Scotland update: Land and Buildings Transaction Tax First-time Buyers' Relief consultation

General Features Personal tax

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The CIOT and ATT submitted responses to the Scottish government's consultation on the criteria for determining eligibility to a first-time buyers' relief and the draft secondary legislation required to deliver the relief.

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 Scottish Government intends to introduce a relief for first-time buyers, which will have the effect of raising the zero rate LBTT threshold from £145,000 to £175,000, generating relief of up to £600. It is expected that the relief will take effect in June 2018.

Although the consultation did not seek views on either the £175,000 threshold or on whether or not to introduce the relief, the CIOT made some general points about these issues. In particular, we noted that the introduction of a relief for a specified group of taxpayers increases the complexity of the tax and that there are likely to be complications in relation to determining eligibility for the relief. We also questioned how effective this relief will be in supporting the Scottish Government's policy of assisting first-time buyers, referencing both the tiny size of the relief relative to the overall costs of purchasing a property of £145,000 or more, and research carried out by HMRC in respect of a temporary SDLT relief that was in place from 25 March 2010 to 24 March 2012.

The consultation proposed four key conditions for eligibility for the relief:

- The buyer is a natural person;

- A single dwelling is being purchased for more than £145,000;
- The buyer is a first-time buyer, who has never had a major interest in a dwelling in Scotland or an equivalent interest in a dwelling situated anywhere else in the world;
- The buyer intends to occupy the dwelling as their main residence.

We think these appear sensible at first glance, but there are likely to be practical problems in giving effect to them.

The condition that the buyer must intend to occupy the dwelling as their main residence requires subjective predictions to be made, creating a tension with the nature of LBTT as a transaction tax. At a practical level, to deal with this requirement, consideration needs to be given as to how a buyer can demonstrate their intent.

The CIOT also raised a concern that in order to provide for the condition that a buyer must not have or previously have held a major interest in a dwelling the legislation is creating unnecessary complexity by inserting a second definition of a ‘major interest in land’ into the 2013 Act.

Moreover, we think that it will prove difficult in practice to monitor compliance with this condition, especially in respect of interests in overseas property and property in the rest of the UK.

The current proposal is for the relief to be unavailable in respect of linked transactions. The CIOT thinks consideration should be given to allowing the relief in relation to linked transactions in respect of a couple of exceptions, in line with the SDLT relief introduced by the UK Government in November 2017.

We also noted that the draft regulations do not contain details of either the operation of the relief or the thresholds and rates involved, requesting confirmation of the way in which these issues will be dealt with.

The ATT also responded to the consultation. Additional points made by the ATT included:

- A suggestion that, rather than looking for an intention to occupy the property as a main residence, the buyer could be required to occupy within a given period.

- Querying whether the use of the term buyer was sufficient to achieve the intended exclusion from the relief of individuals who had previously been gifted or inherited a property.

As noted above, relief is not available if the buyer has previously ever owned a property abroad. The ATT noted that this means the relief will not be available even if the individual can no longer occupy an overseas property due to war, natural disaster or other similar circumstances.

The CIOT submission is available on the CIOT website.

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