

Inquiry into the Land and Buildings Transaction Tax

Summary of evidence submitted

1. In preparation for its scrutiny of the Draft Budget for 2016-17, the Finance Committee issued a call for evidence on the operation so far of LBTT and asked whether there should be changes to rates and bands for the forthcoming Draft Budget. Thirteen responses were received and these are summarised below in sections based on the questions asked by the Committee. Few of the respondents addressed all the questions and Audit Scotland indicated that they were preparing a report for the Auditor General on the implementation and management of financial powers, including LBTT, by the Scottish Government and Revenue Scotland. They would welcome the opportunity to provide evidence to the Committee at the time of publication in December. To put the responses in context, I first set out the rates and bands for LBTT and some statistics on receipts so far and on the property market.

2. LBTT rates and bands for 2015-16¹

Residential transactions

Purchase price	LBTT rate
Up to £145,000	0%
Above £145,000 to £250,000	2%
Above £250,000 to £325,000	5%
Above £325,000 to £750,000	10%
Over £750,000	12%

¹ Tables from the Revenue Scotland website

Non-residential transactions

Purchase price	LBTT rate
Up to £150,000	0%
Above £150,000 to £350,000	3%
Above £350,000	4.5%

3. Numbers of transactions and tax collected to 30 September 2015

Table 2: Notifiable Residential Transactions

	Residential Returns Received ¹	Total Residential Tax Liabilities ²	Total Residential Tax Received By 5th Working Day of Following Month ³	Total Residential Tax Received By Month To Date ⁴
Apr-2015 ^p	^c 6,880	£7,000,000	£6,900,000	£7,000,000
May-2015 ^p	^c 7,810	£11,400,000	£11,400,000	£11,400,000
Jun-2015 ^p	^c 10,030	£18,500,000	£18,400,000	£18,500,000
Jul-2015 ^p	^c 9,940	£19,400,000	£19,200,000	£19,400,000
Aug-2015 ^p	^c 95,40	£21,400,000	£21,300,000	£21,400,000
Sep-2015 ^p	9,040	£18,700,000	£18,500,000	£18,500,000

¹: All valid residential returns received during the stated month.

²: Total self-reported tax due on residential returns received during the stated month.

³: Total payments received by the 5th working day of the following month, where the return to which they relate was received during the stated month.

⁴: Total payments received by date of data extraction relating to returns received during the stated month.

^p: Provisional

^c: Corrected

Table 3: Notifiable Non-Residential Transactions

	Non-Residential Returns Received ¹	Total Non- Residential Tax Liabilities ²	Total Non-Residential Tax Received By 5th Working Day of Following Month ³	Total Non-Residential Tax Received By Month To Date ⁴
Apr-2015 ^p	^c 610	^k £10,900,000	£10,800,000	£10,900,000
May-2015 ^p	^c 810	£12,600,000	£12,500,000	£12,600,000
Jun-2015 ^p	^c 950	^k £13,800,000	£13,800,000	£13,800,000
Jul-2015 ^p	^c 970	£18,100,000	£18,000,000	£18,100,000
Aug-2015 ^p	^c 900	^k £15,500,000	£15,800,000	£15,500,000
Sep-2015 ^p	970	£15,800,000	£15,700,000	£15,700,000

¹: All valid non-residential returns received during the stated month.

²: Total self-reported tax due on non-residential returns received during the stated month.

³: Total payments received by the 5th working day of the following month, where the return to which they relate was received during the stated month.

⁴: Total payments received by date of data extraction relating to returns received during the stated month.

^p: Provisional

^k: Revised

Source: Revenue Scotland Tax Monthly Statistics, September 2015.²

² <https://www.revenue.scot/who-we-are/publications/statistics>

4. Performance against forecast for 2015-16

	Forecast for year	Six month liability	Percentage of forecast	Six month collection	Percentage of liability
Residential	£235m	£96.4m	41.02%	£96.2m	99.79%
Non-residential	£146m	£86.7m	59.38%	£86.6m	99.88%

Forecast from Table 1, Scottish Budget 2015-16 as adjusted following the SDLT changes in December 2014 and subsequent changes to LBTT rates.

In the first half of the year revenue from residential LBTT is less than half of the forecast. The residential property market is generally more buoyant in summer than winter so this must give some concern. A key question is the extent to which this shortfall is the result of one-off behaviour due to the introduction of LBTT (forestalling) and the extent to which it results from unforeseen general market conditions.

