SUBMISSION TO THE FINANCE COMMITTEE OF THE SCOTTISH PARLIAMENT

THE GENERAL PRINCIPLES OF THE LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) BILL

16 JANUARY 2013
About ICAS

The Institute of Chartered Accountants of Scotland ("ICAS") is the oldest professional body of accountants, and is a public interest body. ICAS represents around 19,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK and in almost 100 countries around the world. Nearly two thirds of our members work in business, whilst a third work in accountancy practices, many with expertise in a range of tax areas. Few of these members will be as familiar as solicitors are with the day to day operations of stamp duty land tax, to be replaced by land and buildings transaction tax ("LBTT") in Scotland, however knowledge of the tax in principle, its costs and administrative practicalities will be essential to all ICAS members. ICAS members also play a key role in supporting tax compliance. This submission offers ICAS members experience and insights from the design and operation of other UK taxes.

ICAS comments on the general principles of the LBTT Bill ("the Bill")

The Scottish Government’s overall policy objectives in introducing the Bill and, in particular, whether the Bill “makes provision for a tax which should be seen as simple as possible to understand and pay and which will place the minimum administrative burden on the taxpayer or their agent and on the tax authority”.

ICAS does not normally comment on policy objectives, which are matters of choice for governments, but will comment on how effectively the legislative approach and practical proposals are likely to be in achieving those policy objectives.

At present the draft Bill addresses taxation principles and charges, but does not yet contain, or contain final, provisions for some of the most complex areas of practice; those relating to commercial leases, partnerships, trusts and residential property holding companies. The administrative powers relating to the tax, along with any general anti-avoidance or anti-abuse provision are to be provided for in the Taxes Management Bill for Scotland which the Scottish Government proposes to introduce later this year after a consultation process. It would be premature therefore to offer any conclusion on whether the Bill as drafted, meets the policy objective. However on the work undertaken so far, we consider the approach of using existing UK provisions (with the benefits of familiarity and clarity of understanding), adapted for Scots law sets the right foundation and direction. Attempts to achieve simplification are welcomed.

The lack of information on the starting tax rates and bands under LBTT until only a few months before it comes into effect is a cause of concern. The lack of clarity on even provisional figures of tax rates or bands goes against the principle of certainty in taxes, potentially resulting in a phase of investment decision “blight” in the run up to the introduction of the tax in 2015. This also undermines the stated aim in the Policy Memorandum, in relation to the taxation of commercial transactions, that LBTT should “maintain Scotland’s reputation as the most attractive part of the UK in which to do business”. Whilst final decisions may be needed to be made nearer the time, there is no reason why the Scottish Government should not address these concerns by using the forecast data from the Office of Budget Responsibility to provide indicative figures of bands and rates.

The Bill also provides, at section 67, for a number of changes to the structure and operation of the tax to be made by Scottish Ministers by orders and regulations, under the affirmative procedure or negative procedure. The changes permitted go to broad areas of the proposed LBTT, including the whole aspect of the structure of the tax in terms of bands and rates and the making or withdrawing of exemptions and reliefs. This raises the question of the effectiveness of the process of parliamentary scrutiny on such matters in due course, and ICAS would be keen to see matters of structural issues and significant and important matters considered fully.
The Bill also provides a number of definitions which refer to existing provisions elsewhere in the UK tax legislation; for example, section 57 refers to the definitions in section 1122 of the Corporation Tax Act 2010. Whilst it is to be welcome, for reasons of clarity, that familiar definitions are used where there is no other reason for any change to be adopted for LBTT, it seems contrary to the principle of tax devolution that the LBTT legislation should be dependent on, and subject to the changes in, UK tax law legislated elsewhere.

The replacement of a “slab” structure with a “proportional progressive structure” and how this is reflected in the Bill;

ICAS supports the change in the structure of the tax. When setting the starting threshold and rates, it would be helpful if a longer term view could be taken; minimising the number of changes over time is one way of achieving the aim of simplicity and stability in the tax system.

The Scottish Government’s approach to tax avoidance in the Bill

Methods of countering tax avoidance in this Bill are limited to some specific Targeted Anti-Avoidance provisions (“TAARs”). These provide useful, specific, clarification of the concerns to be addressed in a particular taxing provision and are to be welcomed. It is also helpful to be able to consider these alongside the related charging or relieving provisions, and see no inconsistency with including these as well as, potentially, a general anti-abuse or general anti-avoidance provision in due course, once that has been considered by the Taxes Management Bill for Scotland.

