



T: 0131 244 7282
E: directoroffinancialstrategy@gov.scot

Simon Thomas AM
Chair
Finance Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

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Dear Mr Thomas

Thank you for your letter of 4 October 2016 following my evidence to the Finance Committee on 29 September. I am glad that you found that session helpful and am happy to provide the Committee with the further information requested.

Provision of Land and Buildings Transaction Tax (LBTT) reliefs

Sub-sale Development Relief

Sub-sales arrangements are not uncommon in the Scottish property market. This is the case throughout the UK. "Sub-sales" involve an intermediary – often a developer – buying a parcel of land from a landowner and immediately selling on some of that land to other developers while retaining the remainder for their own purposes. Taxing both sets of purchases - which would involve two tax charges being paid on the same pieces of land although the transactions were near-simultaneous – was seen as unduly onerous. Consequently, a form of sub-sale relief has been available under UK Stamp Duty Land Tax ("SDLT") since 2003. This was provided on a "self-service" basis, so that developers simply calculated the value of the relief and deducted it from their tax calculation. However the relief came to be seen by HMRC and some commentators as providing a tax avoidance loophole. In 2013, HMRC amended the SDLT legislative provisions that provided this relief so that taxpayers wishing to use the relief were obliged to claim it explicitly, and to provide details. The aim was to reduce opportunities for tax avoidance.

The LBTT (Scotland) Act 2013 was enacted without any form of sub-sale relief. The then Cabinet Secretary for Finance, Employment and Sustainable Growth indicated at Stage 3 of the LBTT Bill that in his view the corresponding SDLT relief had been a significant source of tax avoidance. He also indicated that a similar relief in respect of LBTT would only be considered in circumstances where significant *development* of the land or buildings which were the subject of the sub-sale was in prospect, and if it could be shown that the risks of tax avoidance could be satisfactorily mitigated.

Following enactment of the Bill, the Scottish Government convened a consultative group involving representatives of property development interests, property lawyers and taxation professionals, and also undertook a public consultation exercise to seek views. After reflecting on input from the group and the consultation, Ministers decided to introduce a new targeted sub-sale development relief, through secondary legislation. The Land and Buildings Transaction Tax (Sub-sale Development Relief and Multiple Dwellings Relief) (Scotland) Order 2015 was approved by Parliament in March 2015. This Order and the 2013 Act both commenced on 1 April 2015. The relief is available to the 'first buyer' in a land transaction involving sub-sale arrangements where significant development is in prospect. The relief has been targeted in such a way so as to reduce, as far as practical, the opportunities for tax avoidance. If significant development does not take place within five years of the purchase, the relief is withdrawn or partially withdrawn. The principle is that, for the relief to be retained once claimed, significant development activity must take place on the land in question within a period of 5 years. The provisions are similar to other mechanisms in LBTT legislation which allow for the withdrawal of a relief.

Multiple Dwellings Relief and Acquisition Relief

Schedule 5 to the LBTT (Scotland) Act 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 each dwelling being acquired (applying residential rates of tax to each one), rather than charging the higher rates of tax on the full aggregate purchase price of the multiple dwellings. Scottish Ministers can also set a minimum prescribed proportion (MPP) of tax due prior to the relief which must be paid, so that the amount of relief is effectively capped. The Scottish Government consulted on a MPP¹ of 40% (footnote 1 below provides further background information) but after reflecting on stakeholder responses set a MPP of 25%.

The rationale for setting the MPP at 25% cent is that, at that time, under SDLT where the average price per dwelling acquired fell in the nil rate band, a tax 'floor' was set at 1% of the whole purchase price of the dwellings. If the chargeable consideration for the transaction as a whole exceeded £1 million then, in the absence of multiple dwellings relief, tax would be charged at a rate of 4%. As 1% as a proportion of 4% is 25%, then 25% was argued (by LBTT stakeholders) to be a comparable prescribed proportion for the relief under LBTT. The Scottish Government considered that 25 per cent represented the best balance between the public interest in securing tax receipts, and ensuring multiple dwellings relief operates to support the private rented sector when larger numbers of properties are being purchased.

Acquisition relief applies where a land transaction is entered into for the purposes of, or in connection with, the transfer of an undertaking, or part of an undertaking, by a company. In order to qualify for this relief, the consideration paid for the land transaction must be non-redeemable shares and certain other qualifying conditions must be met, as set out in schedule 11 of the LBTT (Scotland) Act 2013. The aim of the relief is to reduce the tax charge on transfers of ownership of land and property between companies where the company itself is being acquired by another. The tax is reduced to a proportion of what would have been charged but for the relief. The Scottish Ministers have the power to set this proportion. The Scottish Government consulted on a prescribed proportion for acquisition relief of 15% of the tax that would be payable but for the relief (see footnote 1 below for further details) but after reflecting on stakeholder feedback settled on a prescribed proportion of 12.5%.

