to be the subject of discussion in consultation meetings and responses.

Has the Scottish Government given any consideration as to whether the introduction of a relief for first time buyers may assist in better supporting their objective of achieving affordable home ownership in Scotland?

2) **The proposed 3% rate for the supplement and the £40,000 purchase price at which it is proposed to take effect.**

The application of a 3% supplement provides cross-border consistency with the rest of the UK. A higher supplement would likely result in those wishing to purchase additional residential properties looking to England and Wales. However, the Scottish Government may wish to consider whether a supplement below 3% would encourage greater investment into residential property in Scotland.

We welcome the exemption from the supplement for properties with a purchase price below £40,000, meaning that such purchases continue to be non-notifiable.

3) **The Scottish Government’s estimate that the measure will raise between £17 million and £29 million in 2016-17.**

It is unclear how the Scottish Government has arrived at this estimate. The consequences for introducing the 3% supplement are unlikely to be predictable, at least in the short term. In particular, the charging provisions are likely to have consequences that are inadvertent (‘collateral damage’). This is inevitable with significant legislative changes, especially those implemented rapidly with minimal consultation. Any estimate must be read with caution. It is unclear whether the policy intention of the supplement is to deter the purchase of additional residential properties (in which case the absence of any revenue attributable to the supplement would be a success) or raise revenue which can be applied to building affordable housing. This should be made clear.

4) **Any reliefs or exemptions that you consider should form part of the legislation.**

We welcome the acknowledgement that reliefs and exemptions should be introduced in order to ensure that the introduction of a 3% supplement does not unfairly penalise those purchasing a home or act as a deterrent for further investment in, and development of, residential property in Scotland.
In considering the reliefs we hope that the Scottish Government would look to relieve purchasers who are purchasing a new main residence, but have not yet sold their existing residence. Given the financial burden this situation places on homeowners, at what is a very costly time, we would recommend that an upfront relief is available with a mechanism for a clawback at a later date.

In addition we would expect relief to be available for corporate bodies and individual investors who carry out a genuine business of investing in property for the private rental sector. Without such a relief, investment in, and so development of, significant residential developments in Scotland is likely to prove costly and unattractive. A separate relief for corporate bodies and individuals who carry on a genuine business of developing (or redeveloping) residential property for resale is also necessary. Without such reliefs, the supplement is likely to counteract the Scottish Government’s stated objectives of increasing affordable home ownership in Scotland, as the number of new developments slows.

We would appreciate confirmation that existing LBTT reliefs, such as those in Schedule 4, will continue to apply to the acquisition of residential properties where conditions are met.

5) The potential for tax avoidance under the supplement and how this should be addressed.

Without further detail as to how the supplement is to be applied, and the reliefs and exemptions that are likely to be made available, it is not possible to comment as to the potential for tax avoidance or how this should be addressed.

6) The likely impact of forestalling.

As the introduction has been announced those who are considering purchasing additional residential properties are likely to bring forward this purchase to ensure it is completed before the rates are introduced. This may cause a spike in property prices and could potentially lead to investors over extending themselves in the effort to ensure that they do not miss out. The Scottish Government may wish to consider whether a longer lead in time could mitigate this risk.

We appreciate that the Scottish Government is keen for the supplement to be introduced; however, the legislation required is likely to be complex, if the stated objectives are to be met.

In order to ensure that the legislation works in the way intended we would advise that the Scottish Government takes the time required to draft and test this complex legislation with those in industry and practice. A detailed and thorough
consultation process is more likely to ensure that the legislation is robust at the time it is introduced, providing certainty and clarity for taxpayers.

We appreciate that a delay in the introduction of the 3% supplement by the Scottish Government would result in a period in which those purchasing additional residential properties in England, Wales and Northern Ireland would be subject to a 3% SDLT supplement, while those purchasing additional residential properties in Scotland would not. This may lead to a short period of increased investment in residential properties in Scotland. The delay would have the benefit of enabling the Scottish Government to learn from the mistakes of the equivalent system in the rest of the UK. As the Scottish Government will be aware, a relatively detailed proposal is set out in a consultation document for the equivalent 3% SDLT surcharge. That proposal is attracting a significant amount of discussion. We anticipate a large number of responses will be made to that consultation (possibly more than any other consultation on a proposed tax change). The Scottish Government should not under-estimate the complexity of introducing the supplement and implementing it in a proportionate manner that achieves its objectives.

7) Any other comments you may have on the proposed supplement.

If the Scottish Government is to ensure that the introduction of the 3% supplement is effective in helping to achieve its objectives of encouraging home ownership in Scotland, the legislation must be well drafted having regard to the wide range of purchasers and circumstances in which residential property transactions are undertaken.

It is therefore of vital importance that prior to the introduction of the 3% supplement taxpayers have clarity and certainty as to how and when the supplement will apply. Clear and consistent drafting of legislation, which smoothly interacts with the existing legislative framework is fundamental in ensuring that this is the case. We would therefore strongly advise against the current proposal to introduce this legislation without a full consultation process involving all stakeholders.

If you have any questions in relation our comments set out above, please do not hesitate to contact Jo Joyce or Jon Meeten.

Jon Meeten
Head of Tax, Scotland

Jo Joyce,
Senior manager, stamp taxes
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from the Law Society of Scotland

Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland’s solicitor profession.

We have a statutory duty to work in the public interest\(^1\), a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom governments, parliaments, wider stakeholders and our membership.

This evidence has been prepared on behalf of the Law Society by members of our Land and Buildings Transaction Tax working party, a sub-group of our Tax Committee (“the working party”). The working party welcomes the opportunity to consider and respond to

\(^1\) Solicitors (Scotland) Act section 1
the call for evidence by the Scottish Parliament’s Finance Committee on the proposed LBTT supplement on additional residential homes.

General Comments

The working party would like to echo the concerns that we are aware have been raised by a number of stakeholders that the timescale and manner in which this proposal is being considered is not conducive to the formulation of good-quality, robust tax legislation. The implications of the proposals could be far-reaching and should be considered carefully before implementation. That consideration could be prejudiced by the stipulation of an unduly short consultation process. It is especially difficult to respond to a call for evidence, and the specific questions contained within it, when draft legislation is published only one day before the end of the time period for the call for evidence. In view of the timescale we have only been able to include some initial comments on the draft legislation in this submission.

Specific Comments

1. Overall policy objectives

The role of the Law Society of Scotland in responding to legislative proposals is not usually to comment on the policy underpinning them.

We will therefore limit our comments to a few general observations in relation to the stated objectives, including the intention of targeting the lower end of the market “where demand for properties for investment purposes or second homes could make it difficult for new entrants to the market to purchase a main residence”.

First of all, we are unsure whether the property market in Scotland is comparable to that in England and Wales and as such whether there is a big enough problem for first time buyers to risk a potentially wider negative impact on the number of property transactions and the provision of new housing. That said, we can envisage situations where house prices will be
reduced in order to absorb the extra charge, which would run counter to the policy objective of targeting those purchasing properties for investment purposes or second homes.

In respect of ability to pay, we note that the situation could arise where the purchaser has to pay the supplement upfront and subsequently seek a refund. This could affect ability to pay, particularly in situations where the purchaser is not cash-rich and is relying on an institutional lender to meet most of the upfront costs. The new regime will mean that purchasers will have to at the very least address the risk of having to pay the supplement, for example if their buyer pulls out. Thus a purchaser has to bear in mind that they may have to arrange bridging finance to complete their own purchase, and in addition pay the 3% supplement, on top of their expected LBTT charge.

We would also make the following observations:

- Given the timescales the public will have little time to prepare themselves for the new regime.
- Schemes such as the help to buy scheme have been successful and funding has been allocated to target low income individuals and help families across Scotland get on or up the housing ladder.² We question whether the focus should be more on the continued promotion of these initiatives rather than on the introduction of the supplement.
- Tax structures should ensure that there are the right economic incentives in terms of driving investment opportunities in the Scottish housing market. We question whether the effect of the additional supplement on the holiday home market might lead to fewer holiday homes being built.
- Bearing in mind the principles of fairness and transparency we would suggest that any provisions which retrospectively impact on home owners are avoided. While we do not have detailed provisions an example of this would be a rule relating to ‘18 months to buy’ (see paragraph 4 below. If such a rule was to be introduced then, depending on from when this is effective, this could unfairly penalise home owners who have sold in advance of the legislation being in contemplation, never mind effect

(i.e. a sale within the preceding 14 months or so prior to the announcement in 16 December 2015).

2. The proposed 3% rate for the supplement and the £40,000 purchase price at which it is proposed to take effect.

The call for evidence states the supplement will be set at 3% of the total “price of the property” for all relevant transactions above £40,000. We are of the view that the wording in the legislation is likely to include other forms of consideration. It would therefore be important to clarify the other types of considerations and transactions which would be caught by the higher rate.

Purchase Price

Properties which are already owned and which have a market value of less than £40k will not be counted by the legislation (see paragraph 9(3)). However, clarification is required on whether this means the value when purchased. Otherwise, the purchaser might have to seek a valuation of these properties at the time of a subsequent acquisition with the attendant additional cost of doing so creating an additional financial burden.

Re-Introduction of ‘Slab’ Structure

One of the policy aims of LBTT was to introduce a more progressive sliding scale compared to the SDLT ‘slab’ structure. The 3% supplement is a ‘slab’ structure in that it attaches to the full consideration on all properties above the value of £40k. We suggest that consideration should be given to a form of taper, in order to minimise the “cliff edge” increase around the £40,000 threshold.

3. The Scottish Government’s estimate that the measure will raise between £17 million and £29 million in 2016-17.

No comment.
4. Any reliefs or exemptions that you consider should form part of the legislation.

Moving House / Replacing a Main Residence
We believe that relief should be available house buyers who are intending to simply move house by selling their only home and buying a new sole residence. Otherwise the risk of having to pay the supplement for such purchasers may deter them from moving house.

We note that the draft legislation contains two 18 month periods to establish whether a person is considered to be replacing a main residence:

- 18 months to buy
  If a person sells the main residence and then buys a new main residence within 18 months, the 3% does not apply

- 18 months to sell
  If a person buys a new main residence and then sells the original main residence within 18 months, he or she gets the opportunity to claim back the supplement

We welcome the fact that the additional rate does not apply in these circumstances. In order to support the stated objective of targeting investment and second homes it is important that the additional rate does not apply to people who are replacing a main residence.

We are concerned, however, that individuals who sold their main residence before the details of the 3% supplement was announced may not be able to benefit from this relief – see our further comments under Transitional Arrangements.

Definition of “main residence”

The UK Government proposal is for the definition of a main residence to be based on the facts. This means that unlike capital gains tax, it will not be possible to elect one’s main residence for SDLT purposes. However, in Scotland there is a statutory residence test in
relation to Scottish taxpayer status. In order to avoid confusion, it will be essential for the guidance to address how “main residence” is to be defined.

Grace Period

There are occasions when a purchaser has no intention of owning two properties but, due to circumstances that might be unforeseen, the transactions will not complete on the same day. In this regard, we recommend a grace period of up to 30 days to allow delayed transactions to complete. We believe that a 30 day grace period where a person in this position would not have to pay the additional sum would be reasonable, fair and realistic. Under such a system, if the 30 day period passed and the second transaction had still not completed, the purchaser would have to pay the supplement and the onus would be on him or her to lodge an amended return with the additional payment. He or she would then still be in a position to be able to seek a refund if he or she had satisfied one of the 18 month periods.

Such a grace period would reduce the number of purchasers faced with paying the supplement due to unforeseen consequences and would also reduce the administrative burden of reclaiming the supplement for both the purchaser and Revenue Scotland.

Transitional Arrangements.

We believe that it would be inequitable to require a purchaser to pay the higher rate if he or she has sold his or her main residence prior to the announcement of the additional charge even if he or she buys a new main residence after 1 April 2016.

We believe that the commencement of the 18 month period should run from the implementation date, 1 April 2016. This would give people (including professional advisers) time to become aware of the new regime.

We note that transactions where missives were concluded prior to 16 December 2015 should not be subject to the supplement. We would highlight that our understanding of the residential market is such that the target average transaction time is usually less than the
14 week period (from 16 December to 1 April) with a target transaction time of 6 – 8 weeks. It is therefore questionable how many transactions will in fact benefit from this transitional relief.

Given Scottish conveyancing practice, we suggest that it would be more appropriate to consider transactions for transitional relief where an offer to buy has been made and accepted in principle (though missives not necessarily concluded) prior to 16 December 2015.

Multiple Properties Relief

We note that no relief for multiple purchases has been included in the draft legislation, as the Scottish Government wishes to consider further all the representations which have been made.

The UK Government consultation proposes a relief for the simultaneous purchase of multiple properties (whether new build or not). The threshold that has been suggested is 15 properties. As it is likely that a multiple properties relief will be included in relation to SDLT, we believe it is important that a similar relief is also included for LBTT, otherwise institutional investors in Scotland would be operating at a competitive disadvantage compared to those elsewhere in the UK.

We also note that that the additional LBTT rate applies even to a purchase of 6 or more residential properties, which is treated as non-residential property and in relation to which LBTT is payable at the non-residential rates. We question whether it makes sense to charge the supplement in relation to the purchase of 6 or more residential properties. It would appear more sensible to align any relief from the supplement for multiple purchases with the current treatment of 6 or more residential properties as being taxable at the non-residential rates. Different thresholds could result in confusion, with purchasers paying commercial rates of LBTT and also being liable for the residential LBTT supplement.

The Scottish Government will also need to consider and clarify whether any multiple purchase tests will apply to the purchase of properties that form part of the same sale and
purchase agreement, linked transactions or on a cumulative basis (or all three). Consideration should be given to taking account of phased purchases for the purposes of determining eligibility for a scale purchase relief. In addition, it has been suggested that relief might only apply where a purchaser already owns a specified number of properties, although this would seem to unfairly disadvantage those investing in their first tranche of properties.

**Student Accommodation Sector**

We are aware that purpose-built student accommodation might have fewer than 15 separate flats but will often have multiple separate beds. There would need to be consideration as to how such a relief would operate in respect of a development that consists of properties intended for multiple occupation. We question whether the relief should take into account not only the number of properties, but also the number of occupants within each property.

**Social Housing**

We believe that the Scottish Government should explore the suggestion of exempting purchases by providers of social housing in Scotland, such as local councils and housing associations (registered social landlords). It would not be possible for such purchasers to rely on a multiple purchase relief, since not all transactions would consist of multiple properties.

**5. The potential for tax avoidance under the supplement and how this should be addressed.**

No comment

**6. The likely impact of forestalling.**

No comment.
7. Any other comments you may have on the proposed supplement.

Owners and First Time Buyers

We would like to highlight an inherent unfairness under the proposed regime.

- Purchaser A does not own a main residence and inherits a £45k interest in a property. He or she then buys his or her first home. Purchaser A pays the higher rate on the purchase.

- Purchaser B already owns a home and inherits a £45k interest in a property. Purchaser B then sells his or her main residence home and buys a new main residence home within 18 months. Purchaser B pays the lower rate on the purchase.

It seems inequitable that Purchaser A is disadvantaged simply because he or she does not already own a main residence.

Given a main residence will be a question of fact, it should be relatively straightforward to determine if a person is buying one or not. As a result, we suggest it is more appropriate (and in keeping with the overall policy objective) that any acquisition of a main residence should attract only standard rates of LBTT.

Establishing the type of additional chargeable interest

The type of additional chargeable interest affected should be made clear in guidance and legislative documentation. We presume that it will only affect major interests in land and will not extend to include interests such as residential leases, servitudes etc.), still less exempt interests such as securities. The draft legislation does indicate that this is so, subject to concerns over ownership of shares of dwellings (see below).
The concept of “ownership” is also a matter that needs to be clearly defined in the legislation. In strict Scottish land law terms, a property is owned by a person so long as they are recorded as being such in the Register of Sasines or Land Register. However, the timing of a person’s removal as owner from these Registers will depend upon a variety of matters, many outwith the control of the party and their own solicitor. Even with the sensible grace period requested above, we suggest that a person should be regarded as ceasing to own a property for the purposes of the supplementary charge once the effective date of its sale has occurred. Similarly, the effective date of a purchase would be the appropriate point at which to regard a property as becoming owned. The draft legislation treats the buyer as owning the property and the seller as ceasing to own the property “as from the end of the day which is the effective date of the transaction” (paragraph 10). We believe this will generally ensure that a person is not treated as owning two properties where they buy and sell their main residence with both transactions completing on the same day. As mentioned above we believe there is a need for a grace period to deal with those cases where the intention was for both transactions to complete on the same day but due to unforeseen circumstances either the purchase or the sale is delayed. A period of 30 days would seem appropriate.

Common and Joint Ownership

The difference between joint and common ownership needs to be borne in mind in the drafting. Joint ownership arises where, although there is more than one owner, their interests are indivisible and cannot be dealt with separately from each other – a prime example being trust (including, often, partnership) property. On the other hand, where property is owned in common each owner has a separate interest (albeit in the one property), which they can deal with separately (eg by selling their share separately or by insisting on the division of, or the sale of the whole of, the property – a prime example being a house where the title is in the name of both husband and wife). In relation to joint ownership it would appear to be inequitable for the rules to apply where there is no actual ‘tradable’ individual interest in the property (see further below).

Consideration needs to be given as to whether and how the supplement should apply in cases where a purchaser buys an interest in a property, becoming an owner in common
with an existing owner (or with multiple owners). For example, it would seem unfair for the supplement to be payable by a purchaser who owned no additional properties just because an existing co-owner holds other residential property. The draft legislation does bring in this charge which seems entirely inequitable.

Take the following case. A young person is anxious to get on the housing ladder, but requires assistance from a parent. In order to protect the position of the rest of the family, the parent is willing to assist, but wishes to become owner part of the property purchases in proportion to their contribution. The parent already owns another dwelling — and perhaps only a share in that dwelling. The contribution may be small — say 10% - (perhaps to assist with the deposit, the rest of the funds being borrowed). The rules would mean that the additional 3% would apply to the child’s 90% of the purchase price, even though that interest was the only (and first ever) interest that this child had bought. This seems entirely inequitable and could be cured while maintaining the policy by applying the supplement only to the parent’s 10% of the purchase consideration.

Married Couples

The draft legislation indicates that married couples and civil partners will only be entitled to one main residence between them. Where they separate, i.e. they are no longer live together and do not intend to live together again, they will no longer be treated as a couple. We welcome the fact that a de facto test of whether couples have separated has been used, rather than a requirement for a court order or formal deed of separation. At the same time, the intention is for a main residence to be determined as a question of fact.

We are concerned that there might be a tension between determining a main residence on the facts and the rule for married couples and civil partners, since the facts may not point to the same main residence for each member of the couple or partnership, particularly in the case of separation.

Partnerships
The draft legislation appears to charge the 3% supplement on all purchases of residential properties by a partnership, where one partner owns a property already. Consideration should be given to a relief for partnerships where they purchase a residential property to be occupied by an employee of the partnership as a condition of their employment or where a residential property is acquired for the partnership business (rather than pertaining to the partner or partners as individuals) where that business is not one of property investment.

Companies

We note that the legislation indicates that companies will have to pay the higher rate for the purchase of any residential property ie not just an additional property. This does not seem to sit with the focus of the tax, namely to tax additional properties. Again relief should be available where the property is acquired for the purposes of the company’s business where it is not one of property investment e.g. job-related accommodation for employees.

Individuals purchasing in the course of a business

The draft legislation provides that the supplement will be payable by an individual buying a residential property “in the course of a business of the individual that consists of or includes acquiring dwellings” (paragraph 3(2)). Relief should be available where the property is acquired for a business purpose which is not one of property investment or trading e.g. job-related accommodation for employees.

Beneficial trusts and individuals who have a right to inhabit a property

The application of the tax to property held in trust will require careful consideration. For example, will someone who has a discretionary right of residence in a property be liable to pay the supplement on a house purchase if the property in trust is his or her principal residence?

It also needs to be made clear that residential properties owned by trustees personally do not count in relation to trust purchases. This may be achieved by paragraph 2 of the draft
legislation, but more attention is required to separate out the trust patrimony from the trustees’ individual patrimonies.

Furthermore, given that trustees are dealt with to some extent separately, it needs to be made clear that purchases by trustees as such are NOT treated as purchases by non-individuals. In this context it should not make any difference whether the trustee as such is an individual or a trust company. This may be the intention but is not at all clear from the draft legislation.

**Mixed purchases**

The draft legislation indicates that the supplement will apply in relation to mixed purchases of residential and non-residential property which include dwellings, (where it will be payable in relation to the consideration attributable to the dwellings) as well as to purchases of 6 or more residential properties (where it will be payable on the total consideration even though LBTT is payable at non-residential rates). This approach also differs considerably from the position set out in the UK Consultation Document on the SDLT 3% supplement which indicates that the supplement will not apply to mixed purchases or to purchases of 6 or more residential properties. This is also out of keeping with the general treatment of mixed properties and whether they are liable to residential or non-residential rates, which does not seem appropriate. If however, this differential treatment is implemented, we recommend that very clear guidance is drawn up to ensure that purchasers and practitioners are aware of the difference between LBTT and SDLT in this regard.

**Rural Housing and Communities**

The additional charge might impact differently on different areas of Scotland. In considering the detail and potential impacts of the proposals, the Scottish Government should have regard to the particular issues regarding rural housing and rural communities. For example, individuals in rural areas are more likely to be home owners - the Review of Equality Evidence in Rural Scotland (2015) outlines that compared with the rest of Scotland a higher proportion of people in rural Scotland own their own homes (71% and 72% respectively in remote and accessible rural areas, compared with 62% in the rest of Scotland) and a
smaller proportion rent from Local Authorities/Scottish Homes or housing associations/co-operatives (14% and 13% respectively in remote and accessible rural areas, compared with 25% in the rest of Scotland).³

Overseas Properties

We note that overseas properties will be taken into account when determining whether or not the purchaser owns more than one residential property (paragraph 9(2)) and that a person is to be treated as owning property outside the UK if they have an interest which is equivalent to ownership in Scotland.

We have concerns over the possible ‘counting’ of property outwith Scotland in determining whether an acquisition is subject to the additional rate of tax.

The property laws and meaning and status of legal ownership differ from jurisdiction to jurisdiction. Scots property lawyers are not qualified to advise on the status of legal ownership of property outwith Scotland. We would question how it is therefore to be ascertained whether a taxpayer ‘owns’ a property in another jurisdiction for the purposes of assessing that this additional tax is due.

Clear guidance must be given to tax payers on this if this is to be a criterion.

For further information and alternative formats, please contact:
Matthew Thomson
Policy Executive

I am a practicing Residential Conveyancing solicitor and Head of Residential Property at Lindsays.

The proposed LBTT supplement is due to come in to effect on 1st April i.e. 10 weeks on Friday. The effect of the regulations surrounding the proposed supplement is highly relevant RIGHT NOW in relation to purchases and sales which are starting or being planned now but which may not complete until after 1st April. My colleagues and I are being asked on a daily basis about the proposed supplement but are unable to provide buyers or sellers with answers to their perfectly reasonable questions.

The kind of questions we cannot answer are:

1. We’re going to move house but already own a buy-to-let property. Will the supplement affect us (on the basis of counting the buy-to-let property as property 1 and the new home as property 2) or will we be exempt because our purchase and sale will relate to our principal Private Residence?

2. We’re going to move house but the way things have worked out we’re having to use a bridging loan to complete our purchase in May with our sale is not going through until June. Will the supplement affect us because at the time of completing our purchase we will still own both properties?

3. We’re going to buy a new home but the property we’re looking at is a wreck and will need completely refurbished. The work is going to take 9 months to complete and we don’t want to sell our current home until the new one is ready for us to move in to. Will the supplement affect our purchase of the new home we’re buying to buy and renovate?

4. We’re buying a second property in Scotland but the first property we own is in England. Will the supplement affect our purchase?

5. We’re buying a second property in Scotland but the first property we own is in Spain. Will the supplement affect our purchase?

6. We’re buying a second property in Scotland but the first property we own is in Australia. Will the supplement affect our purchase?

7. My husband and I recently got married and are about to buy our first home together. I already own a flat in my own name, which I plan to keep and rent out. If my husband and I buy our new home in joint names will the supplement affect us
because I’m keeping my old flat? We won’t be able to get the mortgage we need to buy our new home that had to be in my husband’s name only.

These are just a selection of the type of questions we are being asked right now. You will appreciate are many, many variations on the theme.

I note that submissions need to be with the Committee by 29th January with a view to the matter being discussed during February. Presumably that means that, at earliest, there will be detailed regulations available by late February or sometime in March?

This is a tax which is due to be applied from 1st April. I’d re-iterate that buyers and sellers alike are already involved in, or trying to become involved in, purchases and sales which will complete after 1st April. It is highly important to all of these people (and to those who advise them) that they understand how the regulations will affect them. At the moment however all they know that there is apparently a change coming and, depending on the details of the regulations, that change might or might not affect them in a very material way. There is however no way to find out what the regulations are and accordingly no way to know how anyone or any particular situation might be affected.

I would suggest that this is a highly unsatisfactory state of affairs and a totally unreasonable situation to expect buyers and sellers (and their advisers) to try to work around. It seems to me to be likely that until there are regulations available, and accordingly some clarity as to how people are going to be affected, there will be many transactions which will simply be put on hold or called off altogether. Many of those transactions will not involve what you would consider to be typical “buy-to-let” situations or “holiday house” situations but rather will be situations where people are trying to buy and sell principal private residences but feel that they cannot do so because they just don’t know what the rules of the game are going to be.

Regulations are urgently required so that there can be clarity as to how buyers and sellers will be affected by them. The current absence of Regulations is already a fundamental and very practical problem on a day-to-day basis. The longer the situation subsists the more the natural flow of the Residential Property Market is likely to be distorted, and possibly damaged.

In should be obliged if you could take my submission in to account when the Committee considers the matter.

Your sincerely,

Andrew Diamond

Partner

Lindsay
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from Mahri Tawse

Response

I respectfully request that the Finance Committee take into consideration taxpayers who are in our position when considering the detail of the proposed LBTT supplement on additional residential homes.

I own a flat in Glasgow where my husband and I currently reside. My husband (who is a first time buyer) and I have concluded missives on a new build house. Our anticipated completion date is 29 April 2016. The legal process for the purchase of our new home commenced 15 November 2015 when we paid a Reservation Fee to our house builder. We concluded missives on 7 January 2016. Our long-term savings plan includes retention of my flat to let out. As part of the plan I re-mortgaged my flat mid-2015. Should I sell my flat before the end of 2020 I would incur a financial penalty from my mortgage company for redeeming my mortgage early (therefore selling is not a simple option).

After the Budget announcement on 16 December 2015 we were very concerned about the potential impact on us (and ability to pay) and sought clarification on our position, however no one was able to provide any guidance, including our solicitor and mortgage advisor, as there has been no further detail published by the Scottish Government. The only (non-speculative) guidance we could find as to the Scottish position was the link from Revenue Scotland’s website to the Scottish Government’s LBTT calculator which specifically asks the question “is the property a main residence?”. This property will be our new home and main residence and by answering ‘yes’ the result indicated we are not liable for the additional 3% supplement.

We understand the purpose of this unforeseen tax is to generate revenue from those seeking to purchase property as an investment (at a time when the sector is already facing additional tax raising measures). Although we have sympathy with many first time buyers (my husband is one) we trust that the Government fully considers cases such as ours, where taxpayers would be unjustly and suddenly penalised for the purchase of a property that is not an investment. The tax should be “proportionate to the taxpayer’s ability to pay” however as we are upsizing to a family home this has a significantly disproportionate impact on us relative to the target of the tax supplement.
who are likely purchasing additional property of a lower value than their main residence.

We trust exemptions and reliefs will be considered in cases where;

1. Missives have concluded before 1 April but the purchase completes after the 1st April 2016. This should be considered against a backdrop of absolutely no guidance from the Scottish Government at a time when crucial decisions have to be made;
2. Main residences are being replaced (as alluded to by above mentioned calculator);
3. One of the joint purchasers is a first time buyer.
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from Mark Neil

Response

Please find below my response to the proposed legislation for a 3% supplement on top of LBTT for those purchasing second homes.

I could see very little detail on how this tax will be applied but I am particularly interested, and somewhat concerned, in the application rules and potential exemptions due to my current situation. Due to the lack of detail currently available I have read a large number of different articles, most of which are speculative, and also reviewed the limited notes available on the equivalent proposed tax for the rest of the UK. Overall, I believe the tax to be a good move in the right direction however without the correct exemptions and provisions it could hit a large number of people in the same position as me, and therefore damage the housing market.

A brief summary of my situation is: I am currently about to sign missives on the purchase of a new build home for £280k which will be used as my main residence with the original intention to keep my current property valued at £180k. In the short term I would rent this out with the main driver for this decision being to avoid the early repayment charge (ERC) on our current mortgage which expires in just over a year from now. The introduction of the tax (assuming it is applied to every new purchase) would mean an £8.4k charge of LBTT supplement or the alternative being a £4k ERC charge to sell before moving into the new home. Neither alternative is particularly feasible as the payments required are beyond our means. The rental income I would have received over the course of the ERC period would have covered the mortgage on the current property until the point I could sell and avoid the ERC charge. The likely result of the 3% LBTT supplement is that I will no longer be able to move into the new home, or more relevant, I will no longer be able to move out of the current home meaning less low end homes are available on the market. This situation is not unique and I believe will result in the opposite effect than is intended in some circumstances.

As mentioned above, my situation will not be uncommon and I don’t believe this type of scenario is the intended target of the legislation, rather I am just being caught in the crossfire. There are a number of potential exemptions that could be introduced with the new legislation that would alleviate these issues for me and others in the same situation. Introducing these would allow lower end properties to be made available to the market (albeit slightly further down the line) and therefore achieve the goals of the government. The potential exemptions I can see are:
- An exemption for those who started the house buying process prior to the announcement of the LBTT supplement.
  
  o In my situation, I placed a small reservation fee on the property prior to the announcement of the supplement in late December. Given that it is a new build home, the time taken to build does not make it feasible to reach completion prior to the tax being introduced.

- An exemption for those who are contracted to buy (missives signed) prior to the introduction of the tax on 1 April 2016.

- An exemption for those who sell within a given period (e.g. 18 months) after the completion of the purchase of the second home, with no payment being due until the passing of this period.
  
  o There is some speculation online regarding the possibility of tax being repaid after an 18 month period if the second home was sold however this would mean having to find £8.4k (in my situation) of spare cash for a short term – this is not always feasible and is a disincentive to free up low end property.

- An exemption for those buying a home that will become their primary residence

- A calculation of the tax based on the property that won’t be the primary residence (i.e. my current property)
  
  o If the supplement is applied to the price of new homes then this will mean an excessive charge on the cost of the main residence, in my situation. In most scenarios, and in the intention of the proposed supplement, the charge will be applied to the property that is going to be rented out. This would be a more reasonable tax to apply and would drop my tax bill by £3k (£100k price difference x 3%).
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from Martin & Co Cupar

We would wish to express our concern regarding the proposed tax on Buy to Let property, having been in the private letting sector for over 20 years we have consistently seen more applications for tenancy than available properties. If you couple this with the increase in costs levied to Landlords over the past 5 years the net result will be a smaller PRS.

From our experience social housing cannot in any way keep pace with the requirements and Scotland need the PRS to grow yet consistently puts barriers in the way rather that encouraging new good landlords and penalizing bad landlords.

All landlords are advised to treat BTL as a business and keep the asset in good order and declare all rental income for taxation purposes therefore paying their share towards the GDP.

Kim Godwin
Director
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from Martin & Co Kirkcaldy

I cannot believe that yet again the Scottish Government is deflecting attention away from its own deficiencies by attacking the private rental sector. The Scottish property investor is being penalised on one hand whilst on the other being exhorted to plan and invest for retirement. When I started working in the private rental sector, a landlord would expect to lose part of his first month’s rent in initial fees but the second month onward would be his minus management fee. Now however, the landlord will most certainly lose all of the first month’s rent plus a very large chunk from the second rent to meet all the costs incurred by recent legislation changes. Landlords now have to pay for referencing tenants. Landlords must be registered with the local council. We have legionella testing, upgraded smoke alarm systems, EICR, registering the deposit with one of the recommended schemes and the resultant upsurge in paperwork to comply with the demands of whichever scheme is used, the list goes on and on. Some landlords are throwing their hands up in despair and selling up – some at quite a substantial loss. And yes – those houses are going back into the housing stock so the argument could be that first time buyers now have the chance to become homeowners. It would be interesting to monitor just what is happening to this influx of properties. Personally, individual landlords with a smaller portfolio in which they take pride is preferable to conglomerate ownership.

Regards,

Myra Blaik
Sales & Marketing Manager
Martin & Co Kirkcaldy
Response to ‘Call for Evidence’ on Proposed LBTT Supplement on Additional Residential Homes

This letter has been written in response to the Scottish Government ("SG") Finance Committee’s (“the Committee”) ‘Call for Evidence’ in connection with the proposed LBTT supplement on additional residential homes (“the LBTT Proposal”) as outlined in the Draft Budget 2016-17, announced on 16th December 2015 by Deputy First Minister John Swinney.

Background
Some background of the respondent:
- 33 years old
- Born and lived in Scotland entire life
- Investor in residential property in Scotland for over 10 years (does not include my main private residence)

After a 10 year career in a professional capacity, in early 2015 I quit my position as an associate investment manager with one of Scotland’s largest listed asset managers to further pursue residential property investment full time, with a view to setting up my own business in the industry based in Edinburgh.

Reasons For Response
My core reasons for responding and supplying evidence is that the LBTT Proposal:

- Is not targeted and will therefore not ultimately help first time buyers ("FTB")

- Will actually incentivise residential property investment in existing housing stock in the value band dominated by FTB purchases (<£145,000), compared to higher value property purchases, hindering FTBs

- Will have a detrimental impact on residential property investment across the entire Scottish market

- Will have a detrimental impact on total tax receipt, both at central Government level and at a local level, not just limited to Scottish residential property market, due to
  i) reduction in investment in existing housing stock across all property tax band levels (either for development or rental), therefore lower LBTT receipts,
  ii) associated knock-on effects of reduced investment are less work for the sub-sectors reliant on the investment market, i.e. lower fees for property managers, lawyers, surveyors, accountants, skilled trades, as well as lower VAT, corporation tax, employer NICs and PAYE income tax from the above, and,
  iii) lower disposable income from all in section ii), meaning local economies are be impacted through reduced consumption

Owing to my age, I have friends who are currently prospective FTBs and therefore my evidence is intended to influence SG and in turn help them.

As an investor in the market, my evidence is also intended to highlight the hugely negative impact the LBTT Proposal will have on my future intentions to carry on business/investment in Scotland. As I am only one of a substantial number of investors/developers in the country, I suspect my concerns are not isolated in opinion.
Response

Direct Impact on My Future Business
The recent announcements in 2015 by both SG and UK Government (“UKG”) regarding: i) proposed supplements to LBTT (SDLT in England, Wales and Northern Ireland) for additional homes, and ii) the reduction in ability to deduct finance costs related to residential property from taxable income, have both severely dented my confidence in the sector, and my future appetite to continue with pursuing a business within it.

The LBTT Proposal has also made me question the continuation of holding my current residential property investments and whether my capital could be better invested elsewhere outside of Scotland / the UK, to the financial detriment of both regions. Together with the continual (almost annual) changes in regulation on safety standards in the private rented sector (“PRS”), and recently announced changes to tenancy law via the Private Housing (Tenancies) Bill, being an investor in residential property in Scotland is quickly becoming untenable.

The owner of any business or investment will not remain in business nor continue to hold their asset if it is not sufficiently attractive or worthwhile to do so. The owner is risking their own livelihood and capital in order to make a living/return (both of which are taxed). When there are enough negative influences which make the business/investment unattractive or even loss making, they will divest / liquidate.

Conflicting Messages for Residential Property Investors
Quoting Deputy First Minister John Swinney on announcing the 2016/17 budget on 16 December 2015, “We will achieve these aims by ensuring Scotland is the best place in the UK to do business by focusing on innovation, skills and investment”. (1. Source: SG - December 2015).

This statement is misleading, since measures to introduce the LBTT Proposal will considerably increase the costs of privately funded investment in residential property.

Again quoting Deputy First Minister John Swinney announcing the 2016/17 budget on 16 December 2015, “We are therefore taking action to avoid the likely distortions which will arise in Scotland from the new UK SDLT surcharge on the purchase of additional properties – including buy-to-let and second homes – which could make it more attractive to invest in such properties in Scotland compared to other parts of the UK”. (2. Source: SG - December 2015).

It is astounding that the Deputy First Minister wants to take action to avoid distortions, “...which could make it more attractive to invest in such properties in Scotland...”. My belief is that making investment in Scotland more attractive is what Scotland will benefit from. His assertions also contradict his earlier statement about, “ensuring Scotland is the best place in the UK to do business”.

Reliance on Private Investment in Residential Property Sector
As noted in the minutes of the SG Finance Committee’s Land and Building Transaction Tax Stakeholder meeting held on 8 January 2016, one point was made noting, “around 70% of PRS properties are owned by small-scale landlords who let out 5 or fewer properties, and these landlords account for 95% of the total number of PRS landlords”. (3. Source: SG - January 2016)

At a time when trends in population growth, demographics, lack of public sector capital expenditure on house building, and rising property values, are all leading to increases in rental demand (see below), the approach of both the SG and UKG to continually target the residential property investor and PRS with increased taxation is counter intuitive.

Public funds for a wide scale building plan for social housing are not seen as forthcoming any time soon, and if the private sector is disincentivised to invest in and supply rentable housing stock (which is clearly in demand) by increased taxation, who do the SG contend will provide such housing stock?
Demand vs Supply
The SG’s (and UKG’s) objective with the LBTT Proposal is to make sure that first time buyers have the greatest possible chance to enter the housing market, so instead of introducing a supplementary tax on the whole sector, I believe their efforts should be focused on incentivising the increase in new housing (dwelling) supply, and/or increasing the housing density of that supply.

If population growth and demographic trends mean that demand currently (and is projected to continue to) outstrips supply, influencing either supply or demand for new dwellings is required.

Demand
The combination of population growth and demographic trends both increase demand for new dwellings in Scotland, regardless of whether they are for main residences or PRS.

Population Growth: Scotland’s population growth in the year to June 2014 (latest figures compiled/published) was 19,900 (up 0.37% on c.5.327m people in 2012-13). Net migration into Scotland of 17,600 was the major driver for this growth in population. (4. Source: National Records of Scotland - April 2015)

Demographic Trends: The population of Scotland is ageing and living longer, and the number of households is increasing, due to more people living alone or choosing to live in smaller dwellings. (5. Source: National Records of Scotland – 2014, 6. Source: National Records of Scotland – July 2015)

My presumption is that the SG does not want to restrain population growth by introducing any negative measures to reduce inward migration or birth control. Equally, I also presume that it does not want to constrain the life of anyone by introducing any negative measures to reduce their life expectancy or dictate whether they can live in a certain size of home.

SG’s core purpose is outlined: “to create a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth”. I therefore do not believe that SG’s aim is to reduce the population or growth in population. (7. Source: SG - January 2016)

An increasing demand for new dwellings is therefore expected to continue as the population increases. If the SG wants Scotland to flourish, it might look to (or have to encourage, e.g. regarding an ageing population) an increase in Scotland’s population, in order to drive sustainable economic growth or even just to maintain its current tax receipts.

Supply
New Dwelling Supply: 16,110 of new house supply (new build, refurbishment, conversions - across all sectors (public/private sales, local authority management)) was reported in the same period as the above population statistics (year to June 2014). (8. Source: SG - June 2015)

Public Sector: The ‘Right to Buy’ of social housing and decades of reduced public capital investment has led to public sector authority housing levels continually declining. New dwellings financed by public funds therefore barely restore housing stock that is ‘lost’ through the Right to Buy or through dilapidation and unfit for human habitation stock. (9. Source: SG - 2015)

It is presumed that the appetite for public finances to be used for building new dwellings continues to be relatively low when compared to the private sector. Only 33% of the 16,110 new houses supplied in 2013/14 were from local authorities or housing associations (7% from local authorities). (8. Source: SG - June 2015)

Private investment is therefore highly likely to be required to satisfy the increase in new homes that are required (demand led). Demand is therefore likely to be split between those looking for main residences and those looking to rent. Increasing tax (i.e. the LBTT Proposal) across the entire residential property market will decrease confidence overall and will therefore deter investment in the new build sector at exactly the time when it needs it.
Why The LBTT Proposal Is Flawed and Does Not Help but Hinder FTBs

Quoting the SG’s (and UKG’s) objective to, “make sure that first time buyers have the greatest possible chance to enter the housing market”, I would strongly urge SG to reconsider their current stance on the LBTT Proposal, since it is not targeted or focused to the area in which it is aiming to help. (2. Source: SG - December 2015).

The LBTT Proposal, as well as other changes in taxation, will directly affect anyone aspiring to buy or invest in the Scottish residential property and the PRS sector out with their main residence, regardless of the value of the property they are intending to purchase.

The aim of the LBTT Proposal is to help FTBs, so surely it should be solely focused on helping FTBs, rather than jeopardising investment across the whole spectrum of the market?

The average cost of a FTB home in Scotland in 2015 was c.£133,000, and during the period August to November 2015, 55% of FTBs purchased homes in Scotland had a value of £125,000 or below. (10. Source: Halifax - January 2016)

Although these statistics tell us that a typical FTB can only afford a property with value of £133,000, the LBTT Proposal will penalise anyone who invests in an additional home at every valuation level in the market, including levels way above what a typical FTB can afford.

The current LBTT Proposal by the SG is certainly not “proportionate and fair” (quoting John Swinney), it is not targeted to benefit FTBs, and it is discriminatory against those aspiring to invest in the sector as a whole (i.e. at higher value levels than FTBs can afford). (2. Source: SG - December 2015)

Anyone having the ability to invest in residential property does not proportionately mean they have the ability to absorb/pay for higher sums in tax. Conversely paying higher tax will mean they have less capital to invest, will therefore be forced to purchase properties of lower value, and will therefore be more likely to compete with FTBs on lower value property purchases.

The following is a worked example of how the LBTT Proposal will not be punitive enough for investors looking at the typical FTB property value. It also shows how it will make property purchases at higher valuation levels (those out of reach of FTBs) more punitive for investors.

The LBTT Proposal actually incentivises investors to buy properties at FTB value levels:

<table>
<thead>
<tr>
<th></th>
<th>Average 1 Bed FTB Property (Scotland)</th>
<th>Typical 4 Bed Student Rental (Edinburgh)</th>
<th>Typical Run-Down Townhouse (Edinburgh)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property Value / Purchase Price</td>
<td>133,000 A</td>
<td>399,000 A</td>
<td>665,000 A</td>
</tr>
<tr>
<td>Typical Minimum Deposit Required by Investor (20% of Value)</td>
<td>26,600 B</td>
<td>79,800 B</td>
<td>133,000 B</td>
</tr>
<tr>
<td>Current LBTT on Additional Property</td>
<td>0 C</td>
<td>13,250 C</td>
<td>39,850 C</td>
</tr>
<tr>
<td>=&gt; Total Current Equity Investment Required from Investor</td>
<td>26,600 D + (B + C)</td>
<td>93,050 D + (B + C)</td>
<td>172,850 D + (B + C)</td>
</tr>
<tr>
<td>Equity Investment as % of Value of Property</td>
<td>20% E + D / A</td>
<td>23% E + D / A</td>
<td>26% E + D / A</td>
</tr>
<tr>
<td>LBTT Payable as % of Total Required Equity Investment</td>
<td>0% F + C / D</td>
<td>14% F + C / D</td>
<td>23% F + C / D</td>
</tr>
<tr>
<td><strong>Proposed</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposed LBTT on Additional Property</td>
<td>3,990 G</td>
<td>25,220 G</td>
<td>59,800 G</td>
</tr>
<tr>
<td>=&gt; Total Proposed Equity Investment Required from Investor</td>
<td>30,590 H + (B + G)</td>
<td>105,020 H + (B + G)</td>
<td>192,800 H + (B + G)</td>
</tr>
<tr>
<td>Equity Investment as % of Value of Property</td>
<td>23% I + H / A</td>
<td>26% I + H / A</td>
<td>29% I + H / A</td>
</tr>
<tr>
<td>LBTT Payable as % of Total Required Equity Investment</td>
<td>13% K + G / H</td>
<td>24% K + G / H</td>
<td>31% K + G / H</td>
</tr>
<tr>
<td>Increase in LBTT due to Proposal</td>
<td>3,990 J + G - C</td>
<td>11,970 J + G - C</td>
<td>19,950 J + G - C</td>
</tr>
<tr>
<td>Proposed LBTT Payable Buying 3x Average 1 Bed FTB Properties</td>
<td>11,970</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposed LBTT Payable Buying 5x Average 1 Bed FTB Properties</td>
<td>19,950</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Difference in Proposed LBTT Paid on Buying Higher Band Property vs Equivalent Paid on 3x / 5x Average Priced FTB Properties</td>
<td>13,250</td>
<td></td>
<td>39,850</td>
</tr>
</tbody>
</table>
Based on an investor who requires a minimum equity deposit of 20% of the value of the property they are purchasing, for the average FTB value of property (£133,000), 13% (£3,990) of their total equity requirement (£30,590) will be for LBTT under the new proposals. This is a £3,990 increase in LBTT compared to now.

For a PRS investor looking to purchase property at levels way above the affordability of the average FTB, for example a typical 4 bed student flat in Edinburgh (£399,000 – i.e. 3x the value of the average FTB property), 24% (£25,220) of their total equity requirement (£105,020) will be for LBTT under the new proposals. This is a £11,970 increase in LBTT compared to now.

For an developer looking to purchase a typical run-down Edinburgh townhouse that requires complete renovation and/or conversion in order to bring up to a habitable standard (£665,000 – i.e. 5x the value of the average FTB property), 31% (£59,800) of their total equity requirement (£192,800) will be LBTT under the new proposals. This is a £19,950 increase in LBTT compared to now.

Investor Choices: Multiple FTB Value Properties or Single Higher Value Property
An investor clearly has the choice of where they allocate their capital. They could purchase three average FTB priced properties for the same outlay as one 4 bed student flat (3 * £133,000 = £399,000), or five average FTB priced properties for the same outlay as one run-down Edinburgh townhouse (5 * £133,000 = £665,000).

The investor would pay £13,250 more in LBTT under the LBTT Proposal by buying the 4 bed student flat, than they would if they chose to buy three average FTB priced properties.

Similarly, the investor would pay £39,850 more in LBTT under the LBTT Proposal by buying the townhouse than they would if they chose to buy five average FTB priced properties.

In both of the above scenarios from an initial outlay/investment perspective, the majority of investors would choose to purchase multiple FTB average priced properties in order to save the huge additional outlays of the LBTT Proposal.

This demonstrates that the LBTT Proposal is actually counterproductive, in not only deterring investment in all property valuation bands, **but actually incentivising investment in properties within the average FTB price band**.

Proposed Alternative
As Scotland has different demographics, housing stock, and house valuations compared to the rest of the UK, my suggestion as an alternative to the LBTT Proposal would be to think differently from the UKG and not follow their lead on implementing additional home LBTT across the whole market.

This would continue, if not increase Scotland’s attractiveness to residential property market and its PRS investors, whilst still allowing first time buyers as strong a position as possible to make their first purchase.

According to the latest available official figures from HMRC in 2014 (LBTT figures for a full year (2015) were not available since it was only introduced in April 2015), c.56% of all residential property transactions in Scotland in 2014 were of a value between £40,000 and £150,000 (c.53,000 of a total of c.94,000 transactions). (11. Source: HMRC - June 2015)

Since: i) the first threshold in Scotland for paying LBTT (on a principle residence) is £145,000, ii) over half of Scotland’s property transactions take place in this tax band, and iii) 55% of FTBs purchase property at £125,000 in value and below, it would make much more sense to tax this band (£0 - £145,000, denoted, “the FTB Band”) in such a way as to deter additional home buyers/investors in continuing to invest in the current housing stock in this area of the market only.

Deterring investors in the FTB Band would have to be sufficient enough to curb investment, such as implementing a rate of say 10% on additional home purchases in the FTB Band, therefore a maximum of £14,500 tax would be payable in this band. A more radical proposal could be to simply not allow anyone other than FTBs to purchase property costing £145,000 or less.

Adding supplementary tax to additional Scottish home purchases above £145,000, when the average FTB buyer can only afford £133,000, does not make sense. Solely targeting additional home investment in the FTB Band (and no other band above it) would be the most effective way of assisting FTBs. Targeting any other band will deter investment into the sector as a whole and conversely, may prompt investors to liquidate their existing holdings from the market.
Knock-on Effects of Proposed Alternative and Possible Resolutions

There is a growing PRS requirement for 1 or 2 bed housing in the FTB Band so doing anything to curb investment will ultimately have a knock on effect in the supply of sufficient rental properties in this market.

Introducing a targeted additional home LBTT charge for the FTB Band would mean that existing housing stock in this band would be unattractive to prospective PRS investors in that band. FTBs would therefore only be competing against each other for this existing housing stock going forward.

In order to satisfy investor’s interest in FTB Band property for the rental market, and in turn satisfy the PRS demand for such rental housing, incentivisation measures for new build housing/flats through exempting the additional 10% FTB Band LBTT on “build to rent” schemes for 1 or 2 bed housing valued in the FTB Band should be implemented.

Tax Receipts

SG estimates that the LBTT Proposal will raise between £17m and £29m in 2016-17. According to the latest available official figures (HMRC), residential property transactions in Scotland in 2014 between £40,000 and £150,000 totalled c.£5.03bn. *(5. Source: HMRC - June 2015)*

Assuming investment activity (i.e. additional home purchases) were to drop drastically if a proposed 10% tax on the FTB band were to be introduced (i.e. only 5% of future transactions below £145,000 were attributable to additional home investors compared to 2014 – extremely prudent), investors would contribute c.£25m to Revenue Scotland by way of the 10% additional home purchase LBTT rate.

Calculation: 5% * c.£5.034bn = c.£252m investor transactions in FTB Band, taxed at 10% = c.£25.2m tax

The prospective tax receipt from the alternative proposal is in the mid range of the Finance Committee’s estimate for tax receipts from SG’s current LBTT Proposal.

Fairness / Proportion

Residential property and PRS investors already provide their fair share of tax via income tax on net profit, capital gains tax on chargeable gains on sale, as well as contributing a vast array of tax from property purchases, property development and annual management services (see below).

Additional tax across the whole spectrum of property valuations, as outlined in the LBTT Proposal, when the target is to help FTBs, will prompt PRS investors to shun new investment into the sector.

Together with the other negative factors currently being proposed (as noted above – reduction in tax relief on mortgage interest), the LBTT Proposal may prompt investors to sell up entirely, thus decimating the PRS stock of properties. Alternatively, negative factors will force investors wishing to retain their properties to charge more for rent which will exacerbate current rental affordability.

Current Contributions to Public Finances Which Will be Lost due to LBTT Proposal

Deterring investment into the sector through the LBTT Proposal will reduce the following taxes:

- Income Tax paid on property investor net profits
- Capital Gains Tax paid on property investor gains made through sale of property

Property Purchasing

- Solicitor, Surveyor, Mortgage Broker, Mortgage Provider fees

A proportion of the above fees are undoubtedly used by the Companies to pay for: i) corporation tax, ii) employer NICs, and iii) employer wages, which have income tax deducted. Post tax employer wages are also spent on the local Scottish economy by consumption

- VAT on Solicitor, Surveyor, and Mortgage Broker fees
- Current LBTT
Property Development
- Skilled Trades: Scaffolder, Roofer, Builder, Joiner, Plumber, Electrician, Plasterer, Decorator, Gardener

A proportion of the above fees are undoubtedly used by the Companies to pay for: i) corporation tax, ii) employer NICs, and iii) employer wages, which have income tax deducted. Post tax employer wages are also spent on the local Scottish economy by consumption

- VAT on fees where skilled trades are registered (the majority are)
- VAT on materials used to renovate/develop properties

Ongoing Property Letting - Professional
- Residential Property Manager, Accountant, HMO Licence, Landlord Insurance fees

A proportion of the above fees are undoubtedly used by the Companies to pay for: i) corporation tax, ii) employer NICs, and iii) employer wages, which have income tax deducted. Post tax employer wages are also spent on the local Scottish economy by consumption

- VAT on Residential Property Manager, Accountant, HMO Licence, Landlord Insurance fees

Ongoing Property Letting - Skilled
- Skilled Trades: Scaffolder, Roofer, Builder, Joiner, Plumber, Electrician, Plasterer, Decorator, Gardener

A proportion of the above fees are undoubtedly used by the Companies to pay for: i) corporation tax, ii) employer NICs, and iii) employer wages, which have income tax deducted. Post tax employer wages are also spent on the local Scottish economy by consumption

- VAT on fees where skilled trades are registered (the majority are)
- VAT on materials used to repair/replace furniture, fixtures and fittings
Conclusion

I would strongly urge SG to reconsider their current stance on the LBTT Proposal, since it is not targeted or focused to the area in which it is aiming to help.

The key aim of the LBTT Proposal as noted by SG is to, "make sure that first time buyers have the greatest possible chance to enter the housing market"

In contrast, the LBTT Proposal is counterproductive and not only incentivises investment in properties within the FTB Band, but deters investment across all property valuation bands.

Any changes to LBTT should be constructed to assist FTBs, while not jeopardising investment across the whole spectrum of the market.

The LBTT Proposal in its current form will directly affect anyone aspiring to buy or invest in the Scottish residential property market and the PRS sector out with their main residence, regardless of the value of the property they are intending to purchase.

If the desire is to assist FTBs, it would make much more sense to tax additional home purchases in the FTB Band only, in such a way as to deter continuing investment in the current housing stock solely in this area of the market.

I welcome your response to the points raised in my evidence and I would like to know what evidence you receive from other investors in the Scottish Property Market.

Please be aware that this letter is being sent to associations concerned with the Scottish Property Market as well as Scottish Media Outlets, so please consider it to be in the public domain.

Yours sincerely,

Martin Payne
Appendices: Sources

1. Source: SG - December 2015
   http://www.gov.scot/Publications/2015/12/9056/1

2. Source: SG - December 2015
   http://news.scotland.gov.uk/News/Budget-Scottish-tax-rates-set-for-2016-17-2085.aspx#downloads

   http://www.gov.scot/Topics/Government/Finance/scottishapproach/devolvedtaxes/LBTT/LBTTStakeholderMeeting


5. Source: National Records of Scotland - 2014
   http://www.gov.scot/Topics/People/Equality/Equalities/DataGrid/Age/AgePopMig


7. Source: SG - January 2016
   http://www.gov.scot/About/Performance/Strategic-Objectives

8. Source: SG - June 2015


11. Source: HMRC - June 2015
The Finance Committee
The Scottish Parliament

Your ref: AD/SRC/ MISC
If calling please ask for Stephen Cranston
Email: stephencranston@mccash.co.uk
Date 29th January 2016

ONLY BY EMAIL TO: finance.committee@scottish.parliament.uk

Dear Sirs,

LBTT Additional Supplement
Call for Evidence

We refer to the above matter and to the Call for Evidence issued by the Committee. Having discussed this amongst the solicitors engaged in conveyancing work in the office, our views are as follows:

1. General Policy

We are not convinced that the supplement will meet the aims of the policy. Our experience is that the large scale landlords tend to purchase properties from repossessions, insolvencies and the like. Those tend not to be properties that our first time buyer clients are interested in for reasons unconnected to the price (e.g. the properties are often not in the best condition and can have been lying empty for a considerable time). We suspect that the supplement will simply suppress the housing market further, making sales far more difficult. It may also affect lender’s willingness to lend at the lower end of the market if the natural customer to whom they would sell repossessed properties is faced with increased tax on the purchase.

We would also comment that we would expect that those in the letting business, will simply seek to increase rents on let accommodation to preserve their profit margins and this will lead to first time buyers having to rent for longer before saving an adequate deposit to finance a purchase.