In our submission in response to the consultation document preceding this Bill we expressed a need for proportionate and effective anti-avoidance measures for LBTT, comprising:

1. A clear government policy statement, with supporting examples, to try to define the tax avoidance of concern, and give clarity between what might be acceptable tax planning and what might be unacceptable tax planning.
2. The minimum of rate differences, reliefs or exemptions – limiting the opportunity for tax avoidance.
3. Clear legislation, with the opportunity for ‘testing’.
4. An experienced and effective compliance and enforcement operation.

The Policy Memorandum to the Bill at present reflects these principles, at paragraphs 62 and 63. We also welcome the decision not to replicate the predecessor provision in section 75A-C in the Finance Act 2003.

The proposed exemptions within the Bill

An exemption should be included for licences to occupy, although it should be recognised that most may be below the threshold. They are used most often when a landowner is requiring a building or structure to be put on his/her own land, and avoid disputes over whether any of the construction expenditure would be argued as consideration for the grant of the licence. The other practical circumstance where the exemption is used at present, and that would become taxable under LBTT, would be in connection with retailers at airports or franchisees within retail outlets etc; ‘shops within shops’. These may become less attractive business locations if additional tax charges arise.

As noted above, the Bill will enable changes to be made to the exemptions by secondary legislation, rather than parliamentary consideration. ICAS considers it preferable for primary taxing principles to be subject to full parliamentary consideration.

The proposed reliefs within the Bill

Charity tax relief should, in our view, remain available to charities whose charitable status is granted by HMRC and not just The Office of the Scottish Charity Regulator (“OSCR”). There are few in practice undertaking activities in Scotland who would be affected by this provision, but the issue arises mainly due to the ministerial control test.
It is our understanding that it would be incorrect to say that any English or overseas (ie non Scottish charity) can register with OSCR – they can only do so if they meet the legislative tests for a Scottish charity. Examples of bodies which might be adversely affected by this change include Scottish Natural Heritage.

The removal of sub-sale relief from the provisions is not welcome, as it is frequently used in commercial situations where, for example, a house builder or developer buys a large parcel of land but has neither the finance or risk appetite to develop it all, and will sell on smaller pieces to other developers to undertake different aspects of a project. A double charge is avoided by this relief, a charge which would be both disadvantageous to the construction sector or housebuilders in a difficult market, and one that might make Scotland a less competitive location for development than the rest of the UK. We appreciate the concerns expressed about abuse of the relief and will be pleased to contribute to discussions, as at a UK level for SDLT, to provide a targeted relief for use only in commercial circumstances.

As noted above for exemptions, the Bill will enable changes to be made to the reliefs by secondary legislation, rather than parliamentary consideration. ICAS considers it preferable for primary taxing principles to be subject to full parliamentary consideration.

**The roles of Revenue Scotland and Registers of Scotland in the administration of LBTT**

A tax authority might be expected to undertake a number of roles in the administration of taxes; these are explored in the Scottish Government’s document “A Consultation on Tax Management”, to which ICAS will be responding separately in due course.

Where there is an existing organisation involved, as is the case with Registers of Scotland for land and buildings transactions, a one stop shop for taxpayers has considerable potential to ease the administrative burden for taxpayers and their agents. It is however unusual for a tax authority to delegate powers or roles to another body, such as from Revenue Scotland to Registers of Scotland. This raises the challenge of how to ensure the split of roles and activities across the bodies does not adversely affect efficiency for taxpayers, the collection of tax, or accountability of the tax authority.

One area of potential difficulty is in relation to information assistance to taxpayers. Whilst the practical experience of the reporting system will be with Registers of Scotland, who might be expected to offer a helpline or information service to assist tax filings, questions of principle, or tax dispute, the clearance of complex transactions and policy decisions needed to determine those answers may be expected to be retained at Revenue Scotland. Coordination and cooperation between these bodies will have to be managed carefully in order to achieve the certainty for taxpayers and efficiency of the overall administration of LBTT. As noted above in countering tax avoidance, an experienced and effective compliance and enforcement operation will need to be resourced.

Accountability of the tax authority to parliament is key and the mechanisms to achieve this (balanced with issues of taxpayer confidentiality) are no doubt to be developed as the legislation proceeds.

**The financial implications of the Bill as estimated in the Financial Memorandum**

It will be important that changes in the tax regime, such as the tax base, are communicated clearly and timeously in advance to those affected. It remains to be seen whether the set up cost budget, including as an example £10,000 for “training and publicity for solicitors and other users to ensure full and effective take up” is sufficient to meet professionals and taxpayers expectations, and so achieve the expected compliance result. There will be training and familiarisation costs on professional advisers regardless, but any inadequacy in the Tax Authority or Registers of Scotland communication systems or materials could have adverse consequences for the compliance regime; a false economy.