Scotland update: consultations on Land and Buildings Transaction Tax Group Relief and draft regulations in relation to Social Security appeals

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The CIOT submitted a response to the Scottish government's consultation on an amendment to Land and Buildings Transaction Tax group relief. LITRG responded to the Scottish government's consultation on draft regulations making provision in relation to Social Security appeals, in particular the draft rules of procedure.

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. Schedule 10 of the 2013 Act provides for group relief from LBTT for land transactions between companies within a group, on the basis that there is no overall change in economic interest or benefit.

On 8 August 2017, the CIOT wrote to the Scottish government requesting clarification about the availability of group relief where there is a land transaction within a corporate group structure and there is a relevant extant share pledge or analogous arrangement in place. There has been significant uncertainty around this issue since the introduction of LBTT, as Schedule 10 of the 2013 Act omits provisions equivalent to those found in paragraph 2B, Schedule 7 of Finance Act 2003. In our letter, we suggested that, if the original policy intent was to replicate the substantive terms of the SDLT group relief, then primary legislation ought to be introduced to amend the 2013 Act with retrospective effect.

The Scottish government subsequently signalled its intent to make it clear that group relief will be available where there is a land transaction within a corporate group structure and there is a relevant extant share pledge or analogous arrangement in place.

The consultation sought views on a draft Scottish Statutory Instrument that is required to amend the group relief provisions contained in the 2013 Act.

Our response welcomed the introduction of legislation to ensure that group relief is available for future transactions. The use of secondary legislation means that the provisions will not have retrospective effect, however, which we noted was unhelpful. While we welcomed the certainty that will arise once the secondary legislation is in place, this does not assist with the uncertainty that there has been in relation to group relief and share pledges since the introduction of LBTT on 1 April 2015.

Our response set out a number of areas where we thought amendments were required to the draft instrument, to ensure that it achieves the desired outcome, and also to ensure that it aligned appropriately with Scots law and practices.

The CIOT submission is available on the CIOT website.

Draft regulations in relation to Social Security appeals

The Tribunals (Scotland) Act 2014 created a new framework for tribunals in Scotland and brought existing tribunal jurisdictions together; it also created two new tribunals, the First-tier Tribunal for Scotland (FtT) and the Upper Tribunal for Scotland (UT). The intention is to establish a new chamber of the FtT, to deal with appeals against determinations of entitlement to assistance delivered under the Scottish Social Security system. It is also anticipated that ultimately, appeals in Scotland against decisions on reserved benefits will be heard by the new chamber of the FtT.

The consultation dealt with six sets of regulations, designed to create a new chamber of the FtT – the Social Security Chamber (SSC) – and make provision for the UT. Much of the LITRG response focused on the draft rules of procedure.

For the most part, the proposed rules of procedure for the FtT SSC and the UT draw on the current rules for the UK FtT Social Entitlement Chamber and UT. On the

whole, we welcome this approach. There are areas, however, where we think improvements could be made, and we drew attention to those areas in our response.

We set out some important principles to keep in mind in relation to the tribunals, including the importance of the tribunals being independent – both in fact and appearance – from the Scottish Social Security agency; the tribunal system being accessible to all; appellants being fully advised of their appeal rights and being provided with adequate and neutral guidance on tribunal procedures.
We also noted that effective case management is key, and in this regard we welcomed the explicit provision in the rules for the FtT and UT to have regard to the Scottish Social Security Charter.

The LITRG submission is available on the LITRG website.