5. Market data shows a significant market reaction to the introduction of LBTT. Average house prices in Scotland have been similar to those in the North of England and in Wales in recent years. Average house prices in England and Wales in total have shown a more marked rising trend. However, Scotland alone shows a sharp increase in average price in the first quarter of 2015 followed by a fall in the second quarter after the introduction of LBTT.

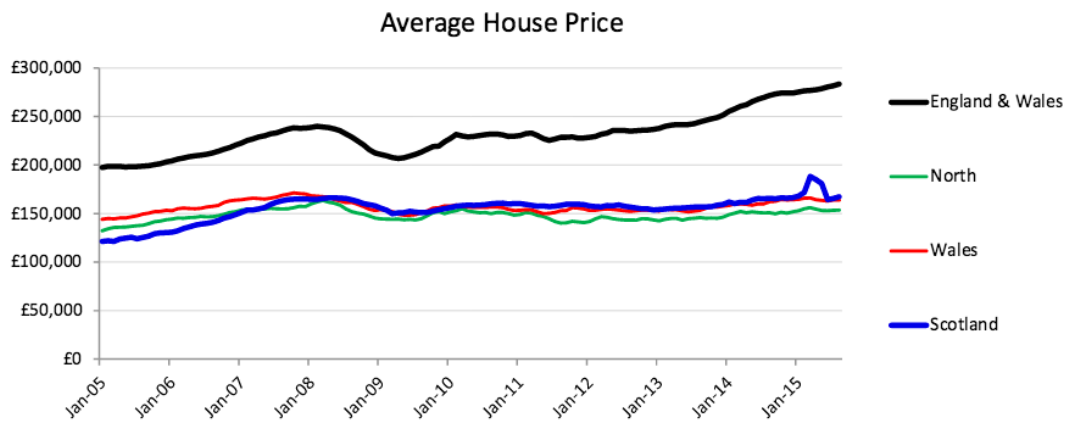


Figure 5. Scotland house prices, compared with England & Wales, Wales and the North for the period January 2005 - August 2015 [link to source Excel](#)

Your Move/ Acadata Scotland, August 2015³

6. That this relates primarily to higher value properties, where LBTT liabilities exceed the replaced SDLT, can be seen in the following table showing the average prices in Scotland's seven cities. With £335,000 being the point at which LBTT starts to exceed SDLT, those cities where the average house price is well below that show little change in average price in the months before and after the introduction of LBTT. Those where the average price rises towards that figure show a marked increase in average price before the introduction of LBTT with a fall thereafter. This suggests relatively fewer sales of higher value properties, either by a slowing of the market or a reduction in prices or both.

² <http://www.acadata.co.uk/Your%20Move%20Acad%20Scotland%20HPI%20News%20Release%20August%202015.pdf>, p. 8

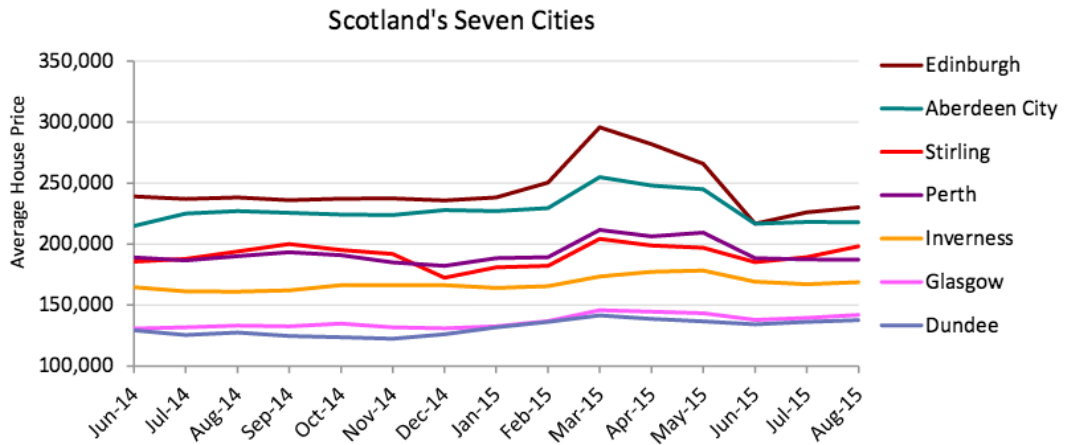


Figure 7. Average house prices for Scotland's seven cities from June 2014 – August 2015

