Finance Committee

Proposed Land and Buildings Transaction Tax (LBTT) supplement on additional residential homes

Submission from the Scottish Property Federation

Introduction

1. The Scottish Property Federation (SPF) is the voice for the property industry in Scotland and speaks for over 180 corporate members with interests in Scottish real estate. We include among our members major institutional investors, developers, landlords of commercial and residential property, and professional property consultants and advisers.

2. We are happy for our comments to be published by the Scottish Parliament and to be shared with other public authorities.

3. In the course of developing these comments we have liaised closely with colleagues at the British Property Federation’s Finance team who are due to submit views to the UK Treasury on their public consultation on the similar proposals for a 3% supplement on additional homes under SDLT.

Key points

4. The housing affordability crisis is fundamentally a result of a chronic under-supply of homes that is failing to meet a rapidly increasing demand for homes. We believe this crisis will only be overcome by policies that will unlock barriers to the supply of new homes. We do not believe that this Bill will contribute to this policy goal.

5. We welcome the consideration in the Policy memorandum and indeed in the stakeholder group meeting of 8 January 2016 of the potential adverse impact on large scale private rented sector investors. This is also a very live debate under the equivalent SDLT measures under consideration south of the border. It is vital that we avoid a competitive disadvantage that would deter large scale investment in new homes, whether for large-scale PRS investment or for smaller new development investments.
6. If the Parliament is to consider a transaction exemption where investors are purchasing a number of properties for letting purposes, then we believe 6 is the appropriate threshold. This is the existing threshold at which transactions are deemed to be commercial in nature. It would seem to be inconsistent to us for a residential surcharge to be applied to non-domestic LBTT rates and so we believe an exemption point here would be appropriate. Crucially an exemption at this point would support those smaller scale developments that would be surcharged if the UK proposals for an exemption/relief at say 15 properties transacted were to be adopted by the Scottish Parliament.

7. There is £30bn of institutional investment seeking build-to-rent opportunities in the UK over the course of the next four years. Currently less than 2% of build-to-rent PRS investment is being directed to Scotland. This is simply not enough to establish a major institutional asset class for large scale build-to-rent PRS in Scotland. The schemes that are underway or proposed in Scotland were initiated ahead of the introduction of the current Private Housing (Tenancies) Bill. Failure to deliver an appropriate exemption that will avoid deterring this investment would send a hugely negative signal to the investment market.

8. An exemption for larger scale investments will not by itself remove the adverse consequences of this legislation. Combined with other recent policy decisions including the impending removal of mortgage relief and the hugely increased risk associated with buy-to-let investment under the Private Housing (Tenancies) Bill, there are many reasons why smaller scale buy-to-let investment will be reduced in Scotland. This will have a consequence for the house-building industry itself as buy-to-let purchasers are a significant proportion of their off-plan sales. The reduction of appetite from these investors will reduce confidence for the sector in delivering new housing sites through effectively forward funding parts of a site and thus reducing risk for the house-builder.

9. Residential property is suffering from a major and rapid increase in taxation and regulation from both UK and Scottish Government sources. Measures include ATED (Annual Tax on Enveloped Dwellings) and non-resident Capital Gains Tax from the UK Government, as well as loss of mortgage interest relief and high value LBTT charges introduced in Scotland.

Questions

10. In its policy memorandum the Scottish Government makes several policy objectives. First, that the charge on additional homes will alleviate pressure on home buyers in the residential market. Second, that failure to introduce any measure will create an incentive
for UK buy-to-let investors from elsewhere in the UK to move into the Scottish PRS market. Finally, that the measures will raise additional LBTT revenue.

**Supporting home ownership**

11. We do not agree that the supplement will greatly support home ownership. The key to sustaining new home owners to meet modern financial requirements has been through direct Scottish Government intervention via Help to Buy. Affordability is an issue caused mainly through lack of supply and these measures are likely to reduce rather than increase the supply of new homes.

