Passage of the

Land and Buildings Transaction Tax (Scotland) Bill 2012

SPPB 190
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Land and Buildings Transaction Tax (Scotland) Bill 2012

SP Bill 19 (Session 4), subsequently 2013 asp 11

SPPB 190

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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard three-stage process described above.

The Finance Committee’s Stage 1 Report did not include the oral and written evidence received by the Committee. This material was originally published on the web only, and is now included in full in this volume.

The Subordinate Legislation Committee’s report at Stage 1 is included after the Finance Committee’s report. The Subordinate Legislation Committee did not take oral evidence on the Bill and agreed its report in private. No extracts from the minutes or the Official Report of the relevant meeting of the Committee are, therefore, included in this volume.

The Public Audit Committee considered the audit arrangements for the Land and Buildings Transaction Tax at its meeting on 27 February 2013. Although not a formal part of Stage 1 of the legislative process, the papers for this meeting along with the
relevant extracts from the minutes and the Official Report are included in this volume.

The motion for a financial resolution for the Bill was not considered by the Parliament on the same day as the Stage 1 debate, but the following week on 1 May 2013. The motion was moved and agreed without debate or division and so no Official Report extract is included in this volume. The relevant extract from the Minutes of the Parliament is, however, included in this volume in the After Stage 1 section.

The Delegated Powers and Law Reform Committee (formerly the Subordinate Legislation Committee) considered the delegated powers in the Bill after Stage 2 and reported to the Parliament. That report is included in this volume. However, the Committee agreed its report without debate and no extracts from the minutes or the Official Report of the relevant meeting of the Committee are, therefore, included.
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Land and Buildings Transaction Tax (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the taxation of land transactions.

PART 1
LAND AND BUILDINGS TRANSACTION TAX

1 The tax

5 (1) A tax (to be known as land and buildings transaction tax) is to be charged on land transactions.

(2) The tax is chargeable—

(a) whether or not there is an instrument effecting the transaction,
(b) if there is such an instrument, whether or not it is executed in Scotland, and
(c) whether or not any party to the transaction is present, or resident, in Scotland.

10 (3) The tax is to be under the care and management of the Tax Authority.

2 Overview

This Act is arranged as follows—

Part 2 makes provision for the key concepts underlying the tax including—

(a) which transactions are land transactions,
(b) which interests are, and which are not, chargeable interests in land,
(c) when a chargeable interest is acquired and the treatment of transactions involving contracts which require to be completed by conveyance as well as other kinds of transaction,
(d) which land transactions are, and which are not, chargeable transactions,
(e) what is, and what is not, chargeable consideration in relation to a chargeable transaction,

Part 3 makes provision for—
Land and Buildings Transaction Tax (Scotland) Bill

Part 2—Key concepts

Chapter 1—Land transactions and chargeable interests

(a) the amount of tax payable,

(b) relief from the tax, and

(c) who is liable to pay the tax,

Part 4 provides for land transaction returns and for the payment of the tax,

Part 5 contains provision about the application of the Act in relation to certain types of buyer, including companies, partnerships and trusts,

Part 6 contains general provision, including provisions about the Tax Authority and definitions of expressions used in the Act,

Part 7 contains provisions on subordinate legislation powers and commencement as well as other final provisions.

PART 2

KEY CONCEPTS

CHAPTER 1

LAND TRANSACTIONS AND CHARGEABLE INTERESTS

Land transaction

3 Land transaction

A land transaction is the acquisition of a chargeable interest.

Chargeable interest

4 Chargeable interest

(1) A chargeable interest is an interest of a kind mentioned in subsection (2) which is not an exempt interest.

(2) The interests are—

(a) an interest, right or power in or over land in Scotland, or

(b) the benefit of an obligation, restriction or condition affecting the value of any such interest, right or power.

(3) In subsection (2), “land in Scotland” does not include land below mean low water mark.

Exempt interest

5 Exempt interest

(1) An interest is exempt if it is a security interest.

(2) In subsection (1) a “security interest” means an interest or right held for the purpose of securing the payment of money or the performance of any other obligation.

(3) See also paragraphs 21 to 24 of schedule 7 (which make additional provision about exempt interests in relation to alternative property finance arrangements).

(4) The Scottish Ministers may, by regulations, modify this section so as to—

(a) provide that a description of an interest or right in relation to land is an exempt interest,
(b) provide that a description of an interest or right in relation to land is no longer to be an exempt interest,
(c) vary a description of an exempt interest.

Acquisition and disposal of chargeable interest

6 Acquisition and disposal of chargeable interest

(1) Each of the following is an acquisition and a disposal of a chargeable interest—
(a) the creation of the interest,
(b) the renunciation or release of the interest,
(c) the variation of the interest.

(2) A person acquires a chargeable interest where—
(a) the person becomes entitled to the interest on its creation,
(b) the person’s interest or right is benefitted or enlarged by the renunciation or release of the interest, or
(c) the person benefits from the variation of the interest.

(3) A person disposes of a chargeable interest where—
(a) the person’s interest or right becomes subject to the interest on its creation,
(b) the person ceases to be entitled to the interest on its being renounced or released, or
(c) the person’s interest or right is subject to or limited by the variation of the interest.

(4) Except as otherwise provided, this Act applies however the acquisition is effected, whether by act of the parties, by order of the court or other authority, by or under any enactment or by operation of law.

7 Buyer and seller

(1) The buyer, in relation to a land transaction, is the person who acquires the subject-matter of the transaction.

(2) But a person is treated as the buyer only where that person has given consideration for, or is a party to, the transaction.

(3) The seller, in relation to a land transaction, is the person who disposes of the subject-matter of the transaction.

CHAPTER 2

PROVISION ABOUT PARTICULAR TRANSACTIONS

General rules for contracts requiring conveyance

8 Contract and conveyance

(1) This section applies where a contract for a land transaction is entered into under which the transaction is to be completed by a conveyance.
(2) A person is not regarded as entering into a land transaction by reason of entering into the contract.

(3) But see sections 9 and 10.

9 Completion without substantial performance

(1) If the transaction is completed without previously having been substantially performed, the contract and the transaction effected on completion are treated as parts of a single land transaction.

(2) In this case the effective date of the transaction is the date of completion.

10 Substantial performance without completion

(1) If the contract is substantially performed without having been completed, the contract is treated as if it were itself the transaction provided for in the contract.

(2) In this case the effective date of the transaction is when the contract is substantially performed.

(3) Where subsection (1) applies and the contract is subsequently completed by a conveyance—

(a) both the contract and the transaction effected on completion are notifiable transactions, and

(b) tax is chargeable on the latter transaction to the extent (if any) that the amount of tax chargeable on it is greater than the amount of tax chargeable on the contract.

(4) Where subsection (1) applies and the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that subsection is to be (to that extent) repaid by the Tax Authority.

(5) That repayment must be claimed by amendment of the land transaction return made in respect of the contract.

Contract providing for conveyance to third party

11 Contract providing for conveyance to third party

(1) This section applies where a contract is entered into under which a chargeable interest is to be conveyed by one party to the contract (A) at the direction or request of the other (B)—

(a) to a person (C) who is not a party to the contract, or

(b) either to C or to B.

(2) B is not regarded as entering into a land transaction by reason of entering into the contract, but the following provisions have effect.

(3) If the contract is substantially performed, B is treated for the purposes of this Act as acquiring a chargeable interest, and accordingly as entering into a land transaction.

(4) In such a case, the effective date of the transaction is when the contract is substantially performed.
(5) Where the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of subsection (3) is to be (to that extent) repaid by the Tax Authority.

(6) Repayment must be claimed by amendment of the land transaction return made in respect of the contract.

(7) Subject to subsection (8), sections 8 to 10 do not apply in relation to the contract.

(8) Where—
   (a) this subsection applies by virtue of subsection (1)(b), and
   (b) by reason of B’s direction or request, A becomes obliged to convey a chargeable interest to B,
sections 8 to 10 apply to that obligation as they apply to a contract for a land transaction that is to be completed by a conveyance.

(9) Sections 8 to 10 apply in relation to any contract between B and C, in respect of the chargeable interest referred to in subsection (1), that is to be completed by a conveyance.

(10) References to completion in sections 8 to 10, as they apply by virtue of subsection (9), include references to conveyance by A to C of the subject-matter of the contract between B and C.

Options etc.

12 Options and rights of pre-emption

(1) The acquisition of—
   (a) an option binding the grantor to enter into a land transaction, or
   (b) a right of pre-emption preventing the grantor from entering into, or restricting the right of the grantor to enter into, a land transaction,
is a land transaction distinct from any land transaction resulting from the exercise of the option or right.

(2) They may be linked transactions (see section 56).

(3) The reference in subsection (1)(a) to an option binding the grantor to enter into a land transaction includes an option requiring the grantor either to enter into a land transaction or to discharge the grantor’s obligations under the option in some other way.

(4) The effective date of the transaction in the case of the acquisition of an option or right such as is mentioned in subsection (1) is when the option or right is acquired (as opposed to when it becomes exercisable).

(5) Nothing in this section applies to so much of an option or right of pre-emption as constitutes or forms part of a land transaction apart from this section.
13 Exchanges

(1) Where a land transaction is entered into by a person as buyer (alone or jointly) wholly or partly in consideration of another land transaction being entered into by that person (alone or jointly) as seller, this Act applies in relation to each transaction as if each were distinct and separate from the other (and they are not linked transactions within the meaning of section 56).

(2) A transaction is treated for the purposes of this Act as entered into by a person as buyer wholly or partly in consideration of another land transaction being entered into by that person as seller in any case where an obligation to give consideration for a land transaction that a person enters into as buyer is met wholly or partly by way of that person entering into another transaction as seller.

(3) As to the amount of the chargeable consideration in the case of exchanges and similar transactions, see—
   (a) paragraphs 5 and 6 of schedule 2,
   (b) paragraph 17 of that schedule.

Interpretation

14 Meaning of “substantial performance”

(1) A contract is substantially performed when—
   (a) the buyer, or a person connected with the buyer, takes possession of the whole, or substantially the whole, of the subject-matter of the contract,
   (b) a substantial amount of the consideration is paid or provided, or
   (c) there is an assignation, subsale or other transaction (relating to the whole or part of the subject-matter of the contract) as a result of which a person other than the original buyer becomes entitled to call for a conveyance to that person.

(2) For the purpose of subsection (1)(a)—
   (a) possession includes receipt of rent or the right to receive it, and
   (b) it is immaterial whether possession is taken under the contract or under a licence.

(3) For the purposes of subsection (1)(b), a substantial amount of the consideration is paid or provided—
   (a) if none of the consideration is rent, where the whole or substantially the whole of the consideration is paid or provided,
   (b) if the only consideration is rent, when the first payment of rent is made,
   (c) if the consideration includes both rent and other consideration, when—
      (i) the whole or substantially the whole of the consideration other than rent is paid or provided, or
      (ii) the first payment of rent is made.

(4) For the purposes of subsection (1)(c) the reference to an assignation, subsale or other transaction includes the grant or assignation of an option.
CHAPTER 3

CHARGEABLE TRANSACTIONS AND CHARGEABLE CONSIDERATION

Chargeable transaction

15 Chargeable transaction
A land transaction is a chargeable transaction unless it is—
(a) an exempt transaction, or
(b) otherwise exempt from charge.

16 Exempt transaction
A transaction is exempt if schedule 1 provides that it is so exempt.

Chargeable consideration

17 Chargeable consideration
(1) Schedule 2 makes provision as to the chargeable consideration for a transaction.
(2) The Scottish Ministers may, by regulations, modify this Act relating to chargeable consideration and make such other provision as they consider appropriate about—
(a) what is to be treated as chargeable consideration,
(b) the determination of the amount or value of chargeable consideration.

Contingent, uncertain or unascertained consideration

18 Contingent consideration
(1) Subsection (2) applies where the whole or part of the chargeable consideration for a transaction is contingent.
(2) The amount or value of the consideration is to be determined on the assumption that the outcome of the contingency will be such that the consideration is payable or, as the case may be, does not cease to be payable.
(3) In this Act, “contingent”, in relation to consideration, means—
(a) that it is to be paid or provided only if some uncertain future event occurs, or
(b) that it is to cease to be paid or provided if some uncertain future event occurs.

19 Uncertain or unascertained consideration
(1) Subsection (2) applies where the whole or part of the chargeable consideration for a transaction is uncertain or unascertained.
(2) The amount or value of the consideration is to be determined on the basis of a reasonable estimate.
(3) In this section, “uncertain”, in relation to consideration, means its amount or value depends on uncertain future events.
20 Contingent, uncertain or unascertained consideration: further provision

Sections 18 and 19 have effect subject to—

(a) section 31 (return where contingency ceases or consideration ascertained),
(b) section 32 (contingency ceases or consideration is ascertained: less tax payable), and
(c) section 41 (application to defer payment in case of contingent or uncertain consideration).

Annuities etc.

21 Annuities etc.: chargeable consideration limited to 12 years’ payments

(1) This section applies to so much of the chargeable consideration for a land transaction as consists of an annuity payable—

(a) for life,
(b) in perpetuity,
(c) for an indefinite period, or
(d) for a definite period exceeding 12 years.

(2) The consideration to be taken into account is limited to 12 years’ annual payments.

(3) Where the amount payable varies, or may vary, from year to year, the 12 highest annual payments are to be taken into account.

(4) No account is to be taken of any provision for adjustment of the amount payable in line with the retail price index, the consumer prices index or any other similar index.

(5) References in this section to annual payments are to payments in respect of each successive period of 12 months beginning with the effective date of the transaction.

(6) For the purposes of this section the amount or value of any payment is to be determined (if necessary) in accordance with section 18 (contingent consideration) or 19 (uncertain or unascertained consideration).

(7) References in this section to an annuity include any consideration (other than rent) that falls to be paid or provided periodically.

(8) References to payment are to be read accordingly.

(9) Where this section applies—

(a) sections 31 and 32 (adjustment where contingency ceases or consideration is ascertained) do not apply, and
(b) no application may be made under section 41 (application to defer payment in case of contingent or uncertain consideration).

Deemed market value

22 Deemed market value where transaction involves connected company

(1) This section applies where the buyer is a company and—
(a) the seller is connected with the buyer, or
(b) some or all of the consideration for the transaction consists of the issue or transfer of shares in a company with which the seller is connected.

(2) The chargeable consideration for the transaction is to be taken to be not less than—

(a) the market value of the subject-matter of the transaction as at the effective date of the transaction, and
(b) if the acquisition is the grant of a lease, the rent.

(3) In this section—

“company” means a body corporate,
“shares” includes stock and the reference to shares in a company includes reference to securities issued by a company.

(4) Where this section applies, paragraph 1 of schedule 1 (exemption of transactions for which there is no chargeable consideration) does not apply.

(5) But this section has effect subject to any other provision affording exemption or relief from the tax.

(6) This section is subject to the exceptions provided for in section 23.

23 Extraordinary deemed market value

(1) Section 22 does not apply in the following cases.

(2) In the following provisions “the company” means the company that is the buyer in relation to the transaction in question.

(3) Case 1 is where immediately after the transaction the company holds the property as trustee in the course of a business carried on by it that consists of or includes the management of trusts.

(4) Case 2 is where—

(a) immediately after the transaction the company holds the property as trustee, and
(b) the seller is connected with the company only because of section 1122(6) of the Corporation Tax Act 2010 (c.4).

(5) Case 3 is where—

(a) the seller is a company and the transaction is, or is part of, a distribution of the assets of that company (whether or not in connection with its winding up), and
(b) it is not the case that—

(i) the subject-matter of the transaction, or
(ii) an interest from which that interest is derived,

has, within the period of 3 years immediately preceding the effective date of the transaction, been the subject of a transaction in respect of which group relief was claimed by the seller.
PART 3

CALCULATION OF TAX AND RELIEFS

Amount of tax chargeable

24 Tax rates and tax bands

(1) The Scottish Ministers must, by order, specify the tax bands and the percentage tax rates for each band—

(a) for residential property transactions, and
(b) for non-residential property transactions.

(2) An order under subsection (1) must specify, in the case of each type of transaction—

(a) a nil rate tax band and at least two other tax bands,
(b) the tax rate for the nil rate tax band, which must be 0%, and
(c) the tax rate for each tax band above the nil rate tax band so that the rate for each band is higher than the rate for the band below it.

(3) A transaction is a residential property transaction if—

(a) the main subject-matter of the transaction consists entirely of an interest in land that is residential property, or
(b) where the transaction is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of such an interest.

(4) A transaction is a non-residential property transaction if—

(a) the main subject-matter of the transaction consists of or includes an interest in land that is not residential property, or
(b) where the transaction is one of a number of linked transactions, the main subject-matter of any transaction consists of or includes such an interest.

25 Amount of tax chargeable

(1) The amount of tax chargeable in respect of a chargeable transaction is to be determined as follows.

Step 1

For each tax band applicable to the type of transaction, multiply so much of the chargeable consideration for the transaction as falls within the band by the tax rate for that band.

Step 2

Calculate the sum of the amounts reached under Step 1.

The result is the amount of tax chargeable.

(2) In the case of a transaction for which the whole or part of the chargeable consideration is rent this section has effect subject to section 55 (application of this Act to leases).

(3) This section is subject to—

(a) schedule 5 (multiple dwellings relief),
(b) schedule 9 (crofting community right to buy relief),
(c) Part 3 of schedule 11 (acquisition relief).

26 Amount of tax chargeable: linked transactions

(1) Where a chargeable transaction is one of a number of linked transactions, the amount of tax chargeable in respect of the transaction is to be determined as follows.

*Step 1*

For each tax band applicable to the type of transaction, multiply so much of the relevant consideration as falls within the band by the tax rate for that band.

*Step 2*

Calculate the sum of the amounts reached under Step 1.

The result is the total tax chargeable.

*Step 3*

Divide the chargeable consideration for the transaction by the relevant consideration.

*Step 4*

Multiply the total tax chargeable by the fraction reached under Step 3.

The result is the amount of tax chargeable.

(2) The relevant consideration is the total of the chargeable consideration for all the linked transactions.

(3) In the case of a transaction for which the whole or part of the chargeable consideration is rent this section has effect subject to section 55 (application of this Act to leases).

(4) This section is subject to—

(a) schedule 5 (multiple dwellings relief),
(b) schedule 9 (crofting community right to buy relief),
(c) Part 3 of schedule 11 (acquisition relief).

Reliefs

27 Reliefs

(1) The following schedules provide for reliefs from the tax in relation to certain land transactions—

schedule 3 (sale and leaseback relief),

schedule 4 (relief for certain acquisitions of residential property),

schedule 5 (multiple dwellings relief),

schedule 6 (relief for certain acquisitions by registered social landlords),

schedule 7 (alternative property finance relief),

schedule 8 (relief for alternative finance investment bonds),

schedule 9 (crofting community right to buy relief),

schedule 10 (group relief),

schedule 11 (reconstruction relief and acquisition relief),

...
schedule 12 (relief for incorporation of limited liability partnership),
schedule 13 (charities relief),
schedule 14 (relief for compulsory purchase facilitating development),
schedule 15 (relief for compliance with planning obligations),
schedule 16 (public bodies relief).

(2) Any relief under any of those schedules must be claimed in a land transaction return or an amendment of such a return.

(3) The Scottish Ministers may, by order, modify this Act so as to—

(a) add a relief,
(b) modify an existing relief, or
(c) remove a relief.

(4) An order under subsection (3) may also modify any other enactment that the Scottish Ministers consider appropriate.

**Liability for tax**

15 28 **Liability for tax**

(1) The buyer is liable to pay the tax in respect of a chargeable transaction.

(2) As to the liability of buyers acting jointly, see—

(a) section 48(2)(c) (joint buyers),
(b) paragraph 3 of schedule 17 (partnerships), and
(c) paragraphs 14 to 17 of schedule 18 (trusts).

**PART 4**

**RETURNS AND PAYMENT**

**CHAPTER 1**

**RETURNS**

**Duty to make return**

(1) The buyer in a notifiable transaction must make a return to the Tax Authority.

(2) If the transaction is a chargeable transaction, the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.

(3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the transaction.
Notifiable transactions

30 Notifiable transactions

(1) A land transaction is notifiable unless it is—
   (a) an exempt transaction,
   (b) an acquisition of the ownership of land where the chargeable consideration for the acquisition is less than £40,000,
   (c) an acquisition of a chargeable interest other than a major interest in land where the chargeable consideration does not exceed the nil rate tax band applicable to the transaction, or
   (d) an acquisition specified in regulations made under section 55 (application of this Act to leases).

(2) In subsection (1)(b) and (c), “chargeable consideration”—
   (a) where the transaction is one of a number of linked transactions, means the total of the chargeable consideration for all the linked transactions,
   (b) includes any amount in respect of which tax would be chargeable but for a relief.

(3) The exceptions in subsection (1)(a) to (d) do not apply where the transaction is a transaction that a person is treated as entering into by virtue of section 11(3).

(4) This section has effect subject to—
   (a) section 10(3) (substantial performance without completion),
   (b) paragraph 17(6) of schedule 2 (arrangements involving public or educational bodies),
   (c) paragraph 12 of schedule 7 (alternative property finance), and
   (d) paragraph 40 of schedule 17 (transfer of partnership interests).

(5) The Scottish Ministers may, by order, amend subsection (1)(b) so as to substitute, for the figure for the time being specified there, a different figure.

Adjustments and further returns

31 Return where contingency ceases or consideration ascertained

(1) The buyer in a land transaction must make a return to the Tax Authority if—
   (a) section 18(2) or 19(2) (contingent, uncertain or unascertained consideration) applies in relation to the transaction (or to any transaction in relation to which it is a linked transaction),
   (b) an event mentioned in subsection (2) occurs, and
   (c) the effect of the event is that—
      (i) the transaction becomes notifiable,
      (ii) additional tax is payable in respect of the transaction, or
      (iii) tax is payable where none was payable before.

(2) The events are—
(a) in the case of contingent consideration, the contingency occurs or it becomes clear that it will not occur, or
(b) in the case of uncertain or unascertained consideration, an amount relevant to the calculation of the consideration, or any instalment of consideration, becomes ascertained.

(3) The return must be made before the end of the period of 30 days beginning with the day after the date on which the event occurred.

(4) The return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.

(5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

32 Contingency ceases or consideration ascertained: less tax payable

(1) The buyer in a land transaction may take one of the steps mentioned in subsection (2) to obtain a repayment of tax if—
(a) section 18(2) or 19(2) (contingent, uncertain and unascertained consideration) applies in relation to the transaction (or to any transaction in relation to which it is a linked transaction),
(b) an event mentioned in section 31(2) occurs, and
(c) the effect of the event is that less tax is payable in respect of the transaction than has already been paid.

(2) The steps are—
(a) within the period allowed for amendment of the land transaction return, amend the return accordingly,
(b) after the end of that period (if the land transaction return is not so amended), make a claim to the Tax Authority for repayment of the amount overpaid.

(3) This section does not apply so far as the consideration consists of rent (see section 55 (application of this Act to leases)).

33 Further return where relief withdrawn

(1) The buyer in a land transaction must make a further return to the Tax Authority if relief is withdrawn to any extent under—
(a) Part 5 of schedule 4 (relief for certain acquisitions of residential property),
(b) Part 5 of schedule 5 (transfer of multiple dwellings),
(c) Part 3 of schedule 10 (group relief),
(d) Part 4 of schedule 11 (reconstruction relief and acquisition relief), or
(e) paragraph 4 of schedule 13 (charities relief).

(2) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable.

(3) The return must be made before the end of the period of 30 days beginning with the day after the date on which the relevant event occurred.
(4) The relevant event is—
(a) in relation to the withdrawal of relief under schedule 4, an event mentioned in paragraph 14(a), (b) or (c) or 16(a), (b) or (c) of that schedule,
(b) in relation to the withdrawal of relief under schedule 5, an event mentioned in paragraph 19(a) or 21(a) of that schedule,
(c) in relation to the withdrawal of group relief, the buyer ceasing to be a member of the same group as the seller within the meaning of schedule 10,
(d) in relation to the withdrawal of reconstruction relief or acquisition relief, the change of control of the acquiring company mentioned in paragraph 13 of schedule 11,
(e) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraphs 5 and 6 of schedule 13.

34 Return or further return in consequence of later linked transaction

(1) This section applies where the effect of a transaction (“the later transaction”) that is linked to an earlier transaction is that—
(a) the earlier transaction becomes notifiable,
(b) additional tax is payable in respect of the earlier transaction, or
(c) tax is payable in respect of the earlier transaction where none was payable before.

(2) The buyer in the earlier transaction must make a return (or further return) in respect of that transaction.

(3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the later transaction.

(4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable as a result of the later transaction.

(5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the earlier transaction.

(6) This section does not affect any requirement to make a land transaction return in respect of the later transaction.

35 Form and content

(1) A return under this Act must—
(a) be in the form specified by the Tax Authority, and
(b) contain the information specified by the Tax Authority.

(2) The Tax Authority may specify different forms and information for—
(a) different kinds of return, and
(b) different kinds of transaction.

(3) The return is treated as containing any information provided by the buyer for the purpose of completing the return.
36 Declaration

(1) A return under this Act must also include a declaration by the buyer that the return is, to the best of the buyer’s knowledge, correct and complete.

(2) However, where the buyer authorises an agent to complete the return—

(a) the agent must certify in the return that the buyer has declared that the information provided in the return, with the exception of the relevant date, is to the best of the buyer’s knowledge, correct and complete, and

(b) the return must include a declaration by the agent that the relevant date provided in the return is, to the best of the agent’s knowledge, correct.

(3) The relevant date is—

(a) in relation to a return under section 29, the effective date of the transaction,

(b) in relation to a return under section 31, the date of the event as a result of which the return is required,

(c) in relation to a return under section 33, the date on which the relevant event occurred,

(d) in relation to a return under section 34, the effective date of the later transaction.

37 Amendment

(1) The buyer in a land transaction may amend a return relating to the transaction by notice to the Tax Authority.

(2) The notice must—

(a) be in the form specified by the Tax Authority, and

(b) contain the information specified by the Tax Authority.

(3) An amendment may not be made more than 12 months after the last day of the period within which the return must be made.

Miscellaneous

38 Interpretation

References in this Act to the making of a return are to the making of a return that—

(a) complies with the requirements of sections 35 and 36, and

(b) contains an assessment of the tax chargeable in respect of the transaction (if one is required).

39 Power to amend period in which returns must be made

(1) The Scottish Ministers may, by order, amend a provision listed in subsection (2) so as to substitute, for the period for the time being specified there, a different period.

(2) The provisions are—

(a) section 29(3),
(b) section 31(3),
(c) section 33(3).

CHAPTER 2
PAYMENT OF TAX

40 Payment of tax

(1) Tax payable in respect of a land transaction—
(a) must be paid to the Tax Authority, and
(b) must be paid at the same time as the land transaction return relating to the transaction is made.

(2) Where a return is to be made under any of the following provisions, the tax or additional tax payable must be paid at the same time as the return is made—
(a) section 31 (return where contingency ceases or consideration ascertained),
(b) section 33 (further return where relief withdrawn), or
(c) section 34 (return or further return in consequence of later linked transaction).

(3) Tax payable as a result of the amendment of a return must be paid at the same time as the amendment is made.

(4) For the purposes of this Act, tax is treated as paid if arrangements satisfactory to the Tax Authority are made for payment of the tax.

(5) This section is subject to section 41 (application to defer payment of tax in case of contingent or uncertain consideration).

41 Application to defer payment in case of contingent or uncertain consideration

(1) The buyer may apply to the Tax Authority to defer payment of tax in a case where—
(a) the amount of tax payable depends on the amount or value of chargeable consideration that, at the effective date of the transaction, is contingent or uncertain, and
(b) the chargeable consideration falls to be paid or provided on one or more future dates of which at least one falls, or may fall, more than 6 months after the effective date of the transaction.

(2) An application under this section must—
(a) be in the form specified by the Tax Authority, and
(b) contain the information specified by the Tax Authority.

(3) An application under this section does not affect the buyer’s obligations as regards payment of tax in respect of chargeable consideration that—
(a) has already been paid or provided at the time the application is made, or
(b) is not contingent and whose amount is ascertained or ascertainable at the time the application is made.
Subsection (3) applies as regards both the time of payment and the calculation of the amount payable.

This section does not apply so far as the consideration consists of rent (see section 55 (application of this Act to leases).

5  Regulations about applications under section 41

(1) The Scottish Ministers may, by regulations, make further provision about applications under section 41.

(2) The regulations may in particular—

(a) specify when an application is to be made,

(b) require the buyer to provide such information as the Tax Authority may reasonably require for the purposes of determining whether to accept an application,

(c) specify the grounds on which an application may be refused,

(d) specify the procedure for reaching a decision on the application,

(e) make provision for postponing payment of tax when an application has been made,

(f) provide for the effect of accepting an application,

(g) require the buyer to make a return or further return, and to make such payments or further payments of tax as may be specified, in such circumstances as may be specified.

(3) Regulations under this section may also provide that where the circumstances in subsection (4) arise—

(a) sections 31 and 32 (adjustment where contingency ceases or consideration is ascertained) do not apply in relation to the payment, and

(b) instead, any necessary adjustment is to be made in accordance with the regulations.

(4) The circumstances are—

(a) a payment is made as mentioned in section 41(3), and

(b) an application under this section is accepted in respect of other chargeable consideration taken into account in calculating the amount of that payment.

CHAPTER 3

REGISTRATION OF LAND TRANSACTIONS ETC.

43  Return to be made and tax paid before application for registration

(1) The Keeper of the Registers of Scotland (“the Keeper”) may not accept an application for registration of a document effecting or evidencing a notifiable transaction unless—

(a) a land transaction return has been made in relation to the transaction, and

(b) any tax payable in respect of the transaction has been paid.
(2) The Tax Authority must provide the Keeper with such information as the Keeper reasonably requires to comply with subsection (1).

(3) In this section, “registration” means registration or recording in any register under the management and control of the Keeper.

(4) This section is subject to section 41 (application to defer payment of tax in case of contingent or uncertain consideration).

PART 5
APPLICATION OF ACT TO CERTAIN PERSONS AND BODIES

44 Companies and other organisations

(1) Everything to be done by an organisation under this Act is to be done by the organisation acting through—

(a) the proper officer of the organisation, or

(b) another person having for the time being the express, implied or apparent authority of the organisation to act on its behalf for the purpose.

(2) Subsection (1)(b) does not apply where a liquidator has been appointed for the organisation.

(3) For the purposes of this Act—

(a) the proper officer of a company is the secretary, or person acting as secretary, of the company,

(b) the proper officer of an unincorporated association (or of a company that does not have a proper officer within paragraph (a)) is the treasurer, or person acting as treasurer, of the association or, as the case may be, the company.

(4) But, where a liquidator or administrator has been appointed for the organisation, the liquidator or, as the case may be, the administrator is the proper officer.

(5) If two or more persons are appointed to act jointly or concurrently as the administrator of the organisation, the reference to the administrator in subsection (4) is to—

(a) such one of them as is specified in a notice given to the Tax Authority by those persons for the purposes of this section, or

(b) where the Tax Authority is not so notified, such one or more of those persons as the Tax Authority may designate as the proper officer for those purposes.

(6) In this section, “organisation” means—

(a) a company,

(b) an unincorporated association.

45 Unit trust schemes

(1) This Act (with the exception of the provisions mentioned in subsection (8)) applies in relation to a unit trust scheme as if—

(a) the trustees were a company, and

(b) the rights of the unit holders were shares in the company.
(2) Each of the parts of an umbrella scheme is regarded for the purposes of this Act as a separate unit trust scheme and the umbrella scheme as a whole is not so regarded.

(3) An “umbrella scheme” means a unit trust scheme—

(a) that provides arrangements for separate pooling of the contributions of participants and the profits or income out of which payments are to be made for them, and

(b) under which the participants are entitled to exchange rights in one pool for rights in another.

(4) A “part” of an umbrella scheme means such of the arrangements as relate to a separate pool.

(5) In this Act—

“unit trust scheme” has the same meaning as in the Financial Services and Markets Act 2000 (c.8), and

“unit holder” means a participant in a unit trust scheme.

(6) The Scottish Ministers may, by regulations, provide that a scheme of a description specified in the regulations is to be treated as not being a unit trust scheme for the purposes of this Act.

(7) Section 620 of the Corporation Tax Act 2010 (c.4) (court investment funds treated as authorised unit trusts) applies for the purposes of this Act as it applies for the purposes of that Act, with the substitution for references to an authorised unit trust of references to a unit trust scheme.

(8) An unit trust scheme is not to be treated as a company for the purposes of schedules 10 (group relief) and 11 (reconstruction relief and acquisition relief).

46 Open-ended investment companies

(1) The Scottish Ministers may, by regulations, make such provision as they consider appropriate for securing that the provisions of this Act have effect in relation to—

(a) open-ended investment companies of such description as may be prescribed in the regulations, and

(b) transactions involving such companies,

in a manner corresponding, subject to such modifications as the Scottish Ministers consider appropriate, to the manner in which they have effect in relation to unit trust schemes and transactions involving such trusts.

(2) The regulations may, in particular, make provision—

(a) modifying the operation of any provision in relation to open-ended investment companies so as to secure that arrangements for treating the assets of such a company as assets comprised in separate pools are given an effect corresponding to that of equivalent arrangements constituting the separate parts of an umbrella scheme,

(b) treating the separate parts of the undertaking of an open-ended investment company in relation to which such provision is made as distinct companies for the purposes of this Act.

(3) In this section—
“open-ended investment company” has the meaning given by section 236 of the Financial Services and Markets Act 2000 (c.8),

“umbrella scheme” has the same meaning as in section 45.

47 Residential property holding companies

(1) The Scottish Ministers may, by regulations, provide for qualifying transfers of interests in residential property holding companies—

(a) to be treated as land transactions, and

(b) to be chargeable transactions.

(2) A “residential property holding company” means a company—

(a) whose sole or main activity is holding or investing in chargeable interests in residential property,

(b) whose property consists of or includes chargeable interests in residential property, and

(c) whose shares are not listed on a recognised stock exchange.

(3) A “qualifying transfer” is a transfer of an interest in such a company that results in the transferee acquiring the right to occupy some or all of the company’s residential property.

(4) Regulations under subsection (1) may in particular make provision, or further provision, about—

(a) the kinds of interest, transfer of which is a qualifying transfer,

(b) the kinds of transfers which are and are not qualifying transfers,

(c) the rights which are rights to occupy a company’s residential property for the purposes of such transfers,

(d) the chargeable consideration in the case of such transfers,

(e) the tax bands and tax rates that are to apply to such transfers,

(f) the person who is to be liable to pay the tax,

(g) the application or disapplication of any reliefs in relation to such transfers.

(5) Regulations under subsection (1) may modify any enactment (including this Act).

48 Joint buyers

(1) This section applies to a land transaction where there are two or more buyers who are or will be jointly entitled to the interest acquired.

(2) The general rules are that—

(a) any obligation of the buyer under this Act in relation to the transaction is an obligation of the buyers jointly but may be discharged by any of them,

(b) anything required or authorised by this Act to be done in relation to the buyer must be done by or in relation to all of them, and

(c) any liability of the buyer under this Act in relation to the transaction (in particular, any liability arising by virtue of the failure to fulfil an obligation within paragraph (a)), is a joint and several liability of the buyers.
(3) The general rules are subject to the following provisions—
   (a) if the transaction is a notifiable transaction, a single land transaction return is required,
   (b) the declaration required by section 36(1) or (2)(a) (declaration that return is complete and correct) must be made by all the buyers.

(4) This section has effect subject to—
   (a) the provisions of schedule 17 (partnerships), and
   (b) paragraphs 14 to 17 of schedule 18 (trusts).

49 Partnerships
Schedule 17 makes provision about the application of this Act in relation to partnerships.

50 Trusts
Schedule 18 makes provision about the application of this Act in relation to trusts.

51 Persons acting in a representative capacity etc.
(1) The personal representatives of a person who is the buyer in a land transaction—
   (a) are responsible for discharging the obligations of the buyer under this Act in relation to the transaction, and
   (b) may deduct any payment made by them under this Act out of the assets and effects of the deceased person.

(2) A receiver appointed by a court in the United Kingdom having the direction and control of any property is responsible for discharging any obligations under this Act in relation to a transaction affecting that property as if the property were not under the direction and control of the court.

PART 6
GENERAL AND INTERPRETATION

52 The Tax Authority
(1) For the purposes of this Act, the Tax Authority is the Scottish Ministers.
(2) The Scottish Ministers may, by order, amend subsection (1) to provide that another person is the Tax Authority.

53 Delegation of functions to Keeper
(1) The Tax Authority may delegate the exercise of any of its functions under this Act to the Keeper of the Registers of Scotland.
(2) But subsection (1) does not apply to any function of making an order or regulations.
(3) A delegation under this section may be varied or revoked at any time.
(4) A delegation under this section does not affect the Tax Authority’s responsibility for the exercise of any functions delegated or the Authority’s ability to carry out such functions.

(5) The Tax Authority may reimburse the Keeper for any expenditure incurred which is attributable to the exercise by the Keeper of functions delegated under this section.

54 Review and appeal

(1) The Scottish Ministers may, by regulations, make provision for—

(a) the review by the Tax Authority, on the application of a specified person, of any specified kind of decision by the Tax Authority,

(b) the appeal by a specified person to a tribunal or court against any specified kind of decision by the Tax Authority.

(2) Regulations under this section may modify any provision made by or under this Act.

(3) In this section, “specified” means specified in the regulations.

Leases

55 Application of this Act to leases

(1) The Scottish Ministers must, by regulations, make provision about the application of this Act in relation to leases.

(2) The regulations may, in particular—

(a) make provision for transactions, which result in the acquisition of interests in leases, to be land transactions,

(b) make provision for what the chargeable consideration is to be in relation to a lease,

(c) make provision for the determination of the amount or value of that chargeable consideration,

(d) make provision for the calculation of the tax chargeable,

(e) specify that certain land transactions relating to a lease are not to be notifiable under section 30.

(3) Regulations under this section may modify any enactment (including this Act).

Linked transactions

56 Linked transactions

(1) Transactions are linked for the purposes of this Act if they form part of a single scheme, arrangement or series of transactions between the same seller and buyer or, in either case, persons connected with them.

(2) Where there are two or more linked transactions with the same effective date, the buyer, or all of the buyers if there is more than one, may make a single land transaction return as if all of those transactions that are notifiable were a single notifiable transaction.

(3) Where two or more buyers make a single return in respect of linked transactions, section 48 applies as if—

(a) the transaction in question were a single transaction, and
(b) those buyers were buyers acting jointly.

(4) This section is subject to section 13(1) (exchanges).

**Connected persons**

57 **Connected persons**

Section 1122 of the Corporation Tax Act 2010 (c.4) (connected persons) has effect for the purposes of the following provisions—

(a) section 14,
(b) section 22,
(c) section 23,
(d) section 56,
(e) paragraphs 1, 11 and 13 of schedule 2,
(f) schedule 4,
(g) Part 5 of schedule 5,
(h) schedule 17 (but see paragraph 48).

**Interpretation**

58 **Meaning of “residential property”**

(1) In this Act “residential property” means—

(a) a building that is used or is suitable for use as a dwelling, or is in the process of being constructed or adapted for such use,
(b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or other structure on such land), or
(c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b).

(2) Accordingly, “non-residential property” means any property that is not residential property.

(3) For the purposes of subsection (1) a building used for any of the following purposes is used as a dwelling—

(a) residential accommodation for school pupils,
(b) residential accommodation for students, other than accommodation falling within subsection (4)(b),
(c) residential accommodation for members of the armed forces,
(d) an institution that is the sole or main residence of at least 90% of its residents and does not fall within any of paragraphs (a) to (f) of subsection (4).

(4) For the purposes of subsection (1) a building used for any of the following purposes is not used as a dwelling—

(a) a home or other institution providing residential accommodation for children,
(b) a hall of residence for students in further or higher education,
(c) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder,

(d) a hospital or hospice,

(e) a prison or similar establishment,

(f) a hotel or inn or similar establishment.

(5) Where a building is used for a purpose specified in subsection (4), no account is to be taken for the purposes of subsection (1)(a) of its suitability for any other use.

(6) Where a building that is not in use is suitable for use for at least one of the purposes specified in subsection (3) and at least one of those specified in subsection (4)—

(a) if there is one such use for which it is most suitable, or if the uses for which it is most suitable are all specified in the same paragraph, no account is to be taken for the purposes of subsection (1)(a) of its suitability for any other use,

(b) otherwise, the building is to be treated for those purposes as suitable for use as a dwelling.

(7) In this section “building” includes part of a building.

(8) Where six or more separate dwellings are the subject of a single transaction involving the transfer of a major interest in, or the grant of a lease over, them, then, for the purposes of this Act as it applies in relation to that transaction, those dwellings are treated as not being residential property.

(9) The Scottish Ministers may, by order—

(a) amend subsections (3) and (4) so as to change or clarify the cases where use of a building is, or is not to be, use of a building as a dwelling for the purposes of subsection (1),

(b) amend or repeal subsection (8).

59 Meaning of “major interest” in land
References in this Act to a “major interest” in land are to—

(a) ownership of land, or

(b) the tenant’s right over or interest in land subject to a lease.

60 Meaning of “subject-matter” and “main subject-matter”
References in this Act to the subject-matter of a land transaction or a contract are to the chargeable interest acquired (the “main subject-matter”) by virtue of the transaction or contract, together with any interest or right pertaining to it that is acquired with it.

61 Meaning of “market value”
For the purpose of this Act “market value” is to be determined as for the purposes of the Taxation of Chargeable Gains Act 1992 (c.12) (see sections 272 to 274 of that Act).
62 Meaning of “effective date” of a transaction

(1) Except as otherwise provided, the effective date of a land transaction for the purposes of this Act is—

   (a) the date of completion, or
   
   (b) such alternative date as the Scottish Ministers may prescribe by regulations.

(2) Other provision as to the effective date of certain land transactions is made by—

   (a) section 10(2) (substantial performance of contract without settlement),
   
   (b) section 11(4) (substantial performance of contract requiring conveyance to third party), and
   
   (c) section 12(4) (options and rights of pre-emption).

63 Meaning of “completion”

(1) In this Act, “completion” means—

   (a) in relation to a lease, when it is executed by the parties or constituted by any means,
   
   (b) in relation to any other transaction, the settlement of the transaction.

(2) References to completion are to completion of the land transaction proposed, between the same parties, in substantial conformity with the contract.

64 General interpretation

In this Act—

“acquisition relief” means relief under Part 3 of schedule 11,

“charities relief” means relief under schedule 13,

“company” means (except as otherwise expressly provided) a body corporate other than a partnership,

“contract” includes any agreement,

“conveyance” includes any instrument,

“employee” includes an office-holder and related expressions have a corresponding meaning,

“group relief” means relief under schedule 10,

“jointly entitled” means entitled as joint owners or common owners,

“land transaction return” means a return under section 29(1),

“personal representatives”, in relation to a person, include that person’s executors,

“reconstruction relief” means relief under Part 2 of schedule 11,

“registered social landlord” means a body registered in the register maintained under section 20(1) of the Housing (Scotland) Act 2010 (asp 17),

“the tax” means land and buildings transaction tax.
Index of defined expressions

Schedule 19 contains an index of expressions defined or otherwise explained in this Act.

**Part 7**

**Final provisions**

**Ancillary provision**

(1) The Scottish Ministers may, by order, make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision made by or under this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

**Subordinate legislation**

(1) Any power conferred by this Act on the Scottish Ministers to make an order or regulations includes the power to make—

(a) different provision for different cases or descriptions of case or for different purposes,

(b) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.

(2) Orders and regulations under the following provisions are subject to the affirmative procedure—

(a) section 5(4),

(b) section 24(1) (but only the first order),

(c) section 27(3),

(d) section 52(2),

(e) section 58(9),

(f) paragraph 8 of schedule 1,

(g) paragraph 1 of schedule 8.

(3) Orders and regulations under the following provisions which add to, replace or omit the text of any Act (including this Act) are also subject to the affirmative procedure—

(a) section 17(2),

(b) section 47(1),

(c) section 54(1),

(d) section 55(1),

(e) section 66(1).

(4) All other orders and regulations under this Act are subject to the negative procedure.
(5) This section does not apply to an order under section 69(2).

Crown application

68  Crown application
Nothing in this Act affects Her Majesty in Her private capacity.

Commencement and short title

69  Commencement
(1) This section and sections 52, 53, 66, 67 and 70 come into force on the day of Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.

(3) An order under subsection (2) may contain such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.

70  Short title
The short title of this Act is the Land and Buildings Transaction Tax (Scotland) Act 2013.
SCHEDULE 1
(introduced by section 16)

EXEMPT TRANSACTIONS

No chargeable consideration

1 A land transaction is an exempt transaction if there is no chargeable consideration for the transaction.

Acquisitions by the Crown

2 A land transaction under which the buyer is any of the following is an exempt transaction—

(a) the Scottish Ministers,
(b) the Scottish Parliamentary Corporate Body,
(c) a Minister of the Crown,
(d) the Corporate Officer of the House of Lords,
(e) the Corporate Officer of the House of Commons,
(f) a Northern Ireland department,
(g) the Northern Ireland Assembly Commission,
(h) the Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government,
(i) the National Assembly for Wales Commission,
(j) the National Assembly for Wales.

Residential leases and licences

3 (1) The grant, assignation or renunciation of—

(a) a lease of residential property (which is not a qualifying lease), or
(b) a licence to occupy such property,

is an exempt transaction.

(2) In sub-paragraph (1), “qualifying lease” has the same meaning as in the Long Leases (Scotland) Act 2012 (asp 9).

Transactions in connection with divorce etc.

4 A transaction between one party to a marriage and the other is an exempt transaction if it is effected—

(a) in pursuance of an order of a court made on granting, in respect of the parties, a decree of divorce, nullity of marriage or judicial separation,
(b) in pursuance of an order of a court made in connection with the dissolution or annulment of the marriage, or the parties’ judicial separation, at any time after the granting of such a decree,
(c) in pursuance of—
(i) an order of a court made at any time under section 22A, 23A or 24A of the Matrimonial Causes Act 1973 (c.18), or

(ii) an incidental order of a court made under section 8(2) of the Family Law (Scotland) Act 1985 (c.37) by virtue of section 14(1) of that Act,

(d) at any time in pursuance of an agreement of the parties made in contemplation or otherwise in connection with the dissolution or annulment of the marriage, their judicial separation or the making of a separation order in respect of them.

Transactions in connection with dissolution of civil partnership etc.

A transaction between one party to a civil partnership and the other is an exempt transaction if it is effected—

(a) in pursuance of an order of a court made on granting, in respect of the parties, an order or decree for the dissolution or annulment of the civil partnership or their judicial separation,

(b) in pursuance of an order of a court made in connection with the dissolution or annulment of the civil partnership, or the parties' judicial separation, at any time after the granting of such an order or decree for dissolution, annulment or judicial separation as mentioned in paragraph (a),

(c) in pursuance of—

(i) an order of a court made at any time under any provision of schedule 5 to the Civil Partnership Act 2004 (c.33) that corresponds to section 22A, 23A or 24A of the Matrimonial Causes Act 1973 (c.18), or

(ii) an incidental order of a court made under any provision of the Civil Partnership Act 2004 (c.33) that corresponds to section 8(2) of the Family Law (Scotland) Act 1985 (c.37) by virtue of section 14(1) of that Act of 1985,

(d) at any time in pursuance of an agreement of the parties made in contemplation or otherwise in connection with the dissolution or annulment of the civil partnership, their judicial separation or the making of a separation order in respect of them.

Assents and appropriations by personal representatives

The acquisition of property by a person in or towards satisfaction of the person’s entitlement under or in relation to the will of a deceased person, or on the intestacy of a deceased person, is an exempt transaction.

Sub-paragraph (1) does not apply if the person acquiring the property gives any consideration for it, other than the assumption of secured debt.

Where sub-paragraph (1) does not apply because of sub-paragraph (2), the chargeable consideration for the transaction is determined in accordance with paragraph 9(1) of schedule 2.

In this paragraph—

“debt” means an obligation, whether certain or contingent, to pay a sum of money either immediately or at a future date, and

“secured debt” means debt that, immediately after the death of the deceased person, is secured on the property.
Variation of testamentary dispositions etc.

7 (1) A transaction following a person's death that varies a disposition (whether effected by will, under the law relating to intestacy or otherwise) of property of which the deceased was competent to dispose is an exempt transaction if the following conditions are met.

5 (2) The conditions are—

(a) that the transaction is carried out within the period of 2 years after a person's death, and

(b) that no consideration in money or money's worth other than the making of a variation of another such disposition is given for it.

10 (3) Where the condition in sub-paragraph (2)(b) is not met, the chargeable consideration for the transaction is determined in accordance with paragraph 9(3) of schedule 2.

(4) This paragraph applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions.

Power to add further exemptions

8 The Scottish Ministers may, by regulations, modify this schedule so as to—

(a) add a description of land transaction as an exempt transaction,

(b) provide that a description of land transaction is no longer an exempt transaction,

(c) vary a description of an exempt transaction.

SCHEDULE 2

(introduced by section 17)

CHARGEABLE CONSIDERATION

Money or money’s worth

1 The chargeable consideration for a transaction is, except as otherwise provided, any consideration in money or money’s worth given for the subject-matter of the transaction, directly or indirectly, by the buyer or a person connected with the buyer.

Value added tax

2 The chargeable consideration for a transaction includes any value added tax chargeable in respect of the transaction, other than value added tax chargeable by virtue of an option to tax any land under Part 1 of schedule 10 to the Value Added Tax Act 1994 (c.23) made after the effective date of the transaction.

Postponed consideration

3 The amount or value of the chargeable consideration for a transaction is to be determined without any discount for postponement of the right to receive it or any part of it.
### Just and reasonable apportionment

4 (1) For the purposes of this Act consideration attributable—
   (a) to two or more land transactions, or
   (b) in part to a land transaction and in part to another matter, or
   (c) in part to matters making it chargeable consideration and in part to other matters,
   is to be apportioned on a just and reasonable basis.

(2) If the consideration is not so apportioned, this Act has effect as if it had been so apportioned.

(3) For the purposes of this paragraph any consideration given for what is in substance one bargain is to be treated as attributable to all the elements of the bargain, even though—
   (a) separate consideration is, or purports to be, given for different elements of the bargain, or
   (b) there are, or purport to be, separate transactions in respect of different elements of the bargain.

### Exchanges

5 (1) This paragraph applies to determine the chargeable consideration where one or more land transactions are entered into by a person as buyer (alone or jointly) wholly or partly in consideration of one or more other land transactions being entered into by that person (alone or jointly) as seller.

(2) In this paragraph—
   “relevant acquisition” means a relevant transaction entered into as buyer,
   “relevant disposal” means a relevant transaction entered into as seller, and
   “relevant transaction” means any of those transactions.

(3) The following rules apply if the subject-matter of any of the relevant transactions is a major interest in land—
   (a) where a single relevant transaction is made, the chargeable consideration for the acquisition is—
      (i) the market value of the subject-matter of the acquisition, and
      (ii) if the acquisition is the grant of a lease, the rent,
   (b) where two or more relevant transactions are made, the chargeable consideration for each relevant acquisition is—
      (i) the market value of the subject-matter of the acquisition, and
      (ii) if the acquisition is the grant of a lease, the rent.

(4) The following rules apply if the subject-matter of none of the relevant transactions is a major interest in land—
   (a) where a single relevant acquisition is made in consideration of one or more relevant disposals, the chargeable consideration for the acquisition is the amount or value of any chargeable consideration other than the disposal or disposals that are given for the acquisition,
(b) where two or more relevant acquisitions are made in consideration of one or more relevant disposals, the chargeable consideration for each relevant acquisition is the appropriate proportion of the amount or value of any chargeable consideration other than the disposal or disposals that are given for the acquisitions.

5  (5) For the purposes of sub-paragraph (4)(b) the appropriate proportion is—

\[
\frac{MV}{TMV}
\]

where—

MV is the market value of the subject-matter of the acquisition for which the chargeable consideration is being determined, and

TMV is the total market value of the subject-matter of all the relevant acquisitions.

6  (6) This paragraph is subject to paragraph 6 (partition etc.: disregard of existing interests).

7  (7) This paragraph does not apply in a case to which paragraph 17 (arrangements involving public or educational bodies) applies.

Partition etc.: disregard of existing interest

6  In the case of a land transaction giving effect to a partition or division of a chargeable interest to which persons are jointly entitled, the share of the interest held by the buyer immediately before the partition or division does not count as chargeable consideration.

Valuation of non-monetary consideration

7  Except as otherwise expressly provided, the value of any chargeable consideration for a land transaction, other than—

(a) money (whether in sterling or another currency), or

(b) debt as defined for the purposes of paragraph 8 (debt as consideration),

is to be taken to be its market value at the effective date of the transaction.

Debt as consideration

8  (1) Where the chargeable consideration for a land transaction consists in whole or in part of—

(a) the satisfaction or release of a debt due to the buyer or owed by the seller, or

(b) the assumption of existing debt by the buyer,

the amount of debt satisfied, released or assumed is to be taken to be the whole or, as the case may be, part of the chargeable consideration for the transaction.

8  (2) Where—

(a) a debt is secured on the subject-matter of a land transaction immediately before and immediately after the transaction, and

(b) the rights or liabilities in relation to that debt of any party to the transaction are changed as a result of or in connection with the transaction,

then for the purposes of this paragraph there is an assumption of that debt by the buyer, and that assumption of debt constitutes chargeable consideration for the transaction.
(3) Where in a case in which sub-paragraph (1)(b) applies—

(a) the debt assumed is or includes debt secured on the property forming the subject-matter of the transaction, and

(b) immediately before the transaction there were two or more persons each holding an undivided share of that property, or there were two or more such persons immediately afterwards,

the amount of secured debt assumed is to be determined as if the amount of that debt owed by each of those persons at a given time were the proportion of it corresponding to the person’s undivided share of the property at that time.

(4) If the effect of this paragraph would be that the amount of the chargeable consideration for the transaction exceeded the market value of the subject-matter of the transaction, the amount of the chargeable consideration is treated as limited to that value.

(5) In this paragraph—

“debt” has the same meaning as in paragraph 6(4) of schedule 1,

“existing debt”, in relation to a transaction, means debt created or arising before the effective date of, and otherwise than in connection with, the transaction, and references to the amount of a debt are to the principal amount payable or, as the case may be, the total of the principal amounts payable, together with the amount of any interest that has accrued due on or before the effective date of the transaction.

Cases where conditions for exemption not fully met

9 (1) Where a land transaction would be an exempt transaction under paragraph 6 of schedule 1 (assents and appropriations by personal representative) but for sub-paragraph (2) of that paragraph (cases where person acquiring property gives consideration for it), the chargeable consideration for the transaction does not include the amount of any secured debt assumed.

(2) In this paragraph, “secured debt” has the same meaning as in paragraph 6(4) of schedule 1.

(3) Where a land transaction would an exempt transaction under paragraph 7 of schedule 1 (variation of testamentary dispositions etc.) but for a failure to meet the condition in sub-paragraph (2)(b) of that paragraph (no consideration other than variation of another disposition), the chargeable consideration for the transaction does not include the making of any such variation as is mentioned in that sub-paragraph.

Conversion of amounts in foreign currency

10 (1) References in this Act to the amount or value of the consideration for a transaction are to its amount or value in sterling.

(2) For the purposes of this Act the sterling equivalent of an amount expressed in another currency is to be ascertained by reference to the London closing exchange rate on the effective date of the transaction (unless the parties have used a different rate for the purposes of the transaction).
Carrying out of works

11 (1) Where the whole or part of the consideration for a land transaction consists of the carrying out of works of construction, improvement or repair of a building or other works to enhance the value of land, then—

(a) to the extent that the conditions specified in sub-paragraph (2) are met, the value of the works does not count as chargeable consideration, and

(b) to the extent that those conditions are not met, the value of the works is to be taken into account as chargeable consideration.

(2) The conditions are—

(a) that the works are carried out after the effective date of the transaction,

(b) that the works are carried out on land acquired or to be acquired under the transaction, and

(c) that it is not a condition of the transaction that the works are carried out by the seller or a person connected with the seller.

(3) Where, by virtue of section 10(3) (substantial performance of contract without completion), there are two notifiable transactions (the first being the contract or agreement and the second being the transaction effected on completion or, as the case may be, the grant or execution of the lease), the condition in sub-paragraph (2)(a) is treated as met in relation to the second transaction if it is met in relation to the first.

(4) In this paragraph—

(a) references to the acquisition of land are to the acquisition of a major interest in it,

(b) the value of the works is to be taken to be the amount that would have to be paid in the open market for the carrying out of the works in question.

(5) This paragraph is subject to paragraph 17 (arrangements involving public or educational bodies).

Provision of services

12 (1) Where the whole or part of the consideration for a land transaction consists of the provision of services (other than the carrying out of works to which paragraph 11 applies), the value of that consideration is to be taken to be the amount that would have to be paid in the open market to obtain those services.

(2) This paragraph is subject to paragraph 17 (arrangements involving public or educational bodies).

Land transaction entered into by reason of employment

13 Where a land transaction is entered into by reason of the buyer’s employment, or that of a person connected with the buyer, the consideration for the transaction is to be taken to be not less than the market value of the subject-matter of the transaction as at the effective date of the transaction.
Land and Buildings Transaction Tax (Scotland) Bill
Schedule 2—Chargeable consideration

Indemnity given by buyer

14 Where the buyer agrees to indemnify the seller in respect of liability to a third party arising from breach of an obligation owed by the seller in relation to the land that is the subject of the transaction, neither the agreement nor any payment made in pursuance of it counts as chargeable consideration.

Buyer bearing inheritance tax liability

15 Where—

(a) there is a land transaction that is—

(i) a transfer of value within section 3 of the Inheritance Tax Act 1984 (c.51) (transfers of value), or

(ii) a disposition, effected by will or under the law of intestacy, of a chargeable interest comprised in the estate of a person immediately on the person’s death, and

(b) the buyer is or becomes liable to pay, agrees to pay or does in fact pay any inheritance tax due in respect of the transfer or disposition,

the buyer’s liability, agreement or payment does not count as chargeable consideration for the transaction.

Buyer bearing capital gains tax liability

16 (1) Where—

(a) there is a land transaction under which the chargeable interest in question—

(i) is acquired otherwise than by a bargain made at arm’s length, or

(ii) is treated by section 18 of the Taxation of Chargeable Gains Act 1982 (c.12) (connected persons) as so acquired, and

(b) the buyer is or becomes liable to pay, or does in fact pay, any capital gains tax due in respect of the corresponding disposal of the chargeable interest,

the buyer’s liability or payment does not count as chargeable consideration for the transaction.

(2) Sub-paragraph (1) does not apply if there is chargeable consideration for the transaction (disregarding the liability or payment referred to in sub-paragraph (1)(b)).

Arrangements involving public or educational bodies

17 (1) This paragraph applies in any case where arrangements are entered into under which—

(a) there is a transfer of the ownership, or the grant or assignation of a lease, of land by a qualifying body (A) to a non-qualifying body (B) (“the main transfer”),

(b) in consideration (whether in whole or in part) of the main transfer there is a grant by B to A of a lease or sub-lease of the whole, or substantially the whole, of that land (“the leaseback”),

(c) B undertakes to carry out works or provide services to A, and
(d) some or all of the consideration given by A to B for the carrying out of those works or the provision of those services is consideration in money, whether or not there is also a transfer of the ownership, or the grant or assignation of a lease, of any land by A to B (a “transfer of surplus land”).

5 (2) The following are qualifying bodies—

(a) public bodies within paragraph 4 of schedule 16,
(b) grant-aided schools within the meaning of section 135(1) of the Education (Scotland) Act 1980 (c.44), and
(c) any body listed in schedule 2 to the Further and Higher Education (Scotland) Act 2005 (asp 6).

10 (3) The Scottish Ministers may, by order, modify sub-paragraph (2) so as to—

(a) add a person or body to the list of qualifying bodies,
(b) remove a person or body from that list,
(c) vary the description of any qualifying body.

15 (4) The following do not count as chargeable consideration for the main transfer or any transfer of surplus land—

(a) the leaseback,
(b) the carrying out of building works by B for A, or
(c) the provision of services by B to A.

20 (5) The chargeable consideration for the leaseback does not include—

(a) the main transfer,
(b) any transfer of surplus land, or
(c) the consideration in money paid by A to B for the building works or other services referred to in sub-paragraph (4).

25 (6) Sub-paragraphs (4) and (5) are to be disregarded for the purposes of determining whether the land transaction in question is notifiable.

SCHEDULE 3
(introduced by section 27)

SALE AND LEASEBACK RELIEF

30 The relief

1 The leaseback element of a sale and leaseback arrangement is exempt from charge if the qualifying conditions are met.

Sale and leaseback arrangements

2 A sale and leaseback arrangement is an arrangement under which—

(a) a person (A) transfers or grants to another person (B) a major interest in land (the “sale”), and
(b) out of that interest B grants a lease to A (the “leaseback”).
Qualifying conditions

3 The qualifying conditions are—

(a) that the sale transaction is entered into wholly or partly in consideration of the leaseback transaction being entered into,

(b) that the only other consideration (if any) for the sale is the payment of money (whether in sterling or another currency) or the assumption, satisfaction or release of a debt (or both), and

(c) where A and B are both bodies corporate at the effective date of the leaseback transaction, that they are not members of the same group for the purposes of group relief (see schedule 10) at that date.

Interpretation

4 In this schedule, “debt” has the same meaning as in paragraph 6(4) of schedule 1.

Overview of reliefs

1 (1) This schedule provides for relief in the case of certain acquisitions of residential property.

(2) It is arranged as follows—

Part 2 provides for relief in the case of an acquisition by a house-building company from an individual acquiring a new dwelling,

Part 3 provides for relief in the case of an acquisition by a property trader from an individual acquiring a new dwelling,

Part 4 provides for relief in the case of an acquisition by a property trader from an individual where a chain of transactions breaks down,

Part 5 provides for the withdrawal of those reliefs in certain circumstances,

Part 6 defines expressions used in this schedule.

Full relief

2 Where a dwelling (“the old dwelling”) is acquired by a house-building company from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the qualifying conditions are met.
Partial relief

3. Where qualifying conditions (a) to (d) but not (e) are met, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.

Qualifying conditions

5. In this Part of this schedule, the qualifying conditions are—

(a) that the individual (whether alone or with other individuals) acquires a new dwelling from the house-building company,

(b) that the individual occupied the old dwelling as the individual’s only or main residence at some time in the period of 2 years ending with the date of its acquisition,

(c) that the individual intends to occupy the new dwelling as the individual’s only or main residence,

(d) that each acquisition is entered into in consideration of the other, and

(e) that the area of land acquired by the house-building company does not exceed the permitted area.

Part 3

ACQUISITION BY PROPERTY TRADER FROM INDIVIDUAL ACQUIRING NEW DWELLING

Full relief

5. Where a dwelling (“the old dwelling”) is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the qualifying conditions are met.

Partial relief

6. Where qualifying conditions (a) to (e) but not (f) are met, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.

Qualifying conditions

7. In this Part of this schedule, the qualifying conditions are—

(a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals who acquire new dwellings from house-building companies,

(b) that the individual (whether alone or with other individuals) acquires a new dwelling from a house-building company,

(c) that the individual occupied the old dwelling as the individual’s only or main residence at some time in the period of 2 years ending with the date of its acquisition,
(d) that the individual intends to occupy the new dwelling as the individual’s only or
main residence,

(e) that the property trader does not intend—

(i) to spend more than the permitted amount on refurbishment of the old
dwelling,

(ii) to grant a lease or licence of the old dwelling, or

(iii) to permit any of its principals or employees (or any person connected with
any of its principals or employees) to occupy the old dwelling, and

(f) that the area of land acquired by the property trader does not exceed the permitted
area.

8 Paragraph 7(e)(ii) does not apply to the grant of a lease or licence to the individual for a
period of no more than 6 months.

PART 4

ACQUISITION BY PROPERTY TRADER FROM INDIVIDUAL WHERE CHAIN OF TRANSACTIONS BREAKS DOWN

Full relief

9 Where a dwelling (“the old dwelling”) is acquired by a property trader from an
individual (whether alone or with other individuals), the acquisition is exempt from
charge if the qualifying conditions are met.

Partial relief

10 Where qualifying conditions (a) to (g) but not (h) are met, the chargeable consideration
for the acquisition is taken to be the amount calculated by deducting the market value of
the permitted area from the market value of the old dwelling.

Qualifying conditions

11 In this Part of this schedule, the qualifying conditions are—

(a) that the individual has made arrangements to sell the old dwelling and acquire
another dwelling (“the second dwelling”),

(b) that the arrangements to sell the old dwelling fail,

(c) that the acquisition of the old dwelling is made for the purpose of enabling the
individual’s acquisition of the second dwelling to proceed,

(d) that the acquisition is made in the course of a business that consists of or includes
acquiring dwellings from individuals in the circumstances mentioned in
conditions (a) to (c),

(e) that the individual occupied the old dwelling as the individual’s only or main
residence at some time in the period of 2 years ending with the date of its
acquisition,

(f) that the individual intends to occupy the second dwelling as the individual’s only
or main residence,
that the property trader does not intend—

(i) to spend more than the permitted amount on refurbishment of the old dwelling,

(ii) to grant a lease or licence of the old dwelling, or

(iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling, and

(h) that the area of land acquired does not exceed the permitted area.

Paragraph 11(g)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.

**PART 5**

**WITHDRAWAL OF RELIEF**

**Introductory**

13 (1) Relief under this schedule is withdrawn in the following circumstances.

(2) Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the acquisition but for the relief.

**Relief under Part 3**

14 Relief under Part 3 of this schedule (acquisition by property trader from individual acquiring new dwelling) is withdrawn if the property trader—

(a) spends more than the permitted amount on refurbishment of the old dwelling,

(b) grants a lease or licence of the old dwelling, or

(c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.

15 Paragraph 14(b) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.

**Relief under Part 4**

16 Relief under Part 4 of this schedule (acquisition by property trader from individual where chain of transactions breaks down) is withdrawn if the property trader—

(a) spends more than the permitted amount on refurbishment of the old dwelling,

(b) grants a lease or licence of the old dwelling, or

(c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.

17 Paragraph 16(b) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.
PART 6
INTERPRETATION

Meaning of “dwelling” and “new dwelling”

18 “Dwelling” includes land occupied and enjoyed with the dwelling as its garden or grounds.

19 A building or part of a building is a “new dwelling” if—

(a) it has been constructed for use as a single dwelling and has not previously been occupied, or

(b) it has been adapted for use as a single dwelling and has not been occupied since its adaptation.

Meaning of “permitted area”

20 “The permitted area”, in relation to a dwelling, means land occupied and enjoyed with the dwelling as its garden or grounds that does not exceed—

(a) an area (inclusive of the site of the dwelling) of 0.5 of a hectare, or

(b) such larger area as is required for the reasonable enjoyment of the dwelling as a dwelling having regard to its size and character.

21 Where paragraph 20(b) applies, the permitted area is taken to consist of that part of the land that would be the most suitable for occupation and enjoyment with the dwelling as its garden or grounds if the rest of the land were separately occupied.

Meaning of “acquisition” and “market value” in relation to dwelling and permitted area

22 References in this schedule to—

(a) the acquisition of a dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling,

(b) the market value of a dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

Meaning of “house-building company”

23 A “house-building company” means a company that carries on the business of constructing or adapting buildings or parts of buildings for use as dwellings.

24 References in this schedule to such a company include any company connected with it.

Meaning of “property trader” and “principal”

25 (1) A “property trader” means an entity listed in sub-paragraph (2) that carries on the business of buying and selling dwellings.

(2) The entities are—

(a) a company,
SCHEDULE 5
(introduced by section 27)

MULTIPLE DWELLINGS RELIEF

PART 1

INTRODUCTORY

Overview of relief

1 (1) This schedule provides for relief in the case of certain land transactions involving multiple dwellings.

(2) It is arranged as follows—

Part 2 identifies the transactions to which this schedule applies,
Part 3 defines key terms,
Part 4 describes the relief available if a claim is made,
Part 5 provides for withdrawal of the relief,
Part 6 contains rules to determine what counts as a dwelling.

**PART 2**

**TRANSACTIONS TO WHICH THIS SCHEDULE APPLIES**

*The rule*

2 This schedule applies to relevant transactions.

3 A relevant transaction is a transaction that is—

(a) within paragraph 4 or paragraph 5, and
(b) not excluded by paragraph 6.

*Single transaction relating to multiple dwellings*

4 A transaction is within this paragraph if its main subject-matter consists of—

(a) an interest in at least two dwellings, or
(b) an interest in at least two dwellings and other property.

*Linked transactions relating to multiple dwellings*

5 A transaction is within this paragraph if—

(a) its main subject-matter consists of—

(i) an interest in a single dwelling, or
(ii) an interest in a single dwelling and other property,

(b) it is one of a number of linked transactions, and

(c) the main subject-matter of at least one of the other linked transactions consists of—

(i) an interest in some other dwelling or dwellings, or
(ii) an interest in some other dwelling or dwellings and other property.

*Excluded transactions*

6 A transaction is excluded by this paragraph if—

(a) relief under schedule 9 (crofting community right to buy) is available for it, or
(b) relief under schedule 10 (group relief), 11 (reconstruction relief and acquisition relief) or 13 (charities relief)—

(i) is available for it, or
(ii) has been withdrawn from it.
PART 3

KEY TERMS

Consideration attributable to dwellings and remaining property
7 In relation to a relevant transaction—
5 (a) the consideration attributable to dwellings is so much of the chargeable consideration for the transaction as is attributable to the dwellings,
(b) the consideration attributable to remaining property is the chargeable consideration for the transaction less the consideration attributable to dwellings.

Dwellings
8 “The dwellings” are, in relation to a relevant transaction, the dwelling or dwellings that are, or are part of, the main subject-matter of the transaction.

Interest in a dwelling
9 A reference in this schedule to an interest in a dwelling is to any chargeable interest in or over a dwelling.
10 But, in the case of a dwelling subject to a lease granted for an initial term of more than 21 years, any interest that is a superior interest in relation to the lease is to be ignored in determining whether a transaction is a relevant transaction.
11 For the purposes of paragraph 10, a lease (A) is a superior interest in relation to another lease (B) if B is a sublease of A.

PART 4

THE RELIEF

Calculation of relief
12 The amount of tax chargeable in relation to a relevant transaction is—
25 \[(DT \times ND) + RT\]
13 where—
20 DT is the tax due in relation to a dwelling,
ND is the number of dwellings that are, or are part of, the main subject-matter of the transaction, and
RT is the tax due in relation to remaining property.
14 However, if the result of paragraph 12 would be that the tax chargeable in relation to the transaction is less than the minimum prescribed amount, the tax chargeable is that amount.
15 The minimum prescribed amount is such proportion of the tax that would be chargeable in relation to the transaction but for the relief as may be prescribed by the Scottish Ministers by order.
Tax due in relation to a dwelling

The tax due in relation to a dwelling is determined as follows.

Step 1

Find the total consideration attributable to dwellings, that is—

(a) the consideration attributable to dwellings for the transaction, or

(b) where the transaction is one of a number of linked transactions, the sum of—

(i) the consideration attributable to dwellings for the transaction, and

(ii) the consideration attributable to dwellings for all other relevant transactions.

Step 2

Divide the total consideration attributable to dwellings by total dwellings. “Total dwellings” is the total number of dwellings by reference to which the total consideration attributable to dwellings is calculated.

Step 3

Calculate the amount of tax that would be due in relation to the relevant transaction were—

(a) the chargeable consideration equal to the result obtained in Step 2,

(b) the transaction a residential property transaction, and

(c) the transaction not a linked transaction.

The result is the tax due in relation to a dwelling.

Tax due in relation to remaining property

The tax due in relation to remaining property is determined as follows.

Step 1

Calculate the amount of tax that would be due in respect of the transaction but for this schedule.

Step 2

Divide the consideration attributable to remaining property by the chargeable consideration for the transaction.

Step 3

Multiply the amount calculated in Step 1 by the fraction reached in Step 2.

The result is the tax due in relation to remaining property.

General

If the whole or part of the chargeable consideration for a relevant transaction is rent, this Part of this schedule has effect subject to section 55.

“Attributable” means attributable on a just and reasonable basis.
PART 5
WITHDRAWAL OF RELIEF

Full withdrawal of relief

19 Relief under this schedule is withdrawn in relation to a relevant transaction if—

(a) an event occurs in the relevant period, and

(b) had the event occurred immediately before the effect date of the transaction, the transaction would not have been a relevant transaction.

20 Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the transaction but for the relief.

Partial withdrawal of relief

21 Relief under this schedule is partially withdrawn in relation to a relevant transaction if—

(a) an event occurs in the relevant period, and

(b) had the event occurred immediately before the effect date of the transaction—

(i) the transaction would have been a relevant transaction, but

(ii) more tax would have been payable in respect of the transaction.

22 Where relief is partially withdrawn, tax is chargeable on the transaction as if the event had occurred immediately before the effective date of the transaction.

23 In that case, the tax so chargeable must be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

Relevant period

24 “The relevant period” means the shorter of—

(a) the period of 3 years beginning with the effective date of the transaction, and

(b) the period beginning with the effective date of the transaction and ending with the date on which the buyer disposes of the dwelling, or the dwellings, to a person who is not connected with the buyer.

25 In relation to a transaction effected on completion of a contract that was substantially performed before completion, paragraph 24 applies as if references to the effective date of the transaction were to the date on which the contract was substantially performed.

Interpretation

26 In this Part of this schedule, “event” includes any change of circumstance or change of plan.
PART 6

WHAT COUNTS AS A DWELLING

27 This Part of this schedule sets out rules for determining what counts as a dwelling for the purposes of this schedule.

28 A building or part of a building counts as a dwelling if—
   (a) it is used or suitable for use as a single dwelling, or
   (b) it is in the process of being constructed or adapted for such use.

29 Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on such land) is taken to be part of that dwelling.

30 Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of that dwelling.

31 The main subject-matter of a transaction is also taken to consist of or include an interest in a dwelling if—
   (a) substantial performance of a contract constitutes the effective date of that transaction by virtue of a relevant deeming provision,
   (b) the main subject-matter of the transaction consists of or includes an interest in a building, or a part of a building, that is to be constructed or adapted under the contract for use as a single dwelling, and
   (c) construction or adaptation of the building, or the part of a building, has not begun by the time the contract is substantially performed.

32 In paragraph 31, “relevant deeming provision” means section 10 or 11.

33 Subsections (3) to (6) of section 58 apply for the purposes of this Part of this schedule as they apply for the purposes of subsection (1)(a) of that section.

SCHEDULE 6
(introduced by section 27)

RELIEF FOR CERTAIN ACQUISITIONS BY REGISTERED SOCIAL LANDLORDS

The relief

1 A land transaction under which the buyer is a registered social landlord is exempt from charge if the qualifying conditions are met.

The qualifying conditions

2 The qualifying conditions are—
   (a) that the registered social landlord is controlled by its tenants,
   (b) that the seller is one of the following—
      (i) a registered social landlord,
      (ii) the Scottish Ministers,
      (iii) a local authority, and
(c) that the transaction is funded with the assistance of a grant or other financial assistance—

(i) made or given by way of a distribution pursuant to section 25 of the National Lottery etc. Act 1993 (c.39) (application of money by distributing bodies), or

(ii) under section 2 of the Housing (Scotland) Act 1988 (c.43) (general functions of the Scottish Ministers).

Landlord controlled by tenants

3 The reference in paragraph 2(a) to a registered social landlord controlled by its tenants is to a registered social landlord the majority of whose board members are tenants occupying properties owned or managed by it.

4 For the purposes of paragraph 3, “board member” is to be construed as follows—

<table>
<thead>
<tr>
<th>Type of registered social landlord</th>
<th>Board member</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company</td>
<td>A director of the company</td>
</tr>
<tr>
<td>Body corporate whose affairs are managed by its members</td>
<td>A member</td>
</tr>
<tr>
<td>Body of trustees</td>
<td>A trustee</td>
</tr>
<tr>
<td>None of the above</td>
<td>A member of the committee of management or other body to which is entrusted the direction of the affairs of the registered social landlord</td>
</tr>
</tbody>
</table>

Overview

1 (1) This schedule makes provision for relief in the case of certain land transactions connected to alternative property finance arrangements.

2 (2) It is arranged as follows—

Part 2 identifies the alternative property finance arrangements that are relieved,

Part 3 makes provision limiting the arrangements that can be relieved,

Part 4 provides for the circumstances in which the chargeable interest acquired by a financial institution under the arrangements is an exempt interest, and

Part 5 defines expressions used in this schedule.
PART 2

ALTERNATIVE PROPERTY FINANCE: ARRANGEMENTS RELIEVED

Land sold to financial institution and leased to person

2 Paragraphs 3 to 6 apply where arrangements are entered into between a person and a financial institution under which the institution—

(a) purchases a major interest in land ("the first transaction"),

(b) grants to the person out of that interest a lease (if the interest acquired is the interest of the owner) or a sub-lease (if the interest acquired is the tenant’s right over or interest in a property subject to a lease) ("the second transaction"), and

(c) enters into an agreement under which the person has a right to require the institution to transfer the major interest purchased by the institution under the first transaction.

3 The first transaction is exempt from charge if the seller is—

(a) the person, or

(b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in paragraph 2 entered into between it and the person.

4 The second transaction is exempt from charge if the provisions of this Act relating to the first transaction are complied with (including payment of any tax chargeable).

5 A transfer to the person that results from the exercise of the right mentioned in paragraph 2(c) ("the third transaction") is exempt from charge if—

(a) the provisions of this Act relating to the first and second transactions are complied with, and

(b) at all times between the second and third transactions—

(i) the interest purchased under the first transaction is held by a financial institution, and

(ii) the lease or sub-lease granted under the second transaction is held by the person.

6 The agreement mentioned in paragraph 2(c) is not to be treated—

(a) as substantially performed unless and until the third transaction is entered into (and accordingly section 14 does not apply), or

(b) as a distinct land transaction by virtue of section 12 (options and rights of pre-emption).

Land sold to financial institution and person in common

7 Paragraphs 8 to 12 apply where arrangements are entered into between a person and a financial institution under which—

(a) the institution and the person purchase a major interest in land as common owners ("the first transaction"),
Schedule 7—Alternative property finance relief

Part 2—Alternative property finance: arrangements relieved

(b) the institution and the person enter into an agreement under which the person has a right to occupy the land exclusively (“the second transaction”), and

c) the institution and the person enter into an agreement under which the person has a right to require the institution to transfer to the person (in one transaction or a series of transactions) the whole interest purchased under the first transaction.

The first transaction is exempt from charge if the seller is—

(a) the person, or

(b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in paragraph 7 entered into between it and the person.

The second transaction is exempt from charge if the provisions of this Act relating to the first transaction are complied with (including payment of any tax chargeable).

Any transfer to the person that results from the exercise of the right mentioned in paragraph 7(c) (“a further transaction”) is exempt from charge if—

(a) the provisions of this Act relating to the first transaction are complied with, and

(b) at all times between the first and the further transaction—

(i) the interest purchased under the first transaction is held by a financial institution and the person as common owners, and

(ii) the land is occupied by the person under the agreement mentioned in paragraph 7(b).

The agreement mentioned in paragraph 7(c) is not to be treated—

(a) as substantially performed unless and until the whole interest purchased by the institution under the first transaction has been transferred (and accordingly section 14 does not apply), or

(b) as a distinct land transaction by virtue of section 12 (options and rights of pre-emption).

A further transaction that is exempt from charge by virtue of paragraph 10 is not a notifiable transaction unless the transaction involves the transfer to the person of the whole interest purchased by the institution under the first transaction, so far as not transferred by a previous further transaction.

Land sold to financial institution and re-sold to person

Paragraphs 14 and 15 apply where arrangements are entered into between a person and a financial institution under which—

(a) the institution—

(i) purchases a major interest in land (“the first transaction”), and

(ii) sells that interest to the person (“the second transaction”), and

(b) the person grants the institution a standard security over that interest.

The first transaction is exempt from charge if the seller is—

(a) the person, or
(b) another financial institution by whom the interest was acquired under other arrangements of the kind mentioned in paragraph 2 or 7 entered into between it and the person.

The second transaction is exempt from charge if the financial institution complies with the provisions of this Act relating to the first transaction (including the payment of any tax chargeable on a chargeable consideration that is not less than the market value of the interest and, in the case of the grant of a lease, the rent).

**PART 3**

**ALTERNATIVE PROPERTY FINANCE: ARRANGEMENTS NOT RELIEVED**

**No relief where first transaction already relieved**

Paragraphs 2 to 12 do not apply to arrangements in relation to which group relief, reconstruction relief or acquisition relief—

(a) is available for the first transaction, or

(b) has been withdrawn from that transaction.

**No relief where arrangements to transfer control of financial institution**

Paragraphs 2 to 12 do not apply to alternative finance arrangements if those arrangements, or any connected arrangements, include arrangements for a person to acquire control of the relevant financial institution.

That includes arrangements for a person to acquire control of the relevant financial institution only if one or more conditions are met (such as the happening of an event or doing of an act).

In paragraphs 17 and 18—

“alternative finance arrangements” means the arrangements referred to in paragraphs 2 and 7,

“connected arrangements” means any arrangements entered into in connection with the making of the alternative finance arrangements (including arrangements involving one or more persons who are parties to the alternative finance arrangements),

“relevant financial institution” means the financial institution which enters into the alternative finance arrangements.

Section 1124 of the Corporation Tax Act 2010 (c.4) applies for determining who has control of the relevant financial institution.

**PART 4**

**EXEMPT INTEREST**

**Interest held by financial institution an exempt interest**

An interest held by a financial institution as a result of the first transaction within the meaning of paragraph 2(a) or 7(a) is an exempt interest for the purposes of the tax.

That interest ceases to be an exempt interest if—
(a) the lease or agreement mentioned in paragraph 2(b) or 7(b) ceases to have effect, or
(b) the right under paragraph 2(c) or 7(c) ceases to have effect or becomes subject to a restriction.

Paragraph 21 does not apply if the first transaction is exempt from charge by virtue of schedule 10 (group relief) or 11 (reconstruction and acquisition reliefs).

Paragraph 21 does not make an interest exempt in respect of—
(a) the first transaction itself, or
(b) a third transaction or a further transaction within the meaning of paragraph 5 or 10.

**PART 5**

**INTERPRETATION**

In this schedule “financial institution” has the meaning given by section 564B of the Income Tax Act 2007 (c.3).

For this purpose section 564B(1) applies as if paragraph (d) were omitted.

In this schedule—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
references to a person are to be read, in relation to times after the death of the person concerned, as references to the person’s personal representatives.

**SCHEDULE 8**

(introduced by section 27)

**RELIEF FOR ALTERNATIVE FINANCE INVESTMENT BONDS**

The Scottish Ministers may make regulations granting relief for land transactions connected to alternative finance investment bonds.

The relief may take the form of—
(a) an exemption from charge,
(b) a reduction in the amount of tax chargeable, or
(c) such other form as the Scottish Ministers consider appropriate.

Regulations under this schedule may modify any enactment (including this Act).
Before making regulations under this schedule, the Scottish Ministers must consult such representatives of financial institutions as they consider appropriate.

Withdrawal of relief

Regulations under this schedule may provide for—
(a) the circumstances in which the relief may be withdrawn or partly withdrawn, and
(b) the tax chargeable where the relief is so withdrawn.

Interpretation

5 In this schedule, “alternative finance investment bond” means arrangements to which
section 564G of Income Tax Act 2007 (c.3) or section 151N of the Taxation of
Chargeable Gains Act 1992 (c.12) (investment bond arrangements) applies.

SCHEDULE 9
(introduced by section 27)
CROFTING COMMUNITY RIGHT TO BUY RELIEF

10 The relief

1 This schedule applies where—
(a) a chargeable transaction is entered into in pursuance of the crofting community
right to buy, and
(b) under that transaction two or more crofts are being bought.

2 The tax chargeable in respect of the transaction is the prescribed proportion of the tax
that would otherwise be chargeable but for this paragraph.

3 The prescribed proportion is such proportion as may be prescribed by the Scottish
Ministers by order.

Interpretation

20 In this schedule “crofting community right to buy” means the right exercisable by a
crofting community body under Part 3 of the Land Reform (Scotland) Act 2003 (asp 2).

SCHEDULE 10
(introduced by section 27)
GROUP RELIEF

PART 1

INTRODUCTORY

Overview

1 (1) This schedule provides for relief for certain transactions involving companies.
(2) It is arranged as follows—
Part 2 provides for when relief is available,
Part 3 provides for when the relief is withdrawn,
Part 4 defines expressions used in this schedule.
PART 2

THE RELIEF

2 A land transaction is exempt from charge if the seller and buyer are companies that at the effective date of the transaction are members of the same group.

Restrictions on availability of relief

3 Relief under this schedule is not available if at the effective date of the transaction there are arrangements in existence by virtue of which, at that or some later time, a person has or could obtain, or any persons together have or could obtain, control of the buyer but not of the seller.

5 Paragraph 3 does not apply to arrangements to which paragraph 9 or 10 applies.

4 Relief under this schedule is not available if the transaction is effected in pursuance of, or in connection with, arrangements under which—

(a) the consideration, or any part of the consideration, for the transaction is to be provided or received (directly or indirectly) by a person other than a group company, or

(b) the seller and the buyer are to cease to be members of the same group by reason of the buyer ceasing to be a 75% subsidiary of the seller or a third company.

6 Arrangements are within paragraph 5(a) if under them the seller or the buyer, or another group company, is to be enabled to provide any of the consideration, or is to part with any of it, by or in consequence of the carrying out of a transaction or transactions involving, or any of them involving, a payment or other disposition by a person other than a group company.

7 Paragraph 5(b) does not apply to arrangements to which paragraph 10 applies.

8 Relief under this schedule is not available if the transaction—

(a) is not effected for bona fide commercial reasons, or

(b) forms part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.

Arrangements that do not restrict availability of relief

9 This paragraph applies to arrangements entered into with a view to an acquisition of shares by a company (“the acquiring company”—

(a) in relation to which section 75 of the Finance Act 1986 (c.41) (stamp duty: acquisition relief) will apply,

(b) in relation to which the conditions for relief under that section will be met, and

(c) as a result of which the buyer will be a member of the same group as the acquiring company.

10 This paragraph applies to arrangements in so far as they are for the purpose of facilitating a transfer of the whole or part of the business of a company to another company in relation to which—
(a) section 96 of the Finance Act 1997 (c.16) (stamp duty relief: demutualisation of insurance companies) is intended to apply, and
(b) the conditions for relief under that section are intended to be met.

