



Law Society
of Scotland

Stage 3 Briefing

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

May 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

This briefing paper is intended to inform MSPs of our comments on the Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill. The Stage 3 Debate is scheduled to take place in the Scottish Parliament on 17 May 2018.

The Bill¹ was introduced into the Scottish Parliament by the Cabinet Secretary for Finance and Constitution, Derek Mackay MSP, on 13 November 2017.

The Bill was allocated to the Scottish Parliament's Finance and Constitution Committee. The Committee issued a call for written evidence and we provided a written submission to the Committee.² On 22 February 2018 the Committee produced a Stage 1 Report.³ The Stage 1 Debate took place in the Scottish Parliament on 6 March 2018 and the Scottish Parliament agreed to the general principles of the Bill. No amendments were made to the Bill at Stage 2.

If you would like to discuss this paper, or if you would like more information on the points that we have raised, please do not hesitate to contact us. Contact details can be found at the end of the paper.

General Comments

Principle and effect of the Bill

We welcome the proposal to give retrospective effect to the Land and Buildings Transaction Tax (Additional Amount - Second Homes Main Residence Relief) (Scotland) Order 2017 (the ADS SI). The

¹[http://www.parliament.scot/Land%20and%20Buildings%20Transaction%20Tax%20\(Relief%20from%20Additional%20Amount\)%20\(Scotland\)%20Bill/SPBill22S052017.pdf](http://www.parliament.scot/Land%20and%20Buildings%20Transaction%20Tax%20(Relief%20from%20Additional%20Amount)%20(Scotland)%20Bill/SPBill22S052017.pdf)

²<https://www.lawscot.org.uk/media/359484/lss-response-on-lbtt-bill-january-2018.pdf>

³<https://sp-bpr-en-prod-cdnep.azureedge.net/published/FCC/2018/2/22/Stage-1-Report-on-the-Land-and-Buildings-Transaction-Tax--Relief-from-Additional-Amount--Scotland--Bill/FCCS052018R3.pdf>

ADS SI addresses one of the most common “unintended consequences” of the ADS legislation by providing that a couple that is married, in a civil partnership, or cohabiting, is treated as a single economic unit for the purposes of applying the ADS regime. The ADS SI applies in the specific circumstances where title to a couple’s main residence is held in the sole name of one of the couple, and the couple then jointly purchase a new main residence before their former main residence is sold, but go on to sell the former main residence within 18 months. In these circumstances, ADS can be reclaimed.

The ADS SI only applied to future transactions. This is because it is not competent for legislation with retrospective effect to be made by way of secondary legislation. The Bill therefore gives retrospective effect by making this relief available to those who were party to transactions before the ADS SI came into effect.

Scope

We welcome the effect of the Bill in giving retrospective effect to the ADS SI. However, we do note that by restricting the scope of the Bill to this issue, the opportunity to deal with a number of other necessary changes to LBTT has been missed, including in relation to the application of the ADS scheme and group relief. Further information in relation to these matters are detailed within our stage 1 briefing⁴.

For further information, please contact:

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⁴ <https://www.lawscot.org.uk/media/359484/lss-response-on-lbtt-bill-january-2018.pdf>