

A CONSULTATION ON THE PROPOSED LAND AND BUILDINGS TRANSACTION TAX FIRST-TIME BUYERS RELIEF

Response by the Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the Scottish Government's consultation document ('the Consultation') on the proposed Land and Buildings Transaction Tax First-Time Buyers Relief published on 8 February 2018¹.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 Our response addresses each of the questions raised in the Consultation in turn.

2 Question 1: Do you agree with the Scottish Government's proposed four key criteria for the relief?

- 2.1 We understand the Scottish Government's four key criteria to be:
 1. The buyer must be a natural person or persons.
 2. The purchase must be of a single dwelling for an amount greater than £145,000.
 3. The property must be used as a main residence by the buyer(s).
 4. The buyer must not have previously owned another dwelling.
- 2.2 We agree that it is reasonable in the light of the stated policy for the relief to only be available to natural person(s).
- 2.3 We agree that it is reasonable in the light of the stated policy to seek to restrict the relief to the purchase of a single dwelling, and to define dwelling with respect to definitions which already exist

¹ <https://consult.gov.scot/fiscal-responsibility/first-time-buyers-relief/>

in the Land and Buildings Transaction Tax (Scotland) Act 2013. We express no comment on the value of the relief as no comments on this were sought.

- 2.4 We consider it is reasonable in the light of the stated policy to restrict the relief to property which is used as a main residence. We note that the legislation is drafted that the buyer has to show an *intention* to occupy as a main residence, not actual residence. We assume this is to allow flexibility where, for example, the buyer cannot occupy the property immediately as it needs remedial work.
- 2.5 However, judging intention is subjective. Clear guidance, including relevant examples, of what might or might not demonstrate an *intention* to occupy will be essential to assist purchasers and their advisers to claim the relief correctly. Areas that guidance should cover will include during what timescale an intention to occupy needs to be demonstrated. For example, if an individual wishes to purchase their first home but is working overseas, do they need to intend to occupy it within a given period, or would a more general longer term intention to occupy suffice? Would another use prior to occupation by the owner (e.g. letting if the property would otherwise be empty) preclude the relief? Some examples of judging intention could be drawn from Private Residence Relief cases for Capital Gains Tax.
- 2.6 The consultation currently refers to Revenue Scotland manuals LBTT10020² for guidance on whether the property is being used as main residence. This manual addresses how to *determine* an individual's main residence, not how to test or demonstrate an *intention to occupy* as a main residence, which is the requirement for first-time buyer's relief. Evidencing intention is a different test and further guidance, as noted above, will be required.
- 2.7 An alternative approach, to remove the subjectivity but still allow flexibility for individuals who for example need to spend a period of time renovating prior to occupancy, would be to replace the intention test with the requirement to actually occupy within a given period. A standard period of, say, 12 months could be set, with Revenue Scotland having the discretion to make a further extension if, for example, renovations took longer.
- 2.8 For the fourth criterion, we consider that the principle that the individual should not have previously owned a dwelling house is reasonable in the light of the stated policy, although this may result in some unintended consequences. For example, this means the relief will not be available to those individuals who have at some point held property abroad, even if subsequently through war, natural disaster or other circumstances they can no longer occupy this property.

3 Question 2: Do you agree that, where there is more than one buyer, all buyers must meet the relevant criteria in order for the relief to be claimed?

- 3.1 For the purposes of simplicity, we can see merit in restricting the relief to only those transactions where all the purchasers qualify for first-time buyers' relief.

² <https://www.revenue.scot/land-buildings-transaction-tax/guidance/lbtt-legislation-guidance/lbtt10001-lbtt-additional-dwell-16>

- 3.2 However, there may be some perceived unfairness where, for example, one of the couple has previously owned a property but the other has not and they feel that they are starting 'afresh' with a new relationship and a new property.

4 Question 3: Do you agree with the Scottish Government's proposed approach with regard to gifts, inheritance and trusts?

- 4.1 Restricting the relief to those who have not previously owned property, whether acquired by purchase, gift or inheritance appears to be consistent with the policy intentions. However there are some situations where this may lead to unintended consequences.
- 4.2 In respect of inheritance, our members have drawn attention to the situation where someone may own a share in another property through inheritance but be unable to either occupy that property personally, or practically dispose of their share prior to acquisition of their first home. Disposal may be impossible due to legal constraints (e.g. a sitting tenant) or inability of other family members to buy them out. Despite the property being unavailable to the individual, ownership would result in first-time buyer relief being denied.
- 4.3 We assume that, for simplicity, it is not intended to set a *de minimis* limit to any inheritance, but note that inheriting even a small fractional share, say 5% of a property, would be sufficient to prevent a claim to first-time buyer relief.
- 4.4 In terms of the proposed restriction, where an individual is a beneficiary of a settlement with a *relevant interest* in a dwelling via a trust, we consider that this should be restricted to those with a *liferent* (or life interest where the individual holds an interest in an English estate under English law) in the trust property, and not where the individual only has a discretionary interest under the settlement, to prevent the restriction applying too widely.
- 4.5 Consideration should also be given to whether the relief should be restricted only if the individual still has a *liferent* (or *life interest* under English law) in residential property held by a trust at the time of their purchase, or if they have ever had a *liferent/life interest*. The definition of *major interest* in paragraph 3(b) of the draft legislation suggests that the test for *relevant interest* is made at the time of purchase. This seems reasonable given the value of the relief and level of complexity which it is reasonable to consider. This would allow, for example, an individual who had a *life interest* in a property under a trust drawn up under English law which has now been revoked by the trustees, to buy their first property in Scotland with the benefit of the relief. Detailed guidance, with examples, to show how a current or historical *relevant interest* impacts on the relief will be required.

