

POLICY NOTE

THE LAND AND BUILDINGS TRANSACTION TAX (ADDITION AND MODIFICATION OF RELIEFS) (SCOTLAND) ORDER 2015

SSI No. 2015/93

The instrument above was made in exercise of the powers conferred by section 27(3) (addition, modification and removal of reliefs) of the Land and Buildings Transaction Tax (Scotland) Act 2013 (“LBTT(S)A 2013”). It is subject to the affirmative procedure.

Addition of ‘miscellaneous reliefs’

Purpose of this instrument

The main reliefs from tax are provided in schedules 3 to 16 of the LBTT(S)A 2013. The legislation which provides for Stamp Duty Land Tax (“SDLT”) includes a number of ‘miscellaneous’ reliefs which apply only in relation to specific organisations or types of property. To provide for similar reliefs from Land and Buildings Transaction Tax (“LBTT”), the Scottish Government consulted on miscellaneous reliefs in the consultation paper on the proposals for the LBTT Bill in 2013. No respondents commented on these reliefs.

The purpose of this instrument is to add the following five reliefs from LBTT using the power in section 27(3)(a) of the LBTT(S)A 2013:

- i. ***Friendly Societies relief*** - under section 105A Friendly Societies Act 1974 / Section 105A Friendly Societies Act 1992, a land transaction is relieved from SDLT if it is effected by or in consequence of:
 - an amalgamation of two or more registered friendly societies under section 82 of the 1974 Act
 - a transfer of engagements of a registered friendly society under that section
 - an amalgamation of two or more friendly societies under section 85 of the 1992 Act
 - a transfer of the engagements of a friendly society under section 86 of that Act, or
 - a transfer of the engagements of a friendly society pursuant to a direction given by the Financial Services Authority under section 90 of that Act

This relief has been added to LBTT as it is conceivable that friendly societies with property in Scotland may continue to merge after the tax is introduced on 1 April 2015.

- ii. ***Building societies relief*** - Under s109A Building Societies Act 1986 (which applies to England, Wales, Scotland and Northern Ireland), a land transaction is relieved from SDLT if it is effected by or in consequence of:
 - an amalgamation of two or more building societies under section 93, or

- a transfer of engagements between building societies under section 94 of the Act.

This relief has been added to LBTT as it is conceivable that buildings societies with property in Scotland may merge after the tax is introduced on 1 April 2015.

- iii. ***Visiting forces and international military headquarters relief*** – The Finance Act 2012 amended s74A of the Finance Act 1960 (visiting forces and allied headquarters: stamp duty land tax exemptions). This relief is therefore replicated in the LBTT legislation as it is conceivable that these EU military and civilian staff could be based in Scotland.
- iv. ***Property accepted in satisfaction of tax relief*** – under s11A of the National Heritage Act 1980 (which extends to England, Scotland, Wales and Northern Ireland), a land transaction entered into under s9(4) by a person mentioned in s9(2) is relieved from SDLT where property is offered to HMRC by a taxpayer in lieu of tax. The property may be transferred to one of a range of heritage bodies.

Some government-sponsored cultural and heritage bodies in Scotland do have powers to acquire land or buildings. This includes acquiring as acceptances in lieu and usually requires the specific agreement of Ministers. If LBTT was to be incurred by cultural / heritage bodies in such cases, any acceptance of land or buildings in lieu would result in a liability on the part of the accepting body to pay LBTT on the acquisition. This would in effect be a charge on the public purse.

This relief from LBTT, which is an equivalent provision to that which is currently in place for SDLT, has therefore been added to avoid that outcome.

- v. ***Lighthouses relief*** - under s221 of the Merchant Shipping Act 1995 (which extends to England, Scotland, Wales and Northern Ireland), a land transaction is relieved from SDLT if it is entered into by or under the direction of the general lighthouse authorities (including the Commissioners of Northern Lighthouses which oversees Scotland) for the purpose of carrying on services funded through the General Lighthouse Fund.

The Northern Lighthouse Board has confirmed that given the widely distributed network of lighthouses and need for regular changes to reflect changes in shipping traffic to ensure the continued safety of navigation, it has a regular number of land transactions and that will carry on into the future. On (rare) occasions it could be directed by the Secretary of State to undertake activity that may require such transactions (for example, under requirements for new Aids to Navigation as part of the recommendations following the Braer disaster). This relief has therefore been included in LBTT to deal with such circumstances.

Relief for certain acquisitions by Registered Social Landlords

Schedule 6 to the LBTT(S)A 2013 currently requires a registered social landlord (RSL) to meet all three of the qualifying conditions in order to qualify for relief, whereas under SDLT, the requirement is that if any one of the conditions is satisfied, the relief is available.

It was not the intention of the Scottish Government to amend the eligibility criteria for this relief. Using the power in section 27(3) of the LBTT(S)A 2013, the Order therefore clarifies the wording of paragraph 2(b)(ii) of schedule 6 to the Act ensure that if any one of the conditions is satisfied, the relief is available.

Crofting Community Right to Buy Relief

Schedule 9 to the LBTT(S)A 2013 provides for relief from LBTT in land transactions that are a result of the Crofting Community Right to Buy (RTB). Paragraph 3 of schedule 9 to the LBTT Act allows Scottish Ministers to prescribe a minimum proportion of LBTT to be paid but for the relief.

Section 27(3)(b) provides a power to allow Scottish Ministers to modify an existing relief by order. Using this power, this instrument will provide for full relief from LBTT for transactions involving the crofting community right to buy under which two or more crofts are bought.

Consultation

In the consultation paper on draft regulations the Scottish Government proposed that land transactions involving the exercise of the Crofting Community RTB should be exempt from LBTT charge.

Ten respondents addressed this question with nine supporting the proposal. The consultation analysis highlighted two rationales for supporting the proposal. Firstly, the proposal was seen as helping to simplify the tax system, with one respondent commenting that the crofting community purchases tend to be exempt from SDLT anyway, on account of the average price per croft almost always being within the nil rate band.

Secondly, the proposal was perceived as furthering the support given to crofting by the Scottish Government with benefits to Scottish business and society. The one respondent that disagreed with the proposal queried why the crofting community should be treated differently from other communities where transfers of individual components (e.g. social housing) are of low value.

Taking the views of those who responded to the consultation into account, the Scottish Government has concluded that transactions involving the crofting community right to buy under which two or more crofts are bought should be relieved in full from LBTT.

Impact Assessments

A Business and Regulatory Impact Assessment¹ (“BRIA”) has been published for the regulations and orders associated with the LBTT(S)A 2013. As the Scottish Government’s approach to these reliefs 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”) was published² in December 2014. The order will have no impact on equality or environmental issues.

Scottish Government
Finance Directorate
Fiscal Responsibility Division

¹ ‘Land and Buildings Transaction Tax - Business and Regulatory Impact Assessment’, published December 2014, available at: www.scotland.gov.uk/lbtt-bria2014

² ‘Land and Buildings Transaction Tax - Equalities Impact Assessment’, published December 2014, available at: <http://www.scotland.gov.uk/Publications/2014/12/5671>