Scotland update: Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill; meetings with the Scottish Government, HMRC and Revenue Scotland

General Features Personal tax

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The CIOT submitted written evidence to the Finance & Constitution Committee of the Scottish Parliament on a Bill to correct the 2013 LBTT Act. The CIOT, ATT and LITRG also report back from their quarterly meeting with the Scottish Government, a Scottish income tax stakeholder meeting with HMRC and the Revenue Scotland LBTT Project Board.

Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill

The CIOT submitted a written response to the call for evidence issued by the Finance & Constitution Committee of the Scottish Parliament concerning the Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill (the Bill).

Land and Buildings Transaction Tax (LBTT) is a tax fully devolved to the Scottish Parliament, having been introduced under the Land and Buildings Transaction Tax (Scotland) Act 2013 (the 2013 Act) with effect from 1 April 2015, to replace Stamp Duty Land Tax (SDLT) on transactions in land situated in Scotland.

The LBTT Additional Amount took effect on 1 April 2016, and is an additional amount of LBTT chargeable on the purchase of a dwelling where, at the end of the day that is the effective date of the transaction, the buyer owns more than one dwelling and is not replacing their only or main residence.

The LBTT Additional Amount does not apply if the buyer is replacing the buyer's only or main residence. In determining whether the LBTT Additional Amount is chargeable, the policy intention was to treat married couples, civil partners and co-habitants, along with their dependent children, as one economic unit.

However, prior to the amendments made by the Land and Buildings Transaction Tax (Additional Amount-Second Homes Main Residence Relief) (Scotland) Order 2017 (the 2017 Order), the LBTT Additional Amount was chargeable if spouses, civil partners or co-habitants were jointly buying a home to replace a home that was owned by only one of them.

The 2017 Order came into force on 30 June 2017 and ensured that relief from the LBTT Additional Amount was available in this scenario for all qualifying future transactions and if buyers entered into the contract to purchase a new main residence on or after 20 May 2017 and the effective date of the transaction was on or after 30 June 2017. The Bill aims to give retrospective effect to the 2017 Order, such that qualifying buyers who paid the LBTT Additional Amount prior to the Order being made, may claim a repayment.

Our response welcomed the Bill and its aim.

As a result of the Bill, certain taxpayers will become eligible to claim a repayment of tax from Revenue Scotland. They will have approximately five years from the effective date of their transaction to do so.

Unfortunately, Revenue Scotland has no means of identifying affected taxpayers. We noted that it is essential that thought is given as to how to communicate eligibility for a repayment claim to taxpayers effectively.

We also noted that, in order to deal with an unintended consequence of the 2016 Act, there has been a two-stage process, using secondary legislation and then primary legislation in order to effect the change. This has been rather cumbersome, and we therefore suggested that there could be a place for an annual Finance Bill / Finance Act in the Scottish Budget Process. Such a Bill / Act would provide a means

of making amendments to existing tax legislation to deal with unintended consequences, errors in drafting and annual tax changes (such as to rates and bands).

The CIOT submission is available on the CIOT website.

Quarterly meeting with the Scottish Government

Representatives of CIOT, ATT and LITRG, together with ICAS, met with Scottish Government officials in January 2018, as part of their regular quarterly meeting schedule. The main discussions centred on the draft Budget for 2018-19 which was published in mid-December and in particular the proposed rates and bands for Scottish income tax. The proposal is for these to diverge from the rest of the UK, by having five rates and bands, of which the higher and top rates are 41% and 46% respectively. The divergences create the need for consequential amendments to UK legislation in a number of areas, and these were also considered.

In addition, there was discussion about several Land and Buildings Transaction Tax matters, including the draft Budget proposal for a first time buyer relief.

HMRC stakeholder meeting: Scottish income tax

Representatives of CIOT, ATT and LITRG, together with ICAS and other professional bodies, met with HMRC officials in January 2018, to discuss how the income tax band structure proposed by the Scottish Government in the Scottish Draft Budget fits with aspects of the wider income tax regime. Key areas of discussion included relief at source on personal pension contributions, marriage allowance, tax relief on Gift Aid donations and PAYE coding.

Revenue Scotland Land and Buildings Transaction Tax (LBTT) Project Board

The Scottish Technical Sub-committee of CIOT were invited to nominate a representative to participate in Revenue Scotland’s new LBTT Project Board.

One of our sub-committee members attended the first meeting in January.

The LBTT Project Board is overseeing some key areas of work that Revenue Scotland need to deal with during 2018, including the changes to commercial LBTT leases

being introduced from 1 April 2018, the amendments to relief from the Additional Amount and the proposed introduction of the LBTT first-time buyer relief announced in the Scottish Draft Budget.