2. Tax Rate and Bands

We have no particular comments on this matter.

3. Additional Revenue

We have not had an opportunity to study the figures produced by the government. We would strongly suggest that the figures produced should reflect a significant down turn in prices and volume. There should also be a recognition that this policy will reduce tax taken on every property as the market price will be reduced.
4. Reliefs & Exemptions

We would have particular concerns about the treatment of property bought in trust or for the benefit of someone other than the owner. For example, parents buying accommodation for disabled adult children. This policy may have the effect of restricting the independence of such persons.

With regard to property bought to provide accommodation for workers (e.g. farm cottages, warden’s accommodation or the like), our view would be that the supplement would be a disproportionate charge on local, family owned businesses in these circumstances. It would also have an indirect effect on the productive use of land.

We would also suggest that careful consideration is given to ensure that properties are not artificially treated as second properties. For example, if a person owned a property that was let out and then moved their principal residence, the new principal residence should not, in our opinion, be subject to the supplement. Another example would be if a person chooses to purchase their new property before selling their current home, the supplement would seem inappropriate. We would suggest that an exemption similar to the principal private residence exemption for Capital Gains Tax would be appropriate.

5. Potential for Tax Avoidance

It is not clear from the published information how companies and other corporate structures are to be treated. Depending on the detail of the legislation there may be scope for using such structures to avoid the supplement.

6. Impact of Forestalling

We would suspect there is a huge scope for this. If clients can legitimately structure their affairs so that they pay less tax, they will clearly opt to do that. This should also be taken into account with the revenue projections.

7. Other Comments

We would suggest that this supplement is likely to remove those who choose to invest some savings in a single buy to let property, who we suspect will simply move out of the market. The institutional landlords are unlikely to close or reduce their businesses due to this measure. We suspect that they will simply increase the rents they charge. We also suspect that the properties that would have been bought by the "occasional" buy to let landlords will in future be bought by institutional landlords.

We would be happy to be contacted for further comment should the committee consider that to be of assistance to them.

Yours faithfully,
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from Morag Shaw

Response

I don’t believe it will assist home ownership at all, because this assumes that landlords or investors compete with homeowners for the same properties. I struggle to believe that this happens anywhere other than London, and to a much lesser extent, possibly small districts of Edinburgh, Glasgow and Aberdeen. Most landlords and small developers can’t afford London/Edinburgh/Glasgow west end prices either, and are more likely to look outside these areas for properties below market value, needing a bit of work, where there is scope to make a bit of profit. They will look for properties that have been languishing on the market for months with no-one showing any interest. They will often buy properties likely to appeal more to renters than buyers, or properties that are in poor condition or even un-mortgageable. The last thing they will do is get into a bidding war with a homebuyer who has their heart set on that very house, as the homebuyer will always be prepared to pay more than the landlord.

A second important point is that many landlords are individuals who only rent out their home because they couldn’t sell it for a fair price, or even sell it at all, or because by switching it to a BTL mortgage they can free up some of the equity to move on to a bigger house for their growing family, or a smaller house where they can see out their retirement years with a little extra income. Very few landlords are rich and some barely break even. This extra 3% now payable on their new home will be a major blow to these people, for whom the BTL mortgage has until now been a blessing, for the first time allowing ordinary people to make some use of the equity in their homes before they drop dead.

All that can be stopping most people from buying homes is high deposits, and nervous lenders. There are plenty of affordable homes out there, struggling to sell. If the government really wants to "level the playing field" for homebuyers, it should restore MIRAS for first time buyers in the 20% tax bracket, on homes up to say £150,000. One can buy a very presentable four bedroom house for that price, so that should suffice for a first time buy. At the risk of sounding like Victor Meldrew, in my day a first time buyer property was a one or two bedroom flat in need of a facelift, and at interest rates of up to 13%, it needed two wages, and that was with MIRAS. Our first mortgage in the eighties took 57% of my full-time shift-working salary as a nursing assistant. That same flat now would take less than 30% of the equivalent salary today. If a true living wage of £10 an hour was ever to become a reality, that would solve the biggest part of the problem.
However, in the meantime, there are too many people who are too poor to ever afford to buy a house, and many who simply don’t want to, or are not currently in a position to do so. Unless more housing is built to increase a finite supply, crippling landlords and reducing investment in the PRS will only disadvantage tenants (often less well off) relative to homebuyers (somewhat better off). It is flawed logic to compare MIRAS for homebuyers with tax relief for landlords. MIRAS allows homebuyers to effectively pay less tax on their income, so they have more money left to pay the mortgage on their home. Landlords don’t get MIRAS on their home at present either, but like every other business that buys, sells, makes something or provides a service for payment, they are allowed to offset any costs they incur in providing their goods or service, against the payment they receive. What’s left is their profit, and that is then taxed like any other income. If a homeowner takes in a lodger for payment, they are expected to pay tax on that income, but they too are allowed to offset a certain amount before paying tax, which presumably is meant to recognise the fact that there are certain additional costs and risks involved in this, such as extra heating, cleaning, hot water, electricity, insurance, possible damage and wear and tear.

There can be no justifiable purpose for this supplement other than to deter people from buying additional properties, but for what reason? If its purpose is to deter wealthy speculators from buying London properties to leave lying empty, while local workers struggle to buy or even rent a home, it will need to be a lot more than 3%. The people who can afford to do this are a very tiny minority, operate in very limited locations, and can well afford the extra 3%, though they will deeply grudge paying it, and they can still expect to make more than 3% in a year’s capital growth. Even average earners who really want to buy a second home for personal holiday use will probably manage to stretch to the extra 3%, since it will be a one-off special purchase, though as usual it will disadvantage the less well off who aspire to buy even a small holiday home which would currently be exempt.

The ones who will be the most seriously affected, will be those whose business it is to buy multiple or serial properties to refurbish and sell on or rent out. It will have a significant impact on already slim profit margins in the PRS, and further disincentivise small developers from building or improving existing housing stock for occupation. Some builders depend on landlords reserving the first few properties in a development to boost their cash flow for the next phase. Coming on top of the new Housing (Scotland) Bill & George Osborne’s Clause 24, it may well be the final nail in the coffin of investment in the PRS. I have been reading a lot of material recently which receives little media coverage, indicating that the UK and Scottish governments are actually trying hard to find ways to incentivise large scale investment in the PRS, without much success. This is in direct contrast to the mainstream portrayal of the PRS as the work of the devil, which must be reined in or better still, destroyed. If that’s the intention, they’re on the right track. Politicians and
campaigners have finally found a scapegoat to blame for everything, which can be universally loathed by everyone from the Greens to the Conservatives. The fact is that renting houses is a high risk, low profit, labour intensive enterprise (no, definitely not a “passive investment”), and the big boys must know this. Low earners and those on benefits will be avoided like the plague in favour of high earning professionals, and they will be looking for incentives, risk mitigation and exit strategies at the taxpayer’s expense to tempt them to dip a toe in the water. They’ll only want to build sizeable developments in areas with a substantial anticipated target market. Small developments in suburbs or villages won’t stack up for them. High earning professional tenants are thin on the ground outside London and other big cities. The idea that housing associations are best placed with the right experience to manage these developments is a bit dubious. Their current remit, mindset, funding source, client group, staff attitudes, regulatory environment and service expectations are very different from those expected by demanding investors and high rent-paying tenants. It would come as a bit of a wake-up call I suspect.

If enough new houses are built to satisfy the shortfall, I don’t think it necessarily matters too much what type of housing it is or who buys it. If it is upmarket housing, those who buy it will be freeing up progressively more affordable properties down the chain. If it is affordable housing, it might be sold directly to homebuyers or landlords, but either way, someone will get a home for each one built. I’m sure small landlords could be very easily persuaded to invest in new build housing, which would give builders some confidence to build. However, the current climate for small landlords is only serving to make us feel it’s no longer worth the aggravation.

2. The proposed 3% rate for the supplement and the £40,000 purchase price at which it is proposed to take effect.

If the purpose is simply to raise more tax, it would be fairer to restrict the supplement to only 1%, and this would have a far less deterrent effect on investment. At 3%, less people will be inclined to invest, so I suspect the tax take will be nothing like anticipated. Properties valued below £70-100,000 are often those most in need of up-grading for the affordable housing market, either for sale or to let, but profit margins are modest. A 3% tax hit would seriously deter investment at this level.

3. The Scottish Government’s estimate that the measure will raise between £17 million and £29 million in 2016-17.

By my reckoning, this means approximately 8000 homes at £125,000 or 13,500 at £70,000 would need to change hands, as additional properties, to raise an extra £29 million in tax. Is it likely that 8000-13,500 people will buy personal holiday homes? I don’t know how many properties are sold per year in total, but if this 8000-13,500 is expected to be developers or landlords, I think most will see this tax as unfair and prohibitive, and they will simply defer purchases while they figure out an alternative
means to maintain a livelihood. The vendors whose houses they might have bought will be stuck with them a while longer, waiting for a homebuyer to come along instead.

4. Any reliefs or exemptions that you consider should form part of the legislation.

This supplement should only be applied, if at all, to homes which are being taken out of use as a primary home, ie genuine private second homes for the personal use of the buyer only. If the property is being bought with the intention to rent or refurbish to sell, the supplement should not apply, as such properties are just being turned around as part of a perfectly legitimate business, and not being removed from the general housing stock, and the extra charge would be a major disincentive to any landlord or developer. I have heard suggestions along the lines that exemptions should apply to purchases of fifteen units or more, or by limited companies, but this just gives an unfair advantage to large operators over smaller ones, and companies over individuals. What makes a full-time landlord with fourteen properties bought one at a time, deserving of a tax penalty on his next purchase, when someone who can afford to buy fifteen properties in one fell swoop gets off scot free? They may differ in scale, but both are providing the same service. This is similar to the discriminatory logic being applied to the Clause 24 tax penalty on smaller or individual landlords providing the same service as larger or company investors, which are spared the penalty. And I deliberately refer to it as a penalty, as opposed to the loss of a relief, because it actually taxes people on profits they have not made, or even on losses. Furthermore, smaller developers/landlords are the only ones likely to be prepared to invest time and money in restoring cheaper, smaller and one-off properties.

5. The potential for tax avoidance under the supplement and how this should be addressed.

There is already confusion among existing landlords who don’t know how it will be applied if they buy a new house to live in. From the guidance available so far, it seems the supplement will be charged on the new private residence(PR) if the current PR is not sold yet. If the old PR is sold within 18 months it will be refunded, but if the old PR is re-mortgaged to BTL and kept as a rental property, the tax will not be refunded. This will mean people will end up paying the second home supplement on their PR after all, and this is likely to be a higher value property than the former PR. If applied to the former PR, how will it be calculated? Will it be based on the price paid at purchase maybe ten years ago (when stamp duty might have been paid already), or its value at the time of transfer to the rental portfolio, or on the difference between the two? What if they sell their main home and move into one of their rental properties temporarily while they house hunt? How will they prove that they have already sold their former main home, and the one they are currently living in is only a stop-gap? I understand that a marrying couple, who perhaps move into a new house
while keeping the husband’s old flat as a rental property, are to be treated as one unit for this tax, so they will need to pay the supplement on their marital home. What about parents sharing a joint mortgage with their child who is a first-time buyer to help them onto the housing ladder? Many landlords are currently looking into the feasibility of transferring their portfolio to a company set-up, in order to escape the punitive effect of Clause 24, but this carries various costs and fees, including CGT and LBTT, as well as having to re-mortgage. To add a further 3% supplement to the cost of “buying” one’s own properties would be prohibitive to most small landlords, so yet another means of remaining afloat is denied to them.

Houses bought as holiday lets, as opposed to private holiday homes, could be a good thing in some areas, helping to boost tourism, and the supplement would be a deterrent to this. Specific areas where locals are being disadvantaged for housing could be treated differently and local rules applied.

Properties already in use as HMOs being bought by another landlord should be exempt as they are not suitable for a homeowner in their current state anyway.

To avoid people buying additional homes for personal use trying to claim exemption by letting them out very occasionally, the supplement could be applied to all additional homes at the time of purchase. Genuine full-time landlords, holiday rentals, or developers could then claim it back over a period of say three years on their tax return, by demonstrating that the house was let to other people as a home or as part of a holiday letting business.

6. The likely impact of forestalling.

Presumably this means delaying implementation for the time being? This can only be a good thing, as this tax can be nothing but detrimental to the housing market in general, and the PRS, building industry, workforce mobility and tourism in particular. It can only cause a slowdown in churn and investment, and will not help homeowners. Vendors will lose a proportion of their potential buyers and may struggle to sell. Builders will lose some of their early investors and struggle to progress or complete developments. Buyers will try to barter prices into lower bands to save a little bit of tax. Property prices may take another dip, just as they are beginning to pick up after eight years of stagnation. Delaying or better still declining to introduce it at all, would give Scotland an advantage over the rest of the UK in attracting investment. Even if there were any conceivable advantages to it, it would be best to wait and see what results from Clause 24 and the Housing(Scotland) Bill, before delivering a third hammer blow to the PRS and its tenants. At the end of the day, it is tenants, as the end users, who will end up paying a substantial portion of these taxes, especially if supply is reduced and they have no choice but to pay the higher rents which the remaining landlords will be forced to charge, if they are to remain viable.
7. Any other comments you may have on the proposed supplement.

The PRS in Scotland has, I understand, more than doubled in size over the last ten years or so, mainly due to small individual landlords from all walks of life, from carpet fitters to hospital consultants, using BTL mortgages. These people are a million miles away from the faceless multinational speculators who have driven the obscene growth in the London market. Without the BTL mortgage, most of these people could not have dreamt of “investing” in property. Most only have one or two properties, some have a more substantial number which provides them with a livelihood, and all are meeting a demand for flexible rented housing of every type in every location. If there was no demand they couldn’t do it. They also provide a stop gap for those waiting for social housing. Most never increase the rent except between tenancies, and then only if the market permits. They wouldn’t dream of evicting a tenant for no good reason, but when they do have a good reason, the process is difficult, stressful, expensive, time-consuming and unlikely to be successful, at least in respect of achieving any financial redress. Some make only a tiny profit or none at all, and few make more than 3 or 4% yield on the value of their property, never mind the time invested if they self-manage. We make 3.1% after routine expenses, assuming no voids or unexpected repairs. There are always plenty of voids and unexpected repairs, so realistically it is probably less than 2.5%. Between March and October this year, I had three days off, managing eight properties. I then had to go in for major surgery and handed over to an agent. I still spend about ten hours a week keeping tabs on the agent, and dealing with minor jobs myself as I like things done promptly and well, however it is a great relief to know that I can let the agent deal with 80% of what I used to do myself. If landlords don’t self-manage, they have to pay around 10% of their gross rent to an agent. They all take a very big risk in handing the keys to tens of thousands of pounds worth of property to complete strangers who are afforded far more rights in law than the landlord, and these rights are being enhanced all the time. As well as carrying this risk, they are also providing and maintaining housing to demanding standards with no taxpayer support or subsidy. Housing benefit is a subsidy to the tenant, not the landlord, and in fact it can cause so many headaches for landlords, that it warrants a chapter to itself, some other time, and many landlords simply prefer to avoid it if they can. Along with all the increased legislation and publicity, has come an increased, disproportionate and misinformed hostility towards landlords, and increased opportunities for malicious tenants to cheat unsuspecting, and even experienced landlords, out of thousands of pounds in unpaid rent and compensation. Incidences of claims are on the rise for “unprotected deposits” even if the deposit was returned in full despite damages, or “overdue Gas Safety Checks” (when it was they who obstructed access) or “defective smoke alarms” (because they disconnected it themselves when it was peeping for a new battery, but they could get around to replacing it) or “gas leaks” (when they loosened a nut under the hob themselves) or “mould & damp” when the property never had a mould problem for the previous ten years, but they never open the curtains never mind a window, don’t heat the bedrooms, never clean the
windows, bathroom or kitchen, and disconnected the extractor fan because the hum was irritating. There are any number of ways in which a malicious person with uninterrupted control of a property, can engineer all sorts of defects to make it look as though the landlord has provided a below-standard property or refused to deal with repairs. Thankfully very few tenants (so far) are malicious, but many are pretty immature and irresponsible, and every landlord with a bit of experience could write a book on the topic. I don’t doubt there is a minority of bad landlords too, but they are operating outside the very ample existing rules and regulations. All that is needed is for the rules to be enforced, not to keep battering the rest of us with yet more rules. Despite all this, most landlords and tenants have a good working relationship, and most tenants I have known prefer to deal directly with a private landlord than an agent or organisation. That face to face human relationship, however superficial, means both parties are more empathic and respectful to one another, and less likely to try and cheat each other. The arrangement is generally mutually beneficial to both parties. The landlords, usually older, are supplementing their pension arrangements or helping their children through university, while the tenants are studying for their degree or saving for a deposit on their first home. There are of course many other circumstances too, but the point I make is that it is not a matter of rich versus poor, young versus old or powerful versus powerless as it is often portrayed. It’s just different people at different stages in life; most landlords were once tenants and may be again at some point, and some tenants might be landlords themselves a few years down the line. A few of mine are already landlords, or have a house elsewhere. Unless of course the BTL mortgage is destroyed; then it will once again become the preserve of only the very wealthy or slum landlords. As it stands, the PRS is a high risk and low profit business, increasingly burdensome in terms of standards and legislation, and becoming very worrying with regard to removing bad tenants and regaining possession, but it remains a slightly better if much riskier investment than the bank, or a useful pension supplement, and even a modest livelihood for some. The returns are just about enough to satisfy small individual investors, but insufficient to attract large corporates trying to satisfy shareholders and pension funds. Large scale student accommodation seems to be the only type taking off at present, but I gather the risks are underwritten by the universities, and they are far from affordable. I have recently housed two students in a nice quiet homely spacious flat with two double bedrooms, a new kitchen and fresh décor and carpets, for a total of £600 including energy and broadband, as opposed to £550 each for a room with shared kitchen in student halls.

Clause 24 will cause all current 40% tax payers with mortgages to pay more than 40% on their real profits, (see attached table) some current 20% taxpayers will enter the 40% bracket based on imaginary profits, some will pay all their profits and more in tax, having to subsidise their rental properties from their other income, and if they don’t have any other income, they’ll be bankrupted. Many perfectly sustainable, well-managed rental portfolios will become unviable, and landlords will be forced to put up rents, incorporate, or sell up. Perfectly good happy tenants will be reluctantly
evicted, and might struggle to find somewhere else because other landlords are also selling up or raising rents. This unprecedented, illogical, discriminatory, inconsistent tax burden, applied retrospectively on only one business and only certain operators within that business, is likely by itself to have a decimating effect on the PRS across the UK. Together with the ever increasing regulatory burden, erosion of landlords’ minimal rights, and the 3% LBTT supplement, it is hard to envisage much more new or sustained investment from small investors, and large investors, who have cold feet anyway, will also be wondering where this crazy tax regime might go next. It seems anything is possible.

Incorporation is not an option for most, as it incurs legal and registration fees, re-mortgaging, liability for capital gains tax and LBTT. For our own portfolio of eight properties, there has been no capital gain since we started out nine years ago, but I worked out that we would need to pay £33,000 in the new LBTT to “buy” them from ourselves if we set up as a company, as opposed to about £6000 at present. New mortgages might be hard to obtain at our age and with our small income, but in any event would incur at least £10,000 in fees (also regarded as profit for the Clause 24 tax penalty) and higher interest rates than at present. This just isn’t an option.

Very few landlords are aware yet of the impact of all these changes, but those who are, are doing their best to lobby politicians, and bring it to the attention of other landlords, local authorities, housing charities, tenants and the general public, all to no avail. Most landlords haven’t given it a second thought, also swallowing the line that it will only affect the really wealthy, which is the opposite of the truth. Everyone else couldn’t care less, convinced that all landlords are rich exploitative parasites earning a fortune from their poor victimised tenants, and Clause 24 is just closing a loophole and in fact doesn’t even go far enough.

If the government wishes to encourage large scale investment in the private sector to alleviate a perceived need for more rented housing, how is this helped by demonising, legislating, regulating and taxing small landlords out of business? Small private landlords have doubled the supply in ten years, and could probably double it again if they weren’t now scared witless that they’ll be forced in future to house unpleasant tenants indefinitely while paying more in tax than they actually earn, and wondering how to keep up with all the regulatory requirements into the bargain. Even if large scale investors could be attracted, they couldn’t, or wouldn’t provide the range and quality of homes and locations that small private landlords can, and they wouldn’t take the risks or provide the personal service they do, nor would they leave the same tenant in situ for five or ten years without bothering to increase the rent, or buy a house with a garden for their tenants in the third floor flat after they had a baby, taking the tenants with them to viewings to help choose the house, or look after their tenant’s dog when they go on holiday, or put up with rent coming in dribs and drabs for eighteen months while someone gets back on their feet after a crisis.
Whatever the agenda is, the Westminster government for some reason best known to itself, seems determined at all costs to destroy the small landlord, and will brook no discussion on the matter.

I truly hope that the Scottish government will actually listen to the facts from the people who know what they are talking about, and realise how unfair and detrimental these taxation measures will be. Most landlords, once aware, will have time and the resources to prepare themselves for this or just get out of the business, but it is tenants, local authorities and housing charities who will bear the brunt of it. Sometimes we should be careful what we wish for.
### Property Income details (per annum) assuming all fully occupied and no unexpected repairs.

<table>
<thead>
<tr>
<th>Property code</th>
<th>Rent</th>
<th>Mortgage Interest (MI)</th>
<th>Routine Expenses (Factor, gas service, insurance, agent) (EXP)</th>
<th>Real Profit ie what landlord has left. (PROF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A 2 bed flat</td>
<td>6000</td>
<td>3204</td>
<td>1680</td>
<td>1116</td>
</tr>
<tr>
<td>B 2 bed flat</td>
<td>6000</td>
<td>588</td>
<td>1680</td>
<td>3732</td>
</tr>
<tr>
<td>C 2 bed flat</td>
<td>6000</td>
<td>588</td>
<td>1680</td>
<td>3732</td>
</tr>
<tr>
<td>D 2 bed flat</td>
<td>7200</td>
<td>2988</td>
<td>1776</td>
<td>2436</td>
</tr>
<tr>
<td>E 2 bed flat</td>
<td>7200</td>
<td>2988</td>
<td>1776</td>
<td>2436</td>
</tr>
<tr>
<td>F 2 bed house</td>
<td>7440</td>
<td>1577</td>
<td>795</td>
<td>5068</td>
</tr>
<tr>
<td>G 4 bed semi</td>
<td>9600</td>
<td>2731</td>
<td>988</td>
<td>5881</td>
</tr>
<tr>
<td>H 3 bed detached</td>
<td>9600</td>
<td>3493</td>
<td>1238</td>
<td>4869</td>
</tr>
</tbody>
</table>

### Landlord’s other income

#### £20,000 per annum (20% taxpayer)

<table>
<thead>
<tr>
<th>Tax now: PROF + Salary – Personal Allowance (£10k*) =Taxable income, taxed at 20% on first £30k, then 40% on amount over £30k.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2223 (2000 payable on salary alone, rest on PROF) 2188</td>
</tr>
<tr>
<td>2864-640=2223</td>
</tr>
<tr>
<td>2864-676=2188=20%</td>
</tr>
<tr>
<td>10446 (10k due on salary alone, rest on PROF) 10376=40% of PROF</td>
</tr>
<tr>
<td>11728-640=11088</td>
</tr>
<tr>
<td>11728-676=11052</td>
</tr>
<tr>
<td>1088/1116=97.5%</td>
</tr>
</tbody>
</table>

#### €50,000 per annum (40% taxpayer)

<table>
<thead>
<tr>
<th>Tax in 2020: Rent – EXP + salary - personal allowance = taxable income, tax calculated as now. From this sum deduct 20% of MI = tax payable.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2088</td>
</tr>
<tr>
<td>1088</td>
</tr>
<tr>
<td>1088</td>
</tr>
<tr>
<td>1088</td>
</tr>
<tr>
<td>1088</td>
</tr>
</tbody>
</table>

### Values assuming individual only has one rental property based on real properties

**Effect of 0.25% interest rate rise**

Two examples of further effect of one 2 month void and one appliance breakdown

<table>
<thead>
<tr>
<th>Salary £20,000 per annum</th>
<th>Salary £50,000 per annum</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>B</td>
</tr>
<tr>
<td>B</td>
<td>C</td>
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<tr>
<td>D</td>
<td>E</td>
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<tr>
<td>F</td>
<td>G</td>
</tr>
<tr>
<td>H</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Tax in 2020:</strong> Rent-Expenses+salary-personal allowance =taxable income. Deduct 20% of MI from tax due on taxable income=tax payable.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equivalent tax rate on real rental profit in 2020, varies from one individual to the next and one property to the next, but always exceeds 40%. Basically as profit falls, relative tax rate increases, until it exceeds profit entirely, and doesn’t stop at 100%.</td>
</tr>
</tbody>
</table>

**Equivalent tax rate on real rental profit in 2020**

- Salary £20,000 per annum
  - 20% tax payer:
    - 20% of PROF
    - Tax in 2020:
      - 2223
      - 2864-640=2223
      - 2864-676=2188=20%
      - 10446 (10k due on salary alone, rest on PROF)
      - 11728-640=11088
      - 11728-676=11052
      - 1088/1116=97.5%

- Salary £50,000 per annum
  - 40% tax payer:
    - 40% of PROF
    - Tax in 2020:
      - 2223
      - 2864-640=2223
      - 2864-676=2188=20%
      - 10446 (10k due on salary alone, rest on PROF)
      - 11728-640=11088
      - 11728-676=11052
      - 1088/1116=97.5%
<table>
<thead>
<tr>
<th>Rents</th>
<th>MI</th>
<th>EXP</th>
<th>PROF</th>
<th>Salary £20,000 per annum</th>
<th>Salary £50,000 per annum</th>
</tr>
</thead>
<tbody>
<tr>
<td>59040</td>
<td>18157</td>
<td>11613</td>
<td>29270</td>
<td><strong>Tax now</strong> 30k@20%=6000 27427@40%=10970 Total tax = 9708 7708/29270=26.3%</td>
<td><strong>Tax now</strong> 30k@20%=6000 39270@40%=15708 Total tax = 9708 7708/29270=38.7%</td>
</tr>
<tr>
<td>55440</td>
<td>19765</td>
<td>13213</td>
<td>22462</td>
<td><strong>Tax in 2020</strong> 30k@20%=6000 27427@40%=10970 Tax due = 13339 11339/29270=47%</td>
<td><strong>Tax in 2020</strong> 30k@20%=6000 39270@40%=15064 Tax due = 12106 11064/29270=40%</td>
</tr>
<tr>
<td>55440</td>
<td>31021</td>
<td>13213</td>
<td>11206</td>
<td><strong>Tax now</strong> 30k@20%=6000 22227@40%=8890 Tax due = 3984 14890-22227=1902 1902/11206=17%</td>
<td><strong>Tax in 2020</strong> 30k@20%=6000 37662@40%=15064 Tax due = 12106 11064/29270=40%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TOTALS</th>
<th>Rents</th>
<th>MI</th>
<th>EXP</th>
<th>PROF</th>
<th>Salary £20,000 per annum</th>
<th>Salary £50,000 per annum</th>
</tr>
</thead>
<tbody>
<tr>
<td>59040</td>
<td>19765</td>
<td>11613</td>
<td>27662</td>
<td><strong>Total</strong> 59040</td>
<td><strong>Total</strong> 59040</td>
<td></td>
</tr>
<tr>
<td>55440</td>
<td>31021</td>
<td>13213</td>
<td>22462</td>
<td><strong>Total</strong> 55440</td>
<td><strong>Total</strong> 55440</td>
<td></td>
</tr>
</tbody>
</table>

**Assuming landlord has no other income (NB Real pre-tax profit never exceeds 20% level)**

<table>
<thead>
<tr>
<th>Rents</th>
<th>MI</th>
<th>EXP</th>
<th>PROF</th>
<th>Salary £20,000 per annum</th>
<th>Salary £50,000 per annum</th>
</tr>
</thead>
<tbody>
<tr>
<td>59040</td>
<td>18157</td>
<td>11613</td>
<td>29270</td>
<td><strong>29270-10000=19270@20%= tax due =3854</strong> 3854/19270=20%</td>
<td><strong>59040-11613-10000=37427. Tax=30k@20%=7427@40%. Tax due =8970-3631=5339. 5339/37427=14.6%</strong></td>
</tr>
<tr>
<td>59040</td>
<td>19765</td>
<td>11613</td>
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Response to the Scottish Parliament’s Finance Committee call for evidence on the proposed LBTT supplement on additional residential homes

From National Association of Estate Agents (NAEA)

January 2016

Background

1. National Association of Estate Agents (NAEA) is the UK’s leading professional body for estate agency personnel, being part of a group representing 14,600 members who practice across all aspects of property services both in the UK and overseas. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land. The NAEA is a sister organisation to the Association of Residential Letting Agents (ARLA).

2. NAEA is dedicated to the goal of professionalism within all aspects of property, estate agency and land. Its aim is to reassure the general public that by appointing an NAEA member to represent them they will receive in return the highest level of integrity and service for all property matters. Both NAEA and ARLA members are bound by a vigorously enforced Code of Practice and adhere to professional Rules of Conduct. Failure to do so can result in heavy financial penalties and possible expulsion from the Associations.

Questions

The Committee would welcome views on -

1. The Scottish Government’s overall policy objectives in introducing the supplement and, in particular, whether it –

   • Is likely to “complement the Government’s commitment to supporting home ownership in a balanced and sustainable way.”
   • “helps to ensure that the tax charge is proportionate to the taxpayer’s ability to pay.”

2. The proposal by the Scottish Government in the Draft Budget 2016-17 to levy “a Land and Buildings Transaction Tax (LBTT) supplement on purchases of additional residential properties, such as buy-to-let properties and second homes” will bring Scotland’s buy-to-let sector and market in second homes in line with the rest of UK.
4. Similar to other parts of the UK, NAEA thinks that the three per cent additional homes supplement is likely to reduce the number of people looking to invest in buy-to-let properties and second homes in Scotland. However, anyone looking to purchase these types of property is likely to do so before April to avoid incurring extra costs because of the supplement.

5. Fewer people entering the buy-to-let market is encouraging for first-time buyers because they won’t be in competition with as many individuals looking to invest in buy-to-let properties or second homes. We think this could be particularly helpful in areas such as Edinburgh, Glasgow or Aberdeen where supply and affordability of housing is limited.

6. However, in relation to the Scottish Government’s overall policy objectives to increase homeownership in a balanced and sustainable way there are two factors which must be taken into consideration. Firstly, house prices are continuing to rise. The NAEA’s Housing 2025 report released in December predicted that the price of the average UK home will rise by 50% in the next 10 years. For houses in Scotland the report outlines how we expect the average house price to be £199,807 this year and rise to £281,445 in 2025. Secondly, like in other parts of the UK, Scotland has a shortage of housing with Homes for Scotland saying in November 2015 that 100,000 new homes are needed in Scotland by 2020. Consequently, the lack of properties available across Scotland, combined with high demand means that house prices aren’t likely to come down any time soon.

7. To ensure that homeownership in Scotland is balanced and sustainable we think that the Scottish Government must implement a nationwide housebuilding programme to even out the current differences between supply and demand. This will help to constrain upward pressure on house prices and allow more prospective buyers to enter the Scottish housing market.

8. Furthermore, those able to purchase housing in Scotland and across the UK still require large sums of money to pay for deposits and solicitors’ fees. With house prices still outstripping wages people need support in accessing finance to purchase property once they are built. It’s also vital that the Scottish Government works closely with
mortgage lenders to ensure that lending criteria are appropriate and that sufficient
lending is available to those looking to buy a home.

2. The proposed 3% rate for the supplement and the £40,000 purchase price at which it is
proposed to take effect.

9. The proposed purchase price at which the supplement takes effect will cover the vast
majority of property sales in Scotland. We know this because the NAEA’s Housing 2025
report shows that last year the average house price in Scotland was £196,799.
Therefore we see the proposed 3% rate causing big problems for people purchasing
additional homes for children or those who have to go on the mortgage with children
and family in order to assist them on to the housing ladder.

10. As we outlined in point 4, NAEA thinks that the supplement could allow for more
properties to become available for first-time buyers and those looking to move house.
However, in our response to the Scottish Parliament’s Finance Committee’s call for
evidence on the LBTT in October we said that we expected the new LBTT rules to help
first-time buyers and the lower end of the market, but figures from members showed
that fewer properties costing up to £145,000 were sold in 2015 since the new rules
came in compared to the same period in the previous two years.

11. Furthermore, although in many cases members said that first-time buyers had been
more active throughout 2015, some members suspected this was largely due to the
availability of mortgage lending rather than the tax savings from purchasing a property
at the lower end of the market. Therefore we feel that this underlines the importance
for the Scottish Government and the banks of continuing to look at more
comprehensive ways to improve access to funding for prospective homeowners,
especially for the importance first time buyer market.

12. For those people who do decide to invest in second homes or in particular buy-to-let
property after April, it is likely that may see rent rises as landlords attempt to recoup
the cost of paying the additional homes supplement. These types of investors may
also not have as much money to renovate or maintain property. NAEA believes access
to good quality housing is essential to improve the sector and strengthen
communities.
13. If the Scottish Government were to start a massive housing building programme (as outlined in point 7) this would not only bring down house prices, but also reduce the cost of renting as supply catches up with demand. As a result people who rent will have more money to save for a deposit, allowing them to become homeowners and part of the Scottish Government’s plan for sustainable and balanced homeownership.

3. The Scottish Government’s estimate that the measure will raise between £17 million and 29 million in 2016-17.

14. We would treat any estimates with caution. We know from information provided to us from members that 2015 sales figures for residential property sold at prices ranging from £250,000 to £325,000 in the period January to March 2015 were no different to the number of properties sold during the same period in 2014. In addition, last year a member reported that only two additional properties were sold from April to August than the same period in 2014.

15. Last year members also witnessed a significant reduction in sales for residential property sold over £750,000 in the two months after the new LBTT regime came in. Furthermore, in December Faisal Choudhry, Savills’ Director of Scottish Research said that the amount of tax collected since the introduction of LBTT is down twenty five per cent on the amount raised during the previous stamp duty regime.

16. Regardless of the amount of money raised as a result of the additional homes supplement the NAEA would like to see the money used to build more houses and fund initiatives to help first-time buyers purchase more affordable housing. NAEA believes that the Help to Buy scheme is a positive step which has helped people to buy homes as well as provided support for the construction industry.

4. Any reliefs or exemptions that you consider should form part of the legislation.

17. On page 18 of Scotland’s Spending Plans and Draft Budget 2016-2017, NAEA feels that greater detail is needed to define more clearly and outline examples of additional purchases which may constitute ‘recreational purposes’ or ‘main residence’. This is because some purchases may be made to allow for work arrangements splitting a person’s main residence. For instance, if they stay in a property from Monday to Friday for work but the family home (lived in on weekends or for a couple of days throughout the week) is somewhere else. If these types of purchases were to fall into the
definition of ‘main residence’ then we would recommend the Scottish Government look at providing some type of relief for buyers.

5. The potential for tax avoidance under the supplement and how this should be addressed.

18. People with a property portfolio might now consider swapping to a limited company structure and paying corporation tax instead.

6. The likely impact of forestalling

19. Anyone looking to invest in a buy-to-let property or second home will more than likely already be securing loans to cover the additional homes supplement before the changes in April.

7. Any other comments you may have on the proposed supplement.

20. We do not have any further comments to make on the proposed supplement.
1. The Scottish Government’s overall policy objectives in introducing the supplement and, in particular, whether it—

- Is likely to “complement the Government’s commitment to supporting home ownership in a balanced and sustainable way.”
- “helps to ensure that the tax charge is proportionate to the taxpayer’s ability to pay.”

There is a potential for this to impact on the buy to let market (investment purchase). Given the low threshold value and tax being payable on the full value, this may act as a deterrent in this market impacting on availability of rented accommodation. It may also increase rents in this sector as landlords seek to recoup the additional cost. Any reluctance by landlords to invest may push rents upwards as demand exceeds supply in the medium term.

There is no information available to comment on whether the charge is proportionate to the taxpayer’s ability to pay.

2. The proposed 3% rate for the supplement and the £40,000 purchase price at which it is proposed to take effect.
Setting the threshold at £40,000 is unlikely to exclude many properties and therefore means that the supplement will apply to most purchases of additional homes. It is noted that the 3% will be applied to the full value of the transaction; consideration should be given to the tax being progressive rather than a flat rate to allow consistency and fairness in relation to other LBTT rates.

3. The Scottish Government’s estimate that the measure will raise between £17 million and £29 million in 2016-17.
This cannot be assessed based on the information presented in the Call for Evidence.

4. Any reliefs or exemptions that you consider should form part of the legislation.
None
5. **The potential for tax avoidance under the supplement and how this should be addressed.**
   The threshold which triggers the tax is considered so low that the likelihood of tax avoidance is minimal.

6. **The likely impact of forestalling.**
   Due to the timescales for implementation there is limited opportunity for forestalling.

7. **Any other comments you may have on the proposed supplement.**
   None
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from Paul Matthews

I am a solicitor living in the Dumfries and Galloway area.

I have been involved in property sales and purchases for 28 years.

I act for numerous private landlords and tenants.

I am secretary to the Dumfries and Galloway solicitors property centre.

I have considerable knowledge of the property market in the region.

The proposed supplement will be bad for this region. I say this with reference to the following facts:

1/ the property market in south west Scotland is weak. It is not enjoying the recovery seen in other geographic areas. We need to encourage purchasers.

2/ the private rental sector accounts for over 13,000 homes in the area. There is an unmet need for housing. Any reduction in the number of homes available to rent will have an adverse effect on families needing their own homes.

3/ our population is ageing. We have the highest average age per head of population in the UK.

Many of our residents seek at some point to downsize and make their larger houses available to younger families living in the locality. The proposal will discourage our elderly residents from considering a purchase with a view to then selling their larger homes. It can take years for a property to sell in the south west. Properties remaining on the market for several years are quite commonplace.

Accordingly, in this area, I see the proposals affecting the elderly, the homeless, and the young families who will find it even harder to sell their starter homes to move up the property ladder.

In short “one size does not fit all”. This proposal will not work in the southwest. It will impact upon us adversely.

Please ask local solicitors, surveyors, estate agents, the local authority (Alan Glendinning) the D&GSPC, the Elderly Forum for confirmation.

Yours sincerely,

Paul Matthews
Response

Perth & Kinross Council is supportive of policy objectives of the Scottish Government and its support for home ownership in a balanced and sustainable way. The Council’s views on the introduction of the proposed supplement are outlined below.

1. The Scottish Government’s overall policy objectives in introducing the supplement and, in particular, whether it—

   Is likely to “complement the Government's commitment to supporting home ownership in a balanced and sustainable way.”

   “helps to ensure that the tax charge is proportionate to the taxpayer’s ability to pay.”

The implementation of the supplement will give owner occupiers a slight competitive advantage in the marketplace. This advantage may however be outweighed by the long term view of an investor as the scale of the levy is relatively modest when considered against the £40,000 to £145,000 market segment where it has the potential to have the most benefit.

Money raised through the levy should be ring fenced to and have a direct link to supporting home ownership initiatives and affordable housing.

2. The proposed 3% rate for the supplement and the £40,000 purchase price at which it is proposed to take effect.

There are relatively few residential transactions below this level and on this basis the £40,000 threshold appears to be appropriate. A higher rate between £40,000 and £145,000 may however afford a greater competitive advantage to 1st time buyers.

3. The Scottish Government’s estimate that the measure will raise between £17 million and £29 million in 2016-17.

This figure would be dependent on exemptions and the effective closing of any potential loopholes to circumnavigate the levy. It is also unclear if these figures include any allowance for the potential costs of the implementation and monitoring that may be associated with the levy.
4. Any reliefs or exemptions that you consider should form part of the legislation.

We have considered the following Exemptions which should form part of the Legislation.

- Where a delay in sale of one property leads to owner occupiers buying a property before their existing property is sold.
- Purchases by Councils or Registered Social Landlords for use of properties for affordable housing.
- Possible exemption for Private Rented Sector (PRS) projects where rents are set at or below the Local Housing Allowance (LHA) for an agreed period provided this is enforceable.
- Charitable bodies purchasing properties to provide temporary accommodation.
- Combining properties to create a larger single residence.

5. The potential for tax avoidance under the supplement and how this should be addressed.

Consideration should be given to:

- How cross border/international purchases by existing owner occupiers be treated.
- Purchases of larger properties to subdivide into smaller properties for commercial letting purposes.
- Purchase of additional properties by different members of the same family residing in the same main residence.

6. The likely impact of forestalling.

There is the potential for a brief rise in transactions prior to April 2016 artificially inflating prices in the £40-145,000 market segment. This may however be offset by an increased supply of properties to the market where owners may have been considering a sale.

7. Any other comments you may have on the proposed supplement.

Perth & Kinross Council welcomes the proposed supplement and its objectives. The impact of the supplement will however be dependent on the level of exemptions and administration. We do not anticipate that the proposals will have any significant impact on the level of housing supply in the Perth & Kinross Council area.

22 January 2016
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from PINSENT MASONs LLP

RESPONSE

Pinsent Masons LLP are a multi-national law firm with three offices in Scotland advising national and international clients with property interests in Scotland. We have extensive experience of acting for landowners, developers, investors and funders. We advise both the public and private sectors. We have restricted our comments to item 4 in the Finance Committee’s call for evidence.

4- Any reliefs or exemptions that you consider should form part of the legislation

Relief for larger scale PRS investors

Scotland is suffering from an affordable housing shortfall and to help the private rented sector (PRS) meet the Scottish Government's own targets for new homes we consider that a relief for larger scale PRS investors should be available on similar terms to the relief from SDLT currently being consulted on in England & Wales. The PRS market is a little bit more developed in England than it is in Scotland, but we are now seeing Build to Rent Schemes starting to come through and PRS investors will want to see consistency across the UK where possible.

However we consider that the threshold in the SDLT relief is too high and should apply either (a) where the purchaser already owns 6+ residential properties or (b) the particular transaction is of 6+ residential properties. In addition, this relief should apply both to purchasers who are non-natural persons and to individuals – where a residential investment portfolio is held in the name of an individual they should still be entitled to the relief just as much as if the portfolio were held in the name of a company.

One of the rationales for introducing the LBTT supplement on second homes is that the proposal "complements our commitment to supporting home ownership in a balanced and sustainable way". What it fails to address is the other commitment (or obligation) of the Scottish Government to provide more affordable homes where, in order to do so, the Scottish Government will need help from the private sector. The private sector investors who can help to deliver the affordable homes may be individuals operating on a smaller scale to the big institutions so will not benefit from the LBTT relief on bulk purchases.
We would welcome a commitment from the Scottish Government that they will review the operation of the additional charge and its reliefs after, say, a year to allow the property industry to propose amendments in light of transactional experiences north and south of the Border.

The Private Tenancies Bill in Scotland has given some PRS investors concern about the possibility of rent control in high pressure areas. Anything else that puts Scotland out of step and makes Scotland a less attractive place to do business should be avoided or this will deter investment into the new PRS at this very early stage.

Relief for homeowners temporarily owning 2 properties at the end of the day of completion

It is proposed that the additional charge to LBTT will arise where a person owns two properties “at the end of the day of completion”. In Scotland it is much more common for an individual to buy their new home before selling their old home and to take out a bridging loan to cover the overlap period when they own two properties. This avoids the problems encountered in England & Wales with long chains of sales and purchases being dependant on each other and all occurring on the same day, which can lead to big problems for all the affected sellers and buyers if there is a problem with any one property in the chain.

We consider that there should be a relief for an individual who is only intending to own two homes for a short period of time. The SDLT proposals suggest that the owner will be required to pay the additional tax initially, albeit they can reclaim it if they sell one of the properties within 18 months. However this would impose an unreasonable financial “cash flow” burden on home owners in Scotland.

We suggest that if an individual already owns 1 (and only 1) dwelling and acquires a second, they can claim an initial short-term relief which would expire after (say) 3 months. At that time they would have to pay the additional tax if they have not sold the first dwelling by then. If they later sell the first dwelling within (say) 18 months then they can reclaim the additional tax paid. By requiring an initial short-term relief to be claimed it should be relatively easy for Revenue Scotland to monitor these transactions and to take enforcement action if the individual fails to pay the appropriate LBTT due.

Pinsent Masons LLP

22 January 2016
Dear Sir or Madam

**Proposed Land and Buildings Transaction Tax (LBTT) supplement on purchases of additional residential properties – Call for Evidence.**

PricewaterhouseCoopers LLP (we) welcome the opportunity to respond to the above call for evidence and we hope that the Finance Committee finds this written submission helpful.

Revenue Scotland has not, as yet, issued details of how the proposed LBTT supplement would be structured but we understand that the intention would be for it to follow the same structure as the proposed change to Stamp Duty Land Tax (SDLT).

The purpose of the LBTT supplement, as per the Finance Minister’s draft budget announcement in December 2015, is to prevent distortions of the Scottish housing market following the introduction of the SDLT supplement in the rest of the UK and to ensure that the opportunities for first time buyers in Scotland are not adversely affected. The policy intent would therefore seem to be closely aligned to the intentions of the UK Government in introducing the SDLT supplement i.e. to support home ownership and particularly to support first-time buyers. In our view, it is therefore appropriate for the LBTT supplement rules to follow as closely as possible those covering the SDLT supplement. This would avoid unnecessary complexity and provide greater certainty and clarity to taxpayers whilst supporting the policy objectives of the Scottish Government.

The UK Government have also stated that they wish to minimise the impact of the higher rates on those making significant investments in residential property, given the role of this investment in supporting the UK Government’s housing agenda. This is reflected in the proposed exemptions from the SDLT supplement and our comments below assume that similar exemptions would be suitable for inclusion in the LBTT rules to prevent distortions in the UK market and also to support residential property investment in Scotland.

I have therefore set out below our key comments on the proposal to introduce the LBTT supplement. We have focused our comments on the practical issues arising from the proposal rather than on the wider economic impact. The accompanying appendix covers the more detailed...
questions raised in the SDLT consultation which will apply equally to LBTT, expanding on the points raised below.

**General comments**

The impact of the proposed supplement should be assessed in conjunction with the significant number of recent changes to other taxes impacting residential property. As such it is hard to specify the impact of this policy on the housing supply and market in isolation without considerable economic analysis (which we have not undertaken). Each tax (or tax change) creates different types and magnitudes of distortion in the economy by distorting market signals, which can manifest themselves in a lower level of economic output, but these are hard to isolate.

In particular, we would highlight that the targeting of specific groups via taxation leads to anomalies and unintended consequences, possibly exacerbating the effects of the housing crisis, such as rising prices. Legislation which appears to target specific groups will also need to be compliant with European law.

In framing a property tax policy for Scotland, care is required to minimise these economic distortions and to ensure that such a policy is targeted so as to have a positive, rather than a detrimental impact, on housing supply.

The level of the supplement (3%) and the threshold above which is will apply (£40,000) are matters of policy for the Scottish Government to decide but in setting these it would be beneficial to consider both the SDLT equivalent figures and also the wider context of property taxation in the UK.

In regard to the question of whether the supplement “helps to ensure that the tax charge is proportionate to the taxpayer’s ability to pay”, there are two matters to highlight:

- The tax charge is proportionate to the price of the house and not linked directly to the taxpayer’s income or wealth. Some purchasers might be buying outright and some borrowing heavily; both would pay the same tax charge.
- There are occasions (noted below) when the charge may fall on those who are not buying a property alone or who are in a position of buying a ‘second’ home due to family breakdown or employment mobility pressures. Their ability to pay may not be proportionate to the tax charge.

Since LBTT is already covered by the GAAR, we do not consider that any further anti-avoidance measures are necessary.

We would also make the general observation that such legislative changes require time and adequate consultation in order to ensure that they meet their policy objectives. Careful review of the legislation will also help to promote compliance and also to prevent avoidance.
Specific proposals

We have put forward for consideration some specific suggestions below that we believe will help to minimise adverse consequences. These are made on the basis that the Scottish Government will implement the proposed measures to amend the LBTT rules in a similar way to that suggested by HMRC in their SDLT consultation. In all cases, consideration will need to be given to compliance with EU laws.

Timing of introduction

We note the intention to introduce the supplement from April 2016. The rules proposed for the SDLT supplement state that any contract entered into after 25 November 2015, and not completed until 1 April 2016 or later, will be within the new rules. Clarity is needed on whether the same timing will apply to LBTT e.g. would it potentially apply to contracts entered into after 16 December 2015?

The presumption seems to be that transactions being entered into now can easily be completed by 1 April 2016. However, delays between exchange and completion are more common that one might imagine. In particular, purchases of new homes from house builders are typically bought off plan and cannot be completed until the property has been finished. Such transactions may be unavoidably within the scope of the additional rate unless an exemption is available.

Given that the rules are not yet final (in particular the scope of the exemptions), this creates unhelpful commercial uncertainty over the LBTT payable in respect of contracts entered into between 16 December 2015 and the date on which the legislation becomes effective, which may not complete by 31 March 2016.

We recommend that it is only contracts entered into after the date on which the legislation becomes clear that should be within the scope of the new rules.

Scope of charge & requirement to be disposing of an existing main residence

It is assumed that the proposed LBTT supplement may also include an exclusion from the additional 3% rate where the Scottish property acquired is a replacement for an existing main residence, which has been disposed of within the last 18 months (as is proposed for the SDLT charge).

In our opinion, this condition is unduly restrictive. It may result in inconsistencies in the treatment of taxpayers who are in similar positions. For example, where someone owns a buy-to-let property and is moving out of rented accommodation (their main residence) into their first home, they will pay the extra 3%, whereas a buy-to-let investor who already owns their own home and is replacing it would not. One example of someone who owns a buy-to-let property but is in rented accommodation would be someone who has moved for work but rents until they have decided where to live or until they have saved for a bigger deposit, and they have retained their previous main residence in order to stay on the housing ladder.
There does not seem to be any policy justification for distinguishing between the two scenarios highlighted above.

There are many examples where the test is likely to create issues for purchasers, including where parents are helping their children to buy property, or where siblings or friends have bought together to get on the property ladder. If at a later date one of them wants to move out and buy their own home, but the other cannot afford to buy them out and agrees to pay rent on the share of the property they don’t own, the additional rate will apply.

We believe that the requirement to dispose of (or have recently disposed of) an existing main home is not necessary, and that second test - the requirement to use the new property as the main residence - is sufficient.

If our suggestion were to be followed, we recognise that Revenue Scotland’s concern will be the ability of someone to purchase a new main residence, and then to move to a new main residence letting out the previous main residence, and to keep doing this to build a portfolio avoiding the 3% additional rate. But we consider that the incidence of this behaviour will be limited given the practical inconvenience of having to move home. But we feel that the simplicity and reduced likelihood of anomalies means that our suggestion is more attractive on the whole.

Refund of 3% LBTT where two properties are owned temporarily

Where a taxpayer is replacing a main residence but has not yet sold their previous residence, it is currently proposed that purchasers will need to pay the additional 3% at the time of the transaction and then reclaim it once they have sold their previous residence. We consider that this could lead to unnecessary hardship and instead propose that taxpayers should be able to apply for a deferral for up to 3 years with the additional 3% becoming due if they have not sold their original residence by then. The requirement to apply for a deferral should protect HMRC from compliance failures where the additional 3% becomes due at a later date.

Exemption

We agree with the policy of providing an exemption from the additional 3% for investors who will contribute to the growth of the housing stock. However, we believe that the exemption should not provide an advantage to a narrow category of investor. In addition, the Government will need to ensure that any exemptions are compliant with EU laws.

We propose for your consideration a number of alternative exemptions as follows:

- **Transaction threshold:** an acquisition by any investor of 6 or more residential properties. The legislation currently caters for an acquisition of 6 or more dwellings being treated as an acquisition of commercial property and we recommend that this threshold be incorporated; and

- **Portfolio threshold:** an acquisition by any investor of one or more residential properties, where that investor (together with companies in the same group in the case of a corporate investor) will own at least 15 residential properties following the transaction; and
Investor type: any acquisition by a “diversely held company” or “widely-marketed scheme” in accordance with the meanings in section 14F TCGA 1992 (this would add an exemption which is consistent with the non-resident capital gains exemption). This exemption should be designed so that it exempts crowd funding transactions. Furthermore, investors into these kinds of qualifying vehicles should not be regarded as having an interest in residential property which precludes them from being exempt from the 3% surcharge on their main residence; and

Asset type: certain types of residential property should not be subject to the 3% surcharge because they are not within the asset class being targeted by HMRC. For example, purpose built student accommodation is not suitable for or available to first time buyers.

If it would be helpful to further discuss any of these points, please do not hesitate to call me on 0131 260 4671 or we would be happy to discuss our evidence with the Committee in person.

Yours sincerely

Susannah Simpson
Susannah.simpson@uk.pwc.com
T: +44 (0) 131 260 4671
Specific questions raised by the SDLT consultation that will also need to be addressed in framing the LBTT legislation.

Where appropriate we have put forward alternative suggestions for consideration by the Scottish Government.

**Married couples and civil partners**

Are there any difficult circumstances involving family breakdown which mean that treating married couples and civil partners as one unit until they are separated is not appropriate? If there are, how would you suggest those circumstances are treated?

We believe that the proposed threshold for what is a separation (separation under a court order or by a formal deed) is too restrictive. In our opinion, it would be more appropriate to use the threshold which applies for capital gains purposes, being separation under a court order, by a formal deed, or in circumstances such that the separation is likely to become permanent.

When a relationship breaks down, it is common for one parent to leave the family home that they co-own, and for them to permit the spouse or civil partner to stay in the home with the children (the remaining spouse being unable to buy out the departing spouse). The home that they co-own may not be sold until the youngest child reaches the age of 18 years.

That an individual in such circumstances - where the separation is likely to become permanent but has not become legal - should be subject to the additional LBTT charge may not be in line with the underlying policy intent.

In addition to extending the threshold for what is a separation, in order that the departing spouse is not penalised by an additional 3% LBTT charge on his or her acquisition of a new home, his/her ongoing joint ownership of the original family home should be ignored in these circumstances. Otherwise the proposed rules for joint purchasers will result in the departing spouse paying the additional 3% on a new home in a situation where the remaining spouse cannot afford to buy them out of the original family home.

**Joint purchasers**

Do you agree that, where property is purchased jointly, if any of the purchasers in a transaction are purchasing an additional residential property and not replacing a main residence, the higher rates should apply to the whole transaction value? If not, how would you suggest the government treats joint purchasers?

There are a number of situations in which the application of the higher rates to the whole transaction value may produce results which do not appear to be in line with the policy intentions. Some examples are as follows.
High property prices have required many people to enter into property ownership in stages (for example buying jointly with siblings, children or flat-mates, before one party is fully able to finance a purchase alone or with a new partner). There may be practical or personal reasons why the first property cannot be sold (for example, negative equity or one party remaining in the first property). The departing owner may become an inadvertent second property owner without receiving rent on the first property, but will nevertheless be subject to the additional LBTT under the current proposals.

Four friends entering the job market may acquire a property to live in. One of the individuals can only do so with parental assistance, with the parents taking a legal interest in the property. If the parents already own their own home, the current proposals will mean that the additional 3% LBTT will apply to the entire purchase price of the property acquired by the four friends.

We recommend that the additional rate of LBTT should only apply to the percentage interest of a property which is acquired by someone who already owns another residential property.

**Determining whether a purchaser is replacing an only or main residence**

For the first stage of the test for determining whether a purchaser is replacing an only or main residence, does considering previously disposed of property in the way presented above cause practical difficulties or hardship in particular cases?

The requirement to be disposing of an existing main residence appears to us to be unduly restrictive, and may result in inconsistencies in the treatment of taxpayers in positions which (from a policy perspective) do not appear to be different.