[link to source Excel](#)

Your Move / Acadata Scotland, August 2015⁴

7. The data on sales of properties priced at £1 million or more illustrates the impact at the very top of the market. The average number of

Monthly Sales	£1 million +
Total 2013	115
Total 2014	140
Jan-15	8
Feb-15	14
Mar-15	90
Apr-15	0
May-15	2
Jun-15	8
Jul-15	5
Aug-15	6
YTD 2015	133

Your Move / Acadata Scotland, August 2015, page 5

properties sold in this category in 2014 was 12 per month. In January to March 2015, the number of such houses sold was 112. In the three months following the introduction of LBTT, ten such houses were sold and in the five months to the end of August, 21 were sold. Of the 133 houses in this category sold in 2015 up to the end of August, 84% were sold before the introduction of LBTT.

Assuming that there was a similar, if lesser impact, in house sales in the

band from £335,000 to £1 million, and noting no other major factors differentiating trends in the Scottish housing market from that, say, in Northern England, we may conclude that forestalling is the major reason for the shortfall in LBTT receipts.

⁴ Ibid. p. 9

The impact on both the residential and commercial property market of the various rates and bands.

8. The Council of Mortgage Lenders consider that it may be some time before the full impact of LBTT on the Scottish residential property market is understood but noted some positive features of the period April to June 2015. The number of loans increased by 39.2% over the previous quarter and by 3.1% over the corresponding quarter in 2014. In value, the increases were 27.5% over the previous quarter and 4.4% over 2014. These figures included 8,000 first time buyer loans, an increase of 50.9% and 5.3% respectively. They consider that these figures may have benefitted from purchases postponed to take advantage of lower LBTT rates at £330,000 and below but there were also competitive deals available in the mortgage market during this quarter.
9. The members of Homes for Scotland are clearer about the impact of the introduction of LBTT. With respect to the majority of house buyers, the new LBTT rates have provided a small benefit, although in their judgement it is insufficient on its own to influence a decision to buy. Members also considered that the change has allowed for a smoother pattern of prices in the market by removing the artificial step at the £250,000 mark. Set against this, they detect diminished activity with respect to properties with a value over £500,000. Buyers at this level are deferring their decision to move and, if this continues, it will adversely affect the functioning of the market which depends on movement up and down price scales without artificial barriers. In terms of the commercial market, members expressed concern that Scotland now appeared less attractive to those seeking to invest in residential property.
10. The National Association of Estate Agents note a small decrease in the average house price over the last year which they attribute to reduced sales of high value properties as a result of the introduction of LBTT. While first time buyers have been more active in 2015, they

attribute this to the availability of mortgage lending rather than to tax savings at the lower end of the market. They cite figures from a member organisation that show a fall in number of sales for the period April to August 2015 in comparison with 2014 in both the sub £145,000 and in the next band to £250,000. There is a small increase in the band from £250,000 to £325,000 where LBTT is still less than SDLT and an increase of one property in the range above £325,000. Confusingly, this last minor increase is put forward by them as an example of there being fewer transactions amongst the most expensive homes following the introduction of LBTT. With no indication of the geographical area or market segment served by the member reporting these numbers, the significance is not clear other than to illustrate that the savings or increases from the introduction of LBTT are not the only factors impacting the market.

11. The Scottish Property Federation report that the market has welcomed the removal of the 'slab' system of SDLT, particularly for residential property where there is no longer a distortion in the market at £250,000. On the other hand they note that despite an overall increase in house prices during April to June 2015 prices actually fell in 11 out of 32 local authority areas. The areas where prices have fallen include Aberdeen, Aberdeenshire, Edinburgh and East Renfrewshire where there are a greater proportion of houses in the £500,000 to £1 million range. They note that Savills recently reported a 31% drop in activity in respect of houses over £750,000 despite an overall increase in residential transactions. Their members have raised concern that higher tax costs and the lack of availability of accommodation on the market at the £325,000 plus level is impacting on labour mobility, both within Scotland and in attracting skills to Scotland. For commercial property, the move to a progressive rate of taxation with less radical changes in rates has gone smoothly and a strengthening economy has lifted the value of sales. However, pricing in this market is reported to have adjusted to take account of the change in tax rates and structure.