¹ <http://www.scotland.gov.uk/Resource/0044/00449463.pdf> (see pages 7 to 15 & 18-20)

The rationale for setting the prescribed proportion at 12.5% was that this would preserve comparability for commercial planning purposes with the relief available, at that time, under SDLT. Under SDLT, the tax charged when this relief was claimed was 0.5% of the chargeable consideration. If the chargeable consideration exceeded £1 million, tax would otherwise have been charged at 4%. Stakeholders argued that as 0.5% as a proportion of 4% is 12.5%, then 12.5% would be a comparable prescribed proportion for the relief under LBTT. The Scottish Government agreed with this.

The Scottish Government does not actively assess the impact of differences in reliefs/exemptions between the LBTT regime in Scotland and the SDLT regime which currently applies in the rest of the UK. The Scottish Government does however keep the position on LBTT reliefs and exemptions under review as part of the ongoing programme of devolved tax planning and management.

LBTT – notification of chargeable transactions

A land transaction is the acquisition of a chargeable interest and is notifiable to Revenue Scotland, unless the transaction is exempt or if the chargeable consideration is less than £40,000. As you note, the position under the LBTT regime is broadly the same as under SDLT. The Scottish Government considers it is important that where a 100% relief is claimed, a tax return should nevertheless be submitted (unless the transaction itself is exempt). This provides important financial data regarding relief levels and also assists Revenue Scotland in exercising its compliance function.

LBTT Guidance for Taxpayers and Agents

Revenue Scotland in its capacity as the tax authority with responsibility for the administration and collection of the devolved taxes in Scotland publishes both practical and legislative guidance. The LBTT legislative guidance is intended to supplement and clarify the detail contained in the LBTT (Scotland) Act 2013 whilst recognising that LBTT is a self-assessed tax and that it is the responsibility of the taxpayer to complete and submit an accurate LBTT return, where required, and pay any tax due. If, after reviewing all the guidance material, a taxpayer or their agent still has a general query then this can be emailed to an LBTT mailbox. When LBTT first commenced there was a tendency for tax agents to email the LBTT mailbox with all their queries without reviewing the on-line guidance first. There has now been a significant reduction in the number of queries.

Revenue Scotland and Tax Powers Act 2014 – repayment of tax paid

I can confirm (Eluned Morgan's question on 29 September refers) that section 108 of the 2014 Act, as amended, covers situations where an order intended to change the tax basis of a devolved tax by means of the provisional affirmative procedure applies for a period but is not subsequently approved by the Scottish Parliament within the required period of 28 days from the date of laying.

When such an Order is made, the Order will include a coming into effect date. It is legitimate for this date to be the date of making the Order. In such a case, the changes to the tax basis which the Order makes (which might be changes to tax rates or bands) would apply immediately and taxpayers' liability will change as soon as the order is made. However if the Order is not approved by Parliament within 28 days, the Order falls. Section 108 provides that in such a situation, a taxpayer can make a claim for repayment of the amount of additional tax (including any related penalty or interest) paid during the period when the

Order was in force. This section also provides that any claim must be made within two years of the 'relevant date' which is defined within the section.

Revenue Scotland

Revenue Scotland is the tax authority responsible for the administration of Scotland's devolved taxes, including LBTT. It was established in statute as a Non-Ministerial Department. This means that Revenue Scotland is part of the Scottish Administration but not under the control of the Scottish Government. Revenue Scotland has a Board and a Chief Operating Officer and operates at arm's length from Ministers.

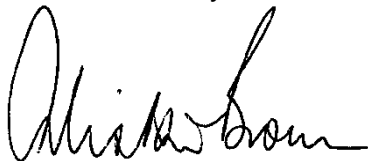
Revenue Scotland recently published their audited Annual Report and Financial Statements for the financial year ending 31 March 2016² (see footnote 2 below for a link to these documents). As part of the Scottish Administration - and in line with other similar types of organisations - Revenue Scotland has a duty placed upon it under the Public Finance and Accountability Act 2000 to prepare accounts as so directed by the Scottish Ministers.

The Revenue Scotland and Tax Powers Act 2014 provides for "Revenue Scotland's independence in that the Scottish Ministers must not direct or otherwise seek to control Revenue Scotland in the exercise of its functions". Although the legislation also provides that the Scottish Ministers "may give guidance to Revenue Scotland about the exercise of its functions and that Revenue Scotland must have regard to that guidance", this power is likely to be used sparingly and to date no such guidance has been issued. It is also worth noting that the legislative requirement to "have regard to guidance issued by the Scottish Ministers" does not by itself compel Revenue Scotland to act in a particular manner and therefore does not restrict Revenue Scotland in exercising its functions.