5 Question 4: Are there any other issues which need to be considered with regard to assessing prior ownership of a dwelling?

- 5.1 There are three issues in respect of assessing prior ownership of a dwelling.

- 5.2 Firstly, how will Revenue Scotland be able to effectively police this part of the measure? Does Revenue Scotland have access to relevant Land Registry information for the rest of the UK? Similarly, do Revenue Scotland have access to equivalent overseas records? Even if access is available, will all overseas records be sufficiently reliable?
- 5.3 Secondly, how will Revenue Scotland interpret what constitutes an *equivalent interest* to a Scottish dwelling? It may be difficult to meaningfully compare the nature and land rights held in some developing countries to a purchase of a property in Scotland. Guidance in this area will be required.
- 5.4 Referring back to our comment in 2.8 above, we note that, under the current drafting, a refugee who has previously owned a home outside Scotland which they have had to leave either as it is no longer habitable, or the situation is such that it is no longer safe for them to reside in that property, would not be entitled to the relief on their first purchase in Scotland.

6 Question 5: Do you agree with the Scottish Government’s position on linked transactions? If not, in what scenarios should relief be available where there is a linked transaction?

- 6.1 We have had sight of the response to this consultation from the Chartered Institute of Taxation (CIOT). We endorse the view expressed in their response that it is, in general, reasonable to exclude linked transactions on the grounds of simplicity but that there are two exceptions where, on the grounds of fairness, the relief should be allowed. These exceptions include where the linked transaction either relates to land forming part of the garden or grounds of the dwelling, or rights of way to the dwelling.

7 Question 6: Are there other issues, not covered in this consultation, that should be addressed in the legislation or guidance?

- 7.1 We are not responding to this question.

8 Question 7: Do you have any views on the draft Land and Buildings Transaction Tax (First-Time Buyer Relief) (Scotland) Order 2018?

- 8.1 Our comments on the draft legislation proposed to be included as a new Schedule 4A are as follows:
- 8.2 Section 2 defines a first-time buyer (where alternative finance is not in point) as follows:

“In this schedule “first-time buyer” means a person who—

(a) has not previously been a buyer in relation to an acquisition of a major interest in land which consisted of a dwelling; [our emphasis]

(b) has not previously acquired an equivalent interest in a dwelling under the law of a territory outside Scotland;” [our emphasis]

- 8.3 We presume that 2(a) is intended to apply to a purchase of a major interest within Scotland, as generally the Land and Buildings Transaction Tax (Scotland) Act 2013 (LBTT 2013) is intended to cover Scottish land and Scottish land rights. This fits with the context of 2(b) which then requires the individual not to have previously acquired an equivalent interest outside Scotland.

Elsewhere, section 7 of LBTT 2013 defines a buyer as follows:

“(1) The buyer, in relation to a land transaction, is the person who acquires the subject-matter of the transaction.

(2) But a person is treated as the buyer only where that person has given consideration for, or is a party to, the transaction.”

The Revenue Scotland manual at LBTT1003³ says:

“The buyer in relation to a land transaction is the person(s) who acquires (or is a party to the acquisition of) the subject-matter of the transaction in return for a consideration (i.e. payment is given to acquire the subject-matter from the seller).”

If the same definition of *buyer* is used in the Section 2 definition of first-time buyer, is *buyer* a sufficiently broad term in the draft legislation to accommodate all the restrictions sought – i.e. that the first time buyer in Scotland has not previously been gifted or inherited Scottish property or benefited where the property has been held for them under a bare trust? In those circumstances the individual has acquired the subject matter, but not provided consideration. We can see that for outside Scotland a more general wording ‘acquired an equivalent interest’ is used. Is there any risk that the legislation could potentially be interpreted to allow someone to have inherited a property in Scotland, sell it, and then purchase their first property in Scotland with the benefit of first-time buyer relief on the grounds that they were not a ‘buyer’ on the inheritance? Would the term ‘beneficial owner’ have broader applicability?

- 8.4 Section 3 defines a ‘major interest in land’. We support the CIOT’s comments in their submission that, since there is already a definition for ‘major interest in land’ elsewhere in LBTT 2013, an additional definition for the same term may cause confusion.
- 8.5 We also note that the draft Schedule 4A does not specifically contain the details of the operation and limits of the relief, just who is entitled to it. We assume that the operational element of the relief will be brought in elsewhere.
- 8.6 Finally, we note that regulation 1(1) of the draft Order has the date of commencement of 1 April 2018 when our understanding is that that the relief will take effect from a date in June 2018.

³ <https://www.revenue.scot/land-buildings-transaction-tax/guidance/lbtt-legislation-guidance/how-tax-works/lbtt1003>

9 **Question 8: Do you think that the planned first time buyer relief will in any way impact upon equal opportunities, human rights, businesses, island communities, privacy and/or sustainable development in Scotland?**

9.1 We do not have the necessary evidence base to enable us to respond to this question.

10 **Summary and conclusions**

10.1 We would be pleased to join in any discussion related to this Consultation. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Helen Thornley, on 07773 087125 or at hthornley@att.org.uk.

Yours sincerely

Helen Thornley
ATT Technical Officer

11 **Note**

11.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has over 8,500 members and Fellows together with over 5,700 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.