**Interpretation**

In this Part of this schedule—

“control” has the meaning given by section 1124 of the Corporation Tax Act 2010 (c.4),

“group company” means a company that at the effective date of the transaction is a member of the same group as the seller and the buyer.

**PART 3**

**Withdrawal of relief**

**Overview**

This Part of this schedule is arranged as follows—

- paragraphs 13 to 19 provide for circumstances where relief under this schedule is withdrawn,
- paragraphs 20 to 31 provide for circumstances in which, despite paragraphs 13 to 19, relief is not withdrawn, and
- paragraphs 32 to 40 provide for the application of paragraphs 13 to 31 where there are successive transactions.

**Withdrawal of relief**

Relief under this schedule is withdrawn or partially withdrawn where paragraphs 14 and 15 apply.

This paragraph applies where the buyer in the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”) ceases to be a member of the same group as the seller—

(a) before the end of the period of 3 years beginning with the effective date of the transaction, or
(b) in pursuance of, or in connection with, arrangements made before the end of that period.

This paragraph applies where, at the time the buyer ceases to be a member of the same group as the seller (“the relevant time”), it or a relevant associated company holds a chargeable interest—

(a) that was acquired by the buyer under the relevant transaction, or
(b) that is derived from a chargeable interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction for which relief under this schedule was available but not claimed.
Amount of tax chargeable where relief withdrawn

16 Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 17.

17 The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for the relief if the chargeable consideration for that transaction had been an amount equal to—
   (a) the market value of the subject-matter of the transaction, or
   (b) if the acquisition was the grant of a lease, the rent.

Amount of tax chargeable where relief partially withdrawn

18 Where relief is partially withdrawn, the amount of tax chargeable is an appropriate proportion of the amount determined in accordance with paragraph 17.

19 An “appropriate proportion” means an appropriate proportion having regard to—
   (a) the subject-matter of the relevant transaction, and
   (b) what is held at the relevant time by the buyer or, as the case may be, by the buyer and its relevant associated companies.

Case where relief not withdrawn: winding up

20 Relief under this schedule is not withdrawn where the buyer ceases to be a member of the same group as the seller by reason of anything done for the purposes of, or in the course of, winding up the seller or another company that is above the seller in the group structure.

Cases where relief not withdrawn: stamp duty reliefs

21 Relief under this schedule is not withdrawn where—
   (a) the buyer ceases to be a member of the same group as the seller as a result of an acquisition of shares by another company (“the acquiring company”) in relation to which—
      (i) section 75 of the Finance Act 1986 (c.41) (stamp duty: acquisition relief) applies, and
      (ii) the conditions for relief under that section are met, and
   (b) the buyer is immediately after that acquisition a member of the same group as the acquiring company.

22 Relief under this schedule is not withdrawn where—
   (a) the buyer ceases to be a member of the same group as the seller as a result of the transfer of the whole or part of the seller’s business to another company (“the acquiring company”) in relation to which—
      (i) section 96 of the Finance Act 1997 (c.16) (stamp duty relief: demutualisation of insurance companies) applies, and
      (ii) the conditions for relief under that section are met, and
(b) the buyer is immediately after that transfer a member of the same group as the acquiring company.

23 But where, in a case to which paragraph 21 or 22 applies—

(a) the buyer ceases to be a member of the same group as the acquiring company in the circumstances mentioned in paragraph 24, and

(b) at the time the buyer ceases to be a member of the same group as the acquiring company, it or a relevant associated company holds a chargeable interest to which paragraph 25 applies,

this schedule applies as if the buyer had then ceased to be a member of the same group as the seller.

24 The circumstances referred to in paragraph 23(a) are that the buyer ceases to be a member of the same group as the acquiring company—

(a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”), or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

25 This paragraph applies to a chargeable interest—

(a) that was acquired by the buyer under the relevant transaction, or

(b) that is derived from a chargeable interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction for which relief under this schedule was available but not claimed.

Case where relief not withdrawn: seller leaves group

26 Relief under this schedule is not withdrawn where the buyer ceases to be a member of the same group as the seller because the seller leaves the group.

27 The seller is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in—

(a) the seller, or

(b) another company that is above the seller in the group structure and as a result of the transaction ceases to be a member of the same group as the buyer.

28 But if there is a change in the control of the buyer after the seller leaves the group, paragraphs 13 to 19 and 22 to 25 have effect as if the buyer had then ceased to be a member of the same group as the seller.

29 Paragraph 28 does not apply where—

(a) there is a change in the control of the buyer because a loan creditor (within the meaning given by section 453 of the Corporation Tax Act 2010 (c.4)) obtains control of, or ceases to control, the buyer, and

(b) the other persons who controlled the buyer before the change continue to do so.

30 There is a change in the control of the buyer if—

(a) a person who controls the buyer (alone or with others) ceases to do so,
(b) a person obtains control of the buyer (alone or with others), or
(c) the buyer is wound up.

31 For the purposes of paragraph 30 a person does not control, or obtain control of, the buyer if that person is under the control of another person or other persons.

Withdrawal of relief in certain cases involving successive transactions

32 Where the following conditions are met, paragraphs 13 to 31 have effect in relation to the relevant transaction as if the seller in relation to the earliest previous transaction falling within paragraph 37 were the seller in relation to the relevant transaction.

33 The first condition is that there is a change in control of the buyer.

34 The second condition is that the change occurs—
(a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”), or
(b) in pursuance of, or in connection with, arrangements made before the end of that period.

35 The third condition is that, apart from paragraph 32, relief under this schedule in relation to the relevant transaction would not be withdrawn under paragraph 13.

36 The fourth condition is that any previous transaction falls within paragraph 37.

37 A previous transaction falls within this paragraph if—
(a) the previous transaction is exempt from charge by virtue of this schedule or schedule 11 (reconstruction relief and acquisition relief),
(b) the effective date of the previous transaction is less than 3 years before the date of the change mentioned in the first condition,
(c) the chargeable interest acquired under the relevant transaction by the buyer in relation to that transaction is the same as, comprises, forms part of, or is derived from, the chargeable interest acquired under the previous transaction by the buyer in relation to the previous transaction, and
(d) since the previous transaction, the chargeable interest acquired under that transaction has not been acquired by any person under a transaction that is not exempt from charge by virtue of this schedule or schedule 11 (reconstruction relief and acquisition relief).

38 Paragraph 33 does not apply where—
(a) there is a change in the control of the buyer because a loan creditor (within the meaning given by section 453 of the Corporation Tax Act 2010 (c.4)) obtains control of, or ceases to control, the buyer, and
(b) the other persons who controlled the buyer before the change continue to do so.

39 If two or more transactions effected at the same time are the earliest previous transactions falling within paragraph 37, the reference in paragraph 32 to the seller in relation to the earliest previous transaction is a reference to the persons who are the sellers in relation to the earliest previous transactions.

40 There is a change in the control of a company if—
(a) a person who controls the company (alone or with others) ceases to do so,
(b) a person obtains control of the company (alone or with others), or
(c) the company is wound up.

Interpretation

For the purposes of paragraphs 20 and 27 a company is “above” the seller in the group structure if the seller, or another company that is above the seller in the group structure, is a 75% subsidiary of the company.

In this Part of this schedule—

“control” is to be interpreted in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c.4) (but see paragraph 31),

“relevant associated company”, in relation to the buyer, means a company that—

(a) is a member of the same group as the buyer immediately before the buyer ceases to be a member of the same group as the seller, and
(b) ceases to be a member of the same group as the seller in consequence of the buyer so ceasing.

PART 4

INTERPRETATION

When are companies members of the same group?

Companies are members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company.

When is a company a subsidiary of another company?

A company (A) is the 75% subsidiary of another company (B) if B—

(a) is beneficial owner of not less than 75% of the ordinary share capital of A,
(b) is beneficially entitled to not less than 75% of any profits available for distribution to equity holders of A, and
(c) would be beneficially entitled to not less than 75% of any assets of A available for distribution to its equity holders on a winding-up.

For the purposes of paragraph 44(a)—

(a) the ownership referred to is ownership either directly or through another company or companies,
(b) the amount of ordinary share capital of A owned by B through another company or companies is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010 (c.4).

“Ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.
Part 1—Introductory

Overview

1 (1) This schedule provides for relief for certain transactions in connection with the reconstruction and acquisition of companies.

(2) It is arranged as follows—

Part 2 provides for when reconstruction relief is available,

Part 3 provides for when acquisition relief is available,

Part 4 provides for when the relief is withdrawn,

Part 5 defines expressions used in this schedule.

Part 2

RECONSTRUCTION RELIEF

The relief

2 A land transaction is exempt from charge if—

(a) it is entered into for the purposes of or in connection with the transfer of an undertaking or part of an undertaking, and

(b) the qualifying conditions are met.

Qualifying conditions

3 The qualifying conditions are—
(a) that a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”) in pursuance of a scheme for the reconstruction of the target company,

(b) that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to all shareholders of the target company,

(c) that after the acquisition has been made—
   (i) each shareholder of each of the companies is a shareholder of the other, and
   (ii) the proportion of shares of one of the companies held by any shareholder is the same, or as nearly as may be the same, as the proportion of shares of the other company held by that shareholder,

(d) that the acquisition—
   (i) is effected for bona fide commercial reasons, and
   (ii) does not form part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.

Where the consideration for the acquisition consists partly of the issue of non-redeemable shares as mentioned in the qualifying condition (b), that condition is met only if the rest of the consideration consists wholly of the assumption or discharge by the acquiring company of liabilities of the target company.

If, immediately before the acquisition, the target company or the acquiring company holds any of its own shares, the shares are treated for the purposes of qualifying conditions (c) and (d) as having been cancelled before the acquisition (and, accordingly, the company is to be treated as if it were not a shareholder of itself).

**PART 3**

**ACQUISITION RELIEF**

**The relief**

6 (1) This paragraph applies where—
   (a) a land transaction is entered into for the purposes of or in connection with the transfer of an undertaking or part of an undertaking, and
   (b) the qualifying conditions are met.

(2) The tax chargeable in respect of the transaction is the prescribed proportion of the tax that would otherwise be chargeable but for this paragraph.

(3) The prescribed proportion is such proportion as may be prescribed by the Scottish Ministers by order.

**Qualifying conditions**

7 The qualifying conditions are—

(a) that a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”),
(b) that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to—

(i) the target company, or

(ii) all or any of the target company’s shareholders,

(c) that the acquiring company is not associated with another company that is a party to arrangements with the target company relating to shares of the acquiring company issued in connection with the transfer of the undertaking or part,

(d) that the undertaking or part acquired by the acquiring company has as its main activity the carrying on of a trade that does not consist wholly or mainly of dealing in chargeable interests,

(e) that the acquisition—

(i) is effected for bona fide commercial reasons, and

(ii) does not form part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.

8 Where the consideration for the acquisition consists partly of the issue of non-redeemable shares as mentioned in qualifying condition (b), that condition is met only if the rest of the consideration consists wholly of—

(a) cash not exceeding 10% of the nominal value of the non-redeemable shares so issued,

(b) the assumption or discharge by the acquiring company of liabilities of the target company, or

(c) both of those things.

Interpretation

9 For the purposes of qualifying condition (c)—

(a) companies are associated if one has control of the other or both are controlled by the same person or person,

(b) “control” is to be construed in accordance with section 1124 of the Corporation Tax Act 2010 (c.4).

10 In this Part of this schedule, “trade” includes any venture in the nature of trade.

PART 4

WITHDRAWAL OF RELIEF

Overview

11 This Part of this schedule is arranged as follows—

paragraphs 12 to 14 provide for circumstances in which relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn,

paragraphs 15 to 21 provide for circumstances in which, despite paragraphs 12 to 14, relief is not withdrawn,
paragraphs 22 to 28 provide for the withdrawal of relief, which would otherwise not be withdrawn by virtue of paragraph 17 or 19, on the occurrence of certain subsequent events,
paragraphs 29 to 32 provide for how the tax chargeable is determined where relief is withdrawn or partially withdrawn.

Withdrawal of relief

12 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn where paragraphs 13 and 14 apply.

13 This paragraph applies where control of the acquiring company changes—

(a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of Part 2, or is subject to a reduced amount of tax by virtue of Part 3, of this schedule (“the relevant transaction”), or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

14 This paragraph applies where, at the time the control of the acquiring company changes (“the relevant time”), it or a relevant associated company holds a chargeable interest—

(a) that was acquired by the acquiring company under the relevant transaction, or

(b) that is derived from a chargeable interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction in relation to which relief under this schedule was available but was not claimed.

Case where relief not withdrawn: change of control of acquiring company as result of transaction connected to divorce etc.

15 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a share transaction that is effected as mentioned in—

(a) any of paragraphs (a) to (d) of paragraph 4 of schedule 1 (transactions connected with divorce etc.), or

(b) any of paragraphs (a) to (d) of paragraph 5 of schedule 1 (transactions connected with dissolution of civil partnership etc.).

16 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a share transaction that—

(a) is effected as mentioned in paragraph 7(1) of schedule 1, and

(b) meets the conditions in paragraph 7(2) of that schedule (variation of testamentary dispositions etc.).

Case where relief not withdrawn: exempt intra-group transfer

17 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of an exempt intra-group transfer.
18 But see paragraphs 22 to 24 for the effect of a subsequent non-exempt transfer.

**Case where relief not withdrawn: share acquisition relief**

19 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief applies.

20 But see paragraphs 25 to 28 for the effect of a change in the control of that other company.

**Case where relief not withdrawn: controlling loan creditor**

21 Relief under Part 2 or Part 3 of this schedule is not withdrawn where—

(a) control of the acquiring company changes as a result of a loan creditor (within the meaning of section 453 of the Corporation Tax Act 2010 (c.4)) becoming, or ceasing to be, treated as having control of the company, and

(b) the other persons who were previously treated as controlling the company continue to be so treated.

**Withdrawal of relief on subsequent non-exempt transfer**

22 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn if—

(a) control of the acquiring company changes as a result of an exempt intra-group transfer, and

(b) paragraphs 23 and 24 apply.

23 This paragraph applies where a company holding shares in the acquiring company to which the exempt intra-group transfer related, or that are derived from shares to which that transfer related, ceases to be a member of the same group as the target company—

(a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of Part 2, or is subject to a reduced amount of tax by virtue of Part 3, of this schedule (“the relevant transaction”), or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

24 This paragraph applies where the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—

(a) that was transferred to the acquiring company by the relevant transaction, or

(b) that is derived from an interest so transferred,

and that has not subsequently been transferred at market value under a chargeable transaction in relation to which relief under Part 2 or Part 3 of this schedule was available but was not claimed.
Withdrawal of relief where share acquisition relief applied but control of company subsequently changes

25 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn if—

(a) control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief applies, and

(b) paragraphs 26 to 28 apply.

26 This paragraph applies where control of the other company mentioned in paragraph 25(a) changes—

(a) before the end of the period of 3 years beginning with the effective date of the relevant transaction, or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

27 This paragraph applies where, at the time control of that other company changes, it holds shares transferred to it by the transfer mentioned in paragraph 25(a), or any shares derived from shares so transferred.

28 This paragraph applies where the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—

(a) that was transferred to the acquiring company by the relevant transaction, or

(b) that is derived from an interest so transferred,

and that has not subsequently been transferred at market value under a chargeable transaction in relation to which relief under Part 2 or Part 3 of this schedule was available but was not claimed.

Amount of tax chargeable where relief withdrawn

29 Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 30.

30 The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for the relief if the chargeable consideration for that transaction had been an amount equal to—

(a) the market value of the subject-matter of the transaction,

(b) if the acquisition was the grant of a lease, the rent.

Amount of tax chargeable where relief partially withdrawn

31 Where relief is partially withdrawn, the tax chargeable is an appropriate proportion of the amount determined in accordance with paragraph 30.

32 An “appropriate proportion” means an appropriate proportion having regard to—

(a) the subject-matter of the relevant transaction, and

(b) what is held at the relevant time by the acquiring company or, as the case may be, by that company and any relevant associated companies.
Interpretation

33 In paragraphs 19 and 25—
(a) “share acquisition relief” means relief under section 77 of the Finance Act 1986 (c.41), and
(b) a transfer is one in relation to which that relief applies if an instrument effecting the transfer is exempt from stamp duty by virtue of that provision.

34 In this Part of this schedule, references to control of a company changing are to the company becoming controlled—
(a) by a different person,
(b) by a different number of persons, or
(c) by two or more persons at least one of whom is not the person, or one of the persons, by whom the company was previously controlled.

35 In this Part of this schedule—
“control” is to be construed in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c.4),
“exempt intra-group transfer” means a transfer of shares effected by an instrument that is exempt from stamp duty by virtue of section 42 of the Finance Act 1930 (c.28) or section 11 of the Finance Act (Northern Ireland) 1954 (c.23 (NI)) (transfers between associated bodies corporate),
“relevant associated company”, in relation to the acquiring company, means a company—
(a) that is controlled by the acquiring company immediately before the control of that company changes, and
(b) of which control changes in consequence of the change of control of that company.

PART 5
INTERPRETATION

When are companies members of the same group?

36 Companies are members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company.

When is a company a subsidiary of another company?

37 A company (A) is the 75% subsidiary of another company (B) if B—
(a) is beneficial owner of not less than 75% of the ordinary share capital of A,
(b) is beneficially entitled to not less than 75% of any profits available for distribution to equity holders of A, and
(c) would be beneficially entitled to not less than 75% of any assets of A available for distribution to its equity holders on a winding-up.

38 For the purposes of paragraph 37—
(a) the ownership referred to in that paragraph is ownership either directly or through another company or companies, and

(b) the amount of ordinary share capital of A owned by B through another company or companies is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010 (c.4).

“Ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.

Chapter 6 of Part 5 of the Corporation Tax Act 2010 (c.4) (group relief: equity holders and profits or assets available for distribution) applies for the purposes of paragraph 37(b) and (c) as it applies for the purposes of section 151(4)(a) and (b) of that Act.

But sections 171(1)(b) and (3), 173, 174 and 176 to 178 of that Chapter are to be treated as omitted for the purposes of paragraph 37(b) and (c).

Other definitions

In this schedule—

“arrangements” include any scheme, agreement or understanding, whether or not legally enforceable,

“non-redeemable shares” means shares that are not redeemable shares.

SCHEDULE 12

RELIEF FOR INCORPORATION OF LIMITED LIABILITY PARTNERSHIP

The relief

A land transaction by which a chargeable interest is transferred by a person (“the transferor”) to a limited liability partnership in connection with its incorporation is exempt from charge if the qualifying conditions are met.

The qualifying conditions

The qualifying conditions are—

(a) that the effective date of the transaction is not more than 1 year after the date of incorporation of the limited liability partnership,

(b) that at the relevant time the transferor—

(i) is a partner in a partnership, or

(ii) holds the interest transferred as nominee or bare trustee for one or more partners in a partnership,

(c) that at the relevant time the partnership mentioned in paragraph (b) is comprised of all the persons who are or are to be members of the limited liability partnership (and no-one else), and

(d) that either—
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(i) the proportions of the interest transferred to which the persons mentioned in paragraph (c) are entitled immediately after the transfer are the same as those to which they were entitled at the relevant time, or

(ii) none of the differences in those proportions has arisen as part of a scheme or arrangement of which the main purpose, or one of the main purposes, is avoidance of liability to the tax.

Interpretation

3 In this schedule—

“limited liability partnership” means a limited liability partnership formed under the Limited Liability Partnerships Act 2000 (c.12) or the Limited Liability Partnerships Act (Northern Ireland) 2002 (c.12 (N.I.)),

“the relevant time” means—

(a) where the transferor acquired the interest after the incorporation of the limited liability partnership, immediately after the transferor acquired it, and

(b) in any other case, immediately before the incorporation of the limited liability partnership.

The relief

1 A land transaction is exempt from charge if the buyer is a charity and the qualifying conditions are met.

Qualifying conditions

2 The qualifying conditions are—

(a) that the buyer intends to hold—

(i) the subject-matter of the transaction, or

(ii) the greater part of that subject-matter, for qualifying charitable purposes, and

(b) that the transaction has not been entered into for the purpose of avoiding the tax (whether by the buyer or any other person).

Qualifying charitable purposes

3 A buyer holds the subject-matter of a transaction for qualifying charitable purposes if the buyer holds it—

(a) for use in the furtherance of the charitable purposes of the buyer or of another charity, or
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(b) as an investment from which the profits are applied to the charitable purposes of the buyer.

Withdrawal of relief

4 Relief under this schedule is withdrawn, or partially withdrawn, if—

(a) a disqualifying event occurs—

(i) before the end of the period of 3 years beginning with the effective date of the transaction which was exempt from charge under this schedule ("the relevant transaction"), or

(ii) in pursuance of, or in connection with, arrangements made before the end of that period, and

(b) at the time of the disqualifying event the buyer holds a chargeable interest—

(i) that was acquired by the buyer under the relevant transaction, or

(ii) that is derived from an interest so acquired.

5 A "disqualifying event" means—

(a) the buyer ceasing to be established for charitable purposes only, or

(b) the subject-matter of the relevant transaction, or any interest or right derived from it, being held or used by the buyer otherwise than for qualifying charitable purposes.

6 Where the relevant transaction is exempt from charge by virtue of qualifying condition (a)(ii), the following are also disqualifying events—

(a) any transfer by the buyer of a major interest in the whole or any part of the subject-matter of the relevant transaction, or

(b) any grant by the buyer at a premium of a low-rental lease of the whole or any part of that subject-matter,

that is not made for the charitable purposes of the buyer.

7 A lease—

(a) is granted “at a premium” if there is consideration other than rent, and

(b) is a “low-rental” lease if the annual rent (if any) is less than £1,000 a year.

8 Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the relevant transaction but for the relief.

9 Where relief is partially withdrawn, the amount of tax chargeable is an appropriate proportion of the tax that would have been chargeable but for the relief.

10 An “appropriate proportion” means an appropriate proportion having regard to—

(a) what was acquired by the buyer under the relevant transaction and what is held by the buyer at the time of the disqualifying event, and

(b) the extent to which what is held by the buyer at that time becomes used or held for purposes other than qualifying charitable purposes.

11 In relation to a transfer or grant that is, by virtue of paragraph 6, a disqualifying event—
(a) the date of the event for the purposes of paragraph 4 is the effective date of the transfer or grant,
(b) paragraph 4(b) has effect as if, for “at the time” there were substituted “immediately before”,
(c) paragraph 10 has effect as if—
   (i) in sub-paragraph (a), for “at the time of” there were substituted “immediately before and immediately after”,
   (ii) sub-paragraph (b) were omitted.

Charitable trusts

This schedule applies in relation to a charitable trust as it applies to a charity.

“Charitable trust” means—
(a) a trust of which all the beneficiaries are charities, or
(b) a unit trust scheme in which all the unit holders are charities.

In this schedule as it applies in relation to a charitable trust—
(a) references to the buyer in paragraph 3(a) and (b) are to the beneficiaries or unit holders, or any of them,
(b) the reference to the buyer in paragraph 5(a) is to any of the beneficiaries or unit holders,
(c) the reference in paragraph 6 to the charitable purposes of the buyer is to those of the beneficiaries or unit holders, or any of them.

Interpretation

In this schedule “charity” and “charitable purposes” have the meaning given by section 106 of the Charities and Trustee Investments (Scotland) Act 2005 (asp 10).

In this schedule, “annual rent” means the average annual rent over the term of the lease or, if—
(a) different amounts of rent are payable for different parts of the term, and
(b) those amounts (or any of them) are ascertainable at the time of the disqualifying event,
the average annual rent over the period for which the highest ascertainable rent is payable.

SCHEDULE 14
(introduced by section 27)
RELIEF FOR COMPULSORY PURCHASE FACILITATING DEVELOPMENT

The relief

An acquisition of a chargeable interest by a person mentioned in paragraph 2 is exempt from charge if the qualifying condition is met.

The person is—
Qualifying conditions

3 The qualifying condition is that the person has made a compulsory purchase order in respect of the chargeable interest for the purpose of facilitating development by another person.

Interpretation

4 For the purposes of this schedule it does not matter how the acquisition is effected (so this provision applies where the acquisition is effected by agreement).

5 In this schedule “development” has the same meaning as in the Town and Country Planning (Scotland) Act 1997 (c.8) (see section 26 of that Act).

SCHEDULE 15
(introduced by section 27)

RELIEF FOR COMPLIANCE WITH PLANNING OBLIGATIONS

The relief

1 A land transaction that is entered into in order to comply with—

(a) a planning obligation, or

(b) a modification of a planning obligation,

is exempt from charge if the qualifying conditions are met.

The qualifying conditions

2 The qualifying conditions are—

(a) that the planning obligation or modification is enforceable against the seller,

(b) that the buyer is a public body, and

(c) the effective date of the transaction is within the period of 5 years beginning with the date on which the planning obligation was entered into or modified.

“Planning obligation” and “modification”

3 “Planning obligation” means an agreement made under section 75 of the Town and Country Planning (Scotland) Act 1997 (c.8).

4 “Modification” of a planning obligation means modification as mentioned in sections 75A and 75B of that Act.

Public authorities

5 The following are public bodies for the purposes of paragraph 2(b)—
a local authority,
the common services agency established under section 10(1) of the National Health Service (Scotland) Act 1978 (c.29),
a health board established under section 2(1)(a) of that Act,
Healthcare Improvement Scotland established under section 10A of that Act,
a special health board established under section 2(1)(b) of that Act,
any other body that is the planning authority for any of the purposes of the planning Acts within the meaning of the Town and Country Planning (Scotland) Act 1997 (c.8),
a person prescribed for the purposes of this paragraph by the Scottish Ministers by order.

SCHEDULE 16
(introduced by section 27)
PUBLIC BODIES RELIEF

The relief

1 A land transaction entered into on, in consequence of or in connection with a reorganisation effected by or under an enactment is exempt from charge if the buyer and seller are both public bodies.

2 The Scottish Ministers may, by order, provide that a land transaction that is not entered into as mentioned in paragraph 1 is exempt from charge if—
   (a) the transaction is effected by or under an enactment specified in the order, and
   (b) either the buyer or the seller is a public body.

Meaning of “reorganisation”

3 A “reorganisation” means changes involving—
   (a) the establishment, reform or abolition of one or more public bodies,
   (b) the creation, alteration or abolition of functions to be discharged or discharged by one or more public bodies, or
   (c) the transfer of functions from one public body to another.

Public bodies

4 The following are public bodies for the purposes of this schedule—
   the Scottish Ministers,
   a Minister of the Crown,
   the Scottish Parliamentary Corporate Body,
   a local authority,
   the common services agency established under section 10(1) of the National Health Service (Scotland) Act 1978 (c.29),
a health board established under section 2(1)(a) of that Act,
Healthcare Improvement Scotland established under section 10A of that Act,
a special health board established under section 2(1)(b) of that Act,
any other authority that is the planning authority for any of the purposes of the
planning Acts within the meaning of the Town and Country Planning (Scotland)
Act 1997 (c.8),
a body (other than a company) that is established by or under an enactment for the
purpose of carrying out functions conferred on it by or under an enactment,
a person prescribed for the purposes of this paragraph by the Scottish Ministers by
order.

5 In this schedule, references to a public body include—
   (a) a company in which all the shares are owned by such a body, and
   (b) a wholly-owned subsidiary of such a company.

6 In paragraphs 4 and 5, “company” means a company as defined by section 1 of the
Companies Act 2006.

SCHEDULE 17
(introduced by section 49)
PARTNERSHIPS
PART 1
OVERVIEW

1 (1) This schedule makes provision about the application of this Act in relation to
partnerships.

   (2) It is arranged as follows—

   Part 2 makes general provision about the treatment of partnerships,
   Part 3 makes provision about ordinary transactions involving a partnership,
   Part 4 makes provision about transactions involving transfers from a partner or
certain other persons to a partnership,
   Part 5 makes provision about transactions involving transfers from a partnership
to a partner or certain other persons (including transfers between partnerships),
   Part 6 makes provision about transfers of interest in, and transactions involving, a
property investment partnership,
   Part 7 makes provision about the application of provisions of this Act on
exemptions, reliefs, and notification to transactions falling within Parts 4 to 6,
   Part 8 defines expressions used in this schedule.
PART 2

GENERAL PROVISIONS

Meaning of “partnership”

2 In this Act, “partnership” means—

(a) a partnership within the Partnership Act 1890 (c.39),
(b) a limited partnership registered under the Limited Partnerships Act 1907 (c.24),
(c) a limited liability partnership formed under the Limited Liability Partnerships Act 2000 (c. 12) or the Limited Liability Partnerships Act (Northern Ireland) 2002 (c.12 (N.I.)),
(d) a firm or entity of a similar character to any of those mentioned in paragraphs (a) to (c) formed under the law of a country or territory outside the United Kingdom.

Chargeable interests treated as being held by partners etc.

3 (1) For the purposes of this Act—

(a) a chargeable interest held by or on behalf of a partnership is treated as held by or on behalf of the partners, and
(b) a land transaction entered into for the purposes of a partnership is treated as entered into by or on behalf of the partners, and not by or on behalf of the partnership as such.

(2) Sub-paragraph (1) applies notwithstanding that the partnership is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.

Acquisition of interest in partnership not chargeable except as specially provided

4 The acquisition of an interest in a partnership is not a chargeable transaction, notwithstanding that the partnership property includes land, except as provided by—

(a) Part 4 of this schedule (transfer of chargeable interest to a partnership),
(b) paragraph 17 (transfer of partnership interest pursuant to earlier arrangements), or
(c) paragraph 31 (transfer of interest in property-investment partnership).

Continuity of partnership

5 For the purposes of this Act, a partnership is treated as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member after the change.

Partnership not to be regarded as unit trust scheme etc.

6 A partnership is not to be regarded for the purposes of this Act as a unit trust scheme or an open ended investment company.
**PART 3**

**ORDINARY PARTNERSHIP TRANSACTIONS**

**Introduction**

7 This Part of this schedule applies to land transactions entered into as buyer by or on behalf of the members of a partnership, other than transactions within Parts 4 to 6 of this schedule.

**Responsibility of partners**

8 (1) Anything required or authorised to be done under this Act by or in relation to the buyer in the transaction is required or authorised to be done by or in relation to all the responsible partners.

(2) The responsible partners in relation to a transaction are—
   (a) the persons who are partners at the effective date of the transaction, and
   (b) any person who becomes a member of the partnership after that date.

(3) This paragraph has effect subject to paragraph 9 (representative partners).

**Representative partners**

9 (1) Anything required or authorised to be done by or in relation to the responsible partners may instead be done by or in relation to any representative partner or partners.

(2) This includes making the declaration required by section 36 (declaration that return is complete and correct).

(3) A representative partner means a partner nominated by a majority of the partners to act as the representative of the partnership for the purposes of this Act.

(4) Any such nomination, or the revocation of such a nomination, has effect only after notice of the nomination, or revocation, has been given to the Tax Authority.

**Joint and several liability of responsible partners**

10 (1) Where the responsible partners are liable to make a payment of tax, the liability is a joint and several liability of those partners.

(2) No amount may be recovered by virtue of sub-paragraph (1) from a person who did not become a responsible partner until after the effective date of the transaction in respect of which the tax is payable.

**PART 4**

**TRANSACTIONS INVOLVING TRANSFER TO A PARTNERSHIP**

**Overview of Part**

11 This Part of this schedule is arranged as follows—

   paragraphs 12 to 16 make provision about the treatment of certain land transactions involving the transfer of a chargeable interest to a partnership,
paragraphs 17 and 18 provide for certain events following such transactions to be treated as land transactions.

Circumstances in which this Part applies

12 (1) This Part of this schedule applies where—

(a) a partner transfers a chargeable interest to the partnership,

(b) a person transfers a chargeable interest to a partnership in return for an interest in the partnership, or

(c) a person connected with—

(i) a partner, or

(ii) a person who becomes a partner as a result of or in connection with the transfer,

transfers a chargeable interest to the partnership.

(2) This Part of this schedule applies whether the transfer is in connection with the formation of the partnership or is a transfer to an existing partnership.

(3) In this Part of this schedule—

"the land transfer" means the transaction mentioned in sub-paragraph (1), and

"the partnership" means the partnership to which the chargeable interest is transferred.

(4) This paragraph has effect subject to any election under paragraph 34.

Calculation of chargeable consideration etc.

13 (1) The chargeable consideration for the land transfer is taken to be equal to—

\[ MV \times (100 - SLP)\% \]

where—

MV is the market value of the interest transferred, and

SLP is the sum of the lower proportions determined in accordance with paragraph 14.

(2) Paragraphs 8 to 10 (responsibility of partners) have effect in relation to the land transfer, but the responsible partners are—

(a) those who were partners immediately before the transfer and who remain partners after the transfer, and

(b) any person becoming a partner as a result of, or in connection with, the transfer.

(3) This paragraph does not apply if the whole or part of the chargeable consideration for the land transfer is rent (see section 55 (application of this Act to leases)).

Sum of the lower proportions

14 The sum of the lower proportions in relation to the land transfer is determined as follows.
Step 1
Identify the relevant owner or owners.

Step 2
For each relevant owner, identify the corresponding partner or partners.

If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil.

Step 3
For each relevant owner, find the proportion of the chargeable interest to which the owner was entitled immediately before the land transfer.

Apportion that proportion between any one or more of the relevant owner’s corresponding partners.

Step 4
Find the lower of the following proportions (“the lower proportion”) for each corresponding partner—

(a) the sum of the proportions (if any) of the chargeable interest apportioned to the partner (at Step 3) in respect of each relevant owner,

(b) the partner’s partnership share immediately after the land transfer.

Step 5
Add together the lower proportions for each corresponding partner.

The result is the sum of the lower proportions.

Relevant owner

15 (1) For the purposes of paragraph 14 (see Step 1), a person is a relevant owner if—

(a) immediately before the land transfer, the person was entitled to a proportion of the chargeable interest, and

(b) immediately after the land transfer, the person is a partner or connected with a partner.

(2) For the purposes of this paragraph and paragraph 14, persons who are entitled to a chargeable interest as joint owners are to be taken to be entitled to the chargeable interest as common owners in equal shares.

Corresponding partner

16 (1) For the purposes of paragraph 14 (See Step 2), a person is a corresponding partner in relation to a relevant owner if, immediately after the land transfer—

(a) the person is a partner, and

(b) the person is the relevant owner or is an individual connected with the relevant owner.

(2) For the purposes of sub-paragraph (1)(b) a company is to be treated as an individual connected with the relevant owner in so far as it—
(a) holds property as trustee, and
(b) is connected with the relevant owner only because of section 1122(6) of the Corporation Tax Act 2010 (c.4).

Transfer of partnership interest pursuant to earlier arrangements

17 (1) This paragraph applies where—
(a) subsequent to the land transfer, there a transfer of an interest in the partnership (“the partnership transfer”),
(b) the partnership transfer is made—
(i) if the land transfer falls within paragraph 12(1)(a) or (b), by the person who makes the land transfer,
(ii) if the land transfer falls within paragraph 12(1)(c), by the partner concerned,
(c) the partnership transfer is made pursuant to arrangements that were in place at the time of the land transfer,
(d) the partnership transfer is not (apart from this paragraph) a chargeable transaction.

(2) The partnership transfer—
(a) is to be treated as a land transaction, and
(b) is a chargeable transaction.

(3) The partners are taken to be the buyers under the transaction.

(4) The chargeable consideration for the transaction is taken to be equal to a proportion of the market value, as at the date of the transaction, of the interest transferred by the land transfer.

(5) That proportion is—
(a) if the person making the partnership transfer is not a partner immediately after the transfer, the person’s partnership share immediately before the transfer,
(b) if that person is a partner immediately after the transfer, the difference between that person’s partnership share before and after the transfer.

(6) The partnership transfer and the land transfer are taken to be linked transactions.

(7) Paragraphs 8 to 10 (responsibility of partners) have effect in relation to the partnership transfer, but the responsible partners are—
(a) those who were partners immediately before the transfer and who remain partners after the transfer, and
(b) any person becoming a partner as a result of, or in connection with, the transfer.

Withdrawal of money etc. from partnership after transfer of chargeable interest

18 (1) This paragraph applies where, during the period of 3 years beginning with the date of the land transfer, a qualifying event occurs.

(2) A qualifying event is—
(a) a withdrawal from the partnership of money or money’s worth which does not represent income profit by the relevant person—
   (i) withdrawing capital from the person’s capital account,
   (ii) reducing the person’s interest, or
   (iii) ceasing to be a partner, or

(b) in a case where the relevant person has made a loan to the partnership—
   (i) the repayment (to any extent) by the partnership of the loan, or
   (ii) a withdrawal by the relevant person from the partnership of money or money’s worth which does not represent income profit.

(3) For this purpose the relevant person is—

(a) where land transfer falls within paragraph 12(1)(a) or (b), the person who makes the land transfer,

(b) where the land transfer falls within paragraph 12(1)(c), the partner concerned or a person connected with the partner.

(4) The qualifying event—

(a) is treated as a land transaction, and

(b) is a chargeable transaction.

(5) The partners are taken to be the buyers under the transaction.

(6) Paragraphs 8 to 10 (responsibility of partners) have effect in relation to the transaction.

(7) The chargeable consideration for the transaction is taken to be—

(a) in a case falling within sub-paragraph (2)(a), equal to the value of the money or money’s worth withdrawn from the partnership,

(b) in a case falling within sub-paragraph (2)(b)(i), equal to the amount repaid,

(c) in a case falling within sub-paragraph (2)(b)(ii) equal to so much of the value of the money or money’s worth withdrawn from the partnership as does not exceed the amount of the loan.

(8) But (in any case) the chargeable consideration determined under sub-paragraph (7) is not to exceed the market value, as at the effective date of the land transfer, of the chargeable interest transferred by the land transfer, reduced by any amount previously chargeable to tax.

(9) The amount of tax payable by virtue of this paragraph in respect of the qualifying event (if any) is to be reduced (but not below nil) by any amount of tax payable by virtue of paragraph 31 (transfer for consideration of interest in property investment partnership) in respect of the event.

### PART 5

**TRANSACTIONS INVOLVING TRANSFER FROM A PARTNERSHIP**

**Overview of Part**

19 This Part of this schedule is arranged as follows—
paragraphs 20 to 26 make provision about certain land transactions involving the transfer of a chargeable interest from a partnership,

paragraph 27 makes special provision where the transaction involves a transfer from a partnership to a partnership,

paragraph 28 makes special provision where the partnership consists entirely of bodies corporate.

Circumstances in which Part applies

20 (1) This Part of this schedule applies where a chargeable interest is transferred—

(a) from a partnership to a person who is or has been one of the partners, or

(b) from a partnership to a person connected with a person who is or has been one of the partners.

(2) For the purposes of this paragraph property that was partnership property before the partnership was dissolved or otherwise ceased to exist is to be treated as remaining partnership property until it is distributed.

(3) In this Part of this schedule—

“the land transfer” means the transaction mentioned in sub-paragraph (1), and

“the partnership” means the partnership from which the chargeable interest is transferred.

(4) This paragraph has effect subject to any election under paragraph 34.

Calculation of chargeable consideration

21 (1) The chargeable consideration for the land transfer is (subject to paragraph 28) taken to be equal to—

\[ MV \times (100 - SLP)\% \]

where—

MV is the market value of the interest transferred, and

SLP is the sum of the lower proportions determined in accordance with paragraph 22.

(2) This paragraph does not apply if the whole or part of the chargeable consideration for the transaction is rent (see section 55 (application of this Act to leases)).

Sum of the lower proportions

22 The sum of the lower proportions in relation to the land transfer is determined as follows.

Step 1

Identify the relevant owner or owners.

Step 2

For each relevant owner, identify the corresponding partner or partners.
If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil.

**Step 3**

For each relevant owner, find the proportion of the chargeable interest to which the owner is entitled immediately after the land transfer.

Apportion that proportion between any one or more of the relevant owner’s corresponding partners.

**Step 4**

Find the lower of the following proportions ("the lower proportion") for each corresponding partner—

(a) the sum of the proportions (if any) of the chargeable interest apportioned to the partner (at Step 3) in respect of each relevant owner,

(b) the partnership share attributable to the partner.

**Step 5**

Add together the lower proportions of each corresponding partner.

The result is the sum of the lower proportions.

### Relevant owner

23 (1) For the purposes of paragraph 22 (see Step 1), a person is a relevant owner if—

(a) immediately after the land transfer, the person is entitled to a proportion of the chargeable interest, and

(b) immediately before the land transfer, the person was a partner or connected with a partner.

(2) For the purposes of this paragraph and paragraph 22, persons who are entitled to a chargeable interest as joint owners are taken to be entitled to the chargeable interest as common owners in equal shares.

### Corresponding partner

24 (1) For the purposes of paragraph 22 (see Step 2), a person is a corresponding partner in relation to a relevant owner if, immediately before the land transfer—

(a) the person was a partner, and

(b) the person was the relevant owner or was an individual connected with the relevant owner.

(2) For the purposes of sub-paragraph (1)(b), a company is to be treated as an individual connected with the relevant owner in so far as it—

(a) holds property as trustee, and

(b) is connected with the relevant owner only because of section 1122(6) of the Corporation Tax Act 2010 (c.4).
Partnership share attributable to partner

25 (1) This paragraph provides for determining the partnership share attributable to a partner for the purposes of paragraph 22 (see Step 4).

(2) Where any tax payable in respect of the transfer of the relevant chargeable interest to the partnership has not been paid under this Act, the partnership share attributable to a partner is zero.

(3) Where the partner ceases to be a partner before the effective date of the transfer of the relevant chargeable interest to the partnership, the partnership share attributable to the partner is zero.

(4) In any other case, paragraph 26 applies for determining the partnership share attributable to a partner.

(5) In this paragraph and paragraph 26, the relevant chargeable interest is—

(a) the chargeable interest which ceases to be partnership property as a result of the land transfer, or

(b) where the land transfer is the creation of a chargeable interest, the chargeable interest out of which that interest is created.

26 (1) Where this paragraph applies, the partnership share attributable to the partner is determined as follows.

Step 1

Find the partner’s actual partnership share on the relevant date.

The relevant date—

(a) if the partner was a partner on the effective date of the transfer of the relevant chargeable interest to the partnership, is that date,

(b) if the partner became a partner after that date, is the date on which the partner became a partner.

Step 2

Add to that partnership share any increases in the partner’s partnership share which—

(a) occur in the period starting on the day after the relevant date and ending immediately before the land transfer, and

(b) count for this purpose.

The result is the increased partnership share.

An increase counts for the purpose of paragraph (b) only if any tax payable in respect of the transfer which resulted in the increase has been duly paid under this Act.

Step 3

Deduct from the increased partnership share any decreases in the partner’s partnership share which occur in the period starting on the day after the relevant date and ending immediately before the land transfer.

The result is the partnership share attributable to the partner.
(2) If the effect of applying Step 3 would be to reduce the partnership share attributable to the partner below zero, the partnership share attributable to the partner is zero.

**Transfer of chargeable interest from a partnership to a partnership**

27 (1) This paragraph applies where—

(a) there is a transfer of a chargeable interest from a partnership to a partnership, and

(b) the transfer is both—

(i) a transaction to which Part 4 of this schedule applies, and

(ii) a transaction to which this Part of this schedule applies.

(2) Paragraphs 13(1) and 21(1) do not apply.

(3) The chargeable consideration for the transaction is taken to be what it would have been if paragraph 13(1) had applied or, if greater, what it would have been if paragraph 21(1) had applied.

**Transfer of chargeable interest from a partnership consisting wholly of bodies corporate**

28 (1) This paragraph applies where—

(a) immediately before the land transfer all the partners are bodies corporate, and

(b) the sum of the lower proportions is 75 or more.

(2) Paragraphs 21 and 27 have effect with the modification set out in sub-paragraph (3).

(3) For paragraph 21 substitute—

“21 The chargeable consideration for the land transfer is taken to be equal to the market value of the interest transferred.”.

(4) Paragraph 22 provides for determining the sum of the lower proportions.

**PART 6**

**PROPERTY INVESTMENT PARTNERSHIPS**

**Overview of Part**

29 This Part of this schedule is arranged as follows—

paragraphs 31 to 33 make provision about certain transactions involving the transfer of an interest in a property investment partnership,

paragraph 34 provides that a property investment partnership may elect to disapply paragraph 12 in relation to certain land transactions.

**Meaning of “property investment partnership”**

30 (1) In this schedule, “property-investment partnership” means a partnership whose sole or main activity is investing or dealing in chargeable interests (whether or not that activity involves the carrying out of construction operations on the land in question).

(2) In sub-paragraph (1) “construction operations” has the same meaning as in Chapter 3 of Part 3 of the Finance Act 2004 (see section 74 of that Act).
Transfer of interest in partnership treated as land transaction

31 (1) This paragraph applies where—
   (a) there is a transfer of an interest in a property-investment partnership, and
   (b) the relevant partnership property includes a chargeable interest.

(2) The transfer—
   (a) is treated as a land transaction, and
   (b) is a chargeable transaction.

(3) The buyer in the transaction is the person who acquires an increased partnership share or, as the case may be, becomes a partner in consequence of the transfer.

(4) The chargeable consideration for the transaction is taken to be equal to a proportion of the market value of the relevant partnership property.

(5) That proportion is—
   (a) if the person acquiring the interest in the partnership was not a partner before the transfer, the person’s partnership share immediately after the transfer,
   (b) if the person was a partner before the transfer, the difference between the person’s partnership share before and after the transfer.

(6) The relevant partnership property, in relation to a Type A transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than—
   (a) any chargeable interest that was transferred to the partnership in connection with the transfer,
   (b) a lease to which paragraph 32 (exclusion of market rent leases) applies, and
   (c) any chargeable interest that is not attributable economically to the interest in the partnership that is transferred.

(7) The relevant partnership property, in relation to a Type B transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than—
   (a) any chargeable interest that was transferred to the partnership in connection with the transfer,
   (b) a lease to which paragraph 32 (exclusion of market rent leases) applies,
   (c) any chargeable interest that is not attributable economically to the interest in the partnership that is transferred,
   (d) any chargeable interest in respect of whose transfer to the partnership an election has been made under paragraph 34, and
   (e) any other chargeable interest whose transfer to the partnership did not fall within paragraph 12(1)(a), (b) or (c).

(8) A Type A transfer is—
   (a) a transfer that takes the form of arrangements entered into under which—
(i) the whole or part of a partner’s interest as partner is acquired by another person (who may be an existing partner), and

(ii) consideration in money or money’s worth is given by or on behalf on the person acquiring the interest, or

(b) a transfer that takes the form of arrangements entered into under which—

(i) a person becomes a partner,

(ii) the interest of an existing partner in the partnership is reduced or an existing partner ceases to be a partner, and

(iii) there is a withdrawal of money or money’s worth from the partnership by the existing partner mentioned in sub-paragraph (ii) (other than money or money’s worth paid from the resources available to the partnership prior to the transfer).

(9) Any other transfer to which this paragraph applies is a Type B transfer.

(10) An interest in respect of the transfer of which this paragraph applies is to be treated as a chargeable interest for the purposes of paragraph 15 of schedule 10 to the extent that the relevant partnership property consists of a chargeable interest.

Exclusion of market rent leases

32 (1) A lease held as partnership property immediately after a transfer of an interest in the partnership is not relevant partnership property for the purposes of paragraph 31(6) or (7) if the following four conditions are met.

(2) The first condition is that—

(a) no chargeable consideration other than rent has been given in respect of the grant of the lease, and

(b) no arrangements are in place at the time of the transfer for any chargeable consideration other than rent to be given in respect of the grant of the lease.

(3) The second condition is that the rent payable under the lease as granted was a market rent at the time of the grant.

(4) The third condition is that—

(a) the term of the lease is 5 years or less, or

(b) if the term of the lease is more than 5 years—

(i) the lease provides for the rent payable under it to be reviewed at least once in every 5 years of the term, and

(ii) the rent payable under the lease as a result of a review is required to be a market rent at the review date.

(5) The fourth condition is that there has been no change to the lease since it was granted which is such that, immediately after the change has effect, the rent payable under the lease is less that a market rent.

(6) The market rent of a lease at any time is the rent which the lease might reasonably be expected to fetch at that time in the open market.
(7) A review date is a date from which the rent determined as a result of a rent review is payable.

**Partnership interests: application of provisions about exchanges etc.**

33 (1) Where paragraph 5 of schedule 2 (exchanges) applies to the acquisition of an interest in a partnership in consideration of entering into a land transaction with an existing partner, the interest in the partnership is to be treated as a major interest in land for the purposes of that paragraph if the relevant partnership property includes a major interest in land.

(2) In sub-paragraph (1) “relevant partnership property” has the meaning given by paragraph 31(6) or (7) (as appropriate).

(3) The provisions of paragraph 6 of schedule 2 (partition etc.: disregard of existing interest) do not apply where this paragraph applies.

**Election by property-investment partnership to disapply Part 4**

34 (1) Part 4 of this schedule does not apply to a transfer of a chargeable interest to a property-investment partnership if the buyer in relation to the transaction elects for that paragraph not to apply.

(2) Where an election under this paragraph is made in respect of a transaction—

(a) Part 5 of this schedule (if relevant) is also disapplied,

(b) the chargeable consideration for the transaction is taken to be the market value of the chargeable interest transferred, and

(c) the transaction falls within Part 3 of this schedule.

(3) An election under this paragraph must be included in the land transaction return made in respect of the transaction or in an amendment of that return.

(4) Such an election is irrevocable and a land transaction return may not be amended so as to withdraw the election.

(5) Where an election under this paragraph in respect of a transaction (the “main transaction”) is made in an amendment of the land transaction return—

(a) the election has effect as if it had been made on the date on which the land transaction return was made, and

(b) any land transaction return in respect of an affected transaction may be amended (within the period allowed for amendment of that return) to take account of that election.

(6) In sub-paragraph (5) “affected transaction”, in relation to the main transaction, means a transaction—

(a) to which paragraph 31 applied, and

(b) with an effective date on or after the effective date of the main transaction.
OVERVIEW OF PART

This Part of this schedule is arranged as follows—

paragraph 36 makes general provision about the application of exemptions and reliefs to transactions mentioned in Parts 4 to 6 of this schedule,

paragraphs 37 and 38 makes provision about the application of group relief to certain transactions mentioned in Part 4 of this schedule,

paragraph 39 makes provision about the application of charities relief to certain transfers of interest in a partnership,

paragraph 40 makes provision about the notification of certain transfers of interest in a partnership.

APPLICATION OF EXEMPTIONS AND RELIEFS: GENERAL

(1) Paragraph 1 of schedule 1 (exemption of transactions for which there is no chargeable consideration) does not apply to—

(a) a transaction to which Part 4 applies,

(b) a transaction to which Part 5 applies, or

(c) a transfer of interest in a partnership which is treated as a land transaction by virtue of paragraph 17 or 31.

(2) But subject to paragraphs 37 and 39 this schedule has effect subject to any other provision affording exemption or relief from the tax.

APPLICATION OF GROUP RELIEF

(1) Schedule 10 (group relief) applies with the following modifications to—

(a) a transaction to which Part 4 applies, and

(b) a transfer of interest in a partnership which is treated as a land transaction by virtue of paragraph 17.

(2) For paragraphs 14 and 15 substitute—

“14 This paragraph applies where a partner who was a partner at the effective date of the transaction which is exempt from charge by virtue of this schedule ("the relevant partner" and "the relevant transaction" respectively) ceases to be a member of the same group as the seller—

(a) before the end of the period of 3 years beginning with the effective date of the transaction, or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.
This paragraph applies where, at the time the relevant partner ceases to be a member of the same group as the seller (“the relevant time”), a chargeable interest is held by or on behalf of the members of the partnership and that chargeable interest—

(a) was acquired by or on behalf of the partnership under the relevant transaction, or

(b) is derived from a chargeable interest so acquired, and has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed.”.

(3) For paragraph 19(b), substitute—

“(b) what is held at the relevant time by or on behalf of the partnership and to the proportion in which the relevant partner is entitled at the relevant time to share in the income profits of the partnership.”.

(4) In paragraphs 20 to 42, for “the buyer” (wherever appearing) substitute “the relevant partner”.

This paragraph applies where in calculating the sum of the lower proportions in relation to a transaction (in accordance with paragraph 14)—

(a) a company (“the connected company”) would have been a corresponding partner of a relevant owner (“the original owner”) but for the fact that paragraph 16 includes connected persons only if they are individuals, and

(b) the connected company and the original owner are members of the same group.

The charge in respect of the transaction is to be reduced to the amount that would have been payable had the connected company been a corresponding partner of the original owner for the purposes of calculating the sum of the lower proportions.

The provisions of schedule 10 apply to the relief under sub-paragraph (2) as to group relief under paragraph 2 of that schedule, but—

(a) with the omission of paragraph 5(a),

(b) with the substitution for paragraphs 14 and 15 of—

This paragraph applies where a partner (“the relevant partner”) who was, at the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”), a partner and a member of the same group as the transferor, ceases to be a member of the same group as the seller—

(a) before the end of the period of 3 years beginning with the effective date of the transaction, or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

This paragraph applies where, at the time the relevant partner ceases to be a member of the same group as the seller (“the relevant time”), a chargeable interest is held by or on behalf of the members of the partnership and that chargeable interest—

(a) was acquired by or on behalf of the partnership under the relevant transaction, or
(b) is derived from a chargeable interest so acquired,
and has not subsequently been acquired at market value under a chargeable
transaction for which group relief was available but was not claimed.”,

(c) with the other modifications specified in paragraph 37(3) and (4).

5  **Application of charities relief**

39  (1) Schedule 13 (charities relief) applies to the transfer of interest in a partnership that is a
chargeable transaction by virtue of paragraph 17 or 31 with these modifications.

(2) In paragraph 1, for “A land transaction is exempt from charge if the buyer is a charity”
substitute “A transfer of an interest in a partnership that is a chargeable transaction by
virtue of paragraph 17 or 31 of schedule 17 is exempt from charge if the transferee is a
charity”.

(3) For paragraph 2(a), substitute—

“(a) that every chargeable interest held as partnership property immediately
after the transfer must be held for qualifying charitable purposes.”.

(4) In paragraph 2(b), for “the buyer” substitute “the transferee”.

(5) In paragraph 3, for “the buyer” (wherever it occurs) substitute “the transferee”.

(6) For paragraph 4(b) substitute—

“(b) at the time of the disqualifying event the partnership property includes a
chargeable interest—

(i) that was held as partnership property immediately after the
relevant transaction, or

(ii) that is derived from an interest held as partnership property at that
time.”.

(7) In paragraph 5(a), for “the buyer” substitute “the transferee”.

(8) For paragraph 5(b) substitute—

“(b) any chargeable interest held as partnership property immediately after the
relevant transaction, or any interest or right derived from it, being
used or held otherwise than for qualifying charitable purposes.”.

(9) For paragraph 10 substitute—

“10 An “appropriate proportion” means an appropriate proportion having regard to—

(a) the chargeable interests held as partnership property immediately after
the relevant transaction and the chargeable interests held as partnership
property at the time of the disqualifying event, and

(b) the extent to which any chargeable interest held as partnership property
at that time becomes used or held for purposes other than qualifying
charitable purposes.”.

(10) After paragraph 16 insert—
“17 There is a transfer of an interest in a partnership for the purposes of this schedule if there is such a transfer for the purposes of Part 3 of schedule 17 (see paragraph 47 of that schedule).

18 Paragraph 42 of schedule 17 (meaning of references to partnership property) applies for the purposes of this schedule as it applies for the purposes of that schedule.”.

Notification of transfers of partnership interests

40 (1) A transaction which is a chargeable transaction by virtue of paragraph 17 or 31 (transfer of partnership interest) is a notifiable transaction if (but only if) the consideration for the transaction exceeds the nil rate band.

(2) The consideration for a transaction exceeds the nil rate band if—

(a) the chargeable consideration, or

(b) where the transaction is one of a number of linked transactions, the total of the chargeable consideration for all the linked transactions,

exceeds the nil rate band applicable to the transaction.

PART 8

INTERPRETATION

Introduction

41 This Part of this schedule defines expressions used in this schedule.

Partnership property

42 Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business.

Partnership share

43 Any reference to a person’s partnership share at any time is to the proportion in which the person is entitled at that time to share in the income profits of the partnership.

Transfer of chargeable interest

44 References to the transfer of a chargeable interest include—

(a) the creation of a chargeable interest,

(b) the renunciation or release of a chargeable interest, and

(c) the variation of a chargeable interest.

Transfer of chargeable interest to a partnership

45 For the purposes of this schedule, there is a transfer of a chargeable interest to a partnership in any case where a chargeable interest becomes partnership property.
Transfer of chargeable interest from a partnership

46 For the purposes of this schedule, there is a transfer of a chargeable interest from a partnership in any case where—

(a) a chargeable interest that was partnership property ceases to be partnership property, or

(b) a chargeable interest is created out of partnership property and the interest is not partnership property.

Transfer of interest in a partnership

47 For the purposes of this schedule, where a person acquires or increases a partnership share there is a transfer of an interest in the partnership (to that partner and from the other partners).

Connected persons

48 In the application of section 1122 of the Corporation Tax Act 2010 (connected persons) for the purposes of this schedule—

(a) that section has effect with the omission of subsection (7) (partners connected with each other), and

(b) for the purposes of paragraph 12 or 22, that section has effect with the omission of subsection (6)(c) to (e) (trustee connected with settlement).

Arrangements

49 “Arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

SCHEDULE 18
(introduced by section 50)

TRUSTS

PART 1

OVERVIEW

Overview

1 (1) This schedule makes provision about the application of this Act in relation to trusts.

(2) It is arranged as follows—

Part 2 makes provision for the application of this Act to trusts generally,

Part 3 makes provision for the treatment of certain transactions involving bare trusts,

Part 4 makes provision for the treatment of certain transactions involving settlements,
Part 5 makes provision for the liability of trustees of a settlement to pay the tax and make returns and declarations.

Part 6 defines expressions used in this schedule.

**PART 2**

**TREATMENT OF TRUSTS AND BENEFICIARIES GENERALLY**

*Interests of beneficiaries under certain trusts*

2 Paragraphs 3 and 4 apply where property is held in trust—

(a) under the law of Scotland, or

(b) under the law of a country or territory outwith the United Kingdom,

on terms such that, if the trust had effect under the law of England and Wales, a beneficiary would be regarded as having an equitable interest in the trust property.

3 The beneficiary is to be treated for the purpose of this Act as having a beneficial interest in the trust property despite the fact that no such interest is recognised by the law of Scotland or of the country or territory outwith the United Kingdom.

4 An acquisition of the interest of a beneficiary under the trust is to be treated as involving the acquisition of an interest in the trust property.

**PART 3**

**TRANSACTIONS INVOLVING BARE TRUSTS**

*Acquisition of chargeable interest by bare trustee*

5 Where a person (T) acquires a chargeable interest or an interest in a partnership as bare trustee, this Act applies as if the interest were vested in, and the acts of T in relation to it were the acts of the person or persons for whom T is trustee.

6 Paragraph 5 does not apply in relation to the grant of a lease.

*Grant of lease to bare trustee*

7 Where a lease is granted to a person as bare trustee, the person is to be treated for the purposes of this Act, as it applies in relation to the grant of a lease, as buyer of the whole of the interest acquired.

*Grant of lease by bare trustee*

8 Where a person, as bare trustee, grants a lease, the person is to be treated for the purposes of this Act, as it applies in relation to the grant of a lease, as seller of the whole of the interest disposed of.
PART 4

TRANSACTIONS INVOLVING SETTLEMENTS

Acquisition by trustees of settlements

Where persons, as trustees of a settlement, acquire a chargeable interest or an interest in a partnership, they are to be treated for the purposes of this Act, as it applies to that acquisition, as buyers of the whole of the interest acquired (including the beneficial interest).

Consideration for exercise of power of appointment or discretion

Paragraph 11 applies where a chargeable interest is acquired by virtue of—

(a) the exercise of a power of appointment, or
(b) the exercise of a discretion vested in trustees of a settlement.

Any consideration given for the person in whose favour the appointment was made or the discretion was exercised becoming an object of the power or discretion is to be treated for the purpose of this Act as the consideration for the acquisition of the interest.

Reallocation of trust property as between beneficiaries

Paragraph 13 applies where—

(a) the trustees of a settlement reallocate trust property in such a way that a beneficiary acquires an interest in certain trust property and ceases to have an interest in other trust property, and
(b) the beneficiary consents to ceasing to have an interest in that other property.

The fact that the beneficiary gives consent does not mean that there is chargeable consideration for the acquisition.

PART 5

SETTLEMENTS: PAYMENT OF TAX AND RETURNS

Liability to pay the tax

Where the trustees of a settlement are liable to pay the tax, the payment may be recovered (but only once) from any one or more of the responsible trustees.

Liability to make returns

A return in relation to a land transaction may be made by any one or more of the responsible trustees in relation to the transaction (the “relevant trustees”).

Duty to make declaration

The declaration required by section 36(1) or (2)(a) must be made by all the relevant trustees.
Responsible trustees

17 The responsible trustees, in relation to a land transaction, are—

(a) the persons who are trustees at the effective date of the transaction, and

(b) any person who subsequently becomes a trustee.

**PART 6**

**INTERPRETATION**

**Meaning of “bare trust”**

18 In this schedule, a “bare trust”—

(a) is a trust under which the property is held by a person as trustee—

(i) for a person who is absolutely entitled as against the trustee, or who would be so entitled but for being under a legal disability by reason of non-age or under another disability, or

(ii) for two or more persons who are or would be jointly so entitled, and

(b) includes a case in which a person holds property as a nominee for another.

**Meaning of “absolutely entitled”**

19 The references in paragraph 18 to a person being absolutely entitled to property as against the trustee are references to a case where the person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustee—

(a) to resort to the property for payment of duty, taxes, costs or other outgoings, or

(b) to direct how the property is to be dealt with.

**Meaning of “settlement”**

20 In this schedule, “settlement” means a trust that is not a bare trust.
SCHEDULE 19
(introduced by section 65)

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Land and Buildings Transaction Tax (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the taxation of land transactions.

Introduced by: John Swinney
On: 29 November 2012
Bill type: Government Bill
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) BILL

EXPLANATORY NOTES
(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Land and Buildings Transaction Tax (Scotland) Bill introduced in the Scottish Parliament on 29 November 2012:
   - Explanatory Notes;
   - a Financial Memorandum;
   - a Scottish Government Statement on legislative competence; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 19–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

4. The Land and Buildings Transaction Tax (Scotland) Bill is the first of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012 (c.11) (“the 2012 Act”) which received Royal Assent on 1 May 2012. Under the terms of the 2012 Act, the Scottish Parliament will have responsibility for taxes on land transactions and disposals to landfill. The Bill deals with the former responsibility and makes provision for a tax on land transactions in Scotland, to be called the Land and Buildings Transaction Tax (“LBTT”). LBTT is based on UK Stamp Duty Land Tax (“SDLT”) as enacted in Part 4 of the Finance Act 2003 (c.14). The provisions of the 2012 Act disapplying the existing SDLT regime in Scotland will be brought into force by a Treasury order in the UK Parliament. The intention is that the provisions introducing LBTT will come into force in April 2015, the day after SDLT is disappplied.

5. Discussion and debate on the provisions of this Bill began with the publication of a consultation document, Taking forward a Land and Buildings Transaction Tax, on 7 June 2012. The consultation document included 17 questions, as follows:

- Questions 1-8 covered the proposed structure and scope of the tax including the move from a ‘slab’ system to a progressive tax; future amendments to support key Scottish Government policies; exemptions and reliefs; and the treatment of both residential and non-residential leases.
- Questions 9-13 related to anti-avoidance measures; and proposals for online returns and linking payment of tax with registration.
- Question 14 sought views on the treatment of partnerships and trusts.
- Questions 15 and 16 covered business and regulatory and equalities draft impact assessments.
- Question 17 sought any other views.

6. The consultation document was published to enable a wide range of people and representative bodies with an interest in and experience of tax matters to comment. A total of 56 responses was received from individuals and organisations. Copies of the non-confidential responses can be accessed through the Scottish Government’s Library (0131 244 4565) or website. ODS Consulting

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1 Link to consultation paper: [http://www.scotland.gov.uk/Publications/2012/06/1301](http://www.scotland.gov.uk/Publications/2012/06/1301)

2 Link to non-confidential consultation responses: [http://www.scotland.gov.uk/Publications/2012/10/1031/0](http://www.scotland.gov.uk/Publications/2012/10/1031/0)
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

was appointed by the Scottish Government to undertake an analysis of the responses received to the consultation and their report has been published on the Scottish Government’s website.3

7. The Bill is intended to inter-operate with a Tax Management Bill to be introduced to the Scottish Parliament in 2013, providing for special powers of the Tax Authority, appeals and other matters of common relevance to devolved taxes. The Scottish Government intends to publish a consultation document on Tax Management matters in mid-December 2012.

THE BILL

Overview

8. The Bill comprises 70 sections and 19 schedules and is divided into 7 Parts as follows:

- Part 1 establishes the LBTT,
- Part 2 makes provision for the key concepts underlying the tax including:
  - which transactions are land transactions,
  - which interests are, and which are not, chargeable interests in land,
  - when a chargeable interest is acquired and the treatment of transactions involving contracts which require to be completed by conveyance as well as other kinds of transaction,
  - which land transactions are, and which are not, chargeable transactions,
  - what is, and what is not, chargeable consideration in relation to a chargeable transaction,
- Part 3 makes provision for:
  - the amount of tax payable,
  - relief from the tax, and
  - who is liable to pay the tax,
- Part 4 provides for land transaction returns and for the payment of the tax,
- Part 5 contains provision about the application of the Bill in relation to certain types of buyer, including companies, partnerships and trusts,
- Part 6 contains general provision, including provisions on the Tax Authority and definitions of expressions used in the Bill,
- Part 7 contains provisions on subordinate legislation powers and commencement as well as other final provisions.

9. LBTT is a tax on land transactions. A “land transaction” is the acquisition of a chargeable interest (i.e. an interest, right or power in or over land which is not exempt). If a transaction is notifiable (i.e. it is not an exempt transaction and the consideration is above certain thresholds), then a land transaction return must be made, together with payment of any tax due, to the Tax Authority. The amount of tax due is calculated on a progressive basis by reference to the consideration paid but this is subject to special rules for certain cases and the availability of reliefs for certain transactions.

3 Link to analysis report on consultation responses: [http://www.scotland.gov.uk/Publications/2012/10/8469](http://www.scotland.gov.uk/Publications/2012/10/8469)
10. The operation of LBTT is described in the flow-chart diagram and the example below.

**Operation of LBTT**

Transaction

- Is there a land transaction? i.e. an acquisition (s.6) of a chargeable interest (s.4)?
  - NO
  - YES

- Is the transaction an exempt transaction (s.16)?
  - YES
  - NO

- Is the transaction notifiable (s.30)?
  - NO
  - YES

- Is the transaction exempt from charge by virtue of relief (s.27)?
  - NO
  - YES

- Complete land transaction return (s.35) and declaration (s.36).

- Submit return (s.29).

Calculate tax (Part 3) on the chargeable transaction (s.15) based on the chargeable consideration (s.17).

Complete land transaction return and self-assessment (s.35) & declaration (s.36).

Submit return (s.29).

Pay tax (if any) (s.40).
Example: Operation of LBTT in relation to a simple house purchase

Justin and Brenda are buying a house from Stacey for £205,000, of which £5,000 is apportioned to moveables such as curtains.

The house purchase is a land transaction (section 3) because it is the acquisition (section 6) of a chargeable interest (section 4), that is to say an interest in land in Scotland that is not an exempt interest (section 5).

Justin and Brenda are the buyers (section 7), Stacey is the seller (section 7). The subject-matter (section 60) of the transaction is the house and any heritable rights included such as rights of way or the right to enforce neighbours’ title conditions (but the moveables are not part of the subject-matter of the transaction). The missives of sale are the contract (section 64) and the disposition by Stacey in favour of Justin and Brenda is the conveyance (section 64). The point at which Justin and Brenda pay the purchase price and receive their keys and the signed disposition is the point of settlement, known as completion (section 63), which fixes the tax point, known as the effective date (section 62).

The house purchase is a chargeable transaction (section 15) because it is not an exempt transaction (schedule 1) or otherwise exempt from charge. The chargeable consideration (schedule 2) is the money given for the subject-matter of the transaction i.e. £200,000 for the land, discounting £5,000 for the moveables.

The transaction is a residential property transaction which will have relevance to the amount of tax chargeable (section 24). It is unlikely that Justin and Brenda can claim any relief (section 27 and schedules 3 to 18).

Justin and Brenda, the buyers, are liable to pay LBTT (section 28). As joint buyers they have joint and several liability (section 48).

The transaction is a notifiable transaction (section 30) because the transaction is not an exempt transaction and the chargeable consideration is over £40,000. Accordingly, Justin and Brenda, the buyers, must make a land transaction return (section 29) to the Tax Authority (section 52) (or to Registers of Scotland if the function of processing returns has been delegated to them (section 53)). The land transaction return must include (i) a self-assessment of the tax chargeable and (ii) a declaration by Justin and Brenda or their solicitor (section 36). As joint buyers, Justin and Brenda have joint responsibility for the return and must both make the required declaration.

Justin and Brenda must make the return within 30 days of the effective date. They may amend the return (for example to correct an error) in the period of 12 months following the deadline for making the return (section 37).

Assuming that the tax bands and rates are such that LBTT is payable on chargeable consideration of £200,000, tax must be paid to the Tax Authority (or Registers of Scotland if the function of processing payments is delegated to them) at the same time
as the land transaction return is made. Tax is treated as paid if arrangements satisfactory to the Tax Authority are made for payment of tax (section 40).

In order for Justin and Brenda to get ownership of the house, the conveyance (disposition) in their favour must be registered in the Land Register. However, Registers of Scotland will only accept an application for registration if the land transaction return has been made and the self-assessed LBTT has been paid (or is treated as paid) (section 43).

PART 1 – LAND AND BUILDINGS TRANSACTION TAX

11. Part 1 establishes LBTT.

Section 1 – The tax

12. Section 1 introduces LBTT as the replacement for SDLT in Scotland. LBTT is a tax which is charged on land transactions. It clarifies that LBTT will apply irrespective of how a transaction is documented (if at all) and whether the transaction is concluded in Scotland or elsewhere.

13. Defined terms used in this section:
   “land transaction” section 3
   “Tax Authority” section 52

Section 2 – Overview

14. Section 2 provides an overview of the Bill (see paragraph 10 above).

PART 2 – KEY CONCEPTS

15. Part 2 makes provision for the key concepts underlying the tax including:
   • which transactions are land transactions,
   • which interests are, and which are not, chargeable interests in land,
   • when a chargeable interest is acquired and the treatment of transactions involving contracts which require to be completed by conveyance as well as other kinds of transaction,
   • which land transactions are, and which are not, chargeable transactions,
   • what is, and what is not, chargeable consideration in relation to a chargeable transaction.
CHAPTER 1 OF PART 2 – LAND TRANSACTIONS AND CHARGEABLE INTERESTS

Land transaction

Section 3 – Land transaction

16. Section 3 defines “land transaction”. If a transaction or other thing involves something other than the acquisition of a chargeable interest then it is not a land transaction and falls outwith the scope of LBTT.

17. Defined terms used in this section:

“acquisition” section 6
“chargeable interest” section 4

Chargeable interest

Section 4 – Chargeable interest

18. Section 4 defines “chargeable interest”, the acquisition of which constitutes a land transaction under section 3. A chargeable interest is any interest, right or power in or over land in Scotland or the benefit of any obligation, restriction or condition affecting the value of such an interest, right or power. In simple terms, a chargeable interest is an interest in land, so an interest in moveable property such as kitchen “white goods” or furniture falls outside the scope of LBTT. The definition is very broad and captures more than the real rights in land known to Scots law; accordingly options in land, licences to occupy land and statutory rights such as community interests in land are chargeable interests. In some cases, certain interests are treated as being interests in land for the purposes of LBTT (see, for example, Part 6 of schedule 17 (property investment partnerships)).

19. Chargeable interests do not include exempt interests (see section 5). Subsection (3) reflects that under Part 4A of the Scotland Act 1998 (c.46) (as inserted by section 28 of the 2012 Act), a tax on interests in land in Scotland may not be imposed on so much of a transaction as relates to land below mean low water mark - therefore interests in the seabed fall outside the scope of LBTT.

Section 5 – Exempt interest

20. Pursuant to section 4(1), exempt interests are not chargeable interests. Section 5 defines “exempt interest” as a security interest, such as a standard security. In addition, certain interests are exempt if they have been acquired by financial institutions under alternative property finance arrangements (see schedule 7, paragraphs 21 to 24).

21. Power is conferred on the Scottish Ministers to vary by regulations the interests in land that are exempt interests. Such regulations will be subject to the affirmative procedure (see section 67).
Section 6 – Acquisition and disposal of chargeable interest

22. Section 6 defines “acquisition” and “disposal”. The section analyses various categories of land transactions in terms of disposals by one party and acquisitions by the other. The creation, renunciation, release or variation of a chargeable interest constitutes an acquisition by one person and a disposal by another.

23. In many cases an acquisition will be where an existing interest is transferred, for example title to a shop is sold and the buyer acquires the property. In other cases acquisition is when a new interest is created, for example a lease of a shop is granted and the tenant acquires the lease. Acquisition also includes where an interest is renounced or released, for example the lease of a shop is surrendered and the owner ceases to be subject to the terms of the lease and acquires free possession.

24. “Disposal” is construed in accordance with the meaning of acquisition. So in the examples given immediately above: the seller of the shop disposes of it when selling it to the buyer; the owner of the shop disposes of the lease in the shop when granting it; and, in the final example, the tenant disposes of the lease when surrendering it.

25. Subsection (4) clarifies that LBTT applies irrespective of how the acquisition is effected, and thus includes transactions arising from a court order or by operation of law, for example transfer by virtue of statute.

Section 7 – Buyer and seller

26. Section 7 defines “buyer” and “seller”. The “buyer” is the person acquiring the subject-matter of the transaction, and “seller” is the person disposing of the subject-matter of the transaction. But a person is not a buyer if they are not a party to or have not provided consideration for the transaction.

27. Defined terms used in this section:
   “subject-matter” section 60

CHAPTER 2 OF PART 2 – PROVISION ABOUT PARTICULAR TRANSACTIONS

General rules for contracts requiring conveyance

Section 8 – Contract and conveyance

28. Sections 8 and 9 establish the general rule that where a contract is to be completed by a conveyance it is the conveyance that represents the land transaction. This rule will apply in the majority of cases and ensures that a transaction is only charged to LBTT once. In a standard house purchase, the missives of sale are the contract and the disposition is the conveyance.

29. Special rules are provided for in sections 9 to 13.

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4 The terms used for SDLT are “purchaser” and “vendor”, reflecting English conveyancing practice.
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

30. Defined terms used in this section:

“completion” section 63
“contract” section 64
“conveyance” section 64

Section 9 – Completion without substantial performance

31. Section 9 provides for the usual case where a contract is completed by a conveyance without having previously been “substantially performed”. The contract and conveyance comprise a single land transaction. In this case, the “effective date” would be the date of completion (i.e. in a normal house purchase, the date of settlement).

32. Defined terms used in this section:

“completion” section 63
“contract” section 64
“effective date” section 62
“substantial performance” section 14

Section 10 – Substantial performance without completion

33. Modifying the general rule in sections 8 and 9, section 10 provides that if a transaction is substantially performed before it is formally completed (or if it is substantially performed but never completed), then the contract and any subsequent completion are treated as two separate land transactions. In this case, the effective date of the contract for the purposes of LBTT would be the date of substantial performance.

34. The rationale for this provision is to remove any tax benefit in a buyer resting on his or her contract and having the effective enjoyment of the interest despite not proceeding to formal completion.

35. Defined terms used in this section:

“completion” section 63
“contract” section 64
“effective date” section 62
“land transaction return” section 64
“substantial performance” section 14

Contract providing for conveyance to third party

Section 11 – Contract providing for conveyance to third party

36. Section 11 makes special provision for where a contract is entered into whereby one party to the contract (B) has the right to direct a conveyance to him/herself or to a third party (C). An example is a development agreement where the developer has the right to enter on the land and build on it and then direct the conveyance of the completed plots. Such a contract is charged to LBTT when it is substantially performed (in the same way as a contract which is to be completed by
a conveyance to B). Section 11 also ensures that it is the consideration that is given or is to be given by B that is charged to LBTT once substantial performance occurs.

37. Where B directs the original seller (A) to convey a plot to C, subsections (9) and (10) apply sections 8 to 10 to the contract between B and C and to the conveyance from A to C. The result is that C is liable to pay LBTT on the consideration paid to B, either on completion or on substantial performance by C.

Example: Contract providing for conveyance to third party

Parties A and B agree in a contract that A will provide land for B to build new homes. A and B agree that A will transfer the homes to buyers found by B. B agrees to pay A £1.5 million with an initial deposit of £150,000. The effective date will be the day that B takes possession of the land and starts building the homes. At that point, LBTT is due to be paid by B on the agreed consideration of £1.5 million. Once the homes are built, A transfers ownership of each one to the buyers, each of whom will pay LBTT at the appropriate rates.

38. Defined terms used in this section:

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<thead>
<tr>
<th>Term</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>“chargeable interest”</td>
<td>4</td>
</tr>
<tr>
<td>“contract”</td>
<td>64</td>
</tr>
<tr>
<td>“conveyance”</td>
<td>64</td>
</tr>
<tr>
<td>“effective date”</td>
<td>62</td>
</tr>
<tr>
<td>“land transaction”</td>
<td>3</td>
</tr>
<tr>
<td>“substantial performance”</td>
<td>14</td>
</tr>
</tbody>
</table>

39. The usual meaning of “completion” in section 63 is modified in subsection (10).

Options etc

Section 12 – Options and rights of pre-emption

40. Section 12 deals with the treatment of options and rights of pre-emption (i.e. rights of first refusal). Where such an option or right is acquired, there is a land transaction chargeable (potentially) to LBTT. Where such an option or right is exercised, the transaction that arises as a consequence is a distinct transaction (although the two transactions may be linked) and chargeable to LBTT in its own right. Options fall within subsection (1)(a) even if the grantor can discharge his or her obligation either by entering into a land transaction or in some other way (e.g. payment of money). The effective date in relation to options and rights of pre-emption is when they are acquired, not when they become exercisable. If an option or right of pre-emption is chargeable as a land transaction in its own right, or because it is part of a wider transaction, then it is dealt with as such, rather than dealt with under this section.

41. Defined terms used in this section:

<table>
<thead>
<tr>
<th>Term</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>“acquisition”</td>
<td>6</td>
</tr>
<tr>
<td>“effective date”</td>
<td>62</td>
</tr>
</tbody>
</table>
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

<table>
<thead>
<tr>
<th>“land transaction”</th>
<th>section 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>“linked transaction”</td>
<td>section 56</td>
</tr>
</tbody>
</table>

**Example: Options and rights of pre-emption**

On 1 January 2016, Mrs Macdonald is granted an option by Mr Brown to buy his house on or before 31 December 2016. Mrs Macdonald paid Mr Brown for the grant of the option.

The acquisition of the option by Mrs Macdonald is a land transaction in its own right. Mrs Macdonald may have to make a land transaction return to the Tax Authority in relation to the option depending on what she paid for it and may be liable for LBTT.

Mrs Macdonald subsequently exercises the option on 1 December 2016.

The exercise of the option by Mrs Macdonald constitutes a separate land transaction from the grant of the option. The effective date of that land transaction is the date of completion of the sale of the house to Mrs Macdonald or, if earlier, the date of substantial performance.

Mrs Macdonald must make a land transaction return in relation to the purchase of the house to the Tax Authority.

A return or further return is also required in respect of the option, which is linked to the purchase since the buyer and the seller in relation to both the option and the purchase are the same (see sections 34 and 56).

The final LBTT payable by Mrs Macdonald in respect of both the grant of the option and the purchase of the house will be determined by the total consideration given by her for both the grant of the option and the purchase of the house. See section 26 for how the tax is calculated and attributed between the option and the purchase.

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**Exchanges**

**Section 13 – Exchanges**

42. Section 13 provides that, where parties enter into transactions that involve an exchange of land, they are treated as if they had entered into two separate land transactions which are not linked. Exchanges are often known as “excambions” in Scotland.

43. Defined terms used in this section:
   
   | “buyer” | section 7 |
   | “linked transaction” | section 56 |
Interpretation

Section 14 – Meaning of substantial performance

44. Section 14 defines “substantial performance”. This is where either the buyer takes possession of the whole or substantially the whole of the subject-matter of the transaction, or where “a substantial amount of the consideration” is paid or provided or where there is an assignation, subsale or other transaction where a third party takes possession of the whole or substantially the whole of the subject-matter of the transaction. Whichever event happens first will trigger the charge to tax even though the contract has not been completed by, say, a conveyance.

45. One of the ways in which a buyer can take possession is if he or she receives or is entitled to receive rent in respect of the property. A buyer is treated as taking possession whether or not the right to possession is documented in the contract or by a licence.

46. Subsection (3) sets out when a substantial amount of the consideration is paid or provided:
   - if none of the consideration is rent, it is when the whole or substantially the whole of the consideration passes,
   - if the only consideration is rent, it is when the first payment of rent is made,
   - if the consideration is partly rent and partly other consideration, it is when the whole or substantially the whole of the consideration passes, or when the first payment of rent is made.

47. Defined terms used in this section:
   - “buyer” section 7
   - “connected persons” section 57
   - “subject-matter” section 60

CHAPTER 3 OF PART 2 – CHARGEABLE TRANSACTIONS AND CHARGEABLE CONSIDERATION

Chargeable transaction

Section 15 – Chargeable transaction

48. Section 15 defines “chargeable transaction”. Chargeable transactions will give rise to a charge to LBTT although they might not if, for example, they fall within the nil rate tax band referred to in section 24.

49. Where a transaction is not exempt but section 27 (and a schedule referred to in it) provides for a 100% relief from the tax, the Bill uses the words “exempt from charge” to make clear that no tax is payable. (The difference between a relief and an exemption is that a relief will have to be claimed in a land transaction return (see section 29).)

50. Defined terms used in this section:
   - “land transaction” section 3
Section 16 – Exempt transaction

51. Section 16 defines “exempt transaction” by reference to schedule 1. Paragraphs 158 to 163 below comment on that schedule. Where a transaction is an exempt transaction, no tax will be payable and the transaction will not be notifiable (see section 30).

52. As mentioned above, if a transaction falls outside the scope of LBTT (for example a transaction involves only moveable property) then it is not liable to charge or to notification.

Chargeable consideration

Section 17 – Chargeable consideration

53. Section 17 defines “chargeable consideration” by reference to schedule 2. Paragraphs 164 to 181 below comment on that schedule. Chargeable consideration is used to calculate the amount of tax due (see sections 25 and 26).

54. Subsection (2) confers a power on the Scottish Ministers to amend by regulations the definition of chargeable consideration with respect to what is to count as chargeable consideration and as to how chargeable consideration should be calculated in specific cases. Such regulations will be subject to the affirmative procedure if they amend the Bill itself. Otherwise, they will be subject to the negative procedure (see section 67).

Section 18 – Contingent consideration

55. Section 18 provides that where the whole or part of the chargeable consideration for a transaction is contingent, the amount of consideration should be calculated on the assumption that the amount relating to the contingency will be payable, whether or not the occurrence of the contingency means that the amount will be payable or cease to be payable. So where a contingency affects the eventual amount of consideration, buyers must calculate the consideration on the basis that the amount relating to the contingency will be payable. “Contingent” is defined in subsection (3).

Section 19 – Uncertain or unascertained consideration

56. Section 19 provides that where the whole or part of the chargeable consideration for a transaction is uncertain or unascertained, the amount of consideration should be calculated on the basis of a reasonable estimate of the outcome. So where the consideration is uncertain or has not yet been ascertained – for example, where it is based on profits in accounts which have not yet been drawn up – buyers must make a reasonable estimate of the final consideration as at the effective date of the transaction.
Section 20 – Contingent, uncertain or unascertained consideration: further provision

57. Section 20 clarifies that sections 18 and 19 on contingent, uncertain or unascertained consideration are to be read with sections:
   - 31 (return where contingency ceases or consideration ascertained),
   - 32 (contingency ceases or consideration ascertained: less tax payable), and
   - 41 (application to defer payment in case of contingent or uncertain consideration).

58. See paragraphs 87 to 90, 108 and 109 below for explanations of those sections.

Annuities etc.

Section 21 – Annuities etc.: chargeable consideration limited to 12 years’ payments

59. Section 21 determines how LBTT will apply where the chargeable consideration is in the form of an annuity. Where an annuity is paid as consideration for a land transaction, the chargeable consideration will be taken to be a one-off payment comprising twelve year’s payments. Where the payments vary, the twelve highest payments will be taken into account. LBTT will accordingly be payable as a single payment.

60. Subsection (9) clarifies that there is no provision for LBTT payments to be deferred, or for an adjustment of the amount of tax paid if, at a later date, an actual payment differs from a reasonable estimate, say, of the payment made when the tax was assessed.

Deemed market value

Section 22 – Deemed market value where transaction involves connected company

61. LBTT is generally calculated by reference to actual and not deemed market values. However, section 22 provides that LBTT will be charged on the full market value of any land purchased by a company with which the seller is “connected” (within the meaning of UK Corporation Tax law) if the consideration involves the issue or transfer of certain shares. For example, if land is purchased by a company from another company which is connected with the buyer in consideration for the issue of securities whose value is less than that of the land, then the section ensures that LBTT is charged on the market value of the land.

62. A special definition of “company” applies for the purposes of this section (the definition is wider than the general definition of “company” in section 64).

63. The general rule that transactions with zero chargeable consideration are exempt does not apply to transactions falling within this section. Otherwise, this section does not affect situations where specific exemptions or reliefs apply. It is also subject to the exceptions provided for in section 23.

64. Defined terms used in this section:
   - “connected persons” section 57
Section 23 – Exceptions from deemed market value

65. Section 23 provides three exceptions from the connected company rules in section 22 for transfers to independent corporate trustees and distributions of land, including distributions on liquidation, to corporate shareholders, other than in specific circumstances. Where the exceptions apply, the charge to LBTT will only apply to any chargeable consideration paid for the transaction.

PART 3 – CALCULATION OF TAX AND RELIEFS

66. Part 3 makes provision for—
   • the amount of tax payable,
   • relief from the tax, and
   • who is liable to pay the tax.