On the matter of set-up costs, I attach (Annex A) an extract from a letter sent by the (then) Chief Executive of Revenue Scotland to the Scottish Parliament's Finance Committee in October 2015 which gives some background about why the actual set-up costs for Revenue Scotland were higher than originally estimated.

I hope the above is helpful to the Committee. Please do not hesitate to contact me if further explanation is needed, or if additional information would be useful.

Yours sincerely



Alistair Brown

² <https://www.revenue.scot/about-us/publications/corporate-documents>.

Administration of the Devolved Taxes - Update

Letter of 30 October 2015 from Revenue Scotland to the Finance Committee Convenor

Extract from letter 30 October: Set-up and Operating Costs and Staffing Levels

“You asked for information on costs and staffing levels. Annex B sets out figures for costs for 2014-15 and 2015-16 compared to the figures I set out for those financial years in my previous report to the Committee in February 2015. Annex C sets out total set-up costs for Revenue Scotland, again compared to the estimates provided previously in February 2015.

There are a few points that it may be worth noting on these figures:

- The total set-up cost for Revenue Scotland and collection of LBTT and SLfT is £5.5m. This compares to my estimate of £6.3m in February 2015.
- Staff costs for set-up in 2015-16 turned out to be £378k, when I had estimated £770k in my report to you in February 2015. The cost was lower as staff involved in the setting up of Revenue Scotland completed their work earlier than I had estimated and were then quickly able to find work elsewhere. We are now beginning work to plan for collection of air passenger and aggregates taxes in Scotland and are using the underspend on the previous set-up costs this year to fund the early work on the new taxes.
- Staff costs for Revenue Scotland operations for 2015-16 are projected to be around £227k higher than I had estimated in February, due to a combination of increasing the capacity of the team to prepare for introduction of new taxes and some staff costs turning out to be higher than originally estimated.
- The planned transfer of £275k from HMRC will most likely take place in the Autumn Budget Revisions.

The comparison between costs and revenues is also important. The £5.5m set-up cost for the devolved taxes and the total operating cost for 2015-16 of £3.8m were covered in full by LBTT collected between 1 and 17 April. Operating costs for 2015-16 are 0.76 per cent of the £498m tax revenue forecast.

Annex B: Revenue Scotland Costs 2014-15 and 2015-16

	Latest - Oct 2015		Previous - Feb 2015		Variance	
	Actual 2014/15	Estimate 2015/16	Forecast 2014/15	Estimate 2015/16	Actual 2014/15	Estimate 2015/16
Revenue Scotland						
Staff Set Up	1,732	378	1,717	770	15	-392
Non-Staff Set Up	614	34	634	10	-20	24
Total Set Up	2,346	412	2,351	780	-5	-368
Staff Running Costs*	482	1,800	472	1,573	10	227
RS non-staff running costs*	29	542	31	668	-2	-126
Transfer in from HMRC - operational savings		-275		-275		
Total Running Costs	511	2,067	503	1,966	8	101
IT Investment - procurement & maintenance*	513	461	749	419	-236	42
IT Investment - additional staff	306	61	253	93	53	-32
Total IT Investment	819	522	1,002	512	-183	10
New Taxes early planning - Staff		343				343
New Taxes early planning - Non-staff		60				60
Total New Taxes	0	403	0	0	0	403
Total Revenue Scotland	3,676	3,404	3,856	3,258	-180	146
Registers of Scotland						
Set Up	234		280		-46	
Staff Running Costs*		181		240		-59
RoS non-staff running costs*		16		85		-69
Total Registers of Scotland	234	197	280	325	-46	-128
Scottish Environment Protection Agency						
SEPA set-up	268		240		28	
SEPA running costs*		496		502		-6
Total SEPA	268	496	240	502	28	-6
Additional Compliance Activity 2015-16 only*		247		259		-12
GRAND TOTAL	4,178	4,344	4,376	4,344	-198	0

Total operating cost* (items marked with asterisk) 3,743
As percentage of forecast tax revenue 0.75%

Annex C: Revenue Scotland Set-up Costs

	2013-14	2014-15	2015-16	Outturn Total	Estimate February 2015	Variance
Revenue Scotland						
Staff Set Up	580	1,732	378	2,690	3,067	-377
Non-Staff Set Up	31	614	34	679	675	4
Operational Staff		482		482	472	10
Operational Non-Staff		29		29	31	-2
IT investment - procurement		513		513	980	-467
IT investment - additional staff		306	35	341	346	-5
Total Revenue Scotland	611	3,676	447	4,734	5,571	-837
Registers of Scotland						
Set Up	91	234		325	371	-46
Total Registers of Scotland	91	234	0	325	371	-46
Scottish Environment Protection Agency						
SEPA set-up	140	268		408	380	28
Total SEPA	140	268	0	408	380	28
GRAND TOTAL	842	4,178	447	5,467	6,322	-855