Scottish aggregates tax and the land and building transaction tax additional dwelling supplement: CIOT responses

Indirect Tax



19 March 2024

The CIOT submitted a response to a consultation from the Scottish Parliament's Finance and Public Administration Committee on a new devolved aggregates levy. In addition, the CIOT provided written evidence to the committee concerning upcoming changes to the land and buildings transaction tax.

Scottish aggregates tax

The CIOT has replied to the Scottish Parliament's call for views on the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill, which creates a new devolved Scottish aggregates tax (SAT). In Scotland, this will replace the existing UK-wide aggregates levy from 1 April 2026. Our response noted that the legislation

contained some surprises.

Part 2 of the Bill contained numerous administrative changes giving authorisation for Revenue Scotland to impose penalties, automate some of its work, change how it communicates with taxpayers, and offset devolved tax debits with credits. For a long time, the CIOT has been calling for the Scottish Parliament to have the power to pass annual Finance Bills which can enable changes such as these. The fact that these had to be attached to an unrelated piece of primary legislation highlights the need for a power to make any freestanding changes.

In this response, and others, we have also pointed out that primary legislation should confine itself with *what* is taxed (that is, when an obligation is imposed upon the citizens of a country), whereas secondary legislation should confine itself to powers on *how* the tax is administered. Devolving too much power to the executive via these regulations runs counter to transparency and accountability; by making changes through an annual Finance Bill, these two principles can be more easily upheld.

With respect to the SAT itself, the CIOT expressed approval that many of the elements of the new tax will be similar to the existing UK levy, thus minimising potential confusion and error. SAT payers will be used to the existing tax and compliance framework, thus this approach retains familiarity and aids simplicity.

A concern the CIOT raised, shared by many involved in the devising of the SAT, is that it will not greatly benefit Scotland with aggregates exported from the country. The SAT, like the UK levy, is based upon the situs of ‘commercial exploitation’, rather than source of aggregate. Therefore, aggregate exported from Scotland to the rest of the UK will only benefit the UK Treasury; only that aggregate imported into Scotland (besides that won from and utilised in Scotland) will be subject to the SAT.

The Scottish government is confined to the provisions of the Scotland Act 2016 so there is little to be done, but given that Scotland exports far more than it imports (around 5.5 million tonnes against 16,000 tonnes), the SAT will not benefit Scotland as much as a tax based upon source. Alternatives involving various forms of double tax relief were considered, but were deemed too complex or impractical.

Land and building transaction tax additional dwelling supplement

Tom Arthur MSP (the Minister for Community Wealth and Public Finance) and Laura Parker from Revenue Scotland appeared before the Finance and Public Administration Committee in February to give evidence on the draft Scottish statutory instrument containing the changes to the land and building transaction tax (LBTT) additional dwelling supplement (ADS), which takes effect from 1 April 2024).

The changes proposed were largely in line with recommendations made by CIOT in the initial 2021/22 consultation (see tinyurl.com/nme2ct8s), which included:

- increasing the 18 month purchase and occupation windows to 36 months;
- applying the £40,000 threshold to a joint-owner's individual share;
- relief in instances of divorce/separation; and
- extension of relief to joint-owners and for inherited property.

However, the criterion for excluding inherited property is very limited (to those properties inherited after conclusion of missives but before completion of purchase on the new property). Our recommendation was that a 'grace period' of three years, mirroring provisions in the rest of the UK, would be more useful.

Besides our objection to this inherited property provision, a longstanding call from CIOT is for Revenue Scotland to have a statutory discretion to waive the ADS in cases of exceptional circumstances. HMRC have the power to extend the 36 month windows in such instances beyond the taxpayer's control where they eventually executed the relevant transactions as soon as they could. Whilst not a frequent occurrence, a taxpayer's having to pay the ADS through no fault of their own can be an injustice to that person; a similar discretionary power would free the hands of Revenue Scotland and the courts.

The possibility of such a power had been raised (and supported by CIOT) within the first ADS consultation, but in their response, the Scottish government concluded that such a power would 'create a significant degree of uncertainty'. We have asked that the matter be reconsidered, but also suggested as an alternative that relief could be confined to specific scenarios (for example, for cladding and fire safety issues, as is available to the Welsh Revenue Authority for land transaction tax).

The full CIOT response to the SAT consultation is available here: www.tax.org.uk/ref1263.

The full CIOT comments on the LBTT ADS evidence session is available here: www.tax.org.uk/ref1285.

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