Amount of tax chargeable

Section 24 – Tax rates and tax bands

67. The Bill does not set out the bands and rates for LBTT. These must be specified by the Scottish Ministers by order under section 24. Ministers must specify a nil rate tax band and at least two other tax bands. To ensure that the tax is a progressive one, the percentage tax rate for each tax band must be higher than for the band below it. There must be tax bands and rates for both residential and non-residential property transactions.

68. The first order under this section will be subject to the affirmative procedure. Subsequent orders will be subject to the negative procedure (see section 67).

69. Defined terms used in this section:
   “linked transaction” section 56
   “residential property” section 58

Section 25 – Amount of tax chargeable

70. This section sets out how to calculate the tax due in relation to a single transaction that is not a linked transaction.

71. Under the “slab” system of SDLT, tax is charged at the applicable rate on the whole consideration for the transaction. For example, if a house is sold for £240,000 the SDLT due is 1% of the whole amount while for a house costing £260,000, the SDLT due is 3% of the whole amount. By contrast, this section (read with section 24) provides for a “progressive system” that includes a nil rate band and at least two other bands. This structure will mean that only the proportion of the consideration above the threshold will be liable to the higher rate. LBTT is therefore to be calculated in a similar way to UK Income Tax.
72. The tax rates and bands which are applicable to the transaction will depend on whether it is a residential property transaction or a non-residential property transaction.

73. Defined terms used in this section:
   “chargeable consideration” section 17 and schedule 2
   “chargeable transaction” section 15

---

**Example: Amount of tax chargeable on a house bought for £260,000**

**Tax due under SDLT**

The rate of tax under SDLT for such a purchase is 3%. So the tax payable would be—

\[ £260,000 \times 3\% = £7,800 \]

**Tax due under LBTT using scenario 1**

Under scenario 1 outlined in paragraphs 287 to 289 of the Financial Memorandum, the applicable rates for the transaction would be:

<table>
<thead>
<tr>
<th>Band</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than £180,000</td>
<td>0%</td>
</tr>
<tr>
<td>Over £180,000 but not more than £1.5m</td>
<td>7.5%</td>
</tr>
<tr>
<td>Over £1.5m</td>
<td>10%</td>
</tr>
</tbody>
</table>

Applying the calculation in section 25(1), the amount of tax payable would be:

\[ (£180,000 \times 0\%) + (£80,000 \times 7.5\%) + (£0 \times 10\%) = £6,000 \]

**Tax due under LBTT using scenario 2**

Under scenario 2 outlined in paragraphs 290 and 291 of the Financial Memorandum, the applicable rates for the transaction would be—

<table>
<thead>
<tr>
<th>Band</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than £125,000</td>
<td>0%</td>
</tr>
<tr>
<td>Over £125,000 but not more than £250,000</td>
<td>2%</td>
</tr>
<tr>
<td>Over £250,000</td>
<td>9.5%</td>
</tr>
</tbody>
</table>

Applying the calculation in section 25(1), the amount of tax payable would be:

\[ (£125,000 \times 0\%) + (£125,000 \times 2\%) + (£10,000 \times 9.5\%) = £3,450 \]

---

**Section 26 – Amount of tax chargeable: linked transactions**

74. Section 26 applies instead of section 25 where a chargeable transaction is one of a number of linked transactions. The amount of tax due on the total consideration for all the linked transactions is calculated first and then that tax is apportioned to the transaction in question on the basis of the chargeable consideration for the transaction.

75. Defined terms used in this section:
   “linked transaction” section 56
Example: Amount of tax chargeable on a number of linked transactions

A developer agrees to buy three plots of land from a farmer and buys them in three separate transactions on the same day. The consideration given for each plot is:

<table>
<thead>
<tr>
<th>Plot</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>£100,000</td>
</tr>
<tr>
<td>B</td>
<td>£200,000</td>
</tr>
<tr>
<td>C</td>
<td>£300,000</td>
</tr>
</tbody>
</table>

Because the three transactions are linked, section 26 applies for the purposes of calculating the tax due in relation to each transaction.

Applying the calculation set out in section 26(1) to each transaction in turn gives the following results under the scenario for non-residential property transactions outlined in paragraphs 292 and 293 of the Financial Memorandum. The rates and bands under that scenario are:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than £150,000</td>
<td>0%</td>
</tr>
<tr>
<td>Over £150,000 but not more than £250,000</td>
<td>3%</td>
</tr>
<tr>
<td>Over £250,000</td>
<td>4.4%</td>
</tr>
</tbody>
</table>

**Plot A**

To calculate the tax on an individual linked transaction, the total tax chargeable on the total consideration for all the linked transactions must be calculated first. Following Steps 1 and 2, the total tax chargeable on £600,000 would be:

\[
(£150,000 \times 0\%) + (£100,000 \times 3\%) + (£350,000 \times 4.4\%) = £18,400
\]

The amount of tax payable in relation to Plot A would therefore be (following Steps 3 and 4)—

\[
£18,400 \times £100,000/£600,000 = £3,067
\]

**Plot B**

Using the total tax chargeable calculated in relation to Plot A, the amount of tax payable in relation to Plot B would be:

\[
£18,400 \times £200,000/£600,000 = £6,133
\]

**Plot C**

Again using the total tax chargeable calculated in relation to Plot A, the amount of tax payable in relation to Plot C would be:

\[
£18,400 \times £300,000/£600,000 = £9,200
\]

Note that, had the three plots been purchased in a single transaction, section 25 would have applied instead and the tax payable (on the same scenario) would have been £18,400, i.e. the same as the total tax payable in the example.
Reliefs

Section 27 – Reliefs

76. Section 27 introduces schedules 3 to 16 concerning reliefs, as described from paragraph 182 below. Reliefs do not apply automatically and must be claimed (see subsection (2)). Subsection (3) provides a power for the Scottish Ministers to add, modify or remove reliefs by order. Orders under this section are subject to the affirmative procedure (see section 67).

77. Defined terms used in this section:

“land transaction return” section 64

Liability for tax

Section 28 – Liability for tax

78. Section 28 provides that the buyer is liable to pay the LBTT due in respect of a chargeable transaction. Further provision about liability where there is more than one buyer can be found in sections 48 on joint buyers, paragraph 3 of schedule 17 on partnerships and paragraphs 4 to 17 of schedule 18 on trusts.

79. Defined terms used in this section:

“chargeable transaction” section 15

PART 4 – RETURNS AND PAYMENT

80. Part 4 provides for land transaction returns (Chapter 1) and for the payment of the tax (Chapter 2).

CHAPTER 1 OF PART 4 - RETURNS

Duty to make return

Section 29 – Duty to make return

81. Section 29 provides that, for every notifiable transaction, a completed land transaction return (tax return), including a self-assessment of liability to LBTT, must be made by the buyer to the Tax Authority within 30 days of the effective date of the transaction.

82. Defined terms used in this section:

“chargeable transaction” section 15
“effective date” section 62
“make a return” section 38
“notifiable transaction” section 30
“Tax Authority” section 52
Notifiable transactions

Section 30 – Notifiable transactions

83. Section 30 specifies which land transactions are notifiable. The general rule is that all transactions are notifiable unless excluded by subsection (1). If the transaction is the acquisition of ownership in land then it is notifiable unless it is an exempt transaction under schedule 1. This may include cases where no tax is payable. However, notification is not required where the consideration for the transaction falls below a threshold of £40,000. Transactions relating to leases are notifiable unless excluded by regulations made under section 55.

84. Transactions which do not involve the acquisition of a major interest in land are only notifiable if they are not exempt transactions and the consideration is above the nil rate band. In other words, where some tax is payable.

85. Subsection (5) confers a power on the Scottish Ministers to amend by order the notification threshold of £40,000 in subsection (1)(b). Such an order will be subject to the negative procedure (see section 67).

86. Defined terms used in this section:
   “chargeable consideration” section 17 and schedule 2
   “land transaction” section 3
   “linked transaction” section 56
   “major interest” section 58

Adjustments and further returns

Section 31 – Return where contingency ceases or consideration ascertained

87. Section 31 provides for the amount of LBTT payable to be adjusted in cases where LBTT was paid on the basis of the rules in sections 18 or 19 because the whole or part of the consideration for the transaction was contingent, uncertain, or unascertained at the outset. If more tax is payable, the section provides that a return must be made and the tax paid.

88. Defined terms used in this section:
   “make a return” section 38
   “Tax Authority” section 52

Section 32 – Contingency ceases or consideration ascertained: less tax payable

89. Section 32 is connected with section 31 and provides for a claim to repayment if tax has been overpaid.

90. Defined terms used in this section:
   “land transaction return” section 64
Section 33 – Further return where relief withdrawn

91. Section 33 applies where a relief is withdrawn under provisions in schedules 4, 5, 10 and 11 which withdraw reliefs in certain circumstances. The buyer must make a further return because the assessment of tax chargeable will have to change (generally, with more tax being payable).

92. Defined terms used in this section:
   “make a return” section 38

Section 34 – Return or further return in consequence of later linked transaction

93. Section 34 provides for a requirement to make a return, or a further return, where a transaction becomes notifiable, or tax or additional tax becomes payable, as a result of a later linked transaction. The buyer under the earlier transaction must deliver a return, or a further return, in respect of the earlier transaction, and pay any tax or additional tax due, within 30 days of the effective date of the later transaction.

94. Defined terms used in this section:
   “effective date” section 62
   “make a return” section 38
   “notifiable” section 30

Example: effect of later linked transaction

Using the example from section 12 where Mrs Macdonald is granted an option by Mr Brown to buy his house, say that Mrs Macdonald pays Mr Brown £150,000 for the option and, for the house, she pays £300,000.

Using scenario 1 outlined in paragraphs 287 to 289 of the Financial Memorandum, the LBTT due at the stage Mrs Macdonald acquires the option would be nil, as the consideration for the option falls below the nil rate tax band threshold (£180,000). And the transaction would not be notifiable under section 30, so no land transaction return would be required.

Mrs Macdonald subsequently exercises the option on 1 December 2016.

The exercise of the option by Mrs Macdonald constitutes a separate land transaction and she must make a land transaction return in relation to the purchase of the house to the Tax Authority.

A return is also then required in respect of the option, which is linked to the purchase since the buyer and the seller in relation to both the option and the purchase are the same (see section 56).

The LBTT payable by Mrs Macdonald will be determined by reference to the total consideration given by her for both the grant of the option and the purchase of the house.
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

(£450,000).

Taking scenario 1 as outlined in the Financial Memorandum, the tax due in relation to the option and the house purchase would be calculated as follows:

Applying the calculations in Steps 1 and 2 of section 26(1), the total tax chargeable for both transactions would be—

\[ (\£180,000 \times 0\%) + (\£270,000 \times 7.5\%) + (\£0 \times 10\%) = \£20,250 \]

The tax chargeable in relation to the option (applying Steps 3 and 4) would now be—

\[ \£20,250 \times \£150,000/\£450,000 = \£6,750 \]

And the tax chargeable in relation to the purchase would be—

\[ \£20,250 \times \£300,000/\£450,000 = \£13,500 \]

Returns: form and content etc.

Section 35 – Form and content

95. Section 35 provides for the form of returns and the information to be included within them to be specified administratively by the Tax Authority.

96. Defined terms used in this section:

“Tax Authority” section 52

Section 36 – Declaration

97. Section 36 provides that returns must include a declaration by the buyer. Special rules as to declarations by particular types of buyer are set out in section 48(3)(b) (joint buyers), paragraph 9 of schedule 17 (partners) and paragraph 16 of schedule 18 (trustees).

98. Subsection (2) makes provision to allow agents such as solicitors to make declarations (for example using an electronic submission system) on behalf of the buyer.

99. A declaration may be given by an attorney pursuant to a power of attorney or factory and commission, for example if a buyer is incapacitated or is outwith Scotland and unable to deal with his or her affairs. The position is the same where a representative appointed by a court acts for an incapacitated person (see paragraph 131 below).

100. Defined terms used in this section:

“effective date” section 62
Section 37 – Amendment

101. Section 37 allows buyers to amend their returns by notice to the Tax Authority within 12 months after the last day of the period within which the return must be made. This might be to correct typographic errors, to claim a relief that the buyer is eligible to claim but did not claim in the initial return or to claim a repayment where a contract which required a conveyance was substantially performed but then rescinded (see section 10(4) and (5)).

102. Defined terms used in this section:

- “land transaction” section 3
- “Tax Authority” section 52

Miscellaneous

Section 38 – Interpretation

103. Section 38 defines the meaning of references to “make a return”.

Section 39 – Power to amend period in which returns must be made

104. Section 39 confers a power on the Scottish Ministers to amend by order the 30 day period set out in various provisions within which returns must be made. Such an order will be subject to the negative procedure (see section 67).

CHAPTER 2 OF PART 4 –PAYMENT OF TAX

Section 40 – Payment of tax

105. Section 40 provides that LBTT is payable to the Tax Authority and deals with the due dates for payment of tax where a return is made or amended, or where tax is due following the withdrawal of a relief.

106. “Paid” does not necessarily mean that the Tax Authority has cleared funds in respect of the tax. The Authority may accept arrangements satisfactory for payment, such as a solicitor’s cheque or direct debit instruction. It is for the Authority to decide what will count as satisfactory.

107. Defined terms used in this section:

- “land transaction” section 3
- “land transaction return” section 64
- “Tax Authority” section 52

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5 Similar provisions exist in relation to the payment of land registration fees - see section 22(1)(e)(ii) of the Land Registration etc. (Scotland) Act 2012 (asp 5).
Section 41 – Application to defer payment in case of contingent or uncertain consideration

108. Section 41 provides that a buyer may make an application for LBTT to be deferred. The application may be made where the whole or part of the chargeable consideration for a transaction is contingent or uncertain and where some or all of the consideration may fall more than 6 months after the effective date of the transaction. Sections 18, 19, 31 and 32 contain provisions about contingent or uncertain consideration.

109. Defined terms used in this section:
   “chargeable consideration” section 17 and schedule 2
   “Tax Authority” section 52

Section 42 – Regulations about applications under section 41

110. Section 42 is linked to preceding section 41 and confers a power on the Scottish Ministers to make, by regulations, further provision about the circumstances under which an application may be made and the administrative framework to deal with the application procedure and the payments or repayments of LBTT which may result. Such regulations will be subject to the negative procedure (see section 67).

CHAPTER 3 OF PART 4 – REGISTRATION OF LAND TRANSACTIONS ETC.

Registration of land transactions etc.

Section 43 – Return to be made and tax paid before application for registration

111. Section 43 creates a link between land registration and payment of LBTT by providing that documents effecting or evidencing a land transaction may not be registered by, or otherwise reflected in an entry in a register under the management and control of, the Keeper of the Registers of Scotland unless a land transaction return has been made and any LBTT payable has been paid. This rule will have most relevance to standard conveyancing transactions where the buyer cannot obtain a real right in land until the disposition in the buyer’s favour has been registered in the Land Register. But the rule will also have relevance in relation to other registers under the management and control of the Keeper, for example the Books of Council and Session if a short non-residential lease is registered there voluntarily for preservation and execution.

112. If a document effecting or evidencing a notifiable transaction does not require to be registered and is not registered voluntarily then the link with registration does not apply.

113. Defined terms used in this section:
   “land transaction return” section 64
   “notifiable transaction” section 30
   “paid” section 40

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6 A “short” lease is a lease of under 20 years. “Long” commercial leases i.e. those over 20 years must be registered in the Land Register. New long residential leases are generally incompetent, subject to exceptions.
PART 5 – APPLICATION OF ACT TO CERTAIN PERSONS AND BODIES

114. Part 5 contains provision about the application of the Bill in relation to certain types of buyer, including companies, partnerships and trusts.

Section 44 – Companies and other organisations

115. Section 44 specifies who is responsible for notifying transactions and paying LBTT in the case of companies (as defined in section 64) and unincorporated associations. It specifies which individuals within such organisations are responsible for:

- making returns under section 29,
- giving declarations under section 36, and
- paying any tax due under section 40.

116. Partnerships are dealt with in section 49 and schedule 17.

117. Defined terms used in this section:

“Tax Authority” section 52

Section 45 – Unit trust schemes

118. Section 45 provides that a unit trust scheme is treated as if it were a company for the purposes of paying LBTT when it acquires land, except in relation to group relief, reconstruction relief and acquisition relief.

119. The section also provides that issues, surrenders and transfers of units are not within the scope of LBTT.

120. Subsection (6) confers a power on the Scottish Ministers to make, by regulations, further provision which specifies that a scheme of a description specified in the regulations is to be treated as not being a unit trust scheme for the purposes of the Bill. Such regulations will be subject to the negative procedure (see section 67).

Section 46 – Open-ended investment companies

121. Section 46 confers a power on the Scottish Ministers to make, by regulations, further provision to ensure that the LBTT provisions apply to open-ended investment companies (OEICs) in the same way as they apply to unit trust schemes. Such regulations will be subject to the negative procedure (see section 67).

Section 47 – Residential property holding companies

122. Section 47 confers a power on the Scottish Ministers to make regulations treating certain transfers of interest in residential property holding companies (“RPHCs”) as land transactions and chargeable transactions. These provisions are aimed at the “enveloping” of residential property in a
holding company and transferring interests in the company instead of transferring title to the property in the ordinary manner. A key feature of the transactions that are covered by this section is that they will carry with them a right to occupy property owned by the company. A broad parallel can be drawn with the rules for LBTT and property investment partnerships (“PIPs”) in Part 6 of schedule 17.

123. Regulations made under this section will be subject to the affirmative procedure if they modify any Act. Otherwise, they will be subject to the negative procedure (see section 67).

124. Defined terms used in this section:

- “chargeable transactions” section 15
- “land transaction” section 3

**Section 48 – Joint buyers**

125. Section 48 sets out the treatment of joint buyers (other than partners and trustees, for which see sections 49 and 50). Joint buyers, for example a couple buying a house, have joint and several liability to comply with the LBTT regime. This includes compliance with making returns under section 29 and paying any tax due under section 40. But declarations under section 36 must be made by all the buyers (without prejudice to the ability of agents such as solicitors to give declarations under subsection (2) of that section).

126. The definition of “jointly entitled” in section 64 covers both common ownership and joint ownership.

127. Defined terms used in this section:

- “jointly entitled” section 64
- “land transaction return” section 64
- “notifiable transaction” section 30

**Section 49 – Partnerships**

128. Section 49 introduces schedule 17 concerning partnerships (see paragraphs 228 to 233 below).

**Section 50 – Trusts**

129. Section 50 introduces schedule 18 concerning trusts (see paragraphs 234 to 236 below).

**Section 51 – Persons acting in a representative capacity etc.**

130. Section 51 concerns the executors or administrators of the estate of deceased persons. It provides for them to fulfil the obligations relating to LBTT arising from a land transaction entered into by the deceased person before he or she died. The section also concerns receivers appointed by a UK court. The person acting in a representative capacity is responsible for making returns under section 29, giving declarations under section 36 and paying any tax due under section 40.
131. No special provision is contained in the Bill for incapacitated persons or minors. The general legal framework for assisting people who lack capacity, including the Adults with Incapacity (Scotland) Act 2000 (asp 4), will operate in relation to LBTT. For the position of attorneys see paragraph 99 above.

132. Defined terms used in this section:

“land transaction” section 3

PART 6 – GENERAL AND INTERPRETATION

133. Part 6 contains general provisions, including provision about the Tax Authority and definitions of expressions used in the Bill.

The Tax Authority

Section 52 – The Tax Authority

134. Section 52 defines the “Tax Authority” as the Scottish Ministers. The Tax Authority has the care and management of LBTT (see section 1(3)) and accordingly returns must be made to the Tax Authority (see section 29) and tax must be paid to the Tax Authority (see section 40).

135. Subsection (2) confers a power on the Scottish Ministers to provide by order that another person is the Tax Authority. This provision could be used to allow for Revenue Scotland to become the Tax Authority, at a future point when Revenue Scotland has a legal personality separate to that of the Scottish Ministers, subject to Parliamentary agreement of provisions for Revenue Scotland7. Such an order will be subject to the affirmative procedure (see section 67).

Section 53 – Delegation of functions to Keeper

136. Section 53 allows for the delegation of Tax Authority functions to the Keeper of the Registers of Scotland. For example, functions around returns and payment may be delegated so that returns would be made to the Keeper and tax paid to the Keeper on behalf of the Tax Authority8.

Section 54 – Review and appeal

137. Section 54 confers a power on the Scottish Ministers to make provision by regulations for the review and appeal of Tax Authority decisions. Such regulations will be subject to the affirmative procedure if they modify the Bill itself. Otherwise, they will be subject to the negative procedure (see section 67).

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7 Government proposals for Revenue Scotland will be set out in the forthcoming consultation on a Tax Management Bill.
8 The Keeper currently exercises delegated functions in respect of SDLT pursuant to the Stamp Duty Land Tax (Electronic Communications) Regulations 2005 (S.I. 2005/844 as amended by S.I. 2006/3427).
Leases

Section 55 – Application of this Act to leases

138. Section 55 confers a power on the Scottish Ministers to make provision by regulations about the application of this Bill in relation to leases. Such regulations will be subject to the affirmative procedure if they modify an Act. Otherwise, they will be subject to the negative procedure (see section 67).

Linked transactions

Section 56 – Linked transactions

139. Section 56 defines “linked transactions”. The section provides that linked transactions can be reported on a single return and imports the rules relating to joint buyers (section 48) if linked transactions with joint buyers are reported on a single return.

140. Defined terms used in this section:
“connected persons” section 57

Example: Linked transactions

A property speculator agrees to buy three new houses from a builder. The builder offers a special price for the houses because the speculator agrees in advance to buy three. It is agreed that the buyer will pay £200,000 for each house once it is complete. The purchases take place in January 2017, February 2017 and March 2018.

The three transactions are linked transactions because they are between the same buyer and seller and form part of a single arrangement. (The length of time between transactions does not in itself affect whether the transactions are linked.)

Separate land transaction returns will be required under section 29 in relation to each transaction because they do not take place on the same date and further returns may be required under section 34 in relation to earlier transactions. See section 26 for the calculation of the amount of tax due.

Connected persons

Section 57 – Connected persons

141. Section 57 defines “connected persons” by reference to section 1122 of the Corporation Tax Act 2010 (c.4). The meaning of “connected persons” is modified in schedule 17 by paragraph 48 of that schedule.
Interpretation

Section 58 – Meaning of “residential property”

142. Section 58 defines “residential property”. Pursuant to section 24, bands and rates for LBTT must be set separately for residential property transactions and non-residential property transactions. If property is not residential property, it is non-residential property (examples of which are commercial and agricultural property). The power in subsection (9) allows for the rules in section 58 to be amended by order so as to change what counts as residential property. Orders will be subject to the affirmative procedure (see section 67).

143. Defined terms used in this section:

“major interest” section 58

Section 59 – Meaning of “major interest” in land

144. Section 59 defines “major interest”, which has particular relevance to the notification rules in section 30. Major interest means ownership of land or a tenant’s right. Less common interests in land such as real burdens, servitudes and options are not major interests. Now that the feudal system of land tenure has been abolished pursuant to the Abolition of Feudal Tenure (Scotland) Act 2000 (asp 5), the interest of a feudal superior - or "feuhold" - is no longer an interest in land recognised in the law of Scotland.

Section 60 – Meaning of “subject-matter” and “main subject-matter”

145. Section 60 provides that “subject-matter” includes the main subject-matter of the transaction and any interest or right pertaining to it. So the acquisition of the ownership of land and the connected right to enforce a real burden over neighbouring property are not to be dealt with as two separate transactions.

Section 61 – Meaning of “market value”

146. Section 61 defines “market value” by reference to UK Capital Gains Tax rules. This is relevant to, among other provisions, section 22.

Section 62 – Meaning of “effective date” of a transaction

147. Section 62 defines “effective date”. This date is the tax point that determines when liability to tax and notification obligations arise. In most cases the effective date will be when the buyer pays the price and settles the transaction. Special rules apply for contracts that are substantially performed before completion and for the grant of options and rights of pre-emption. The power in subsection (1)(b) allows for regulations to prescribe a date other than the date of completion as the effective date. Such regulations will be subject to the negative procedure (see section 67).
Section 63 – Meaning of “completion”

148. Section 63 defines “completion”. Completion generally means settlement. In the case of a routine house purchase that would be the point at which the buyer has paid the purchase price and receives a signed disposition (the “conveyance”) and the keys to the house. In this case, the point of completion is earlier than the point of registration of the disposition in the Land Register, at which point the buyer obtains the real right in land.⁹

Section 64 – General interpretation

149. Section 64 sets out certain definitions used in the Bill. In particular the section provides broad, inclusive definitions for “contract” and “conveyance”. Whilst for the routine conveyance of a real right in land the terms “missives” and “disposition” would be common, the concept of “chargeable interest” in section 4 is very broad and covers interests other than real rights in land; therefore it is appropriate to use broader terminology. A contract or conveyance might, for example, be subject to the law of a jurisdiction other than Scotland (see section 1(2)). These definitions are sufficiently broad to accommodate electronic documents as referred to in Part 10 of the Land Registration etc. (Scotland) Act 2012 (asp 5).

Section 65 – Index of defined expressions

150. Section 65 introduces schedule 19 which provides an index to definitions used in the Bill.

PART 7 – FINAL PROVISIONS

151. Part 7 contains provisions on subordinate legislation powers and commencement as well as other final provisions.

Ancillary provision

Section 66 – Ancillary provision

152. Section 66 empowers the Scottish Ministers to make ancillary provision by order concerning LBTT. Orders under this section will be subject to the affirmative procedure if they modify an Act. Otherwise, they will be subject to the negative procedure (see section 67).

Subordinate legislation

Section 67 – Subordinate legislation

153. Section 67 sets out general provisions for subordinate legislation under the Bill.

⁹ As electronic conveyancing practices become more common the process of delivering dispositions, paying tax and obtaining registration will become more streamlined. The “effective date” may then be the same date as the date of registration.
Crown application

Section 68 – Crown application

154. Section 68 provides that the Bill does not apply to Her Majesty in Her private capacity. By virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), the Bill otherwise applies to the Crown.

155. For the position of Crown bodies as buyers in land transactions see paragraph 2 of schedule 1.

Commencement and short title

Section 69 – Commencement

156. Section 69 provides for the commencement of the Bill.

Section 70 – Short title

157. Section 70 sets out the short title of the Bill by which it may be cited for legal purposes.

Schedule 1 – Exempt transactions

158. This schedule is introduced by section 16 and lists seven types of land transaction which are exempt from LBTT as well as providing the Scottish Ministers with a power, by regulations, to add to the list of exemptions, modify an exemption or remove an exemption (paragraph 8 of schedule 1). Regulations under paragraph 8 will be subject to the affirmative procedure (see section 67).

159. The first exemption is where there is no chargeable consideration (paragraph 1 of schedule 1).

160. The second exemption covers Crown bodies listed in section 80J of the Scotland Act 1998, who may not be made liable to pay LBTT (paragraph 2 of schedule 1).

161. The third exemption covers leases and licences of residential property (paragraph 3 of schedule 1). Because generally a lease of residential property over 20 years in duration may not be granted in Scotland, this exemption covers leases in Scotland that would be unlikely, because of their short duration, to attract tax. Applying the same exemption to licences ensures uniformity. The only exception that has been made, set out in sub-paragraph (2), is to exclude residential leases that are “qualifying leases” under the Long Leases (Scotland) Act 2012. Pursuant to section 1 of that Act a residential lease is “qualifying” if:

- it is registered in the Register of Sasines or the Land Register;
- it was granted for more than 175 years;
- it has more than 100 years left to run from the appointed day laid down under the Act;
- the annual rent does not exceed £100.
162. The fourth and fifth exemptions cover transactions if effected respectively in matrimonial break-up proceedings and proceedings for dissolution of a civil partnership (paragraphs 4 and 5 of schedule 1).

163. The sixth and seventh exemptions cover transactions if effected in implementation of wills or the variation of testamentary dispositions provided there is no consideration (paragraphs 6 and 7 of schedule 1).

Schedule 2 – Chargeable consideration

164. This schedule, which is introduced by section 17, sets out the provisions for determining the amount of the chargeable consideration in relation to a land transaction.

165. Paragraph 1 defines the chargeable consideration for the transaction to be any consideration given in money or money’s worth for the subject-matter of the transaction, directly or indirectly by the buyer or a connected party.

166. Paragraph 2 clarifies that any VAT due on the consideration is included as chargeable consideration. But where the seller has the option to charge VAT but has not actually made an election to do so by the effective date of the transaction, then any VAT that subsequently becomes payable does not count as chargeable consideration.

167. Paragraph 3 ensures that, where some or all of the consideration is to be paid at a later date, it is the amount agreed that comprises chargeable consideration, and no discount is available for the delay in payment.

168. Paragraph 4 provides for just and reasonable apportionment of consideration where the subject-matter of a transaction does not just consist of a chargeable interest (for example, where a business such as a public house, hotel or care home is sold as a going concern and the consideration includes an element of value attributed to “goodwill”) or where the transaction is part of a bargain including other transactions.

169. Paragraph 5 sets out how the chargeable consideration for each transaction will be calculated when land transactions are entered into as consideration for each other. The rule will depend on whether the subject-matter of any of the transactions is a major interest in land as defined in section 59. If this is the case, the chargeable consideration for each acquisition will be deemed to be the market value of the subject-matter of the transaction together with the rent, if the subject-matter is the grant of a new lease. If the subject-matter of all the transactions are minor interests then the values of the interests being exchanged are disregarded but any other chargeable consideration will remain liable to tax. This paragraph is subject to paragraph 6 (Petitions etc.: disregard of existing interest). This paragraph does not apply in a case to which paragraph 17 (Arrangements involving public or educational bodies) applies.

170. Paragraph 6 provides that where land is partitioned, the share of that land held by the buyer immediately before the partition does not comprise chargeable consideration.
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

171. Paragraph 7 provides a general rule that any non-monetary consideration is to be valued at its market value, unless provided otherwise. Non-monetary consideration comprises all consideration except money and debt.

172. Paragraph 8 ensures that the assumption or release of debt by the buyer counts as chargeable consideration for a transaction, but that the amount so chargeable cannot exceed the market value of the subject-matter of the transaction. The assumption of debt for the purposes of this clause does not include any mortgage or similar security taken out in order to acquire the property.

173. Paragraph 9 sets out how the chargeable consideration will be calculated for transactions where the exemptions provided for at paragraph 6 (Assents and appropriations by personal representatives) and paragraph 7 (Variation of testamentary dispositions etc.) of schedule 1 (Exempt Transactions) do not apply because of paragraph 6(2) and paragraph 7(3) of that schedule.

174. Paragraph 10 provides for consideration in a foreign currency to be translated into sterling on the effective date of the transaction.

175. Paragraph 11 sets out how to calculate chargeable consideration where the buyer or the seller carries out works of construction, improvement or repair of a building or other structure. Where those works are carried out after the effective date on land acquired or to be acquired by the buyer under the transaction (or on any of the buyer’s other land) and it is not a condition of the transaction that the seller carry them out on the buyer’s behalf, then the works do not comprise chargeable consideration. In other cases they do, at their open market value. Where by virtue of section 10(3) (substantial performance of contract without completion) there are two notifiable transactions, the condition in sub-paragraph 2 is treated as being met in relation to the second transaction if it is met in relation to the first. This paragraph is subject to paragraph 17 (Arrangements involving public or educational bodies).

176. Paragraph 12 sets out that where the buyer provides services (other than works of construction, improvement or repair of a building or other structure), the chargeable consideration is the open market value of those services. This paragraph is subject to paragraph 17 (Arrangements involving public or educational bodies).

177. Paragraph 13 deals with the situation where the seller is an employer and the buyer the employee of that employer. The chargeable consideration is not less than the market value of the subject-matter on the effective date of the transaction.

178. Paragraph 14 ensures that indemnities given by the buyer to the seller for any ongoing liabilities relating to the land do not count as chargeable consideration.

179. Paragraph 15 ensures that where a buyer in a land transaction is required to pay any UK Inheritance Tax associated with the transaction, then the amount paid does not count as part of the chargeable consideration for LBTT purposes.
180. Paragraph 16 ensures that where a buyer in a land transaction is required to pay any UK Capital Gains Tax associated with the transaction, then the amount paid does not count as part of the chargeable consideration for LBTT purposes.

181. Paragraph 17 applies in the situation where certain public or educational bodies sell or grant a long lease to another party over land/property and then the other party leases the land back to the public or educational body. The public or educational body is not liable for LBTT because the leaseback by the public or educational body and any money for works or services are not considered as part of the chargeable consideration. The other party also does not have to pay LBTT based on the market value of the land/property that party buys or leases, so the party only has to pay it on the actual cash premium or rent the party pays the public or educational body in exchange for entering into the deal. Sub-paragraph 2 lists the qualifying bodies. Sub-paragraph 3 confers a power on the Scottish Ministers to modify, by order, the list of qualifying bodies set out at sub-paragraph 2. Orders under paragraph 17 will be subject to the negative procedure (see section 67).

Schedule 3 – Sale and leaseback relief

182. This schedule, introduced by section 27, provides complete relief from LBTT for the leaseback part of the transaction where there is a sale and leaseback arrangement. The relief is available where the only other consideration for the sale element, other that the leaseback, is money or money equivalent. Where the buyer and seller are both companies, the leaseback will qualify for the relief only where they are not members of the same group.

Schedule 4 – Relief for certain acquisitions of residential property

183. Paragraph 1 of this schedule, introduced by section 27, provides an overview of Parts 2 to 6 of this schedule.

184. Paragraphs 2 and 3 make provision for full and partial relief from LBTT in relation to the acquisition of a dwelling by a house-building company from an individual who is also buying a new house from the company. Paragraph 4 sets out the qualifying conditions for the full and partial relief.

185. Paragraphs 5 and 6 make provision for full and partial relief from LBTT in relation to the acquisition of a dwelling by a property trader from an individual who is buying a new house from a house-building company. Paragraphs 7 and 8 set out the qualifying conditions for the relief.

186. Paragraphs 9 and 10 make provision for full and partial relief from LBTT in relation to the acquisition of a dwelling by a property trader from an individual where a chain of transactions involving the individual breaks down. Paragraphs 11 and 12 set out the qualifying conditions for the relief.

187. Paragraphs 13 to 17 set out the circumstances in which relief under this schedule may be withdrawn.

188. Part 6 defines various terms used in this schedule.
Schedule 5 – Multiple dwellings relief

189. This schedule, introduced by section 27, provides relief from LBTT in relation to purchases of multiple dwellings to ensure that the single transaction involving a number of dwellings is not taxed at a high tax band when it involves dwellings that, individually, may each involve a consideration only falling within lower bands. This relief is given only in so far as the transaction relates to dwellings: consideration that relates to property other than dwellings is taxed in the normal way.

190. The relief applies in respect of single transactions involving multiple dwellings and multiple linked transactions which, taken together, involve multiple dwellings.

191. The calculation of the relief is set out in Part 4. It involves calculating an average price per dwelling and then calculating the tax that would be paid on such a price. The tax due on the average price per dwelling is then multiplied by the number of dwellings covered by the transaction to produce the amount of tax due in respect of the dwellings. To that figure is added any tax payable in respect of property other than dwellings. The result is the tax payable in respect of the transaction.

192. However, it is possible, for example, that a number of dwellings bought in a single transaction may have an average price that falls in the nil tax rate band, in which case 100% relief would be provided and no tax would be due. The provisions in paragraphs 13 and 14 enable the Scottish Ministers to make regulations to introduce a “tax floor” to ensure that if the tax on a particular transaction involving multiple dwellings would be lower than a prescribed amount, then the tax payable would be the prescribed amount. The method for calculating the prescribed amount will be set out by order.

193. Part 5 deals with the withdrawal of the relief.

Schedule 6 – Relief for certain acquisitions by registered social landlords

194. This schedule, introduced by section 27, covers provision for relief from LBTT for certain acquisitions by registered social landlords. Paragraph 2 sets out the qualifying conditions for this relief.

Schedule 7 – Alternative property finance relief

195. This schedule, introduced by section 27, makes provision for relief from LBTT in the case of certain land transactions connected to alternative property finance arrangements. The demand for alternative finance products comes mainly from Muslims, although they may be used by any consumer. Islamic (or Shari’a) law prohibits transactions that involve interest, gambling, speculation or unethical investment.

196. The most pronounced difference between Islamic financing and existing equivalent products is the prohibition on interest. For customers wishing to adhere to Shari’a law, this rules out financial products that result in either payment or receipt of interest, such as conventional deposit accounts and loans. However, Shari’a law does not prohibit the making of a return on capital if the
provider of the capital is willing to share in the risks of a productive enterprise. Thus profit and loss sharing arrangements are considered acceptable, provided there is shared risk.

197. Islamic financial transactions are structured using contracts, or combinations of contracts that satisfy the requirements of Shari’a law. Financial institutions in the UK offer Shari’a compliant alternative finance products that are economically equivalent to conventional banking products but do not involve interest or speculative returns.

198. Part 2 of the schedule details a series of reliefs from LBTT for the granting of particular transactions, all of which are designed to avoid the charging or payment of interest. Paragraphs 2 to 6 cover arrangements where a financial institution buys an interest in land and then leases it to a person where the person has a right to acquire the land from the institution or have it transferred to another person (or to another financial institution).

199. The “first transaction” that occurs as part of these arrangements (the purchase) will usually be chargeable to LBTT (unless it is a transfer from the person to the institution or from another financial institution to the institution – all effectively being re-mortgaging arrangements). The “second transaction” – the lease to the person – will generally be relieved, provided the provisions of the Bill in relation to the first transaction have been complied with. The “third transaction” – the transfer that the person can require the financial institution to make – will also be relieved provided it is a transfer to the person and provided the other conditions in paragraph 5 are met. Paragraph 6 states that sections 12 and 14 do not apply to the agreement mentioned in paragraph 2(c) so that the person’s right to require the institution to transfer the interest in land is not treated as an option and so that the agreement, under which the person can require the institution to transfer the interest, is not treated as substantially performed unless and until the third transaction (the transfer to the person) takes place.

200. Paragraphs 7 to 12 cover a different set of arrangements, where the financial institution and the person acquire an interest in land in common, with the person having an exclusive right to occupy the land and with the person and the institution agreeing to transfer the interest to the person (usually in a series of transactions). As before, the “first transaction” – the purchase – will usually be chargeable to LBTT. Paragraph 8 specifies the conditions under which the first transaction is relieved, namely where there is a refinancing arrangement. Paragraph 9 provides for relief for the “second transaction” – the right to occupy – provided the provisions of the Bill in relation to the first transaction are complied with. Paragraph 10 allows for relief for “further transactions” – transfers to the person from the financial institution. Paragraph 11 makes similar provision as paragraph 6. Paragraph 12 states the notification requirement of this relief.

201. Paragraphs 13 to 15 cover a third set of arrangements, where the financial institution purchases an interest in land, sells it to the person and, in return, the person grants the institution a standard security over the land. Usually LBTT will be due on the “first transaction” – the purchase by the institution. But paragraph 14 details the specific circumstances in which the first transaction is also exempt from LBTT (i.e. where the acquisition is part of a refinancing arrangement). Paragraph 15 provides for relief from LBTT for the “second transaction” – the sale to the person – where the provisions of the Bill in relation to the first transaction are complied with. The grant of the standard security by the person to the institution is not a land transaction, as security interests are exempt interests (see section 5).
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

202. Part 3 deals with transactions connected to alternative property finance arrangements which are not relieved from LBTT. Paragraph 16 provides that relief under this schedule is not available where group, reconstruction or acquisition relief is available in relation to the first transaction. Paragraphs 17 to 20 contain anti-avoidance provisions and provide that no relief is available under Part 2 where the arrangements involve the acquisition by the person of control of the financial institution.

203. Part 4 provides that an interest held by a financial institution as a result of the “first transaction” within the meaning of paragraph 2(a) or 7(a) is an “exempt interest” for the purposes of LBTT. Paragraph 22 provides that the interest will cease to be an exempt interest if certain specified circumstances prevail. Paragraph 23 provides that the interest held by the financial institution is not an exempt interest if the “first transaction” is exempt from charge by virtue of schedule 10 (group relief) or 11 (reconstruction and acquisition reliefs). Paragraph 24 provides that the exemption provided by paragraph 21 does not make an interest exempt in the case of certain specified transactions.

204. Part 5 defines a number of terms for the purposes of this schedule.

Schedule 8 – Relief for alternative finance investment bonds

205. This schedule is introduced by section 27 and covers relief for alternative finance investment bonds. Paragraph 1 confers a power on the Scottish Ministers to make regulations setting out the form this relief may take and places a requirement on the Scottish Ministers to consult with certain bodies.

206. Regulations under this schedule will be subject to the negative procedure (see section 67).

Schedule 9 – Crofting community right to buy relief

207. This schedule, introduced by section 27, relates to transactions made by virtue of the “crofting community right to buy”, which enables crofting communities to apply to the Scottish Ministers for the right to buy crofting land where they live and work from the landlord who owns it. Paragraph 1 describes the type of transaction to which this schedule applies. Paragraph 2 describes the tax chargeable in relation to the transaction as the prescribed portion of the tax that would be payable but for this paragraph. Paragraph 3 provides for the prescribed portion of the tax to be prescribed by the Scottish Ministers by order. Orders will be subject to negative procedure (see section 67). Paragraph 4 defines “crofting community right to buy” for the purposes of this schedule.

Schedule 10 – Group relief

208. The schedule is introduced by section 27. Part 2 provides for relief from LBTT for the intra-group transfer of property held by companies if the relevant conditions are met. Part 3 provides for when relief is wholly or partially withdrawn and Part 4 contains interpretation provisions.

209. Paragraph 2 provides the relief from LBTT for acquisitions of property by companies within groups.
210. Companies are defined as members of a group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company (paragraph 43). Company means a body corporate and therefore as such includes a limited liability partnership. Such a member of a group having no share capital cannot be a subsidiary, only a parent company. Paragraphs 44 and 45 further elaborate that ownership means beneficial ownership of the share capital and can include indirect ownership through another company or companies. The amount of ordinary share capital owned is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010.

211. The schedule sets out in paragraphs 3 to 8 specific anti-avoidance rules (with exceptions in paragraphs 9 and 10) which restrict the availability of group relief. Availability is restricted where different types of arrangements are entered into relating to control of the companies, the provision of consideration from outside the group, or where the seller and buyer are to cease being members of the same group. Where such arrangements exist at the effective date of the transaction, group relief is not available. Finally, in terms of paragraph 8, relief is unavailable if the transaction itself is not for genuine commercial reasons, or forms part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to LBTT.

212. Paragraphs 13 to 19 cover the situation where group relief is withdrawn. It is withdrawn if, following a successful claim for group relief, the buyer ceases to be a member of the same group as the seller within three years of the date of the transaction (or under arrangements made during the three-year period).

213. Paragraphs 20 to 31 provide exceptions from the withdrawal of group relief in certain cases where companies leave groups, and related anti-avoidance provisions. These are:

- where the de-grouping arises because of anything done in the course of winding up the seller,
- where there is an acquisition of shares in the buyer by another company to which section 75 of Finance Act 1986 (c.41) applies (subject to exceptions) and the buyer leaves the group as a result,
- the buyer ceases to be a member of the same group as the seller in the context of the demutualisation of an insurance company, or
- where the seller leaves the group.

214. Paragraphs 32 to 40 provide for withdrawal of relief in certain cases involving successive transactions.

Schedule 11 – Reconstruction relief and acquisition relief

215. This schedule, introduced by section 27, provides for relief from LBTT for land transactions connected to the transfer of the whole or part of an undertaking by a company where the consideration is non-redeemable shares. Relief from all LBTT due is provided if the transfer of the undertaking, including any land held by it, is under a scheme of reconstruction in exchange for non-redeemable shares (“Reconstruction relief”). A key condition is that shareholdings remain the same after the reconstruction. As with group relief, the reconstruction must be for a genuine commercial purpose and must not form part of any arrangement to avoid liability to tax (paragraphs 2 to 5).
216. Separately, under “Acquisition relief” (paragraphs 6 to 10), where a land transaction forms part of the transfer of an undertaking acquired for consideration of shares (but without the shareholdings having to remain the same), the amount of LBTT chargeable is reduced to a proportion (to be prescribed by Scottish Ministers by order) of the tax that otherwise would be chargeable but for the relief. Orders will be subject to the negative procedure (see section 67).

217. Paragraphs 11 to 14 provide for withdrawal of this relief where control of the acquiring company changes within three years, beginning with the effective date of the transaction (or there are arrangements under which control will change after three years which are entered into within the three-year period).

218. Paragraphs 15 to 22 set out situations where reconstruction relief or acquisition relief is not withdrawn despite control of the acquiring company changing. They include:

- where control changes as a result of a share transaction in connection with divorce, dissolution of a civil partnership or for similar reasons,
- where control changes as a result of a share transaction in connection with transactions which vary dispositions following death,
- where control changes as result of an exempt intra-group transfer of shares (defined in paragraph 36),
- where control changes as a result of a transfer to another company to which share acquisition relief applies (defined in paragraph 34), and
- where control changes as a result of a loan creditor becoming or ceasing to be treated as having control.

219. Paragraphs 23 to 29 provide for the withdrawal of reconstruction relief or acquisition relief on a subsequent non-exempt transfer and where share acquisition relief applies but control of the company subsequently changes.

Schedule 12 – Relief for incorporation of limited liability partnership

220. This schedule is introduced by section 27. Paragraph 1 provides for relief from LBTT where land is transferred to a limited liability partnership in connection with its incorporation. Paragraph 2 sets out the qualifying conditions that require to be satisfied to attract the relief. Paragraph 3 defines “limited liability partnership” and “relevant time” for the purposes of this schedule.

Schedule 13 – Charities relief

221. This schedule, introduced by section 27, provides relief from LBTT for charities and charitable trusts. A charity is defined in paragraph 15 of the schedule as having the meaning given in section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10). That definition encompasses a Scottish Charitable Incorporated Organisation (that is, a special type of charitable entity incorporated under that Act) or any other charity registered with the Office of the Scottish Charities Regulator (“OSCR”). Any charity, including an English or a foreign charity, may register with OSCR at no cost.
222. Paragraph 1 provides for relief from LBTT if the buyer is a charity, provided that the two conditions in paragraph 2 are met. Firstly, the purchasing charity must intend to hold the land or the greater part of the land for qualifying charitable purposes (within the meaning of section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (paragraph 16)). Secondly, the purchasing charity must not be entering into the land transaction for the purpose of avoiding LBTT.

223. Paragraph 4 provides for charities relief to be withdrawn wholly or partially where a charity claims the relief in relation to a land transaction and, within three years of the transaction, the buyer ceases to be a charity or the land is used otherwise than for qualifying charitable purposes. Relief may also be lost if these events occur more than three years after the transaction but pursuant to arrangements made during the three-year period.

224. The relief is also wholly or partially withdrawn if the buyer transfers a major interest in the whole or part of the subject-matter of the transaction or grants a low rental lease at a premium (paragraph 7).

Schedule 14 – Relief for compulsory purchase facilitating development

225. This schedule is introduced by section 27. Paragraphs 1 and 2 provide for relief from LBTT for acquisitions by certain public bodies of land using compulsory purchase powers and define who may claim the relief. Paragraph 3 sets out the qualifying condition. Paragraph 5 defines the term “development” for the purposes of this schedule.

Schedule 15 – Relief for compliance with planning obligations

226. This schedule is introduced by section 27. Paragraphs 1 and 2 comprise the main relief provisions. A transaction will be relieved when it is entered into with a public body in order to comply with a planning obligation or a modification of a planning obligation, subject to certain conditions being satisfied. Paragraphs 3 and 4 define “planning obligation” and “modification”. Paragraph 5 lists which bodies fall within the definition of “public bodies” and allows the Scottish Ministers to add bodies to the list by order. Such an order will be subject to the negative procedure (see section 67).

Schedule 16 – Public bodies relief

227. This schedule is introduced by section 27. Paragraph 1 describes the type of transaction, under a statutory reorganisation, which is relieved under this schedule. Paragraph 2 provides that the Scottish Ministers may by order provide that certain other land transactions which do not fall under paragraph 1 are also relieved from LBTT subject to certain conditions. Orders will be subject to the negative procedure (see section 67). Paragraph 3 defines what is meant by a reorganisation for the purposes of paragraph 1 and paragraph 4 lists those bodies which are to be regarded as “public bodies” for the purposes of this schedule. Paragraph 5 includes, in the reference to a public body for the purposes of this schedule, a company which is wholly owned by such a body or a wholly-owned subsidiary of such a company. Paragraph 6 defines “company” for the purposes of paragraphs 4 and 5 of this schedule.
Schedule 17 – Partnerships

228. This schedule, introduced by section 49, provides for the treatment of partnerships in respect of LBTT. It sets out the responsibilities of partners, how LBTT applies in relation to the acquisition of interests in land by partners or partnerships, and excludes certain transactions relating to partnerships from LBTT.

229. Paragraph 2 defines “partnership” to include the various types of UK partnerships and also firms or entities outside Scotland having similar character.

230. Although a Scottish partnership has legal personality, anything done by the partnership is, for the purposes of LBTT, to be done by or in relation to all the partners (paragraph 8). The partners are jointly and severally liable for payment of the tax (paragraph 9). Chargeable interests held by a partnership are treated as held by the partners, whether or not a partnership has legal personality or is a body corporate. A partnership is also held to have continuity notwithstanding that partners change from time to time.

231. Where a partnership acquires land from a third party (or a third party acquires land from a partnership), the transaction is treated the same as any other transaction for the purposes of LBTT (see Part 3 of the schedule).

232. Where partners or prospective partners introduce land into the partnership and where existing partners take land out of the partnership, the transfer is taken to have a chargeable consideration equal to a proportion of the market value of the land transferred (see Parts 4 and 5 of the schedule). The proportion reflects, in the first case, that the partner or prospective partner retains a share of the land as a partner and, in the second case, that the partner already owned a share of the land as a partner.

233. There are special rules for the transfer of interests in property investment partnerships whose sole or main activity is holding or investing in land. In such cases there is no transfer of land except indirectly through the change of ownership structure of the partnership holding vehicle. In such a case the Bill looks to the underlying land (excluding non-land assets held) attributable to the buyer through the acquisition of the interest in the partnership and deems the chargeable consideration to be the market value of that land.

Schedule 18 – Trusts

234. This schedule, introduced by section 50, provides for the treatment of trusts in respect of LBTT.

235. Trusts are divided into “bare trusts” and “settlements” with settlements defined as trusts which are not bare trusts (paragraph 20). Bare trusts are trusts where the beneficiary is absolutely entitled to the property as against the trustee (paragraph 18) and includes the bilateral type of trust where the bare trustee holds the property as nominee for another.
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

236. The liability to pay the tax is imposed on the trustees except in the case of bare trustees, where the beneficiaries are liable for the payment of the tax. The tax can be recovered from any one of the trustees where they are liable for the tax.

Schedule 19 – Index of defined expressions

237. Schedule 19 provides an index to definitions used in the Bill.

FINANCIAL MEMORANDUM

INTRODUCTION

238. This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 29 November 2012. It has been prepared by the Scottish Government, to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

BACKGROUND

239. The Land and Buildings Transaction Tax (Scotland) Bill is the first of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012 (“the 2012 Act”) which received Royal Assent on 1 May 2012. The Bill will be followed in the current session by a Bill to put in place a Scottish Landfill Tax and later by a Bill to introduce arrangements for Tax Management. The Bill makes provisions for a Scottish tax on transactions involving interests in land, to be called the Land and Buildings Transaction Tax (“LBTT”). The 2012 Act also disappplies in respect of Scotland the UK Stamp Duty Land Tax (“SDLT”) regime, which is largely set out in Part 4 of the Finance Act 2003.

240. The provision of the 2012 Act disapplying the existing SDLT regime in Scotland will be brought into force with effect from the end of March 2015 by a Treasury order in the UK Parliament. The intention is that the provisions introducing LBTT will come into force as soon as SDLT is disappplied. At that point, in order to ensure the continued collection of tax receipts, the Scottish Government wishes to have in place arrangements for the management and collection of LBTT and, from that day on, the Scottish Consolidated Fund will receive all receipts raised in respect of transactions involving interests in land in Scotland.

241. There will be a loss of receipts to the UK Government from the withdrawal of SDLT in Scotland. The UK Government will consequently make a corresponding adjustment to the Scottish block grant. These arrangements are explained in pages 30 and 31 of the Command Paper, issued by the UK Government when the Scotland Bill was introduced in Westminster on 30 November
2010.10 Neither the Bill nor this Memorandum deal with adjustments to the Scottish block grant. The block grant adjustment was discussed by the Scottish and UK Governments prior to the passing by the Scottish Parliament of the Legislative Consent Motion for the (then) Scotland Bill in April 2012. The agreement reached on the process for arriving at block grant adjustments and other matters was set out in an exchange of published letters between the Cabinet Secretary for Parliamentary Business and Government Strategy and the Secretary of State for Scotland, on 20 and 21 March 2012. The relevant passage says:

“We will seek the Scottish Parliament’s agreement to changes to Scotland’s funding arrangements, now and in the future, in order to provide democratic oversight and assurance that Scotland’s interests are being properly considered.”

242. The actual formula for calculating the adjustment in respect of LBTT is due to be discussed and agreed in the first half of 2013.

GENERAL

243. The financial implications of this Bill have been considered under the following headings:
   I  The financial implications for the Scottish Administration (paragraphs 244-279)
   II The costs on local authorities and other public bodies (paragraphs 280-282).
   III The costs on other bodies, individuals and businesses (paragraphs 283-293)

I  FINANCIAL IMPLICATIONS FOR THE SCOTTISH ADMINISTRATION

244. The financial implications for the Scottish Administration have been considered under three sub-headings:
   i) The benefits to the total Scottish budget which will arise as a result of all tax receipts raised in respect of transactions involving interests in land in Scotland being paid into the Scottish Consolidated Fund and retained in Scotland. This benefit will vary from year to year depending on tax receipts, which in turn will vary depending on the value and volume of land transactions and the tax rates and bands that will be set in subordinate legislation prior to the introduction of the tax in April 2015 (see paragraphs 247-268);
   ii) The costs to the Scottish Government of setting up and running a new Scottish tax administration function (“Revenue Scotland”). The Bill defines the “Tax Authority” as the Scottish Ministers but confers a power on the Scottish Ministers to provide by order that another body is the Tax Authority. The intention is that this provision should be used to establish Revenue Scotland as the Tax Authority, at a future point when Revenue Scotland has a legal personality separate from that of the Scottish Ministers, subject to Parliamentary agreement of the necessary provisions (see paragraphs 269-275); and
   iii) The administrative and compliance costs which will arise as a result of the Registers of Scotland (“RoS”) taking on operational responsibility for the collection of LBTT (see paragraphs 276-279).

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10 The UK Government Command Paper is available at:
http://www.scotlandoffice.gov.uk/scotlandoffice/14692.394.html
245. The estimated costs cover the implementation of the LBTT Bill from 2013; they do not include the costs of legislating to bring LBTT into existence. In practice, costs of legislating will be borne within the existing administration budgets of the Scottish Government and the Scottish Parliament. Nor do the costs include the anticipated one-off costs associated with the “switch-off” of the UK taxes in Scotland which will be incurred by HMRC and charged to the Scottish Government. There may be offsetting savings to HMRC as a result of no longer needing to operate SDLT in Scotland after April 2015. HMRC has been asked to provide an estimate of these likely costs and offsetting savings as soon as possible and these estimates will be provided to the Parliament. However, further planning work needs to be undertaken before estimates are available.

246. There will be some minor ongoing administrative costs on the Scottish Government as a result of this Bill, for example to provide Ministers with advice on LBTT policy. The Scottish Government considers that these costs, which will be met from existing administration cost budgets are not material.

i. The benefits to the total Scottish budget from LBTT receipts

247. Paragraphs 248-268 explain that it is not possible at this stage to provide a definitive estimate of future tax receipts. As explained above, this Memorandum does not discuss the block grant adjustment. The net effect on the total Scottish budget depends on tax receipts offset by the block grant adjustment. For budgeting purposes, the replacement of SDLT with LBTT could be assumed to be broadly financially neutral. This is discussed further in paragraph 268 below.

248. It is clear that when replacing one tax system with another with a different tax structure, the tax yield will not be exactly the same as previously. Estimating the change to the tax yield is not possible at this stage as tax rates and bands have not yet been set. Historic HMRC data for the combined SDLT receipts from sale and lease transactions in Scotland, taking into account the cost of existing exemptions and reliefs, shows receipts varying from £565 million in 2007-08, to £250 million in 2009-10, rising to £330 million in 2010-11. Receipts from SDLT in the UK and in Scotland in each of the last four years of available data are provided below.
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

SDLT receipts, UK and Scotland (data from HMRC\textsuperscript{11,12,13}

<table>
<thead>
<tr>
<th>YEAR</th>
<th>2007-08</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total UK Receipts (£M)</td>
<td>9,955</td>
<td>4,795</td>
<td>4,885</td>
<td>5,960</td>
</tr>
<tr>
<td>Total Scottish Receipts (£M)</td>
<td>565</td>
<td>320</td>
<td>250</td>
<td>330</td>
</tr>
<tr>
<td>Total Number of Transactions (Scotland)</td>
<td>163,065</td>
<td>97,066</td>
<td>82,564</td>
<td>82,265</td>
</tr>
<tr>
<td>Residential Receipts (£M) (Scotland)</td>
<td>340</td>
<td>185</td>
<td>135</td>
<td>165</td>
</tr>
<tr>
<td>No. of Residential Transactions (Scotland)</td>
<td>150,109</td>
<td>87,148</td>
<td>74,561</td>
<td>73,740</td>
</tr>
<tr>
<td>Non-Residential Receipts (£M) (Scotland)</td>
<td>225</td>
<td>135</td>
<td>115</td>
<td>165</td>
</tr>
<tr>
<td>No. of Non-Residential Transactions (Scotland)</td>
<td>12,956</td>
<td>9,918</td>
<td>8,003</td>
<td>8,525</td>
</tr>
</tbody>
</table>

249. As the table above illustrates, receipts from SDLT are volatile. They depend strongly on the number and value of transactions in the housing, commercial and agricultural property markets. Receipts from LBTT will similarly be volatile and depend on property market conditions in Scotland, including property prices and volume of transactions from 2015-16 onwards. Receipts will also depend on tax rates and bands to be set by Scottish Ministers, with the approval of the Scottish Parliament. Ministers have indicated that they will propose LBTT rates and bands when bringing forward the draft budget for 2015-16 in autumn 2014.

250. Further analysis of SDLT receipts raised in Scotland is provided below.

Receipts from SDLT - Purchases

251. The table below\textsuperscript{14} sets out SDLT receipts raised from residential and non-residential purchases of land and buildings in Scotland. Such sales accounted for approximately 75.5% of total SDLT receipts in 2009-10 and approximately 78% in 2010-11, the remaining 22-24.5% being made up, primarily, of tax receipts from lease transactions.

<table>
<thead>
<tr>
<th>Year</th>
<th>2009-10</th>
<th>2010-11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential sales receipts (£ million)</td>
<td>132.1</td>
<td>160.4</td>
</tr>
<tr>
<td>Non-residential sales receipts (£ million)</td>
<td>54</td>
<td>93.3</td>
</tr>
<tr>
<td>Total receipts from sales in Scotland</td>
<td>186.1</td>
<td>253.7</td>
</tr>
</tbody>
</table>

\textsuperscript{11} Information in this table is published by HMRC - \url{http://www.hmrc.gov.uk/stats/stamp_duty/menu.htm}
\textsuperscript{12} Note – the figures showing the number of transactions include only those transactions notified to HMRC through an SDLT return. Therefore these figures exclude transactions where no return is required, e.g. because a property is sold for less than £40,000 or given to someone as a gift and where no SDLT is payable.
\textsuperscript{13} SDLT receipts and LBTT receipts are calculated after exemptions and reliefs have been taken into account.
\textsuperscript{14} Variations between this information and the table of annual SDLT receipts at paragraph 240 can be attributed to SDLT transactions which are technically neither sales nor leases and so classed as ‘other’.
Receipts from SDLT – Leases

252. The table below shows SDLT receipts on leases in Scotland from 2009-10 to 2010-11:

<table>
<thead>
<tr>
<th>£ million</th>
<th>New Leases</th>
<th>Assigned Leases</th>
<th>Total from Leases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Residential Non-Residential</td>
<td>Residential Non-Residential</td>
<td>Residential Non-Residential</td>
</tr>
<tr>
<td>2009-10</td>
<td>&lt;0.1</td>
<td>19</td>
<td>0.2</td>
</tr>
<tr>
<td>2010-11</td>
<td>&lt;0.1</td>
<td>24.9</td>
<td>0.7</td>
</tr>
</tbody>
</table>

253. The annual receipts from non-residential (i.e. commercial and agricultural) leases, of about £65m per year, are roughly 20% of overall SDLT receipts in 2010-11. As these figures indicate, SDLT receipts from residential leases are low. This is attributable to the reforms introduced in the Land Tenure Reform (Scotland) Act 1974, which ensure that residential leases of over 20 years cannot normally be granted (subject to certain exceptions for residential leases taken by bodies such as local authorities, housing associations and rural housing bodies). Only leases that are over 20 years long can be registered in the Land Register or recorded in the Register of Sasines. The receipts from the taxation of residential leases are likely to become even lower now that the Long Leases (Scotland) Act 2012 has been passed by the Scottish Parliament. That Act will, subject to some exceptions, convert ultra-long residential leases (over 175 years long and with more than 100 years left to run) to ownership.\(^{15}\)

254. The Scottish Government proposed in its consultation paper to simplify the LBTT regime for residential leases in comparison to the existing SDLT structure. The Bill, therefore, exempts from LBTT all transactions involving residential leases (grant of lease, renunciation or assignation), with the exception of ‘qualifying leases’ under the Long Leases (Scotland) Act 2012. The Scottish Government considers that this reduction in receipts, of about £100,000, is not material in the context of total receipts arising from LBTT.

255. As set out in the LBTT consultation paper, the Scottish Government is aware that the current SDLT legislation in relation to the calculation of the tax payable on non-residential leases does not work effectively in the Scottish context. The existing legislation is extremely complex and technical - primarily because non-residential leases are themselves complex, technical arrangements whose purpose and terms vary greatly. There are, for example, significant differences between a lease where an interest in a piece of land or property is awarded on the basis of a pre-agreed and relatively fixed rent and a lease where rent is based on the revenue (“turnover”) that the leaseholder subsequently expects to generate as a result of their having acquired the interest.

256. The Scottish Government’s current position on non-residential leases set out in the Policy Memorandum is that this is a matter which requires further detailed and informed stakeholder and practitioner input in order to finalise the best possible legislative solution. Accordingly, at this stage, the Bill does not make detailed provision in relation to non-residential leases but provides for an order-making power. It is intended that further legislation will be brought forward in due course for approval by the Parliament, either in the form of amendments to the Bill at Stage 2 or of

\(^{15}\) Long leases liable to conversion are referred to as “qualifying leases” in paragraph 3(2) of schedule 1 to the Bill.
statutory instruments. This position is supported by the Law Society of Scotland which said in its response to the LBTT consultation that:

“The committees are of the view that the complexities of the SDLT lease code and the costs incurred by taxpayers in complying with it are out of all proportion to the tax collected. A much simpler system should be introduced for LBTT.”

257. For present purposes, it is assumed that receipts from the taxation of non-residential leases in the LBTT regime in future will be broadly equivalent to those from SDLT at present. A full account of the expected receipts from LBTT on non-residential leases will be provided when the relevant legislation is brought forward.

Exemptions and reliefs

258. Actual SDLT receipts and forecast LBTT receipts reflect exemptions and reliefs claimed by taxpayers. The Bill provides that an exemption will apply where the chargeable consideration is nil and the buyer does not have to make a return to RoS in relation to the transaction – for example, where a property is transferred to someone as part of a divorce settlement. The Bill also provides for reliefs where certain types of buyers of certain types of land or property can submit a claim to reduce the amount of tax payable in part or in full. The Bill provides that where buyer wishes to claim a relief, the buyer must complete an LBTT return. This will enable RoS and/or Revenue Scotland to monitor the use of reliefs and ensure that they are being claimed legitimately. This applies to both partial reliefs and those for 100% of the tax due.

259. The actual value of reliefs and exemptions varies from year to year depending on the overall volume and value of transactions and the relevant rates of tax that are applied. The table below gives information about the value of SDLT reliefs in 2010-11 in Scotland (data provided by HMRC).

<table>
<thead>
<tr>
<th>Relief</th>
<th>Non-residential £ million</th>
<th>Residential £ million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group</td>
<td>24.2</td>
<td>1.7</td>
</tr>
<tr>
<td>Other</td>
<td>10.8</td>
<td>3.4</td>
</tr>
<tr>
<td>Charities</td>
<td>3.5</td>
<td>1.7</td>
</tr>
<tr>
<td>First Time Buyers (withdrawn by UK Government on 25 March 2012)</td>
<td>n/a</td>
<td>4.8</td>
</tr>
<tr>
<td>Certain acquisitions by Registered Social Landlords</td>
<td>0.3</td>
<td>1.1</td>
</tr>
<tr>
<td>Acquisition</td>
<td>1.2</td>
<td>&lt;0.1</td>
</tr>
<tr>
<td>Certain acquisitions - part exchange (house building company)</td>
<td>n/a</td>
<td>1.2</td>
</tr>
<tr>
<td>Alternative property finance</td>
<td>1.1</td>
<td>nil</td>
</tr>
<tr>
<td>Disadvantaged Area (to be withdrawn by UK Government from April 2013)</td>
<td>&lt;0.1</td>
<td>0.8</td>
</tr>
<tr>
<td>Certain acquisitions - relocation of employment</td>
<td>n/a</td>
<td>0.6</td>
</tr>
</tbody>
</table>
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

| Compulsory Purchase Facilitating Development | 0.5 | nil |
| Transfers involving public bodies | 0.3 | <0.1 |
| Acquisition by bodies established for national purposes | 0.2 | <0.1 |
| Reconstruction | 0.1 | <0.1 |
| Incorporation of limited liability partnerships | <0.1 | <0.1 |
| Complying with Planning Obligations | <0.1 | <0.1 |
| Zero Carbon Homes (time limited 1 Oct 2007 to 1 Oct 2012) | n/a | <0.1 |
| Combination of reliefs | n/a | <0.1 |
| Unknown reliefs | n/a | <0.1 |
| **Total cost (excludes <0.1 entries)** | 42.2 | 15.3 |

**Note:** There are a number of other existing UK SDLT reliefs not listed above (for example, demutualisation of an insurance company relief, crofting community right to buy relief) which had zero cost in 2010-11 in Scotland. Relief under the sub-sale provisions is also not listed as it is not claimed as a relief.

**Removing reliefs**

260. The Scottish Government has consulted on and examined the case for replicating each of the reliefs currently available under SDLT. It has concluded that, in some instances, the case for retaining specific reliefs is not strong – particularly when considered in the context of the objective to simplify the tax. The Bill proposes fewer reliefs under LBTT than those currently available under SDLT. For reasons set out in the Policy Memorandum, the reliefs which are currently available under SDLT and which will not be replicated, either wholly or partially, under LBTT are as follows:

- Sub-sales (the SDLT rules for sub-sales are considered to be a relief, although it is not claimed as such);
- Certain acquisitions of residential property;
- Demutualisation of insurance companies/building societies;
- Transfer in consequence of reorganisation of Parliamentary constituencies; and
- New zero-carbon homes.

261. The proposal to remove sub-sale relief may lead to an increase in receipts. However, it is not possible to identify the extent of the potential receipts increase because sub-sale rules are not statutorily classed as a relief under SDLT. Buyers taking advantage of the relief do not have to notify HMRC that they are doing so and there is, therefore, no information on which to base an
estimate. It will be important to ensure that when LBTT is introduced in April 2015, subject to Parliamentary approval, it is made clear to taxpayers that sub-sale rules do not apply any longer.

262. “Certain acquisitions of residential property” refers to a group of four reliefs. It is proposed to retain two of the reliefs in this group, where property is bought in part-exchange for a new residential property and where a property trader acquires a dwelling after the breakdown of a series of transactions. The other two will be removed, as explained in the table below:

<table>
<thead>
<tr>
<th>Relief Available</th>
<th>Existing Cost (2009-10)</th>
<th>Data from HMRC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where a property trader(^{16}) acquires a dwelling from the personal representatives of a deceased person.</td>
<td>£0m</td>
<td></td>
</tr>
<tr>
<td>Where an employer or a property trader purchases a dwelling from an employee who is re-locating.</td>
<td>£0.5m</td>
<td></td>
</tr>
</tbody>
</table>

263. The cost of providing the final three reliefs listed above (Demutualisation of insurance companies, Reorganisation of Parliamentary constituencies and New zero-carbon homes relief) is currently zero – i.e. there have been no claims under these reliefs made in Scotland in recent years. The removal of these reliefs has no financial implications. The reasons for removing these reliefs are set out in the Policy Memorandum accompanying the Bill.

Receipts: economic impacts

264. The UK Government has sought to use SDLT as an instrument to stimulate the property market, or sectors of it, and thus the construction sector and the wider economy. Examples of how the UK Government has sought to use SDLT include the granting of first-time buyer relief and relief for non-residential property transactions in specified disadvantaged areas (the UK Government withdrew the former in March 2012 and plans to end the latter in March 2013). The cost or benefit to the wider economy of such reliefs, and also of changes to tax rates and bands will depend on many factors, including prevailing conditions in different sections of the property market. The effect is likely to vary significantly from year to year. No attempt has been made to estimate the potential wider economic or financial impact of any future adjustments to LBTT. Changes to the tax rates and bands and to reliefs and exemptions will be made by statutory instrument and will require the approval of the Scottish Parliament.

265. Over time, the Scottish Government will develop its analysis of the relationship between LBTT and the wider Scottish economy and will use this information to ensure that there is a good understanding of the linkages between LBTT rates, bands and reliefs and the Scottish property market.

\(^{16}\) In this context a property trader means a company, a limited liability partnership or a partnership whose members are all companies or limited liability partnerships that carries out the business of buying and selling properties.
Receipts: forecasts

266. In March 2012, the Office of Budget Responsibility (OBR) published forecasts for Scottish receipts of SDLT over the five year period from 2010-11 to 2016-17 in the document entitled *Economic and Fiscal Outlook – Scottish tax forecasts*. A summary of actual data and forecast receipts follows:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>£ million</td>
<td>330</td>
<td>319</td>
<td>328</td>
<td>369</td>
<td>426</td>
<td>480</td>
<td>536</td>
</tr>
</tbody>
</table>

Average over 5 years = £354 million

267. The Scottish Government expects that additional information will become available during Parliamentary consideration of this Bill. Forecasts for future SDLT receipts depend heavily on assumptions made about future economic growth and conditions in the property market.

Receipts: summary

268. For the purposes of projecting the net effect on the overall Scottish budget, it is reasonable to assume that receipts from LBTT will be equivalent to those from SDLT at present, and that the block grant adjustment will be broadly equal to the level of SDLT receipts. In other words, the financial impact of the Scottish Government introducing LBTT and the UK Government ending SDLT in Scotland and applying a block grant adjustment, can be assumed to be broadly neutral. This assumption is, of course, dependent on the rates and bands of LBTT, to be set, in due course, by the Scottish Government with the approval of the Scottish Parliament. As noted earlier, this Bill does not deal with the block grant adjustment.

ii. Costs to the Scottish Government of establishing and running Revenue Scotland

269. The Cabinet Secretary for Finance, Employment and Sustainable Growth gave notice in his statement to the Parliament on 7 June 2012 of his intention to establish a tax administration function (Revenue Scotland) to administer both LBTT and Landfill Tax in Scotland. The Cabinet Secretary said that:

“We will establish a tax administration function for assessing and collecting both taxes here in Scotland. The function, which I propose to name Revenue Scotland, will be established this year. By 2015, in line with international best practice, it will be operationally independent and its governance enshrined in legislation.”

270. Legislative provision for the establishment of Revenue Scotland will be made, subject to the agreement of the Scottish Parliament, in the Tax Management Bill, to follow this Bill in 2013. As the Cabinet Secretary announced, Revenue Scotland will have a structure and constitution designed so that it is operationally independent of Scottish Ministers. While ultimately it will deliver and respond to Scottish Government policy and will account to the Scottish Ministers and the Scottish

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Parliament for its performance, it is both appropriate and necessary for Revenue Scotland to be operationally independent in dealing with taxpayers and their affairs.

271. The Scottish Government will meet the costs of establishing and running Revenue Scotland. The estimated costs provided below for both Revenue Scotland and RoS are as provided to the Scottish Parliament in June 2012 and placed in the Scottish Parliament Information Centre (SPICe). These costs reflected work done on the various functions needed to operate the tax. Since June, further work has been done during the public consultation period and thereafter to refine the design of LBTT. More detailed planning is now underway on administrative systems and the allocation of tasks between Revenue Scotland and RoS. This work will include development of a more detailed timetable for the tasks required and of a profile for estimated expenditure. Updated costs and timescales will be provided to the Parliament when they are available.

272. Staff costs are based on average costs for Scottish Government staff in summer 2012 and take account of average basic salary for the grades in question, Accruing Superannuation Liability Charge, Earnings-Related National Insurance Contribution and any non-consolidated award.

273. Revenue Scotland will be established to oversee the administration of both LBTT and Landfill Tax. The administration costs attributable to LBTT and, therefore, to this Bill will arise both in Revenue Scotland and in RoS. Estimated RoS costs are described at paragraphs 276-279 below. At this stage in planning there is insufficient information to support an attribution of Revenue Scotland costs between LBTT and Landfill Tax. So although total estimated costs for Revenue Scotland are given below, only a proportion of these will be attributable to LBTT.

274. Costs have been broken down under two headings: set-up costs and running costs. Total set-up costs incurred from June 2013 to March 2015 to implement LBTT and set up Revenue Scotland (which will cover both LBTT and Landfill Tax) are estimated to be as shown in the table below. Costs are rounded to the nearest £5,000. Note that planning work is already underway so some staff and other costs will also be incurred before June 2013.

### Staff costs

<table>
<thead>
<tr>
<th>Function</th>
<th>Cost per year (£000)</th>
<th>Period</th>
<th>Total cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Management</td>
<td>130</td>
<td>June 2013 to March 2015</td>
<td>240</td>
<td>Head of Revenue Scotland (0.3 fte SCS Pay Band 2), Chief Operating Officer (SCS Pay Band 1)</td>
</tr>
<tr>
<td>Tax Administration Programme</td>
<td>116</td>
<td>June 2013 to March 2015</td>
<td>210</td>
<td>Programme Manager (Band C) and Programme Officer (Band B)</td>
</tr>
<tr>
<td>Revenue Scotland Development</td>
<td>232</td>
<td>June 2013 to March 2015</td>
<td>425</td>
<td>2 Teams, each 1 Band C and 1 Band B, developing internal systems, procedures, policies, capacity and communications.</td>
</tr>
</tbody>
</table>
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

<table>
<thead>
<tr>
<th>Function</th>
<th>Costed on assumption of around 10 staff, averaging Band B.</th>
<th>Costed on assumption of around 10 staff, averaging Band B.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue Scotland Appeals, Disputes &amp; Compliance</td>
<td>October 2014 to March 2015</td>
<td>October 2014 to March 2015</td>
</tr>
<tr>
<td>Administrative support</td>
<td>49</td>
<td>85</td>
</tr>
<tr>
<td>Total</td>
<td>1200</td>
<td>2 Band A staff providing administrative support to all above teams.</td>
</tr>
</tbody>
</table>

Non-staff costs

<table>
<thead>
<tr>
<th>Function</th>
<th>Set-up Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Systems</td>
<td>80</td>
<td>This cost includes the hardware set-up costs for the staff together with the costs of establishing the website but assumes a tax collection system design which does not require central database development at Revenue Scotland. A different design may be chosen and costs will only be known following detailed design and procurement.</td>
</tr>
<tr>
<td>Communications and branding</td>
<td>75</td>
<td>Need to promote awareness of Revenue Scotland and devolved taxes.</td>
</tr>
<tr>
<td>Standard running costs for unit from June 2013 - 31 March 2015</td>
<td>200</td>
<td>Training, travel and subsistence and accommodation costs for staff.</td>
</tr>
<tr>
<td>Contingency</td>
<td>100</td>
<td>Allowance for underestimates in above figures.</td>
</tr>
<tr>
<td>Totals</td>
<td>455</td>
<td>No VAT chargeable on this.</td>
</tr>
</tbody>
</table>

275. Total annual running costs incurred from April 2015 onwards for all Revenue Scotland functions, including Land and Buildings Transaction Tax (rounded to the nearest £5,000) are estimated as shown in the table below.

Staff costs

<table>
<thead>
<tr>
<th>Function</th>
<th>Running Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Management</td>
<td>220</td>
<td>Chief Executive SCS Pay Band 2, Chief Operating Officer SCS Pay Band 1.</td>
</tr>
<tr>
<td>Compliance</td>
<td>350</td>
<td>Team of 8 staff, assume 2 band C, 6 band B.</td>
</tr>
<tr>
<td>Disputes and Appeals</td>
<td>280</td>
<td>2 band C solicitors plus band B support.</td>
</tr>
<tr>
<td>Communications and complaints</td>
<td>240</td>
<td>Band C plus 5 band B staff to manage web and print communications, limited helpline and complaints. This may need to be</td>
</tr>
</tbody>
</table>
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

<table>
<thead>
<tr>
<th>Function</th>
<th>Running Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning and Development</td>
<td>125</td>
<td>Band C plus 2 band B staff covering planning and reporting and further system development.</td>
</tr>
<tr>
<td>Administrative support</td>
<td>100</td>
<td>4 Band A staff supporting all above teams.</td>
</tr>
<tr>
<td>Contingency</td>
<td>155</td>
<td>Allowance for underestimates in all above figures.</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1470</strong></td>
<td>No VAT charged on this.</td>
</tr>
</tbody>
</table>

Non Staff costs

<table>
<thead>
<tr>
<th>Function</th>
<th>Running Cost (£000)</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard running costs</td>
<td>170</td>
<td>Travel training and accommodation.</td>
</tr>
<tr>
<td>IT systems support</td>
<td>50</td>
<td>Assume that receipts will be remitted direct to Scottish Government by collection agents; systems required for case management, appeals administration, performance management of contracts</td>
</tr>
<tr>
<td>Website maintenance and production and updating of on-line guidance</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Appeals against LBTT charges</td>
<td>120</td>
<td>Costed on a basis comparable to SEPA costing for landfill tax appeals; assumption of up to 20 appeals per year. Non-staff cost</td>
</tr>
<tr>
<td>Legal outsourcing/debt recovery contracts</td>
<td>100</td>
<td>Non-staff cost.</td>
</tr>
<tr>
<td>Contingency</td>
<td>250</td>
<td>Allowance for underestimates in all above figures</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>740</strong></td>
<td>No VAT charged on this.</td>
</tr>
</tbody>
</table>

iii. Costs to the Scottish Government of RoS collecting LBTT

276. It is the Scottish Government’s announced intention that Revenue Scotland will delegate operational responsibility for the collection of LBTT to RoS. RoS already collects a proportion of SDLT on behalf of HMRC under a service level agreement.

277. RoS costs, like those for Revenue Scotland, have been broken down under two headings, set-up costs (incurred in 2012 to March 2015) and running costs (i.e. the ongoing costs of collecting LBTT from 1 April 2015). The costs identified by RoS have been prepared on the following assumptions:
that it will have a basic compliance role, with the bulk of responsibility for compliance resting with Revenue Scotland. (Further planning work is required to decide on the respective roles that Revenue Scotland and RoS will have in relation to compliance activity);

that the tax will be introduced as planned in 2015 and as described in the public consultation documents that have been published; and

that at least 90% of LBTT will be processed online.

Changes that affect these assumptions may lead to lower or greater actual costs. RoS operates as a Trading Fund and is self-financing from the income it receives for the services it provides. It therefore requires to cover the costs it incurs in respect of the LBTT service it will provide. These costs will be agreed with and met by the Scottish Government. The cost estimates provided below have been rounded to the nearest £5,000.

Set-up Costs: Registers of Scotland

<table>
<thead>
<tr>
<th>Function</th>
<th>Set-up Costs (£000)</th>
<th>Details</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Staff costs</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff costs of planning, overseeing, and implementing changes prior to April 2015</td>
<td>250</td>
<td>1.5 Grade 7 (C1 equivalent), 1 SEO (B3 equivalent), 1 HEO (B2 equivalent) and 0.3 EO (B1 equivalent)</td>
<td>Includes system preparation, project planning and management costs, and covers work-package effort for legislation and policy, IT, Finance, Registration and implementation. It does not include costs for preparing for compliance and enforcement work - assumed under RS start-up costs</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>250</td>
<td></td>
<td>Excluding VAT – chargeable and recoverable</td>
</tr>
<tr>
<td><strong>Non staff costs</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Familiarisation of solicitors with new systems</td>
<td>10</td>
<td></td>
<td>Training and publicity for solicitors and other users to ensure full and effective take up</td>
</tr>
<tr>
<td>Build cost of new LBTT system</td>
<td>75</td>
<td></td>
<td>This represents the capital costs of building the system</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>85</td>
<td></td>
<td>Excluding VAT – chargeable and recoverable</td>
</tr>
</tbody>
</table>
Total annual running costs (incurred from 1 April 2015 onwards) are estimated to be as follows:

**Running Costs: Registers of Scotland**

<table>
<thead>
<tr>
<th>Function</th>
<th>Running Cost (£000)</th>
<th>Details</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Staff costs</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>e-Services Helpdesk</td>
<td>130</td>
<td>1 EO (B1 equivalent) and 3 x AOs (A4 equivalent)</td>
<td>Estimate is based on providing administrative advice (but not tax advice) to 100 calls per day.</td>
</tr>
<tr>
<td>Provision of complex enquiry helpdesk</td>
<td>60</td>
<td>1 SEO (B3 equivalent)</td>
<td>Referral point from e-Services Helpdesk for complex cases.</td>
</tr>
<tr>
<td>Additional costs associated with system support and new chargeable transactions</td>
<td>20</td>
<td>0.5 HEO (B2 equivalent)</td>
<td>Figure is an estimate to cover system support and possible tax changes.</td>
</tr>
<tr>
<td>Intake process cost</td>
<td>30</td>
<td>1.3 AA (A3 equivalent)</td>
<td>Cost of intake processes in respect of paper applications</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>240</strong></td>
<td></td>
<td>Excluding VAT: chargeable and recoverable.</td>
</tr>
<tr>
<td><strong>Non Staff costs</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional IT maintenance and support costs</td>
<td>20</td>
<td></td>
<td>Costs associated with IT and e-Services support.</td>
</tr>
<tr>
<td>Annual cost of providing data to HMRC</td>
<td>15</td>
<td></td>
<td>UK Government requirement.</td>
</tr>
<tr>
<td>Additional costs associated with new chargeable transactions</td>
<td>50</td>
<td></td>
<td>Figure is an estimate to cover possible changes.</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>85</strong></td>
<td></td>
<td>Excluding VAT: chargeable and recoverable.</td>
</tr>
</tbody>
</table>

These costs have been estimated on the basis that major system changes are being introduced as a result of the Land Registration etc. (Scotland) Act 2012, and that the costs of these changes are unavoidable. By building in LBTT requirements from the outset in designing the new systems, the additional cost in respect of LBTT has been minimised. As a result, RoS’s set-up and
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

running costs, including in relation to IT developments for LBTT, are lower than would otherwise have been the case. As noted above, it is also the case that RoS already undertakes processing and collection of SDLT on behalf of HMRC, and consequently has considerable knowledge and experience of requirements.

II. COSTS ON LOCAL AUTHORITIES AND OTHER PUBLIC BODIES

280. Local authorities and other public bodies are of course subject to SDLT at present and will be subject to LBTT in future. Cost implications for them will depend on the extent to which they purchase or lease land and property, and the prices at which purchases etc are made. Costs will also be dependent on the rates and bands set for LBTT and, to an extent, the availability and design of exemptions and reliefs. As discussed above, rates and bands will not be set until closer to the time at which they will come into force. It is not possible to estimate how much local authorities and other public bodies may pay in tax.

281. In terms of any net administrative and compliance costs, the Scottish Government does not expect that there will be a material change in costs falling on these bodies as a result of removing SDLT and introducing LBTT. The Scottish Government expects that RoS will consult end-users of the replacement tax system, such as local authorities, as part of its development of the online system and that it will seek to provide systems that minimise administrative effort and costs.

282. The Scottish Government expects no increase in administrative costs on local authorities and other public bodies in claiming a relief or exemption. As set out in the Policy Memorandum, the Bill expands access to Compulsory Purchase Order relief for local authorities, so that they will be able to claim this relief when they compulsorily purchase an empty home for onward sale. This may reduce some local authorities’ costs.

III COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

283. Costs to businesses are also examined in the Business and Regulatory Impact Assessment (“BRIA”) which will be published shortly. Individuals and businesses affected would include anyone with an interest in land and property purchase and leases such as:

- People buying a home after April 2015
- Businesses buying or leasing commercial premises
- Farmers buying or leasing agricultural land
- Agents e.g. conveyancing solicitors
- Other tax advisors
- Mortgage and commercial lenders.

284. As with local authorities, the overall cost implications of this Bill for these groups in terms of the tax payable will be dependent on the extent to which they purchase or lease land and property and the prices at which purchases etc. are made. Tax costs are examined further in paragraphs 287-293 below. As many individuals and businesses engage agents to deal with their land and buildings transactions, they will incur professional fees but the fees are not expected to be significantly different from those incurred now in relation to SDLT. The Scottish Government does not expect
that there will be a material change in administrative costs as a result of having to comply with LBTT instead of SDLT. RoS will consult end-users of the new tax system, such as conveyancing solicitors, with a view to designing efficient, easy to use online systems, which help to minimise administrative costs.

285. The amount of tax payable will also be dependent on the rates and bands set for LBTT and, to an extent, the availability and design of exemptions and reliefs, as well as on property market activity. As also discussed above, the rates and bands will not be set until closer to the time at which they will come into force and, therefore, it is not possible to estimate the cost implications. The LBTT consultation paper included three scenarios (two scenarios for residential property purchases and one for non-residential property purchases) to illustrate the possible changes in tax charges when changing from the current ‘slab’ tax structure for SDLT to the more progressive tax structure proposed for LBTT.

