



Finance Committee

The Land and Buildings Transaction Tax (LBTT)

Submission from 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: The Land and Buildings Transaction tax (LBTT). We welcome the opportunity to offer our comments on the operation of LBTT since its introduction on 1 April 2015; 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 5 below.
- 1.3 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 the rates and bands for residential transactions should flow from policy decisions as to the aims of the Scottish Government and the Scottish Parliament for the LBTT. Our response focuses on the final question of the call for evidence concerning the performance of Revenue Scotland in administering and collecting the tax.

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

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

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

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

- 2.1 We are not economists nor experts on the property market and offer no comment in respect of these questions. We previously responded to a call for evidence issued by the Finance Committee concerning the bands and rates for the LBTT. At that time we noted,

As the Finance Committee will be well aware, the announcement of the rates and bands may affect transaction chains in progress – causing some people to delay purchases and others to accelerate them. If

there are significant differences between LBTT and Stamp Duty Land Tax (SDLT) liabilities on particular levels of purchases, there could be distortions in the property market in the coming months.¹

- 2.2 There are several statistical publications available on the Revenue Scotland website, providing details of the number of returns, tax due and tax received on a monthly basis.

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

- 3.1 This is a matter of policy. The decision as to what the rates and bands for LBTT should be (and whether there should be any changes) must take into account the policies of the Scottish Government. There must also be an awareness of the likely direct and indirect impact of any changes – in terms of the effect on taxpayer behaviour and the impact on tax revenues. We refer to our previous submission, where we stated,

It will ... be important for the Scottish Government to uprate the bands periodically, to ensure that they remain appropriate and are in line with policy objectives.²

4 The performance of Revenue Scotland in administering and collecting the tax

- 4.1 CIOT representatives recently attended the first meeting of Revenue Scotland's LBTT forum.³ This forum has been set up to focus on practical and technical issues specific to the administration and operation of LBTT. In preparation for the forum, we gathered views from our members, and both those views and the meeting itself have informed our response to this question.
- 4.2 The LBTT forum is intended to provide a platform for discussion between Revenue Scotland and those working with LBTT, to enable discussion around the operation of LBTT, in relation to guidance, policy and practical matters. Should specific issues arise, Revenue Scotland will establish sub-groups. The existence of the LBTT forum is a good example of the collaborative approach that Revenue Scotland (and the Scottish Government) have adopted in relation to devolved taxes. The LBTT forum is picking up LBTT-specific

¹ Paragraph 4, Submission on the Land and Buildings Transaction Tax Bands and Rates by the Chartered Institute of Taxation: http://www.tax.org.uk/tax-policy/public-submissions/2014/land_buildings_transaction_tax_bands_rates_24_Oct

² Paragraph 5, Submission on the Land and Buildings Transaction Tax Bands and Rates by the Chartered Institute of Taxation: http://www.tax.org.uk/tax-policy/public-submissions/2014/land_buildings_transaction_tax_bands_rates_24_Oct

³ The first meeting was held in Edinburgh on 22 September 2015. It is intended that meetings will be held every six months.

discussions, which would previously have been dealt with by the Devolved Tax Collaborative.⁴

- 4.3 The general view (from CIOT members and the LBTT 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. In respect of leases, however, there are requirements for additional tax returns by comparison with SDLT. This is likely to prove burdensome for those occupying a large number of properties in particular. Some suggestions for improvements have been made, and these are mentioned in the paragraphs below.

