

POLICY NOTE

THE LAND AND BUILDINGS TRANSACTION TAX (PRESCRIBED PROPORTIONS) (SCOTLAND) ORDER 2014

SSI 2014/350

The instrument above was made in exercise of the powers conferred by paragraph 12 of schedule 5 (multiple dwellings relief) and paragraph 6(3) of Schedule 11 (acquisition relief) to the Land and Buildings Transaction Tax (Scotland) Act 2013 (“LBTT(S)A 2013”). It is subject to the negative procedure.

Multiple Dwellings Relief

Policy Objectives

Section 59(8) of LBTT(S)A 2013 treats the acquisition of 6 or more dwellings in a single transaction as a non-residential transaction. Where fewer than 6 dwellings are acquired, the residential rates of tax would apply.

Schedule 5 to LBTT(S)A 2013 provides for relief in the case of certain land transactions involving a purchase of multiple dwellings. To encourage investment in the private rented sector, relief is provided based on the calculation of the average price of the each dwelling being acquired (applying residential rates of tax to each one), rather than charging the higher rates of tax on the full purchase price of the multiple dwellings.

Paragraph 12 of schedule 5 allows Scottish Ministers to prescribe a minimum proportion of Land and Buildings Transaction Tax (“LBTT”) which must be paid so that the amount of relief is effectively capped. The purpose of this instrument is to prescribe the minimum proportion of LBTT that must be paid where the relief applies.

Consultation

A consultation paper¹ was published on 1 May 2014 inviting views by 25 July 2014 on a draft of these regulations. In the consultation paper, the Scottish Government proposed setting a minimum prescribed proportion of 40% of the LBTT that would be payable in the absence of MDR. The Scottish Government received 20 responses to the consultation, all from organisations. No responses were received from individuals. Half of those responding to the consultation represented the legal and accountancy sector. Six retail bodies responded; and four respondents were from the property sector.

An analysis of the consultation responses² was published by the Scottish Government in December 2014. 13 of the 20 respondents to the consultation addressed this

¹ ‘Moving Forward with Land and Buildings Transaction Tax – A Consultation on Proposed Subordinate Legislation’, published May 2014, available at:

<http://www.scotland.gov.uk/Resource/0044/00449463.pdf>

² ‘Moving Forward with Land and Buildings Transaction Tax – A Consultation on Proposed

question, with a majority of 11 respondents opposing the proposal. The most frequently cited reason for opposing the setting of the prescribed minimum amount at 40% was that this would result in a higher tax liability than under UK Stamp Duty Land Tax (“SDLT”), potentially placing Scotland at a competitive disadvantage compared with the rest of the UK.

The most commonly recommended alternative was a proportion of 25% (five respondents), which they felt was more comparable with SDLT than the proposed 40% proportion. The logic behind this proposal is that under SDLT, where the average price per dwelling is acquired falls in the nil rate band, a tax ‘floor’ is charged at 1% of the whole average purchase price of the dwellings. If the chargeable consideration for the transaction as whole exceeded £1M (as it may do, though not in all cases), in the absence of multiple dwellings relief tax would be charged at a rate of 4%. As 1% as a proportion of 4% is equal to 25%, then 25% is argued to be a comparable prescribed proportion for the relief under LBTT.

Taking the views of those who responded to the consultation into account, the Scottish Government has concluded that an appropriate prescribed proportion for multiple dwellings relief should be 25%.

Acquisition Relief

Policy Objectives

Part 3 of schedule 11 to LBTT(S)A 2013 provides for acquisition relief where a land transaction is entered into by a company for the purpose of, or in connection with, the transfer of an undertaking, or part of an undertaking of another company.

The purpose of this instrument is to prescribe the proportion of LBTT that must be paid where the transaction qualifies for relief.

Consultation

11 respondents to the consultation paper referred to above addressed this question with views divided on the proposed rate of 15% for the prescribed proportion for acquisition relief from LBTT. Those supporting the proposal considered that the rate of 15% would produce broadly similar results to those that would have operated under SDLT.

A common view amongst those opposing the proposal was that a proportion of 15% is not directly comparable with SDLT, and a more appropriate comparable minimum amount would be 12.5%, being one-eighth (1/8th) of the LBTT otherwise payable. Under SDLT, tax is currently charged using this relief at 0.5% on the chargeable consideration, which, if the chargeable consideration exceeded £1M, tax would otherwise have been charged at 4%. As 0.5% as a proportion of 4% is equal to

12.5%, then 12.5% is argued to be a comparable prescribed proportion for the relief under LBTT.

Taking the views of those who responded to the consultation into account, the Scottish Government has concluded that an appropriate prescribed proportion for acquisition relief should be 12.5%.

Impact Assessments

A Business and Regulatory Impact Assessment³ (“BRIA”) has been published for the regulations and orders associated with LBTT(S)A 2013. As the Scottish Government’s approach to the prescribed proportions for multiple dwellings relief and acquisition relief broadly mirrors the current approach for SDLT, no significant financial effect or impact on the private, voluntary or public sector is anticipated.

An Equality Impact Assessment (“EQIA”) has been published⁴. The order will have no impact on equality or environmental issues.

Scottish Government
Finance Directorate
Fiscal Responsibility Division

³ ‘Land and Buildings Transaction Tax - Business and Regulatory Impact Assessment’, published December 2014, available at: www.scotland.gov.uk/lbtt-bria2014

⁴ ‘Land and Buildings Transaction Tax - Equalities Impact Assessment’, published December 2014, available at: <http://www.scotland.gov.uk/Publications/2014/12/5671>