Two examples used in the SDLT consultation document highlight this issues:

In Example 9, N purchases her first property, which she will use as a buy-to-let. She will not pay the higher rates because this is her first property. Two years later, N purchases a residential property which she will use as her main residence, but she decides to keep her buy-to-let property. In this instance, as she has two properties at the end of the day on which the second transaction occurs, and has not replaced a main residence (as she has not sold a previous main residence), the higher rates will apply.

This can be compared with Example 23, in which G sold a property which was his main residence three months ago. He still owns another property which he lets out. Since the sale of his main residence he has lived in rented accommodation. G then purchases a new residential property which he intends to use as a main residence. At the end of the day of the transaction, he has two properties, but as he is replacing his main residence, the higher rates will not apply.

In the examples cited above, both purchasers will, at the end of the day of acquisition of the main residence, own two properties (one main residence and one buy-to-let property). However, the purchaser in example 9 will have paid the additional 3% LBTT whereas the purchaser in Example
23 will not. It is difficult to see the rationale for this distinction; this position would seem to disadvantage a purchaser seeking to move from the rented sector to owning their own home.

We have also outlined below other examples where the requirement to be disposing of an existing main residence in order to fall out of the higher rate regime will result in difficulties which do not appear to be in line with the policy behind the measures. There may of course be additional examples where the requirement creates hardship.

- It is not uncommon for people to become "reluctant landlords", when they have to move to a different part of the country for work but cannot sell their original home (for example, where it is in an area where house prices are depressed and/or there is high unemployment and/or they are in negative equity). The additional LBTT charge could have unintentional consequence of people being "trapped" in such areas and being unable move to another area of the country, with consequences for the employment mobility.

- A similar situation may arise where an older couple wish to downsize, or move closer to family, and are unable to sell their existing home. Again, the existing home may be in an area of high unemployment and long term economic decline, and they may be forced to rent the existing property.

Consequently it is our view that the first stage of the test (the disposal of an existing main residence) should be removed as the second stage of the test (the intention to use the new property as the main residence) is sufficient.

If our suggestion were to be followed, we recognise that Revenue Scotland’s concern will be the ability of someone to purchase a new main residence, and then to move to a new main residence letting out the previous main residence, and to keep doing this to build a portfolio avoiding the 3% additional rate. But we consider that the incidence of this behaviour will be limited given the practical inconvenience of having to move home. But we feel that the simplicity and reduced likelihood of anomalies means that our suggestion is more attractive on the whole.

In cases where the purchaser will own more than one residential property at the end of the day of acquisition, if the property being acquired by the purchaser will be his/her main residence, the additional 3% LBTT should not apply. Revenue Scotland could consider aligning the LBTT rules with the principal private residence ("PPR") exemption for capital gains tax purposes but in essence, so long as the intention is for the property to be the main residence, the acquisition should not be subject to the 3% LBTT.

For the second stage of the test, do you agree that the rule should require the purchaser to intend to use the newly purchased property as their only or main residence?

As per our comments above, we agree that there should be an intention for the purchaser to use the newly purchased property as their only or main residence, and that this should be the sole test.
Delay between sale of a previous main residence and purchase of a new one

Do you agree that 18 months is a reasonable length of time to allow purchasers a period between sale of a previous main residence and purchase of a new main residence that allows someone to claim they are replacing their only or main residence and therefore not pay the higher rates of LBTT?

As per our response above, we do not agree that there should be a requirement for a disposal of a previous main residence in order to not pay the higher rates of LBTT. However, if the replacement requirement is to be retained, we believe that three years would be a more appropriate and practical length of time to allow purchasers between sale of a previous main residence and purchase of a new main residence.

A three year period would allow the “reluctant landlords”, referred to in our response above, additional time to dispose of their existing residence.

Refund upon sale of a previous main residence

Do you agree there should be a refund mechanism in place for those who sell their previous main residence up to 18 months after the purchase of a new main residence? Are there any other cases where a refund of the additional LBTT paid should be given?

We do not agree that purchasers who will temporarily hold both a previous and a new main residence should be required to pay the additional 3% LBTT “upfront” on the acquisition of the new main residence.

In accordance with our response above, where the purchaser intends to use the new property as a main residence, the additional 3% LBTT liability should not apply.

However, if the condition for disposing of a previous main residence is to be retained, a period of three years (rather than 18 months) should be allowed either side of the acquisition, to dispose of a replacement main residence.

There are situations where an 18 month period prior to the acquisition of the new main residence will not be sufficient for a taxpayer to identify and purchase a replacement main residence. For example, someone relocating for work may move into rented accommodation while they decide where to buy.

There are also situations where an 18 month period after the acquisition of a new main residence will not be sufficient to achieve a disposal of the property being replaced, for example, where a taxpayer buys a new main residence which they intend to redevelop and they need to continue to reside in the old main residence until redevelopment of the new property has been completed. The process of seeking planning permission, tendering the building work and securing a builder, and then completing the building work, will often last for more than 18 months. The tax payer may consequently hold off disposing of his/her existing main residence in the meantime.
We believe that a deferral mechanism would be preferable to a payment on closing followed by a reclaim mechanism. If a deferral application is made and the taxpayer fails to provide confirmation to Revenue Scotland within the relevant period (we recommend three years), Revenue Scotland have all the information they need in order to recover the additional 3% from the taxpayer and therefore has a mechanism to protect revenues.

Having said this, a refund mechanism might be relevant in cases where a purchaser does not initially intend to use the property as their main residence but, for whatever reason, does end up using the property as the main residence within 3 years of the acquisition. In these circumstances, a refund of the 3% LBTT may be considered appropriate.

**Can you suggest any other actions the government could take to mitigate the cash flow impact on those who only temporarily own two residential properties?**

As stated above, we do not agree that purchasers who will temporarily hold both a previous and a new main residence should be required to pay the additional 3% LBTT “upfront” on the acquisition of the new main residence. The taxpayer may already be in the position of requiring temporary bridging finance to facilitate the acquisition of the new property. In our opinion, the requirement to fund an additional 3% LBTT, even if only for a short time, may prevent a significant number of transactions from proceeding.

Instead, we believe that where a purchaser intends to use the new property as a main residence, the additional 3% LBTT liability should not apply.

In the event that both limbs of the test (the replacement of existing main residence and the intention to use the new property as the main residence) are retained, we would recommend that a deferral mechanism be considered, instead of requiring the taxpayer to pay the additional 3% SDLT and then make a reclaim. The concept of LBTT deferral is already established in the context of contingent or uncertain consideration (LBTT(S) 2013 section 41).

In this case, the taxpayer would submit a standard form deferral application, and the deferral would come to an end on the earlier of:

- the purchaser submitting an amended return confirming that he/she has sold its previous property and that no further LBTT liability arises; and
- three years after the acquisition date, at which point HMRC would raise an assessment for the 3% LBTT.

**Are there any other situations regarding main residences which require further consideration?**

We would seek further clarity on how residence and main residence are going to be defined for the purpose of the additional 3% rules.
There currently exists a number of different terms used for residence, dwelling, main home etc. as recognised by HMRC’s new working party. We would suggest that the definitions be aligned wherever possible. This is of particular concern given that the definition of a Scottish taxpayer will rest on where their main residence is considered to be and differing interpretations of the phrase as applied to income tax and LBTT would potentially cause anomalies.

In terms of the definition of “main residence”, this needs to be workable bearing in mind the need to come to a view at the point at which the property is acquired.

**Would there be a benefit to a significant number of purchasers if the test for whether someone owns one, or more than one, residential properties, were undertaken at a time of submitting the LBTT return, rather than at the end of the day of transaction?**

In the event that both the main residence replacement limb of the test, and the requirement to pay the 3% upfront and subsequently claim a refund are retained, we believe that this would provide an additional window of time for those selling an existing main residence, albeit a limited one.

In place of the requirement to pay the 3% LBTT upfront and subsequently apply for a refund, we believe that a better approach would be the deferral mechanism as outlined above.

**Property owned and purchased outside of Scotland**

Do you agree with the government’s proposed approach to considering property owned anywhere in the world when determining whether the higher rates of LBTT will be due?

We agree with this approach in principle, provided that taxpayers have the ability to treat the Scottish acquisition as the acquisition of a main residence which is not subject to the additional 3% LBTT, in circumstances where they intend to live in the property.

**Other cases**

Do you agree with the proposed treatment of furnished holiday lets?

We do not have any comment to make on furnished holiday lets.

Are there any other cases which the government should consider?

There should be provisions to exclude purpose built student accommodation from the 3% charge if it would not otherwise be exempt.

**The treatment of large scale investors**

Do you agree that an exemption should be available to individual investors as well as all non-natural persons? Alternatively, is there evidence to suggest any exemption should be limited to only certain types of purchaser? If so, which types of purchaser?
We agree that any available exemptions should be available to both individual investors and to non-natural persons and can see no justification for distinguishing between the legal forms investors choose to use.

In addition, the Government will need to ensure that any exemptions are compliant with EU law.

We believe that there should be a number of exemptions and we have outlined these below.

**Do you think that either the bulk purchase of at least 15 residential properties or a portfolio test where a purchaser must own at least 15 residential properties are appropriate criteria for the exemption? Which would be better targeted?**

**Are there better alternative or additional tests that could be used to better target an exemption and fulfil the government’s wider housing objectives?**

It is the UK Government’s intention is to exempt those individuals making significant investments in residential property. In our view, this would also be an appropriate policy objective for the Scottish Government to consider.

We believe that a number of alternative exemptions are appropriate in order that a broader population of investors are unaffected by the new rules to avoid there being a significant impact on the availability of rental stock in the market. We do not consider that large institutional investors will necessarily be the preferred provider of rental accommodation for all renters. Individual landlords may offer advantages – offering property of a type and in locations which larger investors do not (e.g. older family homes in established residential areas, rather than new build flats in city centre locations). For example, non-residence capital gains tax (“NRCGT”) has been introduced to tax gains on the sale of residential property with exemptions for “diversely-held companies”. Tax relief for interest deductions on buy-to-let has been introduced with exemptions for companies. We understand that the exemptions have been introduced in order not to discourage institutional investment in housing and it would therefore seem appropriate to align the exemptions and reduce complexity in the tax system.

Given the significant number of changes to the taxation of residential property in the last couple of years, we also believe that the exemptions should be aligned, as far as possible, with existing legislation.

Hence, we put forward the suggestion that in addition to the exemptions for investors with 15 or more properties currently proposed, that a diversity of ownership exemption is also provided. We also recommend that HMRC consider exemptions for acquisitions of 6 or more properties in one transaction and certain classes of assets. In summary, we propose the following exemptions:

- **Transaction threshold:** an acquisition by any investor of 6 or more residential properties. The legislation currently caters for an acquisition of 6 or more dwellings being treated as an acquisition of commercial property and we recommend that this threshold be incorporated; and
Portfolio threshold: an acquisition by any investor of one or more residential properties, where that investor (together with companies in the same group in the case of a corporate investor) will own at least 15 residential properties following the transaction; and

Investor type: any acquisition by a “diversely held company” or “widely-marketed scheme” in accordance with the meanings in section 14F TCGA 1992 (this would add an exemption which is consistent with the non-resident capital gains exemption). This exemption should be designed so that it exempts crowd funding transactions. Furthermore, investors into these kinds of qualifying vehicles should not be regarded as having an interest in residential property which precludes them from being exempt from the 3% surcharge on their main residence; and

Asset type: certain types of residential property should not be subject to the 3% surcharge because they are not within the asset class being targeted by HMRC. For example, purpose built student accommodation is not suitable for or available to first time buyers.

These tests should also take into account common ownership of portfolios in separate vehicles. A common control test seems the most appropriate given that the test is to be applied to entity types which are not necessarily companies which form an SDLT group.

**Are there any other issues or factors the government should take into account in designing an exemption from the higher rates?**

Whatever the precise scope of the proposed exemptions, the Scottish Government will need to ensure that they will be compliant with EU Law. For example, consideration should be given to whether the exemptions discriminate against Small or Medium Size Enterprises.

**The first purchase of a residential property by a company or collective investment vehicle**

Do any specific kinds of collective investment vehicle or other non-individuals need to be treated differently to companies?

We do not consider that collective investment vehicles or other non-individuals need to be treated differently to companies.

We understand the type of avoidance with which tax authorities are concerned i.e. an individual purchasing as additional property via a company to avoid the additional rates of LBTT/SDLT. However, rather than subjecting the first purchase of residential property by a company or collective investment scheme to the higher rates of LBTT, we would suggest that the introduction of exemptions as outlined above which should be an adequate measure to prevent this type of avoidance.
The treatment of trusts and settlements

Do you agree with the proposed treatment of trusts, including the higher rates of LBTT applying to trusts purchasing residential property except where a purchase is a first property or replacement of a main residence for a beneficiary?

No. Property is commonly owned in trust for many reasons that are not tax-driven (e.g. asset protection; division of assets among family members).

The current proposal that any trust property purchases will be subject to the additional 3%, regardless of the circumstances of the acquisition, appears to us to be too wide. For example, within a discretionary trust a property may be the main residence of a beneficiary and the only property of the trust. It is not clear to us why the same exemptions should not be available to trusts.

Administration and compliance

Do you think that purchasers are more likely to give accurate answers to main residence questions if HMRC provides specific questions for the conveyancer to ask the purchaser?

Yes.

Would a formal declaration by the purchaser that the answers to any such questions are accurate help to increase compliance without creating undue burdens for conveyancers? How do you think such a declaration should work?

We believe that a formal declaration would help, and indeed would be crucial, in order to avoid an undue burden on conveyancers.

The declaration should be in standard form, and be required to be completed prior to completion on the property, either online, or via a paper form.

Besides normal publicly available guidance, are there any additional products that Revenue Scotland HMRC can provide to help purchasers understand what rates of tax they will be paying on a planned purchase?

We believe that there is a risk that guidance dealing with this specific topic only might ignore the many complexities which arise from associated issues (e.g. PPR for capital gains purposes).

The interaction of these rules with other taxes needs to be considered with the aim of achieving as much consistency as possible.

It will also need to be confirmed that the additional 3% LBTT will be deductible for CGT purposes in the same way as the normal charge.
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from RICS in Scotland

Introduction

1. RICS in Scotland acknowledges that a similar levy will be applied to second homes in England and Wales from April 2016.

2. We believe that these regimes could discourage small landlords from future investment and reduce the rental supply in England, Wales and Scotland; reduced supply often leads to increased rents.

3. That said, we believe it was prudent of the Cabinet Secretary for Finance, Constitution and Economy to match the UK levy, as the Scottish housing market could’ve seen an influx of buy-to-let investors from England and Wales if a similar regime is not introduced.

4. The potential addition of house buying participants could have increased competition and subsequently, potentially increased house prices, and then rents.

Home Ownership and the Tax-payers Ability to Pay

1. RICS in Scotland believes that all property should be used effectively and efficiently.

2. Our overarching view is that the 3% LBTT supplement on second homes – whether they are a holiday home or buy-to-let investment - would indicate the Scottish Government’s commitment to supporting home ownership and assisting first time buyers.

3. This supplement may help achieve a more equitable distribution of housing stock by disincentivising second home purchase, thus lowering competition in the housing market.

4. The potentially lower demand could, feasibly, reduce house price rises in Scotland as demand on the chronic housing shortage will be alleviated.
5. However, we are concerned by the implications of the supplement for privately rented accommodation at a time when we have a deficit across all tenures.

6. We believe that a balance needs to be struck between increasing affordability for first time buyers (and owner-occupiers) and sustaining investment and development.

7. If this supplement is enacted, we would urge the Scottish Government to consider ring-fencing revenue generated from the 3% supplement for investment in housing – either through the provision of more social housing, or mortgage deposit guarantees for first time buyers (for new build and existing stock). This latter suggestion would amplify the Government’s commitment to home ownership.

8. Throughout this submission, RICS makes further suggestions for the Finance Committee to consider in striking the required balance, as well as possible exemptions for consideration.

Rural Impact

9. At present, Scotland’s rural population is in decline. In many cases there is an insufficiency of people in rural areas to stimulate the need for housing development and employment opportunities - all of which will assist recovery and vibrancy.

10. RICS believes action is required to encourage a repopulation of rural communities to encourage a critical mass of people, which will in turn stimulate private investment and growth in the rural economy.

11. Holiday homes are very prevalent in rural Scotland. An outcome of this situation is inflated house prices, reducing locals’ ability to afford to live in the area, and reduced community infrastructure.

12. The LBTT supplement for holiday homes could assist rural repopulation and infrastructure requirements.

13. However, there is a case to be made for promoting new developments – particularly purpose built rental or holiday accommodation. We provide further views on this issue under the ‘exemptions’ section of this paper.
An unstable Private Rented Sector (PRS) and Institutional Investment

14. The PRS market in Scotland has been dominated by small-scale investments from individual landlords who own 1-3 properties – with many being “accidental”.

15. Furthermore, the Private Rented Sector (PRS) has experienced significant policy and legislative changes recently. These changes include, for example, the proposed regulation of letting agents, a new tenancy regime and reduced mortgage interest tax relief for landlords.

16. This has led to a fragmented PRS system that lacks consistency and stability. For a fully-functional property market to operate, there needs to be these two ingredients as they can lead to confidence in a sector that will entice investors.

17. RICS believes that more can be done to entice institutional investors to build purpose-built accommodation for rent; not only by providing a stable policy and legislative environment, but creating a financial framework that would encourage them to do so.

The Proposed 3% rate to the £40,000 Purchase Price

18. As an apolitical organisation, RICS does not have a view on the threshold of £40,000 that the LBTT supplement will take effect.

19. However, it is important that the Committee considers the monetary reality that even at the lowest price that the supplement becomes effective i.e. £40,000, this equates to an additional £1200. There is scope to suggest that this additional cost could be diluted into rents, thus applying pressure on already-high rents – particularly in hot spots of Edinburgh, Glasgow and Aberdeen - at a time where they continue to rise.

20. With this supplement potentially hurting PRS supply and rents, tenants may find themselves with a limited PRS offering in terms of both quality and cost.

Exemptions and Reliefs

New Build and Purpose Built

21. RICS in Scotland wants to see a PRS framework that encourages institutional investors to build and let new developments, not take on the landlord duties of current PRS stock.
22. There is, however, a case to be made that small-scale buy-to-let investors assist the delivery of new large-scale developments.

23. For example, second properties that are purchased within a new development are often acquired by landlords looking to make a buy-to-let investment. This would indicate that these investments make a contribution to house-building demand i.e. increasing housing delivery and supply.

24. As such, a balance needs to be struck between increasing delivery of new homes (and the availability and affordability for owner-occupiers), and sustaining adequate levels of investment and development.

25. One possible approach to consider would be to exempt new build property from the supplement after all attempts to sell to owner-occupiers have been exhausted or after a set period of time.

26. This exemption could also be extended to include:
   a. Purpose-built holiday homes for rent, which provide benefit to tourism and local economies – particularly in rural Scotland;
   b. Purpose built student accommodation
   c. Purpose built for units for private rent.

27. It is important to note here that this proposed exemption is for new property, not existing stock.

28. This proposal could feasibly maintain adequate levels of investment in, and supply of, rented accommodation through sustained development, faster delivery and an increased supply. A likely outcome would be more created and maintained jobs and, ultimately, the stabilising of rent increases.

**Bulk Purchases**

29. We acknowledge that the UK government is considering an exemption for purchases of 15 or more properties.

30. If this proposal is to be emulated in Scotland, we would urge the Scottish Government to provide coherent detail: would this involve a portfolio of properties that cover a large area, or units within the same development?

31. We are of the impression that institutional investors will generally look to new build properties. If the Scottish Government wishes to enhance institutional investment in the PRS, which would be a very prudent policy, we would suggest
bulk purchases of new build, planned developments or purpose built rental developments are exempt.

32. With regard to portfolio of properties, we would assume this would be from investors looking to upgrade or enhance existing properties for future let. Unless these properties are pre-assigned for future let, or are currently uninhabitable, we would suggest that they are not exempt on the proviso that the main premise of this supplement is to increase housing supply for owner-occupiers, not upgrading existing stock.

**Inherited Property**

33. RICS seeks clarity in the scenario where an individual who rents a property, inherits another (outright).

34. If this individual wishes to relinquish his/her rented accommodation to purchase a home -as a main residence - would this individual be liable to pay the supplement?

35. In this instance, following the enactment of the LBTT supplement, would s/he have to pay the new supplement on the full value of the new main residence?

36. It should be noted here that some properties can take a considerable amount of time to sell. If relief is not provided, some families’ housing journey could stall.

37. This is an unintended consequence of this proposed regime and we urge the Committee to consider some sort of relief for instances like these.
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from S. Grant

I would strongly suggest that the Finance Committee consider exempting parents co-signing with their children from the supplementary tax on second homes. Many young people aiming to get on the housing ladder can only get a mortgage if a parent co-signs. This iniquitous extra tax will not only penalise people trying to supplement their non-existent pensions with a buy to let property but the very young people trying to get on the property ladder with a little help from their parents.

S. Grant
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from the Scottish Association of Landlords

28th January 2016

The Scottish Association of Landlords (SAL) is the largest and only dedicated national organisation that represents landlords and letting agents throughout Scotland. We support and represent our members' interests through providing resources and assistance as well as delivering lobbying and campaigning work.

SAL welcomes the opportunity to respond to the Finance Committee’s Call for Evidence on the proposed LBTT supplement on additional residential homes. LBTT impacts on our members when they are considering further investments and will also affect them at the point they sell their investments by adding to the overall cost of the asset to prospective purchasers.

The Committee would welcome views on—

1. The Scottish Government’s overall policy objectives in introducing the supplement and, in particular, whether it—
   • Is likely to “complement the Government’s commitment to supporting home ownership in a balanced and sustainable way.”
   • “helps to ensure that the tax charge is proportionate to the taxpayer’s ability to pay.”

We doubt that these effects will be achieved because in practice what will happen is that purchasers will offer less for properties to offset their additional purchase costs. So the impact will be felt more by the vendor than the purchaser, particularly for properties which, due to their characteristics, are not attractive to home owners/first time buyers.

First time buyers are less likely to face competition from investors in Scotland as the more onerous legal obligations placed on landlords in Scotland (as opposed to in the rest of the UK), particularly once the new
tenancy regime comes into force, mean that it is likely landlords will choose
to invest elsewhere in the UK rather than in Scotland.

2. The proposed 3% rate for the supplement and the £40,000 purchase
price at which it is proposed to take effect.
Due to the less favourable legal framework facing landlords in Scotland, we
believe that the Government should introduce tax policies which are more
favourable to landlords than in the rest of the UK; this will help to attract
investment to Scotland despite the less favourable legal framework. For this
reason we believe the tax rate should be lowered and the purchase price
threshold raised rather than the figures being as proposed which are
identical to those planned for the rest of the UK.

3. The Scottish Government’s estimate that the measure will raise
between £17 million and £29 million in 2016-17.
We are not in a position to comment on these figures, but caution that due to
the less favourable legal framework for landlords in Scotland it is likely that
investors will choose to invest elsewhere in the UK unless there are tax
advantages to investing in Scotland. We believe that this will mean very few
choose to invest in Scotland and consequently proceeds from the higher rate
of LBTT will be small.

4. Any reliefs or exemptions that you consider should form part of the
legislation.
For the reasons stated in point 7 below we do not consider that this
legislation should be introduced. However, if the Government is minded to
proceed then we believe that there should be exemptions for: -

- anyone buying at scale (the threshold for this should be six properties
  in order to align it with the threshold for multiple dwellings relief
  (MDR));
- anyone buying new build properties, even on a small scale – this will
  encourage more house building in Scotland;
- a joint purchase where one of the parties is a first time buyer, e.g.
  where a parent is helping a child get on the housing ladder by
  purchasing jointly. Such transactions assist first time buyers and
  should be encouraged, not discouraged;
- the purchase of properties which are not suitable for mortgage
  purposes. These are unlikely to appeal to first time buyers and such
  properties are usually targeted by buy to let investors who have the
  experience and financial resources to bring the properties back into
  use. This type of investment in housing should be encouraged, not
discouraged by higher rates of LBTT;
- properties which have been on the market for 6 months or more. In
  such cases, first time buyers have had ample opportunity to make an
  offer. If there is only interest in a property from buy to let investors, it
is in the interests of the seller to get a sale. Applying the higher LBTT rates in such circumstances, could result in the sale not concluding. It is better to have turnover in the housing market, than have properties remaining unsold for long periods;

- a property owned by an individual in their own name being purchased by a company owned by that same individual as part of a restructuring exercise. Such transactions will not reduce the supply of owner occupied houses;
- where a property is already a buy to let or holiday let property. Such transactions will not reduce the supply of owner occupied houses. In particular, HMO properties being sold to another landlords should be exempt as these types of properties are not suitable for first time buyers.

5. The potential for tax avoidance under the supplement and how this should be addressed.
We are not in a position to comment on this question.

6. The likely impact of forestalling.
For the reasons given in point 7 below we believe that the proposal should not only be forestalled, but shelved. However, forestalling will allow for more analysis of the likely impact of the proposal and will allow time to assess the impact on the private rented sector of other legislation, namely the proposed new tenancy regime and restrictions on finance relief, which we anticipate will exacerbate the shortage of properties the sector and increase rent levels.

7. Any other comments you may have on the proposed supplement.
We believe that the supplementary tax on the purchase of second homes will have a huge impact on the buy-to-let market and exacerbate an already serious shortage of properties in many areas. We firmly believe that the biggest losers will be the most vulnerable tenants who will now find it even harder to get the accommodation they want at a price they can afford, as rents rise in response to a shortage of properties and increasing business costs that need to be met by landlords.

As laid out by the Commission on Housing and Wellbeing, landlords have a major part to play in solving Scotland’s housing crisis precisely because of the investment they can provide at all levels of the market. The Scottish Government should be encouraging more investment by responsible landlords whilst ensuring the highest standards are met, instead of seemingly doing everything it can to dissuade them.

Reducing investment will only lead to less being spent on improving housing stock across Scotland and create a space for rogue landlords and letting
agents who operate outside of the high standards that the overwhelming majority of the sector are rightly held to.

We believe that the increased costs associated with purchasing a property will lead to landlords trying to save money elsewhere and this could mean them:

a) trying to manage their property themselves rather than paying an agent to do so – this is likely to result in a deterioration in the quality of management across the sector;

b) reducing the money they spend improving their newly acquired property. This will lead to a deterioration in the quality of PRS properties. A reduction in investment will also have a huge impact on local tradespeople like plumbers, electricians and decorators who rely on landlords for work.

The Scottish Government should take into account that legal obligations on landlords in Scotland are much more onerous than in the rest of the UK (in particular repairing obligations), and will become significantly more so when the new tenancy regime takes effect. This, combined with the forthcoming restrictions on finance relief and proposed changes to LBTT will, we believe, have a significant impact on investment in the Scottish PRS and will jeopardise the stated aim of the Scottish Government (in its publication “A Place to Stay, A Place to Call Home”) to enable growth and investment in the PRS.

A healthy PRS is vital to the Scottish economy, providing homes for those unable to secure accommodation in social housing and providing labour and housing market flexibility. Rather than discourage investment through increases in LBTT, we believe that the Scottish Government should in fact introduce tax policies which encourage investment, to offset the more stringent legal framework that landlords are exposed to in Scotland, prevent disinvestment and improve Scotland’s competitive advantage in attracting investment to its PRS.
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from Scottish Borders Council

Response

1. The Scottish Government’s overall policy objectives in introducing the supplement and, in particular, whether it—

   - Is likely to “complement the Government’s commitment to supporting home ownership in a balanced and sustainable way.”

   It is unclear from the information set out in the proposals how they will directly complement Government commitment to support home ownership as is being suggested and would welcome it if Government would set this out clearly.

   - “helps to ensure that the tax charge is proportionate to the taxpayer’s ability to pay.”

   As there is no evidence it is unclear whether the tax charge is proportionate to the taxpayers ability to pay, there does not appear to be any direct link to income and proposed supplement value. There is an assumption that the purchaser will be financially able to pay the new proposed supplement value.

2. The proposed 3% rate for the supplement and the £40,000 purchase price at which it is proposed to take effect.

   The proposed 3% flat rate seems an arbitrary % amount and it is unclear how this was arrived at by Government. On basis of available information there are likely to be extremely few properties not affected by the £40k threshold. However, it would be useful to understand the Government’s thinking around the reasons why this is a flat rate. It would be reasonable to think that the threshold could be raised to allow traditional buy-let properties, particularly in specific geographical areas and price variations to continue. There is a concern that the £40k threshold is perhaps too low in certain areas throughout Scotland that rely on additional private rented sector homes via a buy-let market. So in essence the proposed 3% flat rate does not take into account nor reflect the diversity of market conditions.

3. The Scottish Government’s estimate that the measure will raise between £17 million and £29 million in 2016-17.

   Again it is not clear how these suggested income figures were arrived at, or if this income is directly related to particular spending proposals dependant on this income. There is a strong case for the additional income to be hypothecated for spending on a proposed purpose such as additional affordable housing (ie low cost home ownership). It would be useful if the Government could inform the process and set
out the cost of administration against the likely tax revenue actually generated in order to determine what will be the true additionality to the public purse.

4. Any reliefs or exemptions that you consider should form part of the legislation.

Whilst we do not have any specific suggestions re exemptions we would suggest that cross-referencing needs to be made to other existing legislation, such as the new Housing Bill which outlines proposal to rent limits in rent pressured areas.

5. The potential for tax avoidance under the supplement and how this should be addressed.

There could be scope for tax avoidance and would defer this to the lawyers and accountants to comment upon.

6. The likely impact of forestalling.

It would seem that there is still some preparatory work to be done prior to implementing this supplement and would suggest that forestalling could advantage the Government by allowing more time to develop a more reasoned evidence base to allow more considered detailed proposals on how the supplement may operate in practice. That said we could see a rush of purchases of new 2nd homes and properties being bought for PRS ahead of its introduction by people wishing to avoid this supplement.

7. Any other comments you may have on the proposed supplement.

The introduction of such a supplement could potentially have an adverse impact on property market after introduction. Market sales levels are currently at a low level. There is considerable evidence to indicate a slow churn within the property market. The proposals may have an adverse impact on empty homes being brought back into use, and appear contrary to other Government messages suggesting support and acknowledging the vital role of PRS.
29TH January 2016

Dear Finance Committee Clerk

I write with regard to your call for evidence on proposals for a second homes supplement on the Land and Buildings Transaction Tax (LBTT) proposed by John Swinney MSP, Deputy First Minister and Cabinet Secretary for Finance, Constitution and the Economy, in the Draft Scottish Budget on 16 December 2015.

As part of the draft budget proposals the Deputy First Minister proposes a 3% additional levy on second homes.

In line with evidence previously given by the SFHA on the LBBT and on the LBTT (SSI) – both written and oral, the SFHA fully supports the main intention of LBTT to provide a straightforward and equitable tax that reduces the burden on those less able to pay and places a proportionate burden on those better able to pay.

As also previously stated in earlier evidence submissions on LBTT, however, we ask the Scottish Government and the Finance Committee to be aware of potential unintended consequences. We understood that any transactions that pertain to the development or purchase of land or housing for affordable rent (often known as social rent) by housing associations, housing co-operatives and local authorities will continue to be exempt from the tax as they were from Stamp Duty – and we assume that this exemption will also apply to the proposed second homes additional levy. This would include, for example, where a social landlord is buying a number of properties from a developer for the use of social rent in perpetuity.

We have a concern, however, that the levy could have a negative effect on housing association subsidiaries or other bodies providing homes for Mid Market Rent or shared ownership and equity. As the SFHA highlighted in our previous submissions (enclosed) housing association subsidiaries and other bodies provide homes for Mid
Market Rent. These homes are developed to provide quality accommodation to people who cannot have their housing needs met by the market but are unlikely to be housed in social rented housing by housing associations or local authorities. This accommodation is particularly important in pressured housing market areas such as Edinburgh and Aberdeen. Housing association subsidiaries may buy homes from developers in numbers in order to provide homes for Mid Market Rent (we can provide worked examples if that would be helpful). If the second homes levy applies to purchases for Mid Market Rent, then this could lead to considerable additional costs.

Since Mid Market Rent, by its nature, requires funding through either Housing Association Grant or land transferred from public bodies at nil value in order to be viable, then imposing a tax would be counterproductive as it would lead to additional costs to the public purse. This would not be desirable at a time when the Scottish Government has declared an ambition to provide 50,000 affordable homes over the next 5 years and has recently increased funding for affordable housing supply.

We therefore ask the Finance Committee to scrutinise the proposal for a 3% additional second homes levy and ensure that it does not have an unintended consequence of increasing the cost of provision of homes for Mid Market Rent.

Yours faithfully

David Stewart
Policy Lead

Insert Name
Insert Position
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from the Scottish Federation of Housing Associations

18th February 2015

1. Introduction

1.1. The SFHA welcomes the opportunity to give evidence to the Finance Committee on the Land and Buildings Transaction Tax (LBTT), following on from the written and oral evidence we provided in October 2014. Our evidence is confined to the draft Scottish Statutory Instrument (SSI) relating to sub sale and multiple dwellings relief. Our evidence focusses on issues raised in our previous evidence.

1.2. The SFHA is the national representative body for housing associations and co-operatives in Scotland.

1.3. Housing associations and housing co-operatives in Scotland own and manage 47% of the country’s affordable rented housing stock. This represents over 280,000 homes across Scotland, concentrated in some of the poorest communities in our country.

1.4. Housing associations and co-operatives have been working to provide, manage and maintain housing throughout Scotland since the 1960s and have a track record of making a significant contribution to improving housing for the people of Scotland.

1.5. There are some important and distinctive features of housing associations and co-operatives. Our members are:

- Independent businesses that provide and manage high quality affordable accommodation and housing services;
- Responsible for accessing and managing public and private resources;
- Managing their businesses, not to make a profit but using resources imaginatively and inventively to benefit housing and communities;
- Accountable to their members, who live or have other interests in the communities and places which they create;
• Publicly accountable and thus regulated given their use of government resources;

• Housing associations and co-operatives are diverse organisations at different scales, with different histories, purposes and goals. They also collaborate in different ways with each other, with the private sector and with local authorities, according to their particular business imperatives.
2 General Comments

2.1 The SFHA welcomes the continuing exemptions in the LBTT proposals (carried over from Stamp Duty) for residential leases, and the proposal to continue reliefs for acquisitions by tenant controlled housing associations and co-operatives and charities. We welcome this and believe that this is correct as our members provide quality affordable rented housing for people in housing need, on a not for profit basis.

2.2 While of less direct concern to our members and their tenants, we also welcome the fact that the LBTT proposals will be progressive, generally benefitting those buying less expensive properties by

- Ensuring no tax is paid on properties costing £135,000 or less
- An estimated 90% of purchasers pay either the same or less than under stamp duty

2.3 We are disappointed to note that, under the terms of the proposed SSI, there will not be exemptions or reliefs from LBTT on the provision of mid-tenure homes by housing associations non-charitable subsidiaries. We believe that mid-tenure homes serve an important purpose in providing homes for a market not met by the private market for people unlikely to access social rented housing.

2.4 The SFHA welcomes the fact that the SSI clarifies the position on relief from LBTT on multiple property purchases by housing associations and their subsidiaries. We note, however, that the SSI does not provide 100% relief, and believe that the net cost will be higher than it was under Stamp Duty (we have provided a worked example provided by an association).

2.5 On back to back land sales, while the SSI proposes a new provision providing relief to the original purchaser (usually a developer), it appears that no relief will be provided to an association or their subsidiary who purchase all or part of the site from the developer.

2.6 We provide more detailed explanations on points 2.3, 2.4 and 2.5 below.

3. Provision of mid-tenure homes by housing association subsidiaries

3.1 A growing number of housing associations provide mid-market rent (MMR) through non-charitable subsidiaries. These homes meet a distinct need not met by the market, by providing quality homes for rent at a level set between social rent and market rent. They are particularly important in pressured housing areas, where demand for housing is high, providing access to homes for people in low paid employment or grown up children looking to leave home.
3.2 The need for MMR is likely to increase as house prices remain high, making it difficult for young people or people in low paid employment to buy a house.

3.3 In order for an association’s subsidiary to develop housing for mid-market rent, subsidy must be available either in the form of grant or land transferred at nil value from the local authority. In return the MMR meets an unmet housing need, providing quality housing for people who cannot afford to buy a home but who are unlikely to be allocated a council or housing association home.

3.4 We therefore believe that these developments should be exempt from or receive relief on LBTT. We understand that this is not the case in the draft SSI and would urge that an amendment is made.

4. Relief on multiple property acquisitions by associations and their subsidiaries

4.1 In our previous submission to the committee, we highlighted the fact that a likely consequence of the fact that LBTT deliberately shifts a greater share of the tax burden onto high value sales (which we support), one consequence of this would be that where an association’s subsidiary buys multiple homes for MMR, the tax payable on the transaction would be higher than under Stamp Duty. Even with the partial relief proposed under the exemption the tax paid under LBTT would be higher – we provide an example case study in order to illustrate this.

4.2 Again, given that providing MMR is meeting a housing need not met by the market, we would argue that a complete relief or exemption should apply.

5. LBTT and back to back land sales

5.1 It is often the case that housing associations, co-operatives and their subsidiaries gain access to land that they can develop for housing by buying that land from a developer. It is our understanding that while the SSI has introduced a new schedule which provides that a developer purchasing land and selling it on will get relief from LBTT, the purchasing association or subsidiary would still have to pay LBTT on the land that they bought.

5.2 We welcome the fact that developers will receive relief from LBTT on back to back land sales and so will not pass on this cost.

5.3 As with the other issues highlighted, however, it is the SFHA’s view that since MMR meets a need unmet by the market and requires subsidy, then there should be a full relief or exemption.
6. Conclusion

6.1 The SFHA welcomes the underlying aims of the LBTT, to provide a more equitable and straightforward tax than Stamp duty, which it replaces.

6.2 While the SFHA welcomes the fact that changes have been made to LBTT with the proposed introduction of the SSI on sub sales and multiple relief dwellings, we are concerned that in three areas LBTT will, as currently proposed, lead to increased costs on the provision of homes for mid market rent:

- Development of homes housing associations’ non-charitable subsidiaries
- Purchase of multiple properties
- Purchase of land through a back to back sale from a developer

6.3 The SFHA proposes that the LBTT should be amended so that the provision of MMR is exempt from LBTT, or at least there should not be circumstances where the LBTT charged will be higher than the equivalent under Stamp Duty.

SFHA
February 2015
Dear Convener,

Thank you for the opportunity to comment on the proposed LBTT Supplement on Additional Residential Homes.

Most of the questions in your Call for Evidence relate to policy aspects of the proposed new tax. The Scottish Fiscal Commission (SFC) will respond only to those questions which relate to its remit, specifically questions 3, 6 and 7.

Additional homes represent a narrow sub-section of the housing market. There are relatively little data available for such factors as length of ownership, relationship between, and relative size of, main residence transactions and additional residence transactions, and exactly who amongst the ownership cohort of second homes would be subject to the proposed tax.

The Scottish Government, in making a forecast for Draft Budget 2016-17, applied the approach taken for the main LBTT forecast and speculated about some behavioural impacts that would ensue if the proposed additional home supplement is enacted.

Their forecast of revenues by necessity drew on data and elasticities which relate to the entire residential market (either in Scotland or across the whole of the UK) and not just this narrow sub-section. In particular, the analysis of behavioural responses drew on experience in relation to the Stamp Duty holiday several years ago for the UK as a whole, although with some analysis of the impact in Scotland. It is not clear if these elasticities are appropriate for the additional homes market.

There are great uncertainties at this stage as to how good a fit these assumptions would be to the additional properties market.

We would refer the Committee, in the first instance, to section 7 of the SFC’s report on Draft Budget 2016-17 (link here). These paragraphs take the reader through the current approach to this tax.

In our concluding paragraph in section 7, we note that, given the data available, the forecasts as proposed were reasonable, but we stressed the very significant uncertainties which pertain at this time.
It may be helpful to highlight some of those uncertainties:

• **The size of the tax base**: if second or buy-to-let homes are bought through corporations, trusts or other family members, the number of transactions that attract the extra tax will be lower than the LBTT model would suggest;

• **Length of ownership of additional properties**: there is some evidence that buy-to-let property owners hold their properties for longer than typical single home owners.\(^1\) Moreover, the additional measure might be thought to reduce the level of short-term ‘buy-to-sell’ transactions, as the tax reduces the profits from such ‘flipping’.

To the extent that the tax affects the rate of transactions in the second home/buy-to-let/sell market, this may have ambiguous effects on the rate of residential property transactions overall;

• **A forestalling effect**: while it is reasonable to imagine there will be a forestalling effect, the degree of that effect is highly speculative; forestalling which occurred in relation to the new LBTT bands doesn’t necessarily provide a model for this different sub-section of the market;

• **Price distribution**: it is likely that the price distribution for this section of the market will be more concentrated than that for primary homes in the LBTT model. In a progressive tax regime, this will reduce the revenues from the additional measure below those predicted by the LBTT model;

• **Overall housing demand**: if some current additional home buyers are put off by the extra tax, demand for houses will fall overall, reducing prices for residential properties across the market. That will reduce revenues even if they rise where the extra tax applies.

We hope these comments are useful in your deliberations. Thank you again for the opportunity to comment.

Sincerely yours,

Lady Susan Rice                  Professor Campbell Leith   Prof Andrew Hughes Hallett

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Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from the Scottish Land & Estates

Scottish Land & Estates is a membership organisation representing landowners, land managers and rural businesses across Scotland. The majority of these are small to medium sized family businesses. Our members are interested in a great variety of land uses, including housing and development and we welcome the opportunity to respond to this consultation.

Scottish Land & Estates has a Taxation Group within our organisation and has long been interested in the operability of taxation policy and guidance as it affects our membership. At a Scottish level we have been pleased to attend the Devolved Tax Collaborative meetings arranged by the Scottish Government and other relevant stakeholder groups and we engage with the UK Government on reserved taxation matters.

1. The Scottish Government’s overall policy objectives in introducing the supplement and, in particular, whether it –
   - Is likely to “complement the Government’s commitment to supporting home ownership in a balanced and sustainable way.”
   - “helps to ensure that the tax charge is proportionate to the taxpayer’s ability to pay.”

In general terms there is a need for clarity as to who the supplement is meant to be targeting and what activities it is meant to support or incentivise. For instance clarity is required in relation to mixed use properties, where there is a residential and commercial element. Part 2 of the Schedule to the Bill refers to “the main subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling” and we would welcome clarity as to what this means in the context of a mixed estate.

Also, it should be borne in mind that Furnished Holiday Lets make a valuable contribution to the Scottish economy through tourism and we are not clear as to whether the Scottish Government has taken into consideration the potential adverse impact on this sector through the additional supplement. It also needs to be clarified whether it applies in relation to cohabitants unmarried and not in a civil partnership.
Scottish Land & Estates understands that the private rented sector market has been expanding (and continues to do so) at a quick rate in Scotland, more than doubling in size in recent years and plays a critical part in Scottish Government housing strategy providing for those who cannot afford or choose not to purchase and those not meeting the criteria for social housing. It is therefore vital to be aware of the likely impact on that sector of the proposed supplement. We do have concerns that the cost of purchase will be increased for small-scale landlords, potentially wiping out first year returns which could deter investment by this part of the market. There may therefore be challenges in terms of balance and sustainability. This of course also follows the proposal by the UK Government to restrict the ability of landlords to offset finance interest against their rental income.

We assume that it is recognised that property ownership does not transfer in Scotland until registered with the Land Register of Scotland. There may be a legitimate delay between purchasing a new primary dwelling and disposing of the previous one. It would seem appropriate that there is some form of “grace period” to allow sales to be completed without the supplement being payable. In respect of your second bullet point above, many purchasers will not have the additional 3% of the purchase price required to pay the supplement, even if it was later repaid; and a grace period would avoid the need to find this money and also would avoid the additional administration of reclaiming the surcharge when the sale of the previous home is completed. We understand “efficiency” is a key tenet for the Scottish Government in terms of tax operation.

2. The proposed 3% rate for the supplement and the £40,000 purchase price at which it is proposed to take effect.

This of course introduces a tax charge well below the current LBTT tax threshold which appears to go against wider policy intent. We also believe the relationship between this supplement and Multiple Dwellings Relief needs to be closely examined.

3. The Scottish Government’s estimate that the measure will raise between £17 million and £29 million in 2016-17.

Scottish Land & Estates is not best placed to comment on the Scottish Government’s estimate, but would sincerely hope that this has been properly and fully evaluated. We understand that following the introduction of LBTT top end property sales slowed dramatically and we hope that any issues experienced at that time are factored in to estimates now made.

4. Any reliefs of exemptions that you consider should form part of the legislation.

Application of the supplement to purchases by trusts, and for instance farm partnerships etc is a cause for concern. It would seem that a farm partnership which owned farm buildings that included a main residence for the tenant farmer would be caught by the supplement if it bought another building to be used as a residence of a farm employee. We firmly believe that a relief is required in this area and are happy to engage in dialogue regarding the framing of this. Work-related accommodation which is provided and owned by an employer should not count when considering whether an individual is purchasing an additional property.
As mentioned in response to question 1 above, we believe that a “grace period” should be incorporated in the provisions, not least given the condition of the residential market. It should be straightforward to confirm and demonstrate the sale of the original property was intended through for example provision of concluded missives. This would also reduce the administrative burden of imposing the supplement only to have to refund it shortly thereafter. There may in fact be a case to exempt properties which have been on the market for more than say one calendar year to ensure there is no added obstacle to selling. Churn in the housing market is important and where properties are taking a long period to sell the supplement may proportionately have an even more negative impact. Giving Revenue Scotland the power to extend any grace period in special circumstances may also be appropriate.

There may also be a case for exemption where a parent is assisting a child to acquire a property for the first time by purchasing jointly, not least given the lender may insist on this and the share may be minimal. One option may be for the 3% supplement to apply only to the interest held by the parent and if not specified in the title, this could be based on the finance provided.

Where individuals are acquiring an older or derelict property (which may for example not be suitable for mortgage lending purposes) with a view to bringing it back into use, exemption could be considered as the supplement will possibly act as a deterrent to purchase. There could be the anomalous situation where someone acquires a barn or church for example which is not classified as a dwelling at the outset with a view to renovating for future use as a dwelling. While they would presumably not be subject to the supplement, the purchaser of an “abandoned” house would be caught.

5. The potential for tax avoidance under the supplement and how this should be addressed.

Scottish Land & Estates suspects that it will not always be an easy task to identify ownership of residential property in certain overseas countries and so where property is simply leased/rented or occupied in Scotland, but the main property is owned abroad, there will be increased reliance on self-declaration regarding the overseas property. There is scope for abuse of the system and practical issues in terms of compliance.

At present we do not know what administrative arrangement will be implemented by Revenue Scotland in relation to this supplement and assume this can only happen once the policy and legislation have actually been clarified. However, the effectiveness may partly depend upon the operational guidance and clearly the appropriate Revenue Scotland forms and calculators will require to be updated for the new system.

6. The likely impact of forestalling

Scottish Land & Estates considers that there may be advantage in forestalling. This would permit the effects of other legislative changes to be monitored and the impacts evaluated. Indeed it may prove not to be necessary to introduce the 3% supplement due to the resultant adverse consequences.
7. Any other comments you may have on the proposed supplement.

We are concerned about the challenging timetable for consideration of this measure which is effectively compressed into a three month period. There would have been merit in wider consultation on this measure prior to introduction and at the time of responding we are not clear regarding the Parliamentary timetable for the bill.

We are also aware of the simultaneous UK Government consultation on higher rates of Stamp Duty Land Tax on purchases of additional residential properties published on 28th December 2015. The consultation document by HM Treasury contains much more detail regarding implementation of the additional supplement in relation to Stamp Duty Land Tax, than the Scottish Government call for evidence. We have concerns that while the apparent intent of both Scottish and UK Governments in terms is not dissimilar at present, if this changes in England through responses to the UK Government consultation document, it is possible for two very different processes to be enacted. This could increase complexity and add to complications.

As the Bill was only published yesterday we have not had the opportunity to fully review this in detail.
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from the Scottish Property Federation

Introduction

1. The Scottish Property Federation (SPF) is the voice for the property industry in Scotland and speaks for over 180 corporate members with interests in Scottish real estate. We include among our members major institutional investors, developers, landlords of commercial and residential property, and professional property consultants and advisers.

2. We are happy for our comments to be published by the Scottish Parliament and to be shared with other public authorities.

3. In the course of developing these comments we have liaised closely with colleagues at the British Property Federation’s Finance team who are due to submit views to the UK Treasury on their public consultation on the similar proposals for a 3% supplement on additional homes under SDLT.

Key points

4. The housing affordability crisis is fundamentally a result of a chronic under-supply of homes that is failing to meet a rapidly increasing demand for homes. We believe this crisis will only be overcome by policies that will unlock barriers to the supply of new homes. We do not believe that this Bill will contribute to this policy goal.

5. We welcome the consideration in the Policy memorandum and indeed in the stakeholder group meeting of 8 January 2016 of the potential adverse impact on large scale private rented sector investors. This is also a very live debate under the equivalent SDLT measures under consideration south of the border. It is vital that we avoid a competitive disadvantage that would deter large scale investment in new homes, whether for large-scale PRS investment or for smaller new development investments.

1
6. If the Parliament is to consider a transaction exemption where investors are purchasing a number of properties for letting purposes, then we believe 6 is the appropriate threshold. This is the existing threshold at which transactions are deemed to be commercial in nature. It would seem to be inconsistent to us for a residential surcharge to be applied to non-domestic LBTT rates and so we believe an exemption point here would be appropriate. Crucially an exemption at this point would support those smaller scale developments that would be surcharged if the UK proposals for an exemption/relief at say 15 properties transacted were to be adopted by the Scottish Parliament.

7. There is £30bn of institutional investment seeking build-to-rent opportunities in the UK over the course of the next four years. Currently less than 2% of build-to-rent PRS investment is being directed to Scotland. This is simply not enough to establish a major institutional asset class for large scale build-to-rent PRS in Scotland. The schemes that are underway or proposed in Scotland were initiated ahead of the introduction of the current Private Housing (Tenancies) Bill. Failure to deliver an appropriate exemption that will avoid deterring this investment would send a hugely negative signal to the investment market.

8. An exemption for larger scale investments will not by itself remove the adverse consequences of this legislation. Combined with other recent policy decisions including the impending removal of mortgage relief and the hugely increased risk associated with buy-to-let investment under the Private Housing (Tenancies) Bill, there are many reasons why smaller scale buy-to-let investment will be reduced in Scotland. This will have a consequence for the house-building industry itself as buy-to-let purchasers are a significant proportion of their off-plan sales. The reduction of appetite from these investors will reduce confidence for the sector in delivering new housing sites through effectively forward funding parts of a site and thus reducing risk for the house-builder.

9. Residential property is suffering from a major and rapid increase in taxation and regulation from both UK and Scottish Government sources. Measures include ATED (Annual Tax on Enveloped Dwellings) and non-resident Capital Gains Tax from the UK Government, as well as loss of mortgage interest relief and high value LBTT charges introduced in Scotland.

Questions

10. In its policy memorandum the Scottish Government makes several policy objectives. First, that the charge on additional homes will alleviate pressure on home buyers in the residential market. Second, that failure to introduce any measure will create an incentive
for UK buy-to-let investors from elsewhere in the UK to move into the Scottish PRS market. Finally, that the measures will raise additional LBTT revenue.

**Supporting home ownership**

11. We do not agree that the supplement will greatly support home ownership. The key to sustaining new home owners to meet modern financial requirements has been through direct Scottish Government intervention via Help to Buy. Affordability is an issue caused mainly through lack of supply and these measures are likely to reduce rather than increase the supply of new homes.

**Principles of taxation and ability to pay**

12. We are also puzzled as to why the Scottish Government has moved away from its principled stance of progressive taxation. The supplement will be imposed as a slab tax, exactly the same approach that the Scottish Government was keen to move away from when it took responsibility for SDLT in Scotland.

**Estimated additional revenue**

13. The government is anticipating some £17mn to £29mn (2016-17, after which this revenue increases greatly) in additional LBTT revenue as a consequence of the measure. This includes some analysis of ‘forestalling’ whereby transactions are brought forward to occur ahead of the 1st April timetable having not concluded missives before 16 December 2015. We have considered the evidence of the financial memorandum and these figures seemed to be based on assumed proportions of Scottish transactions for second homes or for investment purposes. We cannot see in any of the papers an assessment of whether transactions might be reduced if investors are deterred from the Scottish residential market and therefore we question whether these figures are robust.

**Appropriate relief or exemption**

14. We believe that there should be an exemption set for larger scale transactions of 6 or more properties, at which point the commercial rates of LBTT can be brought into play. The intention of this exemption would be to support significant large scale investment in Scotland. An exemption is proposed at the 15 property level under SDLT but we believe this is too large a number of properties for many Scottish projects which will be initiated by property entrepreneurs seeking to bring a range of 6-14 homes into use that would be forward sold to an investor.

**Relief for new development**
15. We support a relief for new development for 6 or more properties which will have the benefit of sustaining the home-building industry to forward-sell new build properties to investors as described earlier. The threshold of 6 or more properties for this specific relief will retain consistency with our previous comments on seeking an exemption where 6 or more properties are involved in a single transaction. Without such a relief SME housebuilders who were devastated by the credit crunch will be severely constrained in taking forward development projects. Again, the ability to forward sell smaller number(s) of new build or redeveloped properties is crucial for the financing of development projects and without this investment supply will be even more severely constrained than now.

*Look back relief for portfolios*

16. We are concerned that at the lack of flexibility for a ‘look back’ procedure for larger scale transactions intended for the same portfolio (as opposed to individuals). If a developer is unable to gain relief from the 3% surcharge where he may be acquiring a range of properties in a location for the purposes of site assembly for a development then they may find such projects unviable. With such a relief developers may be unable to support new development and PRS investment whereby even with same seller and same buyer a phased project takes more than one transaction to complete the supply and transfer of a number of properties.

17. The Bill includes provisions for an 18 month clawback where an individual purchasing their own homes can reclaim the surcharge. This could still impose a huge up-front tax burden on individuals and we believe this approach needs to be reconsidered in order to better support individuals caught in the conveyancing system, technically, with an additional home yet with no intention of being a second homeowner.

*Relief for certain asset classes – cluster flats in PBSAs*

18. The Bill and policy memorandum does not appear to examine the position of certain asset classes under the charge. For example, we would also question whether cluster flats contained within PBSA accommodation are included within the scope of the charge. These properties are not able to be let on the open market so we do not see any justification for any potential liability to the 3% surcharge.

*Position of other LBTT reliefs*

19. We would also like to know if other reliefs extant under LBTT (Group relief, charities) etc. will still benefit under the 3% supplement? Clarification on this point would be welcome.

*Accidental second homeowners*
20. We are concerned that there are a number of accidental second homeowners who may be unintentionally caught by the Bill’s provisions. In discussion on technical scenarios our members have raised concerns in respect to certain complex situations. For example, where a marriage breaks down and one of the parties needs to re-locate while still nominally an owner of the former marital home. In another case there could be an inheritor of an interest in a property, perhaps as part of a number of siblings for a property not in Scotland. Some siblings may already be homeowners and we understand could be protected from the charge. Yet those siblings not already homeowners but then who actually wish to become a homeowner may be caught. These are difficult situations but there is a fear that these and similar situations, which are not uncommon, may well slip through with the Bill without adequate consideration given the speed of parliamentary implementation.

21. We would be pleased to answer any further questions relating to our evidence.

David Melhuish
Director
Scottish Property Federation
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from Shelter Scotland

29 January 2016

Introduction

Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure that, one day, no one will have to turn to us for help.

Shelter Scotland’s comments are limited to the impact that the Land and Buildings Transactions Tax (LBTT) supplement on additional residential homes is likely have on people who are poorly housed or at risk of homelessness. In particular we will assess the impact of this policy on the private rented sector.