The level of receipts for residential and non-residential transactions in relation to forecasts

12. The Scottish Property Federation produce a bar chart comparing LBTT receipts for April to August 2015 with SDLT receipts for 2013-14 and 2014-15. Comparing the LBTT receipts to a five month proportion of the SDLT receipts for the previous two years shows a shortfall of approximately 5% against 2013-14 but of the order of 25% against 2014-15. Given the changes to residential SDLT introduced in December 2014 and the consequential reduction in the residential LBTT forecast, the total forecast for 2015-16 is £381 million, significantly less than the SDLT receipts for the previous year. Similar to the six month figures in paragraph 4 above, the five month residential LBTT receipts are below forecast while non-residential are a little above. The Federation comment that this is concerning, given that residential transactions are traditionally quiet over the winter, although this may be offset in part by a traditionally strong final calendar quarter for commercial property. No other respondents commented on the question of receipts against forecast.

The extent to which higher priced transactions were brought forward to avoid the higher rates

13. The Council of Mortgage Lenders report anecdotal evidence of transactions being brought forward and members of Homes for Scotland report that some customers facing a higher LBTT charge requested earlier completion of their homes, not always a practical request. One member of Homes for Scotland produced figures for their business comparing the first and second calendar quarters of 2015 with 2014. These support the perception that customers brought forward higher value transactions. The proportion of transactions over £333,000 was 12.7% in Q1 2015 compared to 4.9% in Q1 2014. The average selling price in Q1 2015 was 13.4% higher than in Q1 2014. The average selling price of homes in Q2 2015 was 9.5% lower than in Q1 2015 compared to a drop of 3% in 2014.

14. The National Association of Estate Agents report that, outside Edinburgh, the number of properties sold for £750,000 or more in March 2015 was 113 while only 3 were sold in April and 9 in May. June showed an increase to 19 but this fell back to 3 in July. In Edinburgh the figures were 115 in March, none in April, 5 in May, 7 in June and 3 in July. These figures follow the same pattern as those produced for properties of £1 million and above by Your Move / Acadata and quoted in paragraph 7 above.

15. The Scottish Property Federation refer to substantive evidence that a number of high value residential property transactions were brought forward to avoid higher LBTT rates. They quote a report from Rettie & Co, Estate Agents, of a 266% increase in the number of properties listed in the £500,000 to £750,000 sector in January 2015. This the price range below that highlighted in paragraph 15 above by the National Association of Estate Agents but within the range where SDLT offered a saving over the incoming LBTT. In the commercial market the Federation considers that there was less of an issue due to the smoother transition between rates and thresholds.

The extent to which lower priced transactions were delayed until after 1 April

16. The Council of Mortgage Lenders reported anecdotal evidence of delay in lower value transactions to take advantage of LBTT rates and Homes for Scotland's members reported customers requesting delay in lower value transactions until the new LBTT rates were effective. One of their members observed that 16.9% of all transactions in the first three months of 2015 were below the £145,000 stating point for LBTT while, in the same period in 2014, 28.4% of transactions were at this level.

17. Members of The National Association of Estate Agents report fewer properties sold in the band up to £145,000, and also in the band from there to £250,000, in the period from January to March 2015 than in

the corresponding period in 2014. The Scottish Property Federation, on the other hand, think the evidence of delay at the lower end of the market is less clear cut than that for advancing higher value transactions. They expect that the impact of support schemes such as Help to Buy had more impact than tax issues in this part of the market.

Whether there should be any changes to the rates and bands for residential transactions in the draft budget for 2016-17

18. The Chartered Institute of Taxation draw to the Committee's attention that in an earlier submission they emphasised the need for regular review of the bands for LBTT to ensure that they remain appropriate and are in line with policy objectives. In matching rates and bands to its policy objectives, the Scottish Government must be aware of the likely direct and indirect impact on taxpayer behaviour and tax revenues. As changes are a policy matter, they decline to give any specific recommendations.

19. The Council of Mortgage Lenders believe that a better understanding of the impact of LBTT, particularly whether there is a long term adverse effect at the higher end of the market, is required before recommending change. While Homes for Scotland also consider that it is too early to come to a definitive view, in their case on the impact of LBTT on the new build market, they do express concern. The available evidence suggests that sales of mid- to higher-value homes have been depressed and this will have consequences for the functioning of the wider housing market. They call for a review to determine, for example, whether there should be a more stepped approach above £325,000. They note that the upper limit of the 5% band in Scotland is £325,000 while in the rest of the UK it is £925,000. A member commented that 91% of the LBTT yield from their sales would be generated by sales of properties costing over £325,000 which demonstrates the importance of higher value properties in revenue generation.