286. Scenarios 1 and 2 compare the tax due for SDLT at different residential property values with that due under LBTT using different notional tax rates and bands. The graphs and tables are based on averaging data on residential property transactions in Scotland in 2007 and 2009. For the purposes of a like-for-like comparison of rates and thresholds, the two scenarios are provided on the basis of overall revenue neutrality i.e. the total receipts would be the same in each example. The third scenario looked at the tax payable on non-residential property based on the tax payable on the purchase price or premium component of the tax (rather than rent).

Scenario 1 – Residential property: progressive rate starting at £180,000, revenue neutral

287. This scenario, which is estimated to be broadly revenue neutral, represents a major simplification of the tax structure. There is an added focus on relieving the burden of tax at the lower end of the market with purchases of properties under £180,000 incurring no tax. Based on historical data, no tax would be payable for around 70% of all house purchases in 2007 and 2009.

288. The single rate of 7.5% for purchases between £180,000 and £1.5 million would have the effect of smoothing out the current system and removing distortions in the market. However, exempting a large proportion of the market would mean that the purchase of properties above £300,000 (less than 7% of the market) would incur more tax than under the current SDLT system. Additionally, the smoothing of the rates would mean that properties between £200,000 and £250,000 incur additional tax compared to the current slab system of SDLT.

<table>
<thead>
<tr>
<th>Current</th>
<th>Scenario 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slab rate (%)</td>
<td>Progressive rate (%)</td>
</tr>
<tr>
<td>Up to £125,000</td>
<td>0</td>
</tr>
<tr>
<td>Over £125,000 to £250,000</td>
<td>1</td>
</tr>
<tr>
<td>Over £250,000 to £500,000</td>
<td>3</td>
</tr>
<tr>
<td>Over £500,000 to £1m</td>
<td>4</td>
</tr>
<tr>
<td>Over £1m to £2m</td>
<td>5</td>
</tr>
<tr>
<td>Above £2m</td>
<td>7</td>
</tr>
<tr>
<td>Up to £180,000</td>
<td>0</td>
</tr>
<tr>
<td>Over £180,000 to £1.5m</td>
<td>7.5</td>
</tr>
<tr>
<td>Above £1.5m</td>
<td>10</td>
</tr>
</tbody>
</table>
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

<table>
<thead>
<tr>
<th>% of market</th>
<th>(Average of 2007 and 2009)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below £180,000</td>
<td>70</td>
</tr>
<tr>
<td>Above £180,000</td>
<td>30</td>
</tr>
<tr>
<td>Above £1.5m</td>
<td>0.1</td>
</tr>
</tbody>
</table>

289. Based on 2007 and 2009 data, 70% of the Scottish housing market purchases were under £180,000. Under scenario 1, such purchases would not incur any LBTT.

Chart showing tax payable on house purchases up to £750,000

Amount of tax due by house price

---

- Original - slab rate
- Revised - Progressive

---

<table>
<thead>
<tr>
<th>Purchase price (£)</th>
<th>Tax due (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>50,000</td>
<td>Original: 4,000, Revised: 4,500</td>
</tr>
<tr>
<td>100,000</td>
<td>Original: 8,000, Revised: 9,000</td>
</tr>
<tr>
<td>150,000</td>
<td>Original: 12,000, Revised: 13,500</td>
</tr>
<tr>
<td>200,000</td>
<td>Original: 16,000, Revised: 18,000</td>
</tr>
<tr>
<td>250,000</td>
<td>Original: 20,000, Revised: 22,500</td>
</tr>
<tr>
<td>300,000</td>
<td>Original: 24,000, Revised: 27,000</td>
</tr>
<tr>
<td>350,000</td>
<td>Original: 28,000, Revised: 31,500</td>
</tr>
<tr>
<td>400,000</td>
<td>Original: 32,000, Revised: 36,000</td>
</tr>
<tr>
<td>450,000</td>
<td>Original: 36,000, Revised: 40,500</td>
</tr>
<tr>
<td>500,000</td>
<td>Original: 40,000, Revised: 45,000</td>
</tr>
<tr>
<td>550,000</td>
<td>Original: 44,000, Revised: 50,000</td>
</tr>
<tr>
<td>600,000</td>
<td>Original: 48,000, Revised: 55,000</td>
</tr>
<tr>
<td>650,000</td>
<td>Original: 52,000, Revised: 60,000</td>
</tr>
<tr>
<td>700,000</td>
<td>Original: 56,000, Revised: 65,000</td>
</tr>
<tr>
<td>750,000</td>
<td>Original: 60,000, Revised: 70,000</td>
</tr>
</tbody>
</table>

---

161
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

Chart showing tax payable on house purchases up to £2,500,000

**Amount of tax due by house price**

<table>
<thead>
<tr>
<th>Purchase price (£)</th>
<th>Tax due (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Original - slab rate</strong></td>
<td><strong>Revised - Progressive</strong></td>
</tr>
<tr>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>50000</td>
<td>100,000</td>
</tr>
<tr>
<td>100000</td>
<td>200,000</td>
</tr>
<tr>
<td>150000</td>
<td>300,000</td>
</tr>
<tr>
<td>200000</td>
<td>400,000</td>
</tr>
<tr>
<td>250000</td>
<td>500,000</td>
</tr>
<tr>
<td>300000</td>
<td>600,000</td>
</tr>
<tr>
<td>350000</td>
<td>700,000</td>
</tr>
<tr>
<td>400000</td>
<td>800,000</td>
</tr>
<tr>
<td>450000</td>
<td>900,000</td>
</tr>
<tr>
<td>500001</td>
<td>1,000,000</td>
</tr>
<tr>
<td>550000</td>
<td>1,100,000</td>
</tr>
<tr>
<td>600000</td>
<td>1,200,000</td>
</tr>
<tr>
<td>650000</td>
<td>1,300,000</td>
</tr>
<tr>
<td>700000</td>
<td>1,400,000</td>
</tr>
<tr>
<td>750000</td>
<td>1,500,000</td>
</tr>
<tr>
<td>800000</td>
<td>1,600,000</td>
</tr>
<tr>
<td>850000</td>
<td>1,700,000</td>
</tr>
<tr>
<td>900000</td>
<td>1,800,000</td>
</tr>
<tr>
<td>950000</td>
<td>1,900,000</td>
</tr>
<tr>
<td>1,000,001</td>
<td>2,000,000</td>
</tr>
<tr>
<td>1,050,000</td>
<td>2,100,000</td>
</tr>
<tr>
<td>1,100,000</td>
<td>2,200,000</td>
</tr>
<tr>
<td>1,150,000</td>
<td>2,300,000</td>
</tr>
<tr>
<td>1,200,000</td>
<td>2,400,000</td>
</tr>
<tr>
<td>1,250,000</td>
<td>2,500,000</td>
</tr>
</tbody>
</table>

**Tax payable under Scenario 1 compared with current SDLT system:**

<table>
<thead>
<tr>
<th>House Price</th>
<th>Tax under current system</th>
<th>Tax under Scenario 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>£125,001</td>
<td>£1,250</td>
<td>£0</td>
</tr>
<tr>
<td>£150,000</td>
<td>£1,500</td>
<td>£0</td>
</tr>
<tr>
<td>£180,000</td>
<td>£1,800</td>
<td>£0</td>
</tr>
<tr>
<td>£190,000</td>
<td>£1,900</td>
<td>£750</td>
</tr>
<tr>
<td>£200,000</td>
<td>£2,000</td>
<td>£1,500</td>
</tr>
<tr>
<td>£250,001</td>
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</table>
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

<table>
<thead>
<tr>
<th>Amount</th>
<th>Slab rate (%)</th>
<th>Progressive rate (%)</th>
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<tr>
<td>£1,500,000</td>
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<td>4</td>
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<td></td>
<td>5</td>
<td>Above £2m</td>
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</table>

(Amounts rounded to the nearest £)

Scenario 2 – Residential property: progressive rates starting at £125,000, revenue neutral

290. This scenario, also revenue neutral and based on historical data, illustrates two progressive rates starting at the current £125,000 level. Under this scenario, no property under £325,000 would incur more tax than under the current slab system of SDLT – this represents around 95% of the market. The smoothing out of the current system would mean that properties just above £250,000 incur around £5,000 less tax but this is compensated for by higher rates for the top 5% of the market.

<table>
<thead>
<tr>
<th>Current Slab rate (%)</th>
<th>Scenario 2 Progressive rate (%)</th>
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</thead>
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<tr>
<td></td>
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<tr>
<td>Over £250,000 to £500,000</td>
<td>3</td>
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<tr>
<td>Over £500,000 to £1m</td>
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<td>Over £1m to £2m</td>
<td>5</td>
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<tr>
<td>Above £2m</td>
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</table>

% of market
(Average of 2007 and 2009)

<table>
<thead>
<tr>
<th>Below £125,000</th>
<th>45</th>
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<tbody>
<tr>
<td>Above £125,000 and below £250,000</td>
<td>43</td>
</tr>
<tr>
<td>Above £250,000</td>
<td>12</td>
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</tbody>
</table>

291. Based on 2007 and 2009 data, 45% of the Scottish housing market purchases were under £125,000. Under scenario 2, such purchases would not incur any LBTT, as is the case under SDLT.
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

Chart showing tax payable on house purchases up to £750,000

Amount of tax due by house price

Chart showing tax payable on house purchases up to £2,500,000

Amount of tax due by house price
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

Tax payable under Scenario 2 compared with current SDLT system:

<table>
<thead>
<tr>
<th>House Price</th>
<th>Tax under current system</th>
<th>Tax under Scenario 2</th>
</tr>
</thead>
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</table>

(Amounts rounded to the nearest £)

Example of an indicative progressive rate scenario for non-residential property transactions

292. These graphs and tables, based on averaging data on non-residential property transactions in Scotland in 2007 and 2009, demonstrate how a progressive LBTT might operate in Scotland, compared to the current slab rates for SDLT. The scenario illustrates the tax payable on the purchase price or premiums for non-residential leases (rather than rent).

293. This scenario initially mirrors the SDLT approach with purchases of properties up to £150,000 incurring no tax. A progressive rate of 3% then follows for properties between £150,001 and £250,000, with no purchases below £225,000 incurring more tax than under the current slab system which would be helpful for small businesses. To achieve overall revenue neutrality, a  progressive rate of 4.4% is applied for property purchases above £250,000.
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

<table>
<thead>
<tr>
<th>Current SDLT slab rates</th>
<th>Tax rate (%)</th>
<th>Scenario – progressive rates</th>
<th>Tax rate (%)</th>
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<td>Above £500,000</td>
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</table>

Chart showing tax payable on purchases up to £750,000

![Chart showing tax payable on purchases up to £750,000](image-url)
These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

Chart showing tax payable on purchases up to £5,000,000

Tax due on purchases of non-residential properties

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Tax payable under progressive rate scenario compared with current SDLT system:

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These documents relate to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

294. On 29 November 2012, the Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney MSP) made the following statement:

“In my view, the provisions of the Land and Buildings Transaction Tax (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

295. On 29 November 2012, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Land and Buildings Transaction Tax (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
Cabinet Secretary for Finance, Employment and Sustainable Growth
John Swinney MSP

T: 0845 774 1741
E: scottish.ministers@scotland.gsi.gov.uk

Mr Kenneth Gibson MSP
Convenor of the Finance Committee
The Scottish Parliament
Edinburgh
EH99 1SP

9 January 2013

Dear Kenneth,

It has been brought to my attention that there is an error in the Financial Memorandum accompanying the Land and Buildings Transaction Tax (Scotland) Bill currently being scrutinised by the Finance Committee.

On pages 50 to 51 of the Financial Memorandum, the table entitled “Staff Costs” sets out the staff costs of establishing Revenue Scotland. In the table, the “Cost per year” column shows annual costs, and the “Total cost” column shows total set-up costs in the period June 2013 to March 2015. In the table the estimated cost per year associated with Appeals, Disputes and Compliance appears as £289,000. The correct figure is £481,000. However the figure of £240,000 shown in the Total cost column is correct, since the cost of setting up Appeals, Disputes and Compliance capacity is expected to fall into the 6-month period October 2014 to March 2015 and total set-up costs are therefore half the annualised cost. The estimated total staff costs of setting up Revenue Scotland remains as given in the table at £1,200,000.

The error has been brought to the attention of the Committee Clerks who have helpfully suggested to my officials that the Financial Memorandum should be corrected at stage 2.

I apologise for this error, and trust this explanation is helpful to the Committee.

Yours sincerely,

JOHN SWINNEY
INTRODUCTION

1. This document relates to the Land and Buildings Transaction Tax (Scotland) Bill as introduced in the Scottish Parliament on 29 November 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 19–EN.

POLICY PRINCIPLES OF THE BILL

General overview

2. The Land and Buildings Transaction Tax (Scotland) Bill is the first of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012 (“the 2012 Act”) which received Royal Assent on 1 May 2012. Under the terms of the 2012 Act, the Scottish Parliament will have responsibility for taxes on land transactions and disposals to landfill. This Bill deals with the former responsibility and makes provisions for a Scottish tax on land transactions, to be called the Land and Buildings Transaction Tax (“LBTT”). The intention of the UK Government is that the provision in the 2012 Act disapplying the UK Stamp Duty Land Tax (SDLT) regime to Scotland will be brought into force with effect from the end of March 2015 by a Treasury Order in the UK Parliament. To ensure consistency of tax revenues to government, it is intended that the legislative provisions for LBTT will come into force the day after SDLT is disapplied. The Scottish Government is also consulting on a Scottish tax on disposals to landfill and will bring forward a Landfill Tax Bill in due course. The UK Government will make a reduction to the Scottish block grant (the annual grant paid to the Scottish Government) to offset the expected income from the two devolved taxes so that the Scottish Government’s budget will remain broadly as it would have been.

3. It will be important that, during the transitional period when SDLT is withdrawn and LBTT is introduced, it is clear, particularly in relation to leases, which tax is due and when. There are transitional rules in section 29(6) of the 2012 Act and the UK Treasury is empowered to make consequential and transitional amendments in respect of the new regime by order under section 42(3) of the 2012 Act. The Scottish Government will liaise closely with the UK Treasury to ensure that the arrangements for the transitional period work effectively.
4. The Bill makes provision for Scottish Ministers to be the Tax Authority but for the Authority to be changed by order. As indicated in a statement to the Parliament on 7 June 2012 by the Cabinet Secretary for Finance, Employment and Sustainable Growth, a new body, Revenue Scotland, has been established as an administrative function within the Scottish Government. The Government will shortly consult on provisions to establish Revenue Scotland on a statutory footing. It is intended that the administration and collection of LBTT will be undertaken by Registers of Scotland (RoS) on behalf of Revenue Scotland.

5. In his statement, the Cabinet Secretary also said that the Scottish Government’s approach to taxation in general, and to LBTT in particular, would be founded on four principles – certainty, convenience, efficiency and proportionate to the ability to pay. The Scottish Government has taken care to ensure that these principles are reflected throughout the provisions in this Bill. LBTT will deliver certainty because it has been designed to be as simple as possible and to better reflect Scots law and practice. It will deliver convenience because collection will be supported by a modern, electronic payments system, in line with the ambitions set out in Scotland’s Digital Future: A Strategy for Scotland. It will deliver efficiency because LBTT will be collected by Revenue Scotland through Registers of Scotland, drawing on all of its existing relevant knowledge and expertise. It will be proportionate to the ability to pay because LBTT will have a progressive structure so that the amount of LBTT paid will relate more closely to the value of the interest in the property acquired compared to SDLT.

6. LBTT will result in tax revenue that will be used to further the Scottish Government’s purpose – to create a more successful country with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. In keeping with these ends, this Bill provides for a tax which:

- Is expected to come into effect on 1 April 2015;
- Is modern, efficient, and progressive;
- Does not impede or distort legitimate commercial or housing-market activities;
- In the interests of simplicity, reduces the number of tax reliefs available;
- Is better aligned with Scots law and practices; and
- Contributes revenues to support Scotland’s public finances.

7. In order to prepare for the efficient management of LBTT - and to make provision for any further taxes which could be devolved in the future - arrangements need to be made for the administration and prompt collection of the tax to ensure compliance, and for appeals. Many of the legislative requirements in relation to collection, compliance and appeals will be common to the proposed tax on disposals to landfill and to any further taxes devolved to Scotland in future, as provided for in the 2012 Act. To keep these common provisions in one place and, where possible, promote simpler and more user-friendly tax legislation, a further Bill (which may be called the Tax Management Bill), will be brought forward in 2013 and will, subject to Parliamentary approval, establish the overall framework for tax administration in Scotland. The Scottish Government intends shortly to consult on provisions for inclusion in the Tax Management Bill.

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1 http://www.scotland.gov.uk/Publications/2011/03/04162416/0
8. The LBTT Bill and the Tax Management Bill should, therefore, be viewed as a package, with the LBTT Bill setting out the rules and structure for the tax itself and the Tax Management Bill providing for the issues that are common to both LBTT and to the proposed Landfill Tax, such as the powers of Revenue Scotland, the obligations of taxpayers, the treatment of taxpayers who fail to comply, how taxpayers can appeal, and the treatment of taxpayer information.

9. Revenue Scotland will delegate the day-to-day administration and collection of LBTT to RoS. RoS already performs a key role in many land transactions in Scotland by managing the land registration process and also by collecting SDLT on behalf of HM Revenue & Customs (HMRC) in certain cases. Joining RoS’ existing responsibilities together with a new role in collecting LBTT will enable taxpayers to submit their tax return and their applications to register title at the same time and to pay their tax and registration fees in one process.

10. The Scottish Government is committed to fostering improvements in public services and to promoting innovation and creativity by engaging with stakeholders, expert practitioners, and representative organisations to draw on their in-depth knowledge and experience to inform policy development. To this end, the Scottish Government is committed to consulting on devolved taxes. The consultations cover, respectively, LBTT (consultation launched on 7 June 2012 and closed on 30 August), Landfill Tax (consultation launched on 25 October 2012 and scheduled to close on 15 January 2013) and Tax Management (consultation due mid December 2012 until spring 2013).

11. Details of the analysis of the LBTT consultation responses are provided at paragraph 18 below.

Provisions of the Bill

12. The Bill provides for the rules and structure of LBTT which will impose a tax on anyone buying, leasing or taking other rights (such as options to buy) over land and property in Scotland. LBTT will cover both residential and non-residential transactions. To broaden the tax base, in distinction to the position for SDLT, licences to occupy property are not exempt interests and will be subject to LBTT if there is chargeable consideration that exceeds the nil rate band to be prescribed in due course. Non-residential transactions include:

- The purchase, lease or licence of, or purchase of an option over, commercial property (e.g. shops, offices, factories, hotels, etc.);
- The purchase, lease or licence of, or purchase of an option over, land for development (e.g. for housing, commercial properties, wind farms, etc.);
- The purchase, lease or licence of, or purchase of an option over, agricultural land;
- The purchase, lease or licence of, or purchase of an option over, forestry land;
- Purchases and leases for sports, such as salmon fishing; and
- Other interests in land such as the grant of liferents or servitudes.

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2 Link to consultation paper [http://www.scotland.gov.uk/Publications/2012/06/1301](http://www.scotland.gov.uk/Publications/2012/06/1301)

3 Link to consultation paper [http://www.scotland.gov.uk/Publications/2012/10/3524](http://www.scotland.gov.uk/Publications/2012/10/3524)
13. This memorandum deals with the following main issues:
   - How the tax will be administered, including tax returns and payment arrangements;
   - How the tax will be structured by reference to tax rates and bands (although actual tax rates and bands will be set nearer April 2015 by subordinate legislation made under this Bill, in association with the relevant budget);
   - The Scottish Government’s approach to tax avoidance in relation to LBTT;
   - ‘Notifiable’ transactions and those that will be exempt from LBTT;
   - Transactions that will be entitled to a full or partial relief from LBTT;
   - Calculation of tax for residential and non-residential leases; and
   - Arrangements for transactions involving companies, trusts, and partnerships.

14. In May 2012, the UK Government launched a consultation on a new annual charge on homes worth over £2 million held by companies, partnerships and collective investment schemes. It also plans to consult on draft legislation between December 2012 and February 2013. The proposals, which may be introduced in the UK Finance Bill 2013, are entirely separate from LBTT. If introduced, the annual charge would apply in Scotland, but the tax revenue would not accrue to the Scottish Government and the Scottish Government would have no control over the tax since it would not be a devolved tax.

**Alternative approaches**

15. The first potential option is to ‘do nothing’ – i.e. do not replace SDLT once it is disapplied in Scotland at the end of March 2015. This would mean that from April 2015 taxpayers would no longer need to pay tax on land transactions in Scotland. However, as there would still be an adjustment in the Scottish block grant payment to reflect the fact that responsibility for the SDLT replacement tax has been devolved to the Scottish Parliament, such an option would result in a material reduction in the block grant. That would damage public services in Scotland.

16. The second option is to provide for a replacement tax, for which Scottish legislation is needed. Under the terms of the 2012 Act, SDLT will be disapplied in Scotland by Treasury order; the UK Government’s policy is that this will take place from April 2015. The disapplication of SDLT and consequent introduction of LBTT are not linked to other constitutional initiatives, such as the referendum on independence scheduled for the autumn of 2014. There are no other practical options.

17. Some of the provisions in the Bill are intended to replicate the effect of parts of the existing SDLT legislation. In other areas, the Scottish Government has decided to make changes which it believes will serve better the interests of the people of Scotland. In all instances where a policy decision was required, either to replicate or to change an element of the existing system, careful consideration was given to the policy alternatives and a decision was made on the basis of the available evidence. At the appropriate points, this memorandum makes reference to these alternative approaches and explains why the Scottish Government has reached the decision that it has.
CONSULTATION

18. As mentioned above, discussion and debate on the provisions of this Bill began with the publication of a consultation document, *Taking forward a Land and Buildings Transaction Tax*[^4], on 7 June 2012. The consultation document included 17 questions, as follows:

- Questions 1-8 covered the proposed structure and scope of the tax including the move from a ‘slab’ system to a progressive tax[^5]; future amendments to support key Scottish Government policies; exemptions and reliefs; and the treatment of both residential and commercial leases.
- Questions 9-13 related to anti-avoidance measures; and proposals for online returns and linking payment of tax with registration.
- Question 14 sought views on the treatment of partnerships and trusts.
- Questions 15 and 16 covered business and regulatory and equalities draft impact assessments.
- Question 17 sought any other views.

19. The consultation document was published to enable a wide range of people and representative bodies with an interest in and experience of tax matters to comment. A total of 56 responses were received from individuals and organisations. Copies of the non-confidential responses can be accessed through the Scottish Government’s Library (0131 244 4565) or website[^6]. ODS Consulting was appointed by the Scottish Government to undertake an analysis of the responses received to the consultation and their report has been published on the Scottish Government’s website[^7].

20. The Scottish Government worked with a range of organisations, bodies and groups to develop the proposals contained in the Bill. During the consultation period, public discussion group events were held in Edinburgh, Aberdeen, Perth and Glasgow to provide stakeholders with an interest in this matter to communicate their views. Meetings were also held with representative bodies including the Law Society of Scotland, the Council of Mortgage Lenders, the Chartered Institute of Taxation, the Scottish Tenant Farmers’ forum, and the Institute of Chartered Accountants of Scotland.

Summary of responses

21. Issues raised during the consultation that are relevant to specific measures in the Bill are discussed under the relevant section headings below, including the alternative approaches that were considered. The consultation generated a wide range of views. However, not all were directly relevant to the Bill and so not all of them are referenced here. A summary of responses to the consultation is set out below:

- The overwhelming majority (74%) of respondents supported the move to a progressive tax for residential property.

[^4]: Link to consultation paper [http://www.scotland.gov.uk/Publications/2012/06/1301](http://www.scotland.gov.uk/Publications/2012/06/1301)
[^5]: See paragraphs 34 and 35 below for an explanation of these terms.
[^6]: Link to non-confidential consultation responses: [http://www.scotland.gov.uk/Publications/2012/10/1031/0](http://www.scotland.gov.uk/Publications/2012/10/1031/0)
[^7]: Link to analysis report on consultation responses: [http://www.scotland.gov.uk/Publications/2012/10/8469](http://www.scotland.gov.uk/Publications/2012/10/8469)
• There was majority support for amending LBTT in future to align with government priorities.

• On the topic of exemptions and reliefs, there was support for maintaining the current rules. There was also support, however, for extending reliefs to support compulsory purchase of empty homes to bring them back into use. There were many more suggestions of new reliefs or exemptions. And there was widespread support for making the rules simpler and easier to understand.

• The majority supported exemptions for residential leases of 20 years or less.

• The complexities of commercial leases (in comparison with residential leases) were widely acknowledged. Some practical measures were proposed for improving the LBTT arrangements for commercial leases in future, but there was recognition that more time would be needed to assess and consult on these.

• On the topic of anti-avoidance (or anti-abuse) measures, the strength of overall argument seemed to favour a general anti-avoidance rule (GAAR).

• As far as administration of LBTT is concerned, there was majority support for a new online facility linking LBTT returns with LBTT payment and registration of title. But there was also a clear view that online returns should not be compulsory.

• There was general support for aligning LBTT with Scots law in relation to partnerships and trusts. However, this was seen as another area of complexity requiring further detailed work and consultation.

• Several practical implementation issues were raised. These included the need for clear guidance and ongoing advice; resourcing of Revenue Scotland and/or Registers of Scotland to establish a robust system; and the need for well-designed transitional arrangements from the current system to LBTT.

22. The consultation process was valuable, and respondents helped significantly to shape the content of the Bill. The Scottish Government is grateful to all who contributed their time, input and assistance to the process.

SECTION 1: ADMINISTRATION OF THE TAX

Overview

23. LBTT will be administered by Revenue Scotland. While Revenue Scotland will exist at first as a part of the Scottish Government, by 2015, in line with international best practice, it will be given a separate formal statutory basis. This will establish the body’s operational independence from the Scottish Ministers and will set its governance, accountability arrangements and structure.

24. It is proposed that Revenue Scotland will work with RoS on the administration of LBTT and with the Scottish Environment Protection Agency (“SEPA”), Scotland’s environmental regulator, on the administration of the replacement for Landfill Tax. This approach offers advantages in terms of flexibility and greater scope for efficiencies and, therefore, for keeping costs down.
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

25. The registration of title to land is the longstanding, core business of RoS. It already registers most of the transactions on which LBTT would be payable. RoS is committed to developing its e-registration products to enable the majority of transactions to be submitted electronically. It will also develop an electronic system to receive payments and administer tax returns for LBTT. This should enable RoS to use the synergies available from combining payment and registration into one system, eliminating duplication and unnecessary effort to create a simpler, end-to-end approach to processing land transactions to the advantage of both taxpayers and tax authorities.

26. Working together with RoS and Revenue Scotland, the Scottish Government will ensure that LBTT is delivered on time and that there will be a smooth transition to the replacement tax alongside the withdrawal of SDLT. Improvements to processes will be made by means of this Bill, others through the Tax Management Bill and through the design of the administration and IT arrangements for collection of the tax.

Alternative approaches

27. Several options were considered as to how LBTT could be administered. The three principal options were: contracting the task to HMRC; administration by the new tax authority, or using an existing Scottish body. The Scottish Government examined the option of contracting the work to HMRC carefully and concluded (as confirmed to the Scottish Parliament Finance Committee) that using HMRC would be a more expensive option than using existing Scottish agencies to collect the two devolved taxes on behalf of Revenue Scotland. The Scottish Government also noted that delegating administration to HMRC would restrict the Scottish Government’s ability to introduce a tax that was in any material respect different from SDLT.

Tax returns and payment arrangements

Returns

28. The Cabinet Secretary for Finance, Employment and Sustainable Growth said in his statement to the Parliament on 7 June 2012: “it is important to create certainty around the amount of tax that individuals have to pay”. Accordingly, this Bill makes provision for a tax which should be 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.

29. The Scottish Government intends that, as far as possible, all tax returns for LBTT should be submitted and tax paid electronically. Submitting returns and payments online will allow the taxpayer (or in many cases, their agent) to simultaneously register title to property or land as well as allowing the collection process to operate more efficiently by minimising errors or omissions in LBTT returns (for example, the online system could be designed so as to require all relevant fields to be completed). An increasing proportion of tax has been collected electronically in the UK in recent years. This does not, therefore, represent a significant change from the existing arrangements.

30. At present, there are issues with some elements of SDLT collection because it is based largely on the English property law system, and this does not always fit comfortably with Scots law and practices. An example of differences in property law is that registration of title plays a more important role in Scotland than in England and Wales. Revenue Scotland will help ensure that clear advice and guidance, tailored to Scots law and practices, is available to help taxpayers, agents to understand the new system.

Payment
31. The Scottish Government proposes that taxpayers should continue to have up to 30 calendar days after the effective date (normally when the sale or lease is concluded) both to submit an LBTT return and to pay any tax due. The Bill provides that tax is treated as paid if “arrangements satisfactory to the tax authority” are made for payment of the tax. This wording is drawn from the wording in the Land Registration etc. (Scotland) Act 2012 in relation to the payment of registration fees and is intended to allow forms of payment such as solicitors’ direct debit instructions to be treated as if they are cleared funds.

32. To ensure prompt payment and deliver administrative efficiencies, the Bill requires agents to submit a complete LBTT return and pay any tax due before any application to RoS in respect of the Land Register or Books of Council and Session can be accepted. The Scottish Government understands that for residential transactions, solicitors receive funds from their clients before settlement to cover any SDLT due.

33. However, the Scottish Government is aware of some stakeholders concern in relation to this proposal, based on the fact that in Scotland a buyer or tenant cannot obtain a ‘real right’ over land or buildings until registration has taken place. Some stakeholders were concerned that this could create an unnecessary risk for buyers and that it might have unintended, knock-on effects on third parties, such as lenders. Following further discussions with the Law Society of Scotland, the Scottish Government believes that the “arrangements satisfactory to the Tax Authority” wording mentioned above – coupled with the introduction of “advance notices” under the Land Registration etc. (Scotland) Act 2012 – will address these concerns.

SECTION 2: STRUCTURE OF THE TAX

Policy objectives
34. Currently SDLT has a “slab” structure, which means that tax is charged at the applicable rate on the whole amount of the transaction. For example, if a house is sold for £260,000 the SDLT due is 3% of the whole amount, £7,800, while for a house costing £240,000, the SDLT due is 1% or £2,400. (Existing tax rates and bands for SDLT are noted in paragraph 42 below).

35. The Scottish Government plans to replace this with a proportional progressive structure, which includes a nil rate band and at least two other bands. This structure will mean that only the proportion of the price above the threshold will be liable to the higher rate of tax. The Scottish Government believes this progressive structure will be more proportionate to the ability to pay and will remove the distortion in prices at the thresholds. Annexes B and C of the LBTT
consultation paper⁹, published in June 2012, set out three illustrative examples of how LBTT might operate in Scotland, based on a progressive structure and including indicative rates. As the consultation paper explains, these examples are provided for illustrative purposes only, to demonstrate the principle of a progressive tax. They may not reflect the Scottish Government’s final position on the rates and bands of LBTT when these are set.

36. The Bill also provides that the progressive structure of LBTT will apply to both residential and non-residential transactions.

37. The tax will come into effect on 1 April 2015. The Scottish Government will set the rates and bands for the tax by subordinate legislation nearer the time that the tax will take effect, and after the Bill is expected to have completed its Parliamentary stages. This is because it would be premature to set rates now for a tax that would not come into effect for over two years, particularly when the economic outlook is uncertain. Governments do not usually set rates this far in advance, as it prevents them from taking a range of different, time-sensitive factors into account. The UK Government for example, has not yet set the rates and bands for SDLT for 2015-16. It is the common practice for governments to set tax rates and bands as part of the annual budget process.

Consultation

38. The overwhelming majority of respondents (74%) who answered the specific question about the structure of the tax supported the principle of moving to a progressive structure. The main reasons given were that this was fairer and removed anomalies on either side of current threshold levels. The Council of Mortgage Lenders’ longstanding view of the slab tax is as follows:

“The slab system of stamp duty causes inefficiencies. Buyers pay stamp duty on the full price of the property when each threshold is reached. This distorts house prices because of the jump in stamp duty at each threshold creating the bunching of prices and sales around the threshold. This can also lead to losses through tax avoidance measures such as sellers artificially boosting the value of fixtures and fittings in their properties.”

39. In its response to the consultation, the Building Societies Association said that:

“[The current system] results in cautious consumers reluctant to buy a property in the next price band due to the prohibitive increase in stamp duty. It also puts downward pressure on prices of properties with market values just above threshold levels, discouraging these sellers at a time when the number of property transactions is low. A progressive taxation system would avoid these issues and create a more equitable model for tax on acquiring property.”

40. Homes for Scotland provided a further perspective, as follows:

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This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

“It is currently very challenging for home builders to sell homes in the £125k to £135k and £250k to £270k price ranges because buyers feel they are paying too much for very little advantage which results in a skewed pricing and product structure on new housing developments... As prices edge above £250k, home builders now design that specific product size out of their range altogether as the market will not pay... A move to a progressive rate system should resolve this.”

41. Based on these and other consultation responses, the Scottish Government is content that a more progressive tax structure for both residential and commercial transactions has the support of a majority of stakeholders, will provide for a tax that is proportionate to the ability to pay and represents a more equitable model for a land transaction tax.

Alternative approaches

42. The main alternative considered was to continue with the existing ‘slab’ structure of SDLT. The current rates and bands for SDLT are as follows:

Table 1 - Current SDLT rates for residential property

<table>
<thead>
<tr>
<th>Purchase price</th>
<th>SDLT rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to £125,000</td>
<td>Zero</td>
</tr>
<tr>
<td>Over £125,000 to £250,000</td>
<td>1%</td>
</tr>
<tr>
<td>Over £250,000 to £500,000</td>
<td>3%</td>
</tr>
<tr>
<td>Over £500,000 to £1,000,000</td>
<td>4%</td>
</tr>
<tr>
<td>Over £1,000,000 to £2,000,000</td>
<td>5%</td>
</tr>
<tr>
<td>Over £2,000,000</td>
<td>7%</td>
</tr>
<tr>
<td>Over £2,000,000 (purchase by company or partnership with corporate partner or collective investment scheme)</td>
<td>15%</td>
</tr>
</tbody>
</table>

Table 2 - Current SDLT rates for non-residential or mixed use properties

<table>
<thead>
<tr>
<th>Purchase price</th>
<th>SDLT rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to £150,000 – (for leases) annual rent is under £1,000</td>
<td>Zero</td>
</tr>
<tr>
<td>Up to £150,000 – (for leases) annual rent is £1,000 or more</td>
<td>1%</td>
</tr>
<tr>
<td>Over £150,000 to £250,000</td>
<td>1%</td>
</tr>
<tr>
<td>Over £250,000 to £500,000</td>
<td>3%</td>
</tr>
<tr>
<td>Over £500,000</td>
<td>4%</td>
</tr>
</tbody>
</table>

43. Under SDLT, if a residential property is sold for £260,000, the tax payable is 3% on the entire amount of £260,000 – in this case, £7,800. The tax payable on a house bought for £240,000 is 1% of £240,000 or £2,400. So the tax charge under SDLT is more than 300% higher for the £260,000 property, even though the purchase price is only 8.3% higher.
44. As respondents to the consultation pointed out, this ‘slab’ structure distorts the market by making it unattractive to buy a property at a price that is immediately above a threshold, since the extra tax charged on the whole sum is significantly higher than the tax payable on a slightly lower purchase price. These effects are illustrated in Graph 1 below, which shows the distribution of house sales by value in Scotland. As the Council of Mortgage Lenders pointed out, the current SDLT arrangements also encourage some taxpayers to try to evade tax at the higher rate when the value of a property is just above a threshold, for example, by trying to attach a higher value than the actual market value to moveable items such as carpets or curtains as these items are not liable to SDLT.

45. During the consultation period, a number of organisations who generally supported the proposal to introduce progressive rates for residential transactions expressed concerns in relation to commercial properties. These were mainly private development companies and firms providing professional services to such companies. The concern focused on the potential for a disproportionate effect on the high value commercial property transactions liable to the top rate of LBTT and the need to maintain Scotland’s position as an attractive place in which to invest. The Scottish Government concluded that it could be confusing to have a system of progressive tax rates for residential properties and a ‘slab’ structure of tax rates for commercial properties. Tax rates and bands will be set taking into account these views and other relevant factors. Overall, a system of progressive tax rates was considered to be the preferred option.

**Graph 1 – number of homes sold in Scotland by sale price (2007) – data from Registers of Scotland**

46. Graph 1 shows the impact that SDLT currently has on the housing market as it indicates that there are peaks in numbers of sales just below SDLT price thresholds, with very few sales
just above those thresholds. These effects are most obvious in the residential property market, but they also apply to the commercial and industrial property markets.

47. For many years the ‘slab structure’ of SDLT has been the subject of criticism. The Council of Mortgage Lenders concluded in a 2003 research report\(^\text{10}\) that the slab structure “is clearly an encouragement to bunching of sales around the thresholds and avoidance measures, such as artificially boosting the value of fixtures and fittings”. The effect of the slab structure is that it distorts relative house prices “which implies that the markets do not operate efficiently”\(^\text{11}\) in accordance with the principles of optimal taxation.

48. The inclusion of Value Added Tax (“VAT”) in the chargeable consideration for a transaction, where the seller has waived their exemption to VAT, has also been the subject of criticism. The Scottish Government notes the Court of Session’s judgment, in the case of Glenrothes Development Corporation v Inland Revenue Commissioners (1994 S.C. 169), in particular Lord Hope’s comments that, “The amount of the stamp duty is charged by reference to the amount or value of the consideration for sale, not by reference to the value of the property.” The Scottish Government’s position, in relation to LBTT, which is a transaction tax and not a tax on the value of land, is that it agrees with Lord Hope that LBTT should be charged on the “amount or value” of the transaction and that, “uniformity of charge between comparable subjects of equivalent value is not required, as each transaction must be examined and [LBTT] assessed on it according to its own terms”. This means that, like SDLT, LBTT will be charged on the total purchase price, including any VAT.

49. However, where the amount of tax charged is based on market value, the market value of an asset does not include VAT even if VAT were chargeable on the transfer of the asset. This is because market value is based on a hypothetical transaction, not on the actual transaction.

SECTION 3: TAX AVOIDANCE

Policy objectives

50. The Scottish Government believes that all transactions involving land or buildings in Scotland should be liable for LBTT, except in certain limited and specific circumstances set out in legislation. Payment of tax demonstrates social responsibility as the revenues raised through prompt payment and the efficient collection of the tax contribute to the Scottish Government’s purpose. The Scottish Government is determined to protect the interests of the public, including the vast majority of taxpayers who are compliant. For these reasons, the Scottish Government has considered the issue of tax avoidance (and related matters) carefully both in the context of this Bill and in the wider context of a devolved tax system, of which LBTT will be a part.

51. The Scottish Government has set out its position on avoidance of devolved tax in this section of the memorandum to make clear its policy intent in relation to this Bill. However, the Scottish Government is also aware that avoidance is an issue that is relevant to all devolved


\(^{11}\) Ibid, page 15.
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

taxes. The position of the Scottish Government on tax avoidance will be further explained in the forthcoming consultation on a Tax Management Bill.

The nature of tax avoidance activity

52. The Scottish Government broadly endorses the definition of tax avoidance: “The hallmark of tax avoidance is that the taxpayer reduces his liability to tax without incurring the economic consequences that Parliament intended to be suffered by any taxpayer qualifying for such reduction in his [or her] tax liability.” Tax avoidance is, therefore, likely to involve taxpayers minimising their tax liability through measures that were not envisaged when the relevant legislation was passed, thus achieving a result that was not intended by Parliament. Tax avoidance is not an illegal activity but it does place revenues at risk, for example if other taxpayers begin to take comparable action, leading to a fall in revenues. Tax avoidance may be felt to be unfair by compliant taxpayers who continue to meet the full extent of their liabilities as intended by the law.

53. It follows that tax avoidance takes place when someone (including a company or partnership) seeks to reduce, delay, or avoid altogether their liability for tax by taking action which may be legal but which can reasonably be regarded as a contrivance not in keeping with the spirit or intention of the law. Tax avoidance arrangements are often highly artificial and often exploit areas of the tax system, such as tax thresholds, reliefs, allowances or exemptions, to reduce or avoid tax liability in circumstances where the purpose originally intended by Parliament in granting the reliefs, etc. is not fulfilled by the taxpayer.

The difference between tax evasion and tax avoidance

54. Unlike tax avoidance, tax evasion is an illegal activity. Tax evasion involves or leads to a taxpayer fraudulently not paying or underpaying tax, for example, by under-declaring the value of chargeable consideration.

Why tax avoidance is a cause for concern

55. The Scottish Government believes that tax avoidance distorts the balance of the tax system making it less economically efficient, and undermines the intent for progressive taxation. It can also undermine confidence in the tax system among compliant taxpayers, and lead to perceptions of unfairness. It reduces the tax base, meaning that compliant taxpayers have to pay higher taxes to receive the same level of public services or receive a lower level of public services than would otherwise be the case.

56. From a policy perspective, tax avoidance makes it difficult to forecast tax revenues as avoidance behaviour adds to the “tax gap” (the difference between expected tax revenues and the amount of tax actually collected). It can also result in the tax authority adding more and more detailed provisions to the tax system, in order to close down particular forms of avoidance and limit the scope for new schemes. Over time, this complicates the tax system and makes it difficult to interpret and understand. For all these reasons, the Scottish Government believes there is a strong public interest in taking effective action to minimise tax avoidance.

The Scottish Government’s approach to avoidance of LBTT

57. As noted in paragraph 50 above, payment of tax demonstrates social responsibility and the Scottish Government is keen to promote a culture of responsible tax paying to protect the interests of compliant taxpayers and users of public services. SDLT has been subject to a range of tax avoidance schemes over recent years, meaning that there is a clear, existing risk to LBTT revenues that must be addressed. The UK Chancellor of the Exchequer announced a number of anti-avoidance measures for SDLT in the UK’s 2012 Budget, which the Scottish Government has taken into account in considering its overall approach to avoidance (see also paragraph 14 above).

58. Sections 4 and 5 below deal with the policy intent behind the Scottish Government’s scheme of exemptions and reliefs from LBTT. In explaining the circumstances in which a transaction may qualify for either an exemption or relief from LBTT, the Scottish Government has made clear the purpose for which the exemption or relief is being granted. Subject to the Scottish Parliament’s approval of the Bill, transactions that are outside the intended scope of any of the exemptions or reliefs should, in the view of the Scottish Government, be liable to pay the appropriate full amount of LBTT.

59. The Scottish Government also intends to make use of two different types of anti-avoidance rule. These are targeted anti-avoidance rules (“TAAR”s) and, subject to consultation, a general anti-avoidance rule (“GAAR”).

60. TAARs in this context apply to specific exemptions or reliefs, or groups of exemptions and reliefs, from LBTT. They will establish the boundaries for reliefs. If a transaction goes beyond these boundaries, it should not be considered to fall within the purpose for which those exemptions and reliefs were provided. The TAARS will aim to make clear that avoidance schemes which seek to artificially design transactions in order to claim a relief or exemption will not be valid and that such schemes are likely to be liable to the appropriate amount of tax in full. There are a number of TAARs included in the LBTT Bill (for example, schedule 10, paragraph 8(b) in relation to group relief and schedule 11, paragraph 7(e)(ii) in relation to acquisition relief).

61. A GAAR, subject to consultation, will set out a basis on which tax avoidance arrangements can be counteracted. Provisions for a GAAR are not included in this Bill and are not, therefore, discussed in any further detail in this memorandum. This issue will be included in the consultation on Tax Management, to be brought forward shortly, as it will apply to devolved taxes in general rather than just to LBTT.

62. The Scottish Government has concluded that the most effective approach to reducing the risk of avoidance lies not in one single measure but rather in a combination of the following:

- Clear policy and legislation - for example, much of the tax avoidance activity for SDLT relates to reliefs. The Scottish Government has carefully considered the reasons why each relief is provided and has continued reliefs only where there is good evidence in support of them;
Good tax design - for example, the change to proportional, progressive tax rates will reduce the incentive to declare transaction prices that are lower than they might otherwise be, so that a transaction is taxed at a lower tax band; and

Inclusion of anti-avoidance measures through a number of targeted anti-avoidance rules (TAARs).

63. All of the above will be further supported by active, timely and effective follow-up action by Revenue Scotland through an enquiry system which will be carried out on both a risk assessment and random basis.

Consultation

64. The Scottish Government’s consultation document on LBTT made two proposals in relation to avoidance – to include anti-avoidance provisions and to provide disincentives to buyers purchasing homes that are ‘wrapped’ in corporate entities.

65. Stakeholder response to these proposals was mixed. A higher number of respondents agreed with these proposals than disagreed but the majority of their comments were of a general nature. Most respondents, however, acknowledged that tax avoidance measures are needed. Where responses were more detailed (mostly amongst legal and accountancy bodies and practitioners), a number of common themes emerged, as follows:

- A well-drafted GAAR was preferable to adding to the already complex layers of TAARs associated with SDLT;
- If TAARs were considered in Scotland for LBTT purposes, these should not simply transcribe existing SDLT measures; and
- The current 15% tax under SDLT on high value corporate purchases of residential property was punitive, largely unnecessary and might have an unintended, negative impact on some agricultural transactions.

66. Stakeholders responding to the consultation said that the existing TAAR set out in sections 75A-C of the Finance Act 2003 is complex and is regarded by tax practitioners as ineffective. Taking consultation responses from a number of stakeholders into account, the Scottish Government believes that the existing SDLT anti-avoidance rules in sections 75A-C of the Finance Act 2003 should not be replicated, on the basis that a GAAR will be proposed in the Tax Management Bill.

Alternative approaches

67. Responses to the consultation show that most stakeholders agree that anti-avoidance measures are needed. Avoidance penalises the majority of compliant taxpayers. The Scottish Government is keen to avoid having to add layers of further legislation to address avoidance activity. The measures described above, including the combination of selected TAARs and a GAAR, are considered to provide an effective set of anti-avoidance measures.
SECTION 4: ‘NOTIFIABLE’ AND EXEMPT TRANSACTIONS

Policy objectives

68. Most land and property transactions in Scotland will have to be notified to the tax collection agent (RoS) on a LBTT return within a certain time limit, even if in some cases no tax is due. This is already the case in relation to SDLT. A land transaction will be ‘notifiable’ unless it is an exempt transaction (described below), the acquisition of a minor interest (that is to say an interest other than ownership) where the chargeable consideration is within the nil rate tax band, a standard transaction where the chargeable consideration in under £40,000 or, subject to regulations, certain land acquisitions relating to leases.

69. All land and buildings transactions will be chargeable to LBTT unless they are specifically exempted by legislation. As the Scottish Government signalled in its Taking Forward a Land and Buildings Transaction Tax consultation paper, it considers that some of the exemptions currently available under the SDLT regime are also relevant to a LBTT regime and should continue. These types of transactions include:

- transfers of property on divorce, separation or the end of a civil partnership;
- property transactions where no money or other contribution that has a monetary value changes hands (e.g. a gift);
- grants of certain leases (social tenancies) by Registered Social Landlords;
- land or property which is transferred under succession law when the previous owner dies; and
- acquisitions by the Crown.

70. The types of transactions listed above are not chargeable and do not require to be notified to the Tax Authority because they are exempt. (In the case of leases granted by Registered Social Landlords, these will fall under the more general exemption for all residential leases – see Section 6 below). There are other exemptions available under SDLT which have not been included in the LBTT as they relate to property transactions specific to English law.

71. To ensure future flexibility within the LBTT system, the Scottish Government also proposes that it should be able, through secondary legislation, to add or remove types of transactions from the list of exempt transactions.

Consultation

72. A significant majority (74%) of those who responded to the specific consultation question on exemptions agreed with the proposal to exempt the types of transactions suggested and to dispense with the need to submit an LBTT return for such transactions.

“We agree with the broad strategy that pre-existing exemptions from SDLT should be replicated under the LBTT regime and that compliance burdens should be minimised by dispensing with the requirement to submit LBTT returns wherever this can be done.” (Institute of Chartered Accountants of Scotland)
73. Amongst those who broadly disagreed with the specific consultation question there was little common ground. The points raised often related more to the provision of reliefs than exemptions, which highlights the confusion experienced by some stakeholders in determining when a transaction is an exempt transaction or is a transaction which attracts relief from the tax charge.

**Alternative approaches**

74. The alternative approaches, in relation to exemptions, would be either to add types of transactions to or remove types of transactions from the list of exempt transactions.

75. A common thread running through the LBTT consultation responses was a plea by stakeholders for the Scottish Government to simplify the replacement tax. There was, however, no support for the removal of any of the types of transactions currently exempt from an SDLT charge. The comment was made at one of the public consultation events that the removal of the current exemptions might risk unpredictable and unintended consequences.

76. Some stakeholders suggested types of transactions which could be added to the list of exempt transactions and the Scottish Government has carefully considered these suggestions. However, the Scottish Government has concluded that it would not be prudent to make any additions to the list of exempt transactions for LBTT, given the need to maintain revenues and the lack of strong evidence to support further exemptions.

77. A period of time will be required to enable the LBTT system to become embedded and to allow for sufficient financial and statistical data to be collected to enable informed policy decisions to be taken in the future. The position on exemptions will be kept under review as part of the ongoing process of devolved tax planning and management. The subordinate legislation powers included in the Bill would allow Scottish Ministers to add or delete types of transactions from the list of exempt transactions and this will ensure that the LBTT system will be sufficiently flexible to accommodate future changes.

**SECTION 5: TRANSACTIONS FOR WHICH TAX RELIEF IS AVAILABLE**

**Policy objectives**

78. As highlighted in the Scottish Government’s consultation paper *Taking forward a Land and Buildings Transaction Tax*\(^{13}\) there are currently over 30 separate reliefs available under the SDLT system. This adds layers of complexity to the tax. As stated above, the Scottish Government is keen to simplify the tax where possible and, after listening to the views of a range of stakeholders, has carefully considered which reliefs would be appropriate for LBTT.

79. The Scottish Government recognises that the housing and commercial property markets change over time and, where practical and affordable, wishes to do what it can, within the powers available to it, to help create sound, sustainable market conditions. Taking all of these factors into account, the Scottish Government believes there should be some reliefs provided in

\(^{13}\) Link to consultation paper [http://www.scotland.gov.uk/Publications/2012/06/1301](http://www.scotland.gov.uk/Publications/2012/06/1301) (pages 15-19)
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an LBTT system. These should not be confused with transactions which are classed as “exempt transactions” in schedule 1 of the Bill, such as gifts of property (exempt transactions are considered in Section 4 above).

Current SDLT reliefs/provisions that will be provided for under a LBTT system

- **Sale and leaseback arrangements** – The purpose of this relief is to provide relief from LBTT only in the circumstances where land or buildings have been sold and then “leased back” by the seller to the buyer. This relief ensures there is not a double charge of LBTT. This is achieved by making the leaseback element of the arrangement ‘exempt from charge’.

- **Certain acquisitions of residential property** – Acquisition by a developer or property trader relief will apply where residential property is bought by the developer or property trader in part exchange for a new residential property. The provision of this relief will help a developer/property trader to sell new homes without LBTT being payable twice. A further relief will be available to property developers who acquire a residential property from an individual where a chain of transactions breaks down.

- **Transfers involving multiple dwellings** – This relief ensures that where a taxpayer is buying multiple dwellings in a single transaction, the taxpayer is not taxed at a high tax band when the transaction involves dwellings that, individually, may each involve consideration only falling within low bands. The Scottish Government wishes to encourage institutional and other large scale investment in the private rented sector in order to help improve standards and the quality of housing in the sector, and this relief will help to achieve that.

- **Certain acquisitions by Registered Social Landlords (RSL)** – This relief is available subject to certain conditions, set out in the legislation, being met. In recognition of the important role played by RSLs in the housing market the Scottish Government considers it is important to provide this relief.

- **Alternative Property Finance** – Alternative Finance Products may be used by any consumer when buying a residential property and are economically equivalent to conventional banking products. A series of land transactions takes place under these arrangements (each of which gives rise to an LBTT charge). The effect of the relief is to ensure that LBTT is paid only once and brings the LBTT payable on the purchase of a property using an alternative finance product into line with the tax that would be due where a purchase is made using a conventional mortgage product. The Scottish Government considers that this is fair and equitable.

- **Alternative Finance Investment Bonds (AFIB)** – With a conventional bond, the investor does not have a direct ownership share in the underlying asset but holds an interest-bearing certificate. As LBTT is a charge on the acquisition of a chargeable interest in land or property situated in Scotland, issuing a conventional bond secured on a building will not cause any LBTT to arise. In an AFIB, however, the investor owns part of the underlying asset and interests in land and property in Scotland may be used as that asset. The necessary changes in ownership of the underlying assets involved in an AFIB structure may give rise to a number of LBTT charges (along with capital gains tax and capital allowance issues which are not matters the Scottish Parliament can legislate on). In relation to LBTT, the Scottish Government wishes to provide a similar outcome for
AFIBs to their equivalent conventional finance products. This can be achieved by relieving the LBTT charges. Detailed provisions relating to AFIBs do not currently appear in the LBTT Bill but the Scottish Government intends, following further detailed technical consideration, to bring forward an amendment to the Bill at Stage 2 to deal with this issue.

- **Crofting community right to buy** – Arose as a result of the Land Reform (Scotland) Act 2003 creating a regime in which a crofting community body, representing an identified crofting community, may acquire eligible croft land associated with that crofting community and sporting rights. The crofting community body may also acquire, at the same time, or within a specified period after it has purchased the eligible croft land, the interest of the tenant in tenanted land.

- **Group relief** – Will be available to companies wherever incorporated and in principle no matter how large and complicated the group structure may be. The Scottish Government considers it is appropriate to retain this relief within LBTT as there is no overall change in economic interest or benefit when land or property is transferred amongst companies within a group structure. However, to benefit from the relief the group must be structured for genuine *bona fide* economic/commercial reasons and not primarily for the purpose of mitigation of tax. Group relief may be withdrawn. Collectively these anti-avoidance provisions within the Bill mean that the intentions and motives of the parties to the transaction, which can be inferred or construed from any evidence, are just as important in determining the availability of this relief as the forms of the group structure and the arrangements in respect of any transaction.

- **Reconstruction and acquisition relief** – Reconstruction relief will provide relief from LBTT where a company acquires the whole or part of an undertaking in another company under a scheme of reconstruction. Where the undertaking transferred includes an interest in land and the conditions as set out in the LBTT legislation are met then relief from LBTT is provided. Acquisition relief will reduce the rate of tax to a level which will be set by regulation where a land transaction is entered into as part of an acquisition of an undertaking of a company in exchange for shares, or shares and cash up to 10% of the nominal value of the shares.

- **Incorporation of limited liability partnerships** – Subject to certain specified conditions being met, relief from LBTT may be claimed on a land transaction which transfers a chargeable interest from a person (the transferor) to a limited liability partnership in connection with its incorporation. One of the conditions is that the transferor is a partner in a partnership comprised of all the persons who are (or are to be) members of the limited liability partnership. The Scottish Government considers that provision of this relief gives smaller businesses a certain degree of flexibility around their legal constitution.

- **Charities and charitable trusts** – Relief from LBTT will be available where a charity, or a charitable trust, purchases an interest in land, subject to certain conditions which are set out in the Bill. To qualify for this relief any charity will require to be registered with the Office of the Scottish Charity Regulator (OSCR). Under the Charities and Trustee Investment (Scotland) Act 2005, bodies which represent themselves as charities in Scotland are required to register with OSCR. This requirement includes bodies which are established and/or registered as charities in other legal jurisdictions, such as England and Wales. Bodies established outside Scotland which gain charitable status here (and their
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A large number of charities registered outside Scotland may only have relatively minor operations in Scotland, such as sending a newsletter or information to Scottish members, awarding a grant to a body in Scotland or merely advertising in a newspaper which may also be seen in Scotland. These bodies may operate in Scotland using the term ‘charity’ without having to register with OSCR. However, if the charity in question occupies any land or premises in Scotland or carries out activities in any office, shop or premises in Scotland then its operations are no longer considered minor and it must register with OSCR (there is no registration fee) and it will be subject to regulation by OSCR.

As at September 2012 according to OSCR’s website\(^{14}\) there were 23,553 charities listed on the Scottish Charity Register. As at September 2012, OSCR has received 611 new applications in 2012-13 (including 188 new applications to become a Scottish Charitable Incorporated Organisation (SCIO)). The requirement to register with OSCR is the same requirement that is already placed on charitable and other organisations that wish to claim a reduction or remission of non-domestic rates payable under the Local Government (Financial Provisions etc.) (Scotland) Act 1962. The Scottish Government considers this requirement will help to ensure that only genuine charitable organisations and trusts will receive the relief.

- **Compulsory purchase facilitating development** – As signalled in the LBTT consultation paper, the Scottish Government intends to provide an amended Compulsory Purchase Order (CPO) relief. Under the current SDLT regime, a local authority does not pay SDLT if it purchases land or property through a CPO with the intention of transferring it directly to a third party to facilitate development. CPO relief within an LBTT system is designed so that it will be available in respect of all situations where the local authority transfers land to a third party without being limited to situations where this will facilitate “development”. This will enable local authorities to use CPOs to purchase long-term empty homes, where the home will not be structurally altered after it is resold (and so would not attract relief under the current SDLT definition of “development”) without having to pay LBTT.

- **Compliance with planning obligations** – A planning authority may, when granting planning permission for a development, require a developer to provide affordable housing. This is frequently done through a condition attached to the planning consent. Usually the developer transfers the housing to the local authority to run once it is finished. But there may be two successive charges to LBTT if the developer buys the land from its original owner and then transfers the completed building to the local authority. Although the local authority would be liable for any LBTT on the latter transaction, it will usually seek re-imbursement from the developer, as part of the arrangements for the granting of planning permission. The Scottish Government intends that subject to certain conditions (set out in legislation) a local authority can claim 100% relief from this LBTT liability, so relieving the developer from a double charge.

- **Transfers involving public bodies** – In light of the Scottish Government’s public sector reform policy it intends to retain this relief under LBTT. Relief from LBTT may be claimed on a land transaction which is entered into by or under statute; both the buyer and seller are public bodies; and the land transaction was entered into on, or in

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\(^{14}\) Link to OSCR’s website [http://www.oscr.org.uk/](http://www.oscr.org.uk/)
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consequence of, or in connection with, a reorganisation of public bodies. Additionally the Scottish Government intends, subject to Parliament’s approval, that LBTT relief may also be claimed in cases where the Scottish Ministers make an order that it should be available and one or other of the parties to the transaction is a public body. The legislation sets out what are classed as public bodies for the purposes of being eligible to claim this relief.

- **Diplomatic premises and sovereign bodies and international organisations reliefs** will be available under LBTT to ensure the Scottish Government meets its international obligations. Provisions relating to these reliefs do not appear on the face of the Bill as relief is already provided for by existing statutes such as the Diplomatic Privileges Act 1964 (implementing the Vienna Convention on Diplomatic Relations 1961) and the Consular Relations Act 1968 (implementing the Vienna Convention on Consular Relations 1963).

**Current SDLT reliefs/provisions that will not be provided for under a LBTT system**

80. The Scottish Government set out its intention in the LBTT consultation paper to further simplify the approach to LBTT by not providing a number of reliefs currently available under the SDLT system: right to buy; shared ownership; acquisition by bodies established for national purposes; and collective enfranchisement by leaseholders (leaseholder ownership is not used in Scotland). After further careful consideration, in the light of the consultation responses, the Scottish Government proposes in addition to remove some further reliefs available under SDLT so that they will not be available under the LBTT system.

- **Certain acquisitions of residential property** – Acquisition by property traders from personal representatives of a deceased individual; and acquisition by employer or property trader in cases of relocation of employment. The Scottish Government is not persuaded that these activities would not occur without these reliefs and therefore does not intend to make these reliefs available under LBTT.

- **Demutualisation of an insurance company or a building society** - The Scottish Government considers that these reliefs relate to a previous time when there was a significant level of demutualisation activity in the financial sector. It is no longer relevant to make provision for such reliefs under LBTT.

- **Reorganisation of UK Parliamentary constituencies** – This allows for relief where parliamentary constituencies change and, in consequence of that change, the previous local constituency association transfers a chargeable interest to a new local constituency association. This may be needed, for example, where an old constituency is split into two and two new associations are formed, or where two previous constituencies merge and one is formed. The Scottish Government does not consider it is appropriate to provide such a relief within the LBTT system. Whilst this relief from SDLT relates only to Westminster parliamentary constituencies, the Scottish Government has no plans to introduce a similar LBTT relief for Scottish Parliament constituencies.

- The Scottish Government does not intend to include the current SDLT Sub-sale provisions\(^{15}\) (which are often combined with other reliefs) in the LBTT. These rules apply where Party A contracts to purchase land from Party B who might, for example, be a land value speculator, but Party B sells the land to Party C on the same day as the

\(^{15}\) The UK Government is in the process of reviewing these provisions
completion of the formal contract with Party A. In this case, there will only be one transaction where there is a requirement to pay SDLT. As the sub-sale rules are not considered a relief as such, no claim is submitted through an SDLT return so there are no records of the amount of tax foregone by the tax authority as a result of these rules. There is, however, strong evidence to suggest that the sub-sale rules act as a gateway to a significant amount of avoidance activity.

- **New zero-carbon homes relief** - After further careful consideration, including taking account of comments made by stakeholders through the LBTT consultation paper and at the public consultation events held in July and August 2012, the Scottish Government does not intend to include within LBTT the new zero-carbon homes relief, which was available under the SDLT system for a time-limited five-year period from 1 October 2007. There is little evidence to suggest that this relief achieved its stated objectives of helping to kick-start the market for zero-carbon homes, encourage microgeneration technologies, and raise public awareness of the benefits of living in zero-carbon homes. The Scottish Government does, however, welcome further representations from interested parties on whether alternative arrangements could be devised which would help support Scotland’s climate change targets.

### Consultation

81. During the consultation on LBTT, many stakeholders strongly suggested that LBTT should be less complex than the current SDLT. During the consultation events, others also commented that some tax reliefs may be potential “gateways” for tax avoidance. Tax avoidance activities place tax revenue at risk and are unfair on compliant taxpayers who meet the full extent of their tax liabilities as intended by the legislation.

82. Just over half of the consultation responses responded to the proposal to extend compulsory purchase order relief to allow local authorities to benefit from the relief where they compulsorily purchase an empty home for onward sale. The overwhelming majority of consultees who responded agreed with the proposal.

> “This would undoubtedly make the additional powers due in April 2013 to bring long term empty properties back into use more attractive to local government...” (COSLA)

83. Fifty per cent of correspondents commented on the proposal not to provide a Right to Buy or Shared Ownership relief under LBTT. The majority of those who responded (68%) agreed with the proposal. Around 77% of respondents answered the question on the proposed list of LBTT reliefs. As outlined in the ODS Analysis of Responses Report, many added qualifications or suggested additions. There was no clear pattern among the many detailed comments made by respondents whether they agreed with the proposal, disagreed with the proposal or were more neutral. This may in part be due in some part to the breadth of reliefs that are currently available under the SDLT system.

16 Link to ODS Report: [http://www.scotland.gov.uk/Publications/2012/10/8469](http://www.scotland.gov.uk/Publications/2012/10/8469)
Alternative approaches

84. The alternative approaches available in relation to a scheme of reliefs for LBTT would be to either add new reliefs to the scheme or to remove further reliefs from the scheme. There will always be stakeholders with an interest in adding new reliefs to cover their specific interests and there will be other stakeholders who may argue for the removal of reliefs. The costs of additional reliefs would mean those without reliefs would have to pay more to maintain revenues and fewer reliefs would mean the tax burden generally can be lessened. It is also important to note that the cost of reliefs does not remain static and whilst previous years’ costs may provide some indication of potential future costs, the actual cost of reliefs will depend on the number and value of the transactions carried out in any particular year.

85. As mentioned at paragraph 77 above in relation to exempt transactions, a period of time will be required to enable the LBTT system to become embedded and to allow for sufficient financial and statistical data to be collected to enable informed policy decisions to be taken in the future. The position on reliefs will be kept under review as part of the ongoing process of devolved tax planning and management. Subject to the Parliament’s agreement to the Scottish Ministers being granted powers to add or delete reliefs from the LBTT system, the LBTT system will have sufficient flexibility to accommodate future changes.

SECTION 6: COMMERCIAL, AGRICULTURAL AND RESIDENTIAL LEASES

Policy objectives

86. The Scottish Government intends that LBTT should be levied on anyone leasing land or buildings. However, the tax would only cover non-residential transactions. The Bill treats these two types of lease transactions differently.

Residential leases

87. The Scottish Government believes that there is scope to simplify the treatment of residential leases under LBTT. In view of the fact that only leases that are over 20 years long can be registered in the Land Register in Scotland and that the Long Leases (Scotland) Act 2012 will convert ultra-long leases (defined, for the purposes of the Act, as leases that have been granted for more than 175 years and have more than 100 years to run) to ownership, the Scottish Government originally proposed only to require tenants of the few remaining registerable residential leases to submit an LBTT return when the terms of the lease are changed or the lease is renewed. However, the Bill reflects the broader and simpler policy that all residential leases of whatever duration should be exempt from LBTT. “Qualifying leases” under the Long Leases (Scotland) Act 2012 (i.e. ultra long leases that qualify for conversion to ownership on a day to be appointed by Ministers) are, however, excluded from the LBTT exemption for residential leases. These ultra long leases are akin to ownership and, without this exception to the LBTT exemption, there might be an incentive for tenants to opt out of conversion to ownership to avoid LBTT on future transactions. As there are around 9,000 such ultra long leases in Scotland, the potential loss of tax receipts could be significant. Leases that are opted out of conversion to ownership will, therefore, be subject to LBTT on assignation, variation or renunciation as they currently are under SDLT.
Non-residential leases

88. The taxation of non-residential leases (i.e. leases of commercial and agricultural property) is a complex and technical area primarily because the leases themselves are by nature varied and complex. The Scottish Government is aware that the current SDLT treatment of non-residential leases gives rise to many issues for taxpayers and legal practitioners in Scotland. Existing SDLT legislation does not in every respect recognise the way that non-residential leases work in Scotland under Scots law. The Scottish Government is keen to ensure that the LBTT legislation is better aligned with Scots law and practices.

89. Over the course of the summer of 2012 during the Bill’s public consultation period, the Law Society of Scotland convened and chaired a stakeholder group to discuss, among other things, the taxation of non-residential leases. The group included representatives from the Institute of Chartered Accountants of Scotland, the Chartered Institute of Taxation, the Tenant Farmers’ Forum and others. The work of the group led to the inclusion in the Law Society’s LBTT consultation response of four options which might be explored as an alternative to the existing SDLT approach. These are set out below in paragraph 96.

90. There is broad consensus among stakeholders that detailed consideration should be given to the complex issues raised by the taxation of non-residential leases to ensure that the replacement system is efficient and effective and does not give rise to unintended consequences. The Scottish Government agrees that the issues need to be addressed in further detail, and that the revenue and administrative implications of each of the options should be examined. The Scottish Government is therefore convening a working group to consider further the tax treatment of commercial and agricultural leases. The working group will examine the potential options for the treatment of non-residential leases with a view to preparing draft legislative provisions.

91. Accordingly at this stage, the Bill does not make detailed provision in relation to non-residential leases but provides for an order-making power. It is intended that further legislation will be brought forward in due course for approval by the Parliament, either in the form of amendments to the Bill at Stage 2, or in the form of statutory instruments for consideration on the basis that the Bill is enacted.

Consultation

92. Responses to question 8 in the Scottish Government’s consultation document (‘What proposals would you make to ensure that the calculation of tax payments due on commercial leases is better aligned with Scots law and practices?’), demonstrated that there is significant support amongst professional bodies representing legal and accountancy/tax professionals and private organisations concerned with commercial development for simplification of the current system. In most cases the need to align better with Scots law was also mentioned.

93. A number of problems with the existing system were identified, as follows:

- The difficulties of establishing the basis for payment due to complex or unpredictable rent structures such as those often associated with wind-farm leases;
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- Anomalies in relation to other parts of the UK because of the different legal system; and
- The unfairness of an ‘up-front’ tax where businesses will frequently need to move, terminate or assign leases in mid-term.

94. Respondents made specific suggestions for improvement and some, such as The Law Society of Scotland’s response, were very detailed. The Law Society said that:

   “...it can be very difficult for solicitors and other tax advisers to calculate SDLT on lease rentals...The administrative burden is severe...”

95. Several other respondents referred to and supported the Law Society’s response. For example, the Scottish Property Federation commented as follows:

   “The current regime does not sit well with Scots property law and practices and the tax itself is a considerable ‘up-front’ burden on businesses.”

96. Several respondents suggested a move to taxing rent. The Law Society set out four options for the treatment of non-residential leases under LBTT which they recommended should be considered:

   - Tax payable annually as a percentage of actual rent paid;
   - Tax paid on Net Present Value (NPV) but payable in instalments at the tenant’s option;
   - Tax paid on NPV but recalculated every five years based on actual rent paid; and
   - Tax paid as a percentage of average rent payable under the lease.

Alternative approaches

97. The Scottish Government did not consult on the merits of deferring consideration of commercial leases to a later stage in its consultation document, as it made sense to consider the legislation as a complete package. To that extent, therefore, this is an alternative approach to what was set out in the consultation and is being taken as a result of stakeholder feedback.

SECTION 7: COMMERCIAL PROPERTIES, COMPANIES, TRUSTS AND PARTNERSHIPS

Policy objectives

98. The Scottish Government believes that companies, trusts and partnerships should be liable to pay LBTT on transactions in land or buildings. In designing a system which supports the four principles of taxation - certainty, convenience, efficiency and a tax that is proportionate to the ability to pay - the Scottish Government intends to put in place an LBTT regime which will not create unnecessary administrative burdens on businesses entering into transactions in land or buildings in Scotland.
The following general points relate to the Scottish Government’s policy intentions for companies, trusts and partnerships overall, rather than the specific, individual treatment, under LBTT, of any one of these groups:

- The aim in relation to the taxation of commercial transactions under LBTT is to encourage inward investment and maintain Scotland’s reputation as the most attractive part of the UK in which to do business;

- Where the policy intent is to retain the existing rules under SDLT, it is important to bear in mind that LBTT will have a proportional progressive structure (as opposed to a ‘slab’ structure) for commercial transactions. This will lead to some variations between the amount of LBTT and SDLT due on a transaction of equivalent value. The Scottish Government notes that a more proportional, progressive tax structure has the support of a majority of stakeholders and believes that it represents a more equitable model for tax on acquiring property;

- The rates and bands for LBTT on commercial transactions will be set closer to the time at which they will come into force. As part of the process for setting the rates, the Scottish Government will consider ways in which LBTT might help support an attractive business environment in Scotland - for example, ways in which the tax might support SMEs and where the tax offers opportunities to encourage economic growth;

- Where there is scope to improve the legislation governing the treatment of companies, trusts and partnerships, the Scottish Government will ensure, insofar as is possible, that these improvements are made;

- Where there are references below to bringing further legislation at Stage 2, the Scottish Government wishes to make clear that it expects to liaise closely with the relevant committee during the process of preparing this additional legislation and for the committee to receive updates on progress during its Stage 1 consideration of the Bill;

- The Scottish Government looks forward to engaging further with all interested stakeholders, including Parliamentary stakeholders, in developing the proposals for the treatment of companies, trusts and partnerships under LBTT and to hearing their views on these matters.

Companies

100. It is the Scottish Government’s intention largely to replicate under LBTT, the way in which companies are currently treated under SDLT. This means that the rules which will determine a company’s liability for tax on its transactions will remain broadly the same as those which are currently in place. In particular, and as stated earlier in this document, the Scottish Government intends to retain group relief.

101. Replicating the way in which companies are currently treated under the existing SDLT system would have the advantage of continuity, in that the rules with which companies and tax practitioners are familiar would remain, broadly, in place. It would also maintain a ‘level playing field’, in terms of any comparison how the tax regime will operate in Scotland and in the rest of the UK.
102. The Scottish Government intends to bring forward at Stage 2 detailed proposals for the taxation of transfers of interest in relation to a particular class of companies that hold or deal in residential property, where the transfer gives the transferee the right to use or occupy that property. The Scottish Government believes that a transfer of the economic interest in residential land or buildings should be subject to LBTT in the same way as any other equivalent transaction.

103. There are some precedents for this approach to taxing the transfer of shares in residential property holding companies – such as paragraph 14 of Schedule 15 of the Finance Act 2003, which makes provisions for SDLT to be charged on transfers of interest in property investment partnerships and the Taxation (Land Transactions) (Jersey) Law 2009, as well as in the legal systems of Spain and New York City. However, these proposed measures represent a new approach in the UK to the avoidance of land transaction tax through the use of ‘corporate wrappers’ in respect of residential property.

104. Such a new approach needs to be carefully tested in consultation with stakeholders and tax practitioners. The Scottish Government, therefore, proposes to examine further the scope for improvement to these specific measures before presenting draft provisions to the Parliament during the legislative process.

Trusts

105. The existing SDLT legislation governing trusts is complex. For the purposes of clarity, in setting out the Scottish Government’s position on the treatment of trusts under LBTT, some background information on the nature of trusts may be useful.

106. Because many of the legal systems of the world do not have an equivalent concept to a trust in English and Scottish law, the UK and several important industrialised countries without the concept of a trust have entered the Convention of 1st July 1985 on the Law Applicable to Trusts and on their Recognition. It was enshrined in UK law by the Recognition of Trusts Act 1987. This prescribes that a trust created in accordance with principles set out in the Act must be recognised. This is read into the Bill in so far as the Bill applies to foreign trusts which have the key hallmarks of an English trust, namely having an equitable interest in trust property.

107. The key feature of a trust is that the legal ownership of an asset is held by a person other than the person or persons having the equitable or beneficial economic interest in the asset. In English and Scottish law, a trust can be created like a partnership by the actings of the parties but is almost invariably constituted or at least evidenced by writing. It is usually a tripartite arrangement by which the grantor of the trust (‘the trustor/settlor’) sets up a trust by making a declaration of trust which, if in writing, is known as the trust deed and which stipulates the trust purposes. The trust is administered by the trustee/s, who have legal ownership of the trust funds (‘the funds are vested in them’), which have been transferred to the trust by the trustor for the benefit of the beneficiary/ies.

108. The current SDLT legislation divides trusts into two types: settlements and bare trusts. Settlements are straightforward, tripartite type trusts where the trustees have a discretion in relation to the administration of the trust and often who the beneficiaries are. Settlements can be further defined, for the purposes of this Bill, as trusts which are not bare trusts. Bare trusts are
trusts where either a) the beneficiary has full entitlement to the assets of the trust but for being a minor or having a disability; or b) the trustee holds the trust property as a nominee for someone else.

109. The Bill simply replicates the existing SDLT provisions on the treatment of trusts. The taxation of land transactions involving trusts under LBTT would continue to operate as it had before under SDLT. The Scottish Government’s intention in respect of this part of the legislation is to take the opportunity created by the introduction of LBTT to simplify, as far as possible, the rules in relation to the treatment of trusts under the new tax. There is support for this from stakeholders, in particular the legal community. The Law Society of Scotland is willing to engage further and in more detail with the Scottish Government and assist it in developing a simpler approach.

110. The Scottish Government will work with stakeholders during Stage 1 with a view to bringing forward simpler and clearer legislation on the taxation of land transactions involving trusts at Stage 2. The Scottish Government expects that the committee will hear evidence on the complexities of the rules in relation to the treatment of trusts under SDLT during its Stage 1 consideration of the Bill and that this will also assist the committee in coming to a view on the need and scope for improvement.

111. In relation to bare trusts of type b), the Scottish Government proposes to make the bare trustees liable for LBTT. The Scottish Government sees no compelling reason why the existing treatment of the trustees and beneficiaries in respect of SDLT – where the trustee is essentially the agent of the beneficiary with no discretion about the administration of the trust or how its benefits are distributed – should be replicated under LBTT. This change would mean that the beneficiary will have to put the bare trustee in funds before the bare trustee pays the tax on the transaction. It is intended that, in total, this will make provisions relating to trusts simpler and clearer. Provisions relating to bare trusts of type b) will be brought forward as part of the simplified approach at Stage 2.

**Partnerships**

112. The existing legislation governing partnerships and SDLT is also complex and was subject to significant criticism in stakeholders’ responses to the consultation. For example, the Institute of Chartered Accountants of Scotland said that:

“...The SDLT provisions of the Finance Act 2003...relating to partnerships...are so complex as to be virtually unworkable in practice...”

113. For the purposes of clarity, some background information on partnerships may be useful. In UK law, there are four types of partnership which might be liable to pay SDLT. These are as follows:

- General partnerships;
- Limited partnerships;
- Limited liability partnerships; and
- Foreign partnerships.
114. Broadly speaking, partnerships will transact in land or property in three different ways. There may be a transfer of land to a partnership from a partner or there may be a transfer from a partnership to a partner or a partnership may buy land from a third party. The first two types of transaction are subject to a form of relief, sometimes called ‘partnership relief’ (although it actually forms part of the rules for the treatment of partnerships under SDLT and does not appear in the existing schedule of reliefs). In the third type of transaction, SDLT is paid in the usual way. There can also be an SDLT charge on the transfer of an interest in a partnership, although this is usually restricted to Property Investment Partnerships (PIPs) where the sole or main purpose of the partnership is to invest or deal in land and property.

115. In simple terms, partnership relief is available where a partner retains an interest in the land or property transferred by virtue of being a member of the partnership. The partner is deemed not to have sold the whole of the asset but rather to have retained a share, in proportion equivalent to the number of members of the partnership – if there are four partners then it will be a quarter share and so forth. The SDLT liability arising from the transfer, is adjusted to reflect this “retained interest”. When a partnership transfers the ownership of a piece of land or property to a partner, the same principle applies in respect of the relief only in reverse – i.e. a partnership with four members would be jointly liable for 75% of the tax due, on the basis that the partner to whom the asset is being transferred had already received an economic benefit equivalent to one quarter of the asset, by virtue of being a member of the partnership.

116. The Scottish Government’s initial view is that the existing rules pertaining to partnership relief can be said to align with the principle of taxing the economic benefit of a transaction and that there may well be a need to retain these rules along with other aspects of the current treatment of partnerships under SDLT – where, in relation to normal transfers of land by a partnership from unconnected persons, the general charging regime applies, and whether or not the partnership has legal personality as in Scotland, all the partners are liable jointly and severally for the SDLT.

117. The Bill simply replicates the existing SDLT provisions on the treatment of partnerships. The taxation of land transactions involving partnerships under LBTT would continue to operate as it had before under SDLT. However, there was a broad consensus amongst stakeholders that there is both a need and an opportunity to simplify the legislative provisions in relation to partnerships. The Scottish Government agrees with stakeholders’ views on this matter and intends to carry out further work on these provisions during the Bill’s Parliamentary passage. The aim is to work with stakeholders to prepare simpler and clearer legislation that will be brought forward at Stage 2.

Alternative approaches

118. None were considered.
EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities


120. The Government considers that the Bill does not have an adverse impact on the basis of age, sex, race, gender reassignment, pregnancy and maternity, disability, marital or civil partnership status, religion or belief or sexual orientation.

Human rights

121. Taxation is concerned with the public nature of the relationship between the tax payer and the tax authority and not with civil property rights (see *Ferrazzini v. Italy* [GC] 2001-VII, paras. 24-31) and hence ECHR is not engaged. The only point that ECHR might be triggered is in relation to penalties that might not be classed as criminal for domestic purposes. No provision for penalties is made in the Bill. The Scottish Government, therefore, considers that the provisions of the Bill have no effect on human rights.

Island communities

122. The Bill has no disproportionate effect on island communities. The Scottish Government is keen to promote a ‘digital first’ approach to the submission of tax returns by electronic means but is aware that some remote and island communities may not have sufficient broadband availability. The submission of tax returns by electronic means has, therefore, not been mandated.

Local government

123. The Bill has no disproportionate effect on local government in Scotland. The Bill proposes an amendment to the existing Compulsory Purchase relief available for SDLT. At present, the position is that a local authority does not pay SDLT if it purchases land or buildings by means of a Compulsory Purchase Order (CPO) with the intention of transferring it directly to a third party to facilitate development. The third party remains liable for SDLT if the property exceeds the minimum tax threshold.

124. The Bill proposes that the relief will be available in respect of all CPOs where the local authority transfers land to a third party, without being limited to situations where this will facilitate ‘development’. This will enable local authorities to use CPOs to purchase long-term empty homes, where the home will not be structurally altered after it is resold (and so would not attract CPO relief under the current definition of ‘development’) without having to pay LBTT. In practice, many empty homes are likely to be bought for less than the minimum tax threshold.

17 Link to consultation paper [http://www.scotland.gov.uk/Publications/2012/06/1301](http://www.scotland.gov.uk/Publications/2012/06/1301)
at which SDLT is currently payable, but this will not always be the case. The proposal to widen the relief will therefore remove one potential obstacle to local authorities seeking to bring empty homes back into use. This extension of CPO relief would be available for compulsory purchases by local authorities only, and not by other bodies with CPO powers.

125. The Business and Regulatory Impact Assessment, to be published shortly, will explain the impact on local government in more detail.

**Sustainable development**

126. The Bill will have no impact on sustainable development.
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill19) as introduced in the Scottish Parliament on 29 November 2012

LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Land and Buildings Transaction Tax (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

BACKGROUND

3. The Land and Buildings Transaction Tax (Scotland) Bill is the first of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012 (c.11) (“the 2012 Act”) which received Royal Assent on 1 May 2012. Under the terms of the 2012 Act, the Scottish Parliament will have responsibility for taxes on land transactions and disposals to landfill. The Bill deals with the former responsibility and makes provisions for a tax on land transactions in Scotland, to be called the Land and Buildings Transaction Tax (“LBTT”). LBTT is based on UK Stamp Duty Land Tax (“SDLT”) as enacted in Part 4 of the Finance Act 2003 (c.14). The provision of the 2012 Act disapplying the existing SDLT regime in Scotland will be brought into force by a Treasury Order in the UK Parliament. The intention is that the provisions introducing LBTT will come into force in April 2015, the day after SDLT is disapplied.

4. The Bill is intended to inter-operate with a further Bill (which may be called the Tax Management Bill) to be introduced to the Scottish Parliament in 2013. The Tax Management Bill will, subject to Parliamentary approval, establish the overall framework for tax administration in Scotland. A Tax Management consultation paper is due to issue in mid December and the consultation will run until spring 2013.

APPROACH TO USE OF DELEGATED POWERS

5. The Government has had regard, when deciding where and how provision should be set out in subordinate legislation rather than on the face of the Bill, to:
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill19) as introduced in the Scottish Parliament on 29 November 2012

- the need to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances (for example changing market conditions);

- the need to make proper use of valuable Parliamentary time; and

- the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament (for example tax avoidance).

6. In relation to the third bullet point above, the Government is mindful that SDLT has since its introduction in 2003 been subject to sustained and aggressive tax avoidance.

7. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

DELEGATED POWERS

Section 5(4) – Power to vary the interests in land that are exempt interests

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Provision

8. This provision enables the Scottish Ministers to modify section 5, which sets out the interests in land that are “exempt interests”. Section 4(1) provides that the concept of “chargeable interest” excludes exempt interests.

9. See also the power to vary the transactions that are exempt transactions in paragraph 8 of schedule 1.

Reason for taking power

10. The reason for taking the power is to enable regulations to add to the categories of exempt interests or for the description of an exempt interest to be varied. Similarly, if there is a need for an interest in land to cease to be an exempt interest that can be provided for in regulations. That might be the case if tax avoidance arises through abuse of the exempt interest rules. It would not be an effective use of either the Parliament’s or the Government’s resources for this matter to have to be dealt with through subsequent primary legislation. Having a regulatory power would provide the Scottish Ministers with a degree of flexibility and enable them to move quickly to bring forward amending legislation to close off potential tax loopholes.

1 The Scottish Government broadly endorses the definition of tax avoidance, “The hallmark of tax avoidance is that the taxpayer reduces his liability to tax without incurring the economic consequences that Parliament intended to be suffered by any taxpayer qualifying for such reduction in his [or her] tax liability.” (Dicta of Lord Nolan in Inland Revenue Commissioners v Willoughby [1997] 4 All E.R. 65)
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill19) as introduced in the Scottish Parliament on 29 November 2012

11. A similar power is provided for SDLT in section 48(5) of the Finance Act 2003.

Choice of procedure

12. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation, that is to say section 5 itself.

Section 17(2) – Power to amend Act or make other provision about chargeable consideration

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure if amending the Act, otherwise negative

Provision

13. This provision enables the Scottish Ministers to amend the Act or make other provision about “chargeable consideration”. Pursuant to sections 25 and 26, the amount of tax chargeable in respect of a chargeable transaction is determined by reference to the chargeable consideration for the transaction.

Reason for taking power

14. The Bill makes extensive provision about chargeable consideration, principally in Chapter 3 of Part 2 and in schedule 2. The reason for taking the regulatory power is to facilitate the processing of any future amendments to the rules concerning chargeable consideration which may arise. This might be the case if tax avoidance arises through abuse of the chargeable consideration rules. It would not be a productive use of parliamentary time to require that every amendment to the rules concerning chargeable consideration be made by primary legislation. Using regulations, subject to the affirmative procedure if amendments are made to the Act, will allow responsive implementation of any amendments, while still retaining an appropriately strong level of scrutiny by the Parliament.


Choice of procedure

16. Affirmative procedure is considered to be appropriate to the extent that the power allows for the amendment of primary legislation, that is to say the Bill itself. For other provision made, negative procedure is appropriate.

Section 24(1) – Duty to specify tax bands and rates

Power conferred on: The Scottish Ministers
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill19) as introduced in the Scottish Parliament on 29 November 2012

Power exercisable by: Order
Parliamentary procedure: Affirmative procedure for the first order, negative thereafter

Provision

17. This provision requires the Scottish Ministers to specify tax bands and rates for LBTT. Bands must be specified for both residential and non-residential property transactions. There must be a nil rate band and at least two other tax bands.

Reason for taking power

18. Under the SDLT regime, the level of revenue has fluctuated significantly, depending on property prices and the number of transactions taking place in the property markets. In recognition of this, the Scottish Ministers have said that decisions about the scale of revenues and the tax rates and thresholds to be set for LBTT will be taken in due course alongside the budget process for 2015-2016. This will enable the Scottish Ministers to take a range of different, time sensitive factors into account. This is the rationale for taking the power to enable the Scottish Ministers to specify, by way of an order, the tax bands and rates for LBTT. Using the affirmative procedure for the first order, will allow responsive implementation of the order, while still retaining an appropriately strong level of scrutiny by the Parliament.