Key points

- Shelter Scotland is broadly supportive of the introduction of the LBTT supplement on additional residential homes.
- The LBTT supplement could reduce instability in the buy-to-let sector, identified as being particularly vulnerable to economic turbulence by the Bank of England, protecting private renters.
- The LBTT supplement could also play an important role in reducing house price inflation, to the benefit of first time buyers.

The impact of the LBTT supplement on private renters

Shelter Scotland notes that the Bank of England has raised concerns about the stability of the buy-to-let sector, with the lending criteria perceived to be less stringent than for owner occupiers. The Bank of England asserts that buy-to-let landlords may be more vulnerable than other borrowers should they experience a drop in income or there is an
unexpected rise in interest rates.\textsuperscript{1} This, of course, could have significant consequences for private renters who rent from landlords with buy-to-let mortgages: should a landlord fall behind with their payments and their lender seeks to repossess the rented property, it is likely that the lender will also seek vacant possession of the property in order to sell it, potentially making a private renter and their family homeless.\textsuperscript{2}

In relation to private rents Shelter Scotland is aware that concerns have been raised in relation to a potential increase in private rents as consequence of this change. Shelter Scotland would caution against this analysis of the impact of the LBTT supplement given that private rents are determined by more than just the expenses incurred by private landlords. Integral to rent setting are other factors such as rents in the locality for comparable dwellings and the quality of the accommodation. Further, this additional tax could have a mild deflationary effect on the market, reducing or at least surprising prices. Consequently, this should not have an adverse impact on private rents across the board. However, the Scottish Government should closely monitor changes in private rents, along with other trends in the private rented sector, by increasing the role of the Rent Service Scotland in collecting and publishing private sector rent data. The impact of this policy on house prices should also be examined by the Scottish Government’s Centre for Housing Market Analysis.

The impact of the LBTT supplement on the housing market

Credit which is relatively easy to access for buy-to-let landlords and those seeking second homes has the potential to increase house prices. This is likely to be to the disadvantage of first time buyers, who may have stricter lending criteria and access to less capital. Given that a combination of strict lending criteria and house price growth relative to income growth has already acted a barrier to homeownership for many first time buyers, giving second home purchasers and buy-to-let landlords an advantage over first time buyers could be perceived as unfair. In this sense the introduction of an LBTT supplement could level the playing field for first time buyers, by tempering the market for second homes and buy-to-let properties. As we recommend above the Scottish Government’s Centre for Housing Market Analysis should analyse this section of the market carefully once the LBTT supplement is introduced.

Conclusion

\textsuperscript{1} Bank of England, Financial Stability Report, December 2015, \url{http://www.bankofengland.co.uk/publications/Pages/fsr/2015/dec.aspx}
\textsuperscript{2} This is explored in Wallace, A & Rugg, JJ 2014, Buy-to-Let Mortgage Arrears: Understanding the factors that influence landlords’ mortgage debt, Centre for Housing Policy, University of York \url{https://pure.york.ac.uk/portal/en/publications/buy-tolet-mortgage-arrears-understanding-the-factors-that-influence-landlords-mortgage-debt(2b3f3830-8c28-4cdc-b93b-664ea2bb4a03)/export.html}
Shelter Scotland is supportive of the additional LBTT supplement on additional residential homes. We are of the view that this could add an important element of stability into a potentially unstable buy-to-let market and reduce pressure on house prices, to the benefit of first time buyers. In both of these respects Shelter Scotland believes that, in answer to the Finance Committee’s call for evidence, the LBTT supplement is likely “to complement the Government’s commitment to supporting home ownership in a balanced and sustainable way.” However, the Scottish Government should pay close attention to the impact of the policy on private rents, by expanding the role of the Rent Service Scotland and monitoring the impact of the policy through the Centre for Housing Market Analysis.

Contact:

Debbie King, Public Affairs Officer
Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from South Lanarkshire Council

This proposal is to amend the charges under the Land and Buildings Transaction Tax as from 1 April 2016. An additional charge of 3% will be levied where the transaction relates to the purchase of a second home or buy-to-let and the value of the property is in excess of £40,000.

It is not anticipated that there will be implications for South Lanarkshire Council or other Social Landlords in terms of the acquisitions for former Council houses or other properties.
Proposed LBTT Supplement on Additional Residential Homes - Call for Evidence

I note the draft budget 2016-17 intent to levy a LBTT supplement on additional residential homes. In addition, I also note the Financial Committee's invitation to air views on any reliefs or exemptions that I consider should form part of the legislation. With respect to this latter point, I wish to explore the what defines 'main residence' and ensure that our military personnel are not unduly disadvantaged by the requirement for mobility whilst in Service; specifically noting the Military Covenant reference that “The taxation system may be adapted to reflect their [Service personnel’s] particular circumstances.”

I have been able to find little information on methodology for the proposed LBTT supplement; however, I work to the assumption that no levy will be applied where a property is bought to replace a main residence.

It is common for our Service personnel to purchase a main residence before being posted for several new tours of duty, usually lasting 2-3 years. Furthermore, it is often the case that the property is rented whilst Service accommodation is utilised. Some time later the individual will leave Service accommodation and sell the original property to purchase a new main residence. Of note, HMRC recognise this very scenario with respect to Capital Gains Tax where an individual has been required to occupy “job-related accommodation”. I would like to see the Scottish Government mirror this recognition so as not to unduly punish Service personnel for living a nomadic lifestyle.

My own circumstances might provide more enlightenment. I was raised in Nairn and, upon graduation from The University of Edinburgh, joined the Royal Air Force (RAF) in 1999. Assigned to RAF Kinloss in 2002 I purchased a home in Nairn as my main residence. My girlfriend also owned a flat in Nairn, which she rented out when we began co-habiting in 2007, before marrying in 2009. That same year we accepted a posting overseas ahead of an expected return to RAF Kinloss in 2012. With that in mind, I retained ownership of the property in Nairn and placed it on the rental market.

The output of SDSR 2010 saw the well published demise of RAF Kinloss and forced my next move to RAF Cranwell, Lincolnshire. I continued to rent my property in the hope of a future posting to RAF Lossiemouth. Sadly, I was unable to secure such a move and in a couple of months' time I will retire from the Service to forge a new career that will necessitate a move to the Central Belt. I now intend to sell my property in Nairn to buy a new house in the Dunblane. I left Nairn in April 2009 and have lived in Service-provided accommodation ever since. My wife continues to own her flat and lets it to a family friend.

Whilst highly enthused about a return to Scotland, I am deeply fearful that given my 7-year residence in RAF Married Quarters, the only house I own (in Nairn) will have lost its status as my main residence in terms of any LBTT supplement requirements. If the Scottish Government follow the UK Government line that married couples are treated as one unit, then having lost the ‘main residency’ tag of my house in Nairn, my house purchase in Dunblane would attract an additional 3% levy as my wife continues to own a flat - effectively punishing me financially for my pursuit of a military career. I have lived in 3 different locations over the last 7 years which has curtailed my wife’s career as her Scottish-derived qualifications were not portable; the retention of
her flat as a rental property was viewed as an amelioration measure to offset the impact to her pension from an enforced career break.

In sum, I implore the Scottish Government to be aware of the unique life our Service personnel lead and ensure that the new LBTT legislation sits in harmony with the Military Covenant. 
Specifically, I request that a military exemption be granted and ‘main residence’ status not lost over a period of time where Service-provided accommodation is occupied – even if that runs to a number of years.

Yours Faithfully,

Gareth Jones
Evidence submitted on the LBTT supplementary charge on additional residential properties - Adviser briefing

1. On the basis of the proposal in the 2016/17 Draft Budget to introduce a supplementary LBTT on the purchase of additional residential properties from 1 April 2016, the Finance Committee requested views on a number of questions with a response date of 29 January 2016. The LBTT Amendment (Scotland) Bill was published on 28 January 2016 so the 51 responses received were substantially prepared without sight of the Bill or accompanying documents. The responses were from professional bodies and firms, industry bodies and firms, local councils and individuals. In the very brief time available to review this body of evidence, I have endeavoured to summarize some of the key themes below under each of the questions asked by the Committee. Abbreviations used are listed and their full form given in the Appendix.

2. With the relatively modest estimated yield, this supplementary tax must be justified by its policy objectives. Respondents are concerned at a lack of evidence supporting the proposed benefits and at the significant risk of unintended consequences. The Bill introduces significant complexity for taxpayers and RS, which will increase if more reliefs are provided. Liability depends in some cases on statements of taxpayer's intentions and on others on the taxpayer's veracity regarding the existence of property holdings outside Scotland. These will be very difficult for RS to police. As some respondents have suggested, there is a good case for not rushing to implement this Bill from 1 April 2016 but to seek evidence, consult further and observe the impact of the SDLT measures on the rest of the UK and any knock on effects in Scotland. If still considered appropriate, the measures could be introduced from 1 April 2017.

The Scottish Government’s overall policy objectives in introducing the supplement and, in particular, whether it—

- Is likely to “complement the Government's commitment to supporting home ownership in a balanced and sustainable way.”
“helps to ensure that the tax charge is proportionate to the taxpayer's ability to pay.”

3. Amongst the submissions, there was considerable scepticism that the measure will release more properties for first time buyers. ALACHO were concerned at the lack of research into the impact of buy-to-let purchasers on the property market, Scotland wide and regionally, as were the CIH. ALACHO note that during recent significant buy-to-let activity house prices have remained relatively flat and the number of first time buyers has risen. The absence of research increases the likelihood of unintended consequences from the measure. Craig Nicholson considered that the LBTT supplement was simply copying the SDLT measure which was aimed at a very real problem in London and South East England but had little relevance in Scotland. KPMG and the LSS ask whether the SG has considered whether assistance for first time buyers would be better way of supporting home ownership and the LSS are unsure that of the Scottish property market is comparable with that in England and Wales.

4. The NAEA are supportive of the SG's policy but see it as likely to be most effective in Edinburgh, Glasgow and Aberdeen in releasing additional properties on the market. They caution that they have not seen the increase in first time buyers at the lower end of the market that they anticipated following the introduction of LBTT. Other factors such as rising house prices and finance are important barriers to purchasing a home and any increase in first time buyers has probably resulted from easier borrowing rather than tax measures. They recommend a nationwide house-building programme to constrain upward pressure on house prices and allow more prospective buyers to enter the market.

5. RICS believe the supplement may achieve a more equitable housing stock but are concerned at the potential impact on the rental market at a time when there is demand across all tenures. They do believe there is a risk of an influx of buy-to-let investors if the SDLT provisions are not matched. If the legislation is implemented they urge the SG to ring-fence the tax yield
for housing, either for more social housing or mortgage deposit guarantees.

6. SPF do not expect that the supplement will greatly support home ownership. Home ownership has been supported by financial measures such as help-to-buy. Affordability is an issue created by lack of supply and these measures are likely to reduce rather than increase the supply of new homes. They are also puzzled why the SG has moved away from its principled stance of progressive taxation and reintroduced a slab tax.

7. SAL doubt whether the policy objectives will be achieved as buyers will simply offer less for properties and the vendors will effectively bear the cost, particularly where the property is not attractive to home buyers. First time buyers are likely to be relieved of competition in any case as the new tenancy regime will mean declining investment in rental property in Scotland. The biggest impact of the proposals will be on vulnerable tenants and less will be spent on improving housing stock. The PRS needs tax incentives not tax penalties.

8. The ICAEW consider that, in copying the UK proposals, the SG has missed an opportunity to distinguish Scotland as an attractive location to live, work and do business. In their submission they reiterate the serious concerns they have expressed on the UK SDLT proposals, noting multiple circumstances in which those who are essentially first time buyers will be subject to the tax and they also consider it unfair to smaller investors. They also challenge the overall justification for promoting home ownership at the expense of other forms of residential accommodation. Home ownership is inherently unsuitable for many people including students and migrant workers. In addition they note that by favouring investment by large corporates and discouraging individual investors, this policy will potentially increase the revenues of the UK government in the form of Corporation Tax and tax on dividend income while reducing SRIT on NSND income.
9. PwC caution that unforeseen consequences may follow from the introduction of a tax and without considerable economic analysis the impact on the housing supply is difficult to determine. They give examples of how the price paid for a property does not give an indication of the ability of the buyer to bear the tax.

10. Some witnesses considered that an increase in available properties for first time buyers was more likely in areas where property values were high. With regard to rural areas and other areas where property values were lower, views were expressed that barriers other than availability of property on the market constrained first time purchasers, with size of deposits, insecurity of income and creditworthiness restricting the availability of mortgages. ACC’s response commented on earlier experience with schemes targeted at rural areas which demonstrated that a substantial collapse of house prices would be necessary to make homes affordable to those on low incomes.

11. A property investor, Martin Payne, produces calculations which he considers show that the proposed supplement will make buy-to-let investment in properties in the price range favoured by first time buyers relatively more attractive. Instead of an LBTT supplement across all prices, he suggests that it be restricted to the sector of the market where first time buyers make purchases and set at, say, 10%, discouraging competition with first time buyers while encouraging continued investment at higher price levels. An exemption from this limited supplement for new-build buy-to-lets would encourage more development of 1 and 2 bed properties in this price range.

12. A second policy reason for introducing the LBTT supplement is concern that the proposed SDLT charge on additional properties would divert investment, particularly in lower value properties, to Scotland further restricting the availability of properties to first time buyers. Other than the RCIS, there was some scepticism express about this by respondents. The CLA believe that the more onerous legal obligations placed on landlords in
Scotland, particularly once the new tenancy regime comes into force, mean that it is likely that landlords will choose to invest elsewhere in the UK rather than in Scotland. So first time buyers are unlikely to face competition from a surge of new investors in Scotland.

13. A general concern is that the LBTT supplement will lead to a reduction in investment and availability of rental accommodation. Some agents note that there is already consistently higher demand for rental properties than availability. Several letting agents have noted that landlords are considering selling their letting properties as a result of the forthcoming restriction on income tax relief for interest and the supplement will create a double hit to the sector. The ICAEW quote the findings of a survey by YouGov for the Council of Mortgage Lenders that 34% of landlords will reduce investment in the PRS following the announced income tax changes and the SDLT additional rate. Where properties are sold tenants are evicted. Many of them will be unable to or uninterested in buying and may struggle to find new rental accommodation.

14. The CIOT refer also to this double hit with the income tax changes increasing costs in the buy-to-let sector and indeed in some cases landlords may be subject to tax on "income" when in fact they have suffered a commercial loss. This change needs to be taken into account when considering the potential impact of LBTT supplement on the Scottish housing market. The CLA give a detailed critique of the potentially damaging impact of the supplement on the Scottish housing market and property businesses. The biggest losers will be vulnerable tenants in their opinion.

15. HFG, noting that there are more households living in the PRS than in housing association properties, consider the contribution of the PRS significant and much needed. Together with an improving property market and the reduction in income tax reliefs, this measure will take properties out of PRS and scarcity will drive up rents. Increased homelessness is a real risk as the barrier to home buying for the less well off is availability of
finance not the availability of properties. They fundamentally disagree with the policy basis of the proposal that taking properties out of PRS will level the playing field for first time buyers. The supplement will be factored into the business model of serious property investors whether pure investors or socially motivated, and will lead either to a reduction of money spent on the property subsequent to purchase or, in a sluggish market, it will lower the price for the vendor.

16. Shelter on the other hand doubt whether rents will rise as a result, seeing other factors than landlord’s costs as key to determining rents. They also see the proposal as reducing instability in the buy-to-let sector where the Bank of England has detected risk of default by highly geared investors. Repossession of properties generally results in eviction of the tenant. They do not specify how the LBTT supplement will increase stability, however. With buy-to-let investors having easier credit and thus increasing house prices, they consider that the LBTT supplement will redress the balance in favour of first time buyers.

17. ACC note that provision of accommodation by employers can be necessary, particularly where property prices put purchasing out of reach. In such circumstances, the supplement will increase the cost of employment.

18. The importance to property developers of “off plan” sales to investors was noted by KPMG and others. Such sales make it easier to fund the development and increase the availability of new build property to home-buyers. AREF note that institutions invest for the long term and stability in tax and other matters is important to them. For example, many left the market or reduced exposure during the 1970s when legislation introduced rent controls and overly prescriptive tenancy protection. A climate in which landlords are seen as a target for higher taxation may discourage investment.
The Caledonian Estate Agency, operating in the Cairngorms National Park, and others are concerned that reduced investment in second homes and holiday let accommodation will hit tourism dependent areas and businesses. Second homes have been a feature of some areas of Scotland since Victorian times and many local businesses are dependent on the annual influx of prosperous consumers. Local builders and developers, too, will be hit by a reduction in the demand for holiday homes and homes for letting and this may have a knock on effect reducing availability of new build properties for home-buyers. Highland Park Development, currently completing a 14 house residential development in Killin conceived as primary, secondary and holiday homes, have significant concerns over the impact of the tax. In a price range around £250,000 the LBTT will increase from £2,000 to over £9,000. They believe the tax will have a an "extremely negative impact" on small developers, tourism in rural Scotland and soon-to-be retirees who wish to lock-in their future retirement homes or supplement limited retirement funds.

Solicitor, Paul Matthews, believes the measures to be bad for the Dumfries and Galloway Area. The market is weak and purchasers need to be encouraged. There is already an unmet need for rental accommodation. In this market properties can take years to sell so this measure will be a further barrier to those who wish to downsize as they get older.

A consequence of reducing the number of second homes will be a reduction in the number of properties with council tax discount. ACC note that this will indirectly reduce funding for Strategic Housing Investment Plans. Councils which restrict the discount are permitted to retain and apply the additional council tax to such plans. An increase in grant funding may become necessary.

A number of respondents, including Alistair Wood, refer to the contribution to housing stock arising from the renovation of empty and derelict properties. As part of his business, he buys properties in disrepair, which
are not mortgageable or suitable for a first time buyer, and renovates them for sale or rental. Such properties require the expertise and finance of landlords and property traders to bring them up to standard for sale or let. The supplement may have the effect of reducing this activity and countering the policy objective of increasing available housing.

23. A number of private landlords consider that the proposed legislation is not even-handed and will disadvantage local private landlords and favour large and institutional landlords. As CIH note, issues in regard to standards in certain areas of the private rental sector are being addressed by regulatory legislation. Private landlords make a positive contribution to the stock of available housing and should not be subjected to tax that is not payable by institutional and larger investors.

24. The SG has laid considerable store in being guided by the principles of good taxation set out by Adam Smith namely certainty for the taxpayer, liability proportionate to the ability to pay, convenience and efficiency of collection. The CIOT considers that the only one of the four addressed in the proposal is ability to pay, although one respondent whose property rental businesses has made losses for the last two years queried whether ownership of property indicated ability to pay. The ICAEW also challenge the link between cost of a property and ability to pay. Where liability to pay the supplement on a purchase is dependent on successful sale of another property, there will often be uncertainty for taxpayers. Liability may depend on matters outside the taxpayer's control. Convenience should include the availability of free funds to pay the tax. If liability arises because a sale falls through, a taxpayer will be faced, not only with finding bridging finance, but finding a means to fund the tax charge. As liability will be dependent on factors outwith the immediate transaction taking place, efficiency of collection will be undermined. RS will have to police taxpayer declarations as to their intentions, their other property holdings or the absence of such holdings and their use of these other properties. In some cases, the persons making the declarations will be outside the UK and, even where they are not, verifying the ownership and use of properties
outside Scotland and the UK will not be easy.

25. Apart from those who would aspire to own a property but cannot obtain a mortgage or find a suitable property, many people prefer to rent rather than buy. These include young people who have yet to settle into a longer-term job or career and people whose employment is uncertain or otherwise leads to regular changes of location. It is important that their interests are balanced with those of home-buyers. CIH suggests that the impact of the supplement should be monitored to ensure this balance is achieved. If the yield from the tax is ring-fenced for investment in affordable housing, for support to first time buyers and for improvement of standards in the private sector this will provide balanced support for first time buyers and those seeking rented accommodation. HFG also ask whether the yield will be ring-fenced to build affordable homes.

The proposed 3% rate for the supplement and the £40,000 purchase price at which it is proposed to take effect.

26. The CLA and SAL note that the less favourable legal framework in Scotland is a disincentive to investment in housing and therefore the threshold and rates should not be the same as the rest of the UK. They suggest that the rate should be lower than 3% and that the threshold should be raised above £40,000. KPMG also suggest that a rate lower than 3% will promote investment in Scotland but welcome the £40,000 threshold as it means that purchases up to this level remain non-notifiable. ICAEW point out that the supplement will lead to rates of 13% on properties over £325,000 and 15% on properties over £750,000 with potential disincentive to senior executives and entrepreneurs considering relocating to Scotland. As high-end properties are not targeted by first time buyers, the supplement if introduced at all, should be limited to properties below, say, £250,000.

27. The CIOT, ICAEW, SPF, LSS and others note that the threshold reintroduces the "cliff edge" feature which created market distortions under the old SDLT regime and was eliminated on the introduction of LBTT and
is inconsistent with a progressive tax regime. A buy-to-let purchaser paying up to £40,000 will pay no supplement while one paying £40,001 or more will pay at 3% on the total amount. The LSS advocate the introduction of a taper to ameliorate the "cliff edge".

28. Members of HFS note that a flat 3% is counter to the progressive approach previously adopted for LBTT and that the £40,000 threshold is so low that the supplement will apply to all new build properties.

29. Barry Burton notes that in the market at a property values around £40,000 the potential first time buyers are limited by lack of creditworthiness or lack of interest in property ownership. The LBTT supplement of £1,200 on buy-to-let purchasers will not change this. In terms of the policy objective, the threshold is lower than it needs to be.

30. HFG consider the £40,000 threshold far too low. First time buyers are not active at this level due to unavailability of mortgages or absence of finance to upgrade the properties. If the supplement is truly meant to release properties for first time buyers it should only start applying at a level where first time buyers are active, say £50,000. Otherwise the supplement simply penalises those likely to improve sub-standard properties and bring them into the PRS.

The Scottish Government’s estimate that the measure will raise between £17 million and £29 million in 2016-17.

31. SFC draw attention in their submission to multiple factors that could impact on yield and on the broad, largely UK based data on which the estimate is based.

32. The CIH highlight the absence of relevant data for Scotland and that the SGs forecast is based on UK level data and anecdotal evidence. In the absence of data, the estimates are the best possible in the circumstances. In the light of this, the impact of the supplement should be closely monitored and the rate and threshold reviewed if necessary. The CLA
caution that due to the less favourable legal framework for landlords in Scotland it is likely that investors will choose to invest elsewhere in the UK unless there are tax advantages to investing in Scotland. They believe that this will mean very few investors will choose to invest in Scotland and consequently proceeds from the higher rate of LBTT will be small.

33. The ICAEW are concerned that the estimates do not appear to factor in a behavioural response which may be significant.

34. KPMG consider any estimate at this stage should be treated with caution. A hastily introduced tax with minimal consultation is likely to have unpredictable consequences. In any case it is unclear whether the policy intention is to deter the purchase of additional residential properties, in which case a lower yield indicates success, or whether it is a revenue raising measure where a high yield is looked for. This needs to be clarified.

35. NAEA recommend that the estimates be treated with caution and point to the behavioural responses to the introduction of LBTT. They would like to see the money raised used to build more houses and fund initiatives to help first time buyers.

36. SAL anticipate a decline in investment in property to let in any case and so proceeds from LBTT supplement will be small. SPF cannot find any indication that the estimates take account of a potential decline in activity as a result of the supplement and they consequently question whether the estimates are robust.

Any reliefs or exemptions that you consider should form part of the legislation.

37. While the inclusion of purchases by companies of residential property in the supplementary charge is believed to be an anti-avoidance measure to prevent avoidance by individuals, the role played by larger investors in stimulating construction and providing capacity in the rental sector is important. AREF point out that the LBTT legislation already recognises the
need for a measure of relief for larger transactions. Six or more dwellings purchased in a single transaction are taxed at the lower non-residential rate and multiple dwellings relief is available on a purchase of two or more properties together. For LBTT supplement they recommend complete exemption for institutional investors. They offer two existing legislative tests to determine those due relief: the genuine diversity of ownership test used for authorised investment funds and the "non-close" test used for REITs. PwC offer diversely held company and widely marketed scheme in terms of section 14F, TCGA 1992 as an alternative existing test.

38. There is support for this relief to be available more generally to larger scale investors. If this is the route chosen, AREF consider that size of property portfolio, e.g. five rental properties, rather than size of transaction should be the test. To avoid discriminating against new entrants, a period, say 18 months, should be allowed to reach the five property threshold. If the threshold were reached within the time limit, LBTT supplement would be refunded, as in the case of disposals of a previous main residence. Pinsent Masons suggest that the relief should be available where the investor already owns six or more properties or the transaction concerns six or more properties. They also suggest that the relief should be available to individual investors as well as corporates.

39. The CIOT suggest that the reliefs from higher rate SDLT in Schedule 4A, Finance Act 2003, offer a potential model for relief from LBTT supplement. Alternatively to AREFs focus on size of portfolio, which they consider discriminatory towards new investors, they and the PRS Champion (quoted in Brodies' submission) suggest that relief apply to multiple simultaneous purchases. Jonathan Gordon suggests that a multiple purchases relief be targeted at purchases on the same site or development as these investors are not competing in the market with home-buyers. While the UK SDLT consultation has suggested 15 as an appropriate number, the CIOT, HFS, LSS, Brodies and others, consider that 6 would be appropriate as there is already an LBTT relief which applies to purchases of six properties. Without this alignment, there is not
only room for confusion but also the possibility of the existing relief deeming a purchase to be non-residential for regular LBTT but leaving it subject to the supplement on purchase of residential property. Such a multiple purchase test would require consideration of whether all properties must be part of the same sale and purchase agreement, or be linked transactions or indeed whether it would apply to all the phases of a development where purchases occur in phases.

40. E&Y suggest a refinement where the test would not be the number of properties in the transaction but the number held on completion of the transaction. Using the SDLT proposed number of 15, this would put the person who owns one dwelling and buys 15 on the same footing as one who owns 15 and then buys one. Brodies also suggest a "portfolio" test but suggest six in line with their proposals for single transactions. E&Y are concerned however that these rules discriminate against small developers who are important in the market and who buy and develop property for resale. They suggest a relief for all developers conditional on genuine development. To prevent avoidance there could be a time limit on development similar to the approach under sub-sale relief. An alternative would be to use the income and corporation tax rules and only give relief where the subsequent sale will be treated as trading income.

41. ALACHO, CIH and the Cyrenians are concerned at the potential impact on the affordable houses programmes of LAs and RSLs. House purchases in the social sector play a beneficial role in the market as particularly evident after the 2007/08 financial crash. The measure will impact on existing affordable housing programmes and restrict the overall capacity of the sector to meet the SG’s target of 50,000 new affordable homes over the life of the next parliament. In the light of this, LAs and RSLs should be exempt from the supplement. ICAEW similarly suggest relief for accredited landlords, considering a relief based on the quality of landlord more targeted than one based on size or category. HFG, perceiving a need for greater provision within the PRS, suggest an exemption for buy-to-let where the property will be managed by registered letting agents who
ensure compliance with all PRS legislation. The relief could be given by refund once the compliance is demonstrated. Relief could also be provided where rent levels do not exceed 110% of LHA rates. All bodies whose main purpose is the provision of housing or support to people with housing need should also be relieved of the supplement.

42. SFHA are concerned that relief is extended to housing association subsidiaries and other bodies providing homes for midmarket rent or shared ownership and equity. Such schemes are only viable with a housing association grant or local authority provision of land at nil cost so LBTT supplement will impose a cost on the public purse. This runs counter to the SG’s ambition to provide 50,000 affordable homes over the next five years.

43. Student accommodation featured in submissions by AREF, SPF and others. Halls of residence are not residential property for LBTT but other student accommodation is. Purpose built student accommodation is generally unsuitable for purchase as a home and is often owned by institutional or other large investors. Additional cost to the proprietor may lead to increased rents and a restricted supply. A general relief for such purpose built student accommodation was suggested. Alison Louden suggested that this relief should extend to a property where the owner lives in it jointly with the tenants such as a student sharing with other students. For the multiple purchase test the LSS query whether student accommodation would be better dealt with by counting the number of occupants rather than the number of dwellings.

44. A number of respondents including the ICAEW consider that there is need for relief where a property portfolio is reorganised without change of ownership, as for example, where an individual transfers property to a company owned by him or between companies owned by him. There may be good commercial reasons for such reorganisations from time to time and they remove no property from the market, so there is no policy reason to discourage them. To prevent abuse, the ICAEW suggest that the relief
should be withdrawn if the transferee company is sold to an unconnected party within, say, 12 months and where there is a sale of some of the shares, a proportionate withdrawal.

45. Several respondents, including the CLA, suggested that such a relief should be extended to sales of let properties between landlords on the grounds generally that no property was removed from the homebuyer’s market. If such a general relief is too wide, then it should be given for holiday letting property changing hands as such property contributes to the local economy and also for houses in multiple occupancy which are unsuitable for first time buyers. E&Y and the ICAEW suggest a complete exemption for dwellings used as furnished holiday lets given their contribution to the economy. As there are already strict rules for determining whether a property is a furnished holiday let the scope for avoidance would be minimal.

46. Given the policy aim to increase the number of homes available for purchase, several respondents suggest relief for purchases of properties that have not been purchased or are not suitable for purchase as a home. Candidates for this exemption might be houses which have stuck on the market for six months or more, houses that have been unoccupied for a year or more, those where significant refurbishment is required to bring them up to standard and houses that do not qualify for mortgage finance for whatever reason. Indeed, such reliefs would act as an incentive for those with the finance and skills to bring properties back into the housing stock.

47. Given the stimulus to construction from buy-to-let purchases of new build properties, the CLA, RICS, Jonathan Gordon and others suggest a blanket relief from the supplement for new build purchases. This will not remove any existing homes from the market and by stimulating construction may increase the number of homes available for purchase. HFS agree with this and believe that new build for buy to let or holiday homes are additional properties which remove none from the market place. They
mention in particular new build homes purchased as holiday homes. They remove no properties from the market place and bring development and potentially population growth to rural areas.

48. The treatment of non-natural persons (mostly companies) differs from that of natural persons. The latter are liable to supplement on their second property while the former are liable on their first. E&Y suggest that non-natural persons could be put on an even footing by charging only on second and subsequent properties unless the non-natural person is connected to a natural person or other non-natural person already owning a dwelling. Section 58 of the LBTT(S)A 2013 contains a definition of connected which could be used.

49. Both for companies and individuals the legislation will charge supplement where a residence is purchased in the course of business. LSS consider that relief should be given where the property is for business use other than in the course of investment or trading. This would exempt the provision of job related accommodation for employees, for example. McCash & Hunter specifically mention that imposing the charge on properties purchased to house workers will be a disproportionate burden on local, family owned businesses and SLE are concerned at the potential cost to farmers and farm partnership. They consider that work related accommodation owned and provide by an employer should not be counted for the purpose of the supplement.

50. The intention appears to be that a property purchased by a partnership will be liable for supplement if one partner already owns another property. The CIOT and LSS suggest that relief should be considered where the property is purchased by the partnership for the residential use of an employee as a condition of their employment or otherwise for business use (other than in a property business). ICAEW consider that the circumstances of each partner should be considered individually and supplement applied to each share appropriately.
51. Contrary to SG's proposals ICAEW see no logic in treating married persons, civil partners and cohabitees differently to other individuals. Likewise, the proposed treatment of joint owners is unfair and supplement should be charged only on the share of those holding other property as set out in the following paragraph. Joint ownership is often driven by necessity, for example lender's requirements, not choice.

52. A number of respondents referred to the need for relief where the supplement falls due as a result of another joint owner having other residential property. As the CIOT, E&Y and ICAEW note, where there is a joint purchase, the likely position is that supplement will be charged where any of the purchasers own another property, even where one or more of the purchasers is buying their main and only residence. This seems inequitable to the latter purchasers. Potential reliefs could include limiting the supplement to those purchasers who hold another property (with perhaps a de minimis equity proportion below which there would be no charge) or exempting the purchase, or their proportion of the purchase, where one of the purchasers is acquiring a new or replacement main residence. A targeted anti-avoidance rule might be required for this relief. Other proponents of this relief, the CLA and others, refer particularly to first time buyers and highlight the case where a family member is helped to buy their first home with the funder having a joint share in the property. Such help for first time buyers is in alignment with the SG's policy objective for the legislation.

53. LSS suggest that care needs to be taken with drafting when dealing with multiple owners. Joint and common ownership are different in law. Joint ownership arise where there is more than one owner but their interests are indivisible and cannot be dealt with separately. With common ownership each owner has a separate interest and can deal with it separately. With both types of multiple ownership it seems unfair that the circumstances of one results in a tax charge on the other and they similarly illustrate this with the case of a parent assisting a young person acquire a main residence. If the parent has other property interests their 10% share in the
property can result in supplement being charged on the young person's 90%. They suggest that each owner's interest should be dealt with separately for the supplement.

54. A *de-minimis* rule is also proposed by E&Y where an individual holds a small interest in a property. Such a situation may occur, for example, where a property is inherited jointly with a number of other beneficiaries and cannot be sold without agreement of the other joint owners. Without a *de minimis* rule an individual would be unable to acquire their own main residence without paying the LBTT supplement. They also propose a 24 month period during which inherited property does not count as owned by the beneficiaries. There may differences of opinion amongst the beneficiaries which delay the disposal of the property. Without this the beneficiaries may be liable to supplement on the purchase of what is in reality their only dwelling.

55. A particular case of joint ownership is where a purchaser buys an interest in a property, taking joint ownership with the existing and continuing occupants. The CIOT note that this situation will need to be considered. Will the circumstances of all the owners be relevant for supplement? For example, it would seem inequitable if the incoming buyer owns no other properties but is charged supplement because a continuing owner does.

56. A number of respondents consider that relief will be necessary for a separated spouse or partner who purchases a main residence while retaining an interest in the former family home. Adrian Alderton points out that, without relief, the existing family home may have to be sold with possible further upset to children. The proposal is that married couples and those in civil partnerships will only be entitled to one main residence between them. Where the couple are separated, the CIOT and LSS point out a potentially conflict with the factual test of main residence as the facts in the case of each party may point to different main residences. Unlike CGT, where a couple are treated separately for tax from the tax year after the one in which they separated, the intention for LBTT is to continue to
treat them as a couple until there is a court order or formal deed of separation. This may lead to a separated spouse or partner being charged supplement on the purchase of a main residence simply because the separation formalities have not been completed.

57. McCash & Hunter are concerned at the possible impact on property bought on trust for another, for example, parents purchasing a property for a disabled adult child.

58. ICAEW finds it iniquitous that an individual who is charged supplement on the purchase of a property is charged on the full value of the property being purchased (which may be their intended main residence) while the charge results from some actual or attributed interest in a much lower value property. As noted in paragraphs above, a charge may arise because of an interest attributed through others or through joint ownership, perhaps unsought but acquired through inheritance. In such circumstances, they suggest that taxpayers have the option to limit the amount charged to supplement to the value of the other property interest, and where there is more than one such, to the highest value one.

59. If the policy objective is to release property to the Scottish market, Adrian Alderton considered that ownership of one property outside Scotland could be disregarded for the additional property test without undermining this objective. Edward Conway suggests that the supplement should not be charged on those who buy one holiday home or apartment.

60. There are concerns that the relief for a replacement main residence is not comprehensive enough. Barry Burton, who owns rental property, himself lives in rented accommodation. If he achieves his ambition to buy a home for himself he would like to think he and others like him would not be charged supplement. Currently the legislation only exempts the buyer from the supplement if the buyer both owned and has disposed of his previous main residence. LSS and PwC note the unfairness of situations like Barry’s and recommend that all purchases of main residences be
exempted from the charge. RICS note that someone in rented accommodation may inherit a property and before they have succeeded in selling it they buy a main residence and fall liable to LBTT supplement. As property can take some time to sell, they consider relief should be given. This circumstance would be relieved by a general exemption for the purchase of a main residence. ICAEW note that it should be made explicit that the main residence relief will apply where an individual acquires an additional interest in their current main residence.

61. As currently drafted the buyer of a property is not charged supplement if they intend to use the property as their only or main residence and have disposed of another property, which was their only or main residence, within the previous eighteen months. If at the date of purchase they still own their former or main residence, they will be charged supplement but will be able to claim repayment if the former residence is disposed of within the following eighteen months. One respondent finds himself in precisely this position. Having concluded missives to sell on 15 January and made his financial arrangements at a time when both he and his solicitor were unaware of the proposed supplement, he will now be unable to sell his former residence in time and will be forced to carry the unexpected cost of the supplement until he does so. He suggests a grace period of eight weeks from the later of 1 April 2016 or the effective date of purchase, if later, for the disposal of the former main residence. He also suggests that the period within which the supplement can be reclaimed should be 30 months. This would allow those who have re-mortgaged their original home to fund purchase of their new home time to sell the original home without incurring early repayment charges on the re-mortgage.

62. The CIOT believe that legislation as drafted exposes a purchaser to uncertainty as the timing of the sale of the former residence is outside their control and to potential financial hardship if the intended sale fails to complete in time. This risk could be sufficient to put people off moving home. To mitigate this LSS suggest a 30 day grace period from the effective date of the purchase to complete the sale of the former residence.
on the grounds that this will reduce the number of cases where the supplement is due as a result of unforeseen circumstances.

63. ICAEW, E&Y and KPMG have similar concerns and consider the charge but repay, copied from the SDLT provisions, particularly onerous in Scotland where missives committing the parties to the transaction are typically signed well before the entry date. Somewhat similar to the proposal in the previous but one paragraph, they, together with the CIOT, propose targeted relief for home-buyers who have no intention of owning two properties simultaneously. Most such may not have to pay in the end but nevertheless they must take the risk into account. An anti-avoidance measure would be to require disclosure of the property to be sold and give a time limit for selling before supplement becomes due. CIOT suggest three months but E&Y suggest 18 months with RS issuing an assessment for the supplement if they have not been notified of the sale of the former main residence by that time. Interest could be charged back to the date of the original purchase. PwC go further and suggest that on application a deferral of up to 3 years should be allowed.

64. Pinsent Masons make the point that it more common in Scotland to arrange a bridging loan and have an overlap in ownership. The SDLT proposals for payment and reclaim will lead to an unacceptable cash flow cost and are not suitable for Scotland. Similar to the LSS proposal above they suggest a 30 day grace period to cover the overlap. If sale has not been completed after 30 days, payment of supplement will fall due with repayment made on a sale within 18 months.

65. E&Y draw attention to not uncommon circumstances where an employee is required to go on secondment for 18 months or more and while doing so lives in rented accommodation. At the end of the secondment, they may be posted to a new permanent location. Under the legislation as drafted, they will suffer non-repayable supplement if they buy at their new location before selling at the old. Repayment will not be possible because they have not lived in the former home within the previous 18 months. Similarly,
if they sell before buying but they own another property, they will be charged supplement on their new home because they will not be replacing a main residence within the definition. E&Y propose that a property be treated as a main residence under conditions similar to those used for CGT private residence relief [s. 222B TCGA 1992].

66. This appeal is echoed by Gareth Jones who highlights, from his own experience, the particular issues facing military personnel and requests that military exemption be granted and that main residence status is not lost while living in service accommodation, even if this is for a number of years. The CGT principle residence rules make such allowance. More generally, ICAEW consider that there should be a general relief for individuals relocating for work or business reasons as the hardship is the same where someone coming to Scotland for work or employment reasons is charged supplement because they have not disposed of their residence at their previous location.

67. The NAEA point to circumstances where work requires someone to live in one location, say during the week, while at weekends they return to the family home. Some consideration should be given to these circumstances in the definition of main residence and some relief given to buyers of a second property in these circumstances.

68. ICAEW consider that it should be made clear that a gift of property is exempt from supplement as a gifted property does not involve competition with home buyers in the open market and it is also unfair to charge tax on a gift of property. This relief should extend to circumstances where the donee assumes responsibility for a mortgage or other charge over the asset. They outline appropriate anti-avoidance measures.

69. A number of respondents found themselves in the position of being committed to transactions but unable to obtain information post 16 December 2015 to guide them on potential liabilities. Members of HFS also reported signature of missives being delayed because of lack of
certainty. A submission from Mrs Mahri Tawse, and she is not alone among the respondents, highlights circumstances where a deposit was made on 15 November 2015 on a new house, to be their main residence with her husband a first time buyer, missives were exchanged on 7 January 2016 and completion date is expected to be 29 April 2016. Their initial intention was to rent out the flat belonging to her in which they currently live. The flat was re-mortgaged in mid 2015 with a view to this and will be subject to early repayment penalty if sold before 2020. Post 16 December the only information on their circumstances they could find was on the LBTT calculator which appeared to suggest that they would have no liability to supplement as they were purchasing their main residence. With the publication of the Bill on 28 January it appears that they will suffer supplement on the purchase of their main residence, despite her husband being a first time buyer, because they entered into the contract after 16 December 2015 and cannot dispose of the former main residence without financial penalty.

70. In the light of the absence of information as to how the tax would work, PwC suggest that the transitional provisions should be relaxed, perhaps by exempting transactions where the contract was entered into prior to 28 January 2016 when the outline of the provisions became clear. Alternatively, HFS suggest that transitional relief should apply where a property was reserved prior to 16 December 2016 and will not complete until after 1 April 2016. LSS suggest that the period for disposal of the former main residence should start with the implementation date, 1 April 2016. Given Scottish conveyancing practice, they suggest that transitional relief should be given where an offer has been made and accepted in principle before 16 December 2015 even if missives were concluded after that date.
The potential for tax avoidance under the supplement and how this should be addressed.

71. The CIOT point out that the inclusion of exemptions and reliefs provides more opportunities for tax avoidance. The order in which properties are purchased may have an impact on whether supplement is due so that a purchaser with greater resources may be able to plan transactions in the appropriate order while someone with lesser resources may be unable to plan and will pay supplement. A simple example of this might be:-
   a. Mr A lives in flat worth £100,000; he buys a house worth £300,000 to move into and his elderly mother moves into the vacated flat; LBTT supplement £9,000:
   b. Mr B lives in a house worth £300,000 and buys a flat worth £100,000 for his mother to live in; LBTT supplement £3,000.

72. Properties situated outside Scotland and indeed outside the UK may be relevant factors in determining whether the supplement is payable. The purchaser may be neither resident nor domiciled here. Both the CIOT and SLE query how RS will effectively police declarations of ownership of properties overseas. Ownership of property in some countries is not easily identified and RS will have to relay on self-declaration. The CIOT note that inclusion of purchases of residential properties by companies and similar entities is a key anti-avoidance provision and they consider that the proposed extensive deeming provision in connection with trusts will help address avoidance routes as will the GAAR.

The likely impact of forestalling.

73. It is notable that many respondents interpreted *forestalling* as implying a postponement of the introduction of the LBTT and welcomed the impact in terms of time for consultation, development of the legislation and evidence gathering.

74. The CIOT do not claim to be property market experts but they would anticipate a surge in the purchases of second homes and buy to let
properties prior to April 2016. A letting agent, Barry Burton, reports that some clients, already considering disinvesting because of forthcoming income tax measures, have now put their properties on the market looking to make a sale before 1 April 2016. ICAEW anticipate forestalling and suggest that the forestalling apparent in 2015 on the introduction of LBTT may provide the best indication of what to expect.

75. KPMG believe that forestalling will take place with a possible spike in property prices and buyers over extending themselves. They suggest that SG mitigate the dangers of forestalling by extending the lead in time. This would result in a short period when the 3% SDLT supplement would apply in the rest of the UK with no supplement applied in Scotland possibly leading to some increased investment in Scotland. But it would allow for proper consideration of and consultation on the legislation and allow the SG to learn from the mistakes in the SDLT measures. The SG should not under-estimate the complexity of introducing the supplement and implementing it in a proportionate manner that achieves its objectives. They strongly advise against the current proposal to introduce this legislation without a full consultation process involving all stakeholders.

Any other comments you may have on the proposed supplement

76. The Head of Residential Property at Lindsays, writing 10 weeks before 1 April 2016 provides a long list of the type of question clients were asking and which could not be answered. He considers that many transactions, and not just those relating to holiday homes or buy-to-let will be put on hold because of uncertainty with the likelihood that the property market will be distorted and possibly damaged. Detailed regulations are urgently required.

77. ACC believe that this legislation could provide an opportunity to transfer collection of LBTT to local councils to increase revenue raised and spent locally. They also have an issue with a shortage of key public sector workers largely due to the locally high cost of housing and believe that
LBTT reliefs might be a way to attract key workers to Aberdeen.

78. ALACHO strongly recommend that, if the supplementary LBTT charge is introduced in April as proposed, then there should be an early, comprehensive review of the impact of this on the housing market both nationally and locally. The income from supplementary LBTT should be reserved for additional investment in affordable housing to mitigate unintended consequences.

79. The CIOT note that, in respect of the proposed 18 month window for the replacement of a main residence and where the former residence was sold before 1 April 2016, thought needs to be given to when the period commences. Should the period commence with 1 April 2016 or with date of the disposal of the old residence? The latter might be inequitable if the sale was before the announcement of the supplement (until the legislation was announced there could be no inkling that a clock was running). Also there is an issue with the definition of main residence. It is intended to be factual, unlike CGT where there is an option to elect one's main residence. This is a possible source of confusion and taxpayers resident in Scotland will also have to consider their statutory residence status for UK income tax and their Scottish taxpayer status for SRIT both of which raise question of where one is mainly resident. Clear guidance will be necessary on the differing rules in each case. LSS and E&Y likewise emphasise the need for RS guidance on how main residence will be interpreted.

80. E&Y ask for clarification of the interaction between the supplement and taxation at non-residential rates where six or more dwellings are purchased in one transaction. The interaction with multiple dwellings relief also needs clarification. The ICAEW suggest that all existing LBTT reliefs should be explicitly extended to the supplementary charge to ensure that there is no conflict. KPMG also seek confirmation that existing LBTT reliefs, such as those in Schedule 4, will continue to apply for the supplementary charge.
81. The CIOT recommend that the respective roles and responsibilities of purchasers and professional agents are clarified and the administrative arrangements thought through as policy develops. RS should consult widely on operational guidance and the refund mechanism must operate smoothly to avoid taxpayers suffering additional finance charges through delay in processing claims. One option would be a provision to put the intention to reclaim in the original LBTT return thereby giving RS advance notice.

82. They note that the policy design being followed seems to stem from the SDLT proposals. Scottish property law is significantly different from the law in the rest of the UK and must be taken account of in the drafting. For example, in Scots Law ownership does not transfer until the point of registration with the Land Register. Where it is necessary to determine whether more than one property is held at the end of day it must be specified whether ownership of property in other jurisdictions is determined on Scots Law principles or under local law.

83. ICAEW consider it important to define additional property and offer a definition. It is not immediately clear why they do so as the term is not used in the Bill, but only in the accompanying documents. However, they do highlight an important point where two dwellings are acquired in one transaction and there are no other residential property holdings. The Bill in clause 2(1)(c) effectively excludes supplement on the whole transaction where the buyer is replacing a main residence. In such circumstances, supplement should be due on the consideration attributable to the dwelling which is not the intended main residence. As a larger property may contain a granny flat, stable block accommodation or similar, some consideration of what constitutes a separate dwelling may be necessary.

84. LSS note that properties with a market valuation of less than £40,000 do not count as a dwelling owned by a person. They ask whether this will require a valuation each time there is subsequent transaction with the attendant cost that implies or whether it effectively means that the property
originally cost less than £40,000. Also on the subject of ownership, the legislation should specify that a person will be regarded as ceasing to own a property for the purposes of the supplementary charge once the effective date of its sale has occurred. Similarly, the effective date of a purchase would be the appropriate point at which to regard a property as becoming owned. In strict land law terms, ownership is determined by entry in the Register of Sasines or Land Register and the timing of the removal of a name from the register is beyond control of an individual or their solicitor.

85. LSS raise various concerns over the drafting of the provisions for trusts and mixed purchases. They also query who will have the competence to decide whether an interest in a foreign property is equivalent to ownership in Scotland.

Appendix - abbreviations used

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACC</td>
<td>Aberdeen City Council</td>
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<tr>
<td>ALACHO</td>
<td>Association of Local Authority Chief Housing Officers</td>
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<td>AREF</td>
<td>Association of Real Estate Funds</td>
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<tr>
<td>CGT</td>
<td>Capital Gains Tax</td>
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<td>CIH</td>
<td>Chartered Institute of Housing</td>
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<td>CIOT</td>
<td>Chartered Institute of Taxation</td>
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<tr>
<td>CLA</td>
<td>Council of Letting Agents</td>
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<tr>
<td>HFG</td>
<td>Homes for Good</td>
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<td>HFS</td>
<td>Homes for Scotland</td>
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<tr>
<td>ICAEW</td>
<td>Institute of Chartered Accountants in England &amp; Wales</td>
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<td>LA</td>
<td>Local Authority</td>
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<td>LHA</td>
<td>Local Housing Allowance</td>
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<td>LBTT</td>
<td>Land and Buildings Transaction Tax</td>
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<td>LSS</td>
<td>Law Society of Scotland</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>NAEA</td>
<td>National Association of Estate Agents</td>
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<td>NSND</td>
<td>Non Savings, Non Dividend</td>
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<td>PRS</td>
<td>Private Rental Sector</td>
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<td>REIT</td>
<td>Real Estate Investment Trust</td>
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<td>RS</td>
<td>Revenue Scotland</td>
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<td>RSL</td>
<td>Registered Social Landlord</td>
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<td>SAL</td>
<td>Scottish Association of Landlords</td>
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<td>SDLT</td>
<td>Stamp Duty Land Tax</td>
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<td>SFHA</td>
<td>Scottish Federation of Housing Associations</td>
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<td>SG</td>
<td>Scottish Government</td>
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<td>SHIP</td>
<td>Strategic Housing Investment Plan</td>
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<td>SLE</td>
<td>Scottish Land and Estates</td>
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<tr>
<td>SPF</td>
<td>Scottish Property Federation</td>
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<tr>
<td>SRIT</td>
<td>Scottish Rate of Income Tax</td>
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Delegated Powers and Law Reform Committee

Land and Buildings Transaction Tax (Amendment) (Scotland) Bill at Stage 1
Contents

Introduction 1

Overview of the Bill 2
  Bill provisions 2

Delegated Powers Provisions 4

Recommendations 5
Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

a. any—
   i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   ii. [deleted]
   iii. pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

b. proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

c. general questions relating to powers to make subordinate legislation;

d. whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

e. any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

g. any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

i. any Consolidation Bill as defined in Rule 9.18.1 referred to it by the Parliamentary Bureau in accordance with Rule 9.18.3.

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Introduction

1. At its meeting on 2 February 2016 the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill at Stage 1 (“the Bill”). The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government has produced a Delegated Powers Memorandum (“DPM”) on the delegated powers provisions in the Bill.
Overview of the Bill

3. This Bill was introduced by the Deputy First Minister and Cabinet Secretary for Finance, Constitution & Economy on 27 January 2016. The Bill amends the Land and Buildings Transaction Tax (Scotland) Act 2013 ("the 2013 Act"). The 2013 Act (and related enactments) imposes a tax on the acquisition of chargeable interests in land, known as the Land and Buildings Transaction Tax ("LBTT"). The Bill imposes an additional amount of tax ("the additional charge") in relation to certain types of transaction concerning the purchase of a dwelling.

4. The Bill provides for the additional charge to be levied on the purchase of an additional dwelling i.e. where the buyer is purchasing a dwelling and is not replacing his or her main residence. The additional charge would apply, for example, to the purchase of a second home or buy-to-let property. The Bill also provides, as an anti-avoidance measure, that all purchases of residential property (not just additional residential property) where the buyer is a business entity or sole trader will be subject to the additional charge. The Bill sets the additional charge as 3% of the total purchase price, to be charged in addition to any existing LBTT liability. The Bill provides that a dwelling with a market value of less than £40,000 is not to be counted as a dwelling "owned" by a person; this is relevant when working out whether the additional charge will apply.

Bill provisions

5. **Section 1** of the Bill inserts a new section 26A into the 2013 Act, which introduces a new schedule 2A making provision for the additional charge.

6. **Part 1** of new schedule 2A gives an overview of that schedule.

7. **Part 2** sets out the transactions affected. The additional charge will only apply to "chargeable transactions" (as defined in the 2013 Act); thus, where a transaction is fully exempt from LBTT it will also be exempt from the additional charge. The additional charge will not apply where the purchaser is replacing his or her main residence: in this context, the buyer is treated as "replacing" their residence if they have sold their previous residence within the 18 months preceding the purchase of the new property. Part 2 also provides that the additional charge will apply to any purchase of a dwelling by a business entity, not simply where the purchase is of an additional dwelling. This is an anti-avoidance measure aimed at removing any incentive for individuals to purchase additional dwellings via a corporate "wrapper".

8. **Part 3** deals with the amount of the additional charge, and provides that the amount of LBTT payable in respect of a purchase caught by schedule 2A is increased by 3% of the total purchase price. Where the purchase also includes non-residential property, the additional charge is based on the proportion of the purchase price attributable to the residential element.
9. **Part 4** deals with types of buyer, and provides that where there are joint purchasers, the additional charge will apply where either (or both) purchasers are buying an additional dwelling. A joint purchase where one of the purchasers is a business entity will be treated as a purchase by a business entity. Part 4 also provides, as an anti-avoidance measure, that a home owned by a buyer’s spouse, civil partner or cohabitant will be treated as being owned by the buyer for the purposes of the additional charge.

10. **Part 5** allows for a repayment of the additional charge in certain circumstances. This will apply where a buyer has not been able to sell their previous residence before buying a new one, and has therefore incurred the additional charge. Where the buyer manages to sell their previous residence within 18 months of purchasing their new home, they can claim full repayment of the additional charge.

11. **Part 6** clarifies what is meant by a buyer “owning” a dwelling, for the purposes of working out whether they are buying an additional dwelling. For this purpose, homes owned outside, as well as within, Scotland will count. Properties with a market value of less than £40,000 are discounted. The date of settlement of a property transaction is the operative date for working out what properties are owned.

12. **Part 7** confers power on the Scottish Ministers to substitute, for the 3% additional charge, a different percentage figure; to substitute, for the figure of £40,000 market value below which the additional charge will currently not apply, a different figure; and to make provision about reliefs from the additional charge.

13. **Sections 2 to 6** of the Bill deal with transitional and ancillary provision, commencement and short title.
Delegated Powers Provisions

14. The Committee considered each of the delegated powers in the Bill at its meeting on 2 February 2016. At that meeting, the Committee agreed that it did not need to draw the attention of the Parliament to the following powers:

- Paragraph 14(1) within new schedule 2A inserted by section 1(3) – Power to amend percentage figure in paragraph 4(2) of schedule 2A
- Paragraph 14(3) and (4) within new schedule 2A inserted by section 1(3) – Power to make provision for or about relief from the additional amount
- Section 4 – Ancillary Powers

15. At the same meeting, the Committee took oral evidence from Scottish Government officials on the power in paragraph 14(2) within new schedule 2A inserted by section 1(3) – Power to amend threshold figure in paragraph 9(3) of schedule 2A. The Committee’s recommendation on this power is set out below.
Recommendations

16. The Committee comments on the remaining power in the Bill as follows:

**Paragraph 14(2) within new schedule 2A inserted by section 1(3) – Power to amend threshold figure in paragraph 9(3) of schedule 2A**

- **Power conferred on:** Scottish Ministers
- **Power exercisable by:** order
- **Parliamentary procedure:** negative

**Provision**

17. Paragraph 14(2) of new schedule 2A confers a power on the Scottish Ministers to amend, by order, paragraph 9(3) of that schedule so as to substitute, for the figure for the time being specified there, a different figure. Paragraph 9(3) provides that, for the purposes of working out what counts as a dwelling “owned” by a person, a dwelling with a market value of less than £40,000 is not to be counted.

18. Paragraph 2(1) of new schedule 2A provides that the additional tax charge will apply where the main subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling, and at the end of the day of the transaction the buyer owns more than one dwelling (and is not replacing the buyer’s only or main residence).

