Land and buildings transaction tax and the additional dwelling supplement

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The CIOT has responded to the Scottish government's second consultation containing the draft legislation on reforms to the additional dwelling supplement of the land and buildings transaction tax.

In February 2022, the Scottish government launched a public consultation on wide-ranging reforms to the additional dwelling supplement (ADS), looking at:

- the extension of the 18 month sale and residency timeframes;
- joint-purchasers and previous occupation of the replaced property;
- inclusion of previously inherited properties in the ADS calculation;
- the family home's being discounted from consideration when a new house purchased by a member of a separating/divorcing couple; and

- only a purchaser’s share of a jointly owned property being featured in the ADS calculation.

Draft legislation had been expected in summer 2022 but was not published until February 2023. During that time, the Scottish Budget of December 2022 increased the rate of ADS from 4% to 6% with immediate effect, notwithstanding the absence of the government’s proposed draft legislation.

When it was published, we were pleased to note that the vast majority of the changes to the rules made by the draft legislation were in accordance with the recommendations made by the CIOT in our response to the first consultation on these issues. The 18 month timeframes were extended to 36 months; a joint-purchaser of a replacement house need not have lived in their partner’s previous property; the departing spouse/individual in a co-habiting couple divorcing/separating will be afforded relief from the ADS; and the £40,000 threshold will only be measured against an individual’s share of a property rather than the whole.

However, there remain some areas within the government’s draft legislation where CIOT has reservations.

Firstly, whilst previously inherited properties will be discounted from the ADS calculation of a subsequent purchase, this only applies to those properties inherited after the missives for the new property are concluded. In England, Northern Ireland and Wales, properties inherited three years prior to the subsequent purchase are excluded from the stamp duty land tax (in England and Northern Ireland) and land transaction tax (in Wales) supplementary charges.

We recommended that a similar window be in place for land and buildings transaction tax – the Scottish government’s proposed change would arguably render the reform effectively worthless. By allowing up to three years, the reform would be much more effective and facilitate the fairness which it was seeking to bestow. In addition, it might help to reduce confusion from those residents of elsewhere in the UK buying a property in Scotland having inherited one outside.

The other matter is the lack of provision for Revenue Scotland to have discretion in allowing relief from ADS in extenuating circumstances. In their response to the first consultation, where this point has been raised, the Scottish government said that this reform would cause ‘a significant degree of difficulty’. However, HMRC have

similar powers with respect to stamp duty land tax's additional dwelling surcharge and those few who might find themselves falling foul of the rules, due to no fault of their own, might be afforded some relief if their circumstances so merit.

The full CIOT response is available here: www.tax.org.uk/ref1087.

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