Choice of procedure

19. Affirmative procedure is considered to be appropriate for the first exercise of the power to set the tax rates and bands prior to the introduction of the tax. Once the tax has been established any subsequent changes to the tax rates or bands, for example on account of a change in market conditions or Government revenue, are likely to be less significant and it is desirable to allow the change to be made quickly under the negative procedure. A Budget Process Review Group comprised of Government and Parliamentary officials is considering how tax bands and rates might be varied after the point at which the devolved taxes (LBTT and Landfill Tax in Scotland) are up and running.

Section 27(3) – Power to vary reliefs

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure

Provision

20. This provision enables the Scottish Ministers to amend the Act or other enactments to vary reliefs. A relief entitles the buyer to a tax discount (possibly a 100% discount) which must be claimed in the land transaction return.

Reason for taking power

21. Once the new LBTT regime has had time to become embedded, the Scottish Ministers wish to have the flexibility to introduce new reliefs to support key government priorities or perhaps to provide time limited and targeted support to a specific sector of the property market. The ability to add a new relief by order would enable the LBTT regime to operate with a degree
of flexibility and responsiveness. Similarly, if there is a need for a relief to be abolished, or for a
relief to be modified, that can be provided for by order. That might be the case if tax avoidance
arises through abuse of reliefs or property market conditions change to such an extent that a
relief becomes redundant. It would not be an effective use of either the Parliament’s or the
Government’s resources for this matter to have to be dealt with through subsequent primary
legislation. Using an order, subject to the affirmative procedure, will allow responsive
implementation of any amendments, while still retaining an appropriately strong level of scrutiny
by the Parliament.

22. A relevant if not directly equivalent power exists for SDLT in section 109 of the Finance
Act 2003. See the Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003)
Regulations 2003 (S.I. 2003/2760), the Stamp Duty and Stamp Duty Land Tax (Variation of the
Finance Act 2003) (No. 2) Regulations 2003 (S.I. 2003/2816), the Stamp Duty Land Tax
(Variation of the Finance Act 2003) Regulations 2006 (S.I. 2006/3237) and The Stamp Duty

Choice of procedure

23. Affirmative procedure is considered to be appropriate to the extent that the power allows for
the amendment of primary legislation, that is to say the Bill and other enactments.

Section 30(5) – Power to amend £40,000 notification threshold

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>The Scottish Ministers</th>
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</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Negative procedure</td>
</tr>
</tbody>
</table>

Provision

24. Section 30(1)(b) provides that the acquisition of the ownership of land is not a notifiable
transaction where the chargeable consideration for the acquisition, together with the chargeable
consideration for any linked transactions, is less than £40,000. In other words, where there is
relatively low consideration, no land transaction return requires to be submitted to the Tax
Authority.

25. The power in section 30(5) allows for the variation of the £40,000 figure.

Reason for taking power

26. Permitting the Scottish Ministers to amend the £40,000 figure by order will provide a
degree of flexibility which will assist with the efficient administration of the LBTT system. Any
change in this threshold figure will impact on the number of transactions which are notifiable. A
change to the figure might be required, for example, in consequence of setting the tax bands
under section 24. As with the section 39(1) power, being a technical and administrative matter it
would not be an effective use of either the Parliament’s or the Government’s resources for the
matter to have to be dealt with through subsequent primary legislation. To reduce the
administrative burden on those taxpayers who, as a result of any change in the threshold figure,
may no longer require to submit an LBTT return it would be desirable for any change to be made
as quickly as possible. An order making power would enable the Scottish Ministers to do this.
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill19) as introduced in the Scottish Parliament on 29 November 2012

27. Section 109 of the Finance Act 2003, and S.I. 2008/2338 made under it, both as mentioned above, have some relevance.

Choice of procedure

28. Although the power allows for amendment of the Bill, it only does so to a very limited extent. It is considered that this is a technical and administrative matter and that negative procedure is appropriate.

Section 39(1) – Power to amend 30 day period in which returns must be made

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision

29. The provisions listed in section 39(2) each include a 30 day period for the making of LBTT returns. Where tax is payable, the period for the payment of LBTT is the same. The power allows for the variation of these 30 day periods.

Reason for taking power

30. The reason for taking this order making power is to provide the Scottish Ministers with a degree of flexibility should there be a need for any of all of the 30 day periods to be shortened or extended. Being a technical and administrative matter it would not be an effective use of either the Parliament’s or the Government’s resources for the matter to have to be dealt with through subsequent primary legislation. It might be some time before an opportunity arises to deal with the matter through primary legislation.

31. A similar power is provided for SDLT in section 76(2) of the Finance Act 2003.

Choice of procedure

32. Although the power allows for amendment of the Bill, it only does so to a very limited extent. It is considered that this is a technical and administrative matter and that negative procedure is appropriate.

Section 42(1) – Power to make regulations about applications to defer payment in case of contingent or uncertain consideration

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

33. Section 42 provides that the buyer may apply to the Tax Authority to defer payment that would ordinarily be due, in a case where the chargeable consideration is contingent or uncertain. The power in section 42 allows for regulations to make further provision about applications.
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill19) as introduced in the Scottish Parliament on 29 November 2012

Reason for taking power

34. The reason for taking the power is to enable regulations to set out, in detail, how the rules for applications under section 41 will operate. As the LBTT Bill begins the parliamentary process, the shape of the proposed Tax Management Bill is subject to consultation, and the LBTT Bill should not therefore contain overly prescriptive provisions about administrative matters. Additionally, setting the rules out in regulations means that these can be periodically amended, if required, without recourse to primary legislation. It would not be productive use of parliamentary time to require every change to the rules to be made by primary legislation.

35. A similar power is provided for SDLT in section 90(2) of the Finance Act 2003. See Part 4 of the Stamp Duty Land Tax (Administration) Regulations 2003 (S.I. 2003/2837).

Choice of procedure

36. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself.

Section 45(6) – Power to make regulations to specify scheme as not being a unit trust scheme

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

37. Section 45 makes provision about unit trust schemes. “Unit trust scheme” is defined in subsection (5). The power in subsection (6) enables the Scottish Ministers to specify that a scheme falling within the subsection (5) definition is not a unit trust scheme for the purposes of the Bill.

Reason for taking power

38. The reason for taking the power is to give the Scottish Ministers the flexibility to make regulations where new types of unit trust scheme emerge and it is inappropriate for the usual rules for unit trust schemes to apply. That might be the case if tax avoidance arises through abuse of the unit trust rules. The regulation making power would enable the Scottish Ministers to move quickly to close any potential tax loopholes which could adversely impact on the level of LBTT revenue.

39. A similar power is provided for SDLT in section 101(5) of the Finance Act 2003.

Choice of procedure

40. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself.
Section 46(1) – Power to make regulations in relation to open-ended investment companies

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision
41. This provision enables the Scottish Ministers to make regulations in relation to open-ended investment companies ("OEICs").

Reason for taking power
42. To give flexibility to make appropriate provision for OEICs nearer the time that the LBTT comes into effect (expected to be April 2015). This will enable the Scottish Ministers to take account of any changes in the operation of what can be complex vehicles to ensure OEICs are treated appropriately within the LBTT regime.

43. A similar power is provided for SDLT in section 102 of the Finance Act 2003. See the Stamp Duty Land Tax (Open-ended Investment Companies) Regulations 2008 (S.I. 2008/710).

Choice of procedure
44. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself. Most taxpayers will not be OEICs.

Section 47(1) – Power to make regulations about residential property holding companies

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure (if amends an Act), otherwise negative

45. This provision enables the Scottish Ministers to make regulations treating certain transfers of interest in residential property holding companies ("RPHCs") as land transactions and chargeable transactions. This is to negate the tax benefit that could accrue by enveloping residential property in a holding company and transferring interests in the company instead of transferring title to the property in the ordinary manner. A broad parallel can be drawn with the established rules for LBTT and property investment partnerships ("PIPs") – see in Part 6 of Schedule 17. Regulations may modify any enactment.

Reason for taking power
46. The use of RPHCs is a complex matter. Taking a power to deal with the matter by regulations allows further time to be given to getting the detailed rules right. The UK Government has tackled the matter for SDLT in a different manner (see Schedule 35 to the Finance Act 2012 (c.8)) but the Scottish Government is not persuaded that the method employed is sufficiently effective or dissuasive. The inclusion of the power in the Bill demonstrates that the Government views the use of RPHCs as unacceptable tax avoidance which places ordinary taxpayers at an unfair disadvantage.
Choice of procedure

47. Affirmative procedure is considered to be appropriate to the extent that the power allows for the amendment of primary legislation. For other provision made, negative procedure is appropriate.

Section 52(2) – Power to provide that a person other than the Scottish Ministers is the Tax Authority

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure

Provision

48. Section 52(1) provides that the “Tax Authority”, as referred to throughout the Bill, is the Scottish Ministers. The Tax Authority has the care and management of LBTT (see section 1(3) and tax must be paid to the Tax Authority (see section 40(1)(a)). The power in subsection (2) is intended to allow for the Tax Authority to be Revenue Scotland, at a future point when Revenue Scotland has a legal personality separate to that of the Scottish Ministers. This is of course subject to Parliamentary agreement of provisions for Revenue Scotland; Government proposals for Revenue Scotland will be set out in the forthcoming consultation on a Tax Management Bill.

Reason for taking power

49. Revenue Scotland does not yet exist as a legal person separate to the Scottish Ministers so the power allows for Revenue Scotland to become the Tax Authority in due course without there being a need for further primary legislation.

Choice of procedure

50. Affirmative procedure is considered to be appropriate because the decision as to who is the Tax Authority is particularly important and the power allows for the amendment of primary legislation, that is to say section 52 itself.

Section 54(1) – Power to make provision about review and appeal of Tax Authority decisions

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure if amending the Act, otherwise negative

Provision

51. The Bill generally does not make provision for decisions of the Tax Authority against which it might be appropriate to allow for review or appeal. Reviews and appeals are matters that are to be consulted on in connection with the Tax Management Bill. A regulation making power is included in the Bill.
Reason for taking power

52. Given that the consultation on a Tax Management Bill (including provisions as to review and appeal) has not commenced, it would be premature to set out detailed provision in this Bill concerning review and appeal. Inclusion of the power demonstrates that the Government is minded to allow review and appeal of certain Tax Authority decisions, the details of which will be provided for following consultation.


Choice of procedure

54. Affirmative procedure is considered to be appropriate to the extent that the power allows for the amendment of primary legislation, that is to say the Bill itself. For other provision made, negative procedure is appropriate.

Section 55(1) – Power to make regulations about the application of the Bill to leases

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure (if amends an Act), otherwise negative

Provision

55. The power allows for regulations to be made about the application of LBTT to leases. Regulations may modify any enactment.

Reason for taking power

56. Following feedback from attendees at the public consultation events held in July and August 2012 and comments made in responses received to Taking Forward a Land and Buildings Transaction Tax consultation paper the Government agrees that additional time should be taken to formulate policy for LBTT and leases (with specific reference to non-residential leases), with a view to producing legislation that is better aligned with Scots law and practice than the SDLT rules for leases. See section 6 of the Policy Memorandum. If time allows it is hoped that provisions for leases can be amended into the Bill (supplanting the power in section 55(1)) at Stage 2 or 3.

Choice of procedure

57. Affirmative procedure is considered to be appropriate to the extent that the power allows for the amendment of primary legislation. For other provision made, negative procedure is appropriate.

Section 58(9) – Power to change what counts as residential property

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure
Provision

58. Section 58 sets out what counts as residential property for the purposes of the Bill. There will be separate tax bands and rates for residential and non-residential property (see section 24(2)). The power in section 58(9) allows for the rules in that section to be amended so as to change what counts as residential property. If property does not count as residential property then it is non-residential property.

Reason for taking power

59. The reason for taking the power is to give the Scottish Ministers the flexibility to make an order if there is a need for the rules as to what counts as residential property to be amended. This might be the case if tax avoidance arises through abuse of the residential property rules. The order making power would allow the Scottish Ministers to move quickly to close off any perceived tax avoidance opportunity which could adversely impact on the level of LBTT revenue. Using an order, subject to the affirmative procedure, will retain an appropriately strong level of scrutiny by the Parliament.

60. A similar power is provided for SDLT in section 116(8) of the Finance Act 2003.

Choice of procedure

61. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation, that is to say section 58 itself.

Section 62(1)(b) – Power to prescribe date other than the date of completion as the effective date

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

62. “Effective date” is one of the key concepts for LBTT. The effective date is the tax point in respect of which obligations to notify the Tax Authority and pay LBTT might emerge. The general rule is that the date of completion is the effective date. For a standard house purchase the date of completion would be the date on which the buyer receives a signed disposition and the keys to the house. The power in section 62(1)(b) allows for regulations to prescribe a date other than the date of completion as the effective date.

Reason for taking power

63. If there is a need for the general rule concerning the effective date to be modified, it is desirable for that to be provided for in regulations. This might be the case if tax avoidance arises through abuse of the general effective date rule. It would not be an effective use of either the Parliament’s or the Government’s resources for this matter to have to be dealt with through subsequent primary legislation. It might be some time before an opportunity arises to deal with the matter through primary legislation.

64. A similar power is provided for SDLT in section 119(1)(b) of the Finance Act 2003.
**Choice of procedure**

65. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself.

**Section 66 – Power to make ancillary provision**

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Order  
**Parliamentary procedure:** Affirmative procedure (if amends an Act), otherwise negative

**Provision**

66. This provision enables the Scottish Ministers to make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of the Bill or made under the Bill.

**Reason for taking power**

67. The reason for taking the power is to enable the Scottish Ministers to adequately give effect to the provisions of the Bill. Whilst the power is wide-ranging, tax is a particularly complicated matter and it is vital that the tax interacts well with Scots law and practices. As mentioned above, the Government is mindful that SDLT has since its introduction in 2003 been subject to sustained and aggressive tax avoidance. The power will enable unforeseen situations to be addressed as soon as it is practical for the Scottish Ministers to bring forward an order.


**Choice of procedure**

69. An order made under this section which contains a provision which adds to, omits or replaces any part of an Act is subject to the affirmative procedure. Any other order made under this section is subject to the negative procedure. These procedures are typical for ancillary powers.

**Section 69(2) – Power to commence Bill**

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Order  
**Parliamentary procedure:** No procedure

**Provision**

70. This provision enables the Scottish Ministers to commence the Bill. Transitional, transitory or saving provision may be made.
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill19) as introduced in the Scottish Parliament on 29 November 2012

Reason for taking power
61. It is standard for Ministers to have control over the commencement of Bills.

Choice of procedure
62. No procedure is provided for, which is typical for commencement powers.

Schedule 1, paragraph 8 – Power to vary the transactions that are exempt transactions

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure

Provision
63. This power enables the Scottish Ministers to modify schedule 1, which sets out the land transactions that are “exempt transactions”. Section 15(a) provides that a land transaction is not a chargeable transaction if it is an exempt transaction. In other words, no tax will be payable. Section 30 provides that an exempt transaction is not notifiable; in other words no land transaction return requires to be made.

64. This power is connected to the power to vary the interests in land that are exempt interests in section 5(4).

Reason for taking power
65. If it is desirable for new categories of exempt transactions to be created, that can be provided for by regulations. Similarly, if there is a need for types of transactions to cease to be exempt, or for the description of an exempt transaction to be varied, that can be provided for in regulations. That might be the case if tax avoidance arises through abuse of the exempt transactions rules. It would not be an effective use of either the Parliament’s or the Government’s resources for this matter to have to be dealt with through subsequent primary legislation. It might be some time before an opportunity arises to deal with the matter through primary legislation.


Choice of procedure
67. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation, that is to say schedule 1 itself.

Schedule 2, paragraph 17(3) – Power to modify qualifying public or educational bodies

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision

78. Paragraph 17 of schedule 2 modifies the usual chargeable consideration rules for certain arrangements involving public or educational bodies. The power allows for the list of qualifying bodies to be modified.

Reason for taking power

79. To enable the list of qualifying bodies to be kept up to date if and when provisions for public or educational bodies change. For example, changes in consequence of the Post-16 Education Reform Bill. It is common for lists of public bodies in Acts of the Scottish Parliament to be amendable by statutory instrument. It would not be an effective use of either the Parliament’s or the Government’s resources for this matter to have to be dealt with through subsequent primary legislation. It might be some time before an opportunity arises to deal with the matter through primary legislation.

80. A similar power is provided for SDLT in paragraph 17 of Schedule 4 to the Finance Act 2003.

Choice of procedure

81. Although the power allows for amendment of the Bill, it only does so to a very limited extent. It is considered that this is a technical and administrative matter and that negative procedure is appropriate. A parallel can be drawn with the power in schedule 15 referred to below.

Schedule 5, paragraph 14 – Power to prescribe minimum prescribed amount for multiple dwellings relief

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision

82. Multiple dwellings relief provides relief from LBTT in relation to purchases of multiple dwellings to ensure that a single transaction involving a number of dwellings is not taxed at a high tax band when it involves dwellings that, individually, may each involve a consideration only falling within lower bands. The calculation of the relief involves calculating an average price per dwelling and then calculating the tax that would be paid on such a price. The tax due on the average price per dwelling is then multiplied by the number of dwellings covered by the transaction to produce the amount of tax due in respect of the dwellings. To that figure is added any tax payable in respect of property other than dwellings. The result is the tax payable in respect of the transaction.

83. However it is possible, for example, that a number of dwellings bought in a single transaction may have an average price that falls in the nil tax rate band, in which case 100% relief would be provided and no tax would be due.
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill19) as introduced in the Scottish Parliament on 29 November 2012

84. This provision enables the Scottish Ministers to make regulations to ensure that if the tax on a particular transaction involving multiple dwellings would be lower than a prescribed amount, then the tax payable would be the prescribed amount. The method for calculating the prescribed amount will be set out in the order.

Reason for taking power

85. Because bands and rates are not being set at the point of introducing the Bill, it is necessary for the minimum prescribed amount for multiple dwellings relief to be set at the later point when Ministers set bands and rates for LBTT.

Choice of procedure

86. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself. The duty to set bands and rates in section 17 is subject to the affirmative procedure.

Schedule 8, paragraph 1 – Power to make regulations granting relief concerning alternative finance investment bonds

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure (if amends an Act), otherwise negative

Provision

87. This provision enables the Scottish Ministers to make regulations granting relief for land transactions connected to alternative finance investment bonds. Other provisions about alternative property finance are set out on the face of the Bill in schedule 7. Regulations may modify any enactment.

Reason for taking power

88. The alternative finance investment bond relief is complex and technical. The current UK tax legislation does not deal with alternative finance investment bonds and SDLT in isolation but rather takes a holistic approach to the taxation of these type of bonds and the legislative provisions inter-link SDLT, income tax and capital gains tax. The Scottish Parliament's competence to legislate in this manner may mean that some of these issues will require to be dealt with by means of another approach such as a section 104 order under the Scotland Act 1998. To ensure whatever legislative proposals the Scottish Government brings forward are the correct ones and within the competence of the Scottish Parliament, further work requires to be undertaken.

Choice of procedure

89. Affirmative procedure is considered to be appropriate to the extent that the power allows for the amendment of primary legislation. For other provision made, negative procedure is appropriate.
Schedule 9, paragraph 3 – Power to prescribe appropriate proportion for crofting community right to buy relief

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision

90. This is one of a couple of provisions concerning the “prescribed proportion” for the purposes of applying certain reliefs. The amount of discount for some reliefs is proposed to be calculated in a different manner from that for SDLT; that is because of the change from slab to progressive tax rates (see section 17 as discussed above). Relief for LBTT will be calculated by applying the prescribed proportion to the amount of tax that otherwise would be chargeable but for the relief.

91. The power in paragraph 3 of schedule 9 concerns the prescribed proportion for application of the crofting community right to buy relief provided for in that schedule.

Reason for taking power

92. The reason for taking this power is because bands and rates are not being set at the point of introducing the Bill, it is necessary for the prescribed proportion for this particular relief to be set at the later point when Ministers set bands and rates for LBTT.

Choice of procedure

93. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself. The duty to set bands and rates in section 17 is subject to the affirmative procedure.

Schedule 11, Part 3, paragraph 6(3) – Power to prescribe proportion for acquisition relief

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision

94. The power in paragraph 6(3) of schedule 11 enables Ministers to prescribe the proportion for the purposes of acquisition relief provided for in Part 3 of that schedule.

Reason for taking power

95. As with the crofting community right to buy relief discussed above, as bands and rates are not being set at the point of introducing the Bill, it is necessary for the proportion to be prescribed in an order at the later point when Ministers set bands and rates for LBTT.
Choice of procedure

96. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself. The duty to set bands and rates in section 17 is subject to the affirmative procedure.

Schedule 15, paragraph 5 – Power to prescribe additional public bodies for the purposes of compliance with planning obligations relief

Power conferred on: The Scottish Ministers  
Power exercisable by: Order  
Parliamentary procedure: Negative procedure

Provision

97. Paragraph 5 of schedule 15 sets out the public bodies that may claim compliance with planning obligations relief. The power allows additional bodies to be prescribed.

Reason for taking power

98. To enable additional bodies to benefit from the relief, for example if provisions for planning law change. It is common for it to be possible to supplement lists of public bodies in Acts of the Scottish Parliament by statutory instrument. It would not be an effective use of either the Parliament’s or the Government’s resources for this matter to have to be dealt with through subsequent primary legislation. It might be some time before an opportunity arises to deal with the matter through primary legislation.

99. A similar power is provided for SDLT in section 61(3) of the Finance Act 2003.

Choice of procedure

100. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself.

Schedule 16, paragraph 2 – Power to relieve certain land transactions involving public bodies

Power conferred on: The Scottish Ministers  
Power exercisable by: Order  
Parliamentary procedure: Negative procedure

Provision

101. Schedule 16 provides a relief for certain transfers involving public bodies. The power in paragraph 2 allows for additional types of land transactions involving public bodies to be relieved.

Reason for taking power

102. To enable the Scottish Ministers to relieve additional types of land transactions involving public bodies if it emerges that certain land transactions are not relieved but ought to be.

Choice of procedure

104. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself.

Schedule 16, paragraph 4 – Power to prescribe additional public bodies for the purposes of transfers involving public bodies relief

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>The Scottish Ministers</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Negative procedure</td>
</tr>
</tbody>
</table>

Provision

105. Paragraph 4 of schedule 16 sets out the public bodies that may claim transfers involving public bodies relief. The power allows additional bodies to be prescribed.

Reason for taking power

106. To enable additional bodies to benefit from the relief, for example if new public bodies come into existence. It is common for it to be possible to supplement lists of public bodies in Acts of the Scottish Parliament by statutory instrument. It would not be an effective use of either the Parliament’s or the Government’s resources for this matter to have to be dealt with through subsequent primary legislation. It might be some time before an opportunity arises to deal with the matter through primary legislation.


Choice of procedure

108. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself.
Finance Committee

4th Report, 2013 (Session 4)

Stage 1 Report on the Land and Buildings Transaction Tax (Scotland) Bill

Published by the Scottish Parliament on 27 March 2013
Finance Committee

4th Report, 2013 (Session 4)

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Finance Committee

Remit and membership

Remit:

1. The remit of the Finance Committee is to consider and report on-

   (a) any report or other document laid before the Parliament by members of
   the Scottish Executive containing proposals for, or budgets of, public
   expenditure or proposals for the making of a tax-varying resolution, taking
   into account any report or recommendations concerning such documents
   made to them by any other committee with power to consider such
   documents or any part of them;

   (b) any report made by a committee setting out proposals concerning public
   expenditure;

   (c) Budget Bills; and

   (d) any other matter relating to or affecting the expenditure of the Scottish
   Administration or other expenditure payable out of the Scottish Consolidated
   Fund.

2. The Committee may also consider and, where it sees fit, report to the Parliament
   on the timetable for the Stages of Budget Bills and on the handling of financial
   business.

3. In these Rules, "public expenditure" means expenditure of the Scottish
   Administration, other expenditure payable out of the Scottish Consolidated Fund
   and any other expenditure met out of taxes, charges and other public revenue.

(Standing Orders of the Scottish Parliament, Rule 6.6)

Membership:

Gavin Brown
Malcolm Chisholm
Kenneth Gibson (Convener)
Jamie Hepburn
John Mason (Deputy Convener)
Michael McMahon
Jean Urquhart

Committee Clerking Team:

Clerk to the Committee
Jim Johnston

Assistant Clerk
Alan Hunter

Committee Assistant
Parminder Kaur
The Committee reports to the Parliament as follows—

INTRODUCTION

1. The Land and Buildings Transaction Tax (Scotland) Bill (“the Bill”) was introduced on 29 November 2012 by John Swinney MSP, Cabinet Secretary for Finance, Employment and Sustainable Growth. The Finance Committee was designated lead committee by the parliamentary bureau. The role of the Committee at Stage 1 is to consider and report on the general principles of the Bill.

2. The Committee issued a general call for evidence on 5 December 2012 and all submissions received are available on the Committee’s web pages on the Scottish Parliament website. The Committee also heard oral evidence at its meetings on 23 and 30 January and 6, 20 and 27 February. The Committee would like to thank all those who provided evidence to the inquiry.

3. The Committee also received a report from the Subordinate Legislation Committee (SLC) on the delegated powers provisions within the Bill \(^1\) and some of its findings are considered below.

**Bill Purpose**

4. The Policy Memorandum (PM) states that the Bill “provides for the rules and structure of LBTT which will impose a tax on anyone buying, leasing or taking other rights (such as options to buy) over land and property in Scotland.” \(^2\) This includes both residential and non-residential transactions and will replace the UK Stamp Duty Land Tax (SDLT).

5. This is the first of three Bills being introduced by the Scottish Government (SG) as a consequence of measures enacted in the Scotland Act 2012. A Landfill Tax Bill is due to be introduced in April while a Tax Management Bill is due to be introduced in the Autumn. The PM states that the Land and Buildings Transaction Tax (LBTT) Bill and the Tax Management Bill should “be viewed as a package, with the LBTT Bill setting out the rules and structure for the tax itself and the Tax

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\(^1\) [www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/59857.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/59857.aspx)

\(^2\) [Land and Buildings Transaction Tax (Scotland) Bill. Policy Memorandum, paragraph 12](http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/59857.aspx)
Management Bill providing for the issues that are common to both LBTT and to the proposed Landfill Tax.”

Structure of the Report
6. A number of key issues emerged during the Stage 1 inquiry and each of these is considered in turn below:

- Band and rates;
- Tax avoidance;
- Reliefs;
- Administration of the tax;
- Non-residential leases, companies, trusts and partnerships;
- Block grant adjustment;
- Alternative approaches.

7. The Committee also considers a number of issues in relation to the PM and the Financial Memorandum (FM) throughout the report.

BANDS AND RATES

Progressive Structure
8. The PM states that LBTT will replace SDLT’s “slab” structure with a “progressive” structure which includes a nil rate band and at least two other bands. Witnesses were very supportive of this approach. For example, the Edinburgh Solicitors Property Centre (ESPC) state that: “we are fully supportive of LBTT being a progressive tax.” The Council of Mortgage Lenders Scotland (CMLS) state that: “While there would be winners and losers out of any new system we believe a progressive system would be more equitable and overcome some of the inefficiencies created by the slab system.” However, there was some concern that there could be a disproportionate effect on high value transactions liable to the top rate of LBTT.

9. The CBI Scotland argue that when setting the rates for higher valued domestic properties the SG “need to be conscious of the rates that apply elsewhere in the UK, but also of the message it would send out about the attractiveness of Scotland as a place to live and work.” Likewise in relation to commercial transactions they state that: “maintaining at the very least a level playing field on this tax with the rest of the UK on land and commercial property transactions should be a priority.”

10. The Committee supports the introduction of a progressive structure within LBTT.
Uncertainty

11. Some witnesses raised concerns regarding uncertainty about LBTT rates in the lead up to the introduction of the tax especially in relation to commercial property as this may discourage investment in the Scottish market. The Law Society of Scotland (LSS) state that the “residential rates are not quite so important, but the forward timescale is important for commercial property.”

Although witnesses accepted that there was a degree of uncertainty relating to potential movements in SDLT, they noted that the absence of any indication of likely future rates of LBTT created an additional layer of uncertainty.

12. The Institute of Chartered Accountants of Scotland (ICAS) argue that: “the lack of clarity on even provisional figures of tax rates or bands goes against the principle of certainty in taxes.” The Scottish Building Federation (SBF) stated in relation to commercial rates are: “We would prefer there to be a minimum of 12 months between the publication and the impact, and if we could get towards 18 months, that would be preferable.” Both Homes for Scotland and the Scottish Property Federation (SPF) were supportive of this view.

13. Brodies informed the Committee that the feedback which they had received from commercial clients is that “they are concerned that there is uncertainty” and they suggest that: “if specific rates cannot be published, guidance about the intentions and an indication of the top rate would be welcome.” The LSS recommends that to avoid any uncertainty and perception that Scotland is non-competitive that the SG provides “some indication about the top rate of LBTT on commercial property as soon as possible.” The CIT state that: “Wherever there is uncertainty, investors will keep their hands in pockets” and suggest that the SG indicates the LBTT rates 12 months in advance of the new tax being implemented.

14. However, the ESPC stated that:

“once the decision has been communicated to the public we will want to move as swiftly as possible to implementation. If that does not happen, there is the potential for scenarios in which some people realise that they can benefit by bringing a transaction forward and others realise that they can save money by delaying a transaction until after the implementation, so there could be short-term disruption.”

15. The Cabinet Secretary pointed out that the Committee has heard a range of views as to when the proposed rates and bands should be announced. While he made it clear that he is not persuaded that there is a need to provide a couple of years’ notice he also suggested that providing the information in the draft budget in September 2014 may even be a bit early.

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9 The Institute of Chartered Accountants of Scotland. Written submission
13 The Law Society of Scotland. Written submission
16. The Committee recognises that there was a range of views among witnesses regarding the timing of the publication of the proposed LBTT rates and bands but notes that the emphasis on the desirability of advance notice relates especially to commercial property.

17. The Committee, therefore, asks the Scottish Government to consider the likely implications of the timing of setting the bands and rates for commercial property on investment in the Scottish market.

Level of scrutiny

18. The PM states that the SG will "set the rates and bands for the tax by subordinate legislation nearer the time that the tax will take effect." Section 24 of the Bill provides for the Scottish Ministers to set the bands and rates by order. Ministers must specify a nil rate tax band and at least two other bands and there must be tax bands and rates for both residential and non-residential property transactions. The first order under section 24 will be subject to affirmative procedure and subsequent orders will be subject to the negative procedure. However, the SLC state in their report on the Bill that: "the Scottish Government has not provided a compelling argument for a reduction in the level of scrutiny on the second and subsequent exercise of the power." Concerns regarding the use of subordinate legislation to make changes to the structure and operation of the tax were also raised by ICAS.

19. The SLC’s view is that if the affirmative procedure is required for the initial use of this power then it can see no reason why it should not require that level of scrutiny each time it is used. In response to the government’s argument that there may be a need to act quickly in responding to changing market conditions the SLC point out that whereas the negative procedure takes a full 40 days the affirmative procedure could be completed more quickly if parliamentary timetabling permits. If the order is lodged during a recess period then the SLC advises that “it is possible to provide a suitable procedure to deal with situations of emergency during such periods.” The SLC recommends that the power should always be subject to a form of affirmative procedure with a suitable form of emergency affirmative procedure being made available to Ministers if there is a need to exercise the power when the Parliament is not sitting.

20. In response to questioning from the Committee on this point the Cabinet Secretary stated: “The nature of the responsibility is an integral part of how the Bill is constructed, so it does not strike me that such exercise of the power would confer significantly greater powers or responsibility than are envisaged in the core of the Bill.” While he, therefore, confirmed his view that the negative procedure is appropriate he also indicated that he would consider the views of the SLC.

21. The Committee invites the Scottish Government to respond further to the view of the SLC that the power to set LBTT bands and rates should always be subject to the affirmative procedure.

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16 http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/59857.aspx
17 http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/59857.aspx
The Draft Budget Process
22. The FM states that the SG “will propose LBTT rates and bands when bringing forward the draft budget for 2015-16 in autumn 2014.” It is likely that the devolution of SDLT along with the other financial powers arising from the Scotland Act 2012 will require some changes to the draft budget process. At present the draft budget consists primarily of expenditure proposals with the vast bulk of revenue coming from the UK Government via the block grant. The additional financial powers mean that Holyrood will become responsible for raising a significant proportion of revenue. This raises a number of questions in relation to the form and function of the current budget process.

23. The Committee and the SG have asked government and parliament officials to work together to bring forward proposals for a revised budget process by summer recess. This will include ensuring the effective scrutiny of LBTT.

TAX AVOIDANCE

24. The SG states in its consultation on the Tax Management Bill that SDLT “has been subject to sustained and aggressive tax avoidance. There is a risk that LBTT could be subject to similar activity.” The SG makes clear in the PM that: “all transactions involving land or buildings in Scotland should be liable for LBTT, except in certain limited and specific circumstances set out in legislation.” In evidence to the Committee the Bill Team stated that in relation to SDLT tax avoidance mainly takes place through sub-sale relief.

25. The PM states that the SG “intends to make use of two different types of anti-avoidance rule.” Witnesses were broadly in favour of this approach and, in particular, the introduction of an effective General Anti-Avoidance Rule (GAAR) in the Tax Management Bill. Witnesses also agreed with the decision not to replicate some of the Targeted Anti-Avoidance Rules (TAARs) within SDLT. In particular, witnesses generally welcomed leaving out section 75A-C of the UK Finance Act 2003.

26. The LSS, for example, believes that it has not “acted as an effective deterrent as its scope is too wide and its application too uncertain.” However, the LSS also point out that “there will be challenges in achieving a workable GAAR in the time available.” Brodies state that: “We are pleased to note that Section 75A has not been replicated in the LBTT Bill” and that the inclusion of a GAAR in the Tax Management Bill “will lead to a more robust system and less likelihood of avoidance activities.”

27. The Committee supports the SG’s proposed approach on tax avoidance and notes that it will have a further opportunity to scrutinise the proposed GAAR when the Tax Management Bill is introduced.

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19 Land and Buildings Transaction Tax (Scotland) Bill. Financial Memorandum, paragraph 249
20 http://www.scotland.gov.uk/Publications/2012/12/5404
21 Land and Buildings Transaction Tax (Scotland) Bill. Policy Memorandum, paragraph 50
22 Land and Buildings Transaction Tax (Scotland) Bill. Policy Memorandum, paragraph 59
23 The Law Society of Scotland. Written submission
24 Brodies. Written submission
28. The Committee also notes that the UK Government intends to introduce a GAAR in the Finance Act 2013 and that draft legislation was published on 11 December 2012 and that “the purpose of the GAAR is to counteract tax advantages arising from abusive arrangements.”

RELIEFS

Sub-Sale Relief

29. One of the main issues to emerge in evidence to the Committee is the absence of sub-sale relief in the Bill. The SG states in the PM that “there is strong evidence to suggest that the sub-sale rules act as a gateway to a significant amount of avoidance activity” and that it does not intend to include sub-sale relief in the Bill. However, this has been challenged by a number of witnesses. Pinsent Masons suggest that there “are numerous circumstances where an organisation might legitimately seek to acquire land and move it on quickly” and in “those circumstances where an entity has never actually held the land, sub-sale relief operates such as that tax is only applied to the ultimate purchaser.” They believe “it should be entirely possible to develop sub-sale relief provisions which protect tax revenues from unacceptable avoidance while retaining the economic benefits which the relief facilitates.” As there is currently no requirement to make a SDLT return in order to qualify for sub-sale relief, HMRC are unable to estimate the tax foregone as a result of these provisions.

30. Some witnesses suggested that the removal of sub-sale relief provisions would have a detrimental impact on “forward funding” arrangements where there are three parties involved in the development of a property: the vendor, a property developer and an institutional investor. In a forward funding arrangement, the property developer concludes a deal to purchase an undeveloped site. An institutional investor then buys the site and provides the finance to enable the property developer to develop the site. Under current sub-sale relief arrangements the developer pays no SDLT.

31. The LSS argue that if sub-sale relief is not provided in the LBTT Bill “the developer will have to pay tax on the acquisition from the landowner and the fund will have to pay tax on the acquisition from the developer.” They argue that this would double the tax and have a detrimental impact on this type of funding at a time when bank funding is limited. This is a view shared by Miller Developments who argue that:

“From a developer’s standpoint, sub-sales are frequently used to unlock and develop key commercial sites. They are an increasingly relevant mechanism in the current economic climate, where alternative funding strategies are required in the absence of available bank finance.”

26 Land and Buildings Transaction Tax (Scotland) Bill. Policy Memorandum, paragraph 80
27 Pinsent Masons. Written submission
30 Miller Developments. Written submission
32. Brodies ask that the SG “reconsider the blanket removal of sub-sale relief.”\(^{31}\)
While they recognise that sub-sale relief has been used in schemes devised to
avoid paying SDLT it is also used to facilitate the progress of development deals.
This could leave developers in Scotland facing higher costs than in the rest of the
UK and “such proposals for higher taxation cannot be justified or supported.” The
CIT suggest that: “the problem is not with sub-sale relief. The avoidance has
come around because sub-sale relief has been combined with another relief or
exemption.”\(^{32}\)

33. The Bill Team set out two reasons for not including sub-sale relief in the
LBTT Bill. First, “although we accept that a piece of land can be bought and sold
twice on the same day for perfectly legitimate commercial reasons we were not
persuaded that there is an obvious case for relieving one of the set of transactions
from tax.”\(^{33}\) Second, “that sub-sale relief has become an avenue for avoidance of
quite substantial amounts of stamp duty land tax across the UK. We were anxious
to limit opportunities for tax avoidance.”\(^{34}\)

34. However, the Cabinet Secretary stated in oral evidence that: “I have not
come to a final decision on sub-sale relief” and that “there is a possibility that we
could bring forward proposals at stage 2.”\(^{35}\) The Cabinet Secretary also went on
to make a distinction between sub-sale relief and forward funding and his desire to
tackle tax avoidance without having a negative impact on economic growth. He
stated: “In order to tackle tax avoidance, sub-sale relief will not be offered. In
order to encourage economic activity, we will be more sympathetic to forward
funding.”\(^{36}\)

35. The Committee notes that the UK Government is currently reviewing
sub-sale provisions and is proposing a range of changes that seek to retain
the availability of sub-sale relief for legitimate transactions, but limit the
scope for avoidance activity.

36. The Committee welcomes the distinction which the Cabinet Secretary
has made in relation to sub-sale relief and forward funding and supports the
removal of sub-sale relief from LBTT on the basis that any necessary
amendments are brought forward at Stage 2 to ensure that forward funding
or other legitimate arrangements are not subject to double taxation.

Charities and Charitable Trusts

37. A further area of proposed relief which was discussed in evidence was in
relation to charities and charitable trusts. In particular, there was some discussion
regarding the requirement for any charity to be registered with the Office of the
Scottish Charity Regulator (OSCR) in order to qualify for this relief. The Bill Team
stated in evidence to the Committee that while this would involve some work: “it

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\(^{31}\) Brodies. Written submission
would not be onerous and no fee would have to be paid.” However, OSCR stated in written evidence that: “Registration can be complex depending on the nature of the organisation and there is no guarantee that this will result in the award of charitable status.” They question whether this “is a proportionate way of providing assurance that they qualify for what may only be a one-off relief on one transaction.”

38. OSCR point out that the existing Scottish charity law makes a distinction between charities representing themselves as charities in Scotland and those registered in Scotland. Section 14 of the Charities and Trustee Investment (Scotland) Act 2005 provides for an exception for some charities outside Scotland to refer to themselves as charities without being on the Register. OSCR suggest that this: “might form the basis of an alternative approach to delivering the policy intention of the Bill.” The Charity Law Association (CLA) stated in oral evidence that: “We would in principle be willing to go along with something along the lines of OSCR’s proposal.”

39. A number of other witnesses also disagreed with the proposed approach to charities relief in the Bill. Both Brodies and ICAS suggest that this relief should be available to those whose charitable status is granted by HMRC and not just OSCR.

40. The Cabinet Secretary points out that the test for claiming relief from LBTT for charities will be the same as claiming relief from non-domestic rates. However, he indicated that he would be happy to consider any practical issues arising from the need to register with OSCR to be eligible for charities relief.

41. The Committee invites the Scottish Government to consider the proposal from OSCR that the distinction within Section 14 of the Charities and Trustee Investment (Scotland) Act 2005 might form the basis of the eligibility for charities relief.

Co-Investment by charities

42. Some witnesses also raised the issue of co-investment by charities in relation to charities relief. Both the Wellcome Trust and the CLA refer in written evidence to the recent decision of *The Pollen Estate Trustee Company Ltd and another v Revenue and Customs Commissioners*, [2012] UKUT 277 (TCC). The Wellcome Trust point out that: “the tribunal held that the SDLT charities exemption could not be claimed in respect of the acquisition of property by a charity jointly with a non-charitable purchaser, even in respect of the charity’s share of purchase.” However, the CLA states that the effect of that decision has been criticised and suggests that the Bill is an opportunity “to address the lack of relief for charities that co-invest in Scottish property.”

43. In response from questioning by the Committee as to whether to include a relief for charities that co-invest in properties in the Bill the Cabinet Secretary...
stated that: “My mind is open to particular issues, but my position in principle is that I am not particularly keen on creating lots and lots of reliefs.”

Zero-carbon homes relief

44. The SG states in the PM that it has not included the zero-carbon homes relief in the Bill on the basis that there is little evidence that this relief has achieved its stated objectives. The Bill Team advised that the UK Government has now removed this relief and that “there is no record of its having been applied for successfully in Scotland since it was introduced, so it was of no practical use.” However, the PM also states that it would welcome views on “whether alternative arrangements could be devised which would help support Scotland’s climate change targets.”

45. The Existing Homes Alliance Scotland (ExHA) stated in written evidence that: “there is a strong case to include a relief related to energy efficiency” and that they: “do not believe it is necessarily complex to devise a system of reliefs related to the energy efficiency of the housing stock. For example, a percentage relief could be applied according to the energy rating band of the property.”

46. The SBF suggest that “homes with a poorer energy efficiency rating would incur a higher rate of LBTT whereas homes with a high energy efficiency rating would incur partial or total relief from the tax.” This should take account of the relative cost-effectiveness of improving the energy efficiency of a property.

47. The Energy Savings Trust (EST) recommends that the Bill: “includes provisions to allow the introduction of specific reliefs (or exemptions) for homes that meet certain energy performance standards.” Scottish Land and Estates said in oral evidence: “We would support any intention to continue the relief for zero-carbon homes” and “many of our members are encouraging and trying to develop that in the countryside.”

48. However, Homes for Scotland point out that there is a need to face up to the reality that energy efficiency is very low down the list of new home buyers’ priorities.” The ExHA agreed that it is clear that energy efficiency is not a significant factor in buying and selling homes but that “part of the reason for introducing the relief is to make energy efficiency a more significant factor.”

49. The Cabinet Secretary stated that at this stage he is not persuaded to include some form of zero-carbon home relief in the Bill. He points out that a lot of properties will not be covered by LBTT and therefore would not be encouraged to become more energy efficient by the proposed relief. While he supports fiscal

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44 Land and Buildings Transaction Tax (Scotland) Bill. Policy Memorandum, paragraph 80
45 Existing Homes Alliance Scotland. Written submission
46 Scottish Building Federation. Written submission
47 Energy Savings Trust. Written submission
incentives to encourage behavioural change he suggests that a better option is to make more effective use of the council tax discount scheme which was introduced as part of the Climate Change (Scotland) Act. He suggests: “that is a much more tangible way of reducing the costs of a property for the person occupying the property if they invest in some green energy measures.”

50. The Committee supports the approach of the SG on not including a zero-carbon homes or similar relief within the Bill.

Licences

51. The Bill proposes that licences would be liable for LBTT. ICAS suggested in written evidence that: “An exemption should be included for licences to occupy, although it should be recognised that most may be below the threshold.” For example, “shops within shops” such as franchisees within retail outlets and at airports are currently exempt from SDLT and ICAS argue that these “may become less attractive business locations if additional charges arise.”

52. Brodies do not support the blanket removal of the exemption for licences but recommend that the SG reviews “the position on licences when consulting on the treatment of non-residential leases and introduces categories of licences which will be exempt from LBTT.” For example, they point out that many hotels “now operate under management contracts which are in effect licences to occupy and run hotels” which would mean running a hotel this way would be taxed under LBTT but not in the rest of the UK. Pinsent Masons suggest that removing this exemption has “the potential for rendering Scotland a less competitive place to do business.”

53. The Cabinet Secretary stated in response to these concerns that: “I am forever mindful of the issues of Scotland’s competitiveness and the perception of Scotland’s competitiveness.” However, he also pointed out that there is a need to be equitable in the treatment of commercial properties. For example, if “a particular type of shop is in an airport and that type of shop is also on the high street, the one on the high street will be paying” SDLT. At the same time, he did accept that “there is some distinction between what I would call temporary or short-term occupation and longer-term, almost permanent, occupation.”

54. The Committee invites the SG to consider whether there may be some categories of licences which it would be appropriate to exempt from LBTT within the overall policy objectives of the Bill.

ADMINISTRATION OF THE TAX

The role of Revenue Scotland and Registers of Scotland (RoS)

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52 The Institute of Chartered Accountants of Scotland. Written submission
53 Brodies. Written submission
55. The SG has published a consultation on its proposed Bill on tax management which will include the creation of Revenue Scotland as a non-Ministerial department which will be staffed by civil servants. The SG proposes that its principal function will be “to ensure the efficient and effective care and management of the devolved taxes and that all tax receipts are paid to the Scottish Consolidated Fund.” Witnesses generally welcomed the establishment of Revenue Scotland. For example, the LSS suggests that it will have an important role in devising “an effective audit and enquiry system” which “would increase compliance with LBTT and result in more tax being collected.”

56. Witnesses also generally welcomed the role of RoS in the collection of LBTT but emphasised the need for it to be adequately resourced and for sufficient time to be allowed to test the new collection system before it goes live. The CIT state in their written submission that: “One of our concerns from the start of this process has been the availability of resources, both financial and in manpower terms.”

Compliance Activity
57. The FM states that Revenue Scotland will be primarily responsible for compliance but that further work is planned in deciding upon the respective roles of Revenue Scotland and RoS including in relation to compliance activity. The FM includes £350,000 in staff costs for compliance activity within the estimated running costs for Revenue Scotland. These costs relate to the collection of both LBTT and Landfill Tax.

58. ICAS state in written evidence that “in countering tax avoidance, an experienced and effective compliance and enforcement operation will need to be resourced” and that any inadequacy in the Tax Authority or Registers of Scotland: “could have adverse consequences for the compliance regime; a false economy.”

59. In response to questioning from the Committee on providing sufficient resources to enforce anti-avoidance measures the Bill Team stated: “The resource plans for Revenue Scotland are still at a fairly early stage, but we believe that we have made adequate allowance in those plans for what we have called compliance activity.”

IT Systems
60. Of particular concern to witnesses is the readiness and effectiveness of RoS’s IT system. The LSS suggest that the SDLT online system is overly complex and that it “is essential that the new online system for LBTT is ready in sufficient time for it to be adequately tested by practitioners and for guidance to be prepared well before 2015.” The CIT believe that designing the on-line system should be a “fairly urgent matter” and that “not too many things should be hardwired into it.” The SPF states that it will “be vital for the government to ensure that IT systems

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56 [http://www.scotland.gov.uk/Publications/2012/12/5404]
57 The Law Society of Scotland. Written Submission
58 Chartered Institute of Taxation. Written submission
59 The Institute of Chartered Accountants of Scotland. Written submission
61 [The Law Society of Scotland. Written submission](http://www.scotland.gov.uk/Publications/2012/12/5404)
and the administrative infrastructure is in place well before 1 April 2015 to ensure a smooth transitional period from HMRC to Scottish Ministers as the tax authority."\(^{63}\)

61. Audit Scotland recently published a report on managing ICT contracts which included the audit of ICT projects within the RoS and, in particular, a ten year Strategic Planning Agreement (SPA) which was agreed with BT in 2004. Key findings of the Audit Scotland report included:

- "Terms of SPA meant BT was intended to act as ICT provider and to also have Intelligent Client role. This contributed to RoS having insufficient in-house ICT skills and experience with which to understand and manage the interdependencies of individual projects, and to some ICT projects being delivered late or not at all.

- Two individual projects within the programme now cancelled, with costs of £6.7 million written off in March 2011. Total spend to March 2012 on SPA is £112 million.

- RoS now considers the partnership outsourcing of all ICT was inappropriate and a more traditional client-supplier relationship would have been better. RoS has terminated the SPA meaning that the contract will end 20 months early. Level of compensation payable to BT is currently being negotiated."\(^{64}\)

62. Audit Scotland concludes that: "While RoS is developing plans to bring in additional specialist support where necessary, any lack of in-house ICT skills and experience means that it will need to manage closely a range of risks associated with the transfer of operations from BT."\(^{65}\)

63. RoS acknowledged in oral evidence to the Committee that there was a problem with two particular IT projects "which resulted in an impairment in our 2010-11 accounts."\(^{66}\) However, they went on to say that since then "we have carried out a considerable review of our governance and financial reporting and the controls that we put in place for projects."\(^{67}\) In response to questioning from the Committee the Cabinet Secretary stated that he was content that RoS would be able to deliver the necessary IT system to support LBTT.

64. The Committee also considered the estimated costs for the new IT system. The FM includes provision for £75k to build the new LBTT system. However, in response to questioning from the Committee RoS also advised that the staff set-up costs of £250k is mainly the cost of RoS’s internal IT development staff. RoS confirmed that they were content that this level of funding should be sufficient to

\(^{63}\) Scottish Property Federation. Written submission
\(^{64}\) http://www.audit-scotland.gov.uk/work/all_national.php?year=2012
design and build the new system and that “there is sufficient contingency within them.”

Automated Registration of Title to Land (ARTL)

65. The CMLS support continuing the role of the RoS in the collection of LBTT but emphasise that lessons need to be learned from the ARTL. In particular, they suggest “there have been issues around its robustness, speed and ease of use” and therefore, “if ARTL is to be replaced with a system which will also deal with the online payment of LBTT then it is vital that these issues are addressed in it.” Brodies raised a similar point in written evidence: “It is essential that both the LBTT system and the ARTL system work smoothly separately and together and that all teething problems have been addressed before the systems go live.” They emphasise that RoS should be given adequate resources to “facilitate the smooth introduction and subsequent day to day operation of the LBTT system.” Given that LBTT and ARTL will be operating in tandem the CIT recommend that sufficient time and resources are “made available to have a fully working, fully tested system (by external users as well as Registers of Scotland) in time for the introduction of LBTT.”

Customer Helpdesk and Guidance

66. The proposed duties for Revenue Scotland within the SG’s consultation on a Tax Management Bill include the provision of information and guidance to taxpayers. The FM includes annual staff running costs of £240k for Revenue Scotland to manage web and print communications, a “limited helpline” and complaints. It also includes non-staff running costs of £50k for website maintenance and updating of on-line guidance. In relation to RoS the FM includes staff running costs of £130k for an e-services helpdesk with 4 staff to provide administrative advice but not tax advice. It also includes staff running costs of £60k for the provision of a “complex inquiry helpdesk” with one member of staff as a “referral point from e-Services Helpdesk for complex cases.”

67. RoS state in written evidence that they are in dialogue with Revenue Scotland regarding what role, if any, they will have in LBTT compliance and related to this, the provision of a customer helpdesk. In oral evidence to the Committee they further explained that: “We view compliance as a role primarily for Revenue Scotland” and “we will work with it closely in the next three months to identify precisely where the demarcation line between compliance and collection should be.” They have, therefore, assumed that: “our advice and guidance role, for example, will relate more to administration of form filling than it will to providing guidance on detailed taxation matters.” However, they also stated that: “We do not know whether our role will be simply to give guidance on filling in the online

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69 Council of Mortgage Lenders Scotland. Written submission
70 Brodies. Written submission
71 Chartered Institute of Taxation. Written submission
72 Land and Buildings Transaction Tax (Scotland) Bill. Financial Memorandum, paragraph 275
73 Land and Buildings Transaction Tax (Scotland) Bill. Financial Memorandum, paragraph 278
form or to be more involved in advising on aspects of the tax. At the moment, we think that our role is more likely to be on the former.\textsuperscript{76}

68. In response to questioning from the Committee on the staffing levels for the customer helpdesk RoS stated that: “having four staff will be sufficient for the day to day administrative calls” but that “if someone asked whether it is valid to apply relief X, Y or Z, that would be an area in which we would expect Revenue Scotland’s input.”\textsuperscript{77} This raises the question of how the public will know whether to contact Revenue Scotland or RoS with a query about LBTT. In response to the Committee RoS stated that: “we are aware that it is a key issue and that we will explore it over the course of this year and into the next with our key customer groups and with Revenue Scotland and HMRC.”\textsuperscript{78}

69. The LSS argue that the current HMRC helpline for SDLT is of little use and that: “Consideration should be given to adequately staffed LBTT helplines or drop-in centres in addition to comprehensive and easily accessible guidance.”\textsuperscript{79}

70. Brodies also support the introduction of a helpline staffed by “adequately trained specialist personnel.”\textsuperscript{80} They state in written evidence that: “The lack of technically trained staff at the HMRC helpline has been very frustrating for those of completing SDLT Returns on behalf of clients.”

71. ICAS state that:

“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 retained at Revenue Scotland.”\textsuperscript{81}

72. The Committee recognises that LBTT is not due to be implemented until April 2015 but is nevertheless concerned about the current lack of clarity regarding the respective roles of Revenue Scotland and RoS especially in relation to compliance activity and recommends that this is addressed as a matter of urgency.

73. The Committee notes that RoS have developed “a set of milestones and a set of key dates for key deliverables”\textsuperscript{82} and will invite the RoS to provide this information and also ask Revenue Scotland to provide similar information.

\textsuperscript{79} The Law Society of Scotland. Written submission
\textsuperscript{80} Brodies. Written submission
\textsuperscript{81} ICAS. Written submission
74. The Committee intends to monitor and scrutinise the implementation and delivery of LBTT and invites RoS and Revenue Scotland to provide a 6 monthly progress report both in writing and in oral evidence.

75. The Committee is concerned that while the FM makes provision for an e-Services Helpdesk and complex enquiry helpdesk within RoS there only appears to be provision for a “limited helpline”83 within Revenue Scotland. The Committee asks the SG to provide further details on the proposed Revenue Scotland helpline including its function, an estimate of costs, staffing levels and whether it will be staffed by adequately trained specialist personnel.

Payment Arrangements

76. The PM states that the Bill “makes provision for a tax which should be 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.”84 The intention is that tax returns and payment for LBTT should primarily be done electronically and that taxpayers should have up to 30 calendar days both to submit an LBTT return and to pay any tax due.

Registration

77. The PM points out that registration plays a more important role in the Scottish legal system than at a UK level. At present, payment of SDLT is not required prior to registration. However, payment of LBTT will be required prior to registration and this has caused some concern among witnesses. Pinsent Masons argue that this requirement is “unnecessarily restrictive”85 and that they are not aware of any evidence which suggests that the current approach results in a material loss of revenue. On this basis they invite the SG to reconsider the revised approach under LBTT.

78. The LSS state in written evidence that “this could cause serious difficulties as registration is extremely important in relation to land in Scotland, and payment of LBTT should not impede the registration process.”86 However, the PM states that the SG is aware of these concerns and that the Bill: “provides that tax is treated as paid if ‘arrangements satisfactory to the tax authority’ are made for payment of the tax.”87 The LSS note this in their written submission and state that they:

“will be keen to consider the proposed arrangements and guidance in more detail to ensure that the system will not cause any practical difficulties for solicitors or their clients in relation to the completion of property transactions and the registration process.”88

79. The Committee notes that the CMLS are content with the principle of payment prior to registration on the basis that the system of “advance

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83 Land and Buildings Transaction Tax (Scotland) Bill. Financial Memorandum, paragraph 275
84 Land and Buildings Transaction Tax (Scotland) Bill. Policy Memorandum, paragraph 28
85 Pinsent Masons. Written submission
86 The Law Society of Scotland. Written submission
87 Land and Buildings Transaction Tax (Scotland) Bill. Policy Memorandum, paragraph 31
88 The Law Society of Scotland. Written submission
notices” under the Land Registration etc. (Scotland) Act 2012 are introduced before LBTT comes into force.

Transitional Arrangements

80. HMRC advise in a written submission that there will be costs for the SG arising from work which they will need to carry out in support of the devolution of SDLT. This relates to “IT and business changes to enable systems to be ‘switched off’ and costs for communications including publicity and guidance.” It states that: “Work is being undertaken to provide costings and an initial estimate will be produced during Summer 2013.” The FM does not include an estimate of what these costs might be. Rather, the FM states: “HMRC has been asked to provide an estimate of these likely costs and offsetting savings as soon as possible and these estimates will be provided to the Parliament. However, further planning work needs to be undertaken before estimates are available.”

81. In response to questioning from the Committee the Cabinet Secretary stated HMRC have provided an indicative figure of costs in excess of £500k but that these costs were not included in the FM as the Scottish Government is awaiting a definitive figure from HMRC.

82. The Committee asks why the indicative costs provided by HMRC were not included in the FM given that the requirement of the Standing Orders is to provide “best estimates” and not a definitive figure.

83. The Committee also asks that the SG keeps it fully informed of the costs of HMRC’s involvement in the transitional arrangements. The Committee will also seek an update from HMRC when it takes evidence from them on 8 May.

NON-RESIDENTIAL LEASES, COMPANIES, TRUSTS AND PARTNERSHIPS

84. The Bill team stated in evidence to the Committee that: “We are aware that non-residential leases are an area of particular complexity. It would have been difficult to resolve all the issues before the introduction of the Bill.” The SG has, therefore, established a non-residential leases working group which will examine two key areas: the various options for taxing non-residential leases and the rules that are associated with taxation of non-residential leases.

85. The Bill team explained that the SG also intends to bring forward amendments at Stage 2 in relation to the taxation of residential property holding companies, and the treatment of trusts and partnerships. The PM states that: “The Scottish Government believes that companies, trusts and partnerships
should be liable to pay LBTT.\textsuperscript{94} The PM also sets out the SG’s intention to bring forward stage 2 amendments in the following areas:

- Detailed proposals for the taxation of transfers of interest in relation to a particular class of companies that hold or deal in residential property, where the transfer gives the transferee the right to use or occupy that property;

- Simpler and clearer legislation on the taxation of land transactions involving trusts;

- Simpler and clearer legislation on the taxation of land transactions involving partnerships.

86. In response to questioning from the Committee that this approach was not particularly satisfactory given the limited opportunities to take further evidence at Stage 2 the Bill team responded that this is a consequence of the overall timescales involved in introducing the new tax by 1 April 2015.

87. The Cabinet Secretary was also questioned on the timing of Stage 2 amendments and responded that: “I aim to lodge as many as I can at the outset of the process. The nature of some of the territory that we have to cover is very complex and various questions will require further discussions with stakeholders.”\textsuperscript{95}

88. The Committee notes the need to introduce LBTT by April 2015 but emphasises that there is nevertheless a need to ensure that all aspects of the Bill are subject to effective parliamentary scrutiny. On this basis the Committee recommends that sufficient time is made available at Stage 2 to allow oral evidence both with the Cabinet Secretary and key stakeholders prior to consideration of the proposed amendments on non-residential leases, companies, trusts and partnerships.

89. The Committee also recommends that the SG publishes the equivalent of a Policy Memorandum and Explanatory Notes to accompany the proposed amendments in these areas.

### BLOCK GRANT ADJUSTMENT

90. The Office for Budget Responsibility (OBR) has responsibility for forecasting Scottish tax receipts for the Scottish rate of income tax, SDLT and Landfill Tax and does so on a six monthly basis alongside its economic and fiscal outlook (EFO).\textsuperscript{96} The LBTT Bill FM includes the OBR forecasts for SDLT receipts from March 2012 as follows:

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<td>£ million</td>
<td>330</td>
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\textsuperscript{94} Land and Buildings Transaction Tax (Scotland) Bill. Policy Memorandum, paragraph 98
\textsuperscript{96} http://budgetresponsibility.independent.gov.uk/economic-and-fiscal-outlook-december-2012/
91. The FM states that: “it is reasonable to assume that receipts from LBTT will be equivalent to those from SDLT at present, and that the block grant adjustment will be broadly equal to the level of SDLT receipts.”

92. The OBR has since published its latest forecast for Scottish taxes in December 2012. These include forecast SDLT receipts as follows:

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<td>£ million</td>
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93. The OBR state that the Scottish forecast: “is down by £32 million in 2012-13 relative to March and the shortfall rises to £75 million by the end of the forecast period.” However, the OBR also states: “we still expect robust growth in receipts over the period to 2017-18. The main driver of this rise is the recovery in property transactions from historically low levels since the downturn to a level which is consistent with the average historical duration of home ownership (with owner-occupiers moving every 19 years).” However, Homes for Scotland flagged up continuing concerns regarding the strength of the housing market in Scotland and that “significant change is unlikely in the coming years.”

94. The SPF stated in oral evidence that while the FM states that the financial impact of the new tax should be broadly neutral: “the volatility of this tax makes that a difficult target to achieve with any form of certainty.” They are also of the view that the OBR forecasts are “wildly optimistic” and suggest that the SG “digs in its heels” when negotiating with the UK Treasury on the block grant adjustment for SDLT. The SBF added: “There is concern about the overnight reduction to the block grant from the UK Government to the Scottish Government when the new system comes into place. We should consider whether there is a need for some transitional arrangements.”

95. However, the Cabinet Secretary confirmed that there will be a one-off reduction in the block grant as a consequence of the devolution of SDLT. He suggests that, given the volatility in SDLT receipts, the fairest and most reliable means of calculating the size of the reduction would be to calculate a five-year average of receipts. The Cabinet Secretary argues that the use of actual rather than forecast data would be preferable when calculating the block grant adjustment, given that “the forward estimating of SDLT is very difficult” and the OBR forecasts have already been significantly revised, as illustrated above. The Cabinet Secretary also notes that:

“I have made the point to the UK Government that I expect to receive the budget numbers for our 2015-16 budget sometime in the next six months

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97 Land and Buildings Transaction Tax (Scotland) Bill, Financial Memorandum, paragraph 268
and, because this matter will be material to our 2015-16 budget, I presume that those will be net of stamp duty land tax, so we have to reach an agreement about this in relatively short order.”

96. If the block grant adjustment was calculated within six months’ time, then a five year average for the period 2010-11 to 2014-15 would need to rely on OBR forecasts for at least two, or possibly three of these years. The latest data available is for 2011-12, although 2012-13 should become available within the next 6 months. The Financial Scrutiny Unit have advised that on the basis of currently available data and OBR forecasts, this would imply a block grant adjustment of £319m.

97. The Committee has agreed to take evidence on block grant adjustment in April and May with a view to reporting its findings to the SG by the end of May in order to inform the discussions of the Joint Exchequer Committee. This will include taking evidence from the OBR.

Parliamentary approval

98. The SG and the UK Government set out their initial approach to agreeing adjustments to the block grant as part of correspondence between the Cabinet Secretary for Parliamentary Business and Government Strategy, the Cabinet Secretary for Finance, Employment and Sustainable Growth and the Secretary of State for Scotland. In his letter dated 20 March 2012 the Secretary of State stated that:

“Consistent with the principles of consent, our two governments should reach agreement on implementation issues, including adjustments to the block grant... Each government should also provide assurance to its Parliament before relevant provisions of the Bill are brought into force and before implementation arrangements are brought into effect. I understand that you propose to seek the agreement of the Scottish Parliament as part of this process.”

99. The SG stated in its response that:

“We will seek the Scottish Parliament's agreement to changes to Scotland's funding arrangements, now and in the future, in order to provide democratic oversight and assurance that Scotland's interests are being properly considered. We therefore accept your proposal to amend the Bill to include a statutory requirement for UK and Scottish Governments to report to our respective Parliaments about the progress of implementation.”

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106 www.scottish.parliament.uk/S4_ScotlandBillCommittee/General%20Documents/M_Moore_letter_to_Bruce_Crawford.pdf
107 www.scottish.parliament.uk/S4_ScotlandBillCommittee/General%20Documents/Bruce_Crawford_letter_to_Michael_Moore.pdf
100. However, in evidence to the Committee the Cabinet Secretary seemed to suggest that while he would welcome the input of the Committee, the decision on block grant adjustment is a matter for negotiation between the two governments.\(^{108}\)

101. **The Committee seeks clarification from the SG as to whether it will seek the agreement of the Scottish Parliament to block grant adjustments arising from the devolution of financial powers within the Scotland Act 2012.**

ALTERNATIVE APPROACHES

102. The PM states that the two options considered by the SG are to do nothing which would mean a significant loss of revenue to the Scottish budget or to provide for a replacement tax and that there “are no other practical options.”\(^{109}\) Given this the SG has opted for the latter. However, SPICe advised in their briefing on the Bill that the recent review of the UK tax system led by Sir James Mirrlees concluded that “there is no sound case for maintaining stamp duty and we believe that it should be abolished.”\(^{110}\) The review also states that:

> “Stamp duty land tax, as a transactions tax, is highly inefficient, discouraging mobility and meaning that properties are not held by the people who value them most, and its ‘slab’ structure – with big cliff-edges in tax payable at certain thresholds – creates particularly perverse incentives.”\(^{111}\)

103. The review goes on to state that: “a reasonable quid pro quo for its abolition is that a similar level of revenue should be raised from other, more sensible property taxes.”\(^{112}\) The review proposed a new housing services tax which would replace SDLT on residential properties and council tax and a land value tax which would replace business rates and SDLT on commercial properties.

104. This is a view also supported by Andy Wightman who states in written evidence to the Committee that: “it is disappointing to note that the Scottish Government appear to have taken no account of the significant review of the UK taxation system led by Professor James Mirrlees.”\(^{113}\) He argues that SDLT should be abolished and “replaced with a wider, more coherent land and property tax.”

105. However, the Scotland Act 2012 provides for the devolution of SDLT subject to it remaining a tax on land transactions. SPICe advise that, within the context of the current devolved taxation framework, this means that:

> “In respect of more radical reform along the lines proposed by Mirrlees and Wightman, the Scottish Government’s only option would be to do this through reform of local taxation i.e. council tax and non-domestic rates.”\(^{114}\)


\(^{109}\) Land and Buildings Transaction Tax (Scotland) Bill. Policy Memorandum, paragraph 16

\(^{110}\) [www.ifs.org.uk/mirrleesreview/design/ch16.pdf](http://www.ifs.org.uk/mirrleesreview/design/ch16.pdf)

\(^{111}\) [www.ifs.org.uk/mirrleesreview/design/ch16.pdf](http://www.ifs.org.uk/mirrleesreview/design/ch16.pdf)

\(^{112}\) [www.ifs.org.uk/mirrleesreview/design/ch16.pdf](http://www.ifs.org.uk/mirrleesreview/design/ch16.pdf)

\(^{113}\) Andy Wightman. Written submission

\(^{114}\) [www.scottish.parliament.uk/parliamentarybusiness/58744.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/58744.aspx)
106. The Institute for Fiscal Studies (IFS) stated in its Green Budget published in February 2013 that: “SDLT is a strong contender for the UK’s worst-designed tax.”\textsuperscript{115} The IFS state that: “At a bare minimum, the government should move away from this ‘slab’ structure for SDLT, as the Scottish government is proposing to do.”\textsuperscript{116}

107. The Committee recognises that the Scotland Act 2012 requires any replacement tax for SDLT to be a tax on land transactions.

108. The Committee asks whether the SG considered the findings of the Mirrlees review in bringing forward a replacement tax for SDLT.

Conclusion

109. The Committee supports the general principles of the Bill and emphasises that it will aim to closely monitor the implementation and delivery of LBTT.

\textsuperscript{115} \url{www.ifs.org.uk/budgets/gb2013/GB2013_Ch9.pdf}
\textsuperscript{116} \url{www.ifs.org.uk/budgets/gb2013/GB2013_Ch9.pdf}
ANNEXE A: EXTRACT FROM THE MINUTES

10th Meeting, 2013 (Session 4) Wednesday 20 March 2013

Land and Buildings Transaction Tax (Scotland) Bill (in private): The Committee considered a draft report. Various changes were proposed and decided upon (one by division) and the report was agreed for publication. Record of divisions in private:

Gavin Brown proposed the following wording—

After “LBTT rates” in paragraph 16, add “(noting that almost all witnesses said it should be sooner than September 2014)”. The proposal was disagreed to by division: For 2 (Gavin Brown and Michael McMahon), Against 5 (Kenneth Gibson, Malcolm Chisholm, Jamie Hepburn, John Mason and Jean Urquhart).

ANNEXE B: INDEX OF ORAL EVIDENCE SESSIONS

3rd Meeting, 2013 (Session 4) Wednesday 23 January 2013
Alistair Brown, Deputy Director, Fiscal Responsibility Division, Neil Ferguson, Bill Team Leader, Carol Sibbald, Bill Team member, and John St Clair, Senior Principal Legal Officer, Scottish Government; Iain Doran, Member of Tax Committee, and Isobel d’Inverno, Convener of the Tax Law Committee, Law Society of Scotland; Stephen Coleclough, Deputy President, and Caroline James, Commercial; and Real Estate Partner at HBJ Gateley, Chartered Institute of Taxation.

4th Meeting, 2013 (Session 4) Wednesday 30 January 2013
David Melhuish, Director, Scottish Property Federation; Michael Levack, Chief Executive, Scottish Building Federation; and Philip Hogg, Chief Executive, Homes for Scotland.

5th Meeting, 2013 (Session 4) Wednesday 06 February 2013
David Marshall, Business Analyst, ESPC; Kennedy Foster, Policy Consultant, Council of Mortgage Lenders; Richard Blake, Legal Adviser, Scottish Land & Estates, David Robb, Chief Executive, Office of the Scottish Charity Regulator; and Gavin McEwan, Member, Charity Law Association.

6th Meeting, 2013 (Session 4) Wednesday 20 February 2013
Alan Cook, Partner, Pinsent Masons LLP; Elspeth Orcharton, Director, Corporate and International Taxation, The Institute of Chartered Accountants of Scotland; Nick Scott, Head of Property & Partner, Brodies LLP; Elaine Waterson, Strategy Manager, Energy Saving Trust; and Chas Booth, Senior Press & Parliamentary Officer at Association for the Conservation of Energy, Existing Homes Alliance.
7th Meeting, 2013 (Session 4) Wednesday 27 February 2013
John Fanning, Director of Finance, John Fraser, Head of IT Development, John King, Director of Registration, Registers of Scotland; John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth; Eleanor Emberson, Head of Revenue Scotland, Revenue Scotland; Neil Ferguson, Bill Team Leader; and John St Clair, Senior Principal Legal Officer, Scottish Government.
Land and Buildings Transaction Tax (Scotland) Bill: Stage 1

10:00

The Convener: Item 2 is to take oral evidence from the Scottish Government bill team as part of our stage 1 scrutiny of the Land and Buildings Transaction Tax (Scotland) Bill. I welcome to the meeting Alistair Brown, Neil Ferguson, Carol Sibbald and John St Clair.

I invite the witnesses to make a short introductory statement, which will be followed by questions.

Alistair Brown (Scottish Government): Thank you for inviting us to speak to the committee.

Under the terms of the Scotland Act 2012, two United Kingdom-wide taxes—stamp duty land tax and landfill tax—will be withdrawn in Scotland. The UK Government has stated its intention that that should happen with effect from April 2015. The Land and Buildings Transaction Tax (Scotland) Bill is the first in a package of three bills that the Scottish Government is introducing to replace the two taxes. The Government intends during 2012-13 to introduce, alongside this bill, a bill that will set out the rules and structure of a replacement for landfill tax. It also intends to introduce in 2013-14 a tax management bill, which will set out the underpinning arrangements that are required to support a Scottish tax system. The target is to introduce that bill in the autumn. The proposals for the tax management bill are the subject of a public consultation that was launched on 10 December last year and will close on 12 April.

The bill provides for a land and buildings transaction tax that will impose a charge on anyone who buys, leases, licenses or takes other rights, for example options to buy, over land and property in Scotland. As well as covering residential transactions, the tax will cover non-residential transactions, including those that relate to commercial and agricultural property.

In developing the bill, the Scottish Government has worked closely with stakeholders, notably the Law Society of Scotland, and in doing so has had two particular purposes in mind: to align the legislation better with Scots law and practices, and to simplify the legislation, wherever possible, to make it easier to understand and easier to apply.

We published the consultation paper, “Taking forward a Scottish Land and Buildings Transaction Tax”, on 7 June last year. We received 56 responses from a wide range of individuals and representative bodies, and we held public meetings in Aberdeen, Edinburgh, Glasgow and Perth during the summer of 2012, which involved
a range of practitioners and interested parties. We published an independent analysis of the consultation responses on our website on 1 November last year. I record our thanks to consultees for their continuing input and for the help that they have given us in developing the bill.

As the committee is aware, the bill’s purpose is to introduce a tax that is modern, efficient and progressive, and which does not impede or distort legitimate commercial or housing market activities, but instead seeks to provide an appropriate level of revenue to support Scotland’s public finances. The measures that are described in the bill will, in the interests of simplicity, reduce the number of tax reliefs that are available under stamp duty land tax. The bill will establish LBTT as a progressive tax rather than a slab tax. The intention is to remove the distortions in transaction prices that are caused by the slab nature of SDLT. The bill also provides for LBTT to include a number of targeted anti-avoidance rules to help to minimise the risk of tax avoidance. In addition, it will replace English law definitions in SDLT legislation with appropriate definitions from Scots law.

A lot of work has gone into preparing the bill, and we very much look forward to discussing its provisions with the committee today and over the next few months.

The Convener: Thank you. I will ask a few questions to set the scene before I bring in other members. I do not think that you will be subjected to 14 consecutive questions from Michael McMahon or 12 from Gavin Brown, as Barry White was last week, but we will see how things go. I do not intend to restrict members’ questions on the issue.

Will you say more about the targeted anti-avoidance rules that you plan to introduce?

Alistair Brown: I will comment and then invite Neil Ferguson to comment. Mr Swinney set out in his statement to Parliament on 7 June last year the approach that the Government intends to take to tackling tax avoidance. He said that the Government wants to take a vigorous approach. We have sought to reflect that in the bill with several targeted anti-avoidance rules. In addition—as the committee knows—in the consultation on tax management, which was launched at the beginning of December, there is a proposal to introduce a general anti-avoidance rule.

Neil Ferguson (Scottish Government): There are quite a few examples of targeted anti-avoidance rules in the bill. In a sense, the whole concept of linked transactions is a targeted anti-avoidance rule. The bill provides that if, for example, a husband wanted to buy a house and the wife wanted to buy the garden in separate transactions in order to reduce the price of each transaction and thereby achieve a lower tax band, the two transactions will be linked as if they were one, so the price of the whole property will be considered and the appropriate tax band will apply.

I will pick out a couple of other examples. Paragraph 8 of schedule 10 contains provisions that expressly exclude transactions that purport to be eligible for group relief but are designed to avoid land and buildings transaction tax.

Similarly, in relation to relief for incorporation of limited liability partnerships, paragraph 2(d)(ii) of schedule 12 provides that arrangements that result in differences in the proportion of interest that is transferred within a partnership that would give rise to the relief will not attract the relief, if the arrangement was made simply to avoid land and buildings transaction tax.

It is fairly clear that if a transaction is designed to avoid the tax and gain the relief, it will not be eligible for relief. An awful lot of the tax avoidance activity that Alistair Brown talked about centres on use of and exemptions from reliefs, so we have carefully considered the reliefs that are in the bill, in order to try to minimise tax avoidance.

The Convener: How much do such avoidance measures cost Scotland? We should try to gauge the impact of the anti-avoidance measures, should the bill be passed.

Neil Ferguson: It is difficult to do that. Because tax is avoided, there is no record of it—

The Convener: I appreciate that, but how much do you expect to raise through the anti-avoidance measures? That is another way of putting it.

Neil Ferguson: In a sense, that is a bit of an unknown. The issue is not as much about raising revenue as it is about overcoming avoidance. We know from HM Revenue and Customs figures that some of the avoidance activity on stamp duty land tax has cost in the region of £480 million over the past two or three years—I am not quite sure of the timescale, because HMRC did not tell me that. According to the most recent analysis, avoidance schemes put an estimated £238 million of stamp duty land tax at risk in any one year—that is a United Kingdom-wide figure. I suppose that, if we took a percentage of that for Scotland, it might be around 8 per cent of the £238 million although, to be honest, we cannot really make that generalisation. The figure for Scotland would be a proportion of the £238 million.

The Convener: The excellent Scottish Parliament information centre briefing on the bill mentions areas on which consultation is on-going, which Alistair Brown touched on briefly. Those areas involve complex legal issues that have not
yet been fully resolved because of the need to align the bill with Scots law and practices, as Alistair Brown said. It is proposed that amendments will be lodged at stage 2 to reflect the outcomes of that on-going consultation.

The Institute of Chartered Accountants of Scotland has commented on the need for further consultation; I am sure that members will be interested to hear how you plan to consult further on measures that are to be introduced at stage 2. Will you also say a little more about the complex legal areas?

Alistair Brown: I will begin on that and then pass to Neil Ferguson and, if necessary, John St Clair.

The key areas in which further work is being done are the treatment of commercial or non-residential leases for taxation purposes, the taxation of residential property holding companies, and the treatment of trusts and partnerships. Those are the three biggest, most important and most complicated areas that we are continuing to consider, and in connection with which we hope to lodge amendments at stage 2.

The taxation of non-residential leases under stamp duty land tax has been a significant issue in Scotland for a number of years; several of the written submissions to the committee refer to that. We have engaged with, and are continuing to engage with, the Law Society of Scotland and other stakeholders to discuss those complexities and to seek to resolve them as far as is possible, so that we can lodge amendments that will introduce provisions in the bill that will provide a more satisfactory basis for taxation of non-residential leases.

I invite Neil Ferguson to provide the committee with more detail.

Neil Ferguson: We are aware that non-residential leases are an area of particular complexity. It would have been difficult to resolve all the issues before the introduction of the bill in November. From comments by the Law Society and others, we are aware that a range of provisions in the stamp duty land tax legislation do not work particularly well in the context of Scots law or practice. It would have taken quite a while to go through them and to consider how best such leases might be taxed, given the stakeholders’ concerns.

Therefore, prior to Christmas, we established a non-residential leases working group, which met for the first time on, I think, 21 December to set out its remit and to consider various aspects of non-residential leases. The group includes members from the Law Society, ICAS, the Chartered Institute of Taxation and the Scottish Property Federation, and a range of other stakeholders is being copied into all the papers for the group’s meetings.

The working group will examine two key areas. First, it will look at the various options for taxing non-residential leases. The Law Society’s consultation response in the summer of 2012 set out four alternative options for taxing such leases, and we are looking at each of them against a number of criteria. We are also looking broadly at the way in which the current approach taxes such leases. The first thing is to examine the way in which the tax is calculated. The aim of that is primarily to inform ministers about the impact of changing from the existing approach to a different one, which will help to inform stage 2 amendments.

Secondly, in essence, the working group is looking at the rules that are associated with taxation of non-residential leases. As I said, the legislation does not work quite so well in the Scottish context. We hope to simplify some of that legislation, tidy it up and get it working better for Scotland. We are working closely with stakeholders. The working group had a subsequent meeting in early January to take the work further forward and we are meeting tomorrow to examine again how to go about taxing those leases.

10:15

As Alistair Brown said in his opening statement, we are grateful for the input of stakeholders, because this is complicated and technical stuff for us. I am pleased to say that we are making good progress.

The Convener: The bill is pretty complicated for committee members, as well. Of course, the issue with lodging amendments at stage 2 is that although you will be consulting before that and will be working with a number of people in the working group, as is discussed in detail in the report, the process does not really give the committee an opportunity to interrogate suggested amendments effectively with any third parties. Although we can question the minister at the debating stage, that is not particularly satisfactory, to be perfectly honest.

Alistair Brown: We accept that it is not the ideal way of presenting draft legislation to the committee for scrutiny. We hope for approval in due course. In the particular circumstances that we were—and are—in considering land and buildings transaction taxation, we were limited in the amount of time that we had to prepare the bill for the committee’s review following passage of the Scotland Act 2012, which received royal assent on 1 May last year.

We moved as quickly as we could towards consultation—as the committee knows, we issued
our consultation document on 7 June last year. In parallel with that, work was done in developing instructions to parliamentary draftsmen and then in developing the bill.

We believe—nothing has happened to make us change this view—that if we had consulted in detail on all the technical measures that we have mentioned, the foremost of those being taxation of commercial leases, we would not have been able to develop a full bill for introduction on 29 November, as we did. Such consultation would have jeopardised our overall timescales and could have put at risk our target of introducing the new land and buildings transaction tax successfully on 1 April 2015, to coincide with the switching off of stamp duty.

Given those circumstances, we felt that we should come forward with the bulk of the bill and clearly signal to the committee what we are doing in terms of investigating and exploring further the technical areas that everybody agrees need more work. That is a bit of an explanation for why we are where we are, as it were.

Clearly it will be possible to make the committee’s job of scrutinising the stage 2 amendments as satisfactory as possible—we will provide as much information as we can formally in support of the stage 2 amendments. There may be other ways in which we can offer the committee information—through informal briefings, for example. I am sure that other stakeholders—Neil Ferguson mentioned those who are working with us on the commercial leases working group—would be prepared, if to do so would be appropriate, to provide the committee with informal briefings on the amendments, particularly in relation to taxation of commercial leases, which is the foremost area in which there are technical issues.

There are other such areas—for example, the treatment of partnerships and trusts, which is already in the bill. We propose to offer simplification of the provisions on partnerships and trusts; we think that further simplification is possible. However, our proposals will not substantially change the policy intention behind the measures on partnerships and trusts.

The third area of substance that is covered by your original question, convener, is to do with taxation of residential property holding companies. Section 47 deliberately contains a fair bit of detail about our intentions to give the committee the opportunity to interrogate us and other witnesses on these issues. However, I can say that we propose to bring forward further measures on taxation of residential property holding companies.

The Convener: Gavin Brown has a supplementary on that.

Gavin Brown (Lothian) (Con): The offer of detailed explanations of amendments is clearly welcome. However, I wonder whether the Government might consider lodging all its stage 2 amendments on the new areas—as it were—on day 1 or day 2 of the stage 2 process. Strictly, it has until five days before the committee’s consideration to do so. If you cannot give a commitment to lodge amendments at the beginning of the process, can you at least give a commitment to consider doing so in order to give us perhaps a few weeks to examine and absorb them?

Alistair Brown: Mr Brown has made a helpful suggestion. I can certainly commit to our lodging any such amendments as soon as we possibly can. Obviously, we have to go through an internal process with our lawyers and the parliamentary draftsmen before legislation is in any state to be presented, but we will lodge the amendments for the committee as soon as we can and we will certainly consider Mr Brown’s specific suggestion. If it is not possible to lodge all the amendments at the beginning of stage 2—it might well not be, given the scale and complexity of the issues—we should be able to lodge at least some at that time.

I should ask my colleague Mr St Clair whether that comment was wise. I believe that it is.

John St Clair (Scottish Government): That commitment is fine. We will certainly try to meet the request to lodge the amendments at the start of the stage 2, and it might also be possible to share drafts of some of the amendments with the committee before that.

The Convener: If we get the amendments early enough, we might even be able to hold an evidence-taking session with your team and perhaps others before stage 2.

The bill proposes to extend access to relief to local authorities that purchase land or property through compulsory purchase orders. The Convention of Scottish Local Authorities is very supportive of such a move, and has said that it “would undoubtedly make the additional powers due in April 2013 to bring long term empty properties back into use more attractive for Local Government”.

However, the Law Society of Scotland and the Institute of Chartered Accountants of Scotland have argued that CPO relief should be extended beyond local authorities to other bodies that have compulsory purchase order powers. Why is that not being done?

Alistair Brown: Before I ask my colleague Carol Sibbald to respond to that question, I draw the committee’s attention to schedule 14, which is the relevant part of the bill. It will restrict the provision’s operation to
We have considered whether it would be possible to introduce an alternative—perhaps a low-carbon relief along similar lines, but with less onerous criteria for eligibility. However, we are finding that to be quite tricky. Two options immediately come to mind. One would be sustainability labelling, whereby new properties would be assessed for sustainability in the round and in which carbon emissions would be one element. Each house that is built would be labelled for sustainability purposes as being bronze, silver, gold or platinum—if it were that good—standard. However, that would be a wider measure.

At the moment, a good way to apply the tax relief would be to make houses that got a gold standard in sustainability labelling eligible for the relief. The difficulty that we have come across is that the building standards are about to be upgraded to the point at which the gold standard will become the norm for all new build houses, which would then mean that every new build house would be eligible for the tax relief. That is not really what the relief should be about. If it is available, it should be for houses that have gone even further than normal building standards. That is part of the difficulty. The tax will be introduced in 2015 but, all the time, building standards are being upgraded and amended. Therefore, that approach would not be effective.

The second approach that has been mooted in some of the written evidence to the committee from stakeholders relates to use of energy performance certificates, which already exist through home reports, and are available for all types of property. The difficulty with that approach is that energy performance certificates are based on an inspection of the property and an examination of its construction. After that, data are fed into a computer model that spills out the energy rating for that property. However, there are an awful lot of assumptions in that computer model.

The energy performance certificates regime was never intended to be used for tax purposes. It is fine as far as it goes in providing an assessment of a property's energy rating, but it is probably not sufficiently robust to be used for tax purposes. We are still exploring whether there is an alternative mechanism that will ensure that the right claims are made, that there is a sufficiently rigorous test of the relief and that it is not open to abuse.

One of the other things that we have noted is that “Tax by Design: The Mirrlees Review”, which was published in 2011, included a statement that, “Not every tax needs to be ‘greened’ to tackle climate change as long as the system as a whole does so.”

It is therefore not essential that we have green tax relief within the tax system, although it might be
desirable to have that if we could find a sufficiently robust mechanism.

We will take that into account and will reflect on the evidence that the committee has received, as I am sure the committee will want to do as well, and we will see how we get on. It is tricky, though, to find a mechanism that works for that type of relief.

10:30

The Convener: Thank you for that comprehensive answer. Colleagues are champing at the bit to ask questions, so I will ask just one more.