**Comment**

19. The power in paragraph 14(2) allows the Scottish Ministers to adjust the threshold below which a dwelling is not counted as “owned” by a person, and therefore below which the additional charge will not apply. In this regard it is similar to powers already taken in the 2013 Act for the Scottish Ministers to adjust tax rates and bands for the purposes of the ordinary LBTT charge. The power to adjust tax rates and bands by subordinate legislation is standard in the context of tax law, and on this basis the Committee agrees in principle that it is appropriate to be able to modify the £40,000 threshold by subordinate legislation.

20. With regard to the choice of procedure, however, the Committee does not consider that the negative procedure is appropriate.

21. The Committee has considered the Scottish Government’s argument, set out in the DPM, that the “clear synergies” between the existing power in the 2013 Act to set the “notifiability threshold”, on the one hand, and the proposed power in the Bill to adjust the £40,000 threshold, on the other, mean that the same procedure should apply.

22. However, the Committee considers that the two thresholds operate in very different ways. The “notifiability threshold” in the 2013 Act is an administrative
provision which sets the value (currently £40,000) below which a land transaction is not notifiable to Revenue Scotland, but which does not of itself affect tax liability. Thus, the power to change the notifiablility threshold is administrative in nature and, on this basis, the negative procedure is appropriate. The £40,000 threshold in the Bill, on the other hand, sets the value below which a dwelling is not counted as “owned” by a person, and therefore below which the additional charge will not apply. Thus the power to change the £40,000 threshold is not merely administrative in nature, but is fundamental to the question of tax liability under the Bill.

23. The Committee considers, as noted above, that the proposed power to adjust the £40,000 threshold for additional tax liability is similar to the powers in the 2013 Act to set tax rates and bands for the purposes of the ordinary LBTT charge. The Committee notes that the powers in the 2013 Act to set tax rates and bands are subject to the affirmative procedure when first exercised, and thereafter to the “provisional affirmative” procedure. The Committee also notes that “provisional affirmative” is the procedure chosen to apply to the power in the Bill to adjust the 3% rate for the additional charge.

24. The Committee notes generally that powers to adjust tax rates and bands require close scrutiny by the Parliament, but the Committee accepts that it may be necessary for the Scottish Ministers to act swiftly to adjust tax rates to respond to changing market conditions. The Committee considers that “provisional affirmative” appears to be the appropriate procedure for tax powers of this nature, which may require to be exercised quickly to adjust tax levels, but which nonetheless require close scrutiny by the Parliament. Since the initial value for the £40,000 threshold is set out on the face of the Bill, the Committee considers that the “provisional affirmative” procedure is appropriate for the power in paragraph 14(2) to adjust this threshold.

25. The Committee is content with the power in paragraph 14(2) in principle but makes the following recommendation regarding parliamentary procedure:

26. The Committee recommends that the Scottish Government brings forward an amendment at Stage 2 to make exercise of the power in paragraph 14(2) subject to the “provisional affirmative” procedure. The Committee also notes that, in oral evidence, Scottish Government officials indicated that they would reflect on the Committee’s recommendation, and the Committee welcomes this.

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1 Instruments subject to the “provisional affirmative” procedure can be made and can come into force straight away, but require subsequent approval by the Parliament within 28 days in order to continue to have affect after that date.
Land and Buildings Transaction Tax (Amendment) (Scotland) Bill [as introduced] is available at the following website:

Land and Buildings Transaction Tax (Amendment) (Scotland) Bill Delegated Powers Memorandum is available at the following website:
1. **Decision on taking business in private**: The Committee agreed to take item 9 in private.

5. **Land and Buildings Transaction Tax (Amendment) (Scotland) Bill**: The Committee took evidence on the delegated powers provisions in the Bill at Stage 1 from—


9. **Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (in private)**: The Committee considered the evidence it heard earlier in the meeting and agreed the contents of a report on the delegated powers provisions in the Bill at Stage 1.
Land and Buildings Transaction Tax (Amendment) (Scotland) Bill: Stage 1

11:07

The Convener: Item 5 is for the committee to consider the delegated powers in the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill.

The timetable for considering the bill is short: it is being considered by the Finance Committee tomorrow. I have invited Scottish Government officials to give evidence. The committee will reflect on that evidence and, at item 9, will agree on the terms of a draft report.

I welcome Robert Buchan, who is the bill team leader, and Greig Walker, a solicitor in the Scottish Government legal directorate. Thank you for coming along, gentlemen, and for sitting through that preamble. We have only one real substantive question, which will be put by John Mason.

John Mason (Glasgow Shettleston) (SNP): The main issue that we want to raise is that of the £40,000 threshold and how it might be adjusted. I have a few points to make, if you will bear with me.

The proposed power in paragraph 14(2) of new schedule 2A allows the Scottish ministers to adjust the £40,000 threshold in paragraph 9(3) of that schedule. The £40,000 threshold is relevant when determining whether the additional tax will be triggered. The purchase of additional property with a market value below that figure will not trigger the additional charge, whereas the purchase of a property worth £40,000 or more may do so.

We would like an explanation of why it is considered appropriate for that power to be subject to the negative procedure. The committee notes that powers in the Land and Buildings Transaction Tax (Scotland) Act 2013 to adjust tax rates and bands for the ordinary land and buildings transaction tax charge are subject to the affirmative procedure when first exercised and thereafter to the provisional affirmative procedure.

Generally, the committee considers that a power to adjust thresholds for tax liability should more properly be subject either to the affirmative or the provisional affirmative procedure. Do you have any thoughts on that?

Robert Buchan (Scottish Government): I will defer to Greig Walker in a moment to talk about the different ways in which the threshold can be varied, but from a policy perspective the reason why it was felt necessary to have the power to vary the £40,000 threshold separately from the threshold to notification was that it is conceivable that the Scottish ministers may want the two to diverge in future. There may be good reasons in the future that we are not aware of now for increasing the threshold beyond £40,000 for the purposes of the supplement, and those reasons would not necessarily mean that the threshold for notification per se should be increased.

John Mason: Is that why there are two figures rather than one?

Robert Buchan: Yes.

John Mason: Okay, that makes sense.

Robert Buchan: From a policy perspective, that is about as far as it goes from me. Greig Walker may want to add something.

Greig Walker (Scottish Government): As Robert Buchan has said, we have said in the delegated powers memorandum that there is a synergy between the £40,000 figures that appear in different parts of the Land and Buildings Transaction Tax (Scotland) Act 2013. The current policy is for them to be aligned, and an alternative way of reflecting that in the bill would have been to say in new schedule 2A that the figure is the figure that is already in section 30. However, as Robert Buchan has mentioned, because we need to build in flexibility for the future, we have made the figures severable.

We view the new power in the new schedule 2A as similar to the power in section 30 of the 2013 act as similar to the power in section 30 of the 2013 act. That is a relevant precedent that is subject to negative procedure. Having the same procedure applicable means that two measures could be combined in a single instrument, rather than having two measures at different times and subject to different procedures to achieve a common policy intention.

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The point about the tax rates and bands orders always being subject to a form of affirmative procedure is absolutely right. I would comment in terms of the section 30 power that if, having no regard to the bill, there was a proposal to vary the notification threshold below £40,000 or above, that would have significant legal consequences for the duties of taxpayers and their agents to send in

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returns. It might not affect whether tax is payable, but it could have some impact.

The reason why affirmative procedure applied to the first rates of devolved tax was that there were no figures in the first LBTT bill. There was some time between that bill being passed in 2013 and its coming into effect in April 2015. Here, we have an expedited legislative procedure with commencement scheduled in the bill for 1 April. We have all the rates in the bill, so I do not think that there is a comparator for full affirmative procedure. For the reasons that we have set out, we feel that negative procedure strikes the right balance.

**John Mason:** I want to question that a little bit more, and my colleagues may want to come in as well.

I take the point that we may not be dealing with this measure in quite the same way as we dealt with the full LBTT legislation and that the interim step of full affirmative procedure is therefore not so necessary. However, I would still argue that the provisional affirmative procedure for future changes is necessary. It still seems to me that, if we are comparing the two £40,000 thresholds, changing the threshold in relation to the 3 per cent rate is like changing the 3 per cent rate, in that what somebody actually pays in tax changes, whereas the notification threshold is more administrative. I feel that the two are not quite the same.

Although it has already been pointed out that the two thresholds might not be varied together, or that they might be, my point is still that the two are slightly different things: one is administrative and one is the actual tax. We will hear from others on the committee, but my preference is that it should be the provisional affirmative procedure.

**The Convener:** I would like to intervene from the chair. I have heard everything that you say, Mr Walker, and I agree that, if something is in the bill, there is no need to treat it as if it were not. I do not think that we have any troubles with that.

The difficulty that I have with the idea that the £40,000 threshold for the 3 per cent rate could be varied using negative procedure—and with the idea that it could be compared in any way with whether people need to fill in a form—is quite simply that it could have significant effects on whether I pay tax. If that number was reduced, I could find myself in a position in which I have to pay 3 per cent on an entire transaction when I did not before. It is as simple as that, and 3 per cent on an entire transaction could be an awful lot of money.

There are policy implications that go beyond anything to do with whether a person needs to fill in a piece of paper. It feels to me—and, I think, to my colleagues—as though this threshold is actually a tax band, because that is how it behaves. As you have already said, you would set bands by affirmative procedure—provisional or otherwise.

Mr Buchan has already set out eloquently that the Government feels that it needs to have the opportunity to have different thresholds for filling in the forms and for changing the tax rates. That is the reason—from your own mouth—why this particular power should be subject to the affirmative procedure, because it has a significant effect on individuals’ tax liabilities.

**11:15**

**Greig Walker:** The bill team can certainly reflect on that point. We have obviously not followed the usual procedure, whereby we would have had the benefit of the committee’s input before we are asked to respond. We will certainly take that issue away and reflect on it.

**The Convener:** Thank you very much. I think that that is probably all that we can ask you to do.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I think that I am persuaded by what my two colleagues have said. Although the officials are not here to make a decision on the matter, I think that they can now see that a majority of the committee would be in favour of making the power subject to the affirmative procedure.

**John Scott:** I, too, support what John Mason has eloquently put to the Government officials.

While I have caught the microphone, so to speak, I would like to ask a different question, if that is acceptable.

**The Convener:** Yes, it is. Please go ahead.

**John Scott:** In terms of whether the value of a property is £40,000, does whether it is tenanted affect its value? Have you considered that?

**Robert Buchan:** I am not sure whether the value of a property around £40,000 would be affected by whether it has tenants in it. I imagine that it probably would be, but that is not something that we have considered.

**John Scott:** Is it something that you might consider considering?

**The Convener:** I think that a property being tenanted would certainly change the value; the question is whether it takes someone over the threshold. If the rule of thumb were to be that a tenanted property would be worth half what it might otherwise be worth, which would probably do as a workable number—

**John Scott:** In some cases.
The Convener: —it might make a huge difference.

I make it clear that that is clearly a policy issue, which in principle we should not be going anywhere near, but I am conscious of the timetable, so we might as well raise what we can.

Stewart Stevenson: I think that the interesting point that John Scott raises is perhaps not so much whether the value at the point of the transaction is changed by whether there is a tenant in place—and, indeed, by the nature of the tenancy—but whether, if a tenancy subsequently ceases and that therefore changes the value, there is a mechanism that could be open to being used by some people in some circumstances to reduce the value of a property. They could have a tenant at the point of the transaction who would leave soon thereafter so that the property would assume its full market value. Does this therefore open a tax avoidance question? I am attempting not to answer that question but merely to suggest that it is a question that others may wish to consider getting an answer to.

The Convener: You might be forewarning members of the bill team of questions that the Finance Committee might put to them tomorrow morning, bearing it in mind that two members of that committee are sitting here now.

Greig Walker: I have a technical comment. We will obviously take away all the points that have been made. The nature of LBTT is that there are various points at which there is a financial threshold, so the issue of valuation is not new or irrelevant as to whether someone hits the £145,000 threshold at which the tax starts being payable or the threshold beyond that at which they move into a different tax band. That is not a new question, but we will certainly have a think about it.

The Convener: Are there any other questions on the issues in front of us?

John Scott: This is a daft laddie question, but the value subject to vacant possession—or not—would be an easy way of describing the scenario. Will you reflect on that point?

Greig Walker: We will reflect on it.

The Convener: Thank you, John; thank you, gentlemen. That probably takes us as far as we need to go this morning. I briefly suspend the meeting to enable the witnesses to leave.
22 February 2016

Dear Kenneth,

LAND AND BUILDINGS TRANSACTION TAX (A) (S) BILL - STAGE 1 REPORT

I am grateful to the Committee for its scrutiny of our proposal to introduce a Land and Buildings Transaction Tax (LBTT) supplement as set out in the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill, and its conclusions in the Stage 1 report. The Scottish Government welcomes the Committee’s support for the general principles of the Bill. I attach (Annex A) the Scottish Government’s response to the Committee’s recommendations.

At least one of the Committee’s Stage 1 recommendations (paragraphs 27 and 115 refers) relate to the Scottish Fiscal Commission. As these recommendations are clearly matters for the Commission I will not comment on these in my response.

I hope the Committee finds this information helpful.

John Swinney
Land and Buildings Transaction Tax (Amendment) (Scotland) Bill

Stage 1 Report

Scottish Government Response

22 February 2016

ANNEX A
The Scottish Government welcomes the Finance Committee's Stage I report on the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill. The Scottish Government has considered the Committee’s recommendations and responds as set out below.

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<td><strong>Policy Objectives of the Bill</strong></td>
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<tr>
<td>1.</td>
<td>The Committee recommends there needs to be much greater clarity in relation to the likely distortions which may arise from the introduction of a similar supplement at UK level. In particular, what type and level of investment in the housing market is the Scottish Government (SG) seeking to discourage by introducing the LBTT supplement? <strong>Para 24</strong></td>
<td>The Scottish Government does not want the introduction of a not dissimilar supplement in the rest of the UK to make it harder for first time buyers to purchase property in Scotland. If such a supplement was not introduced in Scotland, it would be comparatively more attractive for buy to let investors and those interested in buying a second home to purchase property in Scotland compared to other parts of the UK. This is particularly likely to be true at the lower end of the market, resulting in more competition for first time buyers. It is not possible to quantify the precise number of additional investors who would buy property in Scotland.</td>
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<td>2.</td>
<td>The Committee recommends that the SG commissions research on the impact of the purchase of BTL properties and second homes on the housing market as a matter of urgency. At the same time it is also essential that the SG intends to improve the data on BTL and second homes. <strong>Para 25</strong></td>
<td>The Scottish Government has a wide-ranging programme of research and data collection activities that help it to monitor and understand the Scottish housing system. Isolating the impact of specific policy changes on the overall system will be challenging, but the administrative data generated by the collection of the tax supplement will provide a new source of data on the flows of properties into and out of the BTL and second homes sector.</td>
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<td>3.</td>
<td>The Committee recommends that the SG closely monitors the impact of the supplement on the housing market and conducts a comprehensive review once sufficient data is available. Para 27</td>
<td>The Scottish Government welcomes the Committee’s recognition - based on the Committee’s experience of the introduction of the Land and Building Transaction Tax - that developing an understanding of the impact of the supplement will be complex and will take time. The Scottish Government considers that reviewing the impact of the supplement will require at least one complete year of data, given the seasonality in housing transactions, the likely forestalling behaviours and the longer-term trends in the housing market. The Scottish Government intends to update Parliament on the outcome of that review in the 2018-19 Draft Budget, in accordance with our undertaking in the Written Agreement on the budget process to provide “a commentary on outturn figures for the devolved taxes for the most recent year, including any variance between outturn and forecasts”.</td>
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**Impact on the Housing Market for First Time Buyers**

<p>| 4   | The Committee is concerned about the potential impact of the supplement on new housing developments if there is a significant reduction in the number of BTL properties being bought off-plan and recommends that the SG closely monitors the impact of the supplement on new housing developments. Para 38 | The Scottish Government is working to increase the supply of new homes by providing support in a range of areas: a significant affordable housing supply programme, over £500m of investment in Help to Buy (Scotland) over 6 years including ring-fenced support for smaller developers; reduced property taxes at affordable levels through the LBTT – taking 7,700 additional purchases out of tax and 93% of purchasers paying a lower level of tax than under Stamp Duty Lands Tax. |</p>
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<td>5.</td>
<td>The Committee recommends that careful consideration needs to be given to the structure of the PRS in Scotland when finalising the proposals for the LBTT supplement. While the Committee recognises the need to help first time buyers there is also a need to help those who rent whether through choice or necessity. In particular, it is essential that the SG closely monitors the impact of the supplement on rent levels especially in areas where rents are already high. Para 49</td>
<td>The Scottish Government recognises the need to balance support for home ownership and first time buyers without discouraging significant and beneficial investment in residential property for rent. The Scottish Government has been supporting the purpose-built PRS sector since 2013 - funding both the Building the Rented Sector study and a dedicated PRS Champion tasked with ensuring action is taken to boost the supply of high quality PRS homes at scale. Existing data collection and annual publication of Private Sector Rent Statistics will allow the Scottish Government to monitor rent levels in various regions of Scotland.</td>
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**Reliefs**

| 6.  | The Committee invites the SG to provide its view on all of the above\(^1\) proposals for reliefs from the supplement. Para 56 | The Scottish Government notes that there are many suggestions for reliefs from the supplement. The Scottish Government recognises that the housing market changes over time and where practical and affordable wishes to do what it can to help create sound sustainable market conditions. As with the LBTT system, the Scottish Government considers that a period of time will be required to enable the LBTT supplement to become embedded and for sufficient financial and statistical data to be collected to enable informed policy decisions to be made in the future. The position on reliefs as relating to the supplement will be kept under review as part of the on-going process of devolved tax planning and management (however see section 8 below). |

\(^1\) Pages 9-12 inclusive of the Stage 1 Report
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<td>7.</td>
<td>The Committee also invites the SG to provide examples of how the general anti-avoidance rule will prevent artificial behaviour in relation to the supplement. <em>Para 57</em></td>
<td>Articiality is the key test in the general anti-avoidance rule (GAAR). The GAAR which forms part of the Revenue Scotland and Tax Powers Act 2014 is designed to capture artificial practices. The GAAR is capable of applying to artificial arrangements, which are arrangements structured in such a way so as to not be a reasonable course of action in relation to the legislation in question. By contrast, practices which are standard for Scots law and practice will not fail foul of the GAAR.</td>
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**Large Scale Investors**

| 8.  | The Committee recommends that the Bill is amended at Stage 2 to include a relief for the bulk purchase of six or more properties in one transaction or in phased transactions in the same development. However, this may need to be reviewed if there is evidence of a negative impact on the number of new housing developments due to a decrease in the number of BTL properties being purchased off-plan by smaller investors. *Para 65* | As outlined in the Bill’s Policy Memorandum, the Scottish Government wished to review and reflect on the Stage 1 written and oral evidence and engage further with stakeholders prior to reaching a concluded view on whether there would be any form of relief from the supplement. The Scottish Government recognises the importance of balancing the need to support home ownership and first time buyers without discouraging significant and beneficial investment in residential property for rent. The Scottish Government therefore agrees with the Committee’s recommendation and will bring forward an amendment at Stage 2 to provide relief from the supplement for buyers purchasing 6 or more residential properties in one transaction. |

**Grace Periods**

<p>| 9.  | The Committee recommends that the Bill is amended at Stage 2 to provide for a grace period. <em>Para 79</em> | The Scottish Government has reflected on all the Stage 1 evidence and subsequently held helpful discussions with, amongst others, the Law Society of Scotland and Revenue Scotland. The Scottish Government has asked Revenue Scotland to monitor the position between the LBTT supplement provisions coming into force and 30 October 2016. The Scottish Government can then take an informed view as to the need or otherwise of a grace period and what that grace period should be. |</p>
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<td></td>
<td><strong>Registered Social Landlords and Local Authorities</strong></td>
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<td>10.</td>
<td>The Committee recommends that the Bill is amended at Stage 2 to provide for a relief from the supplement for RSLs and Local Authorities on the same basis as the current relief from LBTT. <em>Para 84</em></td>
<td>Schedules 6 and 14 to the Land and Buildings Transaction Tax (Scotland) Act 2013 (&quot;the 2013 Act&quot;) provides 100% relief from LBTT for certain acquisitions by registered social landlords and for certain compulsory purchases by local authorities. This relief will also extend to the LBTT supplement.</td>
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<td><strong>Student Accommodation</strong></td>
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<td>11.</td>
<td>The Committee recommends that the Bill is amended at Stage 2 to provide for a relief for student accommodation on the same basis as the relief from LBTT. <em>Para 88</em></td>
<td>No relief for the purchase of student accommodation is available under the 2013 Act. The supplement will not apply to the purchase of student halls of residences that are excluded from the current definition of what counts as a dwelling (Part 6 Schedule 5 of the 2013 Act refers). After careful consideration and taking due cognisance of the fact that the purchase of a number of student built developments will attract relief from the supplement for large scale investors the Scottish Government has decided not to introduce a specific relief for purpose built student accommodation.</td>
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<td><strong>Rural communities</strong></td>
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<td>12.</td>
<td>The Committee recommends that the SG closely monitors the impact of the supplement on new housing developments in rural communities. <em>Para 96</em></td>
<td>The Scottish Government recognises the unique issues associated with the provision of housing in rural Scotland. The Scottish Government has listened to rural stakeholders and to help address these issues – as set out in the 2016-17 Draft Budget document - we will introduce a new rural housing fund in 2016. This fund will aim to increase the supply of affordable housing of all tenures in the rural areas of Scotland.</td>
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<td>Transition</td>
<td>The Committee asks the SG to provide clarity on the transition arrangements for the introduction of the supplement. <strong>Para 100</strong></td>
<td>Section 3 of the Bill sets out the transitional arrangements for the introduction of the supplement. The supplement has been proposed to not apply to the purchase of a residential property where missives have been concluded before 16 December 2015 even when transaction did not settle until after the principal commencement date for the Bill (1 April 2016). Where the missives for the transaction have been concluded on or after 16 December 2015 the supplement has been proposed to apply if this transaction settles on or after the principal commencement date for the Bill. The Scottish Budget statement on 16 December 2015 is the date on which the Scottish Government first announced its intention to introduce an LBTT supplement. The Scottish Government has listened carefully to the stakeholder community and intends to bring forward an amendment at Stage 2 whereby the supplement will not apply to the purchase of a residential property where missives have been concluded before 28 January 2016 (the date the Bill and accompanying documents were published on the Scottish Parliament’s website) but this transaction does not settle until on or after the principal commencement date for the Bill. The Scottish Government considers that this adjustment delivers a fairer result for buyers who may have been putting in offers for property or making reservations for new build property around the time of the Budget statement.</td>
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<td><strong>Ring-Fencing</strong></td>
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<td>14.</td>
<td>The Committee notes that despite the additional revenue from the supplement and the policy objective of encouraging home ownership that the SG has reduced funding for Help to Buy in Draft Budget 2016-17. The Committee asks the SG whether any consideration was given to ring-fencing the revenue from the LBTT supplement to support Help to Buy or for other areas of investment in the housing sector. <strong>Para 103</strong></td>
<td>The Scottish Government considers the housing system should cater for a variety of needs and demands across all tenures. Help to Buy (Scotland) has had a positive impact and has to date supported over 7500 home owners into home ownership. The new scheme will help up to a further 7500 households over the next 3 years. The Scottish Government has sought to offer support where there is market failure, in this case addressing the lack of availability of higher loan-to-value lending on new-build property. The Scottish Government has now changed its maximum contribution from 20% to 15% for the new scheme to reflect improved market conditions. A lower equity stake will ensure that as many people as possible can access support through the scheme, which is also focusing on supporting more affordable property. It is important that funds are flexible to meet determined need. The Scottish Government therefore continues to explore innovative ways to deliver more for less public investment, and continues to work creatively with partners. This work will focus particularly on approaches to unlock infrastructure investment and attract private investment.</td>
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<td><strong>SLAB tax</strong></td>
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<td>15.</td>
<td>The Committee asks the SG to explain why it is proposing a SLAB approach to the supplement in contrast to the more progressive approach to LBTT. <strong>Para 106</strong></td>
<td>The Scottish Government has made clear that a primary driver for introducing the supplement is to ensure opportunities for first time buyers to enter the housing market in Scotland remain as strong as possible. If the supplement did not apply to the full purchase price, the impact of the supplement would be limited at the lower end of the market, which is the market most relevant to first time buyers.</td>
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<tr>
<td>£40,000 Threshold</td>
<td>The Committee support the recommendation of the DPLR Committee that any changes to the £40,000 threshold should be subject to the provisional affirmative procedure. Para 109</td>
<td>The Deputy First Minister and Cabinet Secretary for Finance, Constitution and the Economy has written to the Convener of the Delegated Power and Law Reform Committee to advise that the Scottish Government is persuaded by the Committee’s arguments and proposes to bring forward an amendment at Stage 2 of the Bill to provide that the order making power at section 14(2) of the Bill, which enables the Scottish Ministers to amend the £40,000 threshold for payment of the supplement, will be subject to the provisional affirmative procedure.</td>
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<tr>
<td>Financial Memorandum</td>
<td>The Committee recommends that the SG provides details of how it intends to address the considerable uncertainty in the forecasts for the LBTT supplement. Para 117</td>
<td>The revenue estimate from the supplement which underpins the Draft Budget takes account of behaviourual effects, including forestalling. The Scottish Government considers that the methodologies which it has applied to arrive at this estimate produces the most reasonable estimates possible, within the confines of data availability. The Scottish Fiscal Commission endorsed the forecast as reasonable, while recognising the significant inherent uncertainties caused by these data constraints. As noted above, new data on transactions involving BTL and second homes will be generated by the operation of the supplement, and this will be used to test and refine the assumptions made in future forecasts.</td>
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<tr>
<td>No.</td>
<td>Recommendation</td>
<td>Response</td>
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<td>18.</td>
<td>The Committee notes that forestalling is estimated to reduce revenues in 2016-17 by £13m to £21m. The Committee asks the SG to explain why it estimates that only £5m to £7m will be brought forward to 2015-16. <strong>Para 118</strong></td>
<td>Forestalling involves the bringing forward of transactions from the next tax year (2016-17) to this one (2015-16), to avoid paying the LBTT supplement. The Financial Memorandum accompanying the Bill estimates that this would impact upon transactions which would generate LBTT revenue of £5 million to £7 million, and which would have generated notional LBTT supplement revenue of £8 million to £14 million in 2016-17. This leads to a total ‘lost LBTT revenue’ of £13 million to £21 million in 2016-17. However, because the transactions are assumed to be brought forward into 2015-16, before the effective date of the supplement, LBTT revenues of £5 million to £7 million are assumed to be received, but in 2015-16 rather than 2016-17.</td>
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7th March 2016

Mr Kenneth Gibson MSP
Convener
Finance Committee
By email

Dear Kenneth,

Thank you for the opportunity to respond to recommendations in the Stage 1 Report on the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill. There are two areas which refer to the Scottish Fiscal Commission (SFC) directly, paragraph 27 and paragraphs 114-115.

**Paragraph 27** This recommendation requests that the SFC provides a commentary in November, after six months of outturn data for the supplement are released, including an analysis of the impact of forestalling.

As with the other devolved taxes, the SFC plans to analyse outturn data relative to the forecast. A complication when conducting such an exercise for the LBTT supplement using part-year outturn data is that there are no historical data with which to identify a typical seasonal pattern in tax receipts from the supplement. This makes it difficult to assess whether or not any discrepancy between forecast and outturn is due to an underlying forecast error or an unknown seasonal pattern in this sub-part of the market. Nevertheless, we shall attempt to shed as much light as possible on the operation of the supplement as the outturn data are released.

**Paragraphs 114-115** In this section, you cite the SFC’s statement in relation to uncertainties in assessing the impact of this tax due to the lack of data for this small part of the housing market. And you ask for suggestions for improving the forecasting methodology.

As the citation states, the SFC’s view is that the Scottish Government’s forecast of revenues from the supplement was reasonable, but subject to significant uncertainties. These uncertainties did not stem from a flawed forecast methodology but, as stated, from a lack of available data specific to this relatively small section of the market. The SFC will explore whether or not there are any additional data sources which can facilitate the reduction of the uncertainties associated with this forecast.

I trust this note responds to your concerns, but do please let me know if you have any other questions.

Sincerely yours,

Lady Susan Rice
Background

1. The Committee reported on the delegated powers in the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill ("the Bill") on 2 February 2016 in its 11th report of 2016. The Committee made recommendations on one delegated power provision.

2. The response from the Scottish Government to the report is reproduced at the Annex.

3. This paper summarises the delegated power provision, the Committee’s previous consideration of this power and the Scottish Government’s response.

Scottish Government response

Paragraph 14(2) within new schedule 2A inserted by section 1(3) – Power to amend threshold figure in paragraph 9(3) of schedule 2A

Provision

4. Paragraph 14(2) of new schedule 2A confers a power on the Scottish Ministers to amend, by order, paragraph 9(3) of that schedule so as to substitute, for the figure for the time being specified there, a different figure. Paragraph 9(3) provides that, for the purposes of working out what counts as a dwelling “owned” by a person, a dwelling with a market value of less than £40,000 is not to be counted.

5. Paragraph 2(1) of new schedule 2A provides that the additional tax charge introduced by the Bill will apply where the main subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling, and at the end of the day of the transaction the buyer owns more than one dwelling (and is not replacing the buyer’s only or main residence).

Committee consideration

6. The Committee noted that properties with a market value of less than £40,000 are not treated as owned by the buyer for the purposes of working out whether the additional tax charge can apply; likewise the purchase of an additional property with a market value of less than £40,000 will not trigger the additional charge. The Land and Buildings Transaction Tax (Amendment) (Scotland) Bill as introduced is available at the following website: [http://www.scottish.parliament.uk/S4_Bills/Land%20and%20Buildings%20Transaction%20Tax%20(Amendment)%20(Scotland)%20Bill/SPBill85S042016.pdf](http://www.scottish.parliament.uk/S4_Bills/Land%20and%20Buildings%20Transaction%20Tax%20(Amendment)%20(Scotland)%20Bill/SPBill85S042016.pdf) [accessed February 2016]
Committee considered therefore that the £40,000 threshold is of central relevance when determining whether the additional tax charge can apply. Accordingly, the power to vary this threshold is akin to powers within the Land and Buildings Transaction Tax (Scotland) 2013 (“the 2013 Act”) to vary tax rates and bands.

7. The Committee remarked upon the different parliamentary procedures associated with these powers: the comparable powers to vary tax rates and bands in the 2013 Act are subject to the provisional affirmative procedure (after they have been used once to set initial tax rates and bands), whereas the power to vary the £40,000 threshold introduced by the Bill is subject to the negative procedure.

8. The Committee sought the Scottish Government’s explanation in oral evidence as to why the negative procedure was deemed to be appropriate. Officials, building upon the rationale set out in the Delegated Powers Memorandum, expressed that the “clear synergies” between the existing power in the 2013 Act to set the “notifiability threshold” (to notify a land transaction to Revenue Scotland), on the one hand, and this proposed power in the Bill, on the other, mean that the same procedure should apply. Officials identified that having both powers subject to the same procedure would mean that a single instrument could be brought forward altering both the notability threshold in the 2013 Act and the market value threshold introduced by the Bill.

9. The Committee was not persuaded by this view, pointing out that the thresholds have different effects: the “notifiability threshold” relates to administrative matters, whereas the power in the Bill to adjust the £40,000 threshold affects when tax liability for the additional charge can apply.

10. The Committee recognised the need for Scottish Ministers to act swiftly in response to changing market conditions, and noted that the provisional affirmative procedure provides the necessary flexibility to adjust tax rates quickly.

11. The Committee reported that it was content with the power in principle, but recommended that the Scottish Government bring forward an amendment to make the power subject to the provisional affirmative procedure. The Committee welcomed the Scottish Government’s intention to reflect on the Committee’s recommendation.

Scottish Government’s response
12. The Scottish Government are persuaded that the most appropriate comparator for the power to adjust the £40,000 threshold in the Bill is the power in section 24 of the 2013 Act to specify tax rates and bands, which is subject to the provisional affirmative procedure. The Scottish Government accordingly intends to amend the power at Stage 2, so that it is subject to the provisional affirmative procedure.

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Conclusion
13. Members are invited to make any comments. If at Stage 2 new powers are proposed, or substantial amendments to existing powers are proposed, the Committee will have a further opportunity to consider the Bill after Stage 2.

Recommendation
14. Members are invited to note the Scottish Government’s response on the Bill, and to make any comments.
Correspondence from the Scottish Government, dated 11 February 2016

I welcome the Delegated Powers and Law Reform Committee's (“the Committee”) report on the Delegated Powers Memorandum that accompanies the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (“the Bill”) and would like to thank the Committee for their thorough scrutiny of the delegated powers contained in the Bill.

The Scottish Government would like to respond to the Committee's recommendations as set out in paragraphs 25 and 26 of the report.

Paragraph 14(2) within new schedule 2A inserted by section 1(3) – Power to amend threshold figure in paragraph 9(3) of schedule 2A

The Committee’s report states the following at paragraphs 25 and 26:-

The Committee is content with the power in paragraph 14(2) in principle but makes the following recommendation regarding parliamentary procedure:

- The Committee recommends that the Scottish Government brings forward an amendment at Stage 2 to make exercise of the power in paragraph 14(2) subject to the “provisional affirmative” procedure. The Committee also notes that, in oral evidence, Scottish Government officials indicated that they would reflect on the Committee’s recommendation, and the Committee welcomes this.

Scottish Government Response

The Scottish Government notes the Committee’s arguments and is persuaded that the most appropriate comparator for the power proposed in paragraph 14(2) of proposed schedule 2A to the Land and Buildings Transaction Tax (Scotland) Act 2013 is the existing power in section 24 (power to specify tax rates and tax bands). Therefore the Scottish Government agrees that the paragraph 14(2) power should be made subject to the provisional affirmative procedure and will bring forward amendments at Stage 2 to that effect.
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 5, No. 77 Session 4

Meeting of the Parliament

Wednesday 3 February 2016

Note: (DT) signifies a decision taken at Decision Time.

Business Motion: Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-15546—That the Parliament agrees, for the purposes of its consideration of the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill, under Rule 9.6.3A of the Standing Orders, that the Parliament shall consider the general principles of the Bill on the second sitting day after publication of the lead committee report.

The motion was agreed to.

Suspension and Variation of Standing Orders: Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-15550—That the Parliament agrees that, subject to its agreement to the general principles of the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill, for the purposes of further consideration of the Bill—

(a) Rules 9.5.3A and 9.5.3B of Standing Orders be suspended;

(b) the following be substituted for Rule 9.10.2A of Standing Orders:

“Subject to paragraph 6, where a member intends to move an amendment to the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill at stage 3, that member shall give notice of the amendment by lodging it with the Clerk no later than 12:00 on Friday 4 March 2016."

(c) in Rule 9.7.8A of Standing Orders, the word “second” be substituted for the word “fourth”;

(d) in each of Rules 9.7.8B and 9.7.10 of Standing Orders, the words “third sitting day before the day” be substituted for the words “end of the second week before the week”.

The motion was agreed to (DT).

Designation of Lead Committee: Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-15545—That the Parliament agrees that the Finance Committee be designated as the lead committee in consideration of the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill at stage 1.

The motion was agreed to (DT).
Note: (DT) signifies a decision taken at Decision Time.

**Land and Buildings Transaction Tax (Amendment) (Scotland) Bill:** The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney) moved S4M-15694—That the Parliament agrees to the general principles of the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill.

After debate, the motion was agreed to (DT).

**Land and Buildings Transaction Tax (Amendment) (Scotland) Bill: Financial Resolution:** The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney) moved S4M-15563—

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.

The motion was agreed to (DT).
Land and Buildings Transaction Tax (Amendment) (Scotland) Bill: Stage 1

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-15694, in the name of John Swinney, on the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill. I ask members who are leaving the chamber to do so quickly and quietly.

17:46
The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney): I am pleased to open the debate on the general principles of the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill, which I introduced on 27 January this year. I begin by thanking all those who gave evidence—written and oral—to the Finance Committee and those, such as the Law Society of Scotland and Revenue Scotland, who have given and continue to give freely of their time to work collaboratively with the bill team to resolve some of the more thorny technical matters in order to ensure, as far as practical, the bill's smooth implementation.

I am grateful to the convener and members of the Finance Committee for their scrutiny of the bill at stage 1 and particularly for committee members' co-operation in working to an expedited timetable for the bill. I welcome the committee's support for the general principles of the bill. In light of the expedited bill timetable, I wrote yesterday to the convener of the Finance Committee setting out the Scottish Government's response to the committee's stage 1 report. I hope that it was helpful to have that response in advance of the debate.

The Land and Buildings Transaction Tax (Amendment) (Scotland) Bill introduces a 3 per cent land and buildings transaction tax supplement payable on the purchase of additional dwellings, such as buy-to-let or second homes. Subject to parliamentary approval, that means that, from 1 April 2016, anyone buying a residential property in Scotland of £40,000 and above who already owns a residential property, here or anywhere in the world, will pay an additional 3 per cent land and buildings transaction tax on the whole purchase price of the property, unless they are simply replacing their existing main residence.

The Scottish Government wishes to maximise the opportunities for first-time buyers to get a foot on the property ladder in Scotland. The bill will counteract the potential distortive effect of the introduction of a new stamp duty land tax higher rate of tax in the rest of the United Kingdom from 1 April 2016. Without a land and buildings transaction tax supplement, it is likely that the stamp duty land tax higher rate of tax would make it relatively more attractive for investors to buy up homes in Scotland, particularly at the lower end of the market, thus increasing competition for first-time buyers and therefore the danger of undermining the Scottish Government's policy objectives in this area. The Government's motivation has therefore been clearly expressed to deal with circumstances that we believe are made more likely by the tax changes that are being made in the rest of the United Kingdom.

I am aware from the evidence that was presented to the Finance Committee during its stage 1 scrutiny of the bill that some stakeholders have expressed disappointment at the 3 per cent supplement that applies to the whole purchase price, and that they view that as a return to a form of slab tax, which prevailed in the former stamp duty land tax in Scotland. As I have already indicated, the Scottish Government wishes to do all that it can to empower first-time buyers to purchase their first home. The rationale for applying the supplement to the whole purchase price is that it will impose a greater tax charge on purchases of additional property at lower-value transactions. That is where the demand for properties for investment purchases or holiday homes could make it difficult for first-time buyers to enter the market to purchase a main residence. For example, someone who buys a property as their main residence for £100,000 will not pay any land and buildings transaction tax, but someone who buys the same property for an investment or as a second home will pay £3,000.

As I indicated in my statement on the draft budget last December, it is estimated that the supplement will raise between £17 million and £29 million in 2016-17 after taking account of behavioural effects, including any impact on underlying LBTT revenues. The Scottish Fiscal Commission has endorsed the estimate as reasonable, recognising the uncertainties that are posed by the lack of Scottish data on such transactions. I have discussed those issues with the Finance Committee, and the Government has erred on the side of caution in estimating the volume of revenues that could arise from the tax change, given the potential behavioural implications of the application of the tax charge.

The Scottish Government considers that the housing system should cater for a variety of needs and demands across all tenures. I certainly recognise the need to balance support for home ownership and first-time buyers without discouraging significant and beneficial investment in residential property for rent. The Scottish Government has supported the purpose-built private rented sector since 2013; we funded the
“Building the Rented Sector in Scotland” study; and we provided funding for a dedicated private rented sector champion tasked with ensuring that action is taken to boost the supply of high-quality private rented sector homes at scale.

After reviewing and reflecting on the stage 1 evidence, I am pleased to say that the Scottish Government concurs with the recommendation in the Finance Committee’s stage 1 report that provision should be made in the bill for a relief from the land and buildings transaction tax supplement for buyers who are purchasing six or more residential properties in one transaction. The Scottish Government intends to lodge a stage 2 amendment to give effect to that.

On reliefs in general, I note from reviewing the stage 1 evidence that there are suggestions for a variety of reliefs from the supplement. The Scottish Government recognises that the housing market changes over time and, where practical and affordable, it wishes to do what it can to create sound and sustainable market conditions. However, I am firmly of the view that, as with the land and buildings transaction tax system, a period of time will be required to enable the land and buildings transaction tax supplement to become embedded and for sufficient financial and statistical data to be collected to enable informed policy decisions to be made in the future. The position on reliefs with particular reference to the land and buildings transaction tax supplement will be kept under review as part of the on-going process of devolved tax planning and management. However, I hope that the specific relief that I have set out in relation to the bulk purchase of properties gives further clarity to the marketplace and can enable commitments to be made, with the assurance that I have given.

When I gave oral evidence to the Finance Committee, I did not close the door on implementing a grace period for transactions. I have carefully reviewed the stage 1 evidence and considered further helpful input from the Law Society of Scotland and Revenue Scotland. I am not convinced of the strength of that evidence as yet, but I do not want to entirely close the door on implementing a grace period.

The approach that I have elected to take is to ask Revenue Scotland to monitor the position between the LBTT supplement provisions coming into force and 30 October 2016. The data that is collected will enable the Scottish Government to take an informed view as to the need or otherwise for a grace period and what such a period should be. There are provisions in the bill that enable individuals to claw back charges that may have been applied over an 18-month period. I hope that that provides sufficient reassurance to Parliament, but I reiterate that I remain open to considering the matter in due course.

I am aware that a number of stakeholders have called for an early and comprehensive review of the impact of the supplement. I welcome the Finance Committee’s comment in its stage 1 report that “developing an understanding of the impact of the supplement will be complex and will take time.”

I concur with that view. To review the impact of the supplement will require at least one complete year of data, given the seasonality of housing transactions, the likely forestalling behaviours and the longer-term trends in the housing market. The Scottish Government intends to update Parliament on the outcome of that review in the 2018-19 draft budget, in accordance with our undertaking in the written agreement on the budget process to provide “a commentary on outturn figures for the devolved taxes for the most recent year, including any variance between outturn and forecasts.”

The bill as introduced proposes that the supplement will not apply to the purchase of a residential property where missives were concluded before 16 December 2015—the date of the Scottish draft budget statement—even when the transaction does not settle until after 1 April 2016. Where the missives for the transaction were concluded on or after 16 December 2015, the supplement is proposed to apply if the transaction settles on or after 1 April 2016.

The Scottish Government has listened carefully to the stakeholder community and intends to lodge an amendment at stage 2 whereby the supplement will not apply to the purchase of a residential property where missives were concluded before 28 January 2016 but the transaction does not settle until on or after 1 April 2016. That adjustment delivers a fairer result for buyers who may have been putting in offers for property or making reservations for new-build property before the detail of the proposed supplement was in the public domain—that is, when the bill and accompanying documents were published on the Scottish Parliament’s website.

I move,

That the Parliament agrees to the general principles of the Land and Buildings Transactions Tax (Amendment) (Scotland) Bill.

The Presiding Officer: I call on Kenneth Gibson to speak on behalf of the Finance Committee.

17:57

Kenneth Gibson (Cunninghame North) (SNP): It is with pleasure that I speak on behalf of
the Finance Committee in this stage 1 debate on the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill. I thank the members of the Finance Committee, the clerks and those who gave evidence to help us to reach our conclusions expeditiously, along with our adviser, Professor McEwen, who produced an excellent summary of the responses while working to a particularly tight deadline.

Following publication of the UK autumn statement, in which the chancellor set out plans to introduce a 3 per cent stamp duty land tax supplement on the purchase of additional homes from 1 April 2016, the Scottish Government set out similar proposals in its draft budget. It has emphasised the need to introduce the supplement at the same time as the supplement comes into force in England and Wales in order to mitigate the risk of any related impact on the Scottish property market. That meant that the usual consultation process could not be undertaken and standing orders were suspended to facilitate a truncated timetable for parliamentary consideration of the bill.

The committee notes that those circumstances were far from ideal, but we recognise the reasons behind them and we accept there must be an element of flexibility in the scrutiny arrangements. In essence, there is a need to balance the risk of not responding immediately to UK tax changes and the risk of unintended consequences arising if we enact legislation without first conducting full consultation and comprehensive parliamentary scrutiny. The need to achieve such a balance is clearly an issue of real importance to Scotland’s public finances, and it might arise more frequently in future. We intend to reflect carefully before setting out in our legacy report recommendations on how best to balance the competing priorities.

We issued our own consultation, albeit that it was shorter than usual, and we received over 50 responses ranging from those from professional bodies to those from individuals who were concerned about the bill’s potential impact on their property dealings. We then took evidence from a range of stakeholders before hearing from the Deputy First Minister.

On the bill’s policy objectives, the key intention is to ameliorate market distortions that will potentially arise from the proposed UK supplement and have an impact on first-time buyers, in particular. Some stakeholders expressed concern that no impact assessment has been undertaken and that there is a lack of data on the Scottish second home and buy-to-let markets. We have therefore recommended that the Government commission research and take steps to improve the data on those areas.

Ministers should closely monitor the supplement’s impact on the housing market and conduct a comprehensive review when sufficient information is available. We also recommend that the Scottish Fiscal Commission provide a commentary on the first six months of the supplement’s operation, including on the impact of forestalling, by the end of November. I note that the Deputy First Minister said today that it might be more appropriate to wait until we have a full year’s data. We will deliberate on that.

We heard mixed views on the policy’s potential impact on first-time buyers. Some stakeholders expressed concern that the supplement would act as a deterrent to investment in new housing developments; others suggested that if the supplement is not introduced, investors from outside Scotland could push up property prices.

The committee recognises the Government’s policy intentions regarding first-time buyers, but we are also conscious of the need to protect housing supply for those who rent their homes through choice or necessity. We heard that the vast majority of landlords own fewer than five homes, with large numbers owning just a single buy-to-let property. Concern was expressed that the supplement might not deter investment in housing and might simply result in additional costs being passed on to tenants via higher rents. We consider it essential that the Government closely monitor the supplement’s impact on rent levels, particularly in areas where rents are already high.

To mitigate the possible deterrent effect on investment in Scotland’s housing stock, stakeholders suggested numerous reliefs. Unfortunately, it was not possible for us to scrutinise every proposal in the time that was available, and we remain conscious that exemptions and reliefs have the potential to provide loopholes and opportunities for tax avoidance. We therefore invite the Government to comment on stakeholders’ suggestions.

The committee was convinced of the case for introducing specific reliefs for registered social landlords, local authorities and student halls of residence. The availability of quality, affordable housing for people on lower incomes is a key challenge in Scotland, and we heard that many local authorities and registered social landlords have engaged in significant house purchase activity, which has helped to support the construction industry during the recent period of market recovery. It is clear that student halls of residence are designed in a way that makes them unsuitable for anyone who is seeking to buy a home. We therefore recommend that reliefs be introduced for those types of properties, which should mirror the reliefs that are provided for in the
Land and Buildings Transaction Tax (Scotland) Act 2013.

We also support a relief for larger-scale investors who purchase six properties or more. Such a relief was proposed by numerous professional bodies and would be consistent with the provisions of the 2013 act, which provides:

“Where six or more separate dwellings are the subject of a single transaction ... those dwellings are treated as not being residential property”

for tax purposes.

The UK Government consultation seeks views on reliefs for bulk property purchases. We are mindful that the provision of such a relief south of the border but not in Scotland could adversely affect investment in the Scottish market. Furthermore, we consider it unlikely that such a relief would cover small-scale investors, who are more likely to be in direct competition with first-time buyers to purchase properties. Nevertheless, we remain mindful that the relief might need to be reviewed if there are signs of a negative impact on the number of new housing developments, due to a decrease in the number of buy-to-let properties being purchased by smaller investors.

We are also clear that a grace period should be provided to cover circumstances in which a purchaser temporarily and unintentionally owns two properties simultaneously as a result of a sale being delayed or falling through.

I am pleased that the Government has confirmed its intention to amend the bill to introduce such reliefs and I look forward to discussing the issues further with the Deputy First Minister at next week’s stage 2 proceedings.

The committee supports the general principles of the bill but remains conscious that, although the proposed supplement might appear relatively straightforward, a number of potentially complex issues remain, which will require careful consideration at stages 2 and 3.

In particular, there is a need to introduce appropriate reliefs that balance the needs of first-time buyers, the needs of people who rent their home and the interests of house builders and investors. That will not be easy, especially given the insufficient data on the current structure of the housing market in Scotland. It is therefore essential that the impact of the bill is closely monitored and a comprehensive review carried out when sufficient data are available.

I look forward to considering those important issues further at stage 2 and I look forward to hearing members’ speeches in the debate.

18:04

Jackie Baillie (Dumbarton) (Lab): I welcome much of what the cabinet secretary had to say in his speech, and his recognition of the Finance Committee’s recommendations and the concerns expressed by stakeholders. It is important to take a step back and consider the context, because land and buildings transaction tax was levied for the first time last year, and when the cabinet secretary set out his quite comprehensive plans for the tax—well over a year ago now—it was a matter of a couple of months before he had to think again and bring new proposals back to the Parliament, to respond to George Osborne’s proposals for stamp duty land tax. Although I would observe that that was probably the fastest change of tax policy in history, I do understand the cabinet secretary’s desire to have a similar fiscal position in Scotland to that in the rest of the UK.

Now we are being presented with the land and buildings transaction tax supplement. Yes, it was indeed the self-same chancellor, George Osborne, who introduced that in his autumn statement—a new 3 per cent supplement for stamp duty land tax—and the cabinet secretary moved quickly to copy it. There is now to be a land and buildings transaction tax supplement of 3 per cent on purchases of additional residential properties for those transactions over £40,000.

I know and accept that there are strong arguments for us to have the same fiscal regime both north and south of the border. Our housing markets are similar and they can and will be influenced by each other, but there are times when we might choose to do things differently. There are obviously times when we want to respond very quickly, so that behavioural responses to tax changes are minimised. That has implications for consultation with stakeholders and for scrutiny by this Parliament, and I know that it has not been an entirely satisfactory process for stakeholders, or indeed for members of the Finance Committee, because of the speed at which things have been done.

I hope that the Government and the Finance Committee will consider that in the future so that we get the balance right. I think that it is an issue that we will want to return to, because I can foresee circumstances in which that could happen time and again, and I do not think that any of us want a situation in which speed means bad legislation with unintended consequences.

In that context, I draw members’ attention to the House of Commons Treasury Committee report—not something that I read often, but it is now on my list. It is fair to say that members of that committee are not at all enamoured by the stamp duty land tax supplement and there is a strong suggestion from them that there should be no rush to
implementation because of its complexity and because of the possibility of unintended consequences. They also feel that it would actually be detrimental to the buy-to-let property market and they recognise the importance of that sector for labour mobility, which is a point that I will return to in a minute.

I am not sure—and I do not know whether the Deputy First Minister is any clearer than I am—whether there is a possibility that George Osborne might delay implementation, or indeed substantially change the proposal, but it raises some really interesting questions. Given that the Scottish Government has aligned itself with the proposal from the UK Government, does that mean that the introduction will be delayed in Scotland if it is delayed in the rest of the UK, or does the Deputy First Minister intend to proceed regardless? Perhaps it provides an opportunity to think things through, but in any event we need stability and certainty, not chop and change.

I know that there are real issues that the Government must grapple with, but we will decide on the Scottish budget for 2016-17 tomorrow. Assumptions have been made about the revenue that will be generated by the supplement, but we will have no idea what the UK Government’s response to the Treasury Committee’s report will be until at least mid-March. That is my understanding.

**John Mason (Glasgow Shettleston) (SNP):** Does Jackie Baillie accept that the supplement is a good method by which to protect local people from second home owners?

**Jackie Baillie:** I do, and if there was any lack of clarity about that, I apologise to the member. I absolutely accept that, but there are unintended consequences that we should be alive to, and we should not simply look narrowly at the principle and nothing else.

There are wider questions and there are issues in the bill that need to be addressed. There are areas for exemption that the Scottish Government has said that it will think about further before coming back to the committee at stages 2 and 3. I would like to consider a couple of those areas. There are many more that the committee has spelled out in pages and pages of possible reliefs.

The Scottish Government has a laudable intention of attracting new skilled workers to Scotland. Will any such person who is a home owner abroad and who wants to buy a home here be liable for the additional 3 per cent? If that is the case, I do not think that that sends out the message that the Government wants to send, which is that we would welcome to this country those with the skills that we need. How will ownership abroad be identified and the additional tax be enforced? Alternatively, will Scots who want to buy a second home abroad be liable for 3 per cent of the purchase price? I think that the answer is yes, although that could well be unpopular. However, how would it be checked and enforced? The issue is the practical implementation.

What about women leaving abusive relationships, when, for whatever reason, the woman’s name remains on the ownership of the house that she leaves? Will she be liable for the additional 3 per cent? If a person who is a home owner purchases a half-stake in a flat that is valued at £75,000, will they become liable for 3 per cent of £75,000, liable for 3 per cent of £37,500 or not liable at all? I suggest that there is a complexity that we need to understand, and I wonder whether, in a short period of time, we would not arrive at unintended consequences.

In conclusion, I turn to the revenue that the tax is likely to raise. It is fair to say that the amount raised with residential LBTT is less than expected. So far, we have nine months of outturn data but the modelling of behavioural impacts is critical. The LBTT supplement would have benefited from more assessment but the Scottish Government keeps telling us that there is limited data available. We clearly need more. We want to know the Government’s forecasting methodology. The yield was anticipated to be between £45 million and £70 million, but it has been revised down dramatically to between £17 million and £29 million. If it is simply a tax to generate more income, it is a very inefficient way of doing that.

Perhaps the House of Commons Treasury Committee has got it right and we should proceed with less haste. However, I recognise the dilemma for the Scottish Government, so we will support the general principles of the bill at decision time.

18:12

**Gavin Brown (Lothian) (Con):** It appears that, both north and south of the border, the measure is far more complex than it first appeared when it was announced in the autumn statement. I had the voice of former minister Jim Mather ringing in my ears as I reviewed the bill. Mr Mather once said to me, “Gavin, there is no such thing as unintended consequences; there is only lazy thinking.” That had an impact on me then, and it has had an impact on me since.

Having thought carefully about the bill, I am of the view that the risk of inaction is greater than the risk of unintended consequences flowing from legislative action. On that basis, I was prepared to support the bill at the committee stage and we will vote in favour of the principles of the bill come decision time today.
That said, there are clearly significant issues to resolve— I think that the Government would accept that. However, if the UK Government were to delay the legislation south of the border— I have no inside information on that— we should give serious consideration to delaying it here as well. Mr Swinney would face no criticism from this side of the chamber were that to happen. Nevertheless, I assume that the bill will be passed south of the border within the current timescale, and my working assumption is that the same will happen here.

There are risks, and Kenneth Gibson captured one of them quite neatly. In trying to help first-time buyers, we must be sure that we do not end up making them worse off if we see a reduction in development. One of the arguments that was put to the committee was that a number of developments that go ahead rely on what are called off-plan sales— pre-sales that are made in advance of the development being built— and it is much more likely that anyone involved in a pre-sale will be a buy-to-let operator or a second home owner as opposed to somebody on their first mortgage. Some developments rely on pre-sales to secure funding, and if some of those developments do not go ahead, there could be a greater danger of lack of supply than we currently face. As much analysis of that as can be done ought to be done.

Mark McDonald (Aberdeen Donside) (SNP): Gavin Brown will accept that, in committee, I asked for empirical evidence to support that supposition but none was forthcoming. Therefore, although the suggestion has been made, there is currently no data— at least, none was made available to the committee— to back it up.

Gavin Brown: Mr McDonald makes a fair point. We do not have empirical evidence, but there is anecdotal evidence, which we got from a number of witnesses. That is one of the reasons why all members of the committee took the view that the Government should commission specific research on the impact of buy-to-let properties and second homes on the property market as a whole. So far, the Government does not see a reduction in demand of pounds. Even purchases that are currently outwith LBTT entirely because they are below the threshold could be affected. That is a severe risk.

