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Dear Mr Crawford

I am writing further to my letter of 15 July 2019 regarding the Committee's consideration of the Land and Buildings Transaction Tax (LBTT) Additional Dwelling Supplement (ADS). In that correspondence I stated that my officials would explore the available sources of evidence which could provide the Committee with details of the extent to which the various scenarios highlighted have occurred. The Committee also asked to see the analysis of responses to the recent consultation on the Scottish Government's proposed devolved taxes policy framework.

My officials have now carried out an analysis of all correspondence related to LBTT sent to the Scottish Government from 1 April 2016 (the date of introduction of ADS) to 21 August 2019. During this period, there were 162 cases which focused on the ADS, of which 129 concerned individuals indicating specific scenarios whereby the ADS had either been paid, or the individual expected to pay the ADS. This included a relatively small number (31 cases) of correspondence relating to the specific scenarios highlighted in your letter of 26 June, a larger number (91 cases) related to eight other ADS related themes and seven cases classed as miscellaneous. I have provided a summary of this analysis in the Annex to this letter.

It is important to note that the analysis only captures the instances where taxpayers have written to the Scottish Government, or others have done so on their behalf, in the period to 21 August. Nevertheless, set against the almost 75,000 transactions in this period in relation to which the ADS was paid, the results do not suggest that the issues identified are widespread. Indeed there were two scenarios raised by stakeholders which do not appear to have been raised with the Scottish Government in any other correspondence at all.

I do, however, recognise that challenging circumstances can occur in individual cases and understand the concerns that have been expressed as a consequence. Accordingly, I have asked my officials to undertake further work on this matter. This will include more detailed engagement with stakeholders, in particular conveyancing solicitors and practitioners, to ensure that the best possible

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understanding of these scenarios is gained. I would also again encourage relevant organisations to come forward with any evidence they can provide to support our consideration of this matter.

In my previous letter, I noted that the Scottish Government would work with Revenue Scotland on this issue. Whilst you will appreciate that I cannot comment on the specifics, my understanding is that Revenue Scotland officials recognise the scenarios highlighted in the Scottish Government's analysis and have noted that the correspondence they have received on the ADS has, in the main, related to questions raised on the available guidance. My officials will of course continue to engage with Revenue Scotland in the additional work that I have noted above.

On the other ADS related issues highlighted in your letter of 26 June, I can confirm that the Scottish Government continues to consider the concerns raised about the arrangements in place regarding the application of LBTT to local authorities. With regard to the treatment of SME homebuilders, I await the further information that I mentioned in my earlier letter.

Finally, you also requested that I provide Committee with a copy of the analysis of responses to the recent consultation on the Scottish Government's proposed Devolved Taxes Policy Framework. The analysis, which also sets out the Scottish Government's next steps in this process has now been published and can be accessed at the following link:

<https://www.gov.scot/publications/devolved-taxes-policy-framework-consultation-analysis/>

This consultation set out our proposals for a more structured policy and legislative cycle and associated approach to engagement and consultation for taxes in Scotland. The proposals seek to provide greater certainty, transparency and efficiency and involve a broader range of stakeholders. I am pleased with the positive responses we have received to the consultation.

The next phase of this work is linked to the Devolved Taxes Legislation Working Group, which was established jointly by Scottish Government and Scottish Parliament officials to consider an alternative legislative process for devolved tax legislation, including examining the need for a Finance Bill in Scotland. This builds on the recommendations from the Budget Process Review Group. The Group is due to publish an interim report in early 2020 which will provide an opportunity for input from a wider range of stakeholders. I look forward to engaging with the Committee on this over the coming months.

I hope that the Committee finds this response helpful.

Regards



KATE FORBES

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Summary of Scottish Government Correspondence received on the LBTT Additional Dwelling Supplement

An analysis of all correspondence sent to the Scottish Government from 1 April 2016 to 21 August 2019 related to LBTT has been undertaken. In this period, the ADS was paid in just under 75,000 transactions. During the same period the Scottish Government dealt with 258 cases, of which 162 focused on the ADS.

Of the 162 cases which focused on the ADS, 129 concerned individuals indicating specific scenarios whereby the ADS had either been paid, or the individual expected to pay the ADS. These include some of those raised by stakeholders and included in the Committees previous correspondence, and many go beyond the scenarios raised.

The analysis identified 31 cases involving the seven specific scenarios the Committee has highlighted. The most frequent involves ADS being due when a taxpayer rents rather than owns their previous residence and is thus unable to demonstrate they have replaced a main residence. There were 14 instances of this, including six where individuals lived in accommodation provided in relation to their employment. In all of these scenarios, ADS will have been payable due to the taxpayer owning additional property over and above the new main residence purchased.

In reference to the scenario whereby a couple that gets married jointly purchases a property to live in together, pays the ADS due to owning more than one property and are then unable to claim a repayment as only one of the couple can dispose of a previous main residence, we have identified only one specific example where marriage was specifically mentioned. There were however a further nine scenarios involving joint buyers where the ADS is due and could not then be reclaimed as only one of the couple is able to dispose of a previous main residence.

In reference to the other scenarios raised by the Committee, we have identified three cases where a divorcing couple is subject to the ADS where one buys a new residence and four cases where the ADS is payable as a result of shares being owned in an inherited dwelling. The final two scenarios raised by the Committee (treatment of "granny flats", clarity around treatment of inherited dwellings) have not been raised with the Scottish Government.

Going beyond the scenarios highlighted above, a further eight ADS related themes were identified, accounting for 91 of the 129 cases. Some of these themes will contain a variety of different circumstances.

- A taxpayer buys a new home and moves into it, but cannot sell or does not expect to sell their previous main residence within 18 months (20 cases)
- A taxpayer moves into a new main residence, subsequently moves back to a previous main residence, then sells the new main residence (6 cases)
- A taxpayer buys, but is unable to move to the new main residence due to personal circumstances (8 cases)
- An individual is planning to buy or in the process of doing so and concerned that they will not be able to sell a previous main residence in time and that ADS will be due (9 cases)
- An individual is buying property for family members (12 cases)
- A taxpayer writes about the rules regarding other owned property (not lived in), for example they do not wish to sell a previous residence (23 cases)
- A taxpayer combines two properties into one and the ADS due and cannot be repaid (4 cases)

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- The joint buyer issue which was resolved through the Land and Buildings Transaction Tax (Additional Amount - Second Homes Main Residence Relief) (Scotland) Order 2017 and LBTT (Relief from Additional Amount) (Scotland) Act 2018. (9 cases)

A further seven miscellaneous cases were identified, relating to six different issues.

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