Response from ICAS to the Scottish Government’s Consultation

‘Land and Buildings Transaction Tax: A Consultation on Proposed Sub-sale Development Relief Regulations’

1 September 2014
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About ICAS

1. The Institute of Chartered Accountants of Scotland (ICAS) is the oldest professional body of accountants. We represent over 20,000 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.

General comments


3. ICAS commented in its submission of 16 January 2013, regarding the general principles of the Land and Buildings Transaction Tax Bill, that the removal of sub-sale relief from the provisions was 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 house builders in a difficult market, and one that might make Scotland a less competitive location for development than the rest of the UK. ICAS also noted that it appreciated the concerns expressed about abuse of the relief and would be pleased to contribute to discussions to provide a targeted relief for use only in commercial circumstances.

4. ICAS has therefore welcomed the convening of the Development Transactions Working Group by the Scottish Government to examine this topic of sub-sale relief.

5. The resultant proposal for sub-sale relief in which the parties to a development will need to pay the Land and Buildings Transaction Tax at the outset, but can only claim relief at a later date and subject to significant development activity having taken place within 5 years is a compromise between offering relief to developers from a double charge to tax and the desire to prevent tax avoidance.

6. Paying tax upfront in a commercial market will not necessarily be seen as tax ‘relief’ as it will have major adverse cash flow implications for taxpayers. It is noted that Chapter 6 describes a consultation process with businesses, whose views on the likely market impact of the proposals will best determine whether the relief is overly restrictive.

7. Giving relief up-front with a claw-back mechanism if the “significant development” is not completed within a specified period such as five years would be preferable. A number of the reliefs provided for in the LBTT legislation have claw-back mechanism (for example, group relief, acquisition relief, reconstruction relief and charities relief), and there has been no suggestion that the use of such a mechanism could lead to an inability to collect tax properly due from taxpayers. Whilst there could be difficulties identifying the taxpayer at the end of the 5 year period or there may be a risk that the taxpayer has become insolvent, such points could apply equally to other claw-backs.
It is inconsistent to use a claw back facility with some reliefs but not with sub-sale relief and ICAS recommends that this point be reconsidered.

8. ICAS would also encourage the Scottish Government to consider introducing a wider relief based on the new SDLT sub-sale relief provisions in Schedule 2A FA 2003. Whilst this is complex legislation, it is considered to be robust against tax avoidance and would ensure a level playing field throughout the UK.

9. ICAS recommends that if this form of deferred relief goes ahead, interest should be payable by Revenue Scotland on the refund as some way to alleviating the commercial impact.

Consultation Questions

Question 1
See comment above on timing of relief.

Question 2
It appears that the definition of ‘development’ would exclude developments of hotels, residential care homes, educational establishments or wind farm sites for example. The narrow targeting of ‘development’ suggests this is a deliberate decision but it is not one that is discussed in the consultation. Given the Scottish Government’s stated support for these growth sectors, this seems either inconsistent or too narrowly focussed. Any such restriction in relief should itself be more prominently consulted upon.

Question 6
The draft legislative provision does not define ‘completion certificate’. If it is intended to be that given formally by the planning authorities, then this should be specified in the interests of clarity; architects and other professionals may also opin on stages of completion. It is also understood to be the case that there can be procedural delays in the issue of formal completion certificates, not unusually due to minor points of detail requiring attention, rather than a commentary on matters of substance in the development. There should be an alternative power to permit the taxpayer to demonstrate this test is satisfied within the 5 year period even if the formal certificate is not issued until a period thereafter – a grace period of say six months might be an appropriate practical outcome whilst still satisfying the government’s objectives. This is particularly the case if the tax is paid upfront and revenue risk is negligible.