The intention is that rates and bands will be set annually through a statutory instrument as part of the budget process. I wonder whether the thinking behind that is to have some stability in the revenue stream. As we know, the amount of money raised through the SDLT has varied from £565 million to £275 million over the past five years. The Office for Budget Responsibility predicts somewhat optimistically that if that were to continue, the sum raised would increase from £275 million to £515 million in 2017-18. What is the thinking behind the intention to set rates and bands annually?

Alistair Brown: As you rightly said, rates and thresholds are not dealt with in the bill, although the framework for setting rates and thresholds is provided in the bill. The draft primary legislation mandates a progressive structure of rates and thresholds, but it does not set them. As you said, the proposal is that ministers would prepare statutory instruments for the approval of Parliament to set the rates and thresholds.

The considerations that ministers will take into account will include the expected amount of revenue to be raised. The issue of the volatility of receipts from stamp duty land tax in Scotland over the past few years will be a factor in ministers' consideration of how to set rates and thresholds. That volatility seems to me to be an inevitable consequence of the nature of the tax, because it depends on the level of activity and on prices in the residential and non-residential property markets.

For many years, up until 2007, receipts were fairly predictable and were on a rising trend, and there was comparatively little volatility. Since 2008, both prices and activity have been very volatile. Not only are actual receipts volatile, as the convener pointed out, but the OBR's forecasts of tax receipts are volatile. For example, the December 2012 forecast was nearly 20 per cent below the forecast that the OBR had prepared at budget time in March 2012. We must therefore take all those issues into account, and ministers will clearly need to take them into account in that important area.

The Convener: Thank you. I open up the session to colleagues. The first question is from Malcolm Chisholm.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I was going to ask about reliefs and then about Registers of Scotland, but my first question has been pre-empted. The answer on zero-carbon homes relief was comprehensive, so I will not repeat that question.

I think that, in general, we and a lot of the submissions—the ones that I have read, anyway—are quite sympathetic to your general objective around simplifying reliefs. However, some concerns have been expressed about the abolition of a couple of other reliefs. The first is the sub-sale relief, about which I think that we will hear from the Law Society, so we can ask it questions on that. However, the Law Society suggests that a more targeted approach to the provision of sub-sale relief for commercial developments would be one way of sustaining investment in land and property while cutting down on avoidance.

I will not read out the detailed comments in the ICAS written submission, but it too thinks that sub-sale relief would be helpful and useful in commercial situations in which a developer “buys a large parcel of land but has neither the finance or risk appetite to develop it”,

and then sells it on in “smaller pieces”.

I think that ICAS is saying that although it is sympathetic to your general objective, it feels that there is an issue as far as the wider economy is concerned. Do you accept ICAS's analysis of how the relief works in practice? Do you want to abolish it because you do not think that the objectives that ICAS describes are desirable, or do you want to get rid of it because you think that it is open to abuse?

Alistair Brown: We thought about the issue particularly hard in the lead-up to the introduction of the draft legislation. We concluded that we should not replicate the sub-sale relief provisions in stamp duty land tax for two reasons.

First, although we accept that a piece of land can be bought and sold twice on the same day for perfectly legitimate commercial reasons—the example that ICAS cited and to which Mr Chisholm referred is a perfectly commercially legitimate transaction—we were not persuaded that there was an obvious case for relieving one of the sets of transactions from tax. As I understand it, what happens in practice is that one party will purchase a large piece of land from a seller, split it up and sell some of it on; he may well make a profit on that deal. He will retain some of the land for his own use, or to develop commercially or for
residential property. We were not persuaded that, in such a situation, the first purchase—the purchase of the block of land—should be exempt from the transaction tax.

If that is carried through into law, a set of commercial transactions of that kind in Scotland would face a higher tax burden than an identical set of commercial transactions in some other part of the UK, such as south of the border, would face. ICAS and, I think, the Law Society pointed that out in their submissions. We accept that that is factually correct. The question is whether that is such a powerful consideration that we should set aside our present view that it is quite legitimate for both sets of transactions to be taxed. That is the first part of my answer to your question.

The second reason why we have not replicated sub-sale relief in the LBTT provisions is that we are aware—and it is generally accepted—that sub-sale relief has become an avenue for avoidance of quite substantial amounts of stamp duty land tax across the UK. We were anxious to limit opportunities for tax avoidance. The proposed measure seemed to us to be a legitimate and appropriate step to take. Our second reason was to reduce the scope for tax avoidance.

We are reading carefully the submissions that the committee receives, and we will ensure that Mr Swinney is aware of the arguments that are put. In addition, Mr Swinney will hear the views of the committee on this important area. I understand both sets of arguments and I hope that I have spelled out reasonably clearly for the committee why the Government is taking the position that it is on sub-sale relief.

Malcolm Chisholm: That was very helpful. I am sure that we will pursue the matter further, perhaps with the Law Society, from which we will hear later on.

The other issue that I wanted to raise with you, which was raised by the Law Society and the Chartered Institute of Taxation—from which we will also hear soon—was that of charity relief. Both those organisations were concerned about the fact that certain UK charities would not be able to gain that relief. In fact, the Chartered Institute of Taxation went as far as to say that what was proposed was

"in clear breach of EC law".

Did you give serious thought to that, or was it easy for you to decide to exempt certain UK charities?

Alistair Brown: I will begin the answer to Mr Chisholm’s question and then invite John St Clair to comment on the legal aspects.

Perhaps I can explain things in layman’s terms. Quite valuable reliefs are available to charities through LBTT; basically, a charity does not pay the tax if it purchases a property that is above the threshold. That relief is important and we must ensure that it is claimed only by bona fide charities. We have the Charities and Trustee Investment (Scotland) Act 2005 and the Office of the Scottish Charity Regulator, both of which—the law and the institution—exist to ensure that appropriate high standards are applied in the regulation of charities in Scotland. Moreover, it seemed appropriate in policy terms to limit the availability of charities’ relief under LBTT to charities that were registered with OSCR. Obviously, we made inquiries with OSCR before coming forward with the proposition before the committee and we and it are content that it will operate satisfactorily.

In practice, we have also satisfied ourselves that a charity based outside Scotland elsewhere in the UK, Europe or the world could, if it chose and if it wished to avail itself of charitable relief in Scotland through LBTT, arrange to register with OSCR. That would involve some work, but it would not be onerous and no fee would have to be paid. It is possible for charities based outside Scotland to register themselves.

John St Clair: There is very little that I can add, but it might help to run through how we reached the present situation. When stamp duty land tax was first introduced, it was confined to UK companies. However, under pressure from Brussels and developing jurisprudence, it was decided that such a provision discriminated against companies and charities in the member states of the European Community. In 1910, therefore—

Alistair Brown: I think that you mean 2010.

John St Clair: I am sorry—2010. To avoid discriminating against EC charities, the Finance Act 2010 extended relief to EC charities and indeed to Norway and Iceland. That is the current position with stamp duty land tax.

When we approached the issue, we realised that, although EC charities were no longer being discriminated against, another bit of discrimination had emerged with American and Commonwealth charities being put at a disadvantage, and we looked at a way of extending relief to all charities. Having examined the law, we felt that the best way was to require everyone—Scottish charities, foreign charities, EC charities and so on—to register with OSCR. We have checked with OSCR and our reading of the law is that no charity, whether or not it has assets or real estate in Scotland, should have difficulty in registering. Indeed, it can be done quite quickly and, as Mr Brown has pointed out, without a fee being charged.
We need some means of vetting things to ensure that foreign charities, for example, are bona fide. After all, there are bogus charities out there and we thought that registering with OSCR would be a very small and non-onerous requirement that would nevertheless cut down on exploitation of the system and on the number of people getting tax relief that they were not really entitled to and which Parliament did not intend for them to get.

Malcolm Chisholm: But can a charity that buys property in Scotland for investment purposes register with OSCR?

John St Clair: Our understanding is set out in paragraph 3 of schedule 13, which sets out the qualifying charitable purposes with reference to “the furtherance of the charitable purposes” or “an investment from which the profits are applied to the charitable purposes of the buyer”. We read that as entitling a charity to buy real estate for investment purposes in Scotland. However, having consulted OSCR, we found that the number of charities that buy real estate directly are few. They are usually involved in portfolio investment; they usually only receive legacies or collect money in the street. OSCR could not think of any cases in Scotland in which foreign charities had bought real estate for investment purposes, but it will write to us about that.

10:45

Malcolm Chisholm: Okay. I will not pursue that, because the 2005 charities act was my legislation and you obviously know a lot more about it than I do. I move on swiftly to Registers of Scotland.

The Chartered Institute of Taxation had a basic concern, in that it was worried about the availability of resources to Registers of Scotland. You may want to comment on that, given its extra workload. The more substantive point relates to the concerns about the new system, which are acknowledged in paragraph 33 of the policy memorandum:

“the Scottish Government is aware of some stakeholders concern”.

Paragraph 33 concludes:

“Following further discussions with the Law Society of Scotland, the Scottish Government believes that the ‘arrangements satisfactory to the Tax Authority’ wording mentioned above ... will address these concerns.”

It was not at all clear to me what that was about. I think that the concern basically is that if people have to pay before they register that could create a problem, although my understanding is that, even under the current system, a person must submit a return to the revenue before they register. I found that all a little bit confusing, but you seem to be acknowledging some concerns; I would find it useful if you could clarify the issue, because the role of Registers of Scotland is quite an interesting and significant change.

Alistair Brown: First, I will pick up Mr Chisholm’s point on resources. As he said, the Chartered Institute of Taxation flagged up in its written submission the importance of revenue Scotland being adequately resourced—it is not the only party that has given evidence to that effect. I agree; clearly, the Government’s intention would be to adequately resource the activities of revenue Scotland so that it can provide a fully satisfactory service to Scottish taxpayers once it is up and running.

I respectfully suggest to the committee that there will be an opportunity, when it takes evidence in February from my colleague Eleanor Emberson, the head of revenue Scotland, and from Sheenagh Adams, the keeper of the registers, who leads Registers of Scotland, to probe further on resourcing should you wish to. Resourcing is important and we are giving it a lot of thought.

Malcolm Chisholm raised the issue of systems and referred in particular to paragraph 33 of the policy memorandum. I will split that question into two halves. I will say something about systems in general, then I will ask Neil Ferguson to comment on payment systems, because paragraph 33 is in a section that deals with payment.

On systems in general, we are very aware that tax administration will either live or die by the quality of the information technology systems that support it. The responsibility for co-ordinating, managing and driving forward the development of systems to support the devolved taxes lies with revenue Scotland, so Eleanor Emberson has a clear view of that. Individual systems will be developed within Registers of Scotland and, in connection with the landfill tax, within the Scottish Environment Protection Agency.

We are conscious of the need to ensure that the systems work well, bearing in mind that the IT systems will support not simply the activities of administrative workers within revenue Scotland but, particularly in the case of the land and buildings transaction tax, the work of literally thousands of staff in lawyers’ offices across Scotland who will use the electronic system to help calculate tax and to submit tax returns. I was interested to see in the submissions from the Law Society and others an emphasis on the importance of testing the electronic systems thoroughly, with the end users, before they are brought into use.
I apologise for going on about this, but the area is extremely important. The point that you focused on concerned the payment systems. I invite Neil Ferguson to comment on that.

**Neil Ferguson:** This is a question of process as much as of anything to do with how the tax is paid. At the moment, under stamp duty land tax, the taxpayer has 30 days in which to provide a tax return and a payment of tax. Following a change in 2007, those two actions do not have to be done simultaneously, so, for example, a tax return can be returned on day 3 of those 30 days and the tax payment submitted on day 28. That means that HM Revenue and Customs has to reconcile the payment that it received on day 28 with the tax return that it received on day 3.

In the interests of ensuring prompt payment of tax and the minimisation of the cost to the tax authorities, we want to have a system whereby the tax payment and the tax return will come in together. To ensure prompt payment, the bill proposes that the land and buildings transaction tax must be paid before an application to register title can take place. It is not that registration itself cannot happen until the tax is paid and everything is dealt with, but we are clear that we would like to have the tax return and payment simultaneously, prior to an application for title coming into Registers of Scotland.

That approach was challenged by the Law Society in its consultation response in the summer of 2012, in which it stated that it was concerned that the registration of title might be delayed by the need for cleared funds from the payment. However, I think that the Law Society has since agreed—I hope that it will confirm that this is the case—that its concerns have been addressed by means of a provision in the bill for an arrangement for payment to be in place. That might be a direct debit mandate that could be taken on, say, day 5, if that is when the payment and return came in. That could be taken as cleared funds, even though the direct debit payment would go through a few days later. That opens the door to registration.

In reality, Registers of Scotland proposes to have an online system that would allow for the payment and return of tax and the registration of title to take place simultaneously through one portal, effectively. That would enable tax practitioners to go online, pay the tax, submit the return and then submit the application for registration. Part of the beauty of that would be that there would be less data input from the tax practitioner because all the data about the buyer, the seller, the property and so on would be input just once for the purposes of both processes, which would save time. From the tax authorities’ perspective, it means that all the information comes in simultaneously and there is no need for a manual reconciliation of the payment that comes in later and the return that came in at the outset.

I hope that the Law Society will confirm to you later that it is content with the approach that is now in the bill.

**Alistair Brown:** To confirm what Neil Ferguson said, I point out that paragraphs 29 and 30 of the Law Society’s helpful written evidence that was sent to the committee in the past week or two say that the Law Society welcomes the proposal that Mr Chisholm described and believes that, although there have been concerns about payment, they have been resolved. I think that that represents accurately the view of the Law Society, but it will be able to confirm that for the committee.

**Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** Mr Ferguson, you confirmed that the Government cannot quantify the amount of taxation that is lost through avoidance. Has there been any attempt to assess the number of instances of avoidance in each of the areas in which you are tightening the rules, or is the answer to that question the same?

**Neil Ferguson:** It is pretty much the same. We are not the tax authority for stamp duty land tax, so the data that we have are pretty limited. However, HMRC does not really have data on tax avoidance because, by its very nature, the tax is avoided.

**Jamie Hepburn:** If you cannot quantify the scale of tax avoidance in terms of either the number of instances or the taxation lost, that begets a question about what has formed the basis for each of the areas that you are looking at. You gave the example that a husband might buy the house while his wife buys the garden of the same property. Have you received anecdotal evidence that that happens and that certain areas need to be tightened up?

**Neil Ferguson:** The written evidence from various stakeholders acknowledges that tax avoidance activity goes on—it is also a hot topic in the media—but it is really our discussions with HMRC that have highlighted to us where tax avoidance takes place within the stamp duty land tax regime.

Most notably, tax avoidance takes place through the sub-sale relief for stamp duty land tax. That relief is described quite mechanistically, in that it refers to parties A and B where B buys a property from A and then C ultimately buys the property from B. The relief is described as a mechanism. The way that tax avoidance activity seems to take place is that transactions that would never otherwise have been set up in that way are designed to fit that mechanism in order to gain the relief. HMRC has given us a range of different ways in which that type of activity can take place. I
know that HMRC is trying to tighten up the provisions on the sub-sale relief that is available for stamp duty land tax. It has been described to us that there are probably eight different ways in which a party C can be created for the purposes of tax avoidance in order to fit that mechanism.

To some extent, I guess that we are unclear about the extent of tax avoidance in Scotland, both in financial and in absolute terms, because the data are not available. However, we have tried to craft legislation that addresses the possibility of tax avoidance by having clear legislation that is easy to understand. We are also trying to address that possibility in a range of other ways.

The move to progressive rates is, I guess, quite a big example. Because stamp duty land tax currently works on a slab nature, there is a big difficulty around the thresholds when a property gets to the £250,000 mark. A property worth £249,000 is taxed at 1 per cent on the whole purchase price, which would be about £2,500 worth of tax. As soon as the property goes above the £250,000 threshold, the 3 per cent tax band applies so the charge on the house would be £7,500, which is an enormous step jump—hence the slab nature, as it is described, of stamp duty land tax. By moving to a more progressive tax structure, we aim to take away that sort of cliff-face at the threshold, so the incentive to reduce the property price to a figure just below the threshold will be largely removed. Instead of seeing huge spikes of transactions at just below the threshold, we should start to see a much more even distribution of sales.

The Council of Mortgage Lenders and many others have been critical of the slab nature of stamp duty land tax for many years, so the CML very much welcomes the approach to a more progressive tax structure. The reason that the CML is so keen to get rid of the slab nature is its distortive effect. As Alistair Brown said in his opening statement, a good tax should not impede or distort market activities, but we currently see transactions moving to prices in a way that would never happen otherwise. Indeed, in our consultation in summer 2012, Homes for Scotland suggested that housebuilders are reluctant to build houses worth £250,000 to £270,000—that is how distortive the slab nature of the stamp duty land tax is—because they cannot sell those houses. Therefore, housebuilders do not build in the price bracket just above the threshold. We are keen to get rid of that market distortion, as are many stakeholders, most notably the Council of Mortgage Lenders. That will address some of that tax avoidance as well.

11:00

**Jamie Hepburn:** The Law Society welcomes that in its briefing. It also mentions market distortion.

You referred to parties A, B and C. I presume that, even if different people are involved, they will be the same type of person. Avoidance is not illegal per se, and people will still potentially seek to avoid paying tax. The set of rules that you have put in place is designed to minimise avoidance, and you are quite confident about that. However, I presume that the rules will be subject to constant revision. If you find a loophole, the rules will be examined again down the line.

**Alistair Brown:** Yes, indeed. As you rightly say, tax avoidance is legal. By its nature, it shifts or morphs all the time, as individuals who are seeking to minimise their tax liability adopt new approaches. The tax authority, whether it is HMRC or, in due course, revenue Scotland, needs to be on its toes.

Our intention is that the general anti-avoidance or anti-abuse rule, on which we are consulting through the tax management bill consultation, would provide a mechanism for combating a range of avoidance activity, essentially through established administrative means, rather than through a need to keep changing the law. One of the results of tax authorities tackling tax avoidance is that there are successive complicated layers of changes to the law; in itself, that approach can open up opportunities for avoidance.

**Jamie Hepburn:** You are saying that there is no need to have recourse to either primary or secondary legislation, and that tweaks would be made without the provisions coming back to Parliament.

**Alistair Brown:** As regards the operation of a general anti-abuse or anti-avoidance rule, if the tax authority became aware of a situation where it believed that taxpayers had used artificial means to reduce or avoid their tax liability, it would pursue them—if necessary, through the courts. The court would adjudicate on the interpretation that the tax authority had placed on the general anti-abuse rule and would decide whether the situation was caught or not.

**Jamie Hepburn:** That would be done using the means of legal precedent, rather than changing the law.

**Alistair Brown:** Yes.

**Jamie Hepburn:** But surely that would be an interpretation by the tax authority of evasion, not avoidance.

**Alistair Brown:** We are getting into an issue that is central to the tax management bill
consultation. We are happy to discuss that further, but the questions that are asked in that consultation are about a piece of future legislation that is a concept at the moment, but it will proceed to become a draft bill and will come before the committee. If it were enacted, that legislation would say that, if the taxpayer constructs a highly artificial arrangement that the court believes is either wholly or largely to do with minimising or avoiding tax, that arrangement would not stand. The tax authority would be allowed to examine the matter and tax the person as though the arrangement was not there. We would have to give a taxpayer who was not satisfied with that the right to take the matter further; he would have the right eventually to appeal to the court. The court would decide whether the tax authority's interpretation of the general anti-avoidance rule was appropriate.

Jamie Hepburn: It sounds as if the process to ensure that people do not avoid or evade paying tax could be fairly intensive. Are we confident that the resources will be in place to allow for that?

Alistair Brown: The resource plans for revenue Scotland are still at a fairly early stage, but we believe that we have made adequate allowance in those plans for what we have called compliance activity, rather than anti-avoidance activity, although the two are closely related. With respect, I suggest that the committee might wish to question Eleanor Emerson further on that point.

My only other general point is that any tax authority that is up to scratch will keep its resourcing under careful review, because there is a trade-off between the resources employed to combat tax avoidance and gaining extra revenue, and putting further resources into combating such avoidance might prove an appropriate investment.

John Mason (Glasgow Shettleston) (SNP): Some submissions have suggested that it would be good to have more of an idea of the rates, given the uncertainty that might arise. Are you able to clarify how far ahead the UK Government sets the current stamp duty rate? As I understand it, that happens annually.

Alistair Brown: Colleagues will correct me if I answer Mr Mason’s question inaccurately, but my understanding is that if the UK Government is not changing the rate of stamp duty from one year to the next it does not need to do anything. It is not like income tax, which is basically refreshed year by year in the UK’s annual finance act. Once set, the stamp duty rate continues in place unless and until the UK Government brings forward subordinate legislation to change it.

On the question of the notice that the UK Government typically gives, the answer is, I think, that although it is not required to give any particular term of notice it has in practice done so. For example, last March, the UK chancellor announced his approach to combating the practice of enveloping high-value homes in company structures and then selling the shares in the companies, which basically means that tax is paid on the transfer of shares at 0.5 per cent instead of on the value of the home at 4 per cent. Mr Osborne’s scheme included the introduction of a 15 per cent rate of stamp duty land tax when what was called a non-natural person—in other words, a company—bought a high-value home. Those provisions were announced quite a long way in advance; indeed, they are now in the 2013 finance bill and will come into effect something like 15 months after Mr Osborne first described them in the 2012 budget.

I am sorry to have been so long-winded, but the answer to Mr Mason’s question is that, although the UK Government does not need to give any particular period of notice for a change in the rate, a recent example shows that it has in effect given 15 months’ notice. There might well be cases in the past when stamp duty increased from midnight on the day the chancellor reads out his budget speech.

John Mason: That helpful response confirms my view that there is no more certainty in the approach taken in the UK than there would be in Scotland.

We have not yet touched on the issue of exemptions. Can you comment on the list of exemptions rather than the various reliefs? Why do the exemptions include, for example, “property transactions where no money or other contribution that has a monetary value changes hands ... ; land or property which is transferred under succession law when the previous owner dies; and acquisitions by the Crown”?

Alistair Brown: I will begin and then ask Carol Sibbald and John St Clair to come in.

As Mr Mason indicated, an exemption is a right not to pay the tax at all; it is not the same as having to claim a relief and the tax authority judging whether the claim is valid and, if it is valid, deciding whether some of or all the tax should be relieved. In general, but with some adjustments, the exemptions have been carried forward from the stamp duty land tax regime.

If appropriate, I will ask Carol Sibbald to elaborate.

Carol Sibbald: I do not have a great deal to add. As Alistair Brown has made clear, the exemptions have been carried forward from the stamp duty land tax legislation. When we issued our consultation document in June last year, we said that we proposed to maintain the exemptions. About 80 per cent of consultees who responded
were content with that. Some comments were made that it would be helpful to have the same situation in Scotland and England, as people were familiar with that position. Others felt that adding in any additional exemptions could have unintended consequences. That was the thinking behind our course of action.

**John Mason:** I understand that. However, we are at the start of a new tax, so we need to consider the matter seriously. The provisions on transfer under succession law mean that if an ordinary person works really hard and buys a big house, stamp duty has to be paid, but somebody who comes from a rich family gets their parents’ big house without paying stamp duty. There is a certain unfairness there.

**Alistair Brown:** What Mr Mason describes is accurate. In cases where a home is sold and the value is distributed, or where the home itself is contained in the estate of someone who has died and is passed to their heir, no stamp duty is payable at the moment and, under the proposals before the committee, no LBTT would be payable. Let me check with John St Clair whether I am right in saying that, if a house that is part of an estate is sold and the proceeds are distributed, it is the purchaser who is liable to pay LBTT—therefore, they would indeed pay LBTT—but the amount available to the estate is not reduced by a payment of LBTT. The exemption applies to somebody who is inheriting a whole house, as Mr Mason says. His description is accurate.

**John Mason:** What about the Crown? Is it just that the Crown never pays tax? Is that the logic?

**John St Clair:** The logic is that the Crown is the tax-gathering authority, and it would be gathering money from itself. That is the classical idea—the King does not take money to pay himself. The other exemptions are largely involuntary, including the break-up of marriages. The case that is not really analogous is the one that you have identified: gifts, and the extension of gifts, if you like—inheritance—which are exempt. The Government has not decided to go down the route of bringing such cases into the tax base, but Mr Mason is right that there is no reason in principle why gifts could not be brought into the tax base.

**John Mason:** I am wondering about the logic concerning the Crown. Now that we have a separate tax jurisdiction in Scotland, it makes a difference in practice, as the money would be available to the Scottish taxpayer.

**John St Clair:** By “the Crown”, I mean the Scottish Government and its extensions.

**John Mason:** I see—so we are not specifically referring to—

**John St Clair:** We are not referring to the royal family, no.

**John Mason:** Fair enough. The other area that I wish to touch on is that of HMRC. It seems that it always wins, no matter what happens. Apparently, when it stops doing stamp duty there is a cost, and we pay for that. If it starts doing something else there is a cost, and we pay for that as well. I accept that the issue might not be part of the bill, but I find that a slightly strange arrangement. Why will there be costs when we stop stamp duty?

**Alistair Brown:** HMRC has not yet provided us with an estimate of the costs associated with stopping stamp duty. We are pressing it to do so. It does not expect that the sum will be large. However, costs will arise as a result of modifications to HMRC’s computer systems to ensure that if, for example, a taxpayer mistakenly attempts to pay stamp duty land tax in Scotland after April 2015, HMRC’s systems will reject that and not allow it to happen. That requires some modifications to an IT system, which would have a cost. Other cost elements may arise for HMRC in winding down and ceasing its stamp duty land tax operation in Scotland. It has promised to send us the bills.

11:15

**Jamie Hepburn:** Something has occurred to me regarding the definition of the Crown. Mr St Clair is essentially saying that the Crown is analogous with the Scottish Government. Is that correct? Given that “the Scottish Government” is now a legal term, by virtue of the Scotland Act 2012, why do we not use the term “the Scottish Government”?

**John St Clair:** We are allowed to use the term “the Scottish Government”, but the Crown covers more than the Scottish Government.

**Jamie Hepburn:** That is why I asked the question. So, it is not analogous with “the Scottish Government”. What else does it cover?

**John St Clair:** It covers other ministers of the Crown operating in Scotland.

**Jamie Hepburn:** So, it is the Scottish Government and the United Kingdom Government, and it extends no further than that.

**John St Clair:** Essentially, yes.

**Jamie Hepburn:** Essentially—it extends no further than that.

**John St Clair:** Yes.

**Jamie Hepburn:** Okay—that is helpful.

**John Mason:** My final point is still to do with HMRC, but relates to the question of certainty. The point has been made that there should be
clear guidance about all taxes, and specifically about the one that we are discussing. We can also take up that issue with revenue Scotland in due course. The suggestion was made, correctly, that some tax authorities, specifically HMRC, do not just interpret the law but try to push the law forward. Would there be the same ethos in revenue Scotland, or would revenue Scotland be stricter about sticking to the law?

**Alistair Brown:** Mr Mason is asking us to cast our minds forward to a post-April 2015 event. One point that is relevant to the question is that, in drafting the proposed legislation that is before the committee and in drafting the landfill tax bill and the tax management bill in due course, the intention will be to minimise the scope for a range of interpretations of the statute by making it as clear as possible. If we are successful in that, the scope for different interpretations should be reduced.

Beyond that, I respectfully suggest that that question could be put to Ms Emerson when she gives evidence in February. We will ensure that she is aware of the question.

**Gavin Brown:** I wish to return to the question of sub-sale relief. You gave a comprehensive answer in response to Mr Chisholm’s question as to why you did not replicate the existing provisions in stamp duty land tax. Even those who called for some sub-sale relief in their submissions broadly agreed. Nobody said that the provisions should be replicated. A number of organisations pointed out that sub-sale relief could be targeted, so that genuine transactions, if I can use that term loosely, would still benefit, whereas those that were set up purely for tax avoidance would not. What consideration has the Government given to having more targeted sub-sale relief, as has been suggested?

**Alistair Brown:** The Government has given some consideration to the whole issue of sub-sale relief, as I described earlier. Our position is that we are not persuaded that the genuine commercial transactions of the kind that Mr Brown alludes to should not be taxed. In addition, and as I explained in responding to Mr Chisholm, we were concerned about the scope for tax avoidance. Without wanting to go any further than the minister’s position, we are reading, and will continue to read carefully, the written submissions from witnesses, and we will pay very careful attention to the committee’s comments on the issue.

My understanding is that it would be perfectly normal commercial practice for a developer, for example, to buy a large parcel of land—more than he needs—from a seller and to sell on part of that parcel to one or more developers. In the process, he might well make a profit. That is an example of the kind of thinking that we went through internally in persuading ourselves that it was not obvious why stamp duty should not be paid on both levels of transaction. It is not an open-and-shut case or argument, and different views can be taken on it, but our present position is that we are not persuaded that the relief should be introduced.

**Gavin Brown:** For clarification, can you say whether the Government is still partially open to listening to the idea of having a targeted sub-sale relief, or is its mind closed? Has a full and final decision been made?

**Alistair Brown:** I think that the Government will listen to the evidence and, in particular, to the views of the committee.

**Gavin Brown:** In response to previous questions on the rates of LBTT, you explained clearly why the rates are not part of the bill due to issues with volatility and the need to get clarity on what exactly is likely to be collected. I understand all of that. However, does the Government have a view on the point at which it will provide clarity on the rates and on the number of different rates or thresholds that will be introduced? Is there a plan for when that will be announced?

**Alistair Brown:** What I can put before the committee is the observation that Mr Swinney has said—this is obviously a matter for him—that he would expect to bring forward the Government’s proposals on rates and thresholds at the time of the relevant draft budget. The relevant draft budget would be the draft budget for 2015-16, which should be brought to the Finance Committee in draft in September 2014. His publicly stated position is that that is when he will bring forward proposals. With respect, the committee may want to ask questions on that when it takes evidence from the cabinet secretary at the end of February.

**Gavin Brown:** That is helpful, thank you.

On reliefs, on which there have been a couple of questions this morning, the figures presented in the Scottish Parliament information centre briefing—I do not know whether you have the document in front of you, but its figures come from HMRC—suggest that, for 2011-12, the value of reliefs is estimated to have been just over £114 million for “Residential” and about £17 million for “Non-residential/mixed” and about £17 million for “Residential”. Several organisations have given the Scottish Government credit for seeking to reduce the number of reliefs and simplify things, but will the value of the reliefs that will be proposed be financially neutral? Is this a tidying-up exercise, or will the value of the reliefs probably reduce as well?

**Alistair Brown:** I will answer that question in two halves. First, on the value of reliefs, which I am sure is quoted accurately in the SPICe
document, the outstanding figure is the £100 million that is attributable to group relief that was claimed in Scotland in 2011-12. As the committee may be aware, we too were greatly struck by that figure and made inquiries into that. HMRC has told us—rightly, I am sure—that it is not possible to give us a detailed breakdown of that because that would risk breaching taxpayer confidentiality, which HMRC rightly takes very seriously. Our observation or thought about that is that the figure must relate to either one large commercial transaction or a very small number of such transactions involving a restructuring of property within a corporate group, which is what group relief is restricted to. The corporation undertaking the restructuring must have applied for and successfully obtained group relief. Now, £100 million of relief on a tax that is charged at 4 per cent indicates a very high capital value or assumed selling price of the property, so the restructuring—or one or two restructurings—involving has been very major.

Secondly, in response to the burden of your question on what we expect to be the revenue consequences of the tidying up of reliefs in LBTT as compared with stamp duty land tax, we have not been able to prepare very accurate estimates of that. The reason for that is the nature of the tax, which is a tax on discrete transactions, so we cannot really forecast either the number or value of transactions accurately in advance. My assumption or estimate would be that the variation in LBTT revenues as a result of the change in reliefs from SDLT to LBTT will not be material in the context of a tax that ought to yield about £300 million a year.

**John St Clair:** On a point that was raised by the committee previously, it may be worth adding that there is not a direct link between the level of reliefs claimed and the revenue forgone. The wildcard is the one that Alistair Brown identified, which is group relief. Many of the transactions on which group relief is claimed, such as shovelling stuff around a corporation, would not take place but for the group relief. That big spike does not mean that the revenue lost a lot of money. The restructuring would probably not have taken place without the relief.

**Carol Sibbald:** Further to that point, other reliefs are available under stamp duty land tax, such as the alternative finance property relief and alternative finance investment bonds relief. The alternative finance property relief is more about ensuring parity with conventional financial products; otherwise, the way in which the mortgage product is structured would mean that the property involved would be subject to a number of stamp duty land tax charges. All that the relief does is put people on a level playing field with anyone buying a house with a conventional mortgage, who would pay the tax just once. As John St Clair has said, it is not the case that the amount given through the relief could be added on to the revenue, as it does not quite work like that.

**Gavin Brown:** Finally, are there big differences between the group relief that currently exists under SDLT and what is proposed under LBTT, or will they be the same?

**John St Clair:** They will be more or less the same. That was a policy decision.

**Neil Ferguson:** In terms of monetary value, probably the top five reliefs for stamp duty land tax will be broadly replicated within the land and buildings transaction tax. To answer the initial question on the expected value of reliefs going forward, as Alistair Brown said it is likely to be roughly on a par. We do not anticipate a great change.

The only difference will be around the whole issue of sub sales. However, sub sales are not classed as a relief by HMRC at the moment, so there are no data on how much revenue might be forgone through sub-sale relief because the data are not collected. Sub-sale relief is not in the overall totals for stamp duty land tax at the moment, so that will not make any material difference either to the overall figures.

**Michael McMahon (Uddingston and Bellshill) (Lab):** In his earlier comments, Neil Ferguson said that there had been good communication and that many of the issues that had arisen had started to be worked through with all the stakeholders. In response to an earlier question, Alistair Brown said that a specific issue that the Law Society raised had been worked through to a satisfactory outcome. The Chartered Institute of Taxation, the Law Society and ICAS all raised concerns about the transitional arrangements, on which they said that they must not make the same mistakes as were made in 2003. For clarity, can you tell us whether those issues have been worked through and whether satisfactory outcomes are being achieved through the discussions with stakeholders?

**Alistair Brown:** I think that I can give Mr McMahon some reassurance on that. The responsibility for transitional arrangements lies with the UK Government. Under the Scotland Act 2012, the Treasury has the power to make orders setting out transitional arrangements. We have noted those comments in the written evidence and we are opening up discussions—we have begun discussions—with HMRC about appropriate transitional arrangements.

Let me just put a little bit of colour on that. We do not expect the transitional arrangements to provide any difficulties in relation to purchases. Clearly, a purchase has a specific date, so we expect that purchasers will pay stamp duty land
tax up until 1 April 2015 and LBTT beyond that. The difficulty tends to arise in relation to the taxation of leases, which is an issue that we are pursuing. As Mr McMahon suggests, our aim is to arrive at a position where we have effectively learned the lessons so that there are no difficulties going forward.

Michael McMahon: I have no further questions. Convener, I think that that brings my average number of questions down a bit.

11:30

Jean Urquhart (Highlands and Islands) (Ind): I have a small supplementary to John Mason’s earlier question—I have obviously not learned how to communicate so that I could ask it at the time—about exemptions to SDLT for residential property that is inherited. That will apply to residential property under LBTT, but what about commercial property in those circumstances?

Alistair Brown: I will begin and then invite John St Clair to respond.

Technically speaking, the exemptions are dealt with in schedule 1 to the bill, which sets out the classes of exemption over several paragraphs. As far as I am aware, the exemptions are specified in relation to the tax payable rather than in relation to any particular class of property. That being the case, an exemption would apply both to residential property and to commercial or industrial property. In the unlikely event of an individual dying and leaving a piece of commercial or industrial property to his heir, my understanding is that no land and buildings transaction tax would be payable on that inheritance.

John St Clair may be able to confirm that.

John St Clair: That is right.

The Convener: I thank colleagues for those questions and I thank the bill team for their very detailed responses. I call a five-minute natural break for colleagues and to allow a changeover of questions and I thank the bill team for their very detailed responses. I call a five-minute natural break for colleagues and to allow a changeover of questions.

11:37

On resuming—

The Convener: I welcome the second panel to give evidence on the bill: Iain Doran and Isobel d’Inverno, from the Law Society of Scotland; and Stephen Coleclough and Caroline James, from the Chartered Institute of Taxation—it is not that I cannot pronounce your names; I have broken my glasses and am having difficulty reading my brief. I invite the witnesses to make brief introductory remarks before we proceed to questions.

Isobel d’Inverno (Law Society of Scotland): We are delighted to be here to give evidence on the Land and Buildings Transaction Tax (Scotland) Bill. I am convener of the tax law committee of the Law Society of Scotland. Our members are solicitors who are responsible for completing stamp duty land tax returns as part of their daily work, and it is likely that solicitors will continue to complete returns under LBTT.

We have suffered from the many difficulties of SDLT in the nine years since it was introduced and we have had to paper over many cracks to make it work in Scotland, so we are glad that there is the opportunity to develop a new tax that is more in tune with Scots law and works in relation to our practices. We also welcome the opportunity to try to set up the new arrangements with simpler legislation, which will mean that it is easier for the Scottish Government to police the system and stamp out the avoidance that has been rife in relation to SDLT, as your previous witnesses said.

We are involved in the further discussions on leases and we hope to be able to help in relation to partnerships. I hope that we can help the committee by answering members’ questions.

The Convener: Thank you—that was good. Do the witnesses from the Chartered Institute of Taxation want to say anything?

Stephen Coleclough (Chartered Institute of Taxation): I am the deputy president of the Chartered Institute of Taxation and I am here with colleagues from the Scottish branch. I am representing the CIOT not because I am deputy president, but because since 1998 I have headed up the stamp taxes practice at PricewaterhouseCoopers—so the issue is very much in my sweet spot, if you like.

The CIOT is an educational charity. We are therefore apolitical, and one of our touchstones—indeed, it is our motto—is fairness and justice between the citizen and the state. When it comes to drafting legislation, we always try to square the triangle—if that can be done—between simplicity, certainty and fairness. We have found that the more one tries to be fair, the more complex and uncertain things become and that if we have simplicity we do not necessarily have certainty. The dream is to have a system that is simple, certain and fair, of course.

I echo the comments of Isobel d’Inverno. The Parliament has a fantastic opportunity, such as has not been seen in Europe since the break-up of the Soviet Union and the creation of new countries there, to start with a clean sheet and create a brand new tax. Although I am qualified as an English lawyer, not a Scottish lawyer, I sympathise
tremendously with the difficulties that have been encountered in Scotland as people tried to paper over the cracks and apply laws that were basically written for English property law to Scottish property transactions. This is therefore a tremendous opportunity. You do not need to follow the Westminster or UK rules; you can design a tax that fits the Scottish rules and property law. I urge you to take the opportunity.

The Convener: Thank you both for those positive introductory remarks. I welcome the comments on avoidance.

We had quite a lengthy session with officials this morning and I want to maximise the opportunity for members to ask questions, so I will not ask many questions. An issue that came up a couple of times was sub-sale relief. In paragraph 17 of its submission, the Law Society of Scotland said:

“there is a case for a targeted sub-sale relief which could be available in genuine commercial developments, as otherwise the LBTT payable in relation to developments in Scotland would be twice as much as the SDLT which would be payable on a similar transaction in the rest of the UK.”

The Scottish Government said in its policy memorandum:

“There is ... strong evidence to suggest that the sub-sale rules act as a gateway to a significant amount of avoidance activity.”

The Law Society talked about targeted relief. How do we square the circle and ensure that relief is targeted on the right people while preventing the kind of avoidance that we all want to prevent?

Isobel d’Inverno: The starting point is to draft the legislation in a manner that makes it obvious what the relief is aimed at. The SDLT sub-sale rules were brought in at short notice and include ridiculous wording about “other” transactions, with no definition of what other transactions are. On the back of that, lots of tax schemes have driven a coach and horses through what was probably the intention of Parliament.

The first point in targeting a relief is therefore to ensure that the legislation is very clear but, if we roll back a step, it is about identifying the transactions that need to be given relief, some of which have been mentioned today. A category that we think is quite important is in relation to forward funding, which is a way of funding developments that is particularly important at the moment, when bank funding is so difficult to get. Iain Doran will quickly explain how forward funding works and why it needs a relief.

Iain Doran (Law Society of Scotland): A forward funding arrangement is typically one that is entered into by an institutional investor—the Standard Lifes of this world and so on—which buys an undeveloped site from a developer who has concluded a deal to buy it and acquires the land before the building is constructed. The institutional investor then makes available to the developer the finance to put the building up on the bare land.

When the building is completed, the developer—who, in an ideal world, will already have lined up a tenant—will tell the tenant, “The building’s complete. You move in and start paying rent.” The land is already owned by the institution and the institution gets what it wants, which is an investment that produces income. It is forward funding because the institution buys the land before the building is there and provides the funds to the developer to put the building up.

11:45

The crucial thing for the developer is that he manages to complete the building before the funds run out. The balance between the amount of money that the fund provides to put the building up and its total commitment is the developer’s profit. As Isobel d’Inverno says, the reason why that is very important is that there is a lack of bank funding around at the moment. To my knowledge, developments such as the Collegelands site in Glasgow and the new car park next to the Hydro, which is the new national arena at the Scottish exhibition and conference centre, were funded on that basis.

It is crucial to that—this is where it links back in to sub-sale relief—that the developer is able to transfer the land to the institution providing the finance without having to pay additional tax. If we abolish sub-sale relief, the developer will have to pay tax on the acquisition from the landowner and the fund will have to pay tax on the acquisition from the developer. At present, there is only one set of tax, and we would be very concerned if the tax were, in effect, doubled. That would be inimical to this form of funding.

The Convener: What would be the revenue consequences of that?

Iain Doran: If we permit that particular form of funding, there will be no revenue consequences because it would simply mirror what happens at present. The situation would remain exactly the same as it is now.

The Convener: I take Stephen Colectough’s comments that we can design our own new system and do not have to look to Westminster. However, if it was not to mirror what is happening south of the border, what would be the revenue accruals? Looking at it from another point of view, what would happen if we were to progress the bill without those targeted reliefs?

Isobel d’Inverno: It is difficult to say how many forward funding arrangements there are and how
much tax is involved. There are quite a few such arrangements—they are not a rare occurrence. It is becoming a common way of setting up projects. However, I would not have thought that it would be a massive number. Part of the problem is that it would be different here from the position in the rest of the UK if we did not have sub-sale relief in these forward funding situations.

Iain Doran: Although I wholly agree with Isobel d’Inverno that there is not a massive number, where this sort of arrangement tends to be used is in what you might call trophy buildings, which are big, commercial buildings that are often in prime city-centre locations. Those major investments are likely to be most affected if sub-sale relief is withdrawn. As a result, the forward funding market will either dry up completely or be substantially reduced.

Stephen Coleclough: In my view, the problem is not with sub-sale relief. The avoidance has come around because sub-sale relief has been combined with another relief or exemption. The sub-sale schemes started off using group relief, which was very swiftly closed, but there have been sub-sale schemes using distribution exemption, alternative finance relief, the partnership rules, and annuities options. The problem is not sub-sale relief, but the way in which the sub-sale relief provisions are drafted in the SDLT legislation ambiguously allowed it to be combined with another relief. It was that other relief that made all the SDLT disappear. The issue is not sub-sale relief per se; it is permitting sub-sale relief to be used in conjunction with another relief. That is what has caused the problem.

In theory, that was addressed by a targeted anti-avoidance rule known as 75A that was introduced in December 2006. That has yet to be tested in court or tribunal. My view is that that provision is effective. We are, in the UK tax system, introducing a general anti-avoidance rule, which will also apply to stamp duty land tax and will address that issue. If you keep sub-sale relief, you must ensure that it cannot be combined with other reliefs, because that is how the avoidance worked—not through sub-sale relief on its own. You may also wish to consider some targeted anti-avoidance rules, which is what we are looking at in the UK.

John Mason: I want to unpack Mr Doran’s example. Are you suggesting that the developer buys the land, sits on it for quite a while and then sells it on to the institution?

Iain Doran: No. Typically, the developer will conclude a contract to buy the land, and that contract will be conditional on such matters as investigating ground conditions and whether it is contaminated and, chiefly, obtaining planning permission for the development. Those factors will typically take many months, sometimes even years, but the developer has not bought the land at that stage—he has agreed to buy it, subject to the conditions being satisfied. While he is going through that process—typically the planning permission process—he is also scurrying around seeking two partners, as it were, to make his development work. The first partner is a tenant because the whole point of the property investment market is that it creates—

John Mason: I am asking why the institution cannot buy the land directly. Why does the developer have to own it at all?

Iain Doran: The developer does not own the land; the developer has concluded a contract to buy it, but has not completed that contract.

John Mason: That is enough for stamp duty to apply.

Iain Doran: Yes.

John Mason: Without the developer owning the land.

Iain Doran: Without the developer owning it.

John Mason: Would the price that is passed on be the same as the price that the developer got it for?

Iain Doran: Yes. Typically, it would be the same as the price he got it for.

John Mason: Even though planning permission has been added.

Iain Doran: Yes, because the arrangement would be such that the developer’s profit comes out of the total amount that the fund will pay. An example may help. If a developer contracts to buy some bare land for £1 million, and manages to get planning permission and a tenant to occupy the building when it is completed, typically, he will sell the building on for £1 million and arrange to get, for example, £9 million from the fund.

John Mason: You have clarified my point. Thank you.

The Convener: Paragraph 14 of your submission states:

“Further consideration needs to be given to whether certain categories of licences do merit exemption from LBTT.”

Can you highlight some of the categories that you are thinking about?

Iain Doran: That is one for me, too, I am afraid.

The Convener: That is fine.

Iain Doran: Licences are vast and varied beasts. In the property world, we tend to think of licences as an arrangement under which, for example, a barrow or kiosk in a shopping mall, will
be granted. We are talking about small property that will very often be moved around, of short duration and of comparatively low value. That is fine; there is no great problem with that. However, licences are in fact much wider than that and they involve other things that we do not normally think of as property transactions.

An example is hotel management agreements: hotels are often not leased, but managed. Another example is the conference industry. At both the SECC and the Edinburgh international conference centre, organisations or bodies come to occupy the conference centre. If you start to tax licences, the conference industry could be included in the scope of the tax because a licence to occupy is what people get when they rent the SECC or the Edinburgh international conference centre.

In addition, licences could apply to sports events. For example, I talked to the SECC’s finance director, who pointed out that the arrangements for the Commonwealth games in 2014 would involve tax being paid, were LBTT introduced at that point. The arrangements for the SECC to host the world gymnastics event in 2015 will involve tax being paid. Also, large international conferences could be affected; ditto, large rock concerts and other things like that.

Although we might take the point about the occupation of shop units at an airport, for example, which are typically the subject of concession or licence agreements, one might argue why they should be any different from the same shop on the high street. If Boots the chemist pays tax on its high street lease, why should it not pay tax on its airport shop? Such a view might be reasonable, but our concern is that bringing in all the other examples that I have tried to list might give rise to unintended consequences that might prove prejudicial to the Scottish economy as a whole.

The Convener: Malcolm Chisholm asked the previous panel a number of questions about charities. No doubt he will want to ask you more, so I will try not to steal all his thunder. [Laughter.]

You do not think that the restriction of making a non-Scottish charity register with OSCR is appropriate. However, as we heard earlier, it will not cost anything and will keep out the rogues and scoundrels. Given that it seems to be quite a nice safety net, why do you feel so strongly about the issue?

Stephen Coleclough: We all feel strongly about it. My firm and, indeed, my institute have been going through the tax legislation and, because of our membership of the EU, have had to replace many of the references to “the UK” with “the EU” and sometimes with “the EEA”.

Any requirement to comply with a commitment to, say, register as a Scottish charity is a burden, an imposition and a breach of the freedom of establishment and freedom of movement of goods, peoples and services. Looking at past decisions by the European courts, I suggest that the restriction that a charity be registered as Scottish in order to get tax relief is clearly unlawful under European law. It also represents unlawful state aid to Scottish charities, unless you have obtained state aid clearance from Brussels, which I do not believe you have.

I am also concerned about the trust provisions, which do not seem to cover English trusts. They cover Scottish trusts and trusts governed by laws outwith the UK, which suggests that England, Wales and Northern Ireland are excluded. I think that that, too, is in breach of European law, and I urge you not to do it.

I also point out that the UK tax law on charities has had to be amended, because it used to make a distinction between UK charities and non-UK charities; it now draws a distinction between EU charities and non-EU charities. It is all about whether you get a tax deduction for making a payment to a charity, whether the charity benefits from a tax exemption on its income or whether it benefits from VAT reliefs. The rule is very clear and, as I have said, draws a distinction between EU and non-EU. If non-EU countries want to join, they can, like Norway and Iceland, ask the UK Government to be added to the list but they must show that their charity regulatory regimes are at least comparable to the UK regime.

I urge an EU-compliant approach with regard to charities. If a charity is compliant under EU charity law, it should benefit from that relief.

The Convener: I am sure that colleagues will want to explore the issue further.

I have one final question before I open up the session to members. Is the financial memorandum’s assumption that 90 per cent of LBTT will be processed online realistic?

Isobel d’Inverno: Yes. Given the importance of registering property, most people who deal with SDLT returns use the online system, because it is the quickest method. Indeed, very few people up here insist on making paper returns.

The Convener: Should 100 per cent of the processing be carried out online, or are you happy for both methods to be retained?

Isobel d’Inverno: If we could guarantee fully operational glitch-free broadband in all parts of Scotland, we could go to 100 per cent online processing. In practical terms, pretty much everyone processes their returns online if they possibly can, but making it mandatory could cause difficulties for some and there needs to be an alternative.
Stephen Coleclough: I agree that we should move to online filing. However, I want to highlight a caveat. The Chartered Institute of Taxation's low incomes tax reform group has carried out a lot of work on what we call the digitally excluded that is available on our website and which we can share with the committee. The point is that, because of handicap, lack of access to the internet or various other reasons, not everyone can access online filing and provision needs to be made for them. Whether that will be a big issue in LBTT, which is all about buying or leasing property, one cannot say, but one has to bear it in mind that not everyone can access online filing. Of course, that brings me back to my point that, with this kind of clean-sheet, green-field opportunity that you have, that should be the focus of your intention.

However, things can go wrong. At a very early stage, the people building the SDLT online filing system asked, “You can’t have zero in the consideration, can you?” and were told, “No, you can’t—it’s always got to be a number”. After the system was built, someone introduced a market-value charge on certain things that can be zero. However, the inability to put in zero is hardwired into the system. Defining and agreeing the principles should be a fairly urgent matter and when you design your online system you should ensure that not too many things are hardwired into it. Because of the current SDLT system, I now have HMRC telling me that I have to tell my clients to deliberately file a false return just to get it online—but obviously I cannot do that because doing so carries a criminal penalty.

In short, therefore, you should move everything online, but you need to get your principles sorted first and then ensure that you do not hardwire too much into the system. If you do, it will hamper your ability to move forward.

Isobel d’Inverno: The system definitely needs to be flexible and to respond quickly. The SDLT online system goes down for long periods of time, cannot be accessed and so on. We cannot have that kind of system in Scotland; instead, we must ensure that it is flexible, responsive and up and running. I am sure that solicitors will do all they can to join in with testing the system and whatever else is needed to ensure that it works.

Malcolm Chisholm: Most of what I was going to ask about reliefs has been covered, but I have a supplementary question on charities.

I thought that the Chartered Institute of Taxation’s point about the EU was rather persuasive and we will no doubt discuss it further in due course. However, instead of taking an EU perspective, the Law Society of Scotland says in its submission that “UK charities which invest in property in Scotland are not” required to register with OSCR “and such charities would therefore be denied LBTT charities relief.”

That sounds like a slightly different concern to me. I do not know whether you were here when the legal officer from the Scottish Government suggested that charities could register. You have said that they are not required to register, but do you think that they could register and, notwithstanding the EU issue, would benefit from this relief? Is there a point of difference between you and the Scottish Government legal officer on that?

Isobel d’Inverno: Certainly the requirement to register is only on charities that occupy property and carry out charitable activities up here. Investors could register, but they would need to meet the Scottish charities test, which is not necessarily an instantaneous process and would require some effort, an examination of their constitutional documents and all the rest of it.

However, one way around this might be for OSCR to keep a separate supplementary register of foreign charities. After all, the difficulty for the revenue body is to police charities from different parts of the world, find out whether they are bona fide and so on. Some way of facilitating this would need to be explored with OSCR but, as things stand, there is some concern about the wording in the bill.

Malcolm Chisholm: I have seen a quotation from the Law Society about the registers, although I cannot find it in its submission—

Isobel d’Inverno: I think that it is the last paragraph.

Malcolm Chisholm: The bit that I am looking at states:

“The committees will be keen to consider the proposed arrangements and guidance in more detail to ensure that the system will not cause any practical difficulties for solicitors or their clients”.

Can you say a bit more about that? Are you entirely satisfied, or are you saying that you are cautiously satisfied and that you want us to look at the issue more carefully?

Isobel d’Inverno: I think that we are cautiously satisfied to the extent that we can be at the minute, because this is very much a process-driven matter and we cannot really form the view that the arrangements will work until we know in more detail how they will work. One of the problems that we had when SDLT came in was that we did not have enough lead-time on the arrangements to know whether they would work in Scotland, so we had real difficulties.
The discussions that we have had so far with the bill team and, to a lesser extent, with Registers of Scotland have indicated that it will be possible to make the system work. However, solicitors obviously need to feel confident when they complete a property transaction that they will be able to do whatever is necessary to get the property on to the register, so the LBTT arrangements must not get in the way of that. We need to see more detail, though, on how the system will work.

I think that the devil is in the detail a bit, but I do not think that it is appropriate to spell out in the bill exactly how it will work, because some of it is intensely practical. For example, transactions can involve a purchaser, a seller, a funder, joint venture parties perhaps and different firms of lawyers all making undertakings to each other to ensure that things will hang together so that the transaction will be completed.

We are confident that it will be possible to make the system work, but we need to keep a watching brief on what exactly will be satisfactory arrangements for the tax authority.

Malcolm Chisholm: Thank you. I have a question for the Chartered Institute of Taxation. I was slightly surprised, as was a committee colleague, by your view that the lack of certainty around the rates and banding will have an adverse impact on inward investment through the purchase of Scottish properties. I feel that you are overstating your case. Is what you indicate not just the normal situation with the existing stamp duty?

Stephen Coleclough: No, because, as you heard earlier, the rates for the existing stamp duty will stay in place until the Government decides to change them in a budget or something like that.

We have seen some good recent evidence on this point with regard to high-value residential properties. Wherever there is uncertainty, investors will keep their hands in pockets. For example, with regard to high-value residential properties and stamp duty land tax, George Osborne made an announcement in March about a new annual charge—the annual residential property tax, which will come into effect all over the UK from April this year—and some capital gains tax changes, which we still have not seen. The uncertainty in that regard has killed the market. It is not that people do not want to pay the taxes; it is just that they do not know what the taxes are going to be. If people know what the taxes and rates are going to be, they can put that into their financial projections, work out what the return on their investment is going to be, make plans and get appropriate funding.

It is uncertainty that causes the economic damage, rather than the tax itself. For example, if we knew that the top rate in the UK was 4 per cent but Scotland would have a top rate of 5 per cent on commercial property, that would kill the uncertainty. People would know where they stood and what the cost would be if they wanted to buy, say, a new Government building in Scotland, so they could plan and budget for that, and work out a price and the return on the investment.

Malcolm Chisholm: I am sure that we will explore that a bit further.

I have a final question for the Law Society. You indicated that extending the relief for compulsory purchase orders to bodies other than local authorities would be desirable. Can you give examples of such bodies? Would what you propose involve a small change or would it have substantial implications?

Isobel d’Inverno: I do not think that it would have substantial implications; it is just that there are other bodies with compulsory purchase powers and it seems odd that they will not all benefit from the relief, because often those powers are used to facilitate a development, for example by making the land move to a developer. The desire is really just to see the two things aligned more closely, but I do not think that that would affect huge numbers of transactions.

Jamie Hepburn: I have a question for the Chartered Institute of Taxation, following Malcolm Chisholm’s exchange with Mr Coleclough—I pronounced his name correctly, so I got it right, convener, and you got it wrong, but there we go.

The Convener: You had more time to think about it.

Jamie Hepburn: Indeed.

Mr Coleclough’s observation on the uncertainty and volatility of taxation is not an issue about this tax specifically or about Scotland specifically. I presume that it is just a general observation about taxation more generally.

Stephen Coleclough: It is, yes.

Jamie Hepburn: That is useful.

I want to follow up with all the witnesses on the issue of how charities interact with the taxation, because I get the sense that there is a concern, but I am not clear what the nature of the concern is. On the one hand, it seems to be that an onerous burden is being placed on charities further of Scotland, but I am not clear that that is the case. To clarify, is that one of the concerns?

Isobel d’Inverno: We do not envisage hordes of foreign charities trying to buy land in Scotland, but we would like to be sure that the LBTT bill does not include provisions that do not sit properly with the EU concerns that the CIOT has outlined.
Jamie Hepburn: I will come back to the CIOT in a minute, because my understanding of the evidence that we heard earlier was that the trajectory on the issue is to deal with those concerns. However, on the idea that the provision is a burden, is that a concern?

Isobel d’Inverno: It would not really be appropriate to ask a charity to register with OSCR, even though that would be voluntary. The regulation of charities in Scotland has been discussed, there is legislation and a regime has been set up under which only charities that do charitable things in Scotland have to register. It seems a bit disproportionate to say that, to get the charities relief from LBTT, charities from outside Scotland would have to register with OSCR, too, on a voluntary basis. That is not just a question of filling in a form and sending it in; there is on-going compliance and consideration of activities. The tests are different in different parts of the UK.

Jamie Hepburn: Is it your perspective that, although Scottish charities should have to register with OSCR, foreign charities—primarily those from within the EU, as the issue is about competition law, although we heard from the Scottish Government that the provision will also apply to charities furth of the EU—should not have to register, but should still benefit from the relief?

Isobel d’Inverno: If foreign charities are registered in their jurisdictions, that should be sufficient and they should not also have to register with OSCR.

Jamie Hepburn: What if the burden of registration in another country is not as burdensome as it is here? That will bring me on to the issues of state aid and fair competition.

Isobel d’Inverno: In the overall scheme of things, this perhaps is not the biggest point—

Jamie Hepburn: No, but we are exploring it and we discussed it earlier.

Isobel d’Inverno: —given the numbers of charities involved.

Jamie Hepburn: I am aware that that point was made.

Mr Coleclough, how do you substantiate your point that the provision might be viewed as state aid to Scottish charities? I presume that, by the nature of requiring everyone to register, it cannot be argued that it is state aid to Scottish charities, because all charities, once they are registered, will benefit.

Stephen Coleclough: I have a number of points on that. The first is that a non-Scottish charity will have to comply with the requirements of the laws under which it is established. Let us not forget that, for the purpose of the bill, the term “foreign” includes English charities. For example, the Chartered Institute of Taxation is a foreign charity for those purposes.

Jamie Hepburn: So you are not registered with OSCR.

12:15

Stephen Coleclough: No, we are registered with the Charity Commission. Under the bill, if we wanted to use or invest in premises in Scotland, we would have to register with OSCR. That is a burden and obstacle to free movement, and burdens and obstacles to free movement that discriminate against another European body are, prima facie, unlawful in European law.

On the state aid point, I remind everyone about the disadvantaged land relief. The UK Government had to take great care to meet the objective criteria that need to be met in order to use Government money to subsidise a particular activity or sector. It spent a lot of time pulling together statistics on deprivation, social deprivation, crime and average wages in districts to justify giving disadvantaged areas relief to certain parts of the UK for stamp duty and then stamp duty land tax. Anything else would have been unlawful state aid, as it would have been a diversion of Government resources to support activities that were not ascertained on objective criteria. That provision went slightly wrong because the statistics on social deprivation and so on tend to be about five years out of date, which is how the Canary Wharf development managed to benefit from disadvantaged areas relief, even though it was far from disadvantaged—the statistics came from a time when it was an undeveloped area of Tower Hamlets.

Unless you can set out objective reasons why only certain people can get the relief, it will be seen as state aid. Just saying that a charity has to register with OSCR is not, in my view, a sufficiently objective criterion for the diversion of Government funds for that purpose.

Jamie Hepburn: Clearly, this discussion does not form the main basis of the issue, but it is quite interesting and we might need to explore it a little further.

The Scottish Government spoke extensively of its positive engagement with the Law Society in relation to the formulation of the tax. Iain Doran, can you speak about that? Was the engagement positive and has it been worth while?

Iain Doran: Yes. I wanted to make the point that some of us who have been on the tax law committee for many years have the feeling that Westminster’s consultation is not completely extensive, whereas we have been extremely
impressed by the efforts of the Scottish Government bill team and the Government in general to consult and engage with our organisation and many others, with a view to getting our input. It has been refreshing.

The team deserves credit for having worked so hard and so speedily. It is difficult to construct a new tax, relevant legislation, computer programmes, a new body—revenue Scotland—and everything else that is required in a short length of time, but the progress that has been made is impressive.

Jamie Hepburn: I am sure that all members of this committee are heartened by those comments.

Isobel d’Inverno: One of the most important things has been the involvement not just of the bill team but of lawyers from the legal directorate and people from Registers of Scotland. That joined-up attitude is helping, as things can be a bit fragmented in Westminster, with not all of those who need to be at the table being there. We have been heartened by the amount that has been achieved in a relatively short time.

Jamie Hepburn: That is useful to know.

Gavin Brown: I want to return to the issue of rates and when they will be indicated. Paragraph 9 of the submission from the Chartered Institute of Taxation says:

“We are disappointed to note that no indication of intended rates has been given to date.”

When I asked the bill team when rates would be indicated, I was told that the indication would be given in September 2014, with the tax coming into force in April 2015. Obviously, as you say, investors would want rates yesterday. However, what date for the clear indication of rates are you calling for? Objectively, what do you think is fair and reasonable?

Stephen Coleclough: Looking at the timetables for the decisions that investors make, I would say that 12 months’ notice is reasonable.

Many funds operate on a calendar year basis. Companies such as Standard Life and Scottish Widows have money coming in all the time from policyholders and know that they will get £X million that their investors have told them they want to invest in property. If they know that, during the year, they will get in £150 million that the policyholders want to invest in property, they will have to sit down at the beginning of the year and ask themselves where to put it.

Let us assume that the policyholders have all said that they want to invest in UK property. If the companies invest it in commercial property in London or anywhere else in England, they know—subject to future Government change—that the tax rate will be 4 per cent. However, if they invest it in Scotland, they do not know what the rate will be. That will affect the yield, the return and the amount that they will spend. That is the uncertainty.

If we are talking about people planning their budgets for the financial year starting 1 January 2015, they would need to know probably by September 2014, although that might be leaving it a bit late.

The uncertainty affects not only buildings that are up and ready now. To go back to the earlier forward-funding debate, there are projects kicking off now that will complete post that 2015 horizon. If somebody asked Scottish Widows or a similar company whether they wanted to come in on a fantastic development that was due for completion in June 2015, they would say, “Great, but will I be paying 3, 4, 5 or 6 per cent on LBTT?” They would have to plan and say that they were prepared to commit a certain amount but, if the tax came out at 6 per cent, it would not be viable and they could not make that decision for their policyholders.

For developments that have already been built, September 2014 is probably cutting it a bit fine. However, for projects that are trying to get off the ground now—particularly those that are forward funded—we probably need to know now.

Isobel d’Inverno: We are advising now on transactions that will complete in LBTT time, so it would be helpful if we could give an indication of the rates. That is probably an issue for commercial property rather than residential property. The residential rates are not quite so important, but the forward timescale is important for commercial property.

Curiously enough, people seem to make an enormous distinction. They say that SDLT is 4 per cent now and so probably will be 4 per cent in the future but, because there is a question mark over LBTT, they think that the risk and uncertainty are very different. They are not, really—as has been pointed out, SDLT could change—but it is more a question of putting something in. If there was some indication that the LBTT rate would not be more than a certain figure, people could use that as a benchmark.

Gavin Brown: That is helpful.

Jean Urquhart: Surely, for a development that is happening in two years’ time, there must be other, much bigger uncertainties in the development costs.

Iain Doran: Yes, there are, but, generally speaking, an appraisal is prepared at the outset to work out whether a development is viable. Although that will build in contingencies, the practice is that the contingencies might be for increasing building costs—at the moment, those
are going the other way. The problem is that, if a developer has to leave a total blank for the land tax in the list of expenditure, they might not know whether their development will be viable or not. They can forecast the other entries—such as building costs or professional fees—because they have experience of what they are. They know what those are because they have been forecasting them for years. The problem with LBTT is that nobody has a clue. We have no experience and no indication from past practice as to what it will be.

Jean Urquhart: But surely you agree that nobody would leave a blank; nobody would put a zero in there.

Iain Doran: Absolutely, but what figure does the person put in? Do they put in 4 per cent, which is the current UK rate, as we all know—the market just assumes that the rate will be 4 per cent in future, as Stephen Coleclough said—or do they put in some other figure? We just do not know what the figure should be.

Stephen Coleclough: With stamp duty land tax, the tradition has been that, once the contract has been signed, it is protected even if the rate changes unless the contract is varied or assigned. If someone signs a contract today, in SDLT land, they know that the rate is going to be 4 per cent. I do not know what it will be in LBTT land.

Gavin Brown: I come back to the issue of sub-sale relief, which we heard a number of things about. I think that the position of both groups that are giving evidence today is that, although the Westminster provisions on sub-sale relief should not be replicated exactly, it ought to be done in a targeted way. We heard one concrete example of the type of transaction that ought to be given the relief, which was described as forward funding.

If we think about the issue from the Scottish Government’s perspective, is there a way of drafting the legislation so that we have a clear number of discrete reliefs that exclude everything else but capture the cases that legitimately merit it, or is that a difficult thing to do in practice? Are there five or six cases for sub-sale relief that you would propose, including forward funding?

Stephen Coleclough: There was not much wrong with the original section 45. What it did not make clear was, in a sale from A to B to C, the relationship of B to C in the second part of the transaction. However, that can be tidied up, and it was tidied up in respect of the group relief.

The other thing that I would do is to say that people can use either sub-sale relief or another relief, but not both, because that is where the avoidance opportunity came in. If someone wants to try to manage the tax cost, they can do it by changing the transaction and not paying for things in a particular way, but if you are selling and I am buying, I need your agreement to that. The attraction of sub-sale relief was that you did not know that I was doing that. I bought the property from you, and you thought that I was a good guy, but I immediately sold it to Caroline James, who is my mate, and we did something that qualified for the second relief.

I would not stray too far from the existing legislation, although it does need a tweak. The thing that opened up the opportunity was the fact that I could combine sub-sale relief with another relief and all the tax disappeared.

Gavin Brown: Therefore, one approach would be to say that people cannot combine sub-sale relief with other reliefs, but if that approach was not taken and we had to define set ways in which the relief could be used, could that be easily done, or are there dozens of ways in which it could be used, such that we could not simply list them?

Iain Doran: I fear that there are dozens of ways and dozens of circumstances in which perfectly legitimate sub-sales are achieved, and to try to list them would be fruitless.

Stephen Coleclough: I would struggle to recommend the current UK Government proposals to amend the sub-sale provisions, which are extraordinarily complex.

Iain Doran: One other thought occurs to me. Although the general anti-avoidance rule that we have heard mentioned is not part of this tax, the Law Society, certainly, and maybe the CIOT are in favour of that approach. It is a good thing because it targets general avoidance, whereas the targeted anti-avoidance rules, bizarrely, can actually encourage more avoidance because, as soon as someone gets within the loophole of the targeted rule, by definition they are clean. That is a bizarre situation.

A general, blanket rule will be far better. As someone who advises on property tax deals, I think that, with such a rule, it will very difficult for tax advisers who are inclined to recommend tax avoidance schemes to say to their clients, “This will work, because we’ve manhandled the transaction in such a way that it falls within a loophole.” If there is a general rule that says that if the principal motive for structuring a deal in a certain way is tax avoidance, it does not work—people will see straight through it—we believe that that will be highly effective. We would recommend the GAAR for the purposes of LBTT and generally.

12:30

Stephen Coleclough: I add that whether a rule is a targeted rule or a general rule, it must be seen to be used. There is a targeted rule on stamp duty
land tax that came in on 6 December 2006 under which not a single such case has yet been taken to court. That is more than six years ago, and it does not take that long to get a case to court. A targeted rule under which there has not been a single case starts to fall into disrepute. With such a rule, it is necessary to commit to challenging contraventions of it, and to do that publicly, so that everyone knows that the rule is not just there to deal with a situation that might arise but is something real and tangible that the tax authority will use.

Isobel d’Inverno: The same can be said about sub-sale relief. If the revenue had clamped down on the many schemes that have been done much earlier and had a real go at them, some of them would have been stamped out at a far earlier stage and taxpayers would not have been quite so sanguine about entering into them. It is possible to find out about such schemes on stampdutylanlandtaxavoidance.com on the internet, for example. Therefore, the tax authority needs to be proactive in looking at avoidance.

If there is to be sub-sale relief, whether it is general or targeted, the starting point is to identify the transactions that are deserving of the forward funding that we have mentioned. It may be that it is decided that not everything deserves sub-sale relief. A developer who just flips on land at a profit might not deserve sub-sale relief, whereas it might be deserved in cases involving other, more complex arrangements.

Stephen Coleclough: I would like to pick up on what Isobel d’Inverno said about clamping down. If you were to ask HMRC about that, it would say, “We issued a spotlight on stamp duty land tax avoidance on 7 June 2010, in which we said that we think that these schemes do not work.” The spotlights are things that HMRC sticks on the website, which only people like me read, and it is clear that I am not the target audience. Such a response is wholly inadequate. It is necessary to be more public and to get the message through to the wider public rather than to stamp tax specialists like me.

John Mason: I come back to some issues that I raised earlier about exemptions. I realise that there is a technical side and a policy side to the exemptions. I do not expect you to comment on the policy side, but I am interested in the technical side. Is there a reason for exempting property transactions in which no money is paid and no other contribution is made? What about transfer under succession law and acquisitions by the Crown? Are those purely policy areas?

Stephen Coleclough: They are both technical and policy areas. Before I started my career, there was stamp duty—at market value—on land transactions that were gifts: if someone gifted land, it attracted stamp duty at market value. From a technical perspective, the problem with that is that it is necessary to agree a market value, and it would be possible to spend seven or 10 years arguing with the district valuer what the market value is for stamp duty purposes.

On all such transactions there is that technical issue: if you have a market value charge, someone has to agree the market value. In cases such as death and divorce, there is not a ready market value, because the property is not actually marketed. That is a first technical perspective.

The other reliefs that you mentioned are all cases in which cash does not actually change hands. The person is not borrowing or raising money to buy the property; the property is simply moving from one person to another person—it could be a commercial property on inheritance or large house on inheritance. The person does not have the cash to pay the tax, and if they paid the tax they would have to sell the property, borrow the money or find it from other cash reserves. That is the policy issue.

Your question about the Crown, which is defined as not just the Scottish Government but relevant departments of the UK Government, goes to another policy issue: what is the point of getting one part of the Government to pay tax to another part of the Government, when it is all the Government? Someone in the earlier evidence session today said, quite rightly, “Yes, but we are not all in the same boat. We are Scotland, and then there is the rest of the United Kingdom, and if we tax a Westminster Government department on land and buildings transactions tax the revenue will come into the Scottish Government’s coffers and not the Westminster Government’s coffers.”

That is a legitimate area for debate. You can tax transmission on death, but you will have to think about where people will get the money from. You can tax UK Government departments, but how you carve up the kitty afterwards is between you and Westminster.

Iain Doran: I make a small point in relation to inheritance. If the estate is large enough, inheritance tax will be paid. If, perchance, some of the estate consists of land or buildings, one might therefore ask why, given that the estate has already been subject to inheritance tax, stamp duty or LBTT should be paid in addition.

John Mason: The witnesses’ comments have been helpful. On Mr Doran’s point, if a property is gifted to someone to avoid inheritance tax, I suppose that the argument for applying LBTT is strengthened.

Iain Doran: That is true, but there are already clawbacks in relation to gifts that are made within a certain period before death.
John Mason: Yes, the person has to stay alive for seven years.

Isobel d’Inverno: On the point about valuation, it is probably worth adding that valuations of gifts are needed for other taxes on death and transmission and so on. What you do is a policy issue, really.

John Mason: I take your point. As Mr Coleclough was speaking I was thinking that for business rates and council tax we value properties without there being a transaction. We will probably come back to the issue.

The other point that I want to ask about is—

The Convener: Hold on. Before we move on, Jamie Hepburn has a supplementary question.

Jamie Hepburn: The question occurred to me too late to put it to the Scottish Government officials. It might be unfair to put it to the witnesses, because you might not know the answer, but at least I will get the question on the record. Are you aware of taxes that are levied by the UK Government from which the Scottish Government is exempt?

Stephen Coleclough: All the exemptions that apply to the Crown.

Jamie Hepburn: So it is a reciprocal thing.

Stephen Coleclough: It is, but do not forget that all the revenue goes to the UK Government.

Jamie Hepburn: Yes indeed, as happens with inheritance tax.

John Mason: I think that we will debate the issue later.

In its submission, under the heading “Certainty”—something that I asked the bill team about—the Chartered Institute of Taxation said, of guidance notes:

“But such material should be explanations, assistance and guidance, not a way for the tax authority to interpret (or even worse, change) the law to how it thinks it should operate. Citizens should be taxed by law, not by guidance; nor untaxed by concession.”

That suggests to me that someone thinks that there is a problem with the current system and we need a slightly different system in future.

Stephen Coleclough: We do. What we said about citizens being taxed by law and not untaxed by concession is a theme that the CIOT has been running with for 20 years. There is a perennial problem of a Government making decisions but those decisions being amended or changed by the executive—the tax administration—without any parliamentary supervision.

There are quite a lot of technical issues that we struggle with in the bill. We will feed in our concerns separately, but the main one is that it is far too English and does not seem to address Scottish property law. It will mean more papering over the cracks that we have had in the past. This is not a case in which we should be doing that; it is a case in which we should get it right first time and get it right in the law. That is what we are very keen should happen.

Something that we have discussed on our side—I have not shared it with my colleagues from the Law Society, although I am sure that they will find favour with it—is an idea that has been experimented with in the UK tax legislation, which is outsourcing the writing of materials to third parties, in this case mainly law firms. The suggestion is to invite law firms to tender to write the guidance notes because they understand how the Scottish property rules work.

John Mason: Who writes the guidance at the moment? Is it HMRC generally?

Stephen Coleclough: It is HMRC generally. There are different layers of guidance: sometimes the guidance can have the force of law, if the primary legislation permits that, but otherwise it is just guidance. It goes out to extensive consultation. The guidance on partnerships—an area of law that is a particular nightmare—took literally years to write because it was so complex. As I said earlier, I have been doing this work for more than 20 years and I still have to take two Nurofen before I read the partnership provisions. They are that horrible.

John Mason: Is the answer to get better legislation so that there is not so much room for manoeuvre in the guidance? Or is the issue the way in which the institution—revenue Scotland or HMRC—operates?

Stephen Coleclough: I would say that the answer is better legislation—make it simple, clear and as certain as possible. I think that we all accept that you will not cover every single situation, but if you can make the legislation clearer, more certain and more tailored to what actually happens in Scotland, it will stand you in good stead. I cannot stress enough how important it is that you have sound building blocks in the law first and that you are clear what you are trying to do.

A lot of things in this bill have been purely replicated from the SDLT legislation, in which there are quite severe known problems. My preference would not be to repeat those problems and end up with guidance. There are certain areas—for example, on what a company is and how the partnership rules work—in which people get different answers to the same question from HMRC. The answer depends on why they want to know. It cannot be right to get different answers to
the same question purely at the whim of the revenue officer.

Isobel d’Inverno: It is fair to say that the SDLT guidance is a complete mess—there are lots of problems with it. On the issue of how you fix this, I believe that it would be to have simpler legislation, to know what you are trying to legislate about and to take the trouble to find out how these things work in the first place.

The zero-carbon homes exemption is a good example of how not to proceed because it was a relief that applied to houses that were not being built by anybody. If you start by trying to apply the legislation to how things happen in the real world, you have a much better chance of making it work.

Stephen Coleclough: I can give you an example. There is a provision in the bill that has been copied from the British SDLT legislation. It is in connection with part-built developments and what value to take when someone part-builds a development.

When the SDLT legislation was introduced in 2003, the Financial Secretary to the Treasury said that it would repeal and reverse the Prudential Assurance case. We all read it and it does not—it does exactly the opposite. The Revenue had to admit that it had got it completely wrong and that the legislation has the reverse effect.

That legislation is still on the statute book, and it is replicated in this bill. My question to you is: do you intend to reverse the Prudential Assurance case, which is what the Financial Secretary to the Treasury said he was doing, or do you intend to have the provision that is in the bill now? I do not think that you know the answer to that question.

12:45

Isobel d’Inverno: Many points of detail need to be looked at and perhaps tweaks need to be made to some of the wording to get there. However, we are mindful of the short timescale in which the bill had to be introduced to Parliament. The drafters would have had to be superhuman to have got absolutely everything right in that timescale. Although it would be great if all the provisions were absolutely fine just now, I hope that the committee will be sympathetic to the challenge that the bill presented.

John Mason: I think that that answers my question for just now.

The Convener: I think that Malcolm Chisholm has a supplementary question.

Malcolm Chisholm: Can Stephen Coleclough just refer us to the provision in the bill that he was talking about?

Stephen Coleclough: I was referring to paragraph 11 in schedule 2.

Michael McMahon: As Mrs d’Inverno has possibly just referred to, there has been a lot of talk about how well the bill team is consulting with stakeholders and how progress is being made. It was recognised early on that amendments would be required at stage 2 because more consultation is needed on non-residential leases, companies, trusts and partnerships. Earlier this morning, the bill team told us that it will do its best to lodge the stage 2 amendments as quickly as possible. Does that give you any concern? Would you rather that the consultation went on for a bit more time, or do you think that the amendments will be ready because you will have worked them through?

Isobel d’Inverno: It is important that the necessary work is done on developing LBTT’s new approach to leases. We have been campaigning about the need for a better approach to leases since SDLT came in. We will do all that we can to ensure that the amendments can be brought to the committee at the start of stage 2. We think that it should be possible to do that—obviously, we are in control only of our input into the process—so we do not see that as a concern. We have been living and breathing the problems for a long time, so we have quite well developed ideas about how to solve many of them. Does that answer your question?

Michael McMahon: It does. As I said, the bill team gave us that commitment because it suits us for our purposes to have more time to discuss the amendments. However, that may put pressure on your end to get the work done to ensure that the amendments are ready. As Mr Coleclough said, we need to get the bill right so that we have the clarity that everyone looks for. Would it be better to take the time than to look for the amendments being lodged slightly earlier?

Isobel d’Inverno: If it was helpful to the committee, we would be more than happy to provide any additional briefing on our views of the amendments in relation to leases and so on. If that could be fitted in, we could definitely offer to do that.

The Convener: Yes, that may be helpful. That was alluded to in the previous evidence session as well.

Folks, we are almost out of time. I think that our questions have been—

Jean Urquhart: Convener, you should always remember—

The Convener: You should let me know before I am winding up that you want to ask a question. What would you like to ask?
Jean Urquhart: I would just like to ask about the Scottish trusts issue that is mentioned in paragraph 16 of the Chartered Institute of Taxation submission. Is the issue one of semantics? What kind of trusts are we talking about? If the bill is introducing a Scottish tax, is it not right that it should refer to trusts outwith Scotland? Paragraph 16 of the submission states:

“As the Bill is currently drafted the LBTT will apply to Scottish trusts and to trusts operating under laws of a country outwith the UK.”

Stephen Coleclough: England is not outwith the UK and it is not Scotland, so English trusts are not covered by those provisions, whereas every other trust in the world is. That strikes me as bizarre.

Jean Urquhart: On the issue of language, is a Scottish trust something that is quite particular to Scotland?

Stephen Coleclough: A Scottish trust is established under the laws of Scotland, yes.

Iain Doran: It is a linguistic point. The bill currently copies the UK legislation using English terminology, which is strange.

Jean Urquhart: Should it really just say “outside Scotland”?

Stephen Coleclough: That would be perfect. You have the job.

The Convener: This lot would try the patience of a saint. [Laughter.]

John Mason: Which the convener is not.

The Convener: I thank the witnesses for their very helpful evidence today. No doubt we will see a lot more of each other in the weeks ahead.
On resuming—

**Land and Buildings Transaction Tax (Scotland) Bill: Stage 1**

**The Convener:** Item 2 is to take oral evidence as part of our stage 1 scrutiny of the Land and Buildings Transaction Tax (Scotland) Bill. I welcome the meeting David Melhuish of the Scottish Property Federation, Michael Levack of the Scottish Building Federation and Mr Philip Hogg of Homes for Scotland. We will move straight to questions, but first I thank you for being here 10 minutes earlier than scheduled. The first item was dealt with much more quickly than had been anticipated, which means that we have even more time to interrogate you.

Before we hear from other members, I will ask a few opening questions. My first is for Philip Hogg. I am quite intrigued by paragraph 8 of your submission, on tax avoidance, in which you say:

“It is important that anti-avoidance rules are in-line with the rest of the UK to ensure rules are consistent and understood. We do not want Scotland to be seen as somewhere more challenging to invest in with a high price to pay for legal/accountancy advice manoeuvring from investment across the border."

All the evidence that we have taken so far suggests that the anti-avoidance rules are full of holes, with the result that the people who are supposed to pay often do not pay. Organisations such as the Law Society of Scotland and others are of the view that we need to have very strong anti-avoidance rules, not to deter investors but to ensure that tax is collected fairly. Could you expand on your thoughts on tax avoidance, Mr Hogg?

**Philip Hogg (Homes for Scotland):** Just for clarity, I point out that we do not support tax avoidance in any way. If our submission contains the inference that we support tax avoidance in some way, please take my word that that was not the intention.

We need to ensure that any tax system is fair, accurate and proportionate, and that it can be administered in the most effective manner possible, so when a new tax system is set up, we would want to ensure that people understand it, that it is easily collectable and that tax avoidance is minimised. We were not implying that we support or encourage any tax avoidance. I hope that that clarifies our position.

Equally, we are conscious that many of our member organisations operate north and south of the border. They make investment decisions that are based on the attractiveness of doing business in Scotland or England. As a general point, we need to ensure that Scotland remains competitive.

Let us take the example of a large public limited company that has many millions of pounds to invest in land. It will take a decision on where it thinks it will get the best return on its investment. In taking that decision, it will take into consideration the general cost of doing business, the cost of meeting regulations and so on. Our point was that we are keen to ensure that Scotland will not be disadvantaged or seen to be an expensive place to conduct business and that it will, therefore, encourage investment from such companies.

**The Convener:** Other witnesses can also comment. I asked Mr Hogg that question because of what his organisation’s submission says, but other witnesses should feel free to comment. Equally, when I ask other witnesses questions, Mr Hogg should feel free to answer to answer them.

**Michael Levack (Scottish Building Federation):** It might be an obvious thing to say, but, as someone who has worked closely with HM Revenue and Customs over many years on a host of initiatives to assist the construction and property sectors in navigating their way through the current complex system, I know that its experts acknowledge that the tax arrangements to do with land, property and construction-related activity are among the most complex tax arrangements that we have. If the bill represents a start in giving us an opportunity to have in Scotland a fair and simple system that avoids unintended consequences and which is simple to operate and to understand, that will be most welcome across the property and construction sectors.

I hope that the civil servants who are looking to the implementation stage will come up with some ideas on how we can achieve that, in close consultation with the industry. We should never lose sight of the objective of trying to put in place a far simpler system.

**David Melhuish (Scottish Property Federation):** There is sometimes the danger of a knee-jerk reaction to concerns about anti-avoidance. For example, the 15 per cent rules coming in under the current stamp duty land tax will affect everybody involved in residential property for the next two years, including in Scotland, when an investment is made in high-value residential property by a non-natural person. Neither the Scottish Property Federation nor the British Property Federation opposes that idea in principle, but, unfortunately, the legislation has accidentally caught genuine property investment businesses. It has taken three or four months of quite hard work to explain that to officials in HMRC, as Michael Levack indicated. Our argument has been accepted by HMRC and
changes will be made, but not in time for the legislation coming into force next month.

The concern, therefore, is that measures against tax avoidance inadvertently catch genuine business transactions, which was obviously not the UK Government’s intention in the case that I have described. We need to ensure that such a problem does not happen in Scotland with the current bill.

**The Convener:** Okay. Mr Hogg, you also state in your written submission:

“We would support the reduction of tax chargeable to the lower end of the market from 1% to 0.5%.”

You state that that would be to stimulate demand and improve tax revenue. However, has any work been done to show that such a tax reduction would do that? What is the elasticity of demand in that sector? Would such a reduction be enough to stimulate demand such that it mitigated the loss of revenue from the reduction?

**Philip Hogg:** We must take note of the overall economic circumstances. The total number of housing transactions is dramatically lower; it is probably 40 or 50 per cent lower than at the peak in 2007. However, we have a growing population and a growth in the number of households on housing waiting lists, so there is pent-up demand.

There are probably numerous reasons why transactions are not taking place, but undoubtedly the cost of the transaction and of moving is a big barrier. Stamp duty land tax is one of the barriers that home movers face, which has been exacerbated by the banks’ lack of willingness, rightly or wrongly, to provide high loan-to-value mortgages. That means that home movers must provide a higher deposit or a higher degree of equity to move on. Any minimisation of the tax or the cost of moving will stimulate, or certainly facilitate, more people being able to move on, hence our suggestion of minimising the tax and making it easier for those who wish to move to be able to move.

**The Convener:** But to get the same amount of tax revenue, the number of transactions would have to double. Otherwise, the Scottish Government would lose considerable revenue, which would impact on the services that it provides. What evidence is there that there would be that level of transactions? My understanding is that the banks’ unwillingness to lend and the general economic uncertainty have more of an impact than stamp duty at this level.

**Philip Hogg:** We need to widen the discussion beyond just stamp duty land tax. We know that housing transactions have a significant multiplier effect on the overall economy. The housing market generates economic activity and employment. The discussion must be much wider than just looking at the number of housing transactions. We must think more broadly than that and look at the overall economic impact. The transactions in themselves may not create a neutral net effect, but their multiplier effect provides a much greater benefit to the economy. That is why we are keen for there to be some broader thinking.

**The Convener:** I do not disagree with that at all, but what I am concerned about is whether the increase in the number of transactions would outweigh the reduction in tax revenue. That is the issue for me.

**Mr Melhuish’s written submission states:**

“LBTT is constrained in its development because of the requirement to ‘broadly’ achieve revenue neutrality.”

