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CONSULTATION REGARDING LAND AND BUILDINGS TRANSACTION TAX - ADDITIONAL DWELLING SUPPLEMENT

Response by 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 consultation ('the Consultation') regarding Land and Buildings Transaction Tax (LBTT) and legislative changes to the Additional Dwelling Supplement (ADS) issued on 8 February 2023.
- 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 The ATT's responses to the questions raised in the Consultation are as follows.

2 Extension of ADS timelines from 18 to 36 months

- 2.1 We support the proposed extension of the time limit from 18 to 36 months where it applies to selling a former main residence after acquiring a new main residence, or acquiring a new main residence after selling a former main residence. In both situations, the extension will provide flexibility to accommodate unforeseen personal circumstances and delays in the purchase/sale process, which may be of increasing significance given current economic uncertainty.
- 2.2 We also support the extension of the period in which a dwelling is considered to have been used as an only or main residence from 18 months to 36 months prior to the acquisition of a new dwelling. This will allow greater flexibility to accommodate taxpayers' different living arrangements – for instance where couples move in together in one party's property prior to purchasing a home jointly.
- 2.3 Harmonising the ADS timelines with Stamp Duty Land Tax (SDLT) and Land Transaction Tax (LTT) will also provide clarity and simplicity for purchasers moving between Scotland and England or Wales respectively. This should increase compliance and reduce the burdens of monitoring compliance for the relevant tax authorities.
- 2.4 **Question 1: Do you think that the proposed amendments provide for the Scottish Government's intended change**

Yes. This provides for the intended change, accommodates unforeseen events, allows for variation in regional housing markets and provides buyers with greater flexibility.

2.5 Question 2: If not, what amendments would you propose to the draft legislation and on what basis?

Not applicable.

3 Inherited property

3.1 We welcome full relief from the ADS in appropriate circumstances where a 'first' property is inherited from the estate of a deceased person. The draft legislation (paragraph 9B) provides for an inherited property to be disregarded when assessing liability to the ADS where the inherited property was acquired after the buyer entered into a contract to buy a property (that becomes an 'additional' property only by virtue of having acquired the inherited property) but before completion of that contract to buy that property.

The clarification at new Paragraph 9B (2) regarding the date of acquisition of the inherited property for ADS purposes is helpful.

3.2 Question 3: Do you think that the proposed amendments provide for the Scottish Government's intended change

We consider the proposed period in which an inherited period can be disregarded to be too short to properly achieve the Scottish Government's intentions. As it is structured, anyone inheriting before entering a contract to buy will, where possible, arrange to defer their inheritance until after entering the contract in order to benefit from the relief. This introduces further complexity and delays for executors. A fixed time window, as suggested below in question 4, would resolve this issue.

In addition, a prospective buyer may have taken considerable time to arrange the purchase of what starts out as a first property but, following an inheritance, becomes an *additional* property by the time that purchase is completed. They may have been unaware of the likely timing of their inheritance of the deceased's property, or in some cases completely unaware of their right to inherit. A prospective buyer who inherits a property days before entering into the contract to buy their intended property will have to choose between being forced to try to fund the ADS at the last minute, or abandoning the transaction altogether, thereby causing unnecessary disruption up and down the chain and in the wider housing market. We consider a longer period of exemption from the ADS for inherited properties would achieve a fairer outcome.

3.3 Question 4: If not, what amendments would you propose to the draft legislation and on what basis?

Stamp Duty Land Tax (SDLT) and Land Transaction Tax (LTT) both provide for properties inherited up to three years prior to the purchase of a property to be disregarded when assessing liability to their equivalents to the ADS. We would suggest the same period is adopted for LBTT ADS. Three years should provide a reasonable amount of time for beneficiaries of estates to sell or occupy the inherited property should they choose to, or to enter into the acquisition of an additional property with full awareness of the LBTT cost of doing so.

3.4 Furthermore, harmonising the ADS timelines for inherited property with those applying to SDLT and LTT would provide further clarity and cross-border simplicity as noted in paragraph 2.3. Cross-border consistency should also increase compliance and reduce the burdens for both Revenue Scotland and the English and Welsh tax authorities in monitoring and ensuring compliance.

3.5 Question 5: Over and above existing legislative arrangements, are there any targeted anti-avoidance measures that the Scottish Government should consider in respect of this proposed amendment?

The draft legislation allows for delays in administering the estates of deceased persons in order to postpone conveyance of a dwelling to a beneficiary who is in the process of purchasing a dwelling of their own, in order for them to avoid paying the ADS. Targeted anti-avoidance measures to combat this would be complex to design and administer. By contrast, providing certainty by extending the ADS exemption for inherited properties to three years would simplify the position and avoid unnecessary delays to the administration of estates.