Communications

- 4.4 There are a number of communication channels for taxpayers and agents with queries concerning LBTT. Although these are primarily digital, it is possible to telephone Revenue Scotland or write to them. This choice of communication channel is essential so as not to disadvantage those who are digitally excluded.
- 4.5 There is an email query facility or mailbox: lbtt@revenue.scot. This mailbox is intended to deal with questions 'in principle' and queries of a general nature; Revenue Scotland do not provide responses concerning specific transactions through this channel. We understand that currently the responses given by the mailbox refer to the relevant Revenue Scotland guidance. We, and other members of the LBTT forum, think that the responses should be referenced to the tax legislation, not just the guidance, since taxpayer opinion or interpretation may differ from the guidance.
- 4.6 Revenue Scotland also provide feedback boxes on the website. These allow taxpayers and advisers to suggest improvements to Revenue Scotland, for example where guidance or the information on a particular webpage is unclear.
- 4.7 Revenue Scotland may provide an opinion in certain situations and on specific transactions: <https://www.revenue.scot/help/revenue-scotland-opinions>. An opinion is the Revenue Scotland view on how the law applies. Revenue Scotland provide a checklist on their website, which they have suggested could be used as a basis for appropriate headings when seeking an opinion. We understand from Revenue Scotland that they have received a steady stream of enquiries from taxpayers and agents through this facility. Revenue Scotland currently aim to provide an opinion within 25 working days, provided all relevant information is supplied. The CIOT and other LBTT forum members would like to see more resources for the Revenue Scotland opinions team, as a 25 working day turnaround is not commercial.
- 4.8 We understand that the majority of queries received to date by Revenue

⁴ The Devolved Tax Collaborative (DTC) is a wide forum that usually meets twice a year, to discuss devolved taxes. It has previously dealt with LBTT and Scottish Landfill Tax (SLfT). The new LBTT and SLfT fora will report to the DTC, and the DTC will also deal with new developments.

Scotland concern leases, transitional provisions, partnerships and Multiple Dwellings Relief. In view of this, we suggest that it would be appropriate to review the relevant guidance in these areas and see if there are any amendments that could be made to improve its clarity.

- 4.9 Revenue Scotland have previously held roadshows around Scotland. The intention is to hold three more, in Aberdeen, Edinburgh and Glasgow. The roadshows will provide training in relation to tax returns, payments and penalties. This initiative is to be welcomed. Ideally we would like to see additional roadshows in other locations too or the use of webinars, to ensure they are available to as wide an audience as possible.

Guidance

- 4.10 Revenue Scotland provide guidance (both practical and legislative) for LBTT on their website.⁵ Suggestions for possible general improvements to the guidance include that:

- there should be clear notification on the website when guidance has been updated or new guidance has been added;
- additional practical examples should be included within the guidance.

We would also reiterate the point that we have previously made in relation to guidance, that it should be dynamic. Thus, with experience of operating the tax and interpreting the legislation for practical scenarios, Revenue Scotland should review and update their guidance as necessary.

- 4.11 We think that there are some areas where the guidance is potentially misleading or lacking entirely, and there is a need to review and update it. Revenue Scotland may not always fully appreciate the practicalities of dealing with LBTT for advisers and believe that the Revenue Scotland opinion facility is sufficient. For example, in respect of lease variations, which practitioners deal with frequently, there is a need for certainty in relation to the general principles that should be applied. This is currently not available. This is an example of where the LBTT forum is helpful, as participants have been able to communicate the difficulties they and their clients face in a particular area, and a way forward has been agreed.
- 4.12 Another practical issue is substantial performance. For SDLT, HMRC guidance indicates that 90% consideration or 90% possession constitutes 'substantial'. The LBTT guidance is silent on this issue, but it is not possible to simply read across from the SDLT guidance. Although we can appreciate the Revenue Scotland approach, that each taxpayer must look at the specific facts of each transaction to determine what is and what is not substantial, in practical terms, a clear 'rule of thumb' is needed. Again, following on from discussions at the LBTT forum, we understand that Revenue Scotland are considering issuing percentages by way of a guide, as HMRC have done.

⁵ <https://www.revenue.scot/land-buildings-transaction-tax/guidance>

Debt and arrangements satisfactory

- 4.13 We understand that approximately 48,000 returns have been submitted to the end of August 2015. There are only a small percentage of returns (less than 1%) for which payment has not been received within the deadlines, approximately 300 cases.
- 4.14 The LBTT forum made a sensible suggestion, that Revenue Scotland should report any breach not only to the agent filing that return, but to the LBTT administrator at that firm. Solicitors and tax advisers handling LBTT will tend to belong to professional bodies, such as the CIOT, and will therefore have to adhere to rules of conduct. Thus firms will take breaches seriously and escalate reports as appropriate.

5 The Chartered Institute of Taxation

- 5.1 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.
- 5.2 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.
- 5.3 The CIOT's 17,000 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