However, if there is not going to be revenue neutrality, the implication again is that there should be a reduction in the taxation raised through LBTT. However, that would obviously have an impact on the rest of the Scottish block. The Scottish Parliament’s ability to spend in areas would be reduced if its income was reduced by LBTT. Is that not the case?

10:00

**David Melhuish:** You have identified the constraint that we are talking about and the uncertainty that arises around it at present. As we understand it, that is still being negotiated between the Scottish Government and the United Kingdom Government. The volatility of this tax makes that a difficult target to achieve with any form of certainty. It is only about two years until the tax comes into force, so time is running out.

There is some evidence that, when stamp duty holidays were introduced at the beginning of the 1990s recession, it got economic activity going. Philip Hogg’s point that property transactions help the wider economy is also important in that regard. I think that there is some evidence, which officials might be able to pull out, that stamp duty holidays got activity in property transactions to such a level that revenue returned quickly. I believe that the issue that you mentioned is a matter of timing. How quickly will the increase in activity and, hence, the increase in the number of transactions enable the revenue to be regained? You need to consider the time factor.

**Michael Levack:** We should also consider the volatile nature of returns under the existing tax regime as a result of the current volatility in the property market. There is concern about the overnight reduction to the block grant from the UK Government to the Scottish Government when the new system comes into place. We should consider whether there is a need for some transitional arrangements to ensure that the block grant...
calculation is done on the most realistic, up-to-date figures.

I want to make another point while we are talking about the implementation date and the market uncertainty. I understand from the consultation that the Scottish Government does not intend to publish detailed proposals on the rates until close to the implementation date of April 2015. That could introduce a bit more uncertainty into the market. It would be helpful if the proposed rates and the detail were made public far in advance of the implementation date.

Equally, the rates can change. It will be open to the Scottish Government at any point to change the rates. If we get a system that is simple, balanced and fair, then at any point those rates could change. However, I appreciate your point that, if we simply reduce the tax in one area, we have to make it up somewhere else. It is a balancing process.

The Convener: Yes, indeed. The Finance Committee often comes across that issue when people want more money to be spent but we do not get information on how savings can be found elsewhere.

One reason for the Scottish Government’s proposal is to allow for concerns about volatility, because Scottish Government officials believe that the Office for Budget Responsibility projections for revenue takes in the years ahead are wildly optimistic. That is something that concerns us all.

I have to say that all the written submissions are excellent. Mr Melhuish, will you comment on the section in your submission on simplicity and fairness? You state that simplicity and fairness are “key tenets of the new tax.”

However, you add:

“Unfortunately these two objectives can sometimes contradict and conflict with each other.”

There is an explanation in your submission, but will you expand on that point for the record?

David Melhuish: Yes. The feeling is that, although simplicity in the tax will have a benefit in that the tax will be understandable and clear to everybody, it will not always be fair. In efforts to ensure that, for example, reliefs are introduced for positive purposes or to incentivise certain parts of the market, it is inevitable that a certain amount of further complexity will be introduced.

We will probably see that in more detail if we go on to discuss the issue around commercial leases, for which the Scottish Government is keen to introduce a system that is seen as fairer to the taxpayer. There is currently the issue to do with the big up-front payment, for example, and there is an enormous amount of complexity involved in the current incarnation of the tax, in relation to net present value and so forth.

On the other hand, the simplest approach, which is gaining a lot of interest at the moment—an annual tax on the lease, which is paid on the actual rent that is paid for that year, which seems entirely simple and fair—might introduce problems. For example, there might be a problem ensuring that the revenue that the Government was looking for was achieved on a year-by-year basis—at this stage it is unlikely that it would be achieved. Also, we might inadvertently move people out of the tax system whom we want to tax. Equally, we might inadvertently introduce new taxpayers into the system. The very simplicity of the approach introduces wider areas of policy that would be of concern to the Government and would grate against that desire for simplicity.

Michael Levack: The more complex the system is, the more chance there is that larger companies, which have the resources and the wherewithal to pay for experts, will find ways to minimise their obligations; small and medium-sized companies that operate in property markets might not get the same benefit. The more complex a system is, the more chance there is that highly paid advisers will come up with systems to try to flout or bend the rules.

The Convener: Yes. I think that a reason why professionals outside the Scottish Government who work on such matters are so excited about the bill is that the current system does not work effectively and is full of holes, and they think that the bill gives us a chance to address such matters.

Michael Levack: May I make a suggestion about how you might get accurate information about the current tax take and what it might be? Our organisations can perhaps work with officials to think about what-if scenarios, based on fairly accurate data that we can get from our members on real activity, rather than theoretical work in the field—you would probably learn more from the other panel members’ organisations.

The Convener: Thank you. Mr Levack, you talked about simplicity but, in its submission, the Scottish Building Federation made the fairly radical suggestion that

“homes with a poorer energy efficiency rating would incur a higher rate of LBTT whereas homes with a high energy efficiency rating would incur partial or total relief from the tax.”

That is an interesting and innovative approach. Will you and the other panel members comment on the suggestion?

Michael Levack: I think that all parts of the construction and property industry are looking for a way of stimulating activity. One tax will not present all the opportunities to provide that
stimulus, but it struck us that much more needs to be done on energy efficiency. We would never want to get into a position where we were pitting new build against current stock, but we need to do something to encourage and reward people who are spending money to maintain their buildings and bring existing stock up to more modern standards of energy efficiency.

The measure that we suggested might enable us to achieve that, although we would need a big health warning about being careful with listed and historic buildings, for which the cost of achieving energy efficiency will be considerably higher than it is for newer, modern and new-build properties.

You might argue that, although we want simplicity, we have suggested an approach that would inadvertently bring about complexity. However, it is not beyond the wit of man to find an approach that helps to promote better energy efficiency in the built environment.

David Melhuish: That was a good example from Michael Levack of my previous point.

The objective is obviously desirable. We had an attempt at the zero-carbon homes initiative, but I might as well summarise that by saying that it failed. We are not against it, but we would like to see exactly how the Government wants to attack the issue. At present, the taxes are tied to the value of a property. We have a lot of concerns about the interrelation of value and energy efficiency, particularly for older properties. We have to look at the cumulative impact of Government policy across the piece. If values are reduced because properties must be brought up to a certain standard before they can be sold or leased, we would certainly want to avoid a potential double whammy via the taxation system.

Philip Hogg: This issue is an interesting one that provides the opportunity to push forward on other policy areas. Yesterday, I watched with interest the coverage of the update in Parliament on the carbon emissions targets. The area gives the new homes industry equal measures of concern and opportunity. The Government proposes higher standards for new build, for reasons that we understand. I will not go into the debate on whether those standards are disproportionate, but you will sense from the way that I am speaking that we think that they are.

Although we understand the need to reduce carbon emissions, the biggest emitters of carbon are existing homes, not new ones, so that is where the opportunity, or problem, lies. We might simplistically assume that there could be a linkage between stamp duty and the energy efficiency of a home by rating the stamp duty that is payable on the basis of the home’s energy efficiency. On the face of it, that offers interesting thoughts.

However, we would not want to encourage or create stagnation in the marketplace by creating reasons for people not to move.

We could consider the opportunities to reduce the tax for highly energy-efficient properties. I urge a word of caution on zero-carbon properties, because that is still to be clarified and it is an area of much debate. However, the tax could be reduced for homes that are almost zero carbon or very low carbon emitters, but that should not be done at the expense of stagnating the entire market. If the Government wishes to achieve a drive towards lower carbon outputs from the whole housing stock, which is what Mr Wheelhouse suggested yesterday, action obviously needs to be taken across the whole housing stock. Putting a tax on transactions and so taxing people only at the point at which they plan to move could have the opposite effect, because people could decide to just stay where they are because it is too expensive to move.

Another route that could be explored—again this is probably outside the remit of the bill, but there is a connection—is through council tax. The energy efficiency of homes could be positively linked to the amount of council tax that is paid. I guess that my point is that we should not look at SDLT as one specific tax to pull one lever. We should consider all the taxes that are possible if we are to achieve the carbon reduction targets to which the Government is committed.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I will stick with the same subject, with a question for Mr Levack. In his written submission, he describes his proposed scheme as comparable to the system of getting an MOT for the car. That is an interesting analogy, although, of course, the person who pays for an MOT is the owner or user. I congratulate the Scottish Building Federation on at least making a positive suggestion, but I would like to explore it further. Under the proposal, who would pay for the assessment of whether a property is energy efficient?

Michael Levack: It would be the owner. I appreciate that, when such proposals are made and no such system is currently in place, everybody will say “Oh. Another tax, another burden.” However, I think that we must reflect on where we have gone as a society over the past 10, 15 or 20 years, particularly when bank finance was readily available. If we consider the existing housing stock, many of us meet friends, family, colleagues and others who have built up little portfolios of property for themselves. However, what seem to be seriously lacking are people being prepared to maintain their buildings. There are all sorts of ramifications from that, including at the worst end—without wanting to scaremonger—major structural faults that can impact on the
safety of tenants, people living in or using the properties, and those passing by.

10:15

Equally, there is a host of opportunities to improve energy efficiency. The Government targets and the Sullivan report have been published in that regard. We have lots of targets and desires and we have made claims about having world-leading climate legislation, but things look different for the construction sector at grassroots level. Obviously, the various witnesses here will come at the issue from a slightly different angle, given our vested interests.

With regard to trying to stimulate some activity in the repair, maintenance and improvement market, we believe that a reduction in VAT, which the Scottish Government and other parties support, would help even more in encouraging people to undertake the proper level of repair and maintenance of their property. People have to do it with their cars, so why should they not be encouraged somehow to do the same for their home or building? We have an opportunity to use tax relief as a tool to stimulate some work, improve energy efficiency, and look after our existing built environment.

Jamie Hepburn: Sadly, of course, the Scottish Government does not control VAT at this moment in time.

If the aim is to improve energy efficiency, presumably the incentive has to be that it will cost people more through the taxation that will be levied if they do not undertake remedial work to improve the energy efficiency of their home. Is that realistic?

Michael Levack: It depends whether we look at it as paying more or as paying the published rate but getting relief if certain measures are undertaken to improve the energy efficiency of a building.

We will have to do something. Having spoken to many people across the industry, I do not find many builders, plumbers or electricians chasing the long-awaited green deal as an opportunity to stimulate work. I do not hear building owners or home owners talking about the green deal as the fix to improve energy efficiency. We have to find measures to assist and stimulate some activity: just to do nothing is not the answer. Equally, the answer is not to come in with a heavyweight regime that penalises householders at a time when many of them are struggling. There has to be a balance.

Jamie Hepburn: I agree with your perspective entirely, but I wonder whether the tax relief proposal would be an efficient way of doing what you describe. My perspective is that people will not look at it in terms of brass tacks. If undertaking the necessary repairs to their home will cost more than their increased tax liability or what they will pay if they do not qualify for a discount, I wonder whether they will undertake that work.

I have a question on another issue. Mr Levack and Mr Melhuish have stated orally or in their submissions that the zero-carbon homes relief failed. Mr Levack, why would your suggestion work where that failed?

Michael Levack: We could express similar views on energy performance certificates and the reports that are done when people are preparing to sell a property as we have done on zero-carbon homes relief. Perhaps the suggestion that I have called an MOT is just about moving slightly on from where we are.

For us, it is a case of engaging with the Government and legislators to come up with a system that can stimulate activity. It is never possible to please everyone. No system will be perfectly fair—there will be always be someone who says that the system is not fair. Given that we have a major opportunity, we should do something. It would be wrong not to consider that.

Jamie Hepburn: Thank you very much.

I turn to Mr Hogg. In paragraph 14 of your submission, you say that you favour “a reduction in SDLT rates to assist the lower end of the market”, but you suggest that there is also a need for awareness of “the impact that a higher tax could have on the attractiveness of the higher end of the market to investors.”

You pose the question: “If the tax acts as a disincentive to high end investors will this push investors into the lower end of the market thereby increasing pressure on affordability?”

Will it do that?

Philip Hogg: What we have to understand is that we need a housing market in which we have equal movement between all steps on the ladder or all stages of the chain—you can use whichever description you want to.

Disproportionately incentivising or penalising people at particular points creates blockages. It is fine in theory to help first-time buyers to get their foot on the ladder—who would not want to do that?—but if that is done at the expense of making it more difficult for those who are taking their second or third steps, the net result is that we will create stagnation. Although first-time buyers might be able to get on the ladder, if the stock is not available, there will not be homes for them to buy. The stock will become available only if people are
prepared and able to take second, third and fourth steps on the ladder. Therefore, we need to ensure that all steps that are taken on the ladder are equally or appropriately taxed and incentivised. That is the point that we were making.

If we create blockages at particular points, people will not move or they might consider purchasing property at lower price points to avoid costs. The fundamental point is that it is attractive—and it sounds good—to help first-steppers, but we must ensure that the whole chain is moving because, sadly, we are not building enough homes for there to be surplus stock that first-time buyers or anyone else can just move into.

**Jamie Hepburn:** You refer to the availability of stock, which involves two issues: the current stock and the new stock that comes on line. Your members are in the business of building houses. We have already heard that the current set-up acts as a disincentive to the building of homes that would be valued around the marginal rate. It is clear that the tax regime can influence the building of homes as well as movement between existing stock. Are you saying that the new tax is not likely to affect the construction of new stock in any great way?

**Philip Hogg:** Because we do not yet know exactly how the tax system will be structured or what rates will be set, it is almost impossible to answer that question but, from the information that we have and the information that we are aware of, we want to propose a system that does not create blockages and which is fair for all.

To pick up on the point that you raised with Mr Levack, I think that we should be incentivising zero-carbon and low-energy homes through the tax system. That sends a positive signal to the population and is entirely supportive of the Scottish Government’s position. The fact that no zero-carbon homes were built under the zero-carbon relief gives an indication of how difficult and expensive it is to build such homes, but withdrawing the incentive is not the right thing to do.

I have been contacted by the Scottish Federation of Housing Associations, which was not able to provide a representative today. It has provided me with its submission and said that it is happy for me to present its views. You will see from its submission that it is highly supportive of retaining the zero-carbon relief incentive.

It is important that we send the right signals to the marketplace on the direction of travel, but we must acknowledge that such properties are difficult to build.

**Jamie Hepburn:** It will obviously depend on the final details, but can this form of taxation influence the new-build market as much as the market for existing homes?

**Philip Hogg:** It could go both ways; it could incentivise or it could disincentivise.

**Jamie Hepburn:** But it can influence it—I was not really asking about incentivising. I suppose that you have answered the question.

**Philip Hogg:** Yes.

**John Mason (Glasgow Shettleston) (SNP):** I want to pursue one more point about zero-carbon or low-energy housing—or however we are describing it. The point was made to us in a previous evidence session that the standard can be set at one level with people getting relief or some other incentive, but raising the level, which I hope is what we are trying to do, is quite difficult to build into legislation. Would it not be much simpler just to give people a grant and leave the tax outside the zero-carbon issue?

**Philip Hogg:** A grant to whom?

**John Mason:** The builder, the purchaser or somebody who is adapting their house.

**Philip Hogg:** We have to understand the consumer psychology around low-energy or zero-carbon homes—whichever phrase we care to use. As much as all, or most, people seem to think that ensuring energy efficiency is the right thing to do and that we should be going in that direction, we have to face up to the reality that it is very low down the list of new home buyers’ priorities. Most new home buyers do not take a great deal of interest in the energy efficiency of the home. It is taken as a given; they assume that the home is energy efficient.

**John Mason:** That would suggest that tweaking SDLT—or, rather, land and buildings transaction tax—would have virtually no impact, given that energy efficiency is already low down the priority list and we are talking about varying 5 or 6 per cent.

**Philip Hogg:** That is where the dilemma lies. Although construction costs will increase progressively to achieve zero-carbon or low-energy homes, the buying public and the lenders do not place any value on energy efficiency. For example, let us take home A, which is built today and is super energy efficient, and home B, which is right next door and is 100 years old. The valuers and the lenders will value them on an equitable basis, using normal comparables such as the size of the home; they will not reflect the energy efficiency of the home.

**John Mason:** Would it be a big incentive if someone knew that they would pay less for their energy bill?
Philip Hogg: No. The reality is that it makes very little difference to the majority of home buyers. I know that that might sound odd and contradictory, but it is a fact. Our members who have undertaken serious marketing or other activity to try to sell on the basis of energy efficiency tell us that it does not feature particularly highly in new home buyers’ considerations. Buyers assume that the home will be energy efficient and that there will be lower bills, but that is not in itself a reason to purchase.

I am not saying that this is true for all buyers, but for the vast majority of buyers there is no evidence to suggest that the fact that a home is super energy efficient makes a significant difference in the buying process. All the other fundamentals have to be in place: the home has to be in the right location and it has to have the right layout. It has to tick many other boxes. The sad fact is that energy efficiency still comes some way down that list.

John Mason: Right. I will move on to another area. The suggestion was made earlier—I think it is in some of the papers—that a simpler system would be popular, but there was also a suggestion that we do not want to move too far away from the UK system in case the developers get confused. How do we balance those suggestions? Are you saying that if the system is much simpler we do not mind if it moves far away from the UK system, or are you saying that you would rather have a bit more complexity if that meant that it was closer to the UK system?

Michael Levack: The view that I have expressed this morning is that we want simplicity, but I am saying that from the point of view of a trade body representing builders—the construction part of the sector—and indeed solely from a Scottish point of view. Without being flippan, I would say that I am not particularly bothered what happens south of Hadrian’s wall or whether there is a difference. The point that I made was that, if the system is complex, small and medium-sized operators in this market might not have the wherewithal to employ very expensive consultants to navigate their way through it.

John Mason: Okay, that is helpful. You are quite clear that you want a simple system. Do the other witnesses agree?

10:30

David Melhuish: We fall into the realms of perception here—that is a problem. Major investors on the commercial side of things know that they have had a top rate of stamp duty land tax of 4 per cent, which has been in place for quite a long time, and it is at the same threshold for the various kinds of property that they deal with. If those investors are told that the system is potentially moving to 4.4 per cent but that that is not quite the whole picture because the tax will be levied on a progressive basis, so that they might only pay 4 per cent above £250,000 and 3 per cent above £150,000 or so, they start asking what that means for their values. That takes us into the realms of perception, which would be a slight concern.

We are in no doubt that, residually, the issue is not just one of simplicity; it is about removing distortions. I think that the move to a progressive tax is the right thing to do on the whole.

John Mason: Another idea that has been mentioned a few times is making the system competitive—we hear phrases such as “incentivising the market”. Does that basically mean that you would prefer a lower tax?

David Melhuish: Philip Hogg identified some reasons for that earlier, which very much apply to the commercial world. In a sense, the plc boards have always been a dominant player in Scotland. Those boards make decisions on where to make their investments, and nowadays those decisions can fall on ever smaller margins. I am not saying that the tax rate is the one decision breaker—it is one among a number of factors—but our members want to be as competitive as possible in the UK with regard to the proposed tax.

John Mason: “Competitive” means different things to different people. This might not be the case in property, but in some sectors having an educated workforce is seen as a competitive advantage. We might face a choice of an educated workforce and higher tax or a less educated workforce and low tax. Are you neutral on that? Do you have a preference one way or the other?

David Melhuish: The proposed tax will only ever be one among a range of factors. The employment workforce, the quality of life for that workforce, the attractions that bring people to Scotland, connections, locations and accessibility will all be big issues in the decision whether to locate in Scotland or, say, Newcastle. All we are saying is that, if it comes down to the margin and a small percentage or a few points of a tax can make a significant difference, a higher rate might lead to a decision for an investment to go elsewhere.

We do not disagree that it is only one of a range of factors in making an investment decision but, if decisions are being made on a much tighter basis than they ever were before, it is important that we can at least compete with the rest of the UK on a level playing field.

Philip Hogg: Without wishing to sound flippan, I guess that I am speaking on behalf of home
buyers and the general public, and none of us, intuitively, wants to pay any more tax than we need to. It is hard to imagine anybody who would not want to do anything that would reduce our tax. I refer back to—

John Mason: I totally disagree with that. There are a lot of people who want better services and are prepared to pay more tax. Yours is one view, but I do not think that it is necessarily right across the population.

Philip Hogg: If I can finish my point, I was going to say that if people paying less tax in stamp duty, for instance, stimulates much broader activity in the wider economy, which generates tax income or other income for the Government, that needs to be explored. Creating jobs, taking people off welfare and creating economic activity might—I say only might—have a net greater effect, and some exploration could perhaps be done into that.

That is my reason for suggesting that, if the tax were to be removed, it could stimulate the market. I am not saying that it would do so permanently, but in the current times it could stimulate activity that might have a net better effect overall.

John Mason: And might that be linked with higher income tax to compensate?

Philip Hogg: Why?

John Mason: You said that if we boosted the economy we would get more tax. We would need to bring in more tax somehow in order to compensate for the loss of land and buildings transaction tax.

Philip Hogg: If it creates jobs and takes people off benefits, they will be paying income tax, which could have a net positive effect, as well as there being other benefits such as increased take from corporation tax as businesses become more productive.

Michael Levack: With regard to trying to stimulate some activity in the construction sector, it is important that there is a discussion not only of the level of tax but of the timing of how the tax is paid over the lifetime, as it were, of a major commercial transaction. I am not qualified to go into the nitty-gritty of the issue—that might be more David Melhuish’s field.

Gavin Brown: Michael Levack touched on the timing of the publication of the rates and the thresholds of LBTT. The Government’s current position is that those will be published in September 2014, when the draft budget is published, and will impact from April 2015. Presumably, your members want those rates to be published as soon as is practicable—today or tomorrow, even. Being objective about it, what do you think is a fair and reasonable date for the publication of at least the top rate, if not everything else? Is September 2014 okay? Is it too late?

Michael Levack: Some of our members are developers as well as contractors, but I will speak only from personal experience. I would say that people who take views on larger commercial transactions, which can take years to get the first shovel in the ground, would think that the length of time from September 2014 to April 2015 is not particularly long, particularly if there is a more radical shift in the look of the scheme and the structure of the tax. We would prefer there to be a minimum of 12 months between the publication and the impact, and if we could get towards 18 months, that would be preferable.

Gavin Brown: Do other panellists have fixed views on that?

Philip Hogg: The financial, legal and process time for a typical home purchase—if there is such a thing—is typically three months. That is the usual length of time between someone signing a registration form and them getting the keys to their new home. Of course, you have to add in time for the home-search process that comes before that, when people are looking around to find a property that they want. Therefore, it would not be unrealistic to suggest that a typical timeframe for the process, starting from when someone considers that they want to move and ending when the transaction is completed, is 12 months.

Given that that is the case, I will reinforce Michael Levack’s view by saying that a period of 12 to 18 months would be adequate notice for organisations and individuals who want to have some understanding of the likely changes.

Gavin Brown: Does the SPF have a view?

David Melhuish: I would say that deals and transactions that might take place two years away—certain high-value and major development investments—are probably being considered right now. As early as possible an indication of what the top rate will be would be helpful.

I recognise that SDLT rates can change overnight on a budget day, so I add that caveat to our answer.

Gavin Brown: The SPF’s paper raises concerns about licence agreements potentially being caught by the tax. Can you expand on that point?

David Melhuish: I believe that HMRC has considered the licence arrangements a number of times and veered away from that. The key problem is the sheer scope of licences that might be caught or not caught, or might be caught unintentionally. A lot of licence agreements can be done for perhaps seasonal reasons, such as
kiosks and other facilities for Christmas in shopping centres.

I suppose that the question is whether that is really the kind of activity that we are looking to tax. We should also be concerned about short events such as the Commonwealth games or the gymnastics event that is coming after them. The organisers of such events compete on a worldwide basis, not a UK one. We should be keen to ensure that such activity is not caught. Although those events might be for a short time, a very large price ticket could be associated with them and they could, inadvertently, fall under the licence provisions.

There are other complexities in identifying the kind of licence arrangements that we are trying to include. Those relate to wider scale things such as airports. Are we trying to catch operators, who might have an interest in land for purposes such as servicing or fuelling aircraft? There is huge complexity, which I think is what forced HMRC away from the area. Our concern is that we might open a Pandora’s box and that a lot of unintended consequences would flow out of it—I know that that is a horrible phrase. That is why I think that it has not been done previously.

Gavin Brown: That is helpful.

On sub-sale relief, the Government explained last week why it has not just mirrored exactly the provisions from SDLT. Basically, that is to do with tax avoidance, and the Government seems to have a lot of support on that. However, we have received evidence, including from some of our panellists, that a targeted form of sub-sale relief might be a goer and might be better because not all sub-sale relief is about tax avoidance and there are genuine commercial transactions for which sub-sale relief is important. Do any of our panellists want to comment on whether sub-sale relief might be important for some transactions?

David Meluish: For us, the concern is to do with forward funding, when we try to attract institutions into supporting development. Again, that relates to the well-known comments about the lack of debt finance for property development and investment right now. The institutions are seen as servicing or fuelling aircraft? There is huge complexity, which I think is what forced HMRC away from the area. Our concern is that we might open a Pandora’s box and that a lot of unintended consequences would flow out of it—I know that that is a horrible phrase. That is why I think that it has not been done previously.

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David Meluish: For us, the concern is to do with forward funding, when we try to attract institutions into supporting development. Again, that relates to the well-known comments about the lack of debt finance for property development and investment right now. The institutions are seen as an alternative source of finance, but our concern is that the measures that are proposed in the bill could constrain that activity severely. We will certainly be looking to take up that issue.

Gavin Brown: Homes for Scotland mentioned sub-sale relief in its written submission. Mr Hogg, do you want to expand on that?

Philip Hogg: Yes. Our paper mentioned a lack of clarity on that relief. At the point of writing the paper, I had not seen any of the information that you mentioned. I am not aware of that, so I am not exactly sure where we are on the issue.

The instances of sub-sale relief that I am aware of are when, for instance, someone contracts to purchase a particular property and then, before that contract completes, they want to pass the sale on to someone else because they are unable or unwilling to complete the transaction for whatever reason. It seems odd to have a double taxation hit on something of that nature when, in effect, no goods have changed hands.

Michael Levack: Part-exchange schemes could be caught under that measure. In effect, the property would be taxed twice.

Gavin Brown: Finally, I return to Philip Hogg and Homes for Scotland. Another relief that you touched on in your written submission was registered social landlord relief, which I think you thought ought to be broadened slightly to reflect the current marketplace. Again, will you expand on that?

Philip Hogg: The residential property market is undergoing fairly significant changes in tenure. To put the issue into context, traditionally, the market tended to be polarised between people living in social rented properties and owner-occupiers. Because of the lack of availability of mortgages in recent years and the other issues to do with the property market that we have heard about, we have found that a much more fragmented range of tenures has come on board, including shared ownership, shared equity and mid-market rental. To stay in business, many developers and home builders have had to rejig their business models and provide a much broader range of tenures, so the polarisation has blurred in many respects.

Consideration should be given to how SDLT or other tax applies when people purchase or take on homes on different tenures, given that the situation is less black and white and there are many more shades of grey in that regard. Other forms of tenure will require some examination, to ascertain whether they should be subject to different tax treatment.

10:45

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): The calculation of how much money should be taken from the block grant in 2015 because it is assumed that that is what the existing tax brings in will be crucial.

The Scottish Property Federation talked in detail in its submission about the volatility of SDLT. We know about the big changes since 2007; you also made the interesting comment that the quarter 4 2010 figure for commercial property sales really skewed the estimates that the Government made in its consultation paper. More alarming, you pointed out that it is not at all clear from the data exactly how much is raised by tax on commercial
leases. The most striking comparison was between the £65 million that you said that the Scottish Government’s earlier consultation suggested would be raised from commercial leases and the “figure closer to £17 million” that you said is based on HMRC data. There is a lot of concern in that regard, because if we get that wrong we will not be getting off to a good start.

**David Melhuish**: The £65 million figure includes cases in which people have bought leases or leases have been assigned, so around £45 million of the figure is, in a sense, a transaction to buy a lease, because someone needs to get out of a lease arrangement at the time. Even then, I think that revenue closer to £25 million was suggested as being attributable to leases at that stage of the consultation. More recent figures have been published, because there have been further extrapolations of the HMRC data, and the figure is now a bit closer to £16 million or £17 million. On actual leases themselves, we are talking about around £16 million or £17 million.

It was slightly odd that on the Scottish Government’s website we had to go through the housing directorate to discover the figures that related to commercial leases. The bulk of the £65 million relates to the purchase of leases, which explains some of the difference between the figures.

The larger point that you raised is about the scale of revenue that is attributed to stamp duty land tax, the lack of transactions and the Q4 2010 figure on the value of commercial property sales, which we mentioned in the submission. We have been monitoring Registers of Scotland data on commercial property sales for several years, and the Q4 2010 figure was virtually double the average over the past three or four years, which has been closer to £400 million. In fact, just yesterday we received the figures for the end of last year; the value of commercial property sales has plummeted to £330 million. That tells me that the Q4 2010 figure was virtually double the average over the past three or four years, which has been closer to £400 million. In fact, just yesterday we received the figures for the end of last year; the value of commercial property sales has plummeted to £330 million. That tells me that the Q4 2010 figure was virtually double the average over the past three or four years, which has been closer to £400 million. In fact, just yesterday we received the figures for the end of last year; the value of commercial property sales has plummeted to £330 million. That tells me that the Q4 2010 figure was virtually double the average over the past three or four years, which has been closer to £400 million. In fact, just yesterday we received the figures for the end of last year; the value of commercial property sales has plummeted to £330 million. That tells me that the Q4 2010 figure was virtually double the average over the past three or four years, which has been closer to £400 million.

The revenue from residential transactions was £340 million in 2007-08; that dropped to £165 million in 2010-11.

I am not an economist or forecaster, but I think that if we are close enough to the numbers to suggest that we see no signs of significant movement in the housing market in the number of transactions or the number of housing starts and completions. We forecast that a significant change is unlikely in the coming years, unless there are dramatic changes that are outside most people’s expectations.

For the foreseeable future, we predict that—sadly—the market is likely to be flat. That is in the context of increasing housing need.

**Malcolm Chisholm**: So, in that sense, it might not be difficult to get the residential part correct. Will you explain the unusually high commercial sales figure in Q4 2010? It seems to be dramatically higher than the figures for the other quarters that the Scottish Property Federation has specified.

**David Melhuish**: At the end of Q4 2010, we had not re-entered recession. A lot of unusual transactions simply took place at that time. In that quarter alone, the commercial property sales figure—from which the bulk of the revenue would come—was about £832 million. However, in every quarter since then, the sales data from Registers of Scotland has on average been about £400 million. In the last quarter, for which we received the figures just yesterday, sales were £330 million. As an indicator of the revenue that would be obtained, sales figures suggest that, in the years since Q4 2010 and in a number of quarters that ran up to it, the revenue take would have been significantly lower than that in Q4 2010.

**Malcolm Chisholm**: My next question will be quite general, given that a lot of the detail has been covered. If we assume that the UK Government gets a credible figure that is more or less correct, I assume—from reading between the lines and reading your submissions—that you would really like a reduction in what is collected.

Most of the issues have been covered in detail. Homes for Scotland’s submission talks about extra reliefs for registered social landlords and zero-carbon homes—I have sympathy with both those proposals, although they would involve a cost. Homes for Scotland also refers to sub-sale relief. More strikingly, the organisation is worried about...
the high end being too high and, perhaps most strikingly of all, it wants the low end to go from 1 per cent to 0.5 per cent, which would be bound to reduce the take.

The Scottish Property Federation raises the VAT issue and would like VAT to be taken out when the tax is calculated. The federation also refers to other reliefs, which Gavin Brown mentioned—they had been mentioned anyway—such as disaggregation relief, intercompany group relief and sub-sale relief. The Scottish Building Federation has majored on energy efficiency issues.

Given what you argue implicitly for, my general question is whether you want the overall tax take to be halved, or something like that, to achieve other beneficial objectives. We have talked about environmental objectives—the climate change objectives—but are there more general objectives? Economic objectives have been referred to, such as stimulating the sectors in which you are involved.

Is it fair to say that you argue implicitly for a dramatic reduction in the take from the tax? I do not know whether you can quantify that, but I suggest that you want it to be halved. Do you have a figure for how much you would like the tax to raise in relation to its overall effect on the wider economy?

Michael Levack: I will make what is probably a personal point. We have debated the fact that, although it is okay to reduce income from one tax, that must be balanced by something else going up. We all understand that; that relates to balancing the books, which is certainly not easy at the moment.

Thinking about it from a personal point of view, I suppose that, when buying a house that is going to be my home, I have always scratched my head and thought, “What is this stamp duty actually for?” We could argue that, to varying degrees, with other tax that we pay, we have a closer association with or understanding of what the money will pay for. I know that it is not quite that simple and that we could open up all sorts of debates on the subject, but people broadly understand what their council tax pays for. The same applies to income tax. We could argue about VAT and, perhaps, the duty associated with running a motor car. With the stamp duty when somebody purchases a home, which can be a considerable amount depending on the value of the property, there is not the same connection with what the money will be used for. There is a chance to make Scotland a fairer place and a place in which the people who pay taxes understand what they will be used for, and that would be welcome.

Malcolm Chisholm: Are you arguing that we should not have it at all, then?

Michael Levack: I am not going to be drawn in to comment on such a ridiculous proposal. There are lots of taxes that we would all like not to pay. I think that we have all recognised in giving our evidence that none of the measures will cure everything. They are part of a wider suite of complementary policies that we hope will stimulate activity in the construction and property sectors. What I am saying is that we should perhaps take the chance in Scotland to establish a closer link with what any money that comes in from LBTT—whatever rate it is set at—will be spent on, so that people understand when they buy a home what the money will go towards.

Malcolm Chisholm: So you would like a hypothecated tax for—

Michael Levack: Yes, rather than the money just going into a pot and people not understanding the connection.

Malcolm Chisholm: That is a wider argument, but fair enough.

David Melhuish: I have two points. First, on the VAT issue, commercially, there would presumably be some kind of revenue, but I suppose that our comment is and always has been that we just think that it is wrong that we have a tax that is based on another tax, so there is double taxation. Secondly, on the relief issue, a lot of those reliefs are in play now, so they are already integral to the forecasts that are made and the revenue that is collected. That will perhaps reduce the concerns about giving money away.

Philip Hogg: Speaking from a residential perspective and not a commercial one, I note that we are talking about an item that every one of us needs—a roof over our head. It is not a discretionary item—we have to have it. In looking at how we can best put roofs over people’s heads, we need to think about the broader picture. If we make home ownership more difficult and more expensive, people will be forced to look backwards towards the Government or the state providing housing for them. The need has to be met somewhere, so it makes sense to make home ownership available and accessible for those who can afford it and want it, and to enable resources to be directed towards those who choose not to or are unable to buy a home.

We should ensure that we have a balanced housing market that meets housing need as appropriate. In taxing it or making it unaffordable, we cannot say, “Oh well, it doesn’t matter.” People will still need roofs over their heads and they will look for the Government to provide housing grant to registered social landlords or fund other forms of housing that might be more expensive in the
longer term. We need to broaden out the thinking beyond stamp duty and LBTT and think about how we meet housing need and what, ultimately, is the most economical, efficient and effective means of meeting it.

The Convener: On that point, you said earlier in response to John Mason that if we were to reduce the amount of LBTT it will stimulate the economy and there will be fewer people on benefits, but of course this Parliament would take the hit in terms of its revenue; the income tax and VAT that would be generated would go to the UK Government. We would still have a reduction in income, which would mean that we would have to reduce our services, and that is assuming that the balance was equal or even positive. I do not think that any information has been provided to the committee to suggest that a reduction would provide a level of stimulation that would exceed the loss of revenue to the Scottish Parliament.

Philip Hogg: I certainly would not be able to provide such macro-level statistics and analysis, which are outside the remit of our core skills. However, the work that has been produced in the past shows a multiplier effect of about 2.84, which means that every home that is built creates 2.84 jobs. Logically, if we build homes that people need to live in, it creates jobs, takes people out of unemployment and off benefits, and puts roofs over heads. It is therefore a virtuous circle, in that regard.

11:00

The Convener: Everyone would agree with that view, but we are trying to pin down whether reducing LBTT from 1 per cent to 0.5 per cent will have the effect that you described.

Philip Hogg: I cannot provide you with that sensitivity of analysis. We do not have it.

The Convener: We will explore other avenues on that. Thank you.

I apologise for Jamie Hepburn’s having to leave the meeting for the time being; he is feeling unwell.

Jean Urquhart (Highlands and Islands) (Ind): In earlier evidence sessions, the potential for the new tax was met with a certain amount of enthusiasm. I feel that it will provide opportunity; I think that there was at least a hint of that, if not the use of the actual word, in all the written submissions. However, what I am hearing today is slight nervousness about a change from the UK system. The attitude seems to be “Don’t upset the horses.”

I regard LBTT as a real opportunity. The UK stamp duty land tax is not regarded as the perfect tax by any manner of means. We know that it has loopholes in respect of tax avoidance and so on. It is riddled with things that we would all want to change. However, there is a slight hesitancy here today about why we would want to do that. It seems to me that there is a real opportunity to change things for the better. Do you broadly agree? What one thing would you like to see in the bill that would give a great deal of comfort? I am not talking about not going ahead with the new tax or about reducing it. We have to move away from that kind of thinking and accept that there will undoubtedly be a new tax.

I have a supplementary question in response to an earlier statement by Mr Hogg—I think—about energy efficiency really not being an issue for people. That surprised me, given the Scottish Government’s incentives for energy efficiency, for which leaflets come through people’s doors and there are television advertisements. There is much awareness raising about climate change, but what ultimately makes us switch off a light or not fill the electric kettle is the message about the impact of doing so on the pound in our pocket. White goods are a particularly good example—they have on them a band that shows how energy efficient they are. Given all that, I would challenge your view that people are not energy aware.

Do you think that LBTT is a real opportunity? Can we get excited about it? What would be the one issue that you would like to see dealt with?

Philip Hogg: To answer your first question, we have an opportunity to make the progressive system more fair and to remove the slabs. I think I said in my submission that certain homes are just uneconomical to build; there might be legitimate market need for them, but building them just does not stack up economically. There is therefore an opportunity for the progressive system to remove the logjams and the artificial peaks and troughs. As I said earlier, there is also an opportunity to incentivise low-energy, low-carbon homes and to send the right signals to consumers.

On the second point, I do not wish to sound negative and as if I am from the Flat Earth Society, but I must be realistic. I can tell you about the feedback that I get from our members at the coalface—I have a meeting with many of them this afternoon—who are the sales and marketing people who sit in the sales offices week in, week out and sell homes to people. We challenge them on the new homes advertisements in the newspapers, “Why don’t you advertise energy efficiency? Why don’t you say that people will save on their fuel bills?” They have said to me on numerous occasions that it is an incentive that is not proven to have wide-ranging appeal.

The majority of home buyers—I enter a caveat by saying “the majority”, not “all”—are still looking for the fundamentally important things when they...
consider a new home: location, price and layout. They want to know whether the home will suit their family or their particular circumstances. If they walk into a new home, they assume that it is a given that it will be energy efficient and that their fuel bills will perhaps be lower than the home from which they are moving. It is just taken for granted. To drive that point even further and say that they might save another £100, £200 or £300 a year—whatever the amount might be—on their fuel bills, is not a significant lever; it will not influence a purchase decision one way or another.

That is the reality. I challenge members to visit some new homes developments over the weekend, if the mood takes you. Go and talk to the sales people who are sitting at the sales desks and ask them how many people come in and talk about energy efficiency. The reality that we face is that energy efficiency is not a strong lever in encouraging people to buy new homes.

If the Government wants to achieve the carbon reduction targets that it has set, it will take more than education and more than just encouraging and persuading people—it will take a financial incentive. That is why we are suggesting that, as regards low-carbon or energy-efficient homes, an incentive in the LBTT system should be explored and could perhaps be progressed further through other methods. As I said, that is the reality: I do not necessarily like putting that point across, but I have to reflect what it is like out there in the real world.

**David Melhuish:** I will just add to Philip Hogg’s point. Time and again our organisations have asked the Royal Institution of Chartered Surveyors—the valuers—why it cannot reflect energy efficiency improvements in the value of properties. Its answer is that it does not make the market, but reflects it. The point is that people are not attaching a significant enough value to energy efficiency improvements for it to make that decision. I do not know whether the committee will speak to RICS, but I encourage you to do so, because I do not think that you can differentiate taxes on interest in property from the value of the property, and RICS has the valuation professionals. That supports Philip Hogg’s point—the valuations are perhaps not where we would wish them to be in terms of reflecting energy efficiency improvements.

On the broader point about this being an opportunity, we have broadly welcomed the bill and today, in the cut and thrust of discussion, we are looking at some specifics and opening up some of our wider concerns. For us, both the approach and the general principles that the Government and its officials have adopted to the bill have been very good.

That said, we keep pushing the additional point that we must be competitive. We see this as an opportunity to differentiate ourselves from other parts of the UK, because we are in a hard struggle to attract investment in this particular sector. We see this as an opportunity to develop a simplified bill—a competitive bill. If we can differentiate we should; we have mentioned VAT. We do not have the figures that the convener referred to earlier, but such things can perhaps drive a perception that Scotland is open for business and is looking to attract people.

**Michael Levack:** We need to do a lot more on energy efficiency in terms of changing people’s culture and behaviour, in relation both to new build and to existing stock. I mentioned earlier the total lack of impact so far of the green deal; I do not hold out much hope for it changing things. We have to look at every policy that can contribute in some small way to changing the culture in relation to energy efficiency.

As for whether the bill is an opportunity, we have clearly stated in the conclusion to our written submission that we support the bill’s general aims, and that restructuring the tax offers important opportunities to eliminate the market-distorting anomalies on which my colleagues have touched. We generally welcome the bill and see it as an opportunity.

**Philip Hogg:** Picking up on David Melhuish’s reference to RICS, I point out that one of the five themes of the Government’s sustainable housing strategy, which was published last year, was financial-market transformation—in other words, getting the financial market to reflect energy efficiency in homes. That is exactly the point that David Melhuish was making. When we ask lenders why they cannot value or lend on properties on the basis of their having higher or lower fuel costs or higher or lower energy efficiency, they always respond that there is no evidence that, just because a home has lower running costs, the cash that would be released would or could be used to fund a mortgage repayment. According to them, they cannot factor in that value. Until we break that logjam of new properties being valued at exactly the same rate as old ones, the cost of building new properties will make their construction unviable. We desperately need that financial market transformation to ensure that a property’s running costs are reflected in its value. We are not there yet; I am sad to say that we are long way off. It will take major movement for it to happen but, once it does, it will make the market more reflective, which is why all of our submissions raise the issue.

**Jean Urquhart:** You mentioned yesterday’s statement on the report about climate change
targets. Last week, we had a debate on fuel poverty. The realities will have to be dealt with, and the industry needs to contribute more to changing the culture that allows such things to happen. After all, we are talking about the future. Every other European country is concerned about these issues.

However, I hope that you will agree that the bill seems to present a real opportunity to change the UK system. The current taxation system is clearly very poor and is riddled with holes, but if we can renew and revitalise the system in Scotland we might be able to influence things elsewhere.

Philip Hogg: I reiterate that, as we state in our submission, we are broadly supportive of the general direction and theme of the proposed changes.

Michael Levack: In fact, the Scottish Building Federation joined forces with the existing homes alliance Scotland to address the very point that Jean Urquhart has made. Actually, we were a founder member of the alliance along with other organisations that look at, for example, fuel poverty. We might seem like odd bedfellows, but we are examining the existing housing stock and work very closely with Government on the issues. This is not just about grant funding; we need to think about a host of issues, including the public perception that has just been mentioned. That said, we are very clear that we do not want to get into a debate and argument about new build versus existing stock; we need measures on both, but they need to be proportionate and to reflect the current economic climate.

Michael McMahon: For clarification, I note that in the section entitled “Progressive versus slab approach” in his submission, David Melhuish concludes:

“If the government moves to introduce a progressive approach to residential property transactions then commercial property is likely to follow.”

That raises the question whether the bill will introduce a progressive system. After your conversations with Government officials, do you still have a doubt in your mind that the Government wants to move to such a system?

David Melhuish: I am in no doubt that, administratively, the system will be introduced for both residential and commercial property; the statement simply reflects the fact that most commercial transactions hit the high band. I was more putting a question mark over the necessity for such a move in the commercial sector, given that this kind of progressive system deals with the distortive impact on the residential property world.

11:15

Michael McMahon: That is helpful.

John Mason has already asked about the area that I was interested in, but I suppose that it is only common sense for any business looking to invest—or, in the current climate, to consolidate or contract—to look at the tax regimes in different jurisdictions and make a decision on that basis. Have your organisations done work, or can you point to any academic research, on the degree to which those marginal differences have an effect or are a significant factor in such decisions?

David Melhuish: I believe that the Government’s initial consultation asked about the tipping point at which such decisions become more affected by tax. It might become a significant factor in and influence very high-value commercial transactions involving major investors; as I said earlier, it will be one of a range of factors that we need to be careful about. What the differential in any rate is or might be could have significant consequences in, say, £50 million-worth of property transactions; all those factors might start to stack up and, because of the tax cost, an investor might wish to look elsewhere. I repeat the caveat that it will be one of a number of items that will be taken into account, but the pressure on us from investors and developers is to seek at least to match the UK rate to ensure that that kind of differential is put out of play.

Philip Hogg: I do not have any specific information, but one general theme has arisen in conversations that we have had. First of all, we need to understand that in the new-build market, which I am speaking on behalf of, the total output of new homes in Scotland is heavily dominated by three or four big plc home builders that are based down south. Typically, those major organisations, which as I have said provide a good chunk of the homes that are provided, will at the start of the business year have a fund of £X million to invest in land and will allocate land or spend depending on where they think they might get the best return for their investment and thus satisfy their shareholders. They will then challenge each of their businesses throughout the UK to put forward projects and demonstrate the return on investment for them in what is effectively a tendering process in which the projects that are thought to give the best return on investment secure the funding.

However, the return on investment is determined by market demand and the cost of supplying the products. The two variables that affect demand positively or negatively are SDLT and construction costs; in other words, any increase in construction costs or the costs of delivering homes will necessarily impact on the return from a development and will therefore
impact positively or negatively on the decision to invest in it or in that part of the country. We are managing such sensitive issues and have to assess the impact of any change to legislation—be it to stamp duty land tax, building standards or whatever—on our plc members. After all, the last thing we want is for them to determine that their money would be better invested in other parts of the UK and to withdraw funding and support. That would not only impact on housing output, which is already contributing to the housing crisis, but have knock-on effects such as job losses, loss of subcontract work and so on.

Michael McMahon: That was helpful.

The Convener: I thank colleagues for their questions.

On that last point, can you give us a rough idea of the difference in cost between building a two-bedroom house in Scotland and building one in, for example, London?

Philip Hogg: I cannot quote those figures offhand.

The Convener: What will the margins be given the cost of land, labour and whatever in London? Surely the most significant factors will be demand and the ability of banks to lend to prospective buyers.

Philip Hogg: Costs will be higher, but so will the respective selling prices. The margins are certainly important. In the past two or three years, some national home builders have—rightly or wrongly—withdrawn from activity in Scotland and have decided instead to concentrate their efforts on the south-east, where the market is somewhat more insulated and, indeed, is completely different in that it is directed more towards foreign investors and other forms of available cash.

The Convener: Thank you for that.

Finally, Mr Melhuish talked about very high value commercial transactions and quoted a figure of £50 million. Can you give us a ballpark figure for what you would define as a very high value commercial transaction?

David Melhuish: The number of such transactions has very much fallen, but I think that at the moment a figure of £10 million and upwards would differentiate that kind of transaction significantly from high-value residential transactions, which for taxation purposes would be around £1.5 million to £2 million; I believe, for example, that a £2 million transaction triggers the 7 per cent tax rate. Although there are far fewer commercial transactions, they tend to be of much higher value with regard to investment sales.

The Convener: With regard to the graph in your submission that shows the value of Scottish commercial property sales—which I understand you took from the Registers of Scotland, so you might simply be presenting it as it was presented to you—the quarter-to-quarter presentation of the figures makes it look as if the situation is much more unstable than it turns out to be if you compare the same quarter in different years. Although there has been roughly a 24 per cent reduction in sales over the piece, a comparison between quarter 3 in 2011 and quarter 3 in 2012 shows virtually no difference whatever. Would it not be better to present such figures on an annualised rather than quarterly basis to get a clearer picture of what is actually happening?

David Melhuish: Certainly. I can tell you that the situation has stabilised. Before the crash, there would have been about £6 billion-worth of transactions whereas the figure now is a quarter of that, at about £1.2 billion.

The Convener: It would be interesting to see annualised figures.

David Melhuish: We can send them along.

The Convener: As I have said, I think that they would give the committee a much clearer picture.

I thank the witnesses for their evidence, which will very much help our deliberations. You were scheduled to give evidence for 90 minutes; you have been here for 92, so we have kept within our time. I also thank you for allowing us to start early.

I call a five-minute suspension to give colleagues a natural break.

11:22

Meeting suspended.
The Convener: Item 2 is oral evidence as part of our scrutiny of the Land and Buildings Transaction Tax (Scotland) Bill at stage 1. I welcome to the meeting David Marshall, from the Edinburgh Solicitors Property Centre; Kennedy Foster, from the Council of Mortgage Lenders; and Richard Blake, from Scottish Land & Estates.

There are no opening statements, so we will go straight to questions. I will ask the first couple of questions before opening it out to committee members.

Paragraph 6 of the submission from the Council of Mortgage Lenders states:

"An issue which might be worth considering is that the lower number of high value transactions in Scotland compared with elsewhere in the UK may result in a greater number of winners and losers from the introduction of a progressive system if its aim was revenue neutrality".

Will you expand on that?

Kennedy Foster (Council of Mortgage Lenders): We did a lot of research, which is now 10 years old. In the United Kingdom, 75 per cent of stamp duty land tax was raised in London and the south not only because of the number of transactions, but because of the number of high-value transactions.

I spoke to David Marshall before the meeting. I am aware that the ESPC has done some research looking at the Scottish land register, and there is not the same number of high-value transactions in Scotland. If, as I understand it, the proposal is that the settlement from Westminster will be reduced by the corresponding amount of stamp duty land tax collected in Scotland, and if the Scottish Government wants to maintain revenue neutrality, it will have less flexibility in setting tax rates than it might have had were there a lot of high-value transactions.

The Convener: Should the Scottish Government pursue revenue neutrality?

Kennedy Foster: I have no view on that at all.

The Convener: That is fine.

Mr Marshall, the ESPC has given figures suggesting that most people would pay less tax or that the proposal would be revenue neutral. However, you express concern that people in your area of Edinburgh, Lothians, and Fife "will pay more under the new regime as house prices in this region are higher than the Scottish average."
You go on to say that there is not much scope for localised taxation levels because that would run counter to the objective of having a simple and easily understood system.

Is that not the case at present?

David Marshall (Edinburgh Solicitors Property Centre): Yes. We accept the fact that the proposals would lead to people in any area in which average house prices are above the national average paying a higher rate of tax.

Our main concern, I suppose, is the rate at which the tax increases with selling price. If that gradient is too steep, that may make it more difficult for people to move up and down the property ladder. We are certainly fully supportive of land and buildings transaction tax being a progressive tax, but the rate at which it increases with the selling price is our main area of concern.

The Convener: Obviously, you have concerns that particular areas of Scotland should not be disproportionately affected by the new tax.

David Marshall: As I said, it would not be practical to have regional variations in LBTT. That would lead to greater complexity and require constant revisions so, although it might be a nice idea in theory, it would be terribly difficult to put into practice. However, there certainly needs to be awareness of the make-up of regional markets when setting the new rates to ensure that there are no unforeseen consequences on regional markets.

The Convener: Of course, the Edinburgh region is more prosperous than the Scottish average, so that is one reason why that situation might arise.

David Marshall: Absolutely. As I said, we are fully supportive of LBTT being a progressive tax. There is a disparity in house prices between Edinburgh and Lothians and the national average, but that needs to be seen in the context of the disparity in incomes—whether mean or median—given that the differential in house prices is usually greater than the differential in incomes. Those higher house prices are not always matched by people being more cash rich or having higher incomes. We need some awareness of that to ensure that there are no blockages in the market. As I said, anything that prevents people from moving up and down the ladder will have a negative impact on the market as a whole.

The Convener: However, the progressive nature of LBTT should ease that, particularly for the cliff edge around £250,000.

David Marshall: Yes, we fully support the move away from the slab structure of stamp duty land tax. As I was saying to Kennedy Foster before the meeting began, I fail to see any rational argument for the situation in which a change in £1 in selling price instigates an increase of £5,000 of tax. There is no rational argument for that whatsoever. We are very much in favour of the move away from that, but we need to be careful about the rate of increase to ensure that, for example, the tax paid by someone on a property at £250,000 is not massively less than the tax paid on a property at £350,000 or suchlike. Where large disparities exist, they can create inequalities in the market. That is our only real concern.

The Convener: The Scottish Land & Estates submission expresses some concerns about the taxation of sub-sales, in particular the potential for double taxation. Mr Blake, will you perhaps expand on that for the committee?

Richard Blake (Scottish Land & Estates): To understand where we are coming from, it is worth just rehearsing what might happen in a fairly major purchase. Where a buyer sees attractions in a farm or estate or chunk of land—or any other business in the countryside—that is on the market, the buyer will submit an offer on the closing date and then use the period between the offer being accepted and completion of the sale to sort out how to finance it. Some finance might already be in place, but there may be a need to look at sub-sales to produce more of the finance. Our concern is that the Parliament should look very closely at whether the Government’s policy objective should be to do away with all sub-sale relief, as seems to be the case in the bill.

We are fully aware that there is scope for abuse of sub-sale relief, in that blocks of land that have been purchased and for which the missives have not been completed may be sold on, possibly for profit. As far as I understand it, that scope for abuse is one of the concerns of the bill team, but I do not think that a broad-brush approach to stamping out a potential abuse of sub-sale relief should necessarily block consideration of whether a properly targeted sub-sale relief should be provided for properly constructed transactions in which there is no attempt at tax avoidance.

The Convener: You are worried about the baby being thrown out with the bath water, so to speak. How might the Scottish Government amend the bill if necessary to ensure that we reach the objective of eliminating avoidance while not having that effect?

Richard Blake: I have not looked at the technical detail of this, but I suppose that the Government could look at making provision that, where no profit is made on a sub-sale, some sort of sub-sale relief is available. That would ensure that there was no double taxation.

I am not sure whether your question was also referring to the point that we made about
nominees. Would you like me to comment on that issue, which to a certain extent comes from the same angle?

The Convener: Yes, indeed.

Richard Blake: When someone wants to invest in a major business opportunity—in rural Scotland, or in the centre of Glasgow or wherever—the ownership of the property may need to be structured among various different companies or different parts of the business. For a title that is being sold by person A, part of the title may be taken by B Ltd and part of the title may be taken by C Ltd, both of which might be part of the same organisation. There is a real concern that, if the Government’s policy wish is that sub-sale relief should not be available and that it should also catch nominees, that might take away a lot of the flexibility for potential purchasers in deciding how to finance a potential project or which pocket of their business to put it in. I reiterate that I am talking about an effect not only on rural purchases but on corporate or commercial purchases.

The Convener: Colleagues round the table will no doubt want to ask further questions on that, so I shall move to questions from committee members.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): Mr Foster has already referred to the research that was undertaken for the Council of Mortgage Lenders Scotland about 10 years ago. The CML briefing paper helpfully sets out some of its findings. What was the impetus and methodology for that research?

Kennedy Foster: The research was carried out by University of Reading academics on behalf of the CML in 2003, when the marketplace was probably quite different. However, they looked at the impact of stamp duty on the first-time buyer market, the distribution of stamp duty and its impact throughout the UK. They proposed a number of alternatives to stamp duty land tax as it existed at that time. I shared that research with the Scottish Government officials when they were looking at bringing forward the bill.

Jamie Hepburn: Given that you shared the research with the Government, presumably you think that it still has relevance, even though you concede that the market is different now from what it was 10 years ago.

Kennedy Foster: The research certainly still has relevance and we have referred to it in our submissions on the UK Government’s budget over the past 10 years. We have constantly called for the UK Government to move away from the slab system to a more progressive system.

Jamie Hepburn: Did I pick you up correctly as saying that the research was UK wide?

Kennedy Foster: Yes. I should make it absolutely clear that the research was UK wide, so it is not just about Scotland.

Jamie Hepburn: I am not sure that we have that research. It might be useful for the committee to have a copy of it.

Kennedy Foster: I can certainly send it on to the clerk.

Jamie Hepburn: Your submission expresses concerns about the collection of the tax. You say that online collection is a good idea in principle, “but given the issues which there have been with the Automated Registration to Title to Land system in Scotland (ARTL) it is important that lessons are learnt from that project.” I freely concede that I am not aware of the details of that project. What lessons need to be learned from it?

Kennedy Foster: Registers of Scotland moved to a system called automated registration of title to land, which was one of a number of Government information technology projects that came in for criticism in an Audit Scotland review. I do not personally use the system day in and day out, but we in the lending industry place quite a lot of store on that system, which involved a move to deeds being held electronically with electronic signatures. At the end of the day, lenders would not have to store title deeds and so on, and the system had various security advantages. However, solicitors have found the system slow and difficult to use. They say that registering deeds the old paper-based way is still their preferred method.

My understanding is that it is proposed that that system be replaced. Registers of Scotland has changed its IT methodology; it used to have a contract with British Telecom, but I believe that IT has been taken in house. The committee will take evidence from the keeper at some stage, so it may be worth asking her about that.

The intention, over a period, is to replace the automated registration of title to land system with a new system. However, that system will also deal with the new tax when it comes into play. The concern is that IT projects are delivered. From personal experience in the banking industry, I know that they are notoriously difficult to deliver.

09:45

Jamie Hepburn: Indeed. We have seen that in the public sector, too. Thank you. That is helpful.

I turn to Mr Blake. The convener raised the issue of your concerns about possible double taxation on a land transaction. If I followed you correctly, I think that you were explaining that to finance a purchase, a purchaser may sometimes
sub-sell, or sell parts of the property. I can understand B purchasing land from A and sub-selling part of it to C, but what I cannot understand is B selling the whole property to C. What is the rationale for that type of transaction? Presumably it does not finance the purchase for B, because C will own the whole job lot.

Richard Blake: I cannot tell you the rationale for that, but it happens. It could be a change of mind or circumstances, or the unavailability of finance from banks.

Jamie Hepburn: It is useful to know that we do not have a compelling rationale for that. We need to explore that further.

Richard Blake: I return to a point that Kennedy Foster made. The issue is not in our submission, and I hope that I am introducing it at the right time. We are concerned that where VAT is charged on rent on a taxable transaction, stamp duty, or son of stamp duty—land and buildings transaction tax—would be charged on the VAT element as well as the rent, which is another example of double taxation that might need to be watched. That happens at the moment with stamp duty land tax, and it is a concern to us as an organisation and to professionals when they are dealing not just with a rural lease but with any sort of purchase or rent in which there is a VAT element.

Jamie Hepburn: Are you saying that if that is followed through for LBTTT—I might have used one too many Ts there—it would be consistent with the current form of taxation? It would not be a change, but your point is that it would be a long-standing concern.

Richard Blake: It would not be a change but the Parliament might like to consider that sort of double taxation, or tax on tax. It is rather like tax on fuel duty at the pumps.

Jamie Hepburn: I am sure that we can explore that further.

Mr Marshall’s submission helpfully gives us two sample scenarios for the introduction of a progressive taxation system. In the first, just under 40 per cent of buyers would pay less tax and in the second just over 50 per cent would pay less. I think you said that although few people would pay more, those who pay more would be more “negatively impacted”—I presume by that you mean that they would pay more—than those in the first scenario. Which is your preferred scenario?

David Marshall: I reiterate what I said previously. Our main concern is simply that the rate of increase in taxation should not be too steep. The two illustrative examples that were provided were not entirely unreasonable. There was a slight concern for us about the level of taxation that would be paid at around the £350,000 to £400,000 mark, because there would be a significant increase in taxation at that level, which could have an impact on a significant number of transactions for family homes in and around Edinburgh.

If members look at the first illustrative example, instead of introducing stamp duty at £180,000, possibly our preference would be to introduce it at a low level—it could still be for properties that sell for more than £125,000—which could allow a slightly lower level of taxation on family homes that sell at around the £350,000 to £400,000 mark.

Jamie Hepburn: To be fair, you discounted the prospect of localised taxation—


Jamie Hepburn: However, you posited the possibility, so I will ask my question anyway. You said that there should be awareness of local markets in the system. However, we have received evidence that there is concern about market distortion. Could it be argued that local taxation would lead to market distortion?

David Marshall: As I said, we would in no way advocate regional taxation, which raises three issues. One relates to the complexity of the system and the difficulties in communicating that to potential buyers. The second issue is precisely what you said—the system could lead to distortions between neighbouring markets. The third concern is that constant revision would be required. For example, if house prices in Glasgow rose relative to those in another area of the country, revision would be required. Localised taxation would not be practical.

Jamie Hepburn: What are the other two witnesses’ perspectives on the idea of localising the tax?

Kennedy Foster: Defining a region would be difficult. The housing market is regionally based—the likes of Aberdeen and Edinburgh are prosperous areas, but other areas, such as parts of Ayrshire, are not as strong. Some areas of a region have isolated pockets that are different. I stay in Kilmacolm, which is in Inverclyde. Kilmacolm is quite a prosperous village, whereas other bits of Greenock and so on are not as prosperous. Defining a regional market would be extremely difficult.

Richard Blake: Such a system would be difficult to define and administer, and it would cause all sorts of problems for professionals who were trying to get their heads round it daily. The switch from stamp duty land tax to LBTT will be difficult enough for professionals to understand. We need to keep the system as simple and straightforward as possible, to make revenue collection work, as well as anything else.
Jamie Hepburn: My final question is for Mr Marshall, whose submission makes the interesting point that,

"whilst acknowledging that one of the aims of a progressive system of taxation is to place a greater burden upon those who have the broadest shoulders, it is worth pointing out that households buying a home worth £400,000 aren't necessarily rich."

What do you mean?

David Marshall: As I said, almost one in five transactions for three-bedroom and four-bedroom properties in the capital is at such a level. I made the point that higher house prices in an area are not necessarily reflected in higher incomes—the value of someone's property might have increased and they might be looking to move up the ladder.

Our greater concern is that anything that has an impact on one area of the market will have a knock-on effect elsewhere. If the increase in tax was a little too steep, it could have a negative impact on other areas.

Jamie Hepburn: I did not ask about that; I asked what your definition of "rich" is. Do you have any form of statistical analysis that shows the average income of a family who buy a home that is worth £400,000 or more?

David Marshall: As I said, one in five three-bedroom and four-bedroom properties in the capital is sold at such a level. That is not simply at the very upper end of the market; it covers 18 per cent of transactions for three-bedroom and four-bedroom properties. We are not simply talking about the very wealthy—a number of families would be affected.

Jamie Hepburn: The statistic that you refer to—one in five three-bedroom and four-bedroom properties—is specific. What is the figure among transactions overall?

David Marshall: The percentage among overall transactions is much lower but, in most cases, we could not expect a family to live in a one-bedroom flat.

Jamie Hepburn: I am on the Welfare Reform Committee, so I think that the UK Government might disagree. That point might not be for now, convener; I think that I have explored the point as far as I can.

Richard Blake: I have a point to make on the values that have just been discussed. I understand that the questions that have been asked so far are about residential purchases, but one of the planks of the Scottish Government’s rural policy is to encourage new entrants into farming, and everyone is aware that the cost of agricultural land in Scotland is an additional burden on new entrants who are not necessarily "rich". They are trying to get their foot on the ladder when they borrow to fund the purchase of a small farm. With agricultural values at between £3,000 and £8,000 an acre, those people who do not have an awful lot of surplus cash will soon be into the higher rates of LBTT. Looking at the rural side as well as the residential might help to inform the committee.

Michael McMahon (Uddingston and Bellshill) (Lab): I will direct my question initially to Mr Foster, but I welcome answers from the other witnesses. Mr Foster raised the issue of the proposed exemptions within the bill. At previous committee meetings, witnesses have said that we have a clean slate and a unique opportunity to devise a new piece of taxation legislation. Accepting the current exemptions might therefore mean that we miss a trick. Are you aware of any other exemptions that you might want to be discussed with the Government? As your submission says, further exemptions would have to be considered in regulations or subordinate legislation. We are talking about a fresh bill, so could we consider any such exemptions at the appropriate time?

Kennedy Foster: I cannot think of any other exemptions. I know that there has been some discussion around energy efficiency, which is quite an interesting concept, but I cannot think of anything else.

David Marshall: I echo what Richard Blake said previously, which was that the transition from stamp duty to LBTT should be kept as simple as possible. Unless there is a particularly compelling reason for exemptions to be removed or added, as much as possible they should stay in line with the current exemptions.

Richard Blake: There are two points that I could usefully make. They are not included in our submission on the bill, but they were in our response back in August to the Government consultation on the proposals.

I echo Kennedy Foster’s point. We would support any intention to continue the relief for zero-carbon homes. We would welcome that, and many of our members are encouraging and trying to develop that in the countryside.

In our consultation response, we suggested that, to follow the Scottish Government’s stated priority of a vibrant agricultural tenancy sector, consideration should be given to exempting agricultural leases from LBTT to encourage new entrants.

Michael McMahon: We might pursue that at a later date.

Mr Foster mentioned energy efficiency. It might have surprised a number of us to hear evidence from previous witnesses that energy efficiency is not necessarily an important factor when it comes
to the purchase of homes. Location, number of rooms, and facilities are much higher priorities. Energy efficiency does not feature very highly in the priorities of people who are looking to purchase a home. Would we be encouraging, or raising awareness of, energy efficiency if we were to pursue something along those lines?

Kennedy Foster: The Scottish Government consulted last year on its energy efficiency strategy and, as I understand it, it will make proposals sometime this year about energy efficiency.

The housing market faces a huge challenge if the carbon reduction targets are to be achieved. Most of that will lie with existing housing as opposed to new build. Obviously, there are building regulations that require more energy efficient homes to be built. The issue is how the Government will achieve its targets through improvement in what is basically the second-hand market. There is a proposal for a new energy efficiency standard for social housing. However, the question is how to achieve energy efficiency in the owner-occupied and private rented sectors.

10:00

I said in my response to the Government that there might be areas in which compulsion could be required, and areas in which a carrot could be offered to either the private rented sector or the owner-occupied sector to improve energy efficiency. LBTT is one way of doing that, and council tax reduction is another. People always use the analogy of vehicle excise duty, whereby the lower the emissions from a car, the lower the duty that is paid. However, that is a policy issue that needs to be considered in the light of what the Government proposes on energy efficiency later this year.

Michael McMahon: That is fine. Thanks.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Some of the figures from the ESPC on winners and losers were very interesting for options 1 and 2. I think that you said that you prefer option 2—to be more correct, it is option B. Do the other witnesses have a view on that? In addition, do we have any figures for the whole of Scotland, since you all keep telling us that Edinburgh is different? I should remind the committee, though, that Edinburgh has the fifth-lowest rate of owner occupation in the 32 local authorities in Scotland, which I think most people in Scotland forget.

David Marshall: Our figures cover Edinburgh, the Lothians and all of Fife, so the figures provided in the paper are not simply focused on the Edinburgh market. Unfortunately, I do not have figures for the whole of Scotland, but it would certainly not be a difficult analysis to look at sales in the Registers of Scotland over the past one or two years and identify what the impact would be across the board. Intuitively, given that the average selling price across east central Scotland is higher than that across Scotland as a whole, I anticipate that there would be more winners, as it were, because more people would pay less in Scotland as a whole, than in the area that our paper covers.

Malcolm Chisholm: Do others have a view on the options, or any information?

Kennedy Foster: No. It is not something that I have studied in detail.

Malcolm Chisholm: I was going to ask about sub-sales, but I think that that was substantially dealt with by the convener. However, I repeat that the uppermost question is how we prevent abuse while protecting Scotland’s competitive market.

I have a more specific question for Scottish Land & Estates. You suggest in your submission that in a transaction

"conveyances to nominees of a purchaser are treated as conveyances to the purchaser and ... not ... sub-sales."

I think that such conveyances are treated as sub-sales under the current system. Given that transparency in the process to avoid tax avoidance is such an issue, what suggestions do you have with regard to the role of revenue Scotland in accounting for all parties in a transaction?

Richard Blake: Nominee purchases are fine at the moment and are not excluded from stamp duty land tax, so there would just be a continuation of the existing system. I have no particular proposals. All we wanted to do was to ensure that sense and practice dictate that the nominee should be treated as the purchaser, as long as there is no abuse.

Malcolm Chisholm: Okay. I have a question for the Council of Mortgage Lenders that relates to the current system. You state in section 10 of your submission that you

"believe that the principle of payment of SDLT before registration of the deed ... is a well-established one."

I was not aware of that and a lot of people have been saying that there might be problems with requiring payment at the same time as registration. You go on to suggest that there could be a problem. You suggest that

"the system of advance notices to be introduced through the provisions of the Land Registration, etc. (Scotland) Act 2012 ... be enacted before LBTT comes into force."

Will you give us a bit more detail on and explain those issues?

Kennedy Foster: I am not an expert in commercial property, but it is my understanding
that there is a difference in the payment of stamp duty land tax in the commercial sector. In the residential sector, it is a well-established principle that, usually, when the solicitor is doing the conveyancing and collecting the purchase price ready for settlement, they also collect the stamp duty and send it off to the keeper at the same time as they send off the deeds for registration. In fact, I am old enough to remember, from when I did conveyancing, that at one stage you used to have to take the deeds round to the stamp office and have them physically stamped before you could pass them to the keeper for registration. That is a well-established principle.

My slight concern, and the reason why I mentioned the system of advance notices that is provided for in the Land Registration etc (Scotland) Act 2012, is that, if there are any delays in registration around the payment of the stamp duty land tax, the position of lenders would be protected by an advance notice, which gives a period—I think that the legislation proposes two months—in which the purchaser has priority. There is a race to the register and the deed that gets there first is the one that is registered first. The system of advance notices is really to protect the position of lenders during an interim period. It is important that that provision is enacted, and I think that the intention is that it will be enacted before the LBTT comes into place.

**John Mason (Glasgow Shettleston) (SNP):** I will start with Mr Foster's submission. We have touched on exemptions. You were asked whether you want more exemptions, but I want to ask whether we should keep those that we have in the bill. For example, there is to be an exemption when no money changes hands or when somebody dies. There is also an exemption for the Crown, which would mean that the UK Government could buy and sell property in Scotland and we would lose out on the tax. Are those three exemptions justified or could we remove them?

**Kennedy Foster:** I would not like to comment on the last one. Of the others, one was in the case of death, and what was the other one?

**John Mason:** It is when the property is a gift, in effect.

**Kennedy Foster:** Those are well-established principles. As we said earlier, we should not change them unless there are good policy reasons for wanting to change them. The move to the new taxation system will certainly be a lot more straightforward if we continue with existing exemptions. Those are well-established exemptions. Obviously, other taxes are payable on the likes of death and so on.

**John Mason:** The exemptions are well established and the result is that rich families stay rich and poorer families stay poor. If we were interested in the redistribution of wealth, would there not be logic in removing those exemptions?

**Kennedy Foster:** That is a policy matter for politicians. I do not want to comment on it.

**John Mason:** We have talked about the possibility of relief for zero-carbon homes, but I understand that there have been very few instances of that. However, if the standard of homes keeps increasing, as we hope will happen, is there a risk that the tax take will fall and fall because there will be a lot of exemptions?

**Kennedy Foster:** Obviously, we need to get to a certain place to achieve the targets, and the tax can be used as an incentive to help us get there. Would we want to use it for all time coming? I suspect that the answer is no.

**John Mason:** So we would have to keep revising it, which could be complex.

**Kennedy Foster:** Yes, it could be.

**John Mason:** If no one else wants to comment on that, I will move on to Mr Blake’s paper. I have been trying to get my head round the comments in appendix 1 about persons B, A and C and all the rest of it. The example starts off with:

“B purchases land from A”.

Then B sub-sells part or all of the land to C. Right down toward the end, the second last bullet point says:

“This results in double taxation on that part of the land not purchased by B”.

I cannot quite understand that, because I thought that B had purchased all the land.

**Richard Blake:** B purchases all the land, then sub-sells on to C. The concern there is that there might be two lots of tax payable on the land that was originally bought by B.

**John Mason:** Right, so B buys the land and then sells part of it to C. In other words, the land is purchased by B, but it is not kept by B.

**Richard Blake:** Correct.

**John Mason:** Okay, I am with you.

**Richard Blake:** The title would go from A to C, missing out B. There would not be a conveyance from A to B for that bit of the land that had been sub-sold. There would be a conveyance from A to B of anything that B kept and a conveyance from A to C of anything that B sold on. The question is whether there should be a double tax hit on any of that land.

**John Mason:** Okay.
I think that it was Mr Hepburn who asked you about selling on the whole amount, for which there might be various reasons. Is it your contention that if the two transactions are distinct, it is okay to tax them both but, if they are in effect one transaction, they should not both be taxed?

Richard Blake: If only one amount of money passes between the parties, there must be an argument that only that should be taxed. If A sells to B or C for a cumulo price of £1 million and gets no more than £1 million, and B does not make a profit in the middle, is there a valid argument for there to be a second bite of tax on any part of that sale?

I will give a worked example that I was involved in in Perthshire. I was instructed to offer for a small farm that an estate was selling. I think that my client was a tenant of a farm that was fairly adjacent to part of the farm that was on the market. He did not have the wherewithal to pay the whole price for all the land, so he did a deal with two neighbours who were also farmers and whose land adjoined parts of the farm that was being sold. After he had concluded missives with the estate, he agreed with the other two parties that he would keep the first section, the second farmer would get the middle section and the third farmer would get the other section, so that they lay into the respective farms.

The estate got only the price that was agreed in the missives to start with, whatever that might have been. My client put his percentage of the cumulo price into the pot, as did the other two farmers. No one made a profit; it was just a sensible way to break up a farming unit to make the other units more manageable and affordable.

The Convener: Jamie Hepburn has a supplementary; I will let John Mason continue afterwards.

Jamie Hepburn: In the circumstances that you have just described, how could it be argued that there were two sales? Surely there was just one sale; it just so happened that multiple parties were involved in the purchase.

Richard Blake: No, I think that, in law—I hope that I am not wrong, given that I have been in practice for long enough—the conclusion of the missives, which was when A concluded a contract to buy from the estate, was the date of sale. There were subsequent missives between A, who bought from the estate, and B and C, but it was only one bit of land that changed hands. It can be argued that there was a main sale and sub-sales underneath it.

Jamie Hepburn: But, in that case, there was no additional selling. Is there a misunderstanding of what we mean by “sub-sell”? Would it be accurate to describe the process that you have set out as sub-selling, even though there was no sale?

Richard Blake: Correct. That is what we are concerned that the bill is targeting, possibly through policy or possibly not through policy. We feel that there is an issue there that needs to be looked at.

Jamie Hepburn: It might be the terminology that is at issue.

Richard Blake: Possibly, but I think that the Government needs to be asked whether its policy is to do away with every sub-sale relief, or whether it is simply trying to target sub-sale relief where there are potential abuses and profits to be made.

Jamie Hepburn: So we should ask the Government whether it is looking to target sales when there is a cash transaction and people make money, as opposed to the circumstances that you have just described.

Kennedy Foster: I suspect that, in the example that Richard Blake gave, three sets of missives were concluded for the sale and three separate dispositions of the property took place.

10:15

Richard Blake: In that case, there was one set of missives between the estate and A and there were two other sets of missives. Kennedy Foster is right—there were three separate conveyances of the three separate bits of land, so each person would have had to pay stamp duty under the present system.

Jamie Hepburn: This is the first time that I have been simultaneously more confused and more clear about a matter.

Richard Blake: I do not blame you—it is not an easy question.

The Convener: The deputy convener and I were just saying that the issue would have been easier to understand if Richard Blake’s submission had contained such an example, instead of saying that A goes to B, which goes to C and whatever.

John Mason: I appreciate Richard Blake’s explanation—I think that the convener is trying to say that what you said was clearer, so that was helpful.

You have mentioned moving title between groups of companies, but that would be covered by the separate group relief, would it not?

Richard Blake: That would be the case if a company was buying but not if an individual was doing so.

John Mason: I see what you mean—there would be no group.
Richard Blake: I am no expert in company law but if somebody from any part of Scotland or outwith Scotland wants as an individual to buy a chunk of land, a building project or whatever it might be, he concludes missives for himself, so he does not have a company with which other companies can be part of a group. If he then sets up different structures in an organisation to hold parts of the title in different ownerships—whether that is for tax reasons or whatever—I do not think that group relief will cover that.

John Mason: That is a wee bit at the edge of my knowledge as well—

Richard Blake: Just marginally.

John Mason: We will leave that one.

Another question is whether the tax should be levied on the gross amount, including VAT, or on the net amount, net of VAT. Does that make a difference? If the amount is £1 million plus VAT—that is £1.2 million—and 5 per cent is added to that, or if 6 per cent is added to the net amount of £1 million, we end up with the same answer. The public purse needs to get the money. If the amount included VAT, the rate would be lower, and if it excluded VAT, the rate would be higher. Is that not the case?

Richard Blake: I have no comment to make on that. Whether a tax is taxed is a policy point.

John Mason: Would you prefer 6 per cent on the net amount to 5 per cent on the gross amount, or would you just prefer 5 per cent on everything?

Richard Blake: We must bear it in mind that not every transaction at £1 million will have VAT on top. If somebody buys a property that does not have VAT on it—because no election into the VAT regime has taken place, for example—that person will pay less in land and buildings transaction tax than a person who buys a property that has VAT on it. I suspect that that is a slight anomaly.

John Mason: That would be a wee bit of unfairness.

Richard Blake: I appreciate that that would be marginal. However, in 20 years’ time, the 5 or 6 per cent could be 15 or 16 per cent—who knows?

John Mason: The argument has been made that, if people from outside the country who are looking to invest see one rate in the UK and another rate in Scotland, they might not look below the surface—they might look just at the rates. If we had to have a higher rate because it was based on the net amount, would that put people off or would they understand that?

Richard Blake: I do not think that people would necessarily understand the LBTT—it would be difficult for anybody to understand. I hear where you are coming from, but whether just following the existing stamp duty land tax arrangements is correct is a policy decision for the Government.

John Mason: We have two papers from Mr Marshall and I am not entirely sure of the differences between them. Am I correct in thinking that some figures have been changed?

David Marshall: Amendments were made to lower some figures in option B in the appendix. I apologise to the committee for that error, which I identified yesterday.

John Mason: That is okay—I asked just because I have not had time to go through the submissions line by line.

David Marshall: I sincerely apologise for the error.

John Mason: I see a difference in paragraph 12. Do you know whether that is the only different paragraph?

David Marshall: The difference is just in the final section, in the numbers on the different amounts that would be paid at various levels. Under option B now, more people would benefit, fewer people would lose out and the taxation differential would be lower. I apologise again for that.

John Mason: That is okay—just as long as we are clear about it.

Mr Hepburn asked about the definition of “rich”, so I will not return to that. You talked in your submission about setting the rate, and in paragraph 17 you commented that the banding will be introduced in April 2015. It has been suggested to us that it would be good to know that as far ahead as possible. Do the witnesses share that view?

David Marshall: Our view is that expediency will be most important between the point at which a decision is made and communicated to the public and implementation. As much time as necessary should be taken to set the right levels of taxation, but once the decision has been communicated to the public we will want to move as swiftly as possible to implementation. If that does not happen, there is the potential for scenarios in which some people realise that they can benefit by bringing a transaction forward and others realise that they can save money by delaying a transaction until after implementation, so there could be short-term disruption. That is the main area in which timeliness is an issue.

John Mason: Thank you. If I picked you up correctly, you said that you would like some of the higher rates to be reduced and some of the lower rates to be increased or introduced at a lower level. Is that your view? The effect would be to
make people who are less well off pay more tax and to make better-off people pay less tax.

David Marshall: I should clarify that. Option A considers the suggestion that we raise the lower threshold for stamp duty from the current £125,000 to £180,000. In our experience, the stamp duty holiday, which was in place until last year, did not have a significant impact on the number of transactions in the market. A very low rate of taxation at the lower end of the market might allow for a slightly lower rate of taxation at the upper end, but we would certainly still want a higher rate at the higher end of the market—that goes without saying.

John Mason: You said in your submission that the proposed approach would place “a significant financial burden on families in the Edinburgh area.”

However, I presume that an effect might be that some of the prices at the top would come down a little. That would be a good thing for buyers.

David Marshall: Yes, potentially, if we take the view that people simply have a pot of money to spend on a house, to cover house price, tax and so on. However, in the short term the proposed approach might mean that people needed to raise additional finance to move up the ladder, so there might be short-term disruption in that regard.

Gavin Brown (Lothian) (Con): Sub-sale relief has been considered in detail, and the Scottish Government has made it clear that it does not want to mirror the provisions in SDLT, for reasons that I think are understandable. The question is whether there can be targeted sub-sale relief, which exempts genuine commercial transactions while not applying to transactions that are merely tax-avoidance measures. How easy would it be for the Government to define the types of transactions that could be exempted and the types that should not be exempted? Do you have a view on that? If not, can you reflect on the issue, to assist the committee?

Richard Blake: I am happy to take the question back to my little specialist group—two tax lawyers and a tax accountant—for consideration, if that would be of use to the committee. It would be difficult, first, to get the terminology right, and secondly, to police the system—I suspect that that would be the other problem. I guess that one of the arguments for closing down the relief altogether is that doing so makes it easier to police the system.

If you would like us to look at that, I will see whether I can get the group to come up with anything. They hold that work close to their heart because it is a useful professional planning tool for them.

Gavin Brown: That would be helpful. As it stands, there would be no sub-sale relief—that is the position.

Richard Blake: That is my understanding.

Gavin Brown: The Government will almost certainly not just bring in sub-sale relief as a whole, but the door is slightly ajar for some targeted relief, if the case can be made. It has said that it will listen to the conclusions of the committee and stakeholders.

If your members believe that sub-sale relief is a genuinely important economic tool and, if they can convince the committee and the Government that there are certain cases in which it should be allowed, who knows what the Government may do. If your members cannot do that, my suspicion is that sub-sale relief would just be excluded. There would definitely be value in your making the case, if you can. I do not know whether other panellists have views on that.

Kennedy Foster: Sub-sale relief affects more the commercial side as opposed to the residential side.

Richard Blake: That is right. The Law Society of Scotland or the Institute of Chartered Accountants of Scotland would probably be a good place to start to get something that is specifically targeted to their practitioners.

Gavin Brown: The other issue that I wanted to ask about is that has not been covered is non-residential leases. Clearly, that is a complex area. Consultation is on-going and amendments at stage 2 are likely. Most organisations that have given evidence, written or verbal, have basically said that the topic is complex and that they are glad that it will be returned to. Is there anything that the committee ought to be aware of, looking out for or asking about in relation to non-residential leases?

Richard Blake: I will give one or two thoughts on the rural sector. I am not coming from the commercial sector side at all, except when the proposals would impact on rural estate owners.

I brought up an example during the passage of the Long Leases (Scotland) Act 2012 that is possibly worth looking at. There was a major east coast golf course development, with a huge amount of money put in by commercial partners to enable a development under a long lease—which is why we raised the matter under the long leases legislation—that would have been caught by the bill if we had not drawn the matter to the attention of the parliamentary committee at the time.

My understanding from what I recollect about the lease was that no rent was payable for the first X years. Obviously, the golf course has to mature, and time is needed for publicity to get the
Americans and Japanese over to pay £200 a round or whatever it is. The decent rent to the estate did not kick in for a number of years, which is a turnover rent situation. I suspect that the specialist sub-group is looking at how to tackle turnover rent situations in which there is no specific up-front sum at the beginning of the transaction.

Usually, in residential or rural purchases—farms or whatever—there is an amount in the conveyance and the lease that can be targeted with whatever the rates are. However, with such golf course cases, there may be some agricultural and renewables leases. It is critical at the moment to get renewables leases right. Turnover rents will be paid later on, once the energy comes on stream, but how do you get a formula that will be sensible, fair, understandable, workable and policeable?

I know that the sub-group has been working hard on that, and we have been copied into all its paperwork. Although I have not seen the results of the last meeting, I know that it is working on a matrix to pass to the cabinet secretary to give him various options and their consequences. I hope that that will be a clear way for the cabinet secretary and the committee to look at that. Turnover rents will be the key issue.

Gavin Brown: That is helpful—thank you.

10:30
Jean Urquhart (Highlands and Islands) (Ind): It has been interesting listening to the answers, and some of the questions that I had been answered. However, I want to go back to Mr Blake’s example about persons A, B and C. I am sorry, but I have to get the issue right in my head. All the evidence that we have taken has said that the stamp duty land tax is complex and liable to abuse. The sort of scenario that Mr Blake painted is probably an area in which we will be vulnerable to tax evasion, because the more parties that are involved, the more complicated the land deal or sale is. In the normal way of things, when somebody buys a bit of land, the conveyancing is done and there is the return of the new title and so on. Is it not that work that kicks in the stamp duty?

Richard Blake: Yes. That happens in a straightforward purchase and sale, whether it be residential, commercial or rural. The offer is put in and accepted and the missives are concluded, which means that it is absolutely a done deal as far as the purchaser and seller are concerned. Then there is a time in which the due diligence is sorted out and the paperwork signed. Then, at completion, the purchase price is paid, the stamp duty is paid and the deed goes off to Register House for registration and absolute title. There is no difficulty with that at all. However, in the example that I gave earlier, a farm was sold, but it was not of interest to one particular person, because it suited three farmers to expand their businesses, and these days people need bigger farms to get profitability.

Jean Urquhart: That all sounded very practical, but I guess what I am getting at is that it is unlikely that one agent would be working for the farmer and for the successor owners of the land that he bought. I presume that everybody would have their own representation.

Richard Blake: They would have separate lawyers.

Jean Urquhart: I want to know about the practical business of doing that. Who would register, who would hold title and how would it be divvied up? I am obviously missing something, because I cannot quite understand the reason why that would not be seen as a sale on.

Richard Blake: That is absolutely a sub-sale that would be caught. In practical terms, four sets of solicitors would be involved: one acting for the seller, one for the original purchaser who concluded the purchase and other solicitors acting for parties C and D. That is just the way that it works, otherwise there could be conflicts of interest all over the place. The missives would state that the original purchaser, B, was entitled to have the title in his name or in the name of whomever he wanted, which would give him the option to sell on.