4 Small shares

- 4.1 We welcome the amendment to disregard the total value of a jointly-owned property when assessing a part-owner's liability to ADS on their acquisition of an additional dwelling, and to consider only the value of that part-owner's share of the jointly-owned property.
- 4.2 The proposed revision for the ADS to only apply in cases where that part-owner's share of the original property is valued at £40,000 or more provides fairness and consistency with existing ADS legislation which disregards properties valued at less than £40,000.
- 4.3 We further welcome the proposal to apply this treatment to all 'small share' interests, and not just those acquired via inheritance.
- 4.4 **Question 6: Do you think that the proposed amendments provide for the Scottish Government's intended change**

Yes, we consider the proposed amendments to be effective in this respect.

- 4.5 **Question 7: If not, what amendments would you propose to the draft legislation and on what basis?**

Not applicable.

- 4.6 **Question 8: Over and above existing legislative arrangements, are there any targeted anti-avoidance measures that the Scottish Government should consider in respect of this proposed amendment?**

The proposed amendment relies on a valuation of the property share in question. Two issues arise which may need to be considered and targeted with anti-avoidance measures if deemed necessary:

- i) The date of the valuation of the 'small share' against the £40,000 threshold. We assume the relevant valuation point is the transaction date for the acquisition of the 'additional' property, but this should be clearly defined.
- ii) How is a 'small share' is to be valued, and by whom? For instance, is a 25% share of a £100,000 property worth £25,000 or should a joint ownership discount be applied to reduce its actual market value below its arithmetical value? If so, does the Scottish Government/Revenue Scotland consider that discount to be a set percentage, or will it vary by factors such as the number of joint owners? Additionally, if any minimum standards are required for values to be acceptable to Revenue Scotland (e.g. do valuers need to hold any qualifications? Are formal RICS "Red Book" valuations required? Would informal estate agent valuations be accepted?) these should also be specified in guidance to accompany the legislation. In the absence of guidance in these areas, valuations may be open to manipulation to avoid ADS.

More widely, the £40,000 threshold may become outdated if property values rise (or fall) significantly, and should have a review timeframe or trigger and a method of review to ensure it remains appropriate.

5 Divorce or Separation

5.1 We welcome the amendment to disregard a share in a former matrimonial (or equivalent) home when assessing liability of a former occupier of that home to the ADS on purchase of a replacement dwelling in the circumstances specified by proposed paragraph 9C.

5.2 **Question 9: Do you think that the proposed amendments provide for the Scottish Government's intended change**

Yes, we consider the proposed amendments to be effective in this respect.

5.3 **Question 10: If not, what amendments would you propose to the draft legislation and on what basis?**

In draft paragraph 9C(d) the term "do not intend to live together again" would benefit from further definition to prevent a temporary physical separation from resulting in avoidance of the ADS. We recognise in view of the need for a court order or equivalent (Paragraph 9C(e)) this is unlikely to be a significant issue in practice, but consider further definition would be beneficial in the interests of avoiding ambiguity.

6 Joint Buyers / Economic Unit Provisions

6.1 We welcome the amendment to treat the disposal of a former main residence by one co-habiting party to a transaction as also being a disposal by the other co-habiting party, such that a repayment of the ADS can be made even where one of the cohabiting joint-purchasers did not own or live in the former residence.

6.2 **Question 11: Do you think that the proposed amendments provide for the Scottish Government's intended change**

Yes, we consider the proposed amendments to be effective in this respect.

6.3 **Question 12: If not, what amendments would you propose to the draft legislation and on what basis?**

Not applicable.

7 Local authorities

7.1 We consider it equitable and sensible to align the treatment of local authorities with regards to the ADS with that of housing associations.

7.2 **Question 13: Do you think that the proposed amendments provide for the Scottish Government's intended change**

Yes, we consider the proposed amendments to be effective in this respect.

7.3 **Question 14: If not, what amendments would you propose to the draft legislation and on what basis?**

Not applicable, notwithstanding the need to define affordable housing for LBTT purposes.

8 Other

8.1 There does not appear to be any legislative provision for discretionary extensions to the proposed 36 month ADS repayment window for replacing a main residence referenced in section 2 of this response. By contrast,

HMRC have discretion to extend the equivalent period of SDLT in “exceptional circumstances” as detailed in HMRC Manual SDLTM09807 and legislated at FA2003 Schedule 4ZE paragraph 7A(b).

- 8.2 We consider that the Scottish Government should include similar scope in the amended LBTT legislation for Revenue Scotland to exercise discretion in extending the proposed 36 month period in similar circumstances. This would allow for leniency where events outside a taxpayer’s control push the replacement of a main residence or sale of a former main residence outside the proposed 36 month time limit to claim a repayment of ADS. This would also allow for fairness in the event of extenuating circumstances outside a purchaser’s control. Such situations may be more prevalent given current economic uncertainty, and the impacts on the housing market of the cost of living crisis and on the affordability of mortgages due to high interest rates.

9 Contact details

- 9.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, David Wright on 07833 259356 or dwright@att.org.uk.

The Association of Taxation Technicians

10 Note

- 10.1 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 more than 9,500 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.