20. The National Association of Estate Agents express some concern at the lack of stimulus provided by LBTT to the lower end of the market where there have been fewer transactions since the introduction of LBTT than in comparable periods in the previous two years. They suspect some short-term factors and see flexible lending criteria, more building of affordable homes and measures such as the Help to Buy ISA, rather than LBTT, as key to stimulating this market. North Ayrshire Council would welcome a reduction in LBTT at any level and make the specific suggestion of inserting a further band between £500,000 to £1 million to stimulate the residential market. It is not entirely clear what they intend here as the current bands are 10% from £325,000 to £750,000 and 12% above that. They may mean replacing these two bands with three starting at £325,000, £500,000 and £1 million with rates to be determined.

21. The Scottish Property Federation has clear recommendations for LBTT rates in 2016-17. With LBTT at current rates depressing the higher end of the residential market, they do not believe the 12% rate above £750,000 will contribute significant revenue. Previously, this end of the market contributed significant SDLT. They recommend increasing the upper threshold of the 5% band to £500,000 and abolishing the 12% rate altogether. This would mean that the 10% band would start at a point £425,000 lower than for SDLT but there would be no rate matching the 12% top rate of SDLT paid on residential property transactions from £1.5 million.

22. With regard to commercial property, the market makes a negative comparison between investment yields in Scotland compared with the rest of the UK. While tax is only part of that, the Federation would not wish any further negative comparison to be created in this intensely competitive market. Consequently, they recommend either no change in non-residential rates and bands or realigning the LBTT top rate of 4.5% with the top SDLT rate of 4%.

23. West Lothian Council considers it too early to make a balanced judgement on whether any changes should be made for 2016-17 and recommend reviewing 12 months of operation before considering changes. Two other Councils, Aberdeenshire and Highland, request an extension of an LBTT relief. When acquiring affordable housing units or the land on which to build them, Councils incur LBTT unless the acquisition is under a developer's obligation contained in a S75 agreement.⁵ Housing Associations delivering affordable housing do not have to pay such LBTT.⁶ In constrained financial circumstances, Councils could better apply the money spent on LBTT elsewhere. They suggest that the relief available to Housing Associations should be extended to Local Authorities.

The performance of Revenue Scotland in administering and collecting the tax

24. Revenue Scotland (RS) have set up an LBTT forum to focus on practical and technical issues specific to the administration and operation of LBTT. In advance of the first meeting, the Chartered Institute of Taxation gathered the views of its members. The general view, both of the Institute's members and of participants in the forum, is that for day-to-day conveyancing the system is working well. The LBTT forms are generally simpler and quicker to complete than their SDLT equivalents. There is a requirement for additional returns in respect of leases which may prove burdensome for those occupying a large number of properties, however.

25. RS's communication channels are primarily digital but there is provision for communication by telephone or letter, a provision that the Institute consider essential. There is an email enquiry facility for questions which are 'in principle' or are queries of a general nature.

⁵ Relief for compliance with planning obligations under Schedule 15, LBTT(S)A 2013

⁶ Relief for certain acquisitions by registered social landlords under Schedule 6, LBTT(S)A 2013

Currently, the responses to such enquiries refer to the relevant RS guidance. Both the Institute and other members of the LBTT forum consider that the responses should be referenced to the LBTT legislation since alternative interpretations of the legislation may be possible.

26. There is also online provision for RS to provide opinions on certain situations and on specific transactions. RS report that they have received a steady stream of such enquiries from taxpayers and agents. Currently, RS's target for answering these is 25 working days. Both the Institute and other LBTT forum members would like greater resources put into this facility as a 25 working day turnaround is not commercial. The Institute understands that the majority of queries relate to leases, transitional provisions, partnerships and Multiple Dwellings Relief and they recommend that the relevant guidance is reviewed to see if amendments to improve clarity in these areas is possible. Roadshows around Scotland are already a communication tool for RS and the Institute would like to see this commendable initiative extended to further locations and supplemented by webinars to reach as wide an audience as possible.