I see that my time is up. I will return to that significant issue, because I think that it is the biggest weakness in the bill, and I genuinely want to work with the Government to get it right at stage 2.

The Presiding Officer: You will have the opportunity to return to that issue in about four minutes’ time, Mr Brown. [Laughter.]

I call Mark McDonald. You have four minutes, but you could perhaps push it to five.

18:17

Mark McDonald (Aberdeen Donside) (SNP): Oh, gosh. I am now under pressure to give Gavin Brown time to collect his thoughts for his summing-up speech, and perhaps— who knows?— to give him some content for it.

There are a few points that need to be highlighted. The committee took a great deal of evidence in a very short space of time, and some of the evidence that we received was very interesting. Jackie Baillie asked whether the bill was just one that was designed to generate more revenue. That belies the fact that the genesis of the bill lay in a desire to ensure, first, that a policy change at UK level would not have a detrimental impact and, secondly, that first-time buyers would be protected against buy-to-let investment.

A point that I made in my intervention on Gavin Brown— this is something that I became slightly frustrated by during the course of the committee’s evidence taking— is that a great deal of certainty was being derived from supposition and anecdotal evidence. There did not seem to be a lot of hard data and empirical evidence to back it up. That made it very difficult for the committee to reach a true value judgment on some of the issues that were raised by the witnesses who appeared before us.
That is why it is critical, as Gavin Brown said, that we get some more data to serve as a bedrock for analysis of impacts on the housing market. As the policy rolls out alongside LBTT over a period of time, we will have the opportunity to bottom out forestalling effects and other variations. That will give us a better idea of the impact and help us to build a slightly better picture of what is happening in the housing market.

We had some discussion about how to deal with reliefs in the committee report, but it does go into great detail about the range of reliefs that have been suggested from various quarters. In bringing in any system of reliefs, there is an inherent risk of creating significant loopholes that could undermine the policy intention of the legislation. The committee has very properly asked the Scottish Government for its view on the basket of reliefs, but at the same time it has focused on a couple of specific reliefs that it feels are necessary. The Deputy First Minister has responded very fairly to those suggestions.

The third issue that I have wrestled with and which I mentioned during evidence taking at committee is the flexibility that the process that we currently go through in Parliament affords to the Scottish Government. That point does not necessarily relate to this specific piece of legislation. Let us compare the flexibility afforded to the Scottish Government in announcing or reacting to tax changes with that afforded to the Chancellor of the Exchequer. The chancellor can stand up at his dispatch box and announce a change that will take effect at midnight that evening, should he choose to do so, but under the processes in this Parliament the Scottish Government has to signal its intention some time in advance of changes taking place. We can compare the flexibility that our process allows for behavioural change and forestalling to take place with that which exists at Westminster.

That is something that needs to be explored in more detail in future, perhaps by a successor finance committee, but it would also be welcome in the next session of Parliament to get some more thinking from the Scottish Government on the issue.

The main thrust of LBTT is that, first and foremost, first-time buyers are protected in terms of their purchases.

I see from the Presiding Officer that, despite being told that I could push my speech to five minutes, I am now being told to hurry up. I will do so.

When LBTT was first proposed, I noted that one of its intentions was to stimulate purchases at the lower end of the market. Anecdotally, estate agents in my constituency tell me that they are seeing a stimulation of the market at the lower end. I am confident that that is happening, but I think that the bill is a necessary measure to ensure that that situation is protected.

Thank you, Presiding Officer.

The Presiding Officer: Thank you, Mr McDonald. You actually got to four minutes and 45 seconds, so you did quite well. We now go to the wind-up speeches—Gavin Brown has four minutes.

18:22

Gavin Brown: I have to say that it has been a fairly short debate.

I want to return to the issue of the accidental second-home owner, because I genuinely think that that could be a pretty big problem and one that, both south of the border and here, has not been considered enough.

As we heard in the policy memorandum, we deliberately want to exclude from the tax those people who are just replacing their existing main residence. In the scenario where a family is selling their house but the sale does not go through—it can fall through for any reason—or the scenario where the house just takes longer to sell than anticipated, they would be liable to pay a sum of money for LBTT, ranging from a few hundred pounds to potentially tens of thousands of pounds. Of course, that money could ultimately be clawed back, but it would have to be paid in the first instance.

In my view, that process is wrong for a number of reasons. First, it seems to me unduly punitive because not only are people in those scenarios likely to need some form of emergency finance or bridging loan, but they will have the additional stress of an instant bill that has to be paid before the transaction can go ahead. In many cases, that might just take them to the financial brink and result in a transaction not going ahead, which could have implications elsewhere in the housing chain.

Very few transactions take place in a vacuum, unless a first-time buyer is involved. There are quite often chains, as they are called, where a number of transactions rely on another transaction taking place; if one of those falls through because of the tax having to be paid up front, it could take people over the financial brink, which could have a wider impact on the housing market. It strikes me that the process is unduly bureaucratic, particularly when the Government’s stated intention is not to bring those people within the realms of the legislation.

I feel that it could be a deterrent for the market as a whole. Many of our constituents are cautious,
and we could end up with a scenario whereby, just as a matter of fact, people buy only once they have sold. We could end up with a market in which people sell their house first and consider buying only after they have sold, to make absolutely sure that they are not liable for those thousands of pounds.

In some cases, that might be the right decision, but if that were the effect on the marketplace, I think that it could have a detrimental effect on the economy, and it could slow down parts of the housing market in a way that we do not want. If we allow that to continue for six months, it may take some time to right the market. Therefore, I think that we are better to look carefully at it now.

Of course, Revenue Scotland may prefer the option that Mr Swinney suggested. That would make it cleaner and simpler for it. However, I urge Mr Swinney, in his closing speech, to say that he will at least speak, in particular, to more of the legal profession—those who represent consumers and house buyers—to get as much data as he possibly can before taking a final view. If he does that, I am convinced that he will hear from some of them—expressed strongly—that something needs to be done.

In the committee, we heard that one option is to have a grace period. I certainly think that that is one way of working, although I do not think that the suggestion of a 30-day grace period goes anywhere near far enough. If a housing sale falls through, it is pretty unlikely—although not impossible—that the average house sale will then happen in 30 days. Looking at different websites, it seems to take on average eight to 12 weeks to sell a house, so if the grace period were to be 30 days, a lot of people would be captured.

I urge the Deputy First Minister to give serious consideration to the issue. He said that he is not closed to the idea, and I would personally commit to working with him to find a solution. Although I will not have any constituents post-April, I genuinely believe that a number of constituents would see the issue as a huge matter of regret. We would then have to take emergency action to deal with it. Therefore, I urge the Deputy First Minister to indicate in his closing speech that he would be willing to discuss that matter.

The Presiding Officer: Thank you, Mr Brown. Come May, I will not have any constituents either.

18:27

Lesley Brennan (North East Scotland) (Lab): I will sum up for the Labour group.

It has been a very short debate, but we have heard the key points. During evidence sessions, the Finance Committee heard about the stated aim of the policy, which is to minimise market distortion in Scotland due to inward investment from the rest of the UK, given the Tories’ introduction of a similar initiative there. The Scottish Government considers that such inward investment could crowd out first-time buyers.

We support the principles underpinning the tax, which are to reduce rent-seeking behaviour—whether to crowded-out first-time buyers from buy-to-let landlords or others, or to second-time home owners.

The draft budget estimates that the additional dwelling supplement would raise about £23 million in the first year. That sum is equal to the shortfall at Dundee City Council. If Mr Swinney wanted to earmark it for Dundee City Council, I would be very happy about that. Seriously, though, the Chartered Institute of Housing suggested earmarking that revenue for housing, and I suggest that the Scottish Government ought to consider that. I read in the cabinet secretary’s response to the committee about how the Scottish Government is trying to promote home ownership and about how it has initiatives. If it puts the money raised—the £23 million—into that, it would help more people to get into housing.

I have some concerns about the bill. As everybody said, there is a lack of credible data. The data used is largely anecdotal. I have mentioned that, in 2009, colleagues and I were involved in the Scottish Government report that produced a baseline of the private rented sector. One of the recommendations in that report was about improving the data, and I see that there have been very small improvements. However, to understand how the market works, we need to understand the motivations for people owning more than one home and renting it out—whether that is accidental landlords or people who have inherited property. We just need to understand how the private rented sector is evolving.

The proportion of households in the private rented sector has increased, from 5 per cent in 1999 to 14 per cent now. That expansion has been encouraged by the Scottish Government. Rent increases in Scotland over the last year were 1.6 per cent in the private rented sector. If we are concerned about market distortion, a rental increase of 1.6 per cent might not be as competitive as down south.

Registers of Scotland noted that, between 2005 and 2015, approximately one in five purchases with a mortgage in Scotland were made by first-time buyers. However, it is important to be mindful of the context. Annual house price inflation was 5.6 per cent in England, 0.8 per cent in Wales, 2.9 per cent in Northern Ireland and -0.9 per cent in Scotland. That is the latest data from the Office for National Statistics. The price of properties for first-
time buyers is also increasing but at a decreasing rate, which suggests a slowdown in the housing market. I am a bit concerned that there might be unintended consequences.

There is a question of whether the lack of first-time buyers is a supply-side issue. It might also be a demand-side issue because of the general state of the economy and employment. Revenue Scotland is currently preparing guidance to help taxpayers and their agents to understand the additional dwelling supplement.

Like Gavin Brown, I have concerns about accidental second home owners. I urge the cabinet secretary to think about the grace period. A family who buys a house that takes a couple of months to renovate would be affected by the additional dwelling supplement. Other people might be affected by the supplement if they have accidentally ended up owning a house because something has happened down the chain. A family who are relocating to Scotland from England and have bought a home in Scotland while trying to sell their home in England might be affected.

I know that the cabinet secretary said that he is going to take evidence over the first six months, but there should be a longer grace period, especially given how quickly the LBTT has been implemented. I welcome his comments about the provision in relation to 28 January, but I really hope that he extends the grace period further.

There are some questions that the cabinet secretary ought to address. What will happen if the Conservative Government at Westminster decides to delay the implementation of the tax? How confident is the cabinet secretary that the 3 per cent supplement will change behaviour, prevent second home ownership, and prevent the crowding-out of first-time buyers? I look forward to hearing the cabinet secretary’s comments on those questions.

18:33

**John Swinney:** I am always delighted to be able to provide Jackie Baillie with helpful advice. I am not sure whether she was seeking advice, but she asked me whether a charge will be applied when someone is buying a home overseas. I am not sure whether she was just looking for advice to enable her to undertake her financial planning—perhaps for her retirement, which is, of course, a long way off. The tax will be chargeable only if the additional home is in Scotland. If somebody who lives overseas buys an additional home in Scotland, the charge will require to be paid in Scotland and, of course, the buyer will be required by law to report that through Revenue Scotland returns. If an individual who is not normally resident here buys a property in Scotland, they will have to indicate on their return whether they own other property somewhere else in the world.

**Jackie Baillie:** Will the Deputy First Minister give way?

**John Swinney:** I will be happy to provide Jackie Baillie with more advice.

**Jackie Baillie:** Does that mean than an incoming worker, who might be ordinarily resident somewhere else and is buying a property in Scotland, will be liable? Does the Deputy First Minister think that that will discourage people from coming to Scotland in the first place?

**John Swinney:** If that person owns a home in another country, the charge will apply. People will have to weigh up all the different issues. Many individual circumstances could be applied in the debate but the ones that we have just discussed will apply in the scenario that Jackie Baillie proposes.

Jackie Baillie, Lesley Brennan and Gavin Brown all made reference to the grace period, which I want to address. I have weighed up the evidence and I am not satisfied that the bill does not provide sufficient flexibility to address the issue. However, I am happy to have further discussions about it in the run-up to stages 2 and 3 to enable me to consider further some of the issues that are involved. There is, of course, provision in the bill for ministers to introduce a relief from the supplement, so we can make such provision in due course. That would not ordinarily require to be undertaken as part of stage 2 or stage 3. As I have said, I want a period for us to monitor the issue—until 30 October. We will at that point have a better impression of what is involved.

Jackie Baillie mentioned a possible delay to the UK legislation. I have no information about that, but I certainly have no intention of delaying legislation in Scotland. We took the decision that was prompted by the decision of the UK Government because I could foresee market distortion as a consequence of its decision. We have established the approach and it supports our general policy approach of wishing to protect individuals’ opportunities to access the property market. It is important that that is reflected in the bill.

One of the other issues that came up in the debate was raised by the convener of the Finance Committee and by Mark McDonald, relating to arrangements that we will increasingly have to consider. Of course, we will have to consider them for ever more, now that it is clear that we will have the powers that were envisaged under the Smith commission and the associated tax powers that will come from that. We will have to consider, in our own budgeting and financial process, how we make timeous changes to our legislation to ensure
that we have in place appropriate tax arrangements. I cannot pretend that it is ideal that we have made the changes in such a short time, but we have given them a lot of thought and I am committed to further consideration of the detail during stage 2 and stage 3 to ensure that we cover any circumstances and scenarios that may arise that would require us to make more changes to legislation.

I am confident that the Government has listened carefully to stakeholders’ feedback to ensure that we are properly prepared and equipped to address further issues. However, it would be helpful for the Government—and for the incoming Government after the election in May—to have the benefit of the reflections of the Finance Committee on processes and procedures for Parliament to ensure that we can scrutinise as effectively as possible.

Mark McDonald also talked about the wider question of reliefs that would be envisaged under the legislation. I have set out some of my thinking and am committed to reflecting further on that as the bill takes its course through Parliament.

Jackie Baillie also mentioned a number of points and scenarios in respect of the detail and complexity of the legislation. I accept that there is complexity, but I think that it is incumbent on the Government to ensure that we explore as many scenarios as we can, and I am satisfied that we have in place the processes to enable that.

Mention has been made of the Government’s revenue estimates. We had what were, essentially, headline estimates of between £45 million and £70 million of expected revenue from the supplement. I have settled on £23 million—a mid-range estimate that takes into account the effects of forestalling and of behaviour changes. I believe that it is a prudent assessment for the Government to have made and one that is relevant to the budget that we have set out.

I reaffirm to Parliament the willingness of the Government to engage in detailed scrutiny on those questions and to ensure that the issues that are raised with us by stakeholders are fully and adequately addressed as we take the bill through its remaining stages.

Land and Buildings Transaction Tax (Amendment) (Scotland) Bill: Financial Resolution

18:40

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-15563, in the name of John Swinney, on the financial resolution for the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill. I call John Swinney to move the motion.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act. —[John Swinney.]

The Presiding Officer: The question on the motion will be put at decision time.
Land and Buildings Transaction Tax (Amendment) (Scotland) Bill

 Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 6 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

John Swinney
1 In section 1, page 1, line 24, after first <of> insert <and relief from>

John Swinney
2 In section 1, page 2, line 10, leave out <main>

John Swinney
3 In section 1, page 2, line 11, at end insert—

<(aa) the chargeable consideration for the transaction is £40,000 or more,>

Gavin Brown
43 In section 1, page 2, line 12, after second <the> insert <60th day after the>

John Swinney
4 In section 1, page 2, line 21, leave out <main>

John Swinney
5 In section 1, page 2, line 26, leave out <main>

John Swinney
6 In section 1, page 2, line 27, after <dwelling,> insert—

<(aa) the chargeable consideration for the transaction is £40,000 or more,>

John Swinney
7 In section 1, page 2, line 30, after <(2)> insert <or (5)>

John Swinney
8 In section 1, page 2, line 32, leave out from <that> to end of line and insert <the sole or main activity of which is investing or dealing in chargeable interests.>
(3) Sub-paragraph (2) of paragraph 31 of schedule 17 applies for the purposes of sub-paragraph (2) of this paragraph as it applies for the purposes of paragraph 31(1) of that schedule.

(4) In sub-paragraph (2), the reference to a business of the individual includes a reference to a business of a partnership of which the individual is a partner.

(5) This sub-paragraph applies if the individual is making the acquisition as trustee under a settlement (other than a settlement under the terms of which the beneficiary has a relevant interest in any dwelling that is or forms part of the trust property).>

John Swinney

9 In section 1, page 3, line 14, leave out <or dwellings that form> and insert <(including any interest or right pertaining to ownership of the dwelling) that is or forms>

John Swinney

10 In section 1, page 3, line 19, leave out <condition> and insert <conditions>

John Swinney

11 In section 1, page 3, line 20, after <2(1)(a)> insert <and (aa)>

John Swinney

12 In section 1, page 3, line 20, after <3(1)(a)> insert <and (aa)>

John Swinney

13 In section 1, page 4, line 9, leave out <forming> and insert <that is or forms>

John Swinney

14 In section 1, page 4, leave out lines 15 to 20

John Swinney

15 In section 1, page 4, line 28, leave out <the main> and insert <or formed part of the>

John Swinney

16 In section 1, page 4, line 33, leave out <the main> and insert <or formed part of the>

John Swinney

17 In section 1, page 4, line 38, at beginning insert <if the buyer has made a land transaction return in respect of the transaction,>

John Swinney

18 In section 1, page 5, line 8, at end insert—

<Relief for purchases of 6 or more dwellings>

8A A chargeable transaction is exempt from the additional amount if it is a transaction to which section 59(8) applies.
Relief: supplemental

8B(1) A relief under paragraph 8A must be claimed in the first return made in relation to the transaction or in an amendment of that return.

(2) For the period allowed for amendment of returns, see section 83 of the Revenue Scotland and Tax Powers Act 2014.

John Swinney

19 In section 1, page 5, line 15, at end insert—

<( ) A dwelling owned by a person is not to be counted for the purposes of paragraph 2(1)(b) if the acquisition of ownership of the dwelling by the person—

(a) is or was a chargeable transaction to which this schedule applies by virtue of paragraph 3, or

(b) would have been such a chargeable transaction but for the fact that the dwelling is situated outside Scotland.>

John Swinney

20 In section 1, page 5, leave out line 16 and insert—

<(3) Ownership of a dwelling (other than one that is or forms part of the subject-matter of the chargeable transaction) is not to be counted if the market value of the ownership interest is less than £40,000.

(4) In determining the market value of the ownership interest in a dwelling for the purposes of sub-paragraph (3), the market value of any interest or right pertaining to ownership of the dwelling is to be included.>

John Swinney

21 In section 1, page 5, line 20, leave out first <main>

John Swinney

22 In section 1, page 5, line 20, leave out second <main>

John Swinney

23 In section 1, page 5, line 39, leave out from second <a> to <settlement,> in line 1 on page 6 and insert <—

(a) a bare trust, or

(b) a settlement under the terms of which>

John Swinney

24 In section 1, page 6, line 2, leave out <forming> and insert <that is or forms>

John Swinney

25 In section 1, page 6, leave out lines 5 to 10
In section 1, page 6, line 10, at end insert—

<References in this schedule to “ownership” and “acquisition of ownership” are to be read accordingly.>

John Swinney

In section 1, page 6, line 10, at end insert—

<Deceived ownership: long leases

(1) This paragraph applies where a person (“the tenant”) is the tenant under a lease of a dwelling for a term of more than 20 years.

(2) For the purposes of this schedule—

(a) the tenant is to be treated as the owner of the dwelling, and

(b) the landlord under the lease is to be treated as not being the owner.

(3) References in this schedule to “ownership” and “acquisition of ownership” are to be read accordingly.>

John Swinney

In section 1, page 6, line 10, at end insert—

<Deemed ownership: proper liferents

(1) This paragraph applies where a person (“the liferenter”) holds a liferent over a dwelling under a proper liferent.

(2) For the purposes of this schedule—

(a) the liferenter is to be treated as the owner of the dwelling, and

(b) the granter of the liferent and the fiar are to be treated as not being the owner.

(3) References in this schedule to “ownership” and “acquisition of ownership” are to be read accordingly.>

John Swinney

In section 1, page 6, leave out lines 23 to 26
In section 1, page 6, line 27, leave out <the United Kingdom> and insert <Scotland>.

In section 1, page 6, line 30, leave out from <or> to end of line 31.

In section 1, page 7, line 1, after <paragraph> insert <2(1)(aa), 3(1)(aa) or>

In section 1, page 7, line 8, at end insert

(3A) The Scottish Ministers may by regulations modify the following provisions of this schedule—

(a) Part 4 so far as relating to the application of this schedule in relation to—

(i) partnerships,

(ii) trusts,

(b) Part 6 (except paragraph 9(3)),

(c) paragraph 15.

In section 1, page 7, line 12, after <schedule> insert <“bare trust” has the meaning given in paragraph 19 of schedule 18,>

In section 1, page 7, line 12, leave out from <means> to <19> in line 13 and insert <, except in paragraph 10(5)(b), has the meaning given in paragraph 21>

In section 1, page 7, line 15, at end insert—

( ) For the purposes of this schedule, a beneficiary under a settlement has a relevant interest in a dwelling that is or forms part of the trust property if the beneficiary is entitled to—

(a) occupy the dwelling for life, or

(b) income (whether net or gross) in respect of the dwelling.

Section 2

In section 2, page 7, line 27, after <14(3)> insert <or (3A)>

In section 2, page 7, leave out lines 28 and 29 and insert—

( ) for subsection (5) substitute—
“(5) The order is an order under—
(a) section 24(1),
(b) paragraph 14(1) or (2) of schedule 2A, or
(c) paragraph 3 of schedule 19.”,

John Swinney

40  In section 2, page 7, line 29, at end insert—

< ( ) in schedule 5 (multiple dwellings relief)—

(i) in paragraph 10, after “relevant transaction” insert “other than one to which schedule 2A applies”,
(ii) after paragraph 10 insert—

“10A The amount of tax chargeable in relation to a relevant transaction to which schedule 2A applies is—

\[ \sum DT + RT \]

where—

DT is the tax due in relation to each dwelling that is, or is part of, the main subject-matter of the transaction, and

RT is the tax due in relation to the remaining property.”,

(iii) in paragraph 11, after “DT x ND” insert “or, as the case may be, \( \sum DT \)”,
(iv) in paragraph 13, after Step 3 insert—

“Step 4

In the case of a relevant transaction to which schedule 2A applies, carry out Step 3 (taking account of any relief applicable to the transaction under paragraph 8A of that schedule) in relation to each dwelling that is, or is part of, the main subject matter of the transaction to find the tax due in relation to each dwelling.”,

John Swinney

41  In section 2, page 7, line 33, after <14(1)> insert <or (2)>

Section 3

John Swinney

42  In section 3, page 7, line 36, leave out <16 December 2015> and insert <28 January 2016>
Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

Relief for purchases of 6 or more dwellings
1, 18

Technical and drafting amendments
2, 4, 5, 9, 13, 15, 16, 21, 22, 24

Transactions to which schedule 2A applies: £40,000 threshold for level of consideration
3, 6, 10, 11, 12, 33

Payment of additional amount: ‘grace period’
43, 17

Transactions within paragraph 3: sole traders, partnerships and trusts
7, 8, 14, 25, 37

Dwellings to be counted for purposes of paragraph 2: cases where paragraph 3 applies or would apply
19

“Ownership”: trusts, executries, long leases, liferents
20, 23, 26, 27, 28, 29, 35, 36

“Ownership”: dwellings situated outside Scotland
30, 31, 32

Power to modify schedule 2A
34, 38
Procedure for order modifying £40,000 figures
39, 41

Multiple dwellings relief
40

Transitional provision: application of the Bill
42
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

8th Meeting, 2016 (Session 4)

Wednesday 2 March 2016

Present:
Jackie Baillie  Lesley Brennan
Gavin Brown  Kenneth Gibson (Convener)
John Mason (Deputy Convener)  Mark McDonald
Jean Urquhart

Land and Buildings Transaction Tax (Amendment) (Scotland) Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42.

Amendment 43 was disagreed to (by division: For 3, Against 4, Abstentions 0).

The following provisions were agreed to without amendment: sections 4, 5 and 6 and the long title.

The following provisions were agreed to as amended: sections 1, 2 and 3.

The Committee completed Stage 2 consideration of the Bill.
Item 2 is stage 2 consideration of the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill. We are joined by the Deputy First Minister, who is accompanied by Robert Buchan, Willie Ferrie and Greig Walker. I welcome them to the meeting.

Section 1—Land and buildings transaction tax: second homes etc

The Convener: Amendment 1, in the name of the Deputy First Minister, is grouped with amendment 18.

The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney): The committee carefully considered a number of calls for relief from the supplement, while cautioning that a preponderance of reliefs could give rise to complexity and opportunities for tax avoidance. In its stage 1 report, having reflected on the written and oral evidence, the committee recommended a relief for purchases of six or more dwellings. In my response to that report, I was pleased to accept the committee’s recommendation, as I am well aware that the assistance that is given to first-time buyers through the introduction of the supplement needs to be balanced with the need to protect investment in the private rented sector. I note that the decision to introduce the relief has been welcomed by the property sector.

Amendment 18 delivers the relief that the committee recommended. Amendment 1 is consequential and inserts a reference to reliefs into the overview paragraph that summarises the content of the new schedule 2A to the Land and Buildings Transaction Tax (Scotland) Act 2013. That reflects the fact that, if amendment 18 is agreed to, there will be provision about the reliefs in schedule 2A.

I move amendment 1.

Gavin Brown (Lothian) (Con): I welcome the amendments in the group, which reflect the committee’s view. It is clear that the Government has listened to the committee as well as, probably, privately listening to industry. Without the amendments, there would have been a risk to housing supply. I put it on the record that I welcome the amendments.

The Convener: Does the Deputy First Minister have anything further to add?

John Swinney: I have nothing to add.
Amendment 1 agreed to.

The Convener: Amendment 2, in the name of the Deputy First Minister, is grouped with amendments 4, 5, 9, 13, 15, 16, 21, 22 and 24.

John Swinney: This group is a collection of technical drafting amendments. The bill team has been careful to ensure that the wording in the bill is as clear and consistent as possible in order to minimise the risk of doubts or disputes over interpretation. Amendments 2, 4, 5, 21 and 22 ensure that the bill refers consistently to the dwelling being the subject matter of a transaction, rather than the “main” subject matter of a transaction. In some cases, other property may be involved in addition to the dwelling.

Amendments 13, 15, 16 and 24 are similar. They ensure consistency in references to a dwelling being, or being part of, the subject matter of a transaction or of trust property. Again, other property—in addition to the dwelling—may be involved in some cases.

Amendment 9 clarifies the operation of paragraph 4(3)(b) of proposed schedule 2A to the Land and Buildings Transaction Tax (Scotland) Act 2013. The amendment provides that, when a transaction is a mixed property transaction that contains residential and non-residential elements, the supplement is chargeable to the proportion of the chargeable consideration that is attributable to the dwelling or dwellings.

Amendment 9 has an anti-avoidance function, which is to ensure that any subordinate real rights relating to a dwelling that are acquired along with the dwelling are not artificially severed when people work out how much of the consideration is attributable to acquisition of the dwelling. As I said to the committee in my stage 1 evidence, the Scottish general anti-avoidance rule is on hand to deter and counteract artificial tax avoidance schemes. However, that should go hand in hand with legislation that is as clear and well ordered as possible.

I move amendment 2.

Amendment 2 agreed to.

The Convener: Amendment 3, in the name of the Deputy First Minister, is grouped with amendments 6, 10 to 12 and 33.

John Swinney: Amendments 3 and 6 ensure that only transactions with consideration of £40,000 or more are relevant to proposed new schedule 2A to the 2013 act. The bill includes a £40,000 threshold in relation to the value of properties that are already owned, but the amendments clarify that that is also separately relevant to the chargeable consideration that is paid for the purchase of a dwelling. There are detailed rules for determining chargeable consideration in the existing schedule 2 to the 2013 act.

Amendments 10 to 12 ensure that the £40,000 threshold for the consideration that is paid for the purchase of a property is included as one of the conditions for the purchase of a dwelling when there are joint buyers.

Amendment 33 makes a consequential amendment to the order-making power in paragraph 9(3) of schedule 2, reflecting that there are now three references to the £40,000 figure. We will debate the parliamentary procedure that is applicable to paragraph 9(3) orders separately in one of the later groups.

I move amendment 3.

Amendment 3 agreed to.

The Convener: Amendment 43, in the name of Gavin Brown, is grouped with amendment 17.

Gavin Brown: Amendment 43 is an attempt to deal with something that has become known as the accidental second home owner. Where somebody has a simple main residence and they decide to change their main residence, they will be liable to pay the tax if they have not managed to sell by the time they purchase a new property.

A huge number of transactions do not settle on the same day, for a huge number of reasons. Some fall through entirely in the first instance, which can lead to a delay of weeks or months, and some properties simply take longer to sell than was envisaged, given difficult market conditions. The amendment is an attempt to avoid that happening.

I draw members’ attention to the written submission from the Chartered Institute of Taxation, which says:

“The inclusion of reliefs and exemptions should follow the policy objectives.”

The policy objective, as set out in the memorandum from the Government, is clearly not to bring people who are in that category within the realm of the tax, particularly as some of them may be purchasing properties that would otherwise not be subject to land and buildings transaction tax at all because they are under the threshold. All of a sudden, they may have to pay 3 per cent on the entire purchase price.

The Chartered Institute of Taxation goes on to say:

“In addition, consideration should be given to the Adam Smith principles”.

I know that the cabinet secretary, the Government and the committee have attempted to stick to those pretty closely. On the ability to pay, which is the first of those principles, for a number of
people, it may be challenging suddenly to find thousands of pounds at short notice to cover the shortfall in the first instance—even if they get that money back, as I am sure they would in most cases—and the requirement is not necessarily linked to the ability to pay.

Mark McDonald (Aberdeen Donside) (SNP): Gavin Brown said that a significant number of transactions would fall into that category, but when we took evidence at stage 1 we were unable to get any hard data behind what was essentially anecdotal evidence. Can Gavin Brown provide a number? Does he have the data to hand, and can he put it on the record?

Gavin Brown: No. Mr McDonald raises a perfectly fair point. I did conveyancing for only six months, but from anecdotal evidence it was pretty obvious to me that between 10 and 15 per cent of transactions did not settle on the same day. I emphasise that that is anecdotal. I have formally requested the data that Mr McDonald quite fairly asks for and I was hoping to have it for stage 2, but it is not here—it looks like it will be here for stage 3.

If that anecdotal evidence from my experience is correct and the figure is 10 to 15 per cent, the number will potentially be up to 10,000 transactions, given that there were 99,000 transactions last year, so people in every constituency in the country would be affected. That is not an official figure and I advise everyone to treat it with caution, but it would not surprise me in the slightest if, when the figures come in, the number is of that magnitude.

John Mason (Glasgow Shettleston) (SNP): How would that work in practice? At the moment, it is fairly clear cut, in that people have to pay LBTT. If somebody has to chase 10,000 people—or perhaps even more—60 days afterwards, are we not inviting people to take the opportunity to slip through a loophole and never pay?

Gavin Brown: I do not think so. I take a more generous view of the taxpayer than the picture that Mr Mason attempts to create.

By their nature, almost all the transactions that we are discussing will involve solicitors to complete the legal procedures, and a limited number of firms are using the system, particularly the online system. Most people will ultimately settle—people do not want to pretend to move house; they actually want to move house—and keeping track of such cases will ultimately be more straightforward.

If my amendment is agreed to, we will avoid the bureaucracy of taking £3,000 here, £10,000 there and £20,000 there into the pot and then having to pay it back a week, a month, nine months or 17 months later. The system that is proposed in the bill is slightly messier than—or at least as messy and complex as—the system that is proposed in amendment 43.

On the principles, LBTT is not linked to the ability to pay. On the principle of certainty, it creates certainty that, if a person does not sell a house in time, they will pay the tax. That is a bit arbitrary, as sellers do not know whether they are definitely going to sell the house on the same day. The approach brings an uncertainty into the tax system.

On the principle of convenience, it is pretty inconvenient suddenly to have to find the money if a house does not sell on time, and as well as all the other stresses and strains that exist, it would be necessary to find some kind of bridging finance. The bureaucracy that was created would be greater than the bureaucracy that would, admittedly, be created with some form of exemption.

There is a personal injustice for those who would have to pay the tax at a time of stress, and there is a degree of bureaucracy. If there is a chain of transactions with each relying on the others to happen on the same day, but one of them falls through and the seller cannot find the £5,000 or £10,000 that will suddenly be needed at short notice and they pull out, what impact will that have on the market as a whole and on the chain?

From a wider, longer-term market perspective, if we end up in a situation in which sellers pretty much have to sell before they can buy, that will be a huge change to the way in which the market has operated in Scotland for decades, if not centuries, and ultimately it will mean a reduced number of transactions. People will be a lot more cautious about moving house.

For all those reasons, the committee reached the view that it did. We did not agree on the timing, so members may not agree with the 60 days that I propose. I have tried to reflect the average time that is taken to sell so that, in most cases, if one transaction falls through, the seller ought still to be able to meet the requirement.

I move amendment 43.

John Swinney: The committee has discussed a grace period and it was one of the main topics of interest in the stage 1 debate. Both the Law Society of Scotland and Revenue Scotland have contributed technical expertise on the matter to assist the Government in its consideration.

Amendment 17 allows for the possibility that a person could claim exemption from the supplement in the initial LBTT return. That may be possible in circumstances in which the sale of the previous main residence is completed before the LBTT return for acquisition of the new main
residence has to be submitted. There would therefore be no need for a supplement to be paid. That creates a grace period as part of the transaction.

However, I recognise that that does not provide a solution for all instances in which the purchase of a new dwelling takes place before the sale of an old one, because the purchaser will need to submit the tax return in order to register the title to the property. As I explained in the stage 1 debate, I will monitor the situation for the first six months and decide whether a further relief is required in the form of a grace period. That will give us an opportunity to tabulate the data to make sure that we can have an informed debate about the extent of the issue with which we are wrestling. There is an order-making power in the bill to allow a change to be made by secondary legislation.

09:15

Mr Brown’s amendment 43 seeks to amend the bill so that the supplement applies only if, at the end of the 60th day after the effective date of the transaction, the buyer owns more than one dwelling. It is not clear how the amendment is intended to work administratively, as the LBTT return must be submitted within 30 days of the effective date. The 60-day grace period would apply to all cases, which might conflict with the requirement for the return to be submitted within 30 days. The interaction between the two is therefore unclear. The period would apply to all cases and there would be no way of exempting a case.

It is unlikely that the buyer will, on the 60th day, still be a client of the solicitor who submitted the return or have any on-going engagement in that respect. I would therefore have compliance concerns about the obligation to ensure that all issues are resolved satisfactorily. That opens up the possibility of increased costs of compliance and the necessity to pursue potential debt liabilities. One of the founding approaches of Revenue Scotland has been to minimise the available debt approaches.

There is a facility for an individual who inadvertently ends up owning two properties to claw back the supplement if the sale goes through within 18 months of purchase. If there are concerns about the operation of the property market, it strikes me that that protection for individuals is more comprehensive than believing that such issues can be resolved within 60 days, as amendment 43 suggests.

I hope that the committee will take my assurance that amendment 17 allows for a grace period in certain circumstances and that I will monitor the number of cases in which the supplement is repaid shortly after being paid, in order to establish whether a further grace period is required.

On that basis, I ask Gavin Brown not to press amendment 43 and I invite the committee to support my amendment 17.

Gavin Brown: Technically, there would need to be a change to the return because of amendment 43, but there will have to be a change to it anyway as a consequence of the bill. We do not have a 3 per cent surcharge on all second homes. Changes to the return are not specifically captured in the legislation and can be dealt with by regulatory powers. That is not a huge objection.

The Chartered Institute of Taxation recommended a three-month period, which is longer than the period I am seeking, and it did not see the issue as one that could not be resolved.

John Swinney: The issue can be resolved. The question is whether it is desirable to resolve it. Parliament has to be mindful that there is an obligation in the tax arrangements that we have put in place to collect taxation liabilities timeously. In the LBTT legislation, Parliament decided that collection had to be complete within 30 days, which respects the point about timeous resolution of the issue. That would not be available to us if amendment 43 was agreed to.

Gavin Brown: I do not accept that that is true. Changes to the return could easily capture that. There could easily be boxes on the return that say, “We are selling our main residence” or “We are purchasing only a main residence. We are not attempting to be a second home owner and it is our intention to pay within 60 days if we have not sold”.

The GAAR that we have set up is pretty wide ranging and there is no huge risk of people slipping through the net. The greater risk is to the property market and the injustice to individuals of having to pay up front, although that might be administratively nicer and I am quite sure that Revenue Scotland would favour that approach.

The cabinet secretary said that the Government has spoken to the Law Society, but in my conversations with the Law Society in the past week, in its evidence and in the draft amendment that it submitted, it does not favour the approach that the Government suggests. Therefore, I do not think that the 30 days is a hurdle that could block my amendment.

I am not sure that I accept, either, that the purchaser would no longer be a client of the solicitor. Ultimately, if people have to pay the money up front and claw it back in the future, many people will require the assistance of a solicitor to do that. I am sure that some people will
deal directly with Revenue Scotland but, given that most people are not attached to the online system, they might well use the services of a solicitor to claw the money back. Solicitors are potentially going to be involved in those cases anyway so, again, I am not sure that that is a strong objection to my amendment.

If I got an indication from the Deputy First Minister that he is not against the principle of what I am suggesting and that he is genuinely open to exploring how we can exclude this kind of transaction from the ambit of the tax, I would be prepared not to press my amendment. He is sincere, and if he sincerely wished to explore that and attempt to agree an approach that captures all the risks and makes sure that we do not inadvertently set them up, I would be prepared not to press my amendment.

However, my impression is that he does not accept the principle and he wants to monitor the process for six months. Something that might initially have been an unforeseen consequence is now a foreseen consequence. In the absence of a hint from the Deputy First Minister that he accepts my principle, I press amendment 43.

The Convener: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baillie, Jackie (Dumbarton) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Brown, Gavin (Lothian) (Con)

Against
Gibson, Kenneth (Cunninghame North) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 43 disagreed to.

Amendments 4 to 6 moved—[John Swinney]—and agreed to.

The Convener: Amendment 7, in the name of the Deputy First Minister is in a group on its own.

John Swinney: Amendment 7 ensures that there is no double counting of properties that are treated as being owned by an individual and those treated as being purchased by a business. The amendment ensures that if the supplement is charged on the purchase of a dwelling because it is made by a business, for example a sole-trader property investment business or partnership, that dwelling is not included as being owned by the individual when that individual purchases a dwelling in their own right.

Amendment 7 also ensures that properties purchased through such businesses elsewhere in the world are similarly not included as being owned by the individual. That reflects the principle of equivalence.

I move amendment 7.

Amendment 7 agreed to.

Amendments 8 to 18 moved—[John Swinney]—and agreed to.

The Convener: Amendment 19, in the name of the Deputy First Minister is in a group on its own.

John Swinney: Amendment 19 ensures that there is no double counting of properties that are treated as being owned by an individual and those treated as being purchased by a business. The amendment ensures that if the supplement is charged on the purchase of a dwelling because it is made by a business, for example a sole-trader property investment business or partnership, that dwelling is not included as being owned by the individual when that individual purchases a dwelling in their own right.

Amendment 19 also ensures that properties purchased through such businesses elsewhere in the world are similarly not included as being owned by the individual. That reflects the principle of equivalence.

I move amendment 19.

Amendment 19 agreed to.

The Convener: Amendment 20, in the name of the Deputy First Minister, is grouped with amendments 23, 26 to 29, 35 and 36.

John Swinney: The policy for the bill is that to determine whether the supplement applies, it is necessary to count the number of dwellings that are owned by the buyer at the end of the effective date. In many cases that exercise will be simple, as the ownership in question will be a simple ownership in Scotland or elsewhere. However, what counts as ownership is not always straightforward. The key principle underpinning
this group of amendments is the principle of equivalence.

Amendment 20 clarifies how the rule about counting only dwellings that are worth £40,000 or more is intended to apply. The subtle change that it makes is that for counting owned properties, one no longer looks to the market value of the dwelling as such; one looks to the market value of the ownership interest. That change takes account of the fact that ownership interests will include equivalent interests that are deemed to be ownership, as we shall see in other amendments in the group. It reflects, for example, that the market value of a 90-year lease will be less than the market value of full ownership.

Amendment 20 also has an anti-avoidance function. It clarifies that the value of subordinate real rights that are attached to an ownership interest are not to be artificially severed so as to take the market value under £40,000.

Amendment 23 ensures that where a dwelling is subject to a bare trust, the beneficiary is treated as the owner. That treats bare trusts in the same way as other similar trust arrangements, under which the beneficiary has a significant interest in a dwelling that forms part of the trust property.

Amendment 26 is a technical drafting amendment for clarity and consistency.

Amendment 27 reflects the principle of no double counting. It clarifies that trustees and executors will not be treated as owning property in their care unless they are the owner for another reason, such as being a relevant beneficiary. It is the counterpart to paragraph 11, which treats the beneficiary as the owner.

Amendment 28 is principally intended to cover leasehold interests in England. The nuance is that it is done by reference to the closest approximation in Scots law—the notion of long leases, which are leases over 20 years. Long residential leases have always been rare in Scots law, and following implementation of the Long Leases (Scotland) Act 2012, they are now very rare. Nonetheless, a handful of long residential leases still exist, so where they exist they will be counted as ownership. That better delivers the principle of equivalence, in that a 90-year residential lease in Scotland and a 90-year leasehold in England—both exist quite commonly—will be treated equivalently.

Members will have noted the complexities that can arise when less common forms of ownership are an issue. I will ask members to bear that in mind when we debate the group of amendments that concerns delegated powers.

I move amendment 20.

Amendment 20 agreed to.

Amendments 21 to 29 moved—[John Swinney]—and agreed to.

The Convener: Amendment 30, in the name of the Deputy First Minister, is grouped with amendments 31 and 32.

John Swinney: The policy for the bill is that the supplement applies when the buyer owns two or more dwellings at the end of the effective date. Often all relevant dwellings will be in Scotland; however, all existing property holdings anywhere in the world are to be counted.

An important principle in the bill is the principle of equivalence—that an interest in a dwelling that is situated outside Scotland should be counted as ownership if the interest is equivalent to ownership in relation to a dwelling that is situated in Scotland. Currently the bill references United Kingdom stamp duty land tax legislation for interest in dwellings that are situated in the rest of the UK. Stakeholders have commented that that approach is not particularly clear, and I accept that.

The amendments in the group adopt a simpler approach that better delivers the principle of equivalence. The test for what counts as ownership of dwellings that are situated outside Scotland will be the same whether the dwellings are in or outside the UK. The test is whether they are equivalent to the Scottish ownership interests as set out in the bill.

In assessing whether an interest in a dwelling outside Scotland is equivalent to an ownership interest, account will also have to be taken of the deemed ownership rules in new schedule 2A for special cases, as discussed in relation to the previous group of amendments.

I move amendment 30.

Amendment 30 agreed to.

Amendments 31 to 33 moved—[John Swinney]—and agreed to.

09:30

The Convener: Amendment 34, in the name of the Deputy First Minister, is grouped with amendment 38.

John Swinney: During the stage 1 debate, members raised the challenges of legislating to an expedited timetable, particularly the risks—as they
The Land and Buildings Transaction Tax (Scotland) Act 2013, which the bill will amend, contains a number of delegated powers to ensure that there is flexibility in the LBTT legislation to react to changing circumstances. Those powers allowed for the development, for example, of a targeted sub-sale development relief, which was enacted by order last year. In introducing this bill, I proposed a measured package of delegated powers for the supplement, which are contained in paragraph 14 of proposed schedule 2A. Having reflected on the stage 1 evidence, I consider it appropriate, in the interests of flexibility and future proofing, to propose additional delegated powers to amend certain aspects of proposed schedule 2A. That is what amendment 34 does.

Partnerships and trust arrangements can be complex and can give rise to some of the most difficult aspects of LBTT policy and practice. There are existing regulation-making powers in the 2013 act to amend the LBTT treatment of partnerships and trusts, but they do not extend to schedule 2A for the supplement. Amendment 34 would therefore introduce an equivalent power for schedule 2A, which is consistent with the existing power.

In a previous group, we discussed amendments to part 6 of schedule 2A, to improve and clarify the rules on what counts as ownership. I consider that is another aspect of schedule 2A where there should be power to adjust the provisions by regulations in the months and years ahead. I have in mind the complexity of some ownership arrangements, particularly cross-border arrangements or arrangements to mask true ownership.

Finally, I propose a power to amend the interpretive paragraph 15, which is consistent with the existing power in the 2013 act allowing for the definition of “dwelling” to be adjusted in other schedules should that prove necessary in future.

Amendment 38 ensures that the regulation-making power inserted by amendment 34 is subject to affirmative procedure, which I consider appropriate given that exercise of the power would affect a taxpayer’s position in terms of their liability to the supplement.

I move amendment 34.

Amendment 34 agreed to.

Amendments 35 to 37 moved—[John Swinney]—and agreed to.

Section 1, as amended, agreed to.

Section 2—Consequential amendments

Amendment 38 moved—[John Swinney]—and agreed to.
Section 3—Transitional provision: application of this Act

The Convener: Amendment 42, in the name of the Deputy First Minister, is in a group on its own.

John Swinney: It is settled policy that the bill will apply only to transactions with an effective date on or after 1 April 2016. There have been calls for me to delay that date but I have been clear with Parliament that the supplement should come into force as planned to protect first-time buyers from the impacts of higher rates of stamp duty land tax in the rest of the United Kingdom. However, there is a second limb to the transitional policy, which is currently pegged to 16 December 2015—the date on which I made my 2016-17 budget statement and announced the LBTT supplement. That limb requires missives to have been concluded on or after that date.

It has been put to the Scottish Government that some purchases that were agreed in principle before my announcement would not have progressed to conclusion of missives until a short while later and so would be caught. I have sympathy with those cases. I therefore propose changing the conclusion of missives cut-off date to 28 January 2016, which is the date on which the bill and accompanying documents were published.

Therefore, the transitional policy will be that the bill will apply in relation to a chargeable transaction where missives were concluded on or after 28 January 2016 and the effective date of the transaction is on or after 1 April 2016. That will provide fairness for taxpayers while not being so generous that undue opportunities for forestalling become available.

I move amendment 42.

Amendment 42 agreed to.

Section 3, as amended, agreed to.

Sections 4 to 6 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. The bill will now be reprinted as amended and will be available in print tomorrow morning. Parliament has already agreed that stage 3 proceedings will take place next Tuesday, 8 March, and that the deadline for lodging stage 3 amendments will be noon this Friday, 4 March.
Land and Buildings Transaction Tax (Amendment) (Scotland) Bill
[AS AMENDED AT STAGE 2]

CONTENTS

Section
1 Land and buildings transaction tax: second homes etc.
2 Consequential amendments
3 Transitional provision: application of this Act
4 Ancillary provision
5 Commencement
6 Short title
Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Land and Buildings Transaction Tax (Amendment) (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to amend the Land and Buildings Transaction Tax (Scotland) Act 2013 to make provision about an additional amount of tax to be chargeable in respect of certain transactions relating to dwellings.

1 Land and buildings transaction tax: second homes etc.

5 (1) The Land and Buildings Transaction Tax (Scotland) Act 2013 is amended as follows.

(2) After section 26 insert—

“26A Additional amount: transactions relating to second homes etc.

Schedule 2A makes provision about an additional amount of tax chargeable in respect of certain chargeable transactions.”.

10 (3) After schedule 2 insert—

“SCHEDULE 2A
(introduced by section 26A)

ADDITIONAL AMOUNT: TRANSACTIONS RELATING TO SECOND HOMES ETC.

PART 1

OVERVIEW

Overview

1 (1) This schedule makes provision about an additional amount of tax chargeable in respect of certain chargeable transactions.

(2) It is arranged as follows—

Part 2 identifies the transactions to which this schedule applies,

Part 3 sets out the additional amount of tax,

Part 4 contains provision about the application of this schedule in relation to certain types of buyer,

Part 5 provides for repayment of and relief from the additional amount of tax in certain cases,
Part 6 contains special rules about the meaning of ownership of dwellings for the purposes of this schedule,

Part 7 contains general provision including powers to modify this schedule.

**PART 2**

**TRANSACTIONS TO WHICH THIS SCHEDULE APPLIES**

*Transactions relating to second homes etc.*

2 (1) This schedule applies to a chargeable transaction if the following conditions are satisfied—

   (a) the subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling,
   
   (aa) the chargeable consideration for the transaction is £40,000 or more,
   
   (b) at the end of the day that is the effective date of the transaction, the buyer owns more than one dwelling, and
   
   (c) the buyer is not replacing the buyer’s only or main residence.

(2) A buyer is replacing the buyer’s only or main residence if—

   (a) during the period of 18 months ending with the effective date of the transaction, the buyer has disposed of the ownership of a dwelling,
   
   (b) that dwelling was the buyer’s only or main residence at any time during the period of 18 months, and
   
   (c) on the effective date of the transaction, the buyer intends to occupy the dwelling that is or forms part of the subject-matter of the transaction as the buyer’s only or main residence.

*Transactions where buyer is a non-individual etc.*

3 (1) This schedule applies to a chargeable transaction if the following conditions are satisfied—

   (a) the subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling,
   
   (aa) the chargeable consideration for the transaction is £40,000 or more, and
   
   (b) the buyer—
      
      (i) is not an individual, or
      
      (ii) is an individual and sub-paragraph (2) or (5) applies.

(2) This sub-paragraph applies if the acquisition is made in the course of a business of the individual the sole or main activity of which is investing or dealing in chargeable interests.

(3) Sub-paragraph (2) of paragraph 31 of schedule 17 applies for the purposes of sub-paragraph (2) of this paragraph as it applies for the purposes of paragraph 31(1) of that schedule.

(4) In sub-paragraph (2), the reference to a business of the individual includes a reference to a business of a partnership of which the individual is a partner.
(5) This sub-paragraph applies if the individual is making the acquisition as trustee under a settlement (other than a settlement under the terms of which the beneficiary has a relevant interest in any dwelling that is or forms part of the trust property).

PART 3
THE ADDITIONAL AMOUNT

Additional amount

4 (1) Where this schedule applies to a chargeable transaction, the amount of tax chargeable in respect of the transaction (as determined under section 25(1) or 26(1)) is increased by the additional amount.

(2) The additional amount is an amount equal to 3% of the relevant consideration.

(3) The relevant consideration is—
(a) in a case where the transaction is a residential property transaction, the chargeable consideration for the transaction, or
(b) in a case where the transaction is a non-residential property transaction, so much of the chargeable consideration for the transaction as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of the dwelling (including any interest or right pertaining to ownership of the dwelling) that is or forms part of the subject-matter of the transaction.

PART 4
CERTAIN TYPES OF BUYER

Joint buyers

5 (1) This paragraph applies to a chargeable transaction which satisfies the conditions in paragraph 2(1)(a) and (aa) or 3(1)(a) and (aa) if there are two or more buyers who are or will be jointly entitled to ownership of the dwelling.

(2) The conditions set out in paragraph 2(1)(b) and (c) or, as the case may be, 3(1)(b) are satisfied if they are satisfied in relation to any one of, or more than one of, the buyers.

Spouses, civil partners, cohabitants and children

6 (1) For the purposes of paragraph 2(1)(b), a dwelling which is owned by—
(a) the buyer’s spouse or civil partner,
(b) the buyer’s cohabitant,
(c) a person aged under 16 who is a child of—
(i) the buyer,
(ii) the buyer’s spouse or civil partner, or
(iii) the buyer’s cohabitant,
is to be treated as being owned by the buyer.
(2) Sub-paragraphs (1)(a) and (1)(c)(ii) do not apply if the buyer and the buyer’s spouse or civil partner have separated.

(3) For the purposes of sub-paragraph (2), the parties have separated if—
(a) they no longer live together, and
(b) they do not intend to live together again.

(4) For the purposes of sub-paragraphs (1)(b) and (1)(c)(iii), a person is the buyer’s cohabitant if the two of them live together as though married to one another.

Trustees in certain trusts

7 (1) This paragraph applies to a chargeable transaction which satisfies the condition in paragraph 2(1)(a) if—
(a) the buyer is acting as trustee of a settlement, and
(b) the beneficiary under the settlement has a relevant interest in a dwelling that is or forms part of the trust property.

(2) In paragraphs 2(1)(b) and (c), 2(2)(b) and (c), 5, 6 and 8(1)(b) and (c), references to the buyer are to be read as if they were references to the beneficiary.

(3) In paragraphs 2(2)(a) and 8(1)(a), references to the buyer are to be read as including references to the beneficiary.

PART 5

REPAYMENT OF AND RELIEF FROM THE ADDITIONAL AMOUNT

Repayment of additional amount in certain cases

8 (1) Sub-paragraph (2) applies in relation to a chargeable transaction to which this schedule applies by virtue of paragraph 2 if—
(a) within the period of 18 months beginning with the day after the effective date of the transaction, the buyer disposes of the ownership of a dwelling (other than one that was or formed part of the subject-matter of the chargeable transaction),
(b) that dwelling was the buyer’s only or main residence at any time during the period of 18 months ending with the effective date of the transaction, and
(c) the dwelling that was or formed part of the subject-matter of the transaction has been occupied as the buyer’s only or main residence.

(2) Where this sub-paragraph applies—
(a) the chargeable transaction is to be treated as having been exempt from the additional amount, and
(b) if the buyer has made a land transaction return in respect of the transaction, the buyer may take one of the steps mentioned in sub-paragraph (3).

(3) The steps are—
(a) within the period allowed for amendment of the land transaction return, amend the return accordingly, or
(b) after the end of that period (if the land transaction return is not so amended), make a claim to the Tax Authority under section 107 of the Revenue Scotland and Tax Powers Act 2014 for repayment of the amount overpaid.

(4) For the period allowed for amendment of returns, see section 83 of the Revenue Scotland and Tax Powers Act 2014.

Relief for purchases of 6 or more dwellings

8A A chargeable transaction is exempt from the additional amount if it is a transaction to which section 59(8) applies.

Relief: supplemental

8B(1) A relief under paragraph 8A must be claimed in the first return made in relation to the transaction or in an amendment of that return.

(2) For the period allowed for amendment of returns, see section 83 of the Revenue Scotland and Tax Powers Act 2014.

PART 6
OWNERSHIP OF DWELLINGS

What counts as a dwelling owned by a person?

9 (1) This paragraph applies to determine what counts as a dwelling owned by a person for the purposes of this schedule.

(2) Dwellings situated outside Scotland (as well as such property in Scotland) are to be counted.

(2A) A dwelling owned by a person is not to be counted for the purposes of paragraph 2(1)(b) if the acquisition of ownership of the dwelling by the person—

(a) is or was a chargeable transaction to which this schedule applies by virtue of paragraph 3, or

(b) would have been such a chargeable transaction but for the fact that the dwelling is situated outside Scotland.

(3) Ownership of a dwelling (other than one that is or forms part of the subject-matter of the chargeable transaction) is not to be counted if the market value of the ownership interest is less than £40,000.

(4) In determining the market value of the ownership interest in a dwelling for the purposes of sub-paragraph (3), the market value of any interest or right pertaining to ownership of the dwelling is to be included.

Deemed ownership: cases where title is not yet registered etc.

10 (1) This paragraph applies to determine, for the purposes of this schedule, when a person owns any dwelling where ownership of the dwelling is or has been the subject-matter or part of the subject-matter of a land transaction.
(2) Where the person is the buyer in relation to the transaction, the person is to be treated for the purposes of this schedule as owning the dwelling as from the end of the day that is the effective date of the transaction.

(3) Where the person is the seller in relation to the transaction, the person is to be treated for the purposes of this schedule as ceasing to own the dwelling as from the end of the day that is the effective date of the transaction.

(4) In the application of this paragraph to a dwelling situated in England, Wales or Northern Ireland, “land transaction” and “effective date” have the same meanings as they have in Part 4 of the Finance Act 2003 (stamp duty land tax).

(5) In the application of this paragraph to a dwelling situated outside the United Kingdom—

(a) “land transaction” means any transaction for the transfer of ownership of the dwelling, and

(b) “effective date” means the date of settlement or completion of the transaction (or of any event that is equivalent to settlement or completion of the transaction).