**Principles of taxation and ability to pay**

12. We are also puzzled as to why the Scottish Government has moved away from its principled stance of progressive taxation. The supplement will be imposed as a slab tax, exactly the same approach that the Scottish Government was keen to move away from when it took responsibility for SDLT in Scotland.

**Estimated additional revenue**

13. The government is anticipating some £17mn to £29mn (2016-17, after which this revenue increases greatly) in additional LBTT revenue as a consequence of the measure. This includes some analysis of ‘forestalling’ whereby transactions are brought forward to occur ahead of the 1st April timetable having not concluded missives before 16 December 2015. We have considered the evidence of the financial memorandum and these figures seemed to be based on assumed proportions of Scottish transactions for second homes or for investment purposes. We cannot see in any of the papers an assessment of whether transactions might be reduced if investors are deterred from the Scottish residential market and therefore we question whether these figures are robust.

**Appropriate relief or exemption**

14. We believe that there should be an exemption set for larger scale transactions of 6 or more properties, at which point the commercial rates of LBTT can be brought into play. The intention of this exemption would be to support significant large scale investment in Scotland. An exemption is proposed at the 15 property level under SDLT but we believe this is too large a number of properties for many Scottish projects which will be initiated by property entrepreneurs seeking to bring a range of 6-14 homes into use that would be forward sold to an investor.

**Relief for new development**
15. We support a relief for new development for 6 or more properties which will have the benefit of sustaining the home-building industry to forward-sell new build properties to investors as described earlier. The threshold of 6 or more properties for this specific relief will retain consistency with our previous comments on seeking an exemption where 6 or more properties are involved in a single transaction. Without such a relief SME house-builders who were devastated by the credit crunch will be severely constrained in taking forward development projects. Again, the ability to forward sell smaller number(s) of new build or redeveloped properties is crucial for the financing of development projects and without this investment supply will be even more severely constrained than now.

Look back relief for portfolios

16. We are concerned that at the lack of flexibility for a 'look back' procedure for larger scale transactions intended for the same portfolio (as opposed to individuals). If a developer is unable to gain relief from the 3% surcharge where he may be acquiring a range of properties in a location for the purposes of site assembly for a development then they may find such projects unviable. With such a relief developers may be unable to support new development and PRS investment whereby even with same seller and same buyer a phased project takes more than one transaction to complete the supply and transfer of a number of properties.

17. The Bill includes provisions for an 18 month clawback where an individual purchasing their own homes can reclaim the surcharge. This could still impose a huge up-front tax burden on individuals and we believe this approach needs to be reconsidered in order to better support individuals caught in the conveyancing system, technically, with an additional home yet with no intention of being a second homeowner.

Relief for certain asset classes – cluster flats in PBSAs

18. The Bill and policy memorandum does not appear to examine the position of certain asset classes under the charge. For example, we would also question whether cluster flats contained within PBSA accommodation are included within the scope of the charge. These properties are not able to be let on the open market so we do not see any justification for any potential liability to the 3% surcharge.

Position of other LBTT reliefs

19. We would also like to know if other reliefs extant under LBTT (Group relief, charities) etc. will still benefit under the 3% supplement? Clarification on this point would be welcome.

Accidental second homeowners
20. We are concerned that there are a number of accidental second homeowners who may be unintentionally caught by the Bill’s provisions. In discussion on technical scenarios our members have raised concerns in respect to certain complex situations. For example, where a marriage breaks down and one of the parties needs to re-locate while still nominally an owner of the former marital home. In another case there could be an inheritor of an interest in a property, perhaps as part of a number of siblings for a property not in Scotland. Some siblings may already be homeowners and we understand could be protected from the charge. Yet those siblings not already homeowners but then who actually wish to become a homeowner may be caught. These are difficult situations but there is a fear that these and similar situations, which are not uncommon, may well slip through with the Bill without adequate consideration given the speed of parliamentary implementation.

21. We would be pleased to answer any further questions relating to our evidence.

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