27. RS provide guidance both on legislation and of a practical nature and the Institute suggest that this could be improved by clearly indicating on the website when guidance has been updated or new material added and such updates should be made regularly in the light of experience. Areas where the current guidance is inadequate include lease variations and 'substantial performance'. With respect to SDLT, HMRC have indicated that 90% consideration or 90% possession constitutes 'substantial'. RS have suggested that, for LBTT, each taxpayer must look at the specific facts of each transaction to determine what is or is not substantial. But practically a clear 'rule of thumb' is required and the Institute understand that, following from forum discussions, RS is now considering whether percentages can be issued as a guide.

28. With regard to collection, the Institute understands that by the end of August approximately 48,000 returns had been submitted with tax outstanding beyond the deadline in only approximately 300 cases, less than 1%. The LBTT forum has suggested to RS that any breach of payment deadlines should be referred not only to the agent submitting the return but also to that firm's LBTT administrator. In most cases the agent will belong to a professional body and breaches of professional conduct will be taken seriously and escalated appropriately.
29. Homes for Scotland reported a member as highlighting a smooth changeover from SDLT to LBTT and that the online system works well. There is concern, however, over RS's reluctance to discuss complex or unclear LBTT issues on an informal basis and this is exacerbated by the slowness of response under the alternative formal opinion process. RS does not necessarily follow HMRC guidance, built up over a period of years, even where the statutory provisions concerned are effectively identical. This causes great uncertainty particularly in the absence of informal routes of enquiry.
30. The Institute of Chartered Accountants of Scotland have found RS professional, helpful and responsive to comments and feedback. Their use of multiple channels of communication is welcomed and their use of 'town hall' style meeting is helpful. Their website is well laid out and a good source of information. Feedback from members is that operational implementation has gone well and that LBTT returns are more straight-forward than SDLT ones. Anecdotal evidence suggests that the working relationships and boundaries of LBTT legislation in the more complex commercial transaction have still to be tested and fully established.
31. The Institute considers that RS's publication of specific areas where it will not provide an opinion, for example, on the possible application of the GAAR, is unhelpful and possibly inefficient. Accepting such enquiries will give early warning of tax planning gambits. The taxpayer

should have the right to request an opinion in any circumstance and it will always be open to RS to disagree with a view expressed or to decline to give an opinion in the circumstances. In broad terms, RS's opinions have been helpful and bring together primary and secondary legislation and forms. However, in restating legislation the guidance does not help taxpayers and their advisers to understand how RS interprets the provisions in practice. A particular example is the treatment of leases. They also refer to an IFS discussion paper on the legal status of HMRC guidance which may be relevant to determining the status and certainty of RS's guidance.⁷

32. PricewaterhouseCoopers find the 'Guidance' and 'Forms' sections of the RS website easy to navigate and providing useful information. The portal for submitting LBTT returns is also easy to navigate and user friendly. On the other hand they report an example of a significant delay and difficulty in obtaining a conclusive response to request for an opinion. In this particular case, the relevant LBTT provisions mirrored the SDLT provisions, HMRC had provided a non-statutory clearance on the application of the SDLT provisions to the same structure and a copy of this clearance was given to RS. The reasons for the delay appeared to be a request for further information in response to the original submission which already included all the information in RS's checklist. This was compounded by a lack of communication regarding the reason for the delay and no indication of when a response might be expected. PwC suggest that RS could improve communication and knowledge sharing with HMRC in regard to the non-statutory clearance process.

33. The Scottish Property Federation judge that RS is performing well in the collection of LBTT, with the shortfall against forecast in residential LBTT due to rate and threshold policy, not collection. However, some

⁷ The Tax Rewrite Committee of the IFS, (December 2014) *HMRC's Discretion: The Application of the Ultra Vires Rule and the Legitimate Expectation Doctrine*.

members have expressed concern at the weakness of guidance and administrative support. When attempting to determine the correct course of action for their client they find it difficult to obtain the necessary direction from RS. They feel inhibited in voicing criticism of performance because of their need to build an on-going relationship with RS. There is also a concern that RS are underestimating the level of recurring 'commercial lease events' and there is little evidence that they are preparing to educate taxpayers on their three yearly liability.

34. On a practical level, both Aberdeenshire and Highland Councils find it frustrating that logging in to the LBTT portal can take longer than completing the Return. On the other hand, North Ayrshire and West Lothian Council have no administrative issues to report.

Gavin McEwen

10 November 2015