Deemed ownership: beneficiaries under certain trusts

11 (1) This paragraph applies where a person is the beneficiary under—

(a) a bare trust, or

(b) a settlement under the terms of which the beneficiary has a relevant interest in any dwelling that is or forms part of the trust property.

(2) For the purposes of this schedule, the beneficiary is to be treated as the owner of the dwelling.

(4) References in this schedule to “ownership” and “acquisition of ownership” are to be read accordingly.

Dwellings owned by trustees or personal representatives

11A(1) This paragraph applies where a person owns a dwelling as—

(a) a trustee, or

(b) a personal representative of another.

(2) For the purposes of this schedule, the person is to be treated as not being the owner of the dwelling.

(3) Sub-paragraph (2) does not affect the operation of any other provision of this schedule by which the person is to be treated as the owner of the dwelling.

Deemed ownership: long leases

11B(1) This paragraph applies where a person (“the tenant”) is the tenant under a lease of a dwelling for a term of more than 20 years.

(2) For the purposes of this schedule—

(a) the tenant is to be treated as the owner of the dwelling, and

(b) the landlord under the lease is to be treated as not being the owner.
(3) References in this schedule to “ownership” and “acquisition of ownership” are to be read accordingly.

Deemed ownership: proper liferents

11C(1) This paragraph applies where a person (“the liferenter”) holds a liferent over a dwelling under a proper liferent.

(2) For the purposes of this schedule—

(a) the liferenter is to be treated as the owner of the dwelling, and

(b) the granter of the liferent and the fiar are to be treated as not being the owner.

(3) References in this schedule to “ownership” and “acquisition of ownership” are to be read accordingly.

Deemed ownership: joint owners and owners of shares

12 (1) This paragraph applies where two or more persons are jointly entitled to the ownership of a dwelling.

(2) For the purposes of this schedule, each of the persons is to be treated as the owner of the dwelling.

(3) In the application of this paragraph to a dwelling situated in England, Wales or Northern Ireland, “jointly entitled” has the meaning given in section 121 of the Finance Act 2003 (minor definitions).

(4) In the application of this paragraph to a dwelling situated outside the United Kingdom, “jointly entitled” means having an interest equivalent to being jointly entitled within the meaning of this Act or the Finance Act 2003.

Dwellings outside Scotland: what counts as “ownership”

13 (2) In the case of a dwelling situated outside Scotland, a person owns the dwelling for the purposes of this schedule if the person has an interest in it that is equivalent to ownership in Scotland.

(3) References in this schedule to “ownership” and “acquisition of ownership” are to be read accordingly.

PART 7

GENERAL PROVISION

Power of Scottish Ministers to modify schedule

14 (1) The Scottish Ministers may by order amend paragraph 4(2) so as to substitute, for the percentage figure for the time being specified there, a different percentage figure.

(2) The Scottish Ministers may by order amend paragraph 2(1)(aa), 3(1)(aa) or 9(3) so as to substitute, for the figure for the time being specified there, a different figure.
(3) The Scottish Ministers may by order modify this schedule so as to make provision for or about reliefs from the additional amount and, in particular, may—

(a) add a relief,

(b) modify any relief,

(c) remove any relief.

(3A) The Scottish Ministers may by regulations modify the following provisions of this schedule—

(a) Part 4 so far as relating to the application of this schedule in relation to—

(i) partnerships,

(ii) trusts,

(b) Part 6 (except paragraph 9(3)),

(c) paragraph 15.

(4) An order under sub-paragraph (3) may modify any other enactment that the Scottish Ministers consider appropriate.

Interpretation

15 (1) In this schedule—

“bare trust” has the meaning given in paragraph 19 of schedule 18,

“settlement”, except in paragraph 10(5)(b), has the meaning given in paragraph 21 of schedule 18.

(2) Part 6 of schedule 5 (what counts as a “dwelling”) applies for the purposes of this schedule as it applies for the purposes of schedule 5.

(3) For the purposes of this schedule, a beneficiary under a settlement has a relevant interest in a dwelling that is or forms part of the trust property if the beneficiary is entitled to—

(a) occupy the dwelling for life, or

(b) income (whether net or gross) in respect of the dwelling.”.

2 Consequential amendments

(1) In the Land and Buildings Transaction Tax (Scotland) Act 2013—

(a) in section 25(3) (amount of tax chargeable), before paragraph (a) insert—

“(za) schedule 2A (additional amount: transactions relating to second homes etc.),”,

(b) in section 26(4) (amount of tax chargeable: linked transactions), before paragraph (a) insert—

“(za) schedule 2A (additional amount: transactions relating to second homes etc.),”,

(c) in section 68 (subordinate legislation)—

(i) in subsection (2), after paragraph (j) insert—

“(ja) paragraph 14(3) or (3A) of schedule 2A,”,
(iii) for subsection (5) substitute—

“(5) The order is an order under—

(a) section 24(1),
(b) paragraph 14(1) or (2) of schedule 2A, or
(c) paragraph 3 of schedule 19.”,

(d) in schedule 5 (multiple dwellings relief)—

(i) in paragraph 10, after “relevant transaction” insert “other than one to which
schedule 2A applies”,

(ii) after paragraph 10 insert—

“10A The amount of tax chargeable in relation to a relevant transaction to which
schedule 2A applies is—

\[ \sum DT + RT \]

where—

DT is the tax due in relation to each dwelling that is, or is part of, the
main subject-matter of the transaction, and

RT is the tax due in relation to the remaining property.”,

(iii) in paragraph 11, after “DT x ND” insert “or, as the case may be, \( \sum DT \)”,

(iv) in paragraph 13, after Step 3 insert—

“Step 4

In the case of a relevant transaction to which schedule 2A applies, carry out
Step 3 (taking account of any relief applicable to the transaction under
paragraph 8A of that schedule) in relation to each dwelling that is, or is part of,
the main subject matter of the transaction to find the tax due in relation to each
dwelling.”.

(2) In section 108(3) of the Revenue Scotland and Tax Powers Act 2014 (claim for
repayment if order changing tax basis not approved), in column 1 of the table, in the
entry for the LBTT(S) Act 2013, after paragraph (a) insert—

“(aa) an order under paragraph 14(1) or (2) of schedule 2A,”.

3 Transitional provision: application of this Act

(1) This Act applies in relation to a chargeable transaction where—

(a) the contract for the transaction was entered into on or after 28 January 2016, and

(b) the effective date of the transaction is on or after the day on which section 1
comes into force.

(2) For the purposes of this section, “chargeable transaction”, “contract” and “effective
date” have the same meanings as in the Land and Buildings Transaction Tax (Scotland)
Act 2013.
4 Ancillary provision

(1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with, or for giving full effect to, this Act.

(2) Regulations under subsection (1) may—

(a) modify any enactment (including this Act),

(b) make different provision for different purposes.

(3) Regulations under subsection (1)—

(a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,

(b) otherwise, are subject to the negative procedure.

5 Commencement

(1) This section and sections 4 and 6 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on whichever is the later of—

(a) the day after Royal Assent,

(b) 1 April 2016.

6 Short title

The short title of this Act is the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016.
Land and Buildings Transaction Tax (Amendment) (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to amend the Land and Buildings Transaction Tax (Scotland) Act 2013 to make provision about an additional amount of tax to be chargeable in respect of certain transactions relating to dwellings.

Introduced by: John Swinney
On: 27 January 2016
Bill type: Government Bill
REVISED EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament‘s Standing Orders, these revised Explanatory Notes are published to accompany the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (introduced in the Scottish Parliament on 27 January 2016) as amended at Stage 2. Text has been added or amended as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

4. The Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (“the Bill”) is a Bill to amend the Land and Buildings Transaction Tax (Scotland) Act 2013 (“the 2013 Act“). The 2013 Act imposes a tax on transactions involving the acquisition of chargeable interests in land in Scotland (for example, a standard house purchase) and the Bill will increase the amount of tax for certain transactions. The tax is known as Land and Buildings Transaction Tax or LBTT and is sometimes referred to informally as “Stamp Duty”\(^1\). LBTT is administered by Revenue Scotland, with assistance from the Registers of Scotland, under the Revenue Scotland and Tax Powers Act 2014 (“the 2014 Act“). LBTT is a self-assessed tax and registration of title can generally not be obtained unless a tax return has been made and arrangements satisfactory to Revenue Scotland have been made for payment of any tax.

5. Since being enacted in 2013, the 2013 Act has been amended by—
   • paragraph 9 of schedule 4 to the 2014 Act;

\(^1\) It is important to note however that, strictly, Stamp Duty is a separate and unrelated reserved tax administered by Her Majesty’s Revenue and Customs (HMRC).
This document relates to the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill as amended at Stage 2 (SP Bill 85A)

- the Land and Buildings Transaction Tax (Qualifying Public or Educational Bodies) (Scotland) Amendment Order 2014;
- the Land and Buildings Transaction Tax (Addition and Modification of Reliefs) (Scotland) Order 2015; and
- the Land and Buildings Transaction Tax (Sub-sale Development Relief and Multiple Dwellings Relief) (Scotland) Order 2015.

6. Therefore the amendments provided for in the Bill, as further described below, are additional to these amendments already in effect. It is proposed that the new amendments will be in force for 1 April 2016 for land transactions with an effective date on or after that date, unless missives were concluded before 28 January 2016 which was the date on which the Bill was published on the Scottish Parliament’s website together with accompanying documents.

7. Since the 2014 Act already contains all of the powers required for Revenue Scotland to administer the additional amount of tax provided for in the Bill, and carry out compliance work, the Bill makes only one consequential amendment to that Act (at section 2(2) of the Bill). Part 5 of the 2014 Act, for example, sets out the Scottish General Anti-avoidance Rule and this would apply to tax avoidance concerning the additional tax.

THE BILL

Overview

8. The Bill comprises 6 sections, of which section 1 is the principal measure, introducing a new schedule 2A into the 2013 Act. Within schedule 2A—

- Part 2 identifies the transactions to which schedule 2A applies,
- Part 3 sets out the additional amount of tax,
- Part 4 contains provision about the application of schedule 2A in relation to certain types of buyer,
- Part 5 provides for repayment of and relief from the additional amount of tax in certain cases,
- Part 6 contains special rules about the meaning of ownership of dwellings for the purposes of schedule 2A,
- Part 7 contains general provision including powers to modify schedule 2A.

9. The drafting approach employed means that for the most standard residential property transaction – where an individual or couple replace their main residence – the 2013 Act will apply exactly as it would in the absence of the Bill, and therefore the main body of the 2013 Act is not substantively affected. Where the new provisions are in issue, tax agents will know to look to schedule 2A for all relevant provisions concerning the additional amount of tax.
10. For more general guidance on the 2013 Act, see the Explanatory Notes to that Act as passed and Revenue Scotland’s detailed legislative guidance for LBTT.

**Operation of additional tax provisions**

**Example: Operation of additional tax provisions in relation to a purchase of second home**

*Note: references to provisions of legislation are references to provisions of the 2013 Act as amended by the Bill*

Justin and Brenda, a married couple, purchased their first home in the later part of 2015 and the transaction was subject to LBTT. Justin and Brenda now propose to buy a second home for £105,000 in the later part of 2016, of which £5,000 is apportioned to moveables such as curtains. But for the additional amount of tax there would be no LBTT payable because chargeable consideration of £100,000 (section 17 and schedule 2) is within the nil rate band for residential property transactions.

The additional amount applies because (i) the subject-matter of the transaction (section 61) consists of or includes the acquisition of ownership of a dwelling (Part 6 of schedule 5), (ii) at the end of the effective date (the tax point; section 63) Justin and Brenda own more than one dwelling, and (iii) Justin and Brenda are not replacing their existing home (paragraph 2 of new schedule 2A). Because Justin and Brenda are married, the additional tax applies irrespective of whether title to the original and new houses are in the name of both Justin and Brenda, or in the name of one or the other (paragraph 6 of new schedule 2A).

The additional amount of tax applicable is £3,000, being 3% of the chargeable consideration (paragraph 4 of new schedule 2A). Therefore the total amount of LBTT payable is £3,000.

Were the chargeable consideration £200,000 for this second home purchase the calculation would be as follows:

**Standard amount of LBTT payable**

The first £145,000 falls within the nil rate band

The remaining £55,000 falls within the first tax band charged at 2%

The standard amount of LBTT payable is therefore £1,100

**Additional amount of LBTT payable**

The whole chargeable consideration of £200,000 is charged at 3%

The additional amount of LBTT payable is therefore £6,000

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**Total amount of LBTT payable**

The total amount of LBTT payable is the sum of the standard and additional amounts and is therefore £7,100

**Diagram**

- How many dwellings worth £40,000 or more do you own at the end of the effective date?
  - **One:** The additional amount of tax does not apply.
  - **Two or more:** Is the property being purchased a replacement of your only or main residence?
    - **Yes:** The additional amount of tax does not apply.
    - **No:** The additional amount of tax applies but you will be entitled to claim refund if previous residence is sold within 18 months of effective date.

**COMMENTARY ON SECTIONS**

**Section 1 – Land and buildings transaction tax: second homes etc.**

11. Section 1(2) of the Bill inserts a new section 26A (additional amount: transactions relating to second homes etc.) into the 2013 Act. This new section will appear at the end of Part 3 of the 2013 Act (calculation of tax and reliefs) and will appear after sections 25 and 26 (which concern the amount of LBTT chargeable without reference to the additional tax), and before section 27 concerning reliefs. Section 26A simply introduces new schedule 2A (additional amount: transactions relating to second homes etc.) which is inserted by section 1(3) of the Bill. The new schedule will appear after schedule 2 (chargeable consideration) and before schedule 3 (sale and leaseback relief; the first of a number of reliefs of general application to LBTT).

12. Because schedule 2A will form part of the 2013 Act, key concepts and defined terms applying throughout that Act will also apply to the schedule. There is, therefore, no need for the Bill to repeat or re-enact these things. Key concepts are set out in Part 2 of the 2013 Act and defined terms are referenced in Part 7 and schedule 20, subject to the more specific provision in schedule 2A which is described below.
Part 1 of schedule 2A - Overview

Paragraph 1 of schedule 2A – Overview

13. Paragraph 1 provides an overview of new schedule 2A (see paragraph 8 of these Explanatory Notes above).

Part 2 of schedule 2A – Transactions to which this schedule applies

Paragraph 2 of schedule 2A – Transactions relating to second homes etc.

14. Paragraph 2 is relevant to the standard case where the buyer of a dwelling is an individual or couple. It applies where the subject-matter of a chargeable transaction consists of, or includes, the acquisition of ownership of a dwelling in Scotland. This would cover the standard purchase of a house or flat. “Ownership” in this context will often mean ordinary ownership but an extended meaning of ownership (covering, for example, liferents) is provided in Part 6 (ownership of dwellings). In the particular case of long leases, acquisitions of residential long leases are exempt from LBTT unless the lease is a “qualifying lease” (paragraph 3 of schedule 1 to the 2013 Act).

15. Paragraph 2 only applies if the chargeable consideration (usually the purchase price) for the transaction is £40,000 or more. £40,000 is the notification threshold for acquisitions of the ownership of land under section 30(1)(b) of the 2013 Act. Where a second home in Scotland is bought for the bona fide sum of £35,000 there is no ordinary LBTT payable, nor is any additional tax payable. However, as mentioned, were the chargeable consideration £45,000 the additional amount will be payable on the whole of the consideration including the first £40,000 (resulting in a tax charge of £1,350).

16. Paragraph 2 also only applies the additional tax in schedule 2A where at the end of the day that is the effective date of the transaction (the tax point; usually the date of settlement) the buyer owns more than one dwelling and the buyer is not replacing the buyer’s only or main residence. Therefore where the buyer is replacing their only or main residence the additional amount of tax does not apply even though they may own two or more dwellings at the end of the effective date.

17. The meaning of replacing the buyer’s only or main residence is provided in sub-paragraph (2). This requires the buyer to have sold their previous residence within the 18 months preceding the effective date and requires the buyer to intend to occupy the new residence as their only or main residence.

18. In most cases where paragraph 2 applies, the transaction will be a residential property transaction within the meaning of section 24(3) of the 2013 Act. However, paragraph 2 potentially also applies in cases where the acquisition of a dwelling is taxed as a non-residential property transaction in terms of section 24(4) (so called “mixed” transactions). Where section 59(8) (the “six plus” rule for purchases of multiple dwellings) applies, paragraph 2 also potentially applies, though relief under paragraph 8A will be available.

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5 Tables of rates and bands for residential and non-residential property transactions respectively are set out in the Land and Buildings Transaction Tax (Tax Rates and Tax Bands) (Scotland) Order 2015 (S.S.I. 2015/126).
19. Where it has not been possible to sell a previous main residence, but that happens within the 18 months following the effective date, paragraph 8 provides that repayment of the additional tax paid may be claimed.

20. Interpretative provisions of the 2013 Act relevant to paragraph 2—

<table>
<thead>
<tr>
<th>Term</th>
<th>Section or Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>“buyer”</td>
<td>section 7</td>
</tr>
<tr>
<td>“chargeable consideration”</td>
<td>section 17 and schedule 2</td>
</tr>
<tr>
<td>“chargeable transaction”</td>
<td>section 15</td>
</tr>
<tr>
<td>“dwelling”</td>
<td>Part 6 of schedule 5</td>
</tr>
<tr>
<td>“effective date”</td>
<td>section 63</td>
</tr>
<tr>
<td>“subject-matter”</td>
<td>section 61</td>
</tr>
<tr>
<td>what counts as a dwelling owned/disposed of</td>
<td>Part 6 of schedule 2A.</td>
</tr>
</tbody>
</table>

21. “Only or main residence” is not a defined term and in most cases where there are multiple dwellings it will be straightforward to determine which is the main residence, for example where additional residences are clearly holiday homes. Revenue Scotland will publish guidance on the factors it will look to for the smaller number of cases that are less straightforward.

Paragraph 3 of schedule 2A – Transactions where buyer is a non-individual etc.

22. Paragraph 3 is relevant to less standard cases where the buyer of a dwelling is not an individual or couple purchasing for their domestic interests. It applies therefore to purchases by companies and sub-paragraph (2) concerns purchases by individuals acting as sole traders, if the sole or main activity of that business is the buying or investing in property.

23. Paragraph 3 of schedule 17 to the 2013 Act (chargeable interests treated as being held by partners etc.) applies to schedule 2A as it applies to the rest of the 2013 Act, where the buyer is a partnership within the meaning of paragraph 2 of schedule 17. Chargeable transactions where the purchaser is a partnership will, therefore, be relevant to paragraph 3 if they are made in the course of the business mentioned in paragraph 22, and if they are not made in the course of such a business, such purchases will be relevant to paragraph 2.

24. Purchases by trustees, unless a beneficiary of the trust has an interest in the dwelling bought that is similar to that of an owner of the dwelling, will be relevant to paragraph 3. If the trust beneficiary does have an interest similar to that of an owner of the dwelling, that beneficiary will be treated as the buyer and (unless other conditions in paragraph 3 apply) the transaction will be relevant to paragraph 2.

25. As with paragraph 2, paragraph 3 only applies if the chargeable consideration (usually the purchase price) for the transaction is £40,000 or more.

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6 The singular “individual” includes the plural “individuals” by virtue of section 22 of the Interpretation and Legislative Reform (Scotland) Act 2010.
26. Also as with paragraph 2, the reference to “chargeable transaction” means that, where a transaction is exempt or where 100% relief applies, the transaction will not be subject to schedule 2A. For example, charities relief under schedule 13 to the 2013 Act provides for 100% relief.

27. The key difference from paragraph 2 is that the additional amount of tax in schedule 2A is relevant even where the legal buyer only owns one dwelling at the end of the effective date. In other words, the replacement of main residence test is not relevant. This is principally for anti-avoidance reasons because if schedule 2A were to apply to individuals only there would be an incentive for individuals to purchase dwellings via a corporate “wrapper” or “envelope”.

28. Interpretative provisions of the 2013 Act relevant to paragraph 3—

“buyer” section 7
“chargeable consideration” section 17 and schedule 2
“chargeable transaction” section 15
“dwelling” Part 6 of schedule 5
“subject-matter” section 61.

Part 3 of schedule 2A – The additional amount

Paragraph 4 of schedule 2A – The additional amount

29. Sections 25 and 26 of the 2013 Act provide for the general charge to LBTT being calculated on a “progressive” basis according to tables of rates and bands. There is a nil rate band which currently extends to £145,000, though transactions of £40,000 or above are “notifiable” and a tax return must be sent in to Revenue Scotland. As mentioned, that will continue to be the end of the matter for the most standard residential property transaction where an individual or couple purchase their main residence, (i.e. when they replace their existing one or buy their first one)

30. Where paragraphs 2 or 3 of schedule 2A bring a transaction within schedule 2A an additional amount of tax is applied by paragraph 4, calculated on a “slab” basis. For “residential property transactions” this applies to the whole of the chargeable consideration of the transaction, therefore the first £40,000 of chargeable consideration is relevant to the calculation. For such transactions between £40,000 and £145,000 this will mean that LBTT liability will be increased from nil. The applicable tax rate is 3%.

31. As mentioned, in some cases a transaction that is a “non-residential property transaction” will be within schedule 2A in which case sub-paragraph (3) of paragraph 4 introduces a new concept of “relevant consideration” which is the proportion of the chargeable consideration attributable to the dwellings and any subordinate real rights pertaining to the dwellings.

32. Interpretative provisions of the 2013 Act relevant to paragraph 4—

“chargeable consideration” section 17 and schedule 2
“chargeable transaction” section 15
This document relates to the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill as amended at Stage 2 (SP Bill 85A)

“non-residential property transaction” sections 24(4) and 59(8)
“residential property transaction” section 24(3).

Part 4 of schedule 2A – Certain types of buyer

Paragraph 5 of schedule 2A – Joint buyers

33. Paragraph 5 – which is relevant to chargeable transactions - deals with the not uncommon case where a couple buy a dwelling. Where the couple each take a share of the ownership of the title they will be treated for the purposes of paragraph 2 of schedule 2A as if they 100% own the dwelling. Paragraph 12 of schedule 2A – which is relevant to existing ownership - is also relevant since it deems each person that is jointly entitled to the ownership of a dwelling to be the owner of the dwelling. The definition of “jointly entitled” covers common property in Scots law.

34. The same also applies to other cases where there are two or more buyers, in other words to cases where the jointly entitled persons are not a couple. For example, if siblings were to inherit equal shares in the ownership of a dwelling, each sibling would be treated as the 100% owner for the purposes of paragraph 2 of schedule 2A.

35. The effect of paragraph 5 of schedule 2A is that the conditions in paragraph 2(1)(b) and (c) and 3(1)(b) will be met if they are met in relation to any one of the joint buyers, even though they may not be met in relation to others. So if two people, A and B, who each currently own a dwelling which they occupy as their main residences, jointly buy a dwelling to move into as their new joint main residence and A sells his or her existing dwelling while B retains his or her existing dwelling to rent out, the additional amount is payable on the joint purchase because B is not replacing his or her main residence, even though A is. Similarly if one of the joint buyers is not an individual, then the conditions in paragraph 3(1)(b) will be met in the same way as if there was one buyer who was not an individual.

36. Interpretable provisions of the 2013 Act relevant to paragraph 5—

“buyer” section 7
“chargeable transaction” section 15
“jointly entitled” section 65.

Paragraph 6 of schedule 2A – Spouses, civil partners, cohabitants and children

37. Amongst other things, paragraph 6 ensures that spouses (including same-sex spouses) are not treated differently according to how the titles for the couple’s property or properties are registered. For the purposes of paragraph 2 of schedule 2A, the same tax position will arise whether a first or second property is registered in one spouse’s name, in the other spouse’s, or jointly. Dwellings in the name of one spouse will count against the other for the purpose of determining whether the other partner owns more than one dwelling. Sub-paragraphs (2) and (3) disapply this rule where the couple have separated. Separation in this context does not require to be formal separation, of the types referenced in paragraphs 4 and 5 of schedule 1 to the 2013 Act, but such formal separation would be relevant evidence of practical separation.
38. Paragraph 6 treats civil partners in the same way as spouses and the same tax treatment is also afforded to cohabitants who are defined as persons living together as though married (and therefore this will include same-sex cohabitants). This is consistent with the approach taken in the Family Law (Scotland) Act 2006 and other Acts of the Scottish Parliament.

39. Further, paragraph 6 brings into consideration children of the buyer (or their partner) who are aged under 16 (the age of legal capacity in Scots law). This is to reflect that such a child’s ownership of residential property is practically the responsibility of their parent(s), and as an anti-avoidance measure to disincentivise avoidance of the additional tax by artificially registering title in such a child’s name.

40. Interpretative provisions of the 2013 Act relevant to paragraph 6—

| “buyer” | section 7 |
| “dwelling” | Part 6 of schedule 5 |
| what counts as a dwelling owned | Part 6 of schedule 2A. |

41. In Scots law, reference to a person’s “child” includes reference to an adopted child by virtue of section 40 of the Adoption and Children (Scotland) Act 2007, and includes situations where parentage is determined by the Human Fertilisation and Embryology Act 2008. Marriages (including same-sex marriages) celebrated outside Scotland have equivalent legal status to Scottish marriages by virtue of section 38 of the Family Law (Scotland) Act 2006 (see also sections 212 to 218 of the Civil Partnership Act 2004 for the status of same-sex civil partnerships from outside the UK).

**Paragraph 7 of schedule 2A – Trustees in certain trusts**

42. Paragraph 7 concerns certain cases where the buyer is acting as a trustee of a settlement, which is a trust other than a bare trust. Currently for the purposes of LBTT, only the beneficiaries of bare trusts are treated as the buyer when a trustee enters into a land transaction. Paragraph 7 extends that treatment for the purposes of paragraph 2 of schedule 2A, so that certain other beneficiaries, namely those with substantial rights (rights to occupy a dwelling or right to income from it over a trust are treated as the buyer in a chargeable transaction for the purpose of considering whether the conditions in paragraph 2(1)(b) and (c) are met in relation to the transaction. Account also needs to be taken of paragraph 11 of schedule 2A which treats certain trust property as being owned by the beneficiary.

43. Interpretative provisions of the 2013 Act relevant to paragraph 7—

| “buyer” | section 7 |
| “chargeable transaction” | section 15 |
| “dwelling” | Part 6 of schedule 5 |
| “relevant interest” | paragraph 15(3) of schedule 2A |
| “settlement” | paragraph 18(1) of schedule 2A. |
Part 5 of schedule 2A – Repayment of and relief from the additional amount

Paragraph 8 of schedule 2A – Repayment of additional amount in certain cases

44. Where additional tax has been paid by virtue of paragraph 2 of schedule 2A but the buyer is able to dispose of their former main residence within 18 months from the effective date, repayment may be claimed under paragraph 8. This may be relevant in cases such as the former residence being in England and, potentially through no fault of the vendor (who will be the buyer in the Scottish transaction), the “chain” has broken down and it proves difficult to sell the former main residence before buying the new Scottish main residence.

45. Paragraph 8 operates similarly to section 32 of the 2013 Act (less tax payable where contingency ceases or consideration ascertained) and repayment is claimed either by amending the land transaction return (within the amendment period which section 83(2) of the 2014 Act sets at 12 months) or by making a claim to Revenue Scotland under section 107 of the 2014 Act (where the amendment period has ended). Schedule 3 to the 2014 Act applies to claims made under section 107 of that Act.

46. Where it has been possible to sell the previous residence between the effective date and the date of submitting the LBTT return it will not be necessary to pay the additional amount of tax at that point.

47. Interpretative provisions of the 2013 Act relevant to paragraph 8—
   “buyer” section 7
   “chargeable transaction” section 15
   “dwelling” Part 6 of schedule 5
   “land transaction return” section 65
   “subject-matter” section 61
   what counts as a dwelling owned/disposed of Part 6 of schedule 2A.

Paragraph 8A of schedule 2A – Relief for purchases of 6 or more dwellings

48. Paragraph 8A provides for 100% relief from the additional amount of tax for purchases of 6 or more dwellings. The paragraph cross-references section 59(8) of the 2013 Act which treats such transactions as being the acquisition of non-residential property. Relief under paragraph 8A does not extend to the ordinary amount of LBTT, but multiple dwellings relief under schedule 5 to the 2013 Act will separately be claimable.

49. Interpretative provisions of the 2013 Act relevant to paragraph 8A—
   “chargeable transaction” section 15.

Paragraph 8B of schedule 2A – Relief: supplemental

50. Paragraph 8B sets out how relief under paragraph 8A is to be claimed. It is the same mechanism for claiming other LBTT reliefs in section 27(2) and (2A) of the 2013 Act.
Part 6 of schedule 2A – Ownership of dwellings

Paragraph 9 of schedule 2A – What counts as a dwelling owned by a person?

51. Paragraph 9 clarifies that dwellings situated outside Scotland are to be counted for the purposes of schedule 2A, in particular paragraph 2. This ensures that a buyer’s property holdings throughout the world are taken into account when considering if the additional amount is payable, and not only those in Scotland or the rest of the UK.

52. Paragraph 9 also provides that an ownership interest in a dwelling with a market value of less than £40,000 is disregarded. This is relevant to properties owned other than the property being purchased as part of the chargeable transaction. The relevant date for whether an ownership interest has a value of £40,000 is the effective date of the chargeable transaction. In the case where the buyer is not selling an existing dwelling or dwellings, for example where they are not replacing their only or main residence, they must make a reasonable estimate of the market value of the ownership interest. This will have to be an estimate since in these circumstances the dwelling or dwellings are not on the market. The market value includes the market value of subordinate real rights pertaining to the ownership interest.

53. Paragraph 9 also provides that if a dwelling has been subject to the additional amount because the purchase of it was relevant to paragraph 3, then the dwelling is not relevant to paragraph 2. So, for example, an individual has a sole trade business of property trading, and the additional amount has been paid on the purchase of a dwelling by that business then it is not counted as being owned by the individual for the purpose of paragraph 2. Similarly if such a business purchases a property outside of Scotland, and that purchase would have been relevant to paragraph 3 had the dwelling been in Scotland, that property is not included as being owned by the individual for the purposes of paragraph 2.

54. Interpretative provisions of the 2013 Act relevant to Paragraph 9—

“dwelling” 
Part 6 of schedule 2A.

“market value” 
Part 6 of schedule 5

what counts as a dwelling owned 
section 62

Paragraph 10 of schedule 2A – Deemed ownership: cases where title is not yet registered etc.

55. In Scots law, a buyer does not own a property until the change of ownership is registered in the Land Register. The corollary is that the seller is not divested of the title until that point.

56. Under the 2013 Act the tax point is known as the “effective date” and for a standard residential transaction is likely to be the date of settlement which is the date on which the buyer has paid the purchase price and receives the keys and a signed disposition from the buyer. At this point the buyer will for practical purposes consider themselves to be the owner of the property (they will be able to move in) and the seller (who will no longer have keys) will

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7 Section 50 of the Land Registration (Scotland) Act 2002 states: "Registration of a valid disposition transfers ownership; An unregistered disposition does not transfer ownership."

8 E-conveyancing is not at the time of writing widely adopted so these Explanatory Notes describe the Scottish conveyancing process according to the traditional paper-based process.
consider themselves to no longer be the owner. Paragraph 10 treats the practical position as a deemed ownership – or non-ownership – for the purposes of schedule 2A, notwithstanding the technical position of Scots law. This is particularly relevant for the purposes of paragraph 2 of schedule 2A and the question of how many dwellings the buyer “owns” at the end of the effective date.

57. For properties situated in the rest of the UK the appropriate definitions from UK Stamp Duty Land Tax legislation are imported in sub-paragraph (4); and for properties outside of the UK the same concepts are applied across and to be read according to the prevailing law and practice there. For jurisdictions that follow the civil law there is likely to be similarity to Scots law in terms of registration being key to transferring ownership; and for jurisdictions that follow the common law there is likely to be a similarity to English law in terms of which equitable or beneficial interests can transfer at the point of completion.

58. Interpretative provisions of the 2013 Act relevant to Paragraph 10—
- “buyer” section 7
- “dwelling” Part 6 of schedule 5
- “effective date” section 63
- “subject-matter” section 61.

59. “Seller” takes its common sense meaning here and therefore would mean “vendor” in legal systems where that is the prevailing terminology. “Settlement” also takes its common meaning for the purposes of paragraph 10, and not the meaning in paragraph 15(1).

Paragraph 11 of schedule 2A – Deemed ownership: beneficiaries under certain trusts

60. Paragraph 11 concerns certain beneficiaries under settlements, which are trusts other than bare trusts. In the case of a settlement having a relevant interest (as defined in paragraph 15) in trust property comprising a dwelling, the beneficiary will be treated as the owner of the dwelling for the purposes of considering whether the additional amount of LBTT applies to a chargeable transaction.

61. Interpretative provisions of the 2013 Act relevant to Paragraph 11—
- “dwelling” Part 6 of schedule 5
- “relevant interest” paragraph 15(3) of schedule 2A
- “settlement” paragraph 18(1) of schedule 2A.

Paragraph 11A of schedule 2A – Deemed ownership: dwellings owned by trustees or personal representatives

62. Paragraph 11A provides that trustees and executors are not treated as owning dwellings in their care. But that does not affect that person being treated as owner for another reason – for example, where the person is a relevant beneficiary.

63. Interpretative provisions of the 2013 Act relevant to Paragraph 11A—
Paragraph 11B of schedule 2A – Deemed ownership: long leases

64. Paragraph 11B deems the tenant’s interest in a long lease (a lease of more than 20 years) to be ownership. The landlord’s interest is not treated as ownership. Long residential leases are very uncommon in Scots law but some are still in existence and are to be counted, including some which are not (for technical reasons) “qualifying leases” (as mentioned in paragraph 3 of schedule 1 to the 2013 Act). Long residential leases are much more common in England and Wales and similar legal systems where the tenant’s interest is known as “leasehold”. Read with paragraph 13(2) where appropriate it is paragraph 11B which brings leasehold title within the meaning of ownership in schedule 2A. Tenancies which are short but of indefinite duration, such as the private residential tenancy under the Private Housing (Tenancies) (Scotland) Bill, are not to be treated as long residential leases.

Paragraph 11C of schedule 2A – Deemed ownership: proper liferents

65. Liferent is a formal arrangement where the liferenter is given the effective ownership and use of property for their lifetime. Scots law recognises two forms of liferent – the more common type constituted via trust (which is within paragraph 11) and “proper” liferent which is dealt with in paragraph 11C. The liferenter’s interest is treated as ownership and the original owner and fiar’s interests are not treated as ownership. The fiar is the person who will become owner on the liferenter’s death.

Paragraph 12 of schedule 2A – Deemed ownership: joint owners and owners of shares

66. Paragraph 12 – which considers existing ownership – is separate to paragraph 5 of schedule 2A – which is relevant to a chargeable transaction – and applies even when the new purchase does not involve joint ownership or shares, so looks at the ownership of existing properties when consideration of the additional amount of tax applies.

67. A person might own a share in existing residential property through a “shared ownership” scheme, for example an 80% share with the other share being owned by a public authority or developer. A person might also own a part share for other reasons. Paragraph 12 treats such persons as if they were the 100% owner. Under a shared ownership arrangement this will reflect the practical reality and therefore the additional amount of tax would apply where the purchase of a new dwelling is not the replacement of the buyer’s sole or main residence.

68. Interpretative provisions of the 2013 Act relevant to Paragraph 12—
   “dwelling” Part 6 of schedule 5
   “jointly entitled” section 65.

Paragraph 13 of schedule 2A – Dwellings outside Scotland; what counts as “ownership”

69. Since schedule 2A takes a global view of a person’s property holdings, sub-paragraph (2) maps the Scottish ownership interests to equivalent concepts in other jurisdictions. As mentioned, this has particular relevance to long residential leases which are uncommon in Scots law but are very common in England and Wales.
70. Interpretative provisions of the 2013 Act relevant to paragraph 13—

“dwelling” Part 6 of schedule 5
what counts as a dwelling owned Part 6 of schedule 2A.

Part 7 of schedule 2A – General provision

Paragraph 14 of schedule 2A – Power of Scottish Ministers to modify schedule

71. Paragraph 14 confers on the Scottish Ministers power to modify certain aspects of schedule 2A by order. Sub-paragraph (1) confers power to vary by order the 3% figure in paragraph 4 of schedule 2A. Any order is subject to the provisional affirmative procedure provided for in section 68(4) to (6A) of the 2013 Act.

72. Sub-paragraph (2) confers power to vary by order the £40,000 figures in paragraphs 2(1)(aa), 3(1)(aa) and 9(3). Any order is subject to the provisional affirmative procedure.

73. Sub-paragraph (3) confers power to make provision by order for or about relief from the additional amount, including provision adding, modifying or removing a relief. Any order under sub-paragraph (3) is subject to the affirmative procedure and may modify enactments other than schedule 2A.

74. Sub-paragraph (3A) provides for regulation making power (subject to affirmative procedure) to modify—

Part 4 (as regards partnerships and trusts);
Part 6 (except paragraph 9(3) which is dealt with in paragraph 14(2));
paragraph 15 (which sets out interpretative provisions).

Paragraph 15 of schedule 2A – Interpretation

75. Paragraph 15 sets out definitions for “bare trust”, “settlement”, “dwelling” and “relevant interest”.

Section 2 – Consequential amendments

76. Section 2 of the Bill makes amendments to the 2013 Act and the 2014 Act in consequence of the provisions of new schedule 2A described. To highlight some of the more significant amendments, subsection (1)(d) makes consequential amendments to multiple dwellings relief in schedule 5 to the 2013 Act, and sub-section (2) amends section 108(3) of the 2014 Act to provide for the legal consequences if an order increases liability to additional tax but that order is not approved by the Scottish Parliament.

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9 The provisional affirmative procedure is one of the less common Parliamentary procedures – see the Delegated Powers and Law Reform Committee’s explanation at: http://www.scottish.parliament.uk/S4_SubordinateLegislationCommittee/Guide_to_Scottish_Statutory_Instruments.pdf.
Section 3 – Transitional provision: application of this Act

77. The amendments to the 2013 Act provided for in the Bill do not apply to a chargeable transaction where the missives for the transaction were concluded before 28 January 2016, the date on which the Bill was published on the Scottish Parliament’s website together with accompanying documents. Where missives have been concluded on or after 28 January 2016 the new provisions will apply if the effective date is on or after the principal commencement date for the Bill.

78. Interpretative provisions of the 2013 Act relevant to section 3:
   “chargeable transaction” section 15
   “contract” section 65
   “effective date” section 63.

Section 4 – Ancillary provision

79. Section 4 confers on the Scottish Minister a power to make ancillary provision by regulations in connection with the Bill. The regulations will be subject to negative procedure unless they involve textual amendments to primary legislation in which case affirmative procedure will apply. A comparable power already exists in section 67 of the 2013 Act.

Section 5 – Commencement

80. Sections 4 and 6 (short title) of the Bill come into force on the day after Royal Assent. The other provisions of the Bill (which would include section 1 inserting new schedule 2A) come into force on the same date or – if later – 1 April 2016. This date is referred to as the “principal commencement date” in the Explanatory Note to section 3 above.
INTRODUCTION

1. As required under Rule 9.7.8B of the Parliament’s Standing Orders, this Supplementary Financial Memorandum is published to accompany the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill (introduced into the Scottish Parliament on 27 January 2016) as amended at Stage 2.

2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Financial Memorandum published to accompany the Bill as introduced.

3. This Supplementary Financial Memorandum addresses the financial impact of Stage 2 amendments on the Bill where they would substantially alter any of the costs. Paragraphs 8A and 8B of the Bill were added to new schedule 2A (inserted by section 1 of the Bill) at Stage 2 by amendment. Paragraph 8A introduces a 100% relief from the land and buildings transaction tax (LBTT) supplement for purchases of six or more dwellings in one transaction. Section 59(8) of the Land and Buildings Transaction Tax (Scotland) Act 2013 (“the 2013 Act”) currently treats such a transaction as non-residential. Whilst such transactions will attract a 100% relief from the LBTT supplement, any ordinary LBTT liability currently due under the 2013 Act will require to be paid.

4. Paragraph 8B provides that a relief under paragraph 8A must be claimed in the first land return relating to the transaction or within the one-year period allowed to taxpayers and their agents for an amended return by the Revenue Scotland and Tax Powers Act 2014.

GENERAL

5. The financial implications of the Stage 2 amendments have been considered under the following headings:
   - The financial implications for the Scottish Administration (paragraphs 6 to 10)
   - The costs on local authorities (paragraph 11)
   - The costs on other bodies, individuals and businesses (paragraph 12).
Financial implications for the Scottish Administration

6. The benefits to the Scottish budget which will arise as a result of the tax revenue raised from the introduction of the supplement are as set out in the Financial Memorandum\(^1\) which accompanied the draft Bill on introduction to the Scottish Parliament on 27 January 2016 and published on the Parliament’s website on 28 January 2016.

7. Table 1 below is an extract from the aforementioned Financial Memorandum which provides information on the estimated net revenue impact of the LBTT supplement for the years 2016-17 to 2020-2021. These figures will be reduced by the cost of the relief from the LBTT supplement for purchases of six or more dwellings in one transaction.

<table>
<thead>
<tr>
<th>Table 1 – Estimated net revenue impact of LBTT supplement 2016-21</th>
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<tbody>
<tr>
<td>Scenario 1 – 8,500 additional property transactions</td>
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<tr>
<td>2016-17</td>
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<td>2017-18</td>
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<td>2018-19</td>
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<tr>
<td>2019-20</td>
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<tr>
<td>2020-21</td>
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</tbody>
</table>

8. In estimating the cost of this relief the Scottish Government has given due cognisance to the limited data available from Revenue Scotland – given the LBTT has been in place for under 12 months. Revenue Scotland data shows that between 1 April 2015 and 31 December 2015 there have been 17 claims for multiple dwelling relief that involve the purchase of six or more residential properties in one transaction. A total of 293 properties were bought in the nine-month period as part of these transactions so if this figure is extrapolated over a 12-month period, then it is estimated that 391 properties would be bought in a full 12 month period.

9. In estimating the cost of this relief, reference has been made to Registers of Scotland’s most recent quarterly house price statistics published on 2 February 2016\(^2\) which cover the period October to December 2015. The average property price in the period was £167,734. A supplement of three per cent on this figure would result in £5032 additional LBTT being payable. The estimated total cost of this relief over a 12-month period is calculated by multiplying £5032 by 391 properties which gives a total of £2m (rounded up).

10. The administrative and compliance costs that Revenue Scotland are likely to incur as the Tax Authority responsible for collecting LBTT are as set out in the Financial Memorandum introduced to the Parliament on 27 January 2016. The provision made therein will be sufficient to deal with the administrative and compliance work that may require to be undertaken in

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\(^1\) [http://www.scottish.parliament.uk/parliamentarybusiness/Bills/96000.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/Bills/96000.aspx)

relation to the relief from the supplement for purchases of six or more dwellings in one transaction.

**Costs on local authorities**

11. Cost implications for local authorities will depend on the extent to which they purchase residential property and the price at which the purchases are made. Local authorities will be eligible for the relief from the LBTT supplement where they purchase six or more dwellings in one transaction.

**Costs on other bodies, individuals and businesses**

12. The comments made at paragraph 11 in relation to estimating the costs on local authorities and the eligibility for a relief for purchases of six or more dwellings in one transaction are equally applicable here.
LAND AND BUILDINGS TRANSACTION TAX (AMENDMENT) (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

INTRODUCTION
1. This memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee in its consideration of the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill. This memorandum describes provisions in the Bill conferring power to make subordinate legislation which were introduced, amended or removed from the Bill at Stage 2. The memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

DELEGATED POWERS

Paragraph 14(2) within new schedule 2A inserted by section 1(3) – Power to amend threshold figure in paragraphs 2(1)(aa), 3(1)(aa) and 9(3) of schedule 2A

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: provisional affirmative
Change at Stage 2: change to parliamentary procedure; restructure of threshold figure

Provision
3. The Delegated Powers and Law Reform Committee’s 11th Report of 2016 concluded that, “The Committee recommends that the Scottish Government brings forward an amendment at Stage 2 to make exercise of the power in paragraph 14(2) subject to the “provisional affirmative” procedure.” The Scottish Government accepted that recommendation and the application of the provisional affirmative procedure is now provided for in section 2(1)(c)(ii) of the Bill.

4. Separately what had been a single £40,000 figure in paragraph 9(3) within new schedule 2A inserted by section 1(3) has now become three figures within paragraphs 2(1)(aa), 3(1)(aa) and 9(3) respectively. There are now 2 £40,000 thresholds in paragraph 2 and 3 relating to consideration paid in a chargeable transaction so that only transactions with chargeable consideration of £40,000 or more are relevant to the schedule (chargeable consideration is
defined in section 17 of and schedule 2 to the 2013 Act). The existing £40,000 threshold in paragraph 9(3) of proposed schedule 2A refers to the market value of the dwelling and while that concept works well in considering existing ownership, it was seen as the most appropriate measure in relation to properties being purchased where conceivably the market value could be legitimately different for the consideration paid, with the latter being the appropriate measure. All figures are amendable through the same paragraph 14(2) power.

**Reason for taking power**

5. The Scottish Government’s reasons for accepting the Committee’s recommendations as to parliamentary procedure were set out in the Deputy First Minister’s response to the Finance Committee’s Stage 1 report. In particular the Scottish Government was persuaded with the DPLRC’s argument that “the power to change the £40,000 threshold is not merely administrative in nature, but is fundamental to the question of tax liability under the Bill”.

6. The Scottish Government considers that it is a natural result of the splitting out of the £40,000 figures referred to that the existing delegated power should apply to each reference to £40,000. This can be viewed as a consequential modification with there being no policy to expand delegated powers in this regard.

**Choice of procedure**

7. The Scottish Government considers that no new issues arise from the splitting out of the £40,000 figure and therefore the provisional affirmative procedure is appropriate for the amendment of the figures in paragraphs 2(1)(aa), 3(1)(aa) and 9(3). It is likely that any future change would be applied to each of the figures at the same time however it is not inconceivable that in the future Scottish Ministers would want to vary one but not the other. For example, Scottish Ministers may wish to keep the thresholds in (2)(1)(aa) and 3(1)(aa) at £40,000 to be in line with the figure for notification, but there may be issues around valuations and properties not being “counted” for the purpose of the Land and Buildings Transaction Tax (“LBTT”) supplement so they may decide to reduce this threshold accordingly to effectively ensure all properties are counted. There may also be a decrease in property valuation at some point at which point it may be preferable to have different thresholds for consideration paid in (2)(1)(aa) and 3(1)(aa) and for the value for property in 9(3).

**Paragraph 14(3A) within new schedule 2A inserted by section 1(3) – Power to amend certain aspects of schedule 2A**

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
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</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>regulations made by Scottish statutory instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>affirmative</td>
</tr>
<tr>
<td>Change at Stage 2:</td>
<td>new power</td>
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</table>

**Provision**

8. Paragraph 14(3A) is a new regulation-making power to amend particular aspects of schedule 2A. These aspects are:

- Part 4 as regards partnerships and trusts;
Part 6 which provides for what counts as ownership (except paragraph 9(3) which is separately amendable by the delegated power in paragraph 14(2) earlier mentioned); and

Paragraph 15 which sets out defined terms for interpreting schedule 2A.

Reason for taking power

9. **Partnerships and trust** arrangements can be very complex and give rise to some of the most difficult aspects of LBTT policy and practice. There are existing regulation making powers in the Land and Buildings Transaction Tax (Scotland) Act 2013 to amend the LBTT treatment of partnerships and trusts (sections 49(2) and 50(2) respectively) but these do not extend to schedule 2A for the supplement. The Scottish Government’s amendments at Stage 2 have clarified the position of partnerships and trusts under schedule 2A but it is considered to be prudent to have power to make any further changes that might be required as circumstances develop. This will be particularly relevant if there is a future proposal to invoke sections 49(2) and/or 50(2) referred to, and there being a need to make consequential amendments to schedule 2A.

10. On reflection, the Scottish Government considers it to be appropriate for the order making powers in relation to partnerships and trusts to allow for the amendment of Part 2 as well as Part 4. The Government proposes to bring forward an amendment at Stage 3 to allow for that. Paragraph 3 in Part 2, as amended at Stage 2, contains provisions relating to trusts and partnerships. Part 4 has provisions relating to trusts and currently does not have provisions relating to partnerships however the Scottish Government considers that that flexibility should be available should there be relevant partnership-related changes to schedule 17 of the 2013 Act or Part 2 of proposed schedule 2A.

11. The Scottish Government brought forward Stage 2 amendments to expand, clarify and improve on the provisions of Part 6 of schedule 2A in relation to what counts as ownership. Although there is no direct precedent for the new power proposed the Scottish Government considers this to be an area of particular complexity, given the need to take into account ownership arrangements outside Scotland, and additionally the need to guard against artificial arrangements constructed to mask ownership. For example, a particular aspect of a legal system could emerge that means a form of ownership in a particular jurisdiction was not being counted for the purposes of the schedule and the Scottish Government may want to bring forward an amendment to ensure that it is counted as ownership. Alternatively the complex rules for deemed ownership could conceivably be abused to allow avoidance the supplement. Again, the Scottish Government may want to bring forward an amendment to close off any avoidance opportunity, in parallel to action under the General Anti-Avoidance Rule or otherwise by Revenue Scotland.

12. Part 6 relates to ownership of dwellings and includes different instances of deemed ownership. At Stage 2 on 2 March 2016 the Finance Committee debated two groups comprising a total of 11 amendments which materially amended existing paragraphs 9, 11 and 13 within Part 6 and introducing three new paragraphs (11A to 11C). In speaking to these groups the Deputy First Minister referenced the complexities that can arise when less-common forms of

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1 Group headings: “Ownership”: trusts, exeucturies, long leases, liferents; Ownership of dwellings situated outside Scotland.
ownership are in issue. One reason for taking the power for the whole of Part 6 is to enable the introduction of a new type of deemed ownership should it be necessary to do so, for example when future scenarios arise in practice or as a result of UK tax changes. Part 6 now contains provisions in respect of numerous separate complex forms of ownership (trustees, beneficiaries, long leases, proper liferents, what counts as ownership outside of Scotland) and new issues could emerge that affect any of these.

13. In terms of interpretative provisions, the principal policy intention is to allow for the definition of “dwelling” in paragraph 15(2) to be amendable by regulations, should it become necessary to decouple the definition from the definition in Part 6 of schedule 5 to the 2013 Act. For example, should a change be made to schedule 5 that is not wanted for schedule 2A purposes it would be necessary to decouple the definition. There is an alternative definition of “dwelling” in paragraph 18 of schedule 4. The Scottish Government considers that the most relevant precedent is the existing power in section 27(3) of the 2013 which allows for the amendment of any of the relief schedules (schedules 3 to 16C), since that allows for definitions of “dwelling” within to be fully amendable. The new power also allows for changes to the definitions of “bare trust”, “settlement” and “relevant interest” which the Scottish Government considers prudent to allow the supplement to be administered in the months and years ahead without the need for further primary legislation.

Choice of procedure

14. The Scottish Government considers that affirmative procedure provides for an appropriately strong level of parliamentary scrutiny given that the powers allow for the amendment of primary legislation and could impact on taxpayers’ liability to the supplement.
Delegated Powers and Law Reform Committee

Land and Buildings Transaction Tax (Amendment) (Scotland) Bill as amended at Stage 2
Contents

Introduction 1
Delegated Powers Provisions 2
Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

a. any—
   i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   ii. [deleted]
   iii. pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

b. proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

c. general questions relating to powers to make subordinate legislation;

d. whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

e. any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

g. any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

i. any Consolidation Bill as defined in Rule 9.18.1 referred to it by the Parliamentary Bureau in accordance with Rule 9.18.3.

www.scottish.parliament.uk/delegated-powers
DPLR.Committee@scottish.parliament.uk
0131 348 5175

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## Committee Membership

<table>
<thead>
<tr>
<th>Convener</th>
<th>Deputy Convener</th>
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<td>Nigel Don</td>
<td>John Mason</td>
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Introduction

1. At its meeting on 3 March 2016 the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill as amended at Stage 2 (“the Bill”). The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. This Bill was introduced by the Deputy First Minister and Cabinet Secretary for Finance, Constitution & Economy on 27 January 2016. The Bill amends the Land and Buildings Transaction Tax (Scotland) Act 2013 (“the 2013 Act”). The 2013 Act (and related enactments) imposes a tax on the acquisition of chargeable interests in land, known as the Land and Buildings Transaction Tax. The Bill imposes an additional amount of tax in relation to certain types of transaction concerning the purchase of a dwelling.

3. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill.

4. The Committee previously reported on the delegated powers provisions in this Bill at Stage 1 in its 11th report of 2016.
Delegated Powers and Law Reform Committee  
Land and Buildings Transaction Tax (Amendment) (Scotland) Bill as amended at Stage 2, 19th Report, 2016 (Session 4)

Delegated Powers Provisions

4. The Committee considered the new and substantially amended delegated powers provisions in the Bill after Stage 2.

5. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the new or substantially amended delegated powers provisions listed below, and that it is content with the parliamentary procedure which they are subject to:

   - Paragraph 14(2) within new schedule 2A inserted by section 1(3) – Power to amend threshold figure in paragraphs 2(1)(aa), 3(1)(aa) and 9(3) of schedule 2A
   - Paragraph 14(3A) within new schedule 2A inserted by section 1(3) – Power to modify Part 4 (so far as relating to partnerships and trusts), Part 6 (except paragraph 9(3)) and paragraph 15 of new schedule 2A

6. The Committee therefore reports that it is content with the new and substantially amended delegated powers provisions in the Bill as amended at Stage 2.
Land and Buildings Transaction Tax (Amendment) (Scotland) Bill, as amended at Stage 2 (SP Bill 85A, Session 4 (2016)) is available at the following website:

2 Land and Buildings Transaction Tax (Amendment) Bill. Supplementary Delegated Powers Memorandum (SP Bill 86A-DPM, Session 4 (2016)) is available at the following website:

3 Delegated Powers and Law Reform Committee. 11th Report, 2016 (Session 4). Land and Buildings Transaction Tax (Amendment) (Scotland) Bill at Stage 1 (SP Paper 900) is available at the following website:
Land and Buildings Transaction Tax (Amendment) (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 6

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

John Swinney
1 In section 1, page 2, line 12, leave out <chargeable> and insert <relevant>

Gavin Brown
17 In section 1, page 2, line 13, after second <the> insert <14th day after the>

John Swinney
2 In section 1, page 2, line 15, at beginning insert <either—

(i)>

John Swinney
3 In section 1, page 2, line 15, at end insert <, or

(ii) the buyer is replacing the buyer’s only or main residence but the subject-matter of the transaction also includes the acquisition of ownership of one or more other dwellings in addition to the one that the buyer intends to occupy as the buyer’s only or main residence.>

John Swinney
4 In section 1, page 2, line 29, leave out <chargeable> and insert <relevant>

John Swinney
5 In section 1, page 3, line 2, leave out from <(other) to end of line 4 and insert <and, in relation to any dwelling that is or forms part of the subject-matter of the transaction, there is no interested beneficiary.

( ) For the purposes of sub-paragraph (5), a beneficiary under the settlement is an interested beneficiary in relation to a dwelling if the beneficiary has or will have a relevant interest in the dwelling.>
In section 1, page 3, line 20, at end insert—

<(4) In the case of a chargeable transaction to which this schedule applies by virtue of paragraph 2(1)(c)(ii), the relevant consideration is to exclude so much of the chargeable consideration as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of the dwelling (including any interest or right pertaining to ownership of the dwelling) that the buyer intends to occupy as the buyer’s only or main residence.>

In section 1, page 4, line 10, leave out <condition> and insert <conditions>

In section 1, page 4, line 11, after <2(1)(a)> insert <and (aa)>

In section 1, page 4, line 13, leave out first <the> and insert <a>

In section 1, page 4, line 13, after <has> insert <or will have>

In section 1, page 4, line 14, leave out <trust property> and insert <subject-matter of the transaction>

In section 1, page 5, line 8, at end insert—

<( ) In the case of a chargeable transaction to which this schedule applies by virtue of paragraph 2(1)(c)(ii), sub-paragraph (2)(a) has effect only in relation to the additional amount applicable to so much of the relevant consideration for the transaction as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of the dwelling (including any interest or right pertaining to ownership of the dwelling) referred to in sub-paragraph (1)(c).>

In section 1, page 5, line 36, at end insert—

<(5) Where the ownership interest in a dwelling is one of deemed ownership by virtue of paragraph 11 or 11C then, for the purposes of sub-paragraph (3), the market value of the interest is taken to be the market value of the dwelling.

(6) In determining the market value of a dwelling for the purposes of sub-paragraph (5)—

(a) the market value of any interest or right pertaining to ownership of the dwelling is to be included, and

(b) no account is to be taken of the effect of the existence of the interest referred to in sub-paragraph (5).>
In section 1, page 8, line 9, leave out <Part> and insert <Parts 2 (except paragraphs 2(1)(aa) and 3(1)(aa)) and>

In section 1, page 8, line 18, at end insert—

<“relevant consideration” is to be construed in accordance with paragraph 4(3) and (4),>
Land and Buildings Transaction Tax (Amendment) (Scotland) Bill

Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

Note: The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

Group 1: Replacement of only or main residence: transactions involving multiple dwellings
1, 2, 3, 4, 6, 12, 15

Group 2: Payment of additional amount: ‘grace period’
17

Group 3: Trusts and liferents
5, 7, 8, 9, 10, 11, 13, 16

Group 4: Power to modify Part 2 of schedule 2A
14

Debate to end no later than 30 minutes after proceedings begin
Note: (DT) signifies a decision taken at Decision Time.

**Business Motion:** Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-15840—That the Parliament agrees that, during stage 3 of the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 4: 30 minutes.

The motion was agreed to.

**Land and Buildings Transaction Tax (Amendment) (Scotland) Bill - Stage 3:**

The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16.

Amendment 17 was disagreed to (by division: For 44, Against 66, Abstentions 0).

**Land and Buildings Transaction Tax (Amendment) (Scotland) Bill - Stage 3:**

The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney) moved S4M-15837—That the Parliament agrees that the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
Land and Buildings Transaction Tax (Amendment) (Scotland) Bill: Stage 3

14:11

The Presiding Officer (Tricia Marwick): The next item of business is stage 3 of the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill. In dealing with the amendments, members should have the bill as amended at stage 2—that is, SP Bill 85A—the marshalled list and the groupings. The division bell will sound and proceedings will be suspended for five minutes for the first division. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after each debate. Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after the group is called.

Members should now refer to the marshalled list of amendments.

Section 1—Land and buildings transaction tax: second homes etc

The Presiding Officer: Group 1 is entitled “Replacement of only or main residence: transactions involving multiple dwellings”. Amendment 1, in the name of the Deputy First Minister, is grouped with amendments 2 to 4, 6, 12 and 15.

The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney): Group 1 is designed to deal with the situation in which a chargeable transaction involves the purchase of more than one dwelling, and one of those dwellings is a replacement main residence.

Amendment 3 seeks to ensure that, when a chargeable transaction involves both the replacement of a main residence and the purchase of other dwellings, the supplement will still be payable on the other dwellings that are purchased. Amendment 6 will ensure that, in that scenario, the supplement is payable on the proportion of the consideration that is, on a just and reasonable basis, apportioned to the dwellings that are purchased that are not the replacement main residence. Amendment 1 will ensure that it is the amount of consideration that is looked at in determining whether the £40,000 threshold is to be triggered. Amendment 4 will ensure that it is the apportioned consideration that is relevant to the £40,000 threshold in paragraph 3 cases.
Amendment 15 seeks to cross-reference the concept of "relevant consideration" in paragraph 15 of proposed new schedule 2A, which is on interpretation. The concept of "relevant consideration" includes cases in which the consideration is apportioned when a replacement main residence is purchased alongside other dwellings.

Amendment 12 relates to a situation in which the buyer of a new home still owns their existing one at the time of the purchase, but then within 18 months sells it and claims repayment of the supplement. In that situation, where more than one dwelling is bought as part of the transaction that involves the purchase of the new home, amendment 12 will ensure that the supplement is repaid only in so far as it relates to the purchase of the new home. Amendment 2 is consequential.

I move amendment 1.

Amendment 1 agreed to.

14:15

The Deputy Presiding Officer (Elaine Smith): We now turn to group 2, which is entitled "Payment of additional amount: 'grace period'". Amendment 17, in the name of Gavin Brown, is the only amendment in the group.

Gavin Brown (Lothian) (Con): Amendment 17 aims to cure what I think is a serious flaw in the bill. A person who purchases a new main residence, regardless of size, but has not managed to complete the sale of their existing main residence, will have to pay the full tax up front. They will inadvertently become what has become known as an accidental second-home owner. That means that they had no desire to own a second home and were not planning to own one. For any number of reasons—for example, they were unable to get dates to line up, or the person purchasing the property suddenly had to pull out or to delay because their mortgage had not come through—anybody in a housing transaction could end up as an accidental second-home owner.

If the house that such a person purchased was valued at, say, £300,000, that would mean that they would have overnight to stump up £13,000. If the house was valued at £125,000, which is comfortably below and nowhere near the land and buildings transaction tax threshold, they would have to stump up £4,050. I ask simply this: where are people for whom £125,000 is the limit that they can get to purchase a house suddenly going to find £4,050?

The policy memorandum says very clearly that the intention is not to bring the group of people in question into the tax because it is aimed at genuine second-home owners, but that is exactly what would happen in practice, which would be very punitive on individuals or families, who would potentially be hit with bills for thousands of pounds at a time when they would be genuinely under pressure because their sale had fallen through and they were scrabbling around trying to work out how to fund the purchase of a house. People would become ultra-cautious and would sell before they buy in order to make absolutely sure that they would not have to pay LBTT. That, of course, could lead to their having to rent in the interim period and store all their belongings and furniture, and to a host of other complications and bureaucracies. That could be pretty widespread: it is unlikely that there would be only a handful of cases each year. There could be a significant number, which would create an almighty bureaucracy and have a detrimental impact on the housing market.

Amendment 17 is formally supported by the Law Society of Scotland in the written submission that it sent round MSPs early today or late yesterday. The amendment was suggested by almost all those who gave evidence to the Finance Committee, and is supported by all members of that committee, who all agree with paragraph 79 of our report, which says:

"The Committee recommends that the Bill is amended at Stage 2 to provide for a grace period."

That did not happen at stage 2, but I want it to happen at stage 3.

I move amendment 17.

The Deputy Presiding Officer: Two members have requested to speak. If their comments are brief, I will be able to call both. Malcolm Chisholm will be followed by Jackie Baillie.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I will be very brief. I am not now required for the open debate, which will be short.

I support the bill, but when I looked at its detail, it struck me as rather odd that a grace period was not being allowed—in particular, because that was recommended by the Finance Committee and because the cabinet secretary took up, I think, most of the committee’s recommendations. It certainly seems to be very unfair that people will have to stump up large sums just because the transaction of selling their house will not be complete until a few days later.

Obviously, I will listen very carefully and with interest to what the cabinet secretary will say, but having read previous speeches that he has made on the issue, I do not see why he has to wait for six months to see what happens. I think that we can all anticipate what is likely—Gavin Brown outlined it. The bill as it stands would be unfair to individuals and could have a negative and a
detrimental effect on the housing market more generally.

Jackie Baillie (Dumbarton) (Lab): I apologise for my late arrival. Topical questions finished earlier than I had anticipated.

I support Gavin Brown’s amendment 17. He is right to have pointed out that the issue was first raised in evidence to the Finance Committee by the Law Society of Scotland, and the committee agreed with it. There is genuine concern about the grace period because there are occasions when a purchaser has no intention of owning two properties simultaneously but—for whatever reason—the selling of one home while purchasing another is delayed.

We all accept the principle that there should be a grace period—the debate lies in whether sufficient time is being allowed. The cabinet secretary’s amendment at stage 2 was helpful but a bit tight, because it gives, in effect, a grace period of only three to six days. Gavin Brown’s proposal, which is for a period of 14 days, is the more sensible option. The Law Society believes that it is a better and more workable option: to be frank, we should take heed of that, given its experience in conveyancing. The proposal would avoid unintended consequences, which I know the cabinet secretary is keen to do, so I hope that he, too, will support amendment 17.

John Swinney: At stages 1 and 2, as colleagues have said, a major topic of debate was the question of a so-called grace period. That is relevant to cases in which the buyer has failed to sell their previous residence by the effective date of the new purchase.

A grace period would be a period following the effective date where the buyer could pay any ordinary amount of land and buildings transaction tax that was due, and obtain registration of title without paying the subsequent supplement at that point.

In considering Gavin Brown’s amendment 17, members should be aware that the bill has always provided that a person who sells their previous residence within 18 months of the effective date will be entitled to repayment of the supplement, together with interest.

In addition, I lodged an amendment at stage 2 to clarify that, where the previous residence can be sold before the land and buildings transaction tax return is sent in, no supplement will be payable. That will help where there is a short delay in completing the sale of the previous residence.

A scenario that has been put to the Scottish Government is where a couple buy on a Friday and sell on the Monday so that they can flit over the weekend. A couple in that situation would not pay the supplement as it is proposed in the bill.

I have also given Parliament a commitment that I will keep the matter under review, and ministers have the power under the bill to introduce an appropriate relief by order if it is considered necessary in the future.

Gavin Brown’s amendment 17 is the same as an amendment that he lodged at stage 2, except that instead of proposing a 60-day grace period, he now proposes a 14-day one. The objections that I outlined at stage 2 remain valid. The amendment does not make clear the administrative requirements for taxpayers, their agents or Revenue Scotland, and it would apply even where no attempt has been made to sell a previous residence. It seems that it would shift the tax point forward in all cases.

I wish to emphasise what all that could mean for the Scottish budget. Gavin Brown’s amendment 17 undermines the important feature of land and buildings transaction tax, that registration of title is permitted only when arrangements for the tax that is payable have been put in place. His amendment would allow registration of title to be obtained without payment of the supplement, which could burden Revenue Scotland with chasing sums with which buyers are reluctant to part. Those buyers will include buyers from outside Scotland—and, potentially, outside the United Kingdom—which will make it all the harder to secure payment.

I accept, as Gavin Brown argued at stage 2, that Scottish solicitors can be expected to help with informing their clients as to their legal duties, and with facilitating payments and paperwork, but I do not consider that to be complete protection for the Scottish budget because the ultimate decision on whether and when to pay the supplement would rest with the client.

Murdo Fraser (Mid Scotland and Fife) (Con): I draw members’ attention to my entry in the register of members’ interests as a member of the Law Society of Scotland.

I recall that, in my days in legal practice, situations often arose in which people had hoped to buy and sell on the same day or within a day or two but the purchaser of the property had difficulty in getting mortgage funds or there was an inadvertent delay. As Gavin Brown set out, people who are caught in such circumstances might face paying a hefty additional sum. Where does the Deputy First Minister think people will find that money?

John Swinney: Mr Fraser made my point in the example that he cited. He said that people might have a difficulty of a matter of a day or two.

Gavin Brown: Literally a day or two.
John Swinney: The amendment that I lodged at stage 2 addressed that issue.

Jackie Baillie accepted that I was helpful at stage 2 in extending the period to create those circumstances. I am simply placing on record the practical issues that would arise from Mr Brown’s amendment, which would essentially shift forward the tax point in all cases. That would undermine the fundamental premise of land and buildings transaction tax legislation that Parliament has previously enacted.

I do not believe that it is desirable to make provision in the bill that may give rise to a bigger debtor list in Revenue Scotland at such an early stage in its operations.

In summary, I have not closed my mind entirely on the matter, but I cannot support an amendment the operation of which would be fundamentally unclear, and which would place an additional burden on Revenue Scotland and be liable to have negative implications for the Scottish budget. The statistics that Revenue Scotland collates will enable ministers and Parliament to determine the extent to which delayed sales are a significant issue. If they are, the remedy can be taken forward by ministers, given the powers that they have to introduce in the future an appropriate relief by order.

I invite Gavin Brown not to press amendment 17. Should he decide to press it, I urge members not to support it.

Gavin Brown: John Swinney does not want to burden Revenue Scotland, but he is perfectly happy to burden potentially thousands of people who purchase houses in Scotland.

The original LBTT legislation and the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill have relied heavily on input from the Law Society of Scotland, which makes it quite clear in its written evidence, its oral evidence and the submission that it provided in advance of today that a grace period ought to be included in the bill. It quite clearly supports amendment 17 and is not looking to undermine the fundamental premise of the land and buildings transaction tax.

Mark McDonald (Aberdeen Donside) (SNP): Gavin Brown has cited two examples. The first involved somebody who requires a day or two after a sale, perhaps because of difficulties in getting the dates to match up. The Deputy First Minister has already indicated that his amendment at stage 2 addressed that.

The second example involved a sale falling through. Can Gavin Brown explain how, where a sale falls through, his 14-day grace period would be of assistance to people who will have to go through the sales process all over again?

Gavin Brown: I had wished that the period could be far longer than 14 days, but it was pretty apparent at stage 2 that the Government would not support a longer period.

It may help if there is a day or two, but—this may be news to Mark McDonald—it is sometimes not possible to get things to line up in a day or two; sometimes it can take longer. If a sale falls through because a mortgage is not in place in time, that may well be cured within a week or 10 days or so. My amendment 17 would allow that to happen. I think that everyone who gave evidence to the Finance Committee said the same very clearly. I think that is why Mark McDonald signed up to the committee’s report, which says:

“The Committee recommends that the Bill is amended at Stage 2 to provide for a grace period.”

Nobody on the committee, including Mark McDonald, expressed any objection to that. The committee looked carefully at the evidence and very clearly formed that view. If members change their views under duress a week or two after they have been put forward, that is regrettable.

John Swinney: We are back to the same point that I raised with Mr Fraser. Mr Brown read out an extract from the Finance Committee’s report that argued for a grace period to be put in place at stage 2. That is precisely what the Government has done. Jackie Baillie said that a grace period was included at stage 2. It simply happens that it is not the grace period that Mr Brown thinks appropriate, but we have responded positively. Nobody was put under any duress to do that. Does Mr Brown accept that an amendment was lodged to address the Finance Committee’s recommendation and that that undermines the fundamental point that he is making?

Gavin Brown: I am sure that Mr Swinney attempted to do that, but it is pretty clear to me, to a number of solicitors and to the Law Society of Scotland that the amendment was not sufficient. The Law Society said quite clearly in its report—which, I am sure, Mr Swinney has read—that it welcomes the amendment but it goes nowhere near far enough: the bill does not offer a sufficiently long grace period. The Law Society knows that, in practice, returns are submitted instantly and are not held back because it is not considered reasonable to ask solicitors to delay registration of title, which is the key to the ownership of property. If lawyers do not register title, there is a risk of exposure to inhibitions, for example, so the Law Society supports my amendment.

I am genuinely disappointed by the Deputy First Minister who has, when I have worked with him on a number of bills in the past, been open-minded. Here we have a bill that has been rushed through.
There was no full consultation or impact assessment. The Finance Committee did its best. After all the evidence that we saw on that committee, we suggested—to a person—that there ought to be a grace period, because the provision is unfair and a huge number of transactions could be affected by it.

The Deputy First Minister may shake his head, but when the bill was drafted, that was an unforeseen consequence. It is now, obviously, a foreseen consequence. We can do something about it here today; we can prevent its happening instead of waiting to see what happens after six months, because we are pretty clear about what could happen.

I would like to hear the Deputy First Minister telling people who might be trapped in such a situation that he did not want to bring in a change because it might have put a bit of a burden on Revenue Scotland. That is very disappointing. I will press my amendment.

**The Deputy Presiding Officer:** The question is, that amendment 17 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** Parliament is not agreed. This is the first division at this stage, so I suspend proceedings for five minutes.

14:31

**Meeting suspended.**

14:36

**On resuming—**

**The Deputy Presiding Officer:** We move to the division on amendment 17. This is a 30-second division and members should cast their votes now.

There was a problem with voting consoles that were not working, so I will call the vote again. This is a 30-second division.

**For**

Baille, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Fee, Mary (West Scotland) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

**Against**

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Alieen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunningham North) (SNP)
Gibson, Robin (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Amendments 5 and 11 clarify that only the dwellings that are purchased by trustees. In certain circumstances, beneficiaries ownership of dwellings that are purchased by trustees. Amendment 5, in the name of the Deputy First Minister, is the only amendment in the group.

John Swinney: In the previous groups, we saw technical scenarios that land and buildings transaction tax legislation needs to be capable of addressing. To ensure that appropriate adjustments can be made to the detailed rules for the land and buildings transaction tax supplement, the bill includes a balanced range of delegated powers, all of which are now subject to a form of affirmative procedure. Those delegated powers have all been influenced by existing delegated powers that are contained in the Land and Buildings Transaction Tax (Scotland) Act 2013.

The Delegated Powers and Law Reform Committee and the Finance Committee each scrutinised those powers. I welcome those committees’ support for the principle of ministers having appropriate powers to react to changing circumstances without the need for a further bill.

At stage 2, the committees supported a new power to allow ministers to amend part 2 of schedule 2A to the 2013 act in relation to partnerships and trusts. As I said at stage 2, partnership and trust arrangements can be complex and give rise to some of the most difficult aspects of land and buildings transaction policy and practice. In the vast majority of cases, residential properties are bought and sold without partnership or trust arrangements. On reflection, I consider it appropriate that the power that I described should allow for the amendment of part 2 of schedule 2A—as well as part 4—because part 2 now includes important provisions concerning trusts and partnerships.

Amendment 14 extends the delegated power in paragraph 14(3A)(a) accordingly. The intention to lodge the amendment was signalled in the Scottish Government’s supplementary delegated powers memorandum, which was posted on the Parliament’s website on 3 March.

I hope that I have the Parliament’s support for my proposed extension to the delegated powers, to ensure that the legislation for the land and buildings transaction tax supplement is flexible, proofed for future use and capable of reacting to any tax avoidance arrangements that may emerge.

I move amendment 14.
Amendment 14 agreed to.
Amendments 15 and 16 moved—[John Swinney]—and agreed to.

The Deputy Presiding Officer: That ends the consideration of amendments.

The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney):

I am pleased to be opening this stage 3 debate on the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill. I thank members of the Finance Committee and the Delegated Powers and Law Reform Committee for not only their scrutiny of the bill, but their willingness to work with the Government to enable the bill to progress expeditiously through the Parliament to achieve a 1 April 2016 commencement date.

I thank the organisations and individuals who provided written and oral evidence to the Finance Committee during the committee’s stage 1 scrutiny of the bill. I also appreciate the input from a range of stakeholders who met the bill team, often at short notice. That input has helped to shape the bill before the Parliament today. I am also grateful for the work that was undertaken by Revenue Scotland to ensure that, from an operational standpoint, it is ready to hit the ground running when the land and buildings transaction tax supplement comes into force.

The bill introduces a 3 per cent land and buildings transaction tax supplement payable on the purchase of additional dwellings, such as buy-to-let or second homes. Subject to parliamentary approval, that means that, from 1 April 2016, anyone buying a residential property in Scotland of £40,000 and above who already owns a residential property, here or anywhere in the world, will pay an additional 3 per cent land and buildings transaction tax on the whole purchase price of the property, unless they are simply replacing their existing main residence.

The bill provides that individuals or couples who concluded missives on their purchase before 28 January 2016 will not be subject to the supplement.
The United Kingdom Government announced in November last year that it intended to introduce a new stamp duty land tax higher rate on the purchase of additional residential properties in the UK, effective from 1 April 2016. As I said last December during my draft Scottish budget statement, following careful consideration of matters, I concluded that the absence of a similar land and buildings transaction tax supplement in Scotland could adversely impact on the opportunities for first-time buyers to get a foot on the property ladder.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): The cabinet secretary is admitting that the legislation was introduced in response to the actions of the UK Government. How would the Scottish Government react if the UK Government either delayed or substantially changed its proposals?

John Swinney: The issue that I have had to face with regard to this particular situation is the scenario of the UK Government acting in this fashion. Given the proper consideration that is available to this Parliament over taxation matters, the Scottish Government has to respond to ensure that its policy objectives can be protected in this legislative scenario.

I was concerned about the possibility that the opportunity for first-time buyers to get access to property in Scotland could be undermined if we did not have similar provision in place. I quite understand the point that Mr Chisholm is making, which is that the UK Government is free to change its mind on this question, and I accept that it might well do so. However, I have to act on the basis of the legislative scenario that I see opening up in front of me, and the need to protect the policy objectives of the Scottish Government, which have been supported by the way in which land and buildings transaction tax has been implemented, and the benefits that has given in terms of strengthening the market for first-time buyers.

Without a land and buildings transaction tax supplement in Scotland, it could be more attractive to invest in additional residential properties in Scotland compared to the rest of the UK—particularly at the lower end of the market—making it more difficult for first-time buyers in Scotland to buy a property. That would be contrary to the Scottish Government’s policy of maximising opportunities for first-time buyers to buy their first home.

However, I appreciate that the private rented sector has a key role to play in providing good quality accommodation for those who live in rented accommodation. The Scottish Government has been supporting the purpose-built private rented sector since 2013, funding the study that led to the “Building the Rented Sector in Scotland” report and establishing a dedicated private rented sector champion, tasked with ensuring that action is taken to boost the supply of high-quality private rented sector homes at scale.

I recognise the need to support home ownership and first-time buyers without discouraging significant and beneficial investment in residential property for rent. After reflecting on the stage 1 evidence, I was pleased to positively respond to the Finance Committee’s stage 1 report recommendation that provision should be made within the bill for a 100 per cent relief from the land and buildings transaction tax supplement for buyers purchasing six or more residential properties in one transaction. The Scottish Government lodged a stage 2 amendment to give effect to that decision.

It is estimated that the supplement will raise between £17 million and £29 million in 2016-17, after taking account of behavioural effects, including any impact on underlying LBTT revenues. The Scottish Fiscal Commission has endorsed the estimate as reasonable, recognising the uncertainties posed by the lack of Scottish data on these types of transactions.

The cost of the relief from the supplement for buyers who purchase six or more residential properties in one transaction has not been factored into the aforementioned revenue estimate. As outlined in the supplementary financial memorandum, lodged with the Parliament on 3 March, the Scottish Government has estimated the cost of the relief to be in the region of £2 million in 2016-17 and annually thereafter.

There have been numerous calls for various reliefs from the land and buildings transaction tax supplement. I am firmly of the view that a period of time will be required to enable the supplement to become embedded and for sufficient financial and statistical data to be collected to enable informed policy decisions to be made in future. The position on reliefs with particular reference to the land and buildings transaction tax supplement will be kept under review as part of the on-going process of devolved tax planning and management.

I turn to the subject of a grace period, which was discussed by the Finance Committee and earlier today during stage 3. The Scottish Government lodged a stage 2 amendment, agreed to by the Finance Committee, that allows for the possibility that a person could claim exemption from the supplement in their initial land and buildings transaction tax return. That may be possible where the sale of the previous main residence is completed before the land and buildings transaction tax return for the acquisition of the new main residence has to be submitted. In such circumstances, no supplement would need to be paid.
I acknowledge that that does not provide a solution for all instances where the purchase of a new dwelling takes place before the sale of an old one, because the purchaser will need to submit their tax return in order to register the title to the property. The approach that I have decided to take here is to ask Revenue Scotland to monitor the position from the land and buildings transaction tax supplement provisions coming into force until 30 October 2016. The data collected will enable the Scottish Government—

Gavin Brown (Lothian) (Con): Is the Scottish Government’s advice to solicitors to hold off for a few extra days—or as long as it takes—before submitting that return?

John Swinney: No. That is not the Government’s advice. The Government’s advice to solicitors is to comply with the legislation, as I would expect them to do. However, we will monitor the evidence as it emerges in the handling of this issue.

It is important that we review the impact of the land and buildings transaction tax supplement, and I am aware of a number of calls for an early review to be carried out. I certainly agree with the comments made by the Finance Committee in its stage 1 report that “developing an understanding of the impact of the supplement will be complex and will take time”.

To ensure a meaningful and constructive review, I firmly believe that reviewing the impact of the supplement will require at least one complete year of data, given the seasonality in housing transactions, the likely forestalling behaviours and the longer-term trends in the housing market. The Scottish Government intends to update Parliament on the outcome of that review in the 2018-19 draft budget, in accordance with our undertaking in the written agreement on the budget process.

I move,

That the Parliament agrees that the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill be passed.

14:53

Jackie Baillie (Dumbarton) (Lab): It seems like no time at all since we were having the stage 1 debate on the land and buildings transaction tax supplement, because, in fact, it was just two weeks ago. We have approached the bill literally at breakneck speed. I acknowledge the effort that that has been for the Cabinet Secretary for Finance, Constitution and Economy, his officials, the Finance Committee, the clerks and those who contributed to our deliberations by giving evidence. We have proceeded with a degree of haste that is not usual for bills in this Parliament.

I have said a couple of times before that we need to think carefully about our parliamentary process for scrutinising tax changes. I accept absolutely that there will be occasions when we need to act quickly to implement a new tax or vary a rate. We will want, as a matter of course, to avoid behavioural responses where people might seek to avoid any new or changed tax but, equally, we will want to ensure that we have time to consider any revised legislation and get that legislation right. No one in this chamber wants unintended consequences to arise from rushed legislation.

The speed has implications for stakeholders, too, as consultation will, by its very nature, need to be done entirely differently, never mind the scrutiny process of this Parliament. The Law Society of Scotland, KPMG and the Chartered Institute of Taxation all expressed concerns to the committee about the lack of consultation that was undertaken.

I know that the convener of the Finance Committee agrees, and that will undoubtedly feature in the committee’s legacy paper. I hope that the speed of acting initially is balanced by a greater degree of post-legislative scrutiny, so that we can at least fix those aspects of legislation that are not working as intended. However, that debate will be for another day—in another session.

Let me turn to the substance of the debate. The land and buildings transaction tax was levied for the first time last year. The bill to introduce a supplement that is before us today is in reaction to the decision by the Chancellor of the Exchequer to implement a 3 per cent stamp duty tax supplement, which he announced in his autumn statement. We are essentially copying a proposal from the UK Government in order to safeguard the housing market in Scotland. I think that we all get that.

However, the House of Commons Treasury Committee believes that the proposal from the chancellor, on which we have based ours, is flawed. That committee believes that it will have a negative effect on the buy-to-let market, which we consider to be important—as the Deputy First Minister said in his opening speech—and it believes that it will also have an impact on labour market mobility. Indeed, the committee thinks that the whole thing is unduly complex and that it will have unintended consequences, so it is pushing for a delay—a period of calm reflection. I am not sure how successful the Treasury Committee will be and how persuadable George Osborne is, but the cabinet secretary has made it clear to me previously that he will proceed regardless.

Irrespective of any delay, the cabinet secretary—or indeed his successor—needs to keep the legislation under close review. Let us not
be slow to amend it if we feel that it is having a negative impact on areas of our housing market. There is considerable and increasing reliance on the private sector rental market. If the availability of properties diminishes, there will be a knock-on effect on the social rented sector, where the number of new housing developments has been in decline.

The cabinet secretary said that he would come back at stage 2 with areas for exemption, and he did that to an extent. However, I think there is a continuing concern about labour market mobility on two counts. First, any contraction in the private sector rental market has a consequence for people moving around the country for work. They will be unable to access the range of housing that is currently available. That is the concern. Secondly, it has an effect on economic migration, as incoming workers will be charged an additional 3 per cent if they retain their home abroad.

That might not affect that many people, but we do not want to send out a message that Scotland is a less desirable place to move to in order to do business. We need skills from outwith our borders, such as those of doctors, nurses and teachers. We need to be cautious that we do not do anything that puts them off. I ask the cabinet secretary or his successor to monitor the impact of the legislation on labour mobility.

Finally, let me consider the income that is likely to be generated. As I have said before, the amount that is generated by residential LBTT is much less than anticipated. The forecast for 2015-16 was £235 million, and we are likely to be some way short, despite £20 million coming from the Treasury for forestalling effects.

The forecast for the LBTT supplement is much less ambitious. From a yield of £45 million to £70 million, it has been reduced to between £17 million and £29 million. The cabinet secretary has touched on some of the reasons for that. It has undoubtedly benefited from a much more detailed assessment and an attempt to consider behavioural factors. However, it is still limited in the availability of data, a point that was made robustly by the Scottish Fiscal Commission. I ask the cabinet secretary what action is being taken to improve the data.

The cabinet secretary has indicated that the bill is about ensuring that the opportunities for first-time buyers to enter the housing market remain as strong as they possibly can. That is something that we can agree on. I hope, however, that he has not had a negative impact on the private buy-to-let market, which is an increasingly important element of the housing market in Scotland.
My biggest concern was outlined in the stage 1 debate, at stage 2 and when we discussed my amendment today. At this late stage, I still urge the Scottish Government to give careful consideration to a grace period. A host of organisations have argued for that, not least those that advised the cabinet secretary on this bill and on the Land and Buildings Transaction Tax (Scotland) Bill. This bill will create a genuine unfairness for those buying houses. None of us wants that to happen, but it is pretty obvious that it will happen in a huge number of cases. The cabinet secretary said that he was not closed minded about a grace period, but thus far he appears to have been. I urge him to keep his mind open and liaise closely with stakeholders, in particular the Law Society of Scotland and those who will have to implement the bill on the ground.

It is obvious to me that we will have to revisit the bill pretty quickly—certainly long before six months have passed, given the number of transactions that will be involved. I ask the cabinet secretary to say something further about that in his closing speech.

The Deputy Presiding Officer: We come to the open debate. It will be a short debate, with speeches of a maximum of four minutes. Mark McDonald will be followed by Lesley Brennan.

15:03

Mark McDonald (Aberdeen Donside) (SNP): It is good to know that, unlike at stage 1, when I was the only speaker in the open debate, I will have some company this time around.

A group of schoolchildren came into the public gallery and had to sit through the discussion on the amendments. As we discussed the finer merits of technical amendments to a taxation policy, I contemplated what a fine job we were doing of teaching them that politics was not in any way dry, boring or dull. It is fair to say that at least Gavin Brown did his best to inject a bit of heat into the debate, although he was a little uncharitable in his description of how the Finance Committee approached the issue of a grace period, particularly at stage 2.

The Deputy First Minister stated—and Jackie Baillie agreed in her remarks just now—that a grace period was included at stage 2. The Finance Committee recommended only that there should be a grace period; it did not recommend a specific length of time. As Gavin Brown will recall, we had a long discussion about that issue in committee. It was felt that, on balance, it would be best for the committee to recommend a grace period and allow the Scottish Government to decide on the most appropriate length of time.

Gavin Brown: Will the member give way?

Mark McDonald: I ask Gavin Brown to give me one moment.

Gavin Brown is perfectly entitled to disagree with the length of time of the grace period and to advocate for the points that he wishes to make. However, he must accept, first, that the committee recommended merely a grace period; secondly, that the Deputy First Minister proposed a grace period that was voted on in committee and accepted; and thirdly, that there was no duress applied with regard to how the committee members voted. Committee members assessed the options that were in front of them and voted accordingly.

Gavin Brown: Does Mark McDonald genuinely think that the amendment that the cabinet secretary lodged at stage 2 provided for a grace period? Does he think that it would be wise for solicitors to hold off on submitting land returns in the interim?

Mark McDonald: I will make a couple of observations. First, the Deputy First Minister has outlined that the amendment that he lodged at stage 2 dealt only with the first part of Gavin Brown’s two-pronged problem in that respect. The second problem that Gavin Brown highlighted, which relates to a situation in which the sale collapses because the buyer withdraws, would not be addressed by a 14-day grace period as proposed at stage 2. [Interruption.]

I hear Gavin Brown saying that he proposed a 60-day grace period at stage 2. At committee, we went through the reasons why that was inappropriate. Given the 30-day requirement for the submission of LBTT returns, a 60-day grace period would have raised significant issues. In particular, Gavin Brown’s amendment did not specify any particular sales that would be captured, so it would have covered all transactions and allowed anybody to delay their transaction by 60 days irrespective of whether a sale had been completed or whether they were selling in the first place. It would have given carte blanche for a 60-day grace period simply to apply to all sales, in the same way as the 14-day grace period that Gavin Brown proposed, which did not specify who would be captured by the provision.

Gavin Brown should draw comfort from the fact—and I think that he is supporting the bill at stage 3 for these reasons—that, first, as the Deputy First Minister has highlighted, there will be the possibility of repayment after an 18-month period if a transaction goes through, and secondly, data will be captured to inform the possible future use of order-making powers to make an amendment if that is necessary. On that basis, we should all be grateful that the bill will receive support at decision time.
Lesley Brennan (North East Scotland) (Lab):
The housing market is a key component of our economy and, as such, changes to it ought to be considered very carefully. According to Registers of Scotland, approximately 90,000 properties were submitted for registration in the past financial year. The Fraser of Allander institute warned last week that growth in Scotland is set to slow further. With that fragility in mind, I strongly urge the Deputy First Minister to reconsider the implementation of an explicit grace period for accidental home owners.

The Finance Committee recommended that the Scottish Fiscal Commission should provide commentary in November, after the six-month outturn data for the supplement are released. The committee received correspondence yesterday from Lady Susan Rice on behalf of the Scottish Fiscal Commission. She stated:

“As with the other devolved taxes, the SFC plans to analyse outturn data relative to the forecast. A complication when conducting such an exercise for the LBTT supplement using part-year outturn data is that there are no historical data with which to identify a typical seasonal pattern in tax receipts from the supplement.”

I welcome the Deputy First Minister’s comments today about reviewing the arrangements after 12 months to ensure that seasonality is picked up, but there is still the issue around how we then unpick people who are captured, given that there is no explicit grace period.

The letter continues:

“This makes it difficult to assess whether or not any discrepancy between forecast and outturn is due to an underlying forecast error or an unknown seasonal pattern in this sub-part of the market. Nevertheless, we shall attempt to shed as much light as possible on the operation of the supplement as the outturn data are released.”

Moreover, the Scottish Fiscal Commission states that uncertainty in assessing the impact of the tax stems from the lack of data for this small part of the housing market. The Scottish market is a small part of the housing market, as is buy-to-let and accidental second home owners. In addition, the Council of Mortgage Lenders stated in correspondence with me that it does not collect any data or have any information on the bridging finance market. Given the paucity of data and the fragility of the economy, an explicit grace period ought to have been implemented.

Finally, it is not explicit in the bill that registered social landlords and local authorities who purchase fewer than six properties would be exempt, so I urge that exemption. I support the supplement in the bill, but I am concerned about the rapid roll-out of the measure and any unintended consequences, specifically because of the lack of precision in the two points that I have highlighted today.

John Swinney: I will address some of the comments that have been made. There has been a debate about the supplement provision that the bill will enact. Gavin Brown characterised the situation correctly when he said that it is a matter of judgment. Everybody can see that there could be a risk to the Government’s objectives for the housing market in Scotland, and in particular to one of our key objectives in our approach to land and buildings transaction tax in the original legislation, which was to give first-time buyers better prospects of progressing on the property ladder. That objective could be undermined by the legislative changes that are being made south of the border and their implications for the property market in Scotland. The decision in principle is undoubtedly a decision that was made on balance, but I have been anxious to ensure that the Government’s policy objectives, which have been reinforced by the steps that we have taken on land and buildings transaction tax, are in no way jeopardised by that proposal from the UK Government.

Jackie Baillie’s comments were an explicit acknowledgement of one of the challenges that we now face in our parliamentary budgeting and financial processes. We need to respond at greater speed than our core longstanding budget process allows. That was a helpful recognition of the issues that arise out of the devolution of additional tax-raising powers to the Scottish Parliament and the need for tax decisions to be made, and an acknowledgement that tax decisions sometimes have to be taken within a smaller window than expenditure decisions, given that behavioural implications can arise.

We will not resolve those issues this afternoon. However, the discussions about the bill and the scrutiny that the Finance Committee has given to the measures in the fiscal framework and the Scottish Fiscal Commission Bill, to which we will come later in the week, as well the wider agenda around the budget process, are all live discussions that Parliament needs to reflect on. I am sure that the Finance Committee will reflect them in its legacy paper.

Today, I put on the record the Government’s willingness to engage constructively with Parliament on those discussions. We all need to understand the parameters and processes within which we are working, in what is now a different scenario from the one that was envisaged when some of the veterans of Parliament—I consider myself to be one of them—were involved in the
production of the Public Finance and Accountability (Scotland) Act 2000.

The other major issue in the debate was that of the grace period. We touched on some of the detail of that in considering the stage 3 amendments and we discussed it at stage 2. Mr McDonald fairly characterised the Finance Committee’s recommendation—it argued for a grace period to be provided for in the legislation. I responded constructively to that at stage 2 and provided for a grace period that will not have the effect of undermining the central tenet of the land and buildings transaction tax legislation, which is that it is important that transactions are registered with Revenue Scotland. That should enable all the appropriate tax to be collected and should mean that there is no diminution of that important principle. I will continue to reflect on those issues as we see the implementation of the legislation and, if I consider that there is any requirement for the issue to be addressed, appropriate provisions will be drawn to Parliament’s attention.

I acknowledge that the bill has been taken through Parliament at some speed and I am grateful to everyone who has participated in that process to enable it to happen. I give the reassurance that the Government will reflect carefully on the implementation of the legislation to ensure that its central purpose is delivered as part of the process.
Land and Buildings Transaction Tax (Amendment) (Scotland) Bill

[AS PASSED]
Amendments to the Bill since the previous version are indicated by sideling in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Land and Buildings Transaction Tax (Amendment) (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to amend the Land and Buildings Transaction Tax (Scotland) Act 2013 to make provision about an additional amount of tax to be chargeable in respect of certain transactions relating to dwellings.

1  Land and buildings transaction tax: second homes etc.

5  (1) The Land and Buildings Transaction Tax (Scotland) Act 2013 is amended as follows.

6  (2) After section 26 insert—

“26A Additional amount: transactions relating to second homes etc.

Schedule 2A makes provision about an additional amount of tax chargeable in respect of certain chargeable transactions.”.

10  (3) After schedule 2 insert—

“SCHEDULE 2A
(introduced by section 26A)

ADDITIONAL AMOUNT: TRANSACTIONS RELATING TO SECOND HOMES ETC.

PART 1

OVERVIEW

Overview

1  (1) This schedule makes provision about an additional amount of tax chargeable in respect of certain chargeable transactions.

20  (2) It is arranged as follows—

Part 2 identifies the transactions to which this schedule applies,

Part 3 sets out the additional amount of tax,

Part 4 contains provision about the application of this schedule in relation to certain types of buyer,

Part 5 provides for repayment of and relief from the additional amount of tax in certain cases,
Part 6 contains special rules about the meaning of ownership of dwellings for the purposes of this schedule,
Part 7 contains general provision including powers to modify this schedule.

**PART 2**

**TRANSACTIONS TO WHICH THIS SCHEDULE APPLIES**

*Transactions relating to second homes etc.*

2 (1) This schedule applies to a chargeable transaction if the following conditions are satisfied—

(a) the subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling,

(aa) the relevant consideration for the transaction is £40,000 or more,

(b) at the end of the day that is the effective date of the transaction, the buyer owns more than one dwelling, and

(c) either—

(i) the buyer is not replacing the buyer’s only or main residence, or

(ii) the buyer is replacing the buyer’s only or main residence but the subject-matter of the transaction also includes the acquisition of ownership of one or more other dwellings in addition to the one that the buyer intends to occupy as the buyer’s only or main residence.

(2) A buyer is replacing the buyer’s only or main residence if—

(a) during the period of 18 months ending with the effective date of the transaction, the buyer has disposed of the ownership of a dwelling,

(b) that dwelling was the buyer’s only or main residence at any time during the period of 18 months, and

(c) on the effective date of the transaction, the buyer intends to occupy the dwelling that is or forms part of the subject-matter of the transaction as the buyer’s only or main residence.

*Transactions where buyer is a non-individual etc.*

3 (1) This schedule applies to a chargeable transaction if the following conditions are satisfied—

(a) the subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling,

(aa) the relevant consideration for the transaction is £40,000 or more, and

(b) the buyer—

(i) is not an individual, or

(ii) is an individual and sub-paragraph (2) or (5) applies.
(2) This sub-paragraph applies if the acquisition is made in the course of a business of the individual the sole or main activity of which is investing or dealing in chargeable interests.

(3) Sub-paragraph (2) of paragraph 31 of schedule 17 applies for the purposes of sub-paragraph (2) of this paragraph as it applies for the purposes of paragraph 31(1) of that schedule.

(4) In sub-paragraph (2), the reference to a business of the individual includes a reference to a business of a partnership of which the individual is a partner.

(5) This sub-paragraph applies if the individual is making the acquisition as trustee under a settlement and, in relation to any dwelling that is or forms part of the subject-matter of the transaction, there is no interested beneficiary.

(6) For the purposes of sub-paragraph (5), a beneficiary under the settlement is an interested beneficiary in relation to a dwelling if the beneficiary has or will have a relevant interest in the dwelling.

**PART 3**

**The additional amount**

**Additional amount**

4 (1) Where this schedule applies to a chargeable transaction, the amount of tax chargeable in respect of the transaction (as determined under section 25(1) or 26(1)) is increased by the additional amount.

(2) The additional amount is an amount equal to 3% of the relevant consideration.

(3) The relevant consideration is—

(a) in a case where the transaction is a residential property transaction, the chargeable consideration for the transaction, or

(b) in a case where the transaction is a non-residential property transaction, so much of the chargeable consideration for the transaction as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of the dwelling (including any interest or right pertaining to ownership of the dwelling) that is or forms part of the subject-matter of the transaction.

(4) In the case of a chargeable transaction to which this schedule applies by virtue of paragraph 2(1)(c)(ii), the relevant consideration is to exclude so much of the chargeable consideration as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of the dwelling (including any interest or right pertaining to ownership of the dwelling) that the buyer intends to occupy as the buyer’s only or main residence.

**PART 4**

**Certain types of buyer**

**Joint buyers**

5 (1) This paragraph applies to a chargeable transaction which satisfies the conditions in paragraph 2(1)(a) and (aa) or 3(1)(a) and (aa) if there are two or more buyers who are or will be jointly entitled to ownership of the dwelling.
(2) The conditions set out in paragraph 2(1)(b) and (c) or, as the case may be, 3(1)(b) are satisfied if they are satisfied in relation to any one of, or more than one of, the buyers.

**Spouses, civil partners, cohabitants and children**

6 (1) For the purposes of paragraph 2(1)(b), a dwelling which is owned by—

(a) the buyer’s spouse or civil partner,

(b) the buyer’s cohabitant,

(c) a person aged under 16 who is a child of—

(i) the buyer,

(ii) the buyer’s spouse or civil partner, or

(iii) the buyer’s cohabitant,

is to be treated as being owned by the buyer.

(2) Sub-paragraphs (1)(a) and (1)(c)(ii) do not apply if the buyer and the buyer’s spouse or civil partner have separated.

(3) For the purposes of sub-paragraph (2), the parties have separated if—

(a) they no longer live together, and

(b) they do not intend to live together again.

(4) For the purposes of sub-paragraphs (1)(b) and (1)(c)(iii), a person is the buyer’s cohabitant if the two of them live together as though married to one another.

**Trustees in certain trusts**

7 (1) This paragraph applies to a chargeable transaction which satisfies the conditions in paragraph 2(1)(a) and (aa) if—

(a) the buyer is acting as trustee of a settlement, and

(b) a beneficiary under the settlement has or will have a relevant interest in a dwelling that is or forms part of the subject-matter of the transaction.

(2) In paragraphs 2(1)(b) and (c), 2(2)(b) and (c), 5, 6 and 8(1)(b) and (c), references to the buyer are to be read as if they were references to the beneficiary.

(3) In paragraphs 2(2)(a) and 8(1)(a), references to the buyer are to be read as including references to the beneficiary.

**PART 5**

**REPAYMENT OF AND RELIEF FROM THE ADDITIONAL AMOUNT**

**Repayment of additional amount in certain cases**

8 (1) Sub-paragraph (2) applies in relation to a chargeable transaction to which this schedule applies by virtue of paragraph 2 if—
(a) within the period of 18 months beginning with the day after the effective date of the transaction, the buyer disposes of the ownership of a dwelling (other than one that was or formed part of the subject-matter of the chargeable transaction),

(b) that dwelling was the buyer’s only or main residence at any time during the period of 18 months ending with the effective date of the transaction, and

(c) the dwelling that was or formed part of the subject-matter of the transaction has been occupied as the buyer’s only or main residence.

(2) Where this sub-paragraph applies—

(a) the chargeable transaction is to be treated as having been exempt from the additional amount, and

(b) if the buyer has made a land transaction return in respect of the transaction, the buyer may take one of the steps mentioned in sub-paragraph (3).

(3) The steps are—

(a) within the period allowed for amendment of the land transaction return, amend the return accordingly, or

(b) after the end of that period (if the land transaction return is not so amended), make a claim to the Tax Authority under section 107 of the Revenue Scotland and Tax Powers Act 2014 for repayment of the amount overpaid.

(4) For the period allowed for amendment of returns, see section 83 of the Revenue Scotland and Tax Powers Act 2014.

(5) In the case of a chargeable transaction to which this schedule applies by virtue of paragraph 2(1)(c)(ii), sub-paragraph (2)(a) has effect only in relation to the additional amount applicable to so much of the relevant consideration for the transaction as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of the dwelling (including any interest or right pertaining to ownership of the dwelling) referred to in sub-paragraph (1)(c).

Relief for purchases of 6 or more dwellings

8A A chargeable transaction is exempt from the additional amount if it is a transaction to which section 59(8) applies.

Relief: supplemental

8B(1) A relief under paragraph 8A must be claimed in the first return made in relation to the transaction or in an amendment of that return.

(2) For the period allowed for amendment of returns, see section 83 of the Revenue Scotland and Tax Powers Act 2014.
PART 6

OWNERSHIP OF DWELLINGS

What counts as a dwelling owned by a person?

9 (1) This paragraph applies to determine what counts as a dwelling owned by a person for the purposes of this schedule.

(2) Dwellings situated outside Scotland (as well as such property in Scotland) are to be counted.

(2A) A dwelling owned by a person is not to be counted for the purposes of paragraph 2(1)(b) if the acquisition of ownership of the dwelling by the person—

(a) is or was a chargeable transaction to which this schedule applies by virtue of paragraph 3, or

(b) would have been such a chargeable transaction but for the fact that the dwelling is situated outside Scotland.

(3) Ownership of a dwelling (other than one that is or forms part of the subject-matter of the chargeable transaction) is not to be counted if the market value of the ownership interest is less than £40,000.

(4) In determining the market value of the ownership interest in a dwelling for the purposes of sub-paragraph (3), the market value of any interest or right pertaining to ownership of the dwelling is to be included.

(5) Where the ownership interest in a dwelling is one of deemed ownership by virtue of paragraph 11 or 11C then, for the purposes of sub-paragraph (3), the market value of the interest is taken to be the market value of the dwelling.

(6) In determining the market value of a dwelling for the purposes of sub-paragraph (5)—

(a) the market value of any interest or right pertaining to ownership of the dwelling is to be included, and

(b) no account is to be taken of the effect of the existence of the interest referred to in sub-paragraph (5).

Deemed ownership: cases where title is not yet registered etc.

10 (1) This paragraph applies to determine, for the purposes of this schedule, when a person owns any dwelling where ownership of the dwelling is or has been the subject-matter or part of the subject-matter of a land transaction.

(2) Where the person is the buyer in relation to the transaction, the person is to be treated for the purposes of this schedule as owning the dwelling as from the end of the day that is the effective date of the transaction.

(3) Where the person is the seller in relation to the transaction, the person is to be treated for the purposes of this schedule as ceasing to own the dwelling as from the end of the day that is the effective date of the transaction.

(4) In the application of this paragraph to a dwelling situated in England, Wales or Northern Ireland, “land transaction” and “effective date” have the same meanings as they have in Part 4 of the Finance Act 2003 (stamp duty land tax).
(5) In the application of this paragraph to a dwelling situated outside the United Kingdom—
   (a) “land transaction” means any transaction for the transfer of ownership of the dwelling, and
   (b) “effective date” means the date of settlement or completion of the transaction (or of any event that is equivalent to settlement or completion of the transaction).

Deemed ownership: beneficiaries under certain trusts
11 (1) This paragraph applies where a person is the beneficiary under—
   (a) a bare trust, or
   (b) a settlement under the terms of which the beneficiary has a relevant interest in any dwelling that is or forms part of the trust property.
(2) For the purposes of this schedule, the beneficiary is to be treated as the owner of the dwelling.
(4) References in this schedule to “ownership” and “acquisition of ownership” are to be read accordingly.

Dwellings owned by trustees or personal representatives
11A(1) This paragraph applies where a person owns a dwelling as—
   (a) a trustee, or
   (b) a personal representative of another.
(2) For the purposes of this schedule, the person is to be treated as not being the owner of the dwelling.
(3) Sub-paragraph (2) does not affect the operation of any other provision of this schedule by which the person is to be treated as the owner of the dwelling.

Deemed ownership: long leases
11B(1) This paragraph applies where a person (“the tenant”) is the tenant under a lease of a dwelling for a term of more than 20 years.
(2) For the purposes of this schedule—
   (a) the tenant is to be treated as the owner of the dwelling, and
   (b) the landlord under the lease is to be treated as not being the owner.
(3) References in this schedule to “ownership” and “acquisition of ownership” are to be read accordingly.

Deemed ownership: proper liferents
11C(1) This paragraph applies where a person (“the liferenter”) holds a liferent over a dwelling under a proper liferent.
(2) For the purposes of this schedule—
   (a) the liferenter is to be treated as the owner of the dwelling, and
(b) the granter of the liferent and the fiar are to be treated as not being the owner.

(3) References in this schedule to “ownership” and “acquisition of ownership” are to be read accordingly.

Deemed ownership: joint owners and owners of shares

12 (1) This paragraph applies where two or more persons are jointly entitled to the ownership of a dwelling.

(2) For the purposes of this schedule, each of the persons is to be treated as the owner of the dwelling.

(3) In the application of this paragraph to a dwelling situated in England, Wales or Northern Ireland, “jointly entitled” has the meaning given in section 121 of the Finance Act 2003 (minor definitions).

(4) In the application of this paragraph to a dwelling situated outside the United Kingdom, “jointly entitled” means having an interest equivalent to being jointly entitled within the meaning of this Act or the Finance Act 2003.

Dwellings outside Scotland: what counts as “ownership”

13 (2) In the case of a dwelling situated outside Scotland, a person owns the dwelling for the purposes of this schedule if the person has an interest in it that is equivalent to ownership in Scotland.

(3) References in this schedule to “ownership” and “acquisition of ownership” are to be read accordingly.

PART 7
GENERAL PROVISION

Power of Scottish Ministers to modify schedule

14 (1) The Scottish Ministers may by order amend paragraph 4(2) so as to substitute, for the percentage figure for the time being specified there, a different percentage figure.

(2) The Scottish Ministers may by order amend paragraph 2(1)(aa), 3(1)(aa) or 9(3) so as to substitute, for the figure for the time being specified there, a different figure.

(3) The Scottish Ministers may by order modify this schedule so as to make provision for or about reliefs from the additional amount and, in particular, may—

(a) add a relief,

(b) modify any relief,

(c) remove any relief.

(3A) The Scottish Ministers may by regulations modify the following provisions of this schedule—

(a) Parts 2 (except paragraphs 2(1)(aa) and 3(1)(aa)) and 4 so far as relating to the application of this schedule in relation to—
(i) partnerships,
(ii) trusts,
(b) Part 6 (except paragraph 9(3)),
(c) paragraph 15.

(4) An order under sub-paragraph (3) may modify any other enactment that the Scottish Ministers consider appropriate.

Interpretation
15 (1) In this schedule—
“bare trust” has the meaning given in paragraph 19 of schedule 18,
“relevant consideration” is to be construed in accordance with paragraph 4(3) and (4),
“settlement”, except in paragraph 10(5)(b), has the meaning given in paragraph 21 of schedule 18.

(2) Part 6 of schedule 5 (what counts as a “dwelling”) applies for the purposes of this schedule as it applies for the purposes of schedule 5.

(3) For the purposes of this schedule, a beneficiary under a settlement has a relevant interest in a dwelling that is or forms part of the trust property or the subject-matter of a transaction if the beneficiary is entitled to—
(a) occupy the dwelling for life, or
(b) income (whether net or gross) in respect of the dwelling.”.

2 Consequential amendments
(1) In the Land and Buildings Transaction Tax (Scotland) Act 2013—
(a) in section 25(3) (amount of tax chargeable), before paragraph (a) insert—
“(za) schedule 2A (additional amount: transactions relating to second homes etc.),”,

(b) in section 26(4) (amount of tax chargeable: linked transactions), before paragraph (a) insert—
“(za) schedule 2A (additional amount: transactions relating to second homes etc.),”,

(c) in section 68 (subordinate legislation)—
(i) in subsection (2), after paragraph (j) insert—
“(ja) paragraph 14(3) or (3A) of schedule 2A,”,

(ii) for subsection (5) substitute—
“(5) The order is an order under—
(a) section 24(1),
(b) paragraph 14(1) or (2) of schedule 2A, or
(c) paragraph 3 of schedule 19.”,

(d) in schedule 5 (multiple dwellings relief)—
(i) in paragraph 10, after “relevant transaction” insert “other than one to which schedule 2A applies”;

(ii) after paragraph 10 insert—

“10A The amount of tax chargeable in relation to a relevant transaction to which schedule 2A applies is—

\[ \sum DT + RT \]

where—

\( DT \) is the tax due in relation to each dwelling that is, or is part of, the main subject-matter of the transaction, and

\( RT \) is the tax due in relation to the remaining property.”.

(iii) in paragraph 11, after “DT x ND” insert “or, as the case may be, \( \sum DT \),”

(iv) in paragraph 13, after Step 3 insert—

“Step 4

In the case of a relevant transaction to which schedule 2A applies, carry out Step 3 (taking account of any relief applicable to the transaction under paragraph 8A of that schedule) in relation to each dwelling that is, or is part of, the main subject-matter of the transaction to find the tax due in relation to each dwelling.”.

(2) In section 108(3) of the Revenue Scotland and Tax Powers Act 2014 (claim for repayment if order changing tax basis not approved), in column 1 of the table, in the entry for the LBTT(S) Act 2013, after paragraph (a) insert—

“(aa) an order under paragraph 14(1) or (2) of schedule 2A,“.

3 Transitional provision: application of this Act

(1) This Act applies in relation to a chargeable transaction where—

(a) the contract for the transaction was entered into on or after 28 January 2016, and

(b) the effective date of the transaction is on or after the day on which section 1 comes into force.

(2) For the purposes of this section, “chargeable transaction”, “contract” and “effective date” have the same meanings as in the Land and Buildings Transaction Tax (Scotland) Act 2013.

4 Ancillary provision

(1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with, or for giving full effect to, this Act.

(2) Regulations under subsection (1) may—

(a) modify any enactment (including this Act),

(b) make different provision for different purposes.

(3) Regulations under subsection (1)—
(a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,

(b) otherwise, are subject to the negative procedure.

5 Commencement

5 (1) This section and sections 4 and 6 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on whichever is the later of—

(a) the day after Royal Assent,

(b) 1 April 2016.

6 Short title

The short title of this Act is the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016.
Land and Buildings Transaction Tax (Amendment) (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to amend the Land and Buildings Transaction Tax (Scotland) Act 2013 to make provision about an additional amount of tax to be chargeable in respect of certain transactions relating to dwellings.

Introduced by: John Swinney
On: 27 January 2016
Bill type: Government Bill