I fully understand that if he was selling on for a profit, there would be potential abuse and additional tax would have to be paid. However, in this particular situation, the three dispositions and three conveyances would be prepared and stamp duty would be paid on the individual transactions by the individual solicitors. The seller is not interested in who pays the tax—he just wants his £1 million or whatever it is, and then he is out of the equation. So it would be down to the three other sets of solicitors to ensure that the paperwork is in place. In that situation, the original purchaser B is potentially exposed if he cannot sell on bits to C and D because they cannot get funding, so he is in a potentially vulnerable situation.

To take the issue further, a foreign, or Scottish, purchaser might purchase an estate in Scotland that is made up of farms, houses, cottages and businesses. After they conclude missives to buy at whatever the price is, they might see an opportunity to sell off bits. I can understand that the Scottish Government might have the policy objective of dealing with such asset stripping. There have been lots of cases in Scotland in the past 10 or 15 years in which landed estates have
been bought up by property speculators and then cottages, farms and houses have been sold. That is a sub-sale for profit, which I think is where the difference is between that and my first example.

I do not know whether I have explained the issue sufficiently clearly, but those are two very different examples of what can happen in the countryside.

The Convener: That brings our questions to an end. I thank committee members for their questions and, more important, the witnesses for coming along and giving the answers.

10:35
Meeting suspended.

10:42
On resuming—

The Convener: The committee will continue its oral evidence taking on the bill. I welcome to the meeting David Robb, from the Office of the Scottish Charity Regulator, and Gavin McEwan, from the Charity Law Association. I understand that you have no prepared statements, so we will go straight to questions.

This will be a difficult session for me as convener. Your submissions are two pages and just over two pages long respectively, and it will be difficult for me to hold back and not ask the juicy questions, depriving all six members of the committee of their opportunity. I will try not to do that, and I know that Malcolm Chisholm is keen to ask a question, so he will be first after me. I will just ask a couple of openers so that the committee has a chance to explore the issue in the necessary depth.

Mr McEwan, paragraph 8 of your submission says:

"there is a cost to charities that need to amend their constitutions to satisfy the Scottish registration requirements. There are also ongoing compliance costs, including annual reporting costs."

How much might a one-off cost be to an average charity, and what would be the costs of on-going compliance?

Gavin McEwan (Charity Law Association): It will vary from charity to charity. Typically, the initial costs of compliance with the Scottish charity test and getting on to the Scottish charity register involve a constitutional change. It is usually a simple change to the articles of association of a charitable company, or a change to a trust deed. Those changes might cost a few hundred pounds if the organisation needs legal support and, by themselves, they are quite straightforward. If a charitable company is quite sizeable and has a large number of members, it might be quite difficult logistically to get people together for a general meeting. That can add to the cost of the process of putting through a constitutional change.

If, however, a charity is created as a royal charter body or under an act of Parliament, the process is much more involved. Typically, the charity will either need to obtain consent from the Scottish Parliament, from the Westminster Parliament if the charity is England-based, or from the Privy Council if the charity has been created as a royal charter body. That is a more expensive process and it can typically cost £5,000 or more to make even a simple change to a constitution. It can therefore be quite costly for that type of charity to make what looks like a minor change.

The financial cost of meeting on-going requirements is not great, but there is a commitment to comply with Scottish charity law generally, so there is a bit of a dual burden of regulation to be satisfied, and that requires a bit of extra work and effort on the part of the charity. However, the cost is not substantial. It tends to be front-loaded and in some cases it might be quite small, although it could be higher in other cases.

10:45
The Convener: How many charities are we talking about? You have said in your submissions that the number is small, so how many per year will be affected by the bill?

Gavin McEwan: It is difficult to estimate that. At the moment, I would say that we are talking about dozens, up to about 100 in total, and not many more than that. They would all be within the UK. We are talking about quite a small-scale issue.

A tiny number of charities that were created outside the UK might be affected, but it would be just a handful. We are talking about dozens of charities, possibly up to three figures, but not thousands.

The Convener: Mr Robb, do you concur with those figures?

David Robb (Office of the Scottish Charity Regulator): Yes. We do not have detailed numbers but we are engaging with Her Majesty’s Revenue and Customs to get a better estimate. However, that is our sense of the scale. The number might just touch on the hundreds inside the UK and there might be a tiny handful outside the UK. Gavin McEwan’s estimate of the scale is absolutely right.

The Convener: Mr Robb, OSCR’s submission says:

"The intention of section 14 was to ensure that only charities with ‘significant operations’ in Scotland are required to register with OSCR."
What do you define as “significant operations”?  

**David Robb:** The Charities and Trustee Investment (Scotland) Act 2005 seeks to create a comprehensive register that will give the public confidence that charities that are active on the ground and delivering services in Scotland are registered. However, lots of UK-based charities might seek to raise funds through a television campaign, so people might send money to a charity that is based south of the border. It is quite proper for those charities to refer to themselves as charities even if they do not have significant operations in Scotland. The 2005 act tried to strike a reasonable balance between giving people in Scotland confidence that charities that are active in Scotland are properly entered in the register and recognising that charities from beyond Scotland should still be able to legitimately raise money or make grants in Scotland without having to go through the full registration process.

**The Convener:** Finally, before I open questioning out to the rest of the committee, Mr Robb, your submission says:

“There is a question as to whether bringing such organisations permanently under the full scope of the Scottish charity regulatory regime is a proportionate way of providing assurance that they qualify for what may only be a one-off relief on one transaction.”

Is it?

**David Robb:** In my view, no. I think that there is a simpler fix that is more consistent with the general thrust of the 2005 act. As we have been exploring the issue, this tiny problem has emerged for investment decisions from beyond the UK and, as the bill stands, from elsewhere in the UK. There is probably a better solution to be found than the one that is in the bill.

**The Convener:** I will not continue to explore that because I will be stealing my colleagues’ thunder. Malcolm Chisholm will go first, to be followed by Jamie Hepburn.

**Malcolm Chisholm:** I am interested in the section 14 exception. Has anyone registered voluntarily under section 14?

**David Robb:** To my knowledge, no one has completed the process. We have had occasional inquiries, but it is difficult to know who would seek to register in Scotland if they were not planning to be active in Scotland.

**Malcolm Chisholm:** I was slightly surprised by what you said about that. That process appears to deal with some of the problems that other bodies such as the Wellcome Trust and the Charity Law Association have raised. Where in section 14 of the 2005 act does it say that someone can register on that basis? The heading of section 14 is “Exception for certain bodies not in Register”.

**David Robb:** I am sorry—I will tread carefully in this area, as I am not a legal expert, and I know that these are complex matters. We need to consider the interaction of sections 13 and 14 of the 2005 act. Section 13 is the one that requires charities that are active in Scotland to register. Section 14 permits charities to refer to themselves as charities without being on the register. That deals with the situation that I was describing earlier, where a charity that is based in England is raising funds in Scotland but is not active on the ground here. It is perfectly proper for it to refer to itself as a charity, but it is not required to register.

There has been a bit of confusion in some of the evidence that you have received about whether charities can choose to register. They can if they think that they will meet the Scottish charity test, but it is not clear to me why they would choose to do that. The matter before the committee is that, as the bill stands, in order to qualify for charity relief, a charity would have to register with us. We are not sure that that is the appropriate mechanism. At the moment, there is no stream of charities—not even a trickle—seeking voluntarily to register with us, other than those that plan to be active in Scotland.

**Malcolm Chisholm:** So, in order to get the relief, a charity would have to register voluntarily. There are two questions that arise from that. The matter of cost has been touched on—although your comments on what the cost might be could be interesting. On a more substantive point, in order to register under section 14 of the 2005 act, would a charity still have to meet the Scottish charity test? That could presumably be a problem for some bodies in England or elsewhere.

**David Robb:** It would register under section 13. Section 14 is about a body referring to itself as a charity but not being registered. If a charity voluntary sought to register under section 13, it would still be required to meet the Scottish charity test. The test says that it must have exclusively charitable purposes and must be providing public benefit in Scotland or elsewhere. There are charities that are properly registered in Scotland although their activities are overseas. The public benefit may be provided overseas.

The 2005 act creates the possibility that a charity in Venezuela could apply for registration in Scotland. If it could demonstrate to us that it was providing public benefit in Venezuela and that its constitution was exclusively charitable and met the tests, we could accept it on to the register. Having been accepted, it would then have to follow the rest of the regulation procedure, so it would be required to submit annual returns to us. If it ever came off the register, we would have a continuing interest in its assets. It is for that reason that we do not have a lot of interest from charities beyond...
our shores seeking registration, unless they want to be active in Scotland, in which case registration is the proper route. In our view, to go through the full registration process simply to benefit from the charity tax relief on an investment decision seems a little disproportionate.

Malcolm Chisholm: Are you implying that that bit of the bill needs to be reformed? You presumably still want relief for charities, but you think that the need to register with you perhaps goes too far?

David Robb: Yes. As some of the written submissions that you have received point out, there are easier ways for charities, particularly those south of the border, which account for the large majority of those involved from outwith Scotland, to be identified as bona fide without their entering themselves on to the register for what might be a single transaction.

Malcolm Chisholm: The Wellcome Trust, which was one of the main bodies that raised these concerns, also expressed concern about cases in which a property is purchased jointly by a charity and a non-charity. I believe that such a move does not get relief under the current SDLT system, but the trust argues that, as funding for charitable organisations becomes more competitive and scarce, joint purchasing of resources with non-charitable groups might become increasingly necessary, and it has suggested that, instead of a complete prohibition on relief in such circumstances, a purpose test on properties purchased by charities and private companies be introduced. Is there any merit in that suggestion?

David Robb: I hope that Gavin McEwan has a better grasp of this matter. I have to admit that when I studied that part of the trust's evidence, I found a bit of the bill needs to be reformulated. You presumably still want relief for charities, but you think that the need to register with you perhaps goes too far?

Gavin McEwan: Obviously I cannot speak for the Wellcome Trust, but I should point out that our submission contains a paragraph or two on the same point. On behalf of the Charity Law Association, I would say that, in relation to the Pollen Estate Trustee Company court case that we highlight and which the Wellcome Trust also refers to in its submission, the judge said that it was not clear whether under the SDLT regime there was a deliberate policy either in favour of or against reliefs to charities where there was a range of co-investors but, under the black letter of the law, relief had to be denied.

The association invites the Parliament to consider whether a specific policy on this issue should be introduced just to make things clear. Although I can see why charities that co-invest to purchase a property would like to gain relief on their element of it, I can also see that that does not match the current practice under SDLT. It has to be a policy decision and, as I have said, the association simply invites the Parliament to explore whether a policy decision needs to be made on this matter.

Jamie Hepburn: Paragraph 10 of Mr McEwan's submission says that the Charity Law Association considers “that registration as a charity with HMRC in accordance with the provisions of Schedule 6 Finance Act 2010”—

with which I must confess I am not intimate—

"should be a sufficient requirement for exemption from LBTT."

Given that HMRC will not be responsible for collecting the tax and that the Parliament has no legislative authority and the Government no executive authority over it, might such a move not lead to problems?

Gavin McEwan: I take the point. The suggestion in paragraph 10 was intended to broadly reflect the structure of the current tax relief but, having been fortunate to have read OSCR's submission, I think that its alternative proposal might present a solution to any difficulty around the charity relief test that might well satisfy the association. We would in principle be willing to go along with something along the lines of OSCR's proposal instead of our suggestion in paragraph 10.

Jamie Hepburn: I will indeed explore OSCR's proposal in a moment, but you do recognise that your own suggestion has its limitations.

Gavin McEwan: I can see that.

Jamie Hepburn: The next paragraph says:

"We are also concerned that charities may be unable to benefit from the charity exemption when they co-invest in property in Scotland jointly with other investors."

What is your solution to that?

Gavin McEwan: That relates to what I was talking about a few moments ago. Again, I do not really have a solution. We are not really arguing that there should be such a relief; we are inviting
the Parliament to consider whether there is a definite policy to be made on that point.

11:00

Jamie Hepburn: Would you suggest that there should be relief on the entire transaction?

Gavin McEwan: No, I do not think that that would be fair. If there were to be relief under those circumstances, the policy would have to be that only the elements that related to a charitable purchaser should be relievable, not the entire transaction.

Jamie Hepburn: Otherwise, presumably, it would act as an incentive for every investor to hook a charity.

Gavin McEwan: Absolutely. I completely agree.

Jamie Hepburn: Will the situation not be rather complicated? We have heard a lot of evidence that suggests that the process should be kept as simple as possible. Trying to disaggregate parts of an investment for taxation purposes sounds pretty tricky to me.

Gavin McEwan: I can completely see that. That is why we are stopping short of presenting some kind of solution or even arguing against the idea of refusing relief on those transactions. We are inviting Parliament to make a policy decision.

Jamie Hepburn: What you are saying is that we should be aware of the issue but that there might not be a solution to it.

Gavin McEwan: Precisely.

Jamie Hepburn: What is the purpose of section 14 of the 2005 act? What does it allow a foreign charity to do in Scotland?

David Robb: It allows it to say that it is a charity and it allows that not to be a problem.

Jamie Hepburn: Okay. I kind of got that. Am I right in thinking that it is not allowed to do anything, such as raise funds, have a presence and so on?

David Robb: No, it might collect funds.

Jamie Hepburn: On that basis, I presume that OSCR has a degree of oversight and some responsibility for regulation. You must have to ensure that those charities have a genuine charitable purpose.

David Robb: Concerns are occasionally raised by members of the public about whether a body that is presenting itself as a charity has a legitimate reason to do so. Sometimes, that body will be one that is not on our register but which meets the criteria in section 14. If we find a body representing itself as a charity that does not meet those criteria or which should be on the Scottish register, we have powers to take action.

Section 14 is trying to strike a balance between a comprehensive register that captures all the significant on-the-ground activity in Scotland and a situation in which Scotland will be open to messages from overseas charities.

Jamie Hepburn: So you have the ability to investigate whether those bodies have a genuine charitable purpose and take action if you find that it does not.

David Robb: Yes, but it does not arise very much.

Jamie Hepburn: I appreciate that. We are spending a lot of time on this when we are all aware that the circumstances that we are discussing around LBTT are not going to arise very much. Nonetheless, that is what we are discussing.

Given that what you have said is the case, it does not seem that it would be an overwhelming burden for OSCR to maintain a register of the sort that is proposed in the bill.

David Robb: I do not think that the burden would be large for OSCR. There would be work involved in investigating the circumstances of people applying to join the register—

Jamie Hepburn: But that is the case anyway.

David Robb: Yes, but if the charity is overseas, it can be harder for us to establish the facts of the situation.

Given that the vast majority of applicants for this relief are going to be in the UK, as Gavin McEwan outlined—there will be possibly 100 or so from the UK and a handful from outside the UK—we are not so concerned about the burden on OSCR. The burden will fall on the charities applying to the register.

We believe that there is a risk of the integrity of the register being eroded. At the moment, people are confident that we have a comprehensive register in Scotland. That is not the case in other parts of the UK. Everything on our register meets the charity test and is clearly a recognisable charity in Scotland. If we start accepting non-Scottish charities whose sole reason for application is an investment decision, that starts to dilute the integrity of the register.

David Robb: We would be including charities on the register that do not otherwise have a profile in Scotland and whose only intention in applying to the register would be to benefit from tax relief. Our
register should be there to capture significant charitable activity, so people might see that as an unusual use of it—certainly one that it was not designed for.

Jamie Hepburn: Are we talking about people in the third sector? None of my constituents has ever raised with me concerns about the integrity of OSCR’s register.

David Robb: Our purpose and the regulation’s purpose is to reassure the public. Ultimately, if an overseas charity applied for registration and sought to make significant investment in property, that would introduce a risk that we are not particularly well placed to police.

Jamie Hepburn: I will pose this to both witnesses. There is acceptance that charities further of Scotland should be able to benefit from the exemption. I have not heard anyone say that that should not be the case. The argument is then that, in essence, the Scottish taxpayer would be subsidising a charitable purpose outwith Scotland, so the least that that charity could do is register with the Scottish charity regulator. Does that argument have any merit?

Gavin McEwan: You need to consider whether it is proportionate to grant charity relief dependent on registration. A charity will have to amend its constitution and become subject to the body of Scots charity law simply to gain a tax relief that Parliament wishes it to receive, which we think is disproportionate.

Jamie Hepburn: Would it make sense if there was some form of supplementary register—a separate register that was still held by OSCR? Even in OSCR’s recommendations, someone will have to have responsibility. A burden will fall on someone. You have accepted that that already exists to an extent for OSCR in section 14 of the 2005 act. Someone has to check that a charity is bona fide.

David Robb: There is a lot of merit in the suggestion of some form of supplementary list. I know that the committee has taken evidence to that effect. There is a role for OSCR to be involved in that.

Operationally, OSCR does not administer tax relief. As revenue Scotland gets into its stride, we would expect to have dialogue with it about eligibility, as we now have dialogue with HMRC about some of the issues. At the moment, the question does not arise for the vast majority of transactions, because the charity is based in Scotland and is properly on our register and HMRC can rely on that eligibility. That will continue to be the case.

At the margins, where a charity is not on our register and in our view it is not desirable for it to go through the registration process just to demonstrate eligibility, we get into territory where some sort of supplementary list should be held. Who holds it and who makes the decisions about it is the area that we need to explore.

Jamie Hepburn: That is helpful.

John Mason: As I understand it, a key line in section 14 of the 2005 act concerns whether a charity is occupying property. If it is occupying property—presumably for its office—it is required to register with OSCR, and if it is not occupying property, it does not have to register. Is that correct?

David Robb: Yes.

John Mason: I assume that the Scottish standard to be a charity is higher than it is in other countries.

David Robb: That is very much the case. In many parts of the world there is nothing that we would recognise as a charity regulation system.

John Mason: Although we have also been told that we must treat all EU countries, at least, equally, so we cannot be too discriminatory.

I presume that the risk is that organisations somewhere outside Scotland that, according to our understanding, would not really be charities, might come to Scotland, call themselves charities and get relief. That is why the proposed provision is there. Is that correct?

David Robb: Yes.

John Mason: So, in addition to the costs, which we have had explained to us, there is a risk.

As I understand it, one of OSCR’s guidelines is that charities should not sit on assets but should use them. If a charity just sits on piles of money, which do not go down, questions are asked about that. Should questions not also be asked about a charity—whether Scottish or from overseas—that buys property and just sits on it?

Gavin McEwan: Charities are entitled to invest their assets. Under charity law, charities have a duty to invest assets that they do not immediately need for the purposes of their charitable activities. That means that if a charity has, for example, a large amount of cash that it does not immediately need for its charitable activities, it should invest those funds, which may mean investing them partly in stocks and shares; it may also mean investing them partly in property to have a diversified range of assets. There is a legal duty to invest assets that are not immediately required. From that point of view—I am speaking for OSCR here—OSCR is content for charities to sit on funds
that are legitimate investments and which are not immediately required for charitable activities.

David Robb: I agree entirely with that, but if we saw evidence that that was all that a charity was doing, we would have concerns. The charity test requires the active provision of public benefit. One of the early issues that OSCR had to deal with was that there were many dormant, frozen charities that were providing no active benefit, even though they might have been established for charitable purposes. The Scottish charity test requires charities to actively provide public benefit; an organisation that simply sat on funds, whether invested or not, would not meet the test. A lot of our regulatory activity is focused on charities in relation to which we have a concern that the active provision of public benefit is not demonstrated.

Gavin McEwan is absolutely right, but if investing in property were a charity’s exclusive activity, we would have a concern, because that would not seem to us to meet the test.

John Mason: That will be trickier for you to establish with an overseas or foreign charity. You might not know what activities it is doing.

David Robb: As I said, it is a situation that does not arise very often and one that the 2005 act was not designed to capture. We are worried about being drawn into such activity. I do not foresee us sending teams to Venezuela to check on their activities, but that situation could arise in a tiny number of cases.

John Mason: That deals with charities outside Scotland.

As far as charities within Scotland are concerned, it seems to me that there are two kinds of charities: there are real charities that help people and there are what I would call pretend charities, which used to be part of organisations such as councils but which now provide leisure services, for example. As they have managed to get through the hoops, they are called charities and get relief, but they are not charities in the traditional sense of the word. In fact, some of them have been set up with the sole purpose of avoiding tax, particularly business rates.

Where are we going with what is proposed? Should we just accept that any body that is called a charity should get all the relief because it has satisfied the OSCR test? Is that right?

David Robb: We would describe the situation slightly differently. It is undoubtedly true that there is a great spectrum of activity that correctly passes the charity test. We do not distinguish between charities that are very charitable and those that are only a wee bit charitable. If a charity is on our register, it is there because it meets the charity test, which is the test that the Parliament agreed that we should apply. We do that consistently.

I recognise the situation that you describe. There are lots of organisations about which a man or woman, when stopped in the street and asked, “Does that look like a charity to you?”, would say, “Absolutely,” because it fits with the traditional mould, but among the assets of the third sector are its flexibility and its capacity to innovate. The label “charity” is evolving quite rapidly to respond to different situations. I think that that is a good thing and something that we should value in the third sector. However, it means that we continually need to modernise our understanding of what the “charity” label or brand means. Currently it encompasses a lot of things that surprise people.

The challenge is to ensure that our understanding keeps up with the times. There are tensions in that regard and it is possible that, over time, we will need to have different categories of charity. Currently we have one test, so we do not have a very sophisticated system to address a tremendously diverse sector, which comprises 23,500 charities. In general, diversity is a strength and should be encouraged, but I recognise the situation that you described.

11:15

John Mason: For the purposes of the bill, we need to continue to treat all charities in the same way, but the issue might need to be looked at at another time.

Gavin McEwan: It is important to stress that, as well as existing for a charitable purpose, a charity must provide public benefit. That is part of the charity test, and it is a big part of OSCR’s assessment of charities at the point of creation as well as its on-going regulation of charities. If a charity existed only to secure relief from non-domestic rates, there would be a good argument that it was not providing public benefit. For the charity test to be satisfied, there must be a deliberate attempt to provide public benefit. OSCR actively polices and regulates the issue.

Jean Urquhart: Is setting up charities a big business? For example, could someone in Scotland establish a charity offshore and register and operate a company elsewhere globally—or at least across the United Kingdom and Europe—in which you would not take an interest? Are you aware of loopholes or movements, given the growing number of charitable organisations? Where is the line in the sand beyond which you would be nervous about the future?

Gavin McEwan: I am a full-time charity lawyer, so a lot of charities come across my desk, day in, day out. I see the problems that charities bring to me and I see the concerns that people have about
the sector. I do not see widespread abuse along the lines that you described. I do not see people creating charities offshore to get round tax rules or other regulatory requirements. That is a very rare occurrence indeed—I cannot think of an example of that happening that I have come across.

The issue tends to be that charities are not spending their money properly, domestically. Such cases come up from time to time and OSCR rightly investigates them. There is not an issue with offshore entities trying to grab our domestic tax reliefs—that does not happen very much.

Jean Urquhart: If we are proudly saying that our standards are high in deciding whether a company meets the charity test—in examining its purpose and so on—how do we compare with countries in the rest of the United Kingdom and the rest of Europe? Are there issues to do with our standards?

David Robb: It is difficult for me to say categorically. The positions across the UK are slightly different. The charity regulator in Northern Ireland has been able to get up and running only in the past few months, because there have been difficulties with establishing the basis of the charity test there. The Charity Commission has been established for a long period, whereas the regulatory body in Scotland is still quite new. I do not have encyclopaedic knowledge of how things work across Europe, but my impression is that the systems are very different.

I underline what Gavin McEwan said about the rarity of the incidents that you asked about. Our view in OSCR is that wilful misconduct on the part of charity trustees is extremely rare and the great bulk of activity should not be a matter of concern for anyone. However, problems can arise and there are instances in which people actively seek to abuse the system. I suppose that my message is that there might be easier systems to abuse than the Scottish system. Scrutiny is something that OSCR does quite well. Given our comprehensive register, and given the scrutiny that we exercise before we accept a charity on to the register and on an on-going basis, I suspect that there would be easier systems to exploit, if someone was minded to exploit the system.

The Convener: That concludes questions from the committee. I thank the witnesses for your contributions, which have helped our deliberations.
Land and Buildings Transaction Tax (Scotland) Bill: Stage 1

09:30

The Convener: Our second item of business is to take oral evidence as part of our stage 1 scrutiny of the Land and Buildings Transaction Tax (Scotland) Bill. I welcome Alan Cook of Pinsent Masons; Elspeth Orcharton from the Institute of Chartered Accountants of Scotland; and Nick Scott of Brodies. Good morning to you all.

We usually have opening statements but, as you have given us detailed submissions, we will go straight to questions. In time-honoured fashion, I will start the questions and then open up the session to my colleagues. I will begin with the ICAS submission, paragraph 5 of which states:

“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.”

Is there any evidence that that is taking place?

Elspeth Orcharton (Institute of Chartered Accountants of Scotland): We looked at the behavioural response to rate changes across all taxes in the United Kingdom; I am sure that Her Majesty’s Revenue and Customs could provide that evidence. For example, when income tax rates change, there is an acceleration of income into a lower tax-rate period and a deferral of income out of a higher tax-rate period.

The discussion about bonuses in the city and the top rate of income tax provides evidence of the behavioural impact. Although we have not undertaken a particular survey and I cannot point to a report, if I were considering moving house next year, it would be nice to know whether the tax rate that I would have to fund would be 3, 4, 5, 6, 7, 8 or 10 per cent, and I do not think that I am untypical. That might stifle a decision.

The Convener: Mr Scott, you raised similar concerns in your submission, which states:

“uncertainty may discourage investment in the Scottish market.”

However, we have received evidence that says exactly the opposite: that setting the rate this early might discourage activity now. For example, if tax levels were to be reduced following April 2015, people might decide to delay investment decisions now. It has been presented to us in evidence that it is actually positive not to give the details of the tax rates before April 2015.

Nick Scott (Brodies LLP): There is a difference between residential and commercial property. With
residential property, decisions to move house are often dictated by personal drivers for the individual. For example, people move because they have had a new child, they have retired or their job has changed.

Our practice and client base spreads across the spectrum, including commercial clients. In the commercial property industry, the drivers are often the returns that can be had on the property that is invested in. One function of that is the cost of acquiring the property. If someone is buying a property and knows that the rate of LBTT or stamp duty land tax is going to change, they will know that the cost of acquiring the property will change and therefore the returns that they will get from buying it will change. In those circumstances, people need certainty about the return that they will get on their money.

I can speak for the range of clients that we talk to. They are based in the Scottish market as well as overseas and throughout the rest of the UK. The feedback that we have received from them is that they are concerned that there is uncertainty. They do not know what the cost will be to them of making an investment if they commit now to purchase or make investment decisions that will take effect when the new rules will be in place, and therefore they do not know what net return they will make on the investment. Even if they are acquiring properties now, they may well sell them post the rules coming in, and they do not know what the purchasers will have to pay as the cost to acquire them. That will affect their return.

Alan Cook (Pinsent Masons LLP): I agree with Nick Scott’s comments. It is also worth bearing in mind how the transitional arrangements will work for the introduction of LBTT compared with how transitional arrangements typically work when SDLT rates change, for example. SDLT rates can potentially change at the drop of a hat on budget day, if the UK Government decides to do that, but typically there is a carve-out from the effect of the rate change that says that any contracts that were in place before the rate change was announced will be subject to the old rates. That gives certainty to people who have already entered into commitments and contracts that the rates that they expected will continue to apply to them.

LBTT is to apply to any contract that is completed or substantially performed after the tax is introduced in April 2015, whether or not that is a pre-existing contract. People will enter into commitments in the lead-up to 2015. Some commitments that will take effect after April 2015 have already been entered into, and people still do not know and will not know what tax rate will apply to transactions that they have committed to.

It would be wrong to assume or rely on a notion that people will happily just sit back and wait to see what the rates are, because commercial investors and developers have to take investment opportunities when they arise; they cannot just sit for a year or two waiting to see whether the tax rate is acceptable for their project appraisal before they decide to commit. They need to commit then and, if tax rates are uncertain, that is an extra element of uncertainty that will not help investment decisions.

The Convener: The Scottish Government has made it clear that it expects the tax to be revenue neutral, so there will not be any massive increase in taxes. Obviously, rates might change, but there is no great leap into the unknown, is there?

Alan Cook: The aspiration is for the tax to be revenue neutral overall, but that means that there will be winners and losers. I am speculating on the precise policy that will underpin the rates that are finally hit, but if, for example, a decision is made to favour the residential property market and assist the lower ends of it, the difference will have to be made up somewhere else to achieve revenue neutrality, and it is entirely conceivable that that would be made up out of the higher end and commercial transactions. Investors and developers will be looking at that, expecting that that might happen and therefore expecting that they could end up with a higher tax rate than the current SDLT position would give them.

The Convener: I go back to the ICAS submission, with which I opened. Paragraph 10 of that submission says that there should be“the minimum of rate differences, reliefs or exemptions—limiting the opportunity for tax avoidance.”

However, paragraph 16 says:

“The removal of sub-sale relief from the provisions is not welcome”.

Paragraph 5 mentions that we need to “maintain Scotland’s reputation as the most attractive part of the UK in which to do business”. Will you clarify that? If you want to reduce the number of reliefs, will that reduce Scotland’s attractiveness? At the same time, you obviously wish to ensure that sub-sale relief is included.

Elspeth Orcharton: Let us go to the comment that addressed simplicity and removing the opportunity for tax avoidance. Tax avoidance arises when there are more and more reliefs and exemptions, some of which may no longer have the policy need that they had when they were introduced. Tax legislation often emerges as layer upon layer, and it is the interaction of many of the reliefs and exemptions that gives rise to avoidance opportunities.

That is not to say that exemptions and reliefs for key areas that support policy drivers are bad
things. Our view is that there are commercial uses of sub-sale relief that should be protected. Sub-sale relief is not a bad thing in itself; it is probably one of the key areas where we want to maintain a relief, but we need to be careful about how it is structured.

Nick Scott: One of our major concerns about the bill relates to sub-sale relief. It is probably worth explaining the effect that removing the relief might be perceived to have. The property industry breaks down into those who use property and those who are willing to invest in and develop property. A developer often bridges the gap between the people with capital who wish to invest in property and those who use it. The job of developers is to identify a building or a site that they think might have an end user and to join the two dots together—to get planning, make the thing financeable and build it, ensuring that it gets built to cost and on time and so on. Developers hope that they will make a profit at the end of the process.

That activity is not only entrepreneurial but speculative, because projects often do not come to pass. Developers may often run five, 10, 15 or 20 projects, of which three or four might come off. They hope that they will make enough profit out of the three or four to bail them out or make up for the fact that many projects do not happen.

Developing is therefore a difficult job, particularly in the current economic situation. Removing sub-sale relief would tax the person who is the engine and the driver of the development that creates the built environment that we see around us. It would discourage them from doing the one thing that they are there to do, which is to try to create new property for commercial businesses and others to use.

It is also worth understanding that for many of the projects for which we see streets around city centres or for development sites being built in Edinburgh, Glasgow, Dundee, Aberdeen or wherever, the decisions and the people financing them come from commercial organisations that are mostly not based in Scotland. If they are discouraged from or taxed further for doing their projects in Scotland rather than equivalent projects in Manchester, Durham or Newcastle, we must be careful about the message that that creates for those people, on whom our economy relies overall to act as drivers of economic regeneration.

We are gravely concerned about the perceptions that might be created. There may be legitimate concern about tax avoidance, but that can be addressed by discussion of avoidance issues. You do not want to create a perception that the job of developers will be taxed more by the Scottish Government than it would be by the English Government or other Governments.

Alan Cook: I entirely agree with all those sentiments. When the bill was published, it was a serious concern of ours as well that sub-sale relief was deliberately excluded from the tax. It has been a feature of the tax system and the stamp taxes system from time immemorial. It underpins what is regarded as genuine commercial activity; it is not there for tax avoidance reasons.

Nobody would dispute that the relief has been exploited by tax avoiders, but a lot of the tax avoidance that has surrounded sub-sale relief under SDLT is frowned on by the majority of tax professionals and people who are just trying to get on with life. It is notable that, in the Scottish Government’s policy memorandum, the sole justification for excluding sub-sale relief is that it is used for tax avoidance purposes; there is no attempt to argue that the economic activity that sub-sale relief supports is inappropriate.

The bill is in severe danger of undermining such economic activity in the interests of clamping down on tax avoidance, which there are other ways to do. As we said in our submission, what is happening at Westminster with SDLT means that sub-sale relief is being recast in a manner that will—I hope—stop it being used for tax avoidance purposes. The UK Government accepts that the economic activity that sub-sale relief underpins is appropriate and ought to be supported.

09:45

The Convener: Mr Scott, paragraph 14 of your submission, which is about proposed exemptions under the bill, says:

“We note the absence of licences to occupy from the exemptions. Licences to occupy have been exempted from SDLT.”

Why should those exemptions be included in the LBTT arrangements?

Nick Scott: The position depends on the type of licence that is being referred to. Some of the concern is that there is uncertainty about what class or category of licence would qualify. For example, in a shopping mall or high street that has a variety of shops or units, most of them would be occupied under a lease, but there is no reason why a person occupying a unit could not be rented a licence to occupy the premises. That is as much a conveyancing distinction as anything else. There is still an economic activity in paying a sum of money for the right to use the premises and run a business from them. There is no logical reason for treating such activity differently under SDLT and LBTT.

The concern is about broadening LBTT’s remit to cover all categories of licences to occupy premises. It appears that there is an attempt to include certain circumstances in LBTT’s ambit. For
example, is it really appropriate that taking on premises for a night to run them as a music venue for a gig should be subject to LBTT when it is clearly not subject to SDLT?

Another example that is very relevant to this city comes from how hotels are operated and managed. Historically, they might have been leased, in which case SDLT would have been paid on them. They might now operate under management contracts, which are in effect licences to occupy and run hotels. We are concerned that operating and managing hotels in other parts of the UK would not be taxed but, in the Scottish economy, running a hotel would be taxed under LBTT. A decision needs to be made about whether that is appropriate. It is certainly a concern if that puts another block on economic development opportunities for hotels in the Scottish market.

**The Convener:** The Pinsent Masons submission says:

> "The Committee should make sure it has fully appraised itself of the potential implications for this expansion of the scope of LBTT over SDLT."

You then mention a number of exemptions, Mr Cook.

**Alan Cook:** We are in grave danger of falling foul of the law of unintended consequences by having a blanket inclusion of licences in LBTT’s scope. In our submission, we gave a couple of examples. For instance, group company occupation is a typical feature of a commercial lease that is granted to a company; it means that companies that are in the same group as the tenant company are allowed to occupy the premises.

Companies that have a series of subsidiary companies for elements of their business might reorganise the business so that the business that is being done from premises needs to be undertaken by a different company in the group. The lease will say that that is permitted, provided that the arrangement is a licence and not a lease. Suddenly, every time that that happens, the group company will be subject to LBTT. It might be said that the company could obtain group relief, and that would be fine, but businesses would have a whole new compliance burden as a result.

I am trying to think of other examples in which the tax could bite. The committee might or might not think that some of them are things that we want to tax, but members should be aware that they could become subject to the tax. An example is telecommunications masts. Typically, a telecoms operator installs a mast somewhere; there may be a lease, which is fine, but it is common for different telecoms operators to have site-sharing arrangements that allow other operators to put equipment on the mast. That is a licence-type arrangement, and such arrangements could be subject to LBTT, depending on values.

Could a train operating company’s entitlement to use Network Rail-owned railway infrastructure become subject to LBTT? In the case of building contracts under which a contractor is engaged to build a building on premises that someone else owns, what is the basis on which the contractor occupies the land to do the development work? Is a licence granted to the contractor? Forward funding arrangements have been discussed in previous committee meetings. Part of the forward funding arrangements is that a licence is granted to a developer to build a building on land that an investor has purchased.

Those are all examples in which LBTT could kick in. In commercial arrangements that are not currently subject to SDLT, the tax burden will be increased in a variety of cases and the compliance burden on businesses will be increased. The intention may or may not be for such arrangements—and 101 others—to be subject to LBTT, and it is probably impossible for us to guess what they all might be. However, the committee must be aware that the proposal will have unintended consequences.

**The Convener:** Does anyone else wish to comment?

**Elspeth Orcharton:** I do not think that there is anything to add.

**The Convener:** That is fine. Not everyone has to comment on every question; if they did, we would probably be here all morning.

All the submissions are excellent and detailed. Mr Scott, paragraph 21 of your submission states:

> "We would suggest that Scottish Limited Partnerships ... should be treated as bodies corporate for the purposes of LBTT group relief, so that assets can be transferred between sister companies owned by an SLP without an LBTT charge. This is not the case for SDLT."

What would be the impact of that change on revenue to the Scottish Government?

**Nick Scott:** I cannot comment on the tax that would or would not be raised by that. From our perspective, an arbitrary distinction has been drawn that does not appear to have any policy driver behind it. The decision to structure a company as a Scottish limited partnership, rather than a normal corporate vehicle or anything else, will be driven by particular reasons of a business, family or anyone else for organising their affairs. It seems to us that there is no policy reason why, if an umbrella entity owns various subsidiary companies, transfers of property between them should be treated differently according to whether
the parent is a company or an SLP. That was the driver for our submission.

**The Convener:** Mr Cook, you comment on section 47 of the bill in your submission, which states:

“If transfers in the shares of companies which hold or invest in residential property in Scotland attract LBTT rather than 0.5% stamp duty ... this is surely going to inhibit companies from investing in residential property within Scotland.”

Why would that be the case?

**Alan Cook:** Over the past few years, both pre and post-crash, much policy thought has been given UK-wide to ensuring that there is enough housing stock in the UK. Housing stock has taken a good knock over the past five years and it is therefore important that we allow every opportunity for residential development and the development of housing stock to take place.

One direction that has been identified to promote such development—it dates right back to studies from before the crash—is to encourage professional and institutional investment in residential property. That has slowly developed over the past few years, with significant institutional investors building up their involvement in residential property. The idea is that they will help to create housing stock that is available for let rather than for people who are buying their own home.

Those investors are large companies that own a lot of residential property. When shares in those companies are traded, they are subject to stamp duty at 0.5 per cent in respect of any transaction in the UK. If a higher rate of LBTT is charged on such share transfers, that will discourage such investors from investing in property in Scotland. That is the concern.

It is worth looking at what is happening with SDLT at the UK level. I do not want the committee to think that I am simply saying that we should copy SDLT every time, but it is always instructive to see what is going on in other jurisdictions and tax regimes. Over the past year or two, there has been quite a lot of focus on—and a lot of heat has been generated about—people in Chelsea and Westminster avoiding SDLT by buying mansions using corporate vehicles. The UK finance bill 2013 will introduce measures to combat that, so stakeholders have been consulted a lot over the past few months on how to make those work.

The draft finance bill 2013 provisions produced by the Treasury include a raft of exemptions from the charge for residential property that is held in corporate wrappers, such as businesses investing in or developing residential property, farmhouses and other types of business-related activity. If there is to be such a charge under LBTT, serious consideration should be given to applying similar exemptions in order not to discourage the important development of a professional and institutional residential investment market in Scotland.

**The Convener:** Each of you has said that you want to ensure that the taxation rates are kept quite low so that there is no disincentive to invest relative to the rest of the UK. However, at the same time, each of you has called for exemptions and reliefs, which clearly, if implemented, would reduce the revenue. If the revenue that the Scottish Government is to receive from the tax is to be broadly neutral, surely that means that the overall rate needs to go up to cover all those exemptions. Incidentally, no one has quantified in any of the submissions what the impact of an exemption would be.

Surely that position is a contradiction in terms. The more exemptions there are, the more the people who do not get the exemptions will need to pay if we are to have a revenue-neutral tax.

**Alan Cook:** A lot of the things that we have talked about are not about looking for exemptions over and above what people are used to, although there may be examples of that. The things that we have talked about are cases in which it is proposed to expand the scope of LBTT beyond that of SDLT, such as by taxing licences, taxing sub-sales and taxing corporate-wrapper arrangements. We are talking about mitigating the effect of expanding the envelope of the tax rather than trying to improve the taxpayer’s lot as against the current situation under SDLT.

10:00

**The Convener:** I understand that, but surely the overall rate will have to go up if the exemptions are implemented.

**Elspeth Orcharton:** The provisions that we have commented on are in existing legislation, so they are included in the revenue figure. It is the revenue-neutral position to carry them forward, almost by definition. If the exemptions or reliefs are withdrawn, that will increase the revenue take—

**The Convener:** Unless the rate is reduced overall.

**Elspeth Orcharton:** The opportunity to do that might be provided. We are trying to inform the decision on the policy choices. The revenue will increase only if the activity follows. It is the activity consequences that we are getting to.

**The Convener:** Indeed.

**Nick Scott:** I repeat the point that the rate applies only if there is a transaction that triggers
an LBTT charge. The concern is that, if the rules are set so as to discourage people from doing the transaction in the first place, there will be less revenue overall.

That should not be viewed in a narrow context. I appreciate that the discussion is about LBTT, but I go back to sub-sales, developers and so on. If a developer is discouraged from building a new building, that building will not be created, rates will not be paid, people will not be employed in it, construction work will not be generated and all the other taxes that flow from the economic activity of investment in residential or commercial property and so on will be affected. The issue must be viewed not just in the context of LBTT, but more widely.

The Convener: Indeed—it is a question of where the balance is to be struck.

I open up the questioning to colleagues.

John Mason (Glasgow Shettleston) (SNP): Some of my points build on issues that the convener has raised already. I will start on what Mr Scott has just said, on the theme of not wanting to discourage development and on the idea that putting tax up will discourage development. First, how do Scottish land and building prices compare to those in England? I assume that they are lower than prices in London, but are they comparable to other places?

Nick Scott: It differs. It depends on demand and supply. Some parts of some Scottish cities will be more expensive or valuable than those in an equivalent English city. Development is less about the absolute cost than about the return on the capital that is invested. In a sense, it does not matter whether or not an investment is made developing a property in central London, where residential values are far higher than they are in Edinburgh; it is a question of how much money is put in, how long the money is tied up in the project before a profit is crystallised and what profit will be generated by carrying out the development.

John Mason: The tax part of that is very small, relatively speaking.

Nick Scott: It depends on who is involved and on which part of the process they are in. As I said earlier, the groups or people who use the property generally do not want to invest their capital in it. They might simply be trading businesses—they just want to run a business from a shed or office or whatever it might be. The categories of investors that will have money to invest in the property include those such as pension funds. The developers are the engine in the middle. Their job is to try to marry those two sides and to drive the project. Being taxed through LBTT on the land value for that transaction is quite a material part of the profit that they might generate.

John Mason: Is the result of that not just that they pay it? If someone has £1 million to spend and the tax is £50,000, and we make the tax £60,000 instead, does that not just mean spending £10,000 less on the actual building, to compensate?

Nick Scott: It might, but it depends on whether or not it is possible to have that negotiation with the landowner, the building contractor and so on. We employ a lot of lawyers and we have a broad range of clients. We talk to them and we note their attitude and the perceptions that are created.

I will give you an example. Ten days ago, I had a meeting with a potential client from the English regions who has been trading for 60 or 70 years and whose main focus is student accommodation, hotels and the education sector in general. The company has done quite well in the English market for the past 50 or 60 years, has identified Edinburgh as a place that might have many similar users of property and came to Scotland to meet potential lawyers, advisers and so on and to look at sites for discussion. I was introduced to the people in question and, in the following discussion, was asked, “How will the Scottish market work for us relative to our experience of the English one?” After we had gone through the legal background and all the rest of it, we came on to the subject of tax, how the SDLT works at the moment and the impact of tax reform. How am I to describe what we are discussing this morning and what effect this legislation will have on decisions about whether the client bothers to enter the Scottish market or simply continues to plough the furrow that it has been ploughing quite successfully in the English regions?

John Mason: But your potential client cannot build something in Newcastle for students in Edinburgh.

Nick Scott: These projects can take years of time, effort and speculation before they bear profit. Moreover, I point out that there are students in Newcastle, Manchester, Birmingham and everywhere else. If there are two ostensibly identical propositions but one is in a jurisdiction where the client in question will be taxed more than it would be in the other, you will inherently encourage it to spend its time where the net return from the exercise, which might well serve many beneficial purposes, will be greater. I am not here to defend developers making lots of money as some absolute thing, but such developments create accommodation that students can go into, construction activity and all the rest of it.

John Mason: I agree with all that, but if I were that person’s accountant I would be saying, “Right—the tax is higher in Scotland, so just offer a certain percentage less than what you would pay
in Newcastle.” I still do not understand how it will affect commercial decisions.

**Nick Scott:** Some of this is about negotiation—ultimately, there needs to be a vendor who is willing to sell you a site for you to develop it—but feedback from clients suggests that a genuine issue is their perception of the Government’s attitude to what they do.

**John Mason:** You mentioned the slightly related issue of hotels, which, as I understand it, are international concerns. Most of the submissions that we have received make comparisons with England, but what about Holland, Denmark or elsewhere? Presumably companies such as Hilton are used to dealing with umpteen tax regimes around the world. We are talking about the differences between Scotland and England, but I suggest that every European country is different.

**Nick Scott:** Indeed, and we all compete in attractiveness for that international capital. All that we are saying is that you are potentially creating a situation in which setting up these businesses and investing in these premises will cost more in Scotland than it will in other parts of the UK.

**John Mason:** How does the situation compare with other European countries? Do we know?

**Nick Scott:** I cannot comment specifically on that, but each of those countries will have different regimes.

**John Mason:** Does anyone know whether the UK is losing out or winning because of tax regimes around Europe?

**Elspeth Orcharton:** Tables have been produced, mostly by the Organisation for Economic Co-operation and Development, showing the UK’s relative competitiveness compared with the rest of Europe. The difficulty is that they are at a very high level and distinguish between taxes on, say, profits, employment and capital and wealth. There are so many different tax systems and structures across Europe—and indeed beyond—that it is very difficult to have one measure of competitiveness. However, there are ways of looking at the issue and I am sure that, for a particular tax, something might be available. I will see what I can find.

**John Mason:** It would be interesting to see the wider picture.

**Elspeth Orcharton:** There are differential property rates or equivalents of stamp taxes across Europe but I am afraid that I cannot recount them off the top of my head.

**Nick Scott:** It is worth making a positive point; I do not want to sit here and just complain about particular proposals in the bill. With LBTT, we have an opportunity to encourage particular types of development that the Government might wish to see. For example, a UK-wide income tax relief called the property renovation allowance encourages the regeneration of tired secondary buildings in areas that have been identified as disadvantaged. In the city centres of Scotland that quality, we have seen that the creation of that relief and its targeting at specific economic activities has encouraged people who would not otherwise have spent their time pursuing those activities to do so. Hotels are one example of the kind of project that it encourages the financing and construction of.

**John Mason:** You have taken me on to an issue that I was going to ask the next panel about. I will ask you folk about it now. Energy efficiency is given as an example of what relief is intended to help with, but the examples that you give are relevant, too. Is it better to give tax relief, or just to charge everyone the same tax, which keeps it simple, and then give separate grants for such purposes?

**Nick Scott:** Our experience shows that tax reliefs encourage people to spend their time analysing and trying to make such projects work.

**John Mason:** But are tax reliefs more effective in doing that than giving people a grant?

**Nick Scott:** That is not something that I can comment on, but if it would help, I can give you clear examples of where projects have worked because—

**John Mason:** I believe that relief helps. My question—which I will put to the next panel, as well—is whether a grant is better and more targeted than a relief.

I turn to Mr Cook. Your main observation is about sub-sale relief. On page 1 of your submission, you give the example of someone who buys a bit of land, divvies it up, sells it on and makes a profit. In evidence, we have been given the example of three landowners who, for convenience, want to buy a bit of land jointly, which they split up between them, with no profit or loss being made. I can see the argument for that being one transaction, although legally it is two—or rather, four—transactions.

In your example, one developer buys a big bit of land, sells it on and makes a profit on the whole process. Are those not two separate transactions?

**Alan Cook:** As a starter, just for the avoidance of doubt, there is nothing wrong with people making a profit on activity. It is essential that people can do so.

**John Mason:** That is absolutely right. The question is how we tax it.
Alan Cook: The tax is a tax on the acquisition of land interests. That is what a land transaction is—it is the acquisition of an interest in the land.

In the case of such development structures, the interest in land is not being acquired; it is slipping right through to the end purchaser. A typical example would involve land that is in a number of separate ownerships. When someone spots the opportunity to bring those ownerships together to create a larger development site on which something can be built, they need to be in a position to do all the work that is needed to bring the individual owners together, to get planning permission, to make the site viable and to identify someone who will occupy it and purchase it. The sort of people who will do that—investors—are not interested in doing all those things and undertaking all that risky activity. They want to buy something that is nice and clean, which will give them a rental income at the end of the process.

The developer is therefore a facilitator of the development process. They enter into contracts for the purchase of the land because that is what it is necessary to do to pull the interests together, but they will not own the land at any point; they will pass it directly on to the person who will buy it—the investor who will ultimately hold the land and receive the rental income. That is a typical example of where sub-sale relief kicks in. If sub-sale relief were not there, that person would be required to pay tax at anything up to 4 per cent or whatever the tax was.

John Mason: Your argument is that if someone does that almost immediately in one go, only one lot of tax should have to be paid. If someone buys all the land, sits on it for 10 years and then sells it, they will be taxed twice.

Alan Cook: That is right. No one would expect to be relieved of the tax in those circumstances whether they sat on it for a day or for 10 years because, as you said, they acquired the property in its own right. Under the current regime, they would not expect to benefit from sub-sale relief.

John Mason: That was helpful.

10:15

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I have a couple of questions arising out of the evidence thus far. First, I am intrigued by the tables of comparative international competitiveness to which Ms Orcharton referred. I think that she suggested that she would provide them to us. We look forward to receiving them. We look forward to receiving them. Before we get them, will she tell us what they are?

Elspeth Orcharton: That is Hilton's European strategy. I would be making a bit of a guess.

Jamie Hepburn: It is perhaps an unfair question, but the point that I am trying to get at is that, if we get a list of the taxation levels alone, it does not tell us much other than what the taxation levels are. Surely the measure of competitiveness is the effect of those taxation levels. After all, you are all here to give us evidence on how LBTT will affect decisions made by investors.

Elspeth Orcharton: The short answer to that is yes, the tables contain data that is helpful, but they do not explain the full rationale of the decisions that are made.

There are probably others who are better qualified than I am to comment on what is or is not attractive and what creates or does not create activity in the property market. I expect that financing—or the lack of it—rather than just the tax rates will provide much of the answer.

Jamie Hepburn: The information will be useful, but I suspect that we might need to look at some other data to really dig into the matter.

The Convener: I am sorry to interrupt you, Jamie.

Ms Orcharton, you talk about tax competitiveness, but a society surely must consider its overall economic competitiveness, which concerns the productivity of the workforce, the amount of capital invested, the educational attainment levels within the society and its infrastructure. Those things all have to be paid for by taxes, so a country can have the most competitive tax structure in the world but, if it does not help to fund some of those other things, it does
not necessarily improve economic competitiveness, because the country might not have an educated, skilled and trained workforce and good infrastructure.

Elspeth Orcharton: That is one of the other challenges of the tables—the context in which they are seen. As we have said before, if we are examining a tax system, we have to examine how it integrates with the political, social and economic aspects of the country. We offer evidence on a particular aspect but, no doubt, you will apply wider considerations and consider the wider factors.

Alan Cook: I am no expert on the relative tax rates of different European countries, but I know that the investment decisions that a company such as Hilton makes in different parts of Europe are based on an overall equilibrium that the company discovers in each individual country. Tax rates might be higher or lower in one place, but that might be counteracted by any number of other factors that result in the company being prepared to make an investment in that country. If we change one element of that overall equilibrium, we risk having an adverse effect on the investment decisions that such companies make.

The Convener: Back to you, Jamie.

Jamie Hepburn: Thank you, convener.

I want to discuss sub-sale relief, which has been explored by the convener and the deputy convener. I may be paraphrasing you here, Mr Cook, so you can correct me if I have picked you up wrong. In response to the convener, I think that you said that no attempt was made in the Scottish Government memorandum to say that economic activity underpinned with sub-sale relief is legitimate. Is that, broadly speaking, what you were saying?

Alan Cook: I was saying that all that the policy memorandum says to explain why sub-sale relief has been excluded from the bill is that it underpins avoidance activity. That is the only justification that is given for excluding sub-sale relief. There is no attempt to suggest that the sort of economic activity that we have talked about and that benefits from sub-sale relief is inappropriate.

My point therefore is that the Scottish Government does not appear to have had a policy imperative. We are saying that some important things need to be thought about here. On the basis that it was not part of the policy decision-making process in the first place, surely those points should be taken into account.

Jamie Hepburn: I think that yes is a fair synopsis of what you said.

I was going to ask which activities that are underpinned by sub-sale relief you consider to be legitimate, but I think that you have done that fairly reasonably in response to John Mason.

You said that there are avoidance activities that would be frowned upon by tax professionals. What type of activity is not so legitimate? What type of activity is just tax avoidance?

Alan Cook: I suppose that the starting point here, without getting too jurisprudential about it, is the question of what we mean by tax avoidance. There is a whole spectrum there. On the one hand, there is the right of every taxpayer to order their affairs in a tax-efficient manner, which I do not think anyone would dispute as a matter of broad principle.

At the other end of the spectrum there is what you might call egregious manipulation of the tax rules and the technicalities within the tax rules to exploit loopholes and avoid tax in a manner that many reasonably minded people would think was an inappropriate use of the tax rules.

Jamie Hepburn: I do not know whether the tax professionals that you are talking about are reasonably minded people, but I presume that that is what you were talking about when you said that some activity would be frowned upon. Let us focus on that. What is the activity that would be frowned upon?

Alan Cook: With the SDLT, and with stamp duty before it, there was a bit of a tradition of people wanting to try to avoid it. When the SDLT was introduced, its raison d’être was to do everything possible to clamp down on the avoidance that was occurring under stamp duty. However, because that inheritance is there, there have been continued efforts in certain quarters to find ways to avoid having to pay the SDLT.

There has been an equal effort on the part of the UK Government to stop that activity. A game has been played over a number of years, as the SDLT legislation has developed, to close down the loopholes.

In latter years, we have particularly seen the activity in certain elements of the residential property market where sub-sale relief has been combined with other mechanisms within the legislation in what some would say is quite an aggressive way. Aggressive is tax professionals’ code for, “It might not work but you’re prepared to give it a try.” Some of that aggressive planning has been sold to people as a way to avoid having to pay stamp duty on the purchase of their house.

Jamie Hepburn: I am not really getting a sense of what that might involve. Will you tell us, without naming names—I am not asking you to whistleblow—the type of initiative that might be frowned upon, as you put it, by a tax professional?
Alan Cook: I will give you an example of a loophole that has been closing in the past year or so: sub-sale relief was combined with the grant of an option to purchase the house from the person who ostensibly bought it. I do not want to get too far into the technicalities of it because I will probably get stuck in the mud and I do not think that you need to be terribly interested in the precise detail—

Jamie Hepburn: I am not sure about that. Surely we need to get stuck into the detail. If you are saying to us that what the Scottish Government is proposing, which is that there should be no form of sub-sale relief, is not correct and that elements of it should be allowed, the detail will be important, whether we like it or not. I might not understand it, but as long as it is on the record, that is fine.

Alan Cook: If someone wants to buy your house, they find somebody who is prepared to co-operate with them to put together an overall scheme. The first person agrees to buy the house from you. As far as you are concerned, you are selling the house to someone and you are getting paid the price that you want, so everything is fine. However, the person who has contracted with you is agreeing to grant an option to buy the house, on certain terms, to a friendly party. The grant of the option, under the rules as they were before the loophole was closed, arguably constituted a sub-sale. Because it was a sub-sale, the purchase of the property in the first place did not attract SDLT. The option was granted on the terms that no SDLT was triggered by doing so, and there were mechanisms within the option documentation that would allow the onward sale of the property, if it were decided to sell it, in a tax-free manner.

That was aggressive, in the sense that not everybody agreed that the grant of the option brought the transaction within the sub-sale rules. However, there were those who were prepared to make the case for sub-sale relief kicking in in those circumstances and to sell that as a proposition to people who wanted to avoid having to pay SDLT on the purchase of their house.

Jamie Hepburn: Were people avoiding paying the tax in those circumstances?

Alan Cook: I believe so. It was probably more common in England, particularly in the higher-value areas, where more is at stake. If you engage in aggressive tax planning, there is a risk that it will not work and that the tax authority will investigate your affairs, decide that you should have paid the tax and charge you the tax plus interest and, potentially, impose penalties for having done what it thinks was the wrong thing in the first place. Therefore, it has to be worth while engaging in it in the first place, which is why the schemes really only apply to higher-value properties. They were marketed primarily at property over £500,000, where the 4 per cent SDLT—

Jamie Hepburn: My home would not count then.

Alan Cook: Neither would mine.

Jamie Hepburn: That was a helpful explanation.

Charities relief is an area that demanded more of our attention than we might have expected, and ICAS and Brodies refer to it in their submissions. It would be worth exploring the issue a little further.

ICAS says:

“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”.

That was suggested to us in a previous meeting but, when I explored the issue with the witness, I suggested that there might be difficulties with that. Clearly, the Scottish Parliament has no legislative competence over HMRC. Might difficulties arise as a result of the fact that we would essentially be using an organisation over which we had no powers of direction with regard to the criteria for bodies that might come under the legislation?

Elspeth Orcharton: You might argue that, but the reality is that there is no expectation around Scotland or the rest of the UK—that I am aware of—that there will be any change in the approach of HMRC, the Charity Commission or the UK Government to the definition of a charity. The law has stayed pretty stable since 16-something, if my tax history serves me right. I am therefore not sure that a worry about any change that HMRC might come up with is a cause for much practical concern.

10:30

As far as I am aware, there are few bodies that have charitable status approved by HMRC that would not be able to register with the Office of the Scottish Charity Regulator—the paper gives the example of Scottish Natural Heritage. When it comes down to it, there are few differences in the legislative provisions of those bodies. That is not to say that there is not an administrative process that HMRC-approved bodies would have to go through to register with OSCR, but that is different from the case of those who could not register with OSCR because they do not meet the OSCR conditions.

Jamie Hepburn: I will come to that in a minute, but the point that I was making was not to do with the specific charitable test. In essence that is different, to a degree. Do not ask me what the difference is, but I understand that we have a different standard in Scotland.
Elspeth Orcharton: There are very few differences, but yes.

Jamie Hepburn: The issue that I was concerned about was the fact that we cannot compel HMRC to say which bodies it currently understands to be charities. It might well say, “Here’s a list,” if we asked it, but the point that I am making is that we could not compel it to do so, as we have no jurisdiction over it. Is there not a danger in that?

Elspeth Orcharton: I am not sure that you would be seeking that. Would you not be seeking evidence from the body itself about its individual status? I think that your engagement would be with the body that would be seeking a charitable exemption, and that you would not need anything from HMRC directly.

Jamie Hepburn: That is helpful.

You talk about bodies not being required to register with OSCR. Paragraph 15 of your submission says:

“It is our understanding that it would be incorrect to say that any English or overseas (i.e. non Scottish charity) can register with OSCR”.

Why do you think that that is the case?

Elspeth Orcharton: If it does not meet the charitable conditions, as set out in the Scottish charities legislation, it cannot register with OSCR as a Scottish charity.

Jamie Hepburn: You do not say that it cannot register as a Scottish charity; you say that it cannot register with OSCR.

Elspeth Orcharton: My understanding is that it cannot go on OSCR’s register, which is the register of Scottish charities.

Jamie Hepburn: OSCR told us that those bodies could voluntarily register with it under—l think—section 14 of the Charities and Trustee Investment (Scotland) Act 2005. Is that news to you?

Elspeth Orcharton: It would be, because my understanding is that any body could apply to register with OSCR, but it would have to clear a further hurdle in terms of the constitutional powers, purposes and aims before it could be admitted to the register.

Jamie Hepburn: But this involves a separate register. It is a register that is only voluntarily engaged in. Our understanding, from OSCR, is that those charities could register with OSCR.

Elspeth Orcharton: That is not my understanding of the position, but I do not claim to be an expert on every aspect of section 14.

Jamie Hepburn: The submission from Brodies says:

“We do not believe that LBTT charities relief should only be available to charities which are registered with OSCR. We believe LBTT charities relief should also be available to charities registered with the Charity Commission or recognised as charities by HM Revenue and Customs, and also to overseas charities operating in Scotland, whether or not they are required to register with OSCR.”

However, we obviously want to ensure that any body that is claiming to be a charity has a genuinely charitable purpose. How do we do that?

Nick Scott: The answer is much the same as the points that have been touched on already. You can see why, at a practical level, we would go to OSCR, because that is the body that we know and it will have done the testing for us. The point is that it would be for the charity to claim an exemption or relief and to justify why it meets the criteria. It strikes us that that is a better and more legitimate approach than to have a criterion that says that the charity must be registered with X, Y or Z.

Jamie Hepburn: To be fair, you have given two examples—HMRC and the Charity Commission—and I freely accept that we are talking about a minute number of instances, if any, but the circumstances could arise, so we had better get it right at the start. If organisations say that they are charities but perhaps do not fulfil the criteria, how will we check them? You said that they will have to prove it, but how will they do that?

Nick Scott: That is a fair concern. I do not think that it is the biggest concern in the overall scope of the bill.

Jamie Hepburn: I accept that.

Nick Scott: However, I take your point.

Elspeth Orcharton: I understand that similar issues have arisen in the tax system at a UK level and HMRC maintains a list of bodies that are the equivalents to OSCR in different parts of the world, although not every part of the world has the equivalent of charity tax exemptions and reliefs for charities as countries have different structures. It may be that that approach could be followed. Under it, there is an exercise to be undertaken, however. It is an administrative burden for a Government or tax authority to do that work.

Jamie Hepburn: Okay.

Jean Urquhart (Highlands and Islands) (Ind): I am afraid that I want to go back to sub-sale relief and tax avoidance. The bill has been generally welcomed by everybody who has come in to give evidence on the ground that it is much clearer and it simplifies things, yet when we come to the detail, there seems to be nervousness in each area that we might change things too dramatically and that business might be asked to pay too much, which
would be off-putting. That nervousness about the bill has been a large element in your evidence today.

We can assume that the bill is welcome and it represents a real opportunity for clarification and simplification. Last week or the week before that, somebody said in the House of Commons that people can drive a coach and horses through SDLT. That means that there has been a huge loss of revenue to the Government, which has to be balanced up somewhere, causing people to have to pay more.

You seem to be suggesting that closing some of the loopholes that we are proposing to close is a bridge too far. However, if everybody paid their tax, maybe we could all pay a little bit less, so it is important to close the loopholes. Would it be better to begin by stating that everybody should pay and that there may then be exemptions, rather than trying to anticipate what all the areas should be and include them in the bill?

Elspeth Orcharton: My observation would be that this is a great opportunity to simplify, to clarify and to sort out the distinctions between English property law and Scots law. If the drafting, as the bill proceeds, can preserve reliefs and exemptions in commercial circumstances where they support economic activity for a good policy reason, that is fine.

What should not be encouraged or enabled is the drafting of legislation on the reliefs without our having the legislation on the anti-avoidance provisions, many of which we have not seen yet because they will sit in the proposed tax management bill, which is still to come. We should not adopt that approach. That does not in itself mean that we should not be able to proceed with the likes of sub-sale relief in commercial development transactions, which may be important from an economic perspective. There will not be a revenue cost if the relief is already there.

Alan Cook: I agree. It is correct to say that the principles and aspirations behind the bill are supported fairly universally. Simplification is also supported—that is why, for example, the intention is to simplify the partnership arrangements, which are one of the most complex bits of the SDLT legislation. We are not talking about that today because we do not know what the legislation will look like for LBTT, but that is an example of an area in which simplifying the legislation is supported across the board. However, there is a distinction between simplifying the legislation and cutting out bits that taxpayers feel are important in underpinning economic activity.

Jean Urquhart: Nobody wants to discourage business, but thinking about entrepreneurialism and so on, is the tax really a priority in terms of what makes companies develop business opportunities with pieces of land or properties? It is not the first thing on their minds, is it?

Alan Cook: It is pretty high up in the minds of people in the property industry. SDLT is quite a straightforward tax in the sense that it is pretty easy to see at a simple level what percentage of the price that you are paying for land will be creamed off in tax through SDLT—it is 4 per cent at the top level. To give a comparison, when stamp duty was replaced by SDLT, it generated a vast amount of heat in the property industry, and a vast amount of interest. That is indicative of the high profile that stamp taxes—including LBTT—have within the property industry. Anything that is seen as a significant change to the rules will be quite high profile in the minds of people in the property industry.

Nick Scott: It also depends on which participants in the property industry we are talking about. For someone who is thinking about buying a house, the LBTT rate might not be the biggest determining factor in whether they do that. The rate will not necessarily have a bearing on where they choose to live or which property they go after. The LBTT rate might also not be the most important determining factor for an investor who is buying a £50 million office block. However, uncertainty about what the rate will be can be a discouraging factor.

For other people—I mentioned developers earlier—the cost of LBTT relative to the development profit that they will make by creating the investment is material. It is not 4 per cent on the top of the gross. The 4 per cent may well be half or a quarter of the entire profit that they make from the project, so it will surely be a material factor for them in determining whether they spend years pursuing a particular project or pursue another one elsewhere.

Jean Urquhart: There was a bit of a stushie when stamp duty changed to SDLT. What was the outcome? Were many of the concerns realised? Did business stop? Was there a dramatic change in how people bought property or developed commercial ventures?

Alan Cook: Life always goes on, and commercial activity always goes on. When SDLT was coming in, just to pick one relevant example, sub-sale relief was not initially a feature of the SDLT legislation, but there was such concern about the whole thing that it was accepted that sub-sale relief would be a feature of SDLT. I am not suggesting that history will repeat itself—although I rather hope that it will—but that is an example of a level of concern being generated and of the tax authorities or the Government of the day accepting that an issue is genuine and accepting
the argument that an impact would be felt in relevant cases.

10:45

Jean Urquhart: The authorities listened, but they made so many exemptions that their tax collection regime has been faulty for quite a long time, which has involved millions, if not billions—quote, unquote.

Alan Cook: The SDLT legislation is not exactly the finest example of parliamentary drafting—it is unclear and technical. Tax legislation that is unclear and technical lends itself easily to tax avoidance, because people can pick many potential loopholes in it. That happened with SDLT.

A feature that was subsequently introduced into SDLT and which will be a feature of LBTT is a general anti-avoidance rule. SDLT initially had section 75A of the Finance Act 2003, which is not proposed to be a feature of LBTT. That will be superseded by a general anti-avoidance rule, which will be a feature of LBTT, by virtue of the tax management legislation. Such a provision will probably have the biggest impact on closing loopholes because it is an overarching blanket that stops avoidance.

Gavin Brown (Lothian) (Con): The tax rates and bands are due to be published in September 2014 and the tax is to go live in April 2015. In the view of your organisations and the people whom you speak for, when should the tax rates and bands be published?

Nick Scott: My perspective and that of our client base is that the sooner that happens, the better. If specific rates cannot be published, guidance about the intentions and an indication of the top rate would be welcome. As I have said, the issue is uncertainty in buying a property today and not knowing what the value will be once the rates are announced, because the rates will affect the value when the property is sold on. That discourages people from investing and affects their ability to make sane and rational decisions about investing in property.

Elspeth Orcharton: I echo that. I understand that it is proposed that the bill be enacted this summer. ICAS has always taken the view that it is for the Parliament to enact what it intends should happen, but I must admit that we have an intellectual problem with a tax being introduced without the details of its structure being set out as the bill is considered. I completely understand that rates might need to be flexed according to the perception of the revenue that would be raised, but key decisions of principle will be in the act.

I understand that, under the follow-up timetable, there will be further consultation on the regulations that will contain details of the rates. That is due to be concluded by summer 2014. If that is the last time that the Parliament considers the issue, that should finalise matters, but to leave it another few months before anything is announced would be a poor outcome. More control and decision making would be expected of the Parliament in relation to the direction that the bill is to take.

Alan Cook: I agree. As I said, by virtue of the way in which the transitional arrangements will work for the introduction of LBTT, contracts are being entered into and deals are being negotiated now that will be subject to LBTT because they will complete post April 2015. The people who are entering into those arrangements do not know what tax they will pay on the transactions. One might argue that, as LBTT is intended to be revenue neutral overall, the amount of tax might be expected to be roughly in the same ballpark as would be expected under SDLT. However, it may be that the tax on higher-value transactions and commercial transactions needs to go up to compensate for a favouring of the residential market. That might end up being the case to a greater or lesser extent, but the point is that we do not really know. Investors and developers do not know to what extent they might be expected to shoulder a greater tax burden, and that produces some uncertainty. Therefore, any guidance or indications that can be given now as to the broad direction that the balance will take would be very helpful for people.

Gavin Brown: We have had a lot of discussion on sub-sale relief, so my questions on the issue will be brief, but I want to follow up one point.

You have all indicated that you favour retaining sub-sale relief, and you have given examples of why you believe that such a relief is important. You have all also accepted that, as things stand at the UK level, at least over the past couple of years, sub-sale relief has been subject to avoidance that is not seen as legitimate within the industry. In considering whether and how to amend the Land and Buildings Transaction Tax (Scotland) Bill, how easy would it be for the Scottish Government to include provision for a targeted sub-sale relief that would allow genuine transactions—if I can phrase the issue as such—while preventing some of the more aggressive avoidance measures? How easy would it be to include a provision in the bill that would satisfy both policy objectives?

Alan Cook: The reason why sub-sale relief under SDLT has provided such rich pickings for the tax avoidance industry is that it does not work in the same way as other reliefs. People do not really have to claim sub-sale relief. It just
disappears under the radar because it involves a disregard of the first stage in the sub-sale process. Other reliefs need to be claimed by submitting a return form and ticking a box that says that a particular relief is being claimed, so the transaction is firmly on the radar and it is open to the tax authority to investigate whether people are really entitled to claim the relief.

I envisage that sub-sale relief under LBTT would involve a similar type of process whereby the transaction is firmly on the radar. Of course, that will be combined with the general anti-avoidance rules that will be in the tax management bill. The whole purpose of those rules will be to stop avoidance activity, whether through sub-sale relief or anything else.

**Gavin Brown:** Do other panellists have similar thoughts?

**Elspeth Orcharton:** I agree. It is perfectly within the capability of the draftsman to do a far better job than the combination of reliefs that currently sits in the legislation. Other pieces of legislation, for example, targeted anti-avoidance provisions and bona fide commercial reasons tests.

It should also be possible to look at the compliance management process that revenue Scotland or Registers of Scotland will use when claims are made. Actually, an effective compliance and challenge process has been missing from the practical operation of SDLT, and I suggest that that might be one reason why there was so much proliferation of avoidance activity in that area. That is about how the tax is managed by revenue Scotland.

It is perfectly possible to include such a provision. It will take a little time and thought, but it is possible.

**Nick Scott:** Often, it was not so much sub-sale relief itself as the combination of sub-sale relief with other reliefs that gave rise to many of the concerns that were raised. I do not think that there is a fundamental problem with including a sub-sale relief that will have the effect that we all want it to have and encourage the economic activity that we have all been talking about.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** I have one final question on sub-sale relief—unless Michael McMahon has lots of questions on the same issue. Would the amendment that the UK Government is about to introduce be a good model to follow, or might there be some flaws in that approach as well?

**Alan Cook:** The UK Government’s proposal involves people claiming sub-sale relief in the way that I described, which would mean their claiming it just like any other relief, where a return has to be submitted, so the transaction is on the radar. The UK Government has combined that with several pages of legislative drafting to define in intricate detail all the possible circumstances that it can see in which the relief might be used, not used, abused and so on. In the interest of trying a simplified approach, I suggest that what is missing in that approach is the impact that a general anti-avoidance rule has on attempts to manipulate the rules inappropriately.

**Malcolm Chisholm:** Thanks for that. That leads me on to the comment that was made a moment ago about SDLT not being the finest example of parliamentary drafting. The Pinsent Masons submission suggests that, to some extent, the bill copies some of those problems. An example is given—which I will not even attempt to describe—about the relationship between section 10(5) and section 37, but the submission also makes the more general comment that that and several other points in the bill will need to be clarified by guidance. That is one concern.

In the interests of time, let me combine that with another concern. Two of the submissions point out that the fact that some things are not in the bill because they will be in regulations is a matter for concern. In particular, reference is made to section 67, which I think deals with our favourite topic of exemptions. Are there large issues in the bill that need to be sorted in primary legislation rather than in guidance? Is it only section 67 that needs to be looked at from the point of view of requiring primary legislation rather than regulations, or is there a general problem that too much of the detail is left to regulations?

**Alan Cook:** Section 67 allows for reliefs and the like to be adjusted through subordinate legislation, which will be subject to parliamentary process. I will not comment on whether the affirmative or the negative process is appropriate for individual cases, other than to say that it is a common feature of tax legislation to provide a facility for making fine adjustments without having to wait for primary legislation. I suppose that we take the view that, whether the affirmative or the negative process is used, the checks and balances in the parliamentary process should ensure that there is no abuse.

The problem with copying over large parts of the SDLT legislation into the LBTT bill is that we have spent the past nine years or so, since SDLT came in, trying to work out how it should work in practice. To be honest, it is not really possible to look at the SDLT legislation cold and understand how it ought to work. The only way in which to understand it is to understand the background to the sticking plasters that apply to particular provisions. One needs to know the guidance that the revenue—that is, HMRC—has issued about
hundreds of instances to know how the legislation needs to be interpreted to make a particular scenario work, because there are so many inconsistencies or uncertainties in the legislation.

Where the LBTT bill copies over the SDLT legislation, we are going back to year zero, if you like, as we will not have the benefit of the years of guidance that the revenue has built up, which is hidden away in manuals or guidance notes on its website and so on. We would need to feel our way through the whole thing again with revenue Scotland. In an ideal world, we would take the time to ensure that the LBTT legislation deals properly with all those points. I suspect that the reality is that, unfortunately, we do not have the luxury of the time that is needed to achieve that.

11:00

Malcolm Chisholm: ICAS is more worried about the secondary legislation point.

Elspeth Orcharton: Yes. Perhaps I am worrying but, as I read the bill, the powers that are being taken relate to the structures of the tax in terms of rates and bands—I completely accept that an adjustment to make the rate 3.5, 3.6 or 3.7 per cent would be within the normal budgetary process that we might expect—but they also extend to all the reliefs and exemptions. We have spent a considerable amount of time this morning discussing reliefs and exemptions and whether we should or should not have them. The ability to make changes by regulations to what has been perhaps the biggest area of discussion seems slightly generous.

Malcolm Chisholm: That is useful, although I can think of the counterarguments.

You are also concerned about the number of definitions that refer to UK legislation. You give the example of the definitions relating to corporation tax, but are there lots of examples that you are concerned about?

Elspeth Orcharton: I found a few examples as I read through the bill, but my point is more on the principle. If the bill is to be Scottish legislation by the Scottish Parliament, I wonder why it has definitions that we do not control. The Corporation Tax Act 2010 is not controlled by the Scottish Parliament. If a change in the definitions in that act was enacted by the UK Parliament, that would change the impact of the LBTT legislation without the Scottish Parliament doing anything. It seems perfectly acceptable for some of the definitions that are not controversial simply to be copied in their current form. That would make them part of an act that the Scottish Parliament controls rather than part of something that it does not control.

Malcolm Chisholm: I am sure that you will do this, but it would be useful if you suggested amendments for stage 2 on a lot of the points in your submission. That is certainly true of the Pinsent Masons submission, which has a lot of detail that is appropriate for stage 2.

One general point that has come up relates to Registers of Scotland. We have the keeper of the registers of Scotland coming to the committee next week. Pinsent Masons seems to favour the current system. This might be unfair, Mr Cook, but it seems that, in many of your comments, you have urged us not to change the existing SDLT provisions. Your submission mentions the land transaction return that is currently submitted to Registers of Scotland and your worry about the new arrangement under which payment will go at the same time as registration. You make the interesting point, which nobody else has made, that in practice people have only 14 days, rather than 30 days. You go on to say that the Land Registration etc (Scotland) Act 2012 will perhaps solve all the problems.

My simple question is: do we just have to ensure that we follow your proposal about implementation of that act? Would the 35-day priority period cancel all your other concerns, or will they still stand even after the 2012 act comes into force?

Alan Cook: That would certainly be helpful. The detail on the point is in our written submission. It is probably fair to say that there has been a general pushback from the property industry on the notion that someone will not be able to register their title until they have not only submitted their return but paid the tax, whereas at present people have to submit the return, but they do not have to pay the tax.

I guess that the system under SDLT is justified on the basis that, by submitting a return, someone has submitted themselves to the tax system. In the unlikely event that they do not follow up quickly with payment of the tax, they are in the system and it is easy for the tax authority to enforce payment, because it knows that they should have paid it. It seems to me that it is fairly straightforward for HMRC’s computer systems to link the two using the codes that are adopted for individual returns. I do not think that a manual process is involved, although I think I saw somewhere in the policy evidence that revenue Scotland might be concerned about that. To me, there does not seem to be a particular compliance issue with tax collection under the current system.

Malcolm Chisholm: Okay. I will not go into licensing and charities except to ask two brief questions. Nick Scott gave the example of licensing a music gig for a night, which rather
surprised me. Are you suggesting that that will somehow be caught by the bill?

Nick Scott: That is our reading of the legislation. There is a concern that removing the exemption of licences from LBTT will accidentally sweep into LBTT all sorts of things that to date have not been covered by SDLT. I gave my example to ask whether that is what is intended. There are more meaningful and legitimate examples to concern ourselves with, but we need to be clear about what the intention is.

Malcolm Chisholm: Thanks. Finally, on the issue of charities, into which I will not go in great detail, I was intrigued by the reference to Scottish Natural Heritage in the ICAS submission. I did not quite understand the reference.

Elspeth Orcharton: Scottish Natural Heritage has charitable status granted by HMRC, but it does not meet the conditions of the Charities and Trustee Investment (Scotland) Act 2005 in order to be recognised as a charity in Scotland by OSCR. If the LBTT bill applies only to properties acquired by bodies that are approved by OSCR as Scottish charities, SNH’s situation will change. If it acquires land in a transaction under SDLT, it is within the charitable exemption, but that will not be the case under LBTT.

Malcolm Chisholm: I find that really interesting, because I did not realise that that was the case. It opens up the question whether lots of bodies that are registered with HMRC are in the same position as SNH in that regard. I do not know whether SNH has tried to register with OSCR or on what grounds it cannot register.

Elspeth Orcharton: My understanding is that there is a particular provision in OSCR that has something to do with ministerial control.

Malcolm Chisholm: That is true.

Elspeth Orcharton: My understanding is that that is likely to be the test that is being failed.

Malcolm Chisholm: I did not think that Scottish Natural Heritage was covered by that.

Elspeth Orcharton: I am not aware that a huge number of charities are involved in that way, which could lead me to conclude that you will not cause a big problem if you do not include them. However, it is sometimes useful to think of examples and, if there are not a big number, ask whether we should just include them. Nevertheless, the current policy decision is as I have stated.

Malcolm Chisholm: Okay. That is interesting—thank you.

Michael McMahon (Uddingston and Bellshill) (Lab): I apologise for not being in my place when you kicked off the meeting, convener.
We will not have opening statements and will go straight to questions. I may as well kick off—I usually do. I will not ask a lot—[Interruption.] Of course, I would get on a bit quicker if the deputy convenor did not heckle me. [Laughter.]

Obviously, the ground that we will cover will not be as extensive as that covered in the previous session. My first question is for Chas Booth, but Elaine Waterson can answer subsequently.

Your submission states:

“It makes much sense therefore to introduce a relief at this stage within the principles of the bill, and allow the proposed tax to start to shape investment decisions before the bill is enacted.”

You go on to say that

“most energy efficient homes become cheaper to buy as the transaction costs decline. Therefore, demand for energy efficient homes might increase and thus incentivise sellers to invest to improve ratings.”

As you may be aware, we have taken a lot of evidence from organisations such as Homes for Scotland and the Scottish Building Federation; we have also taken evidence from the Government’s bill team. Some of us were surprised by their evidence, because they completely refute the view that energy efficiency has any impact whatsoever on someone’s decision to buy a home, although they will look at the cost of the house, stamp duty and a number of other factors.

I asked the bill team about zero-carbon homes relief and they said that there have been only five applications—of which three were awarded the relief—in the United Kingdom since the legislation came in in 2006. Would your proposal have any impact? Where is the evidence that it would? The people who sell homes day to day tell us that it would not have an impact.

Chas Booth (Existing Homes Alliance): Thank you very much for the opportunity to give evidence. I want to clarify that I am giving evidence on behalf of the existing homes alliance, which is an alliance of lots of different organisations. I work for the Association for the Conservation of Energy—ACE—which is a trade association. Our members are companies with an interest in energy efficiency and are major manufacturers and installers of energy saving equipment. We are members of the Scottish fuel poverty forum, the existing homes alliance—under whose remit I am giving evidence to you—and Stop Climate Chaos Scotland.

The alliance supports the principle of the introduction of an energy efficiency relief. We accept that there may need to be more discussion on the practicalities of how that is introduced. I will make it clear if I deviate from speaking from the existing homes alliance’s perspective to an ACE perspective.

To answer your question, it is absolutely clear that, at the moment, energy efficiency is not a significant factor when people come to buy and sell homes. Part of the reason for introducing the relief is to make energy efficiency a more significant factor.

The context is that energy performance certificates, which were introduced in 2009, are required at the point of sale. The intention behind those was to raise awareness of the energy efficiency of homes. There is very little evidence that they have been effective in the UK, although there is some evidence that they have been more effective across the European Union. We suggest that although an energy efficiency relief on a transaction tax will not be a magic bullet, it will significantly improve the chances of people taking seriously the energy efficiency of properties.

I will hand over to Elaine Waterson, as I know that the Energy Saving Trust has done quite a bit of research on that.

Elaine Waterson (Energy Saving Trust): Yes. Chas Booth is absolutely right. We know from the research that we have done that people say that energy efficiency and fuel bills are really important to them when they make decisions about purchasing properties, but when it comes down to it, that is not the case. Other things are much more important to them, such as the location of the property, the size of its garden and the number of bedrooms that it has. Energy efficiency makes very little difference when people purchase properties.

A key barrier to people installing energy efficiency measures is that they think that there is a risk that their investment will not be recouped through fuel bill savings over the period in which they live in the property. That prevents them from investing in and taking up energy efficiency measures. It is important to introduce other incentives that would encourage them to invest. Offering reliefs could make a big difference.

The Convener: I am interested in pursuing the detail of that. You have both said that there should be reliefs. The Energy Saving Trust’s submission says that the bill should include

“provisions to allow the introduction of specific reliefs”,

which has just been mentioned. How would those provisions be implemented? How much would they cost? What form would they take? How would we fund them?

The previous witnesses also talked about reliefs and exemptions. I raised with them the issue that the Scottish Government is looking for the bill to be revenue neutral, so that we do not have to cut services because the tax take is low or impose taxes elsewhere to make up any shortfall. What
would the financial impact be if we brought in reliefs? How would the money be recouped from elsewhere? Previous witnesses have said that increasing rates would disincentivise people from investing in property in Scotland. I am looking for more detail on how your proposal would work in practice.

**Chas Booth:** As I said, we accept that perhaps there needs to be more discussion about how it could work. The existing homes alliance has made the specific proposal that the rebate would be based on the energy performance certificate band. For example, a property rated A or B might receive a 50 per cent reduction in the levy or tax that would be due. That would reduce to, for example, 30 per cent for a C-rated property and 20 per cent for a D-rated property, and there would be no reduction at all for the least energy efficient properties. We have done research that estimates that the impact could be between £80 million and £170 million if reliefs alone were introduced.

An alternative approach would be to introduce a relief for the most energy efficient properties and a levy for the least energy efficient properties such that the overall impact would be revenue neutral. For example, a significant rebate could be provided for A-rated properties, there could be a small levy for G-rated properties, and the banding in-between could be varied to ensure that those who sold the least energy efficient properties paid a little bit more, and those who had the most energy efficient properties paid less. That would have the impact of being revenue neutral.

**The Convener:** Say an MSP decides to buy a house in Edinburgh. They might have decided to buy it because they might have a good salary and all the rest of it, and it is likely to be energy efficient. A young person who is starting out may be on a low income. A couple of weeks ago, my assistant bought a house that was built in 1898. Surely what you propose would have an adverse impact on people at the lower end of the income scale rather than people who have money. The proposal would be regressive in some ways in respect of people’s incomes.

**Chas Booth:** I agree that it would have that effect if it was introduced in isolation. However, we have the benefit of the Scottish Government’s excellent energy assistance programme, which provides grants to people in fuel poverty. The Scottish Government will soon introduce the national retrofit strategy, which will provide grants to improve energy efficiency and for other measures. There is also finance from the UK Government’s green deal, which people can use to install energy saving measures in their homes at no up-front cost. In the context of all those measures, including the Scottish Government’s boiler scrappage scheme and the many other initiatives to promote energy efficiency, the overall impact would not be regressive—it would be quite progressive.

Part of the crucial gap with regard to the promotion of energy efficiency is the fact that there is very little incentive to home owners or building owners to invest in energy saving because, in most cases, they will not get their investment back.

To take my own example, I live with my wife and two young children in a two-bedroom Edinburgh colony flat that was built in 1863. Over the past few years we have invested around £20,000 to improve the energy efficiency of the property through draught proofing, solid wall insulation, solar panels, an upgraded boiler and so on. If we come to sell the flat in the near future, we will not make that back. There will be no energy efficiency benefit to us for all the things that we have done. We made that investment partly to improve comfort in the home—it was quite cold, especially at night—and partly to see what the practical difficulties and challenges were in going through the process. Most ordinary people would not do that. Introducing a relief as part of the Scottish Government’s package of measures to improve energy efficiency would have a significant impact.

**Elaine Waterson:** I agree with Chas Booth. The Scottish Government has indicated that it is seriously considering regulating energy efficiency, possibly from 2018. Getting people used to upgrading their home’s energy efficiency at the point of sale is an important precursor to introducing such regulation in future.

**The Convener:** Is there not an issue about whether the cost of bringing a property up to those standards is higher than the amount that people would make on the relief?

**Chas Booth:** Yes, I think that that is true. Any relief will be an incentive, but it will not necessarily offset the entire cost of the measure. That is the purpose of the green deal finance and the national retrofit strategy. Someone who is in fuel poverty and who is eligible for various reliefs will get lots of measures for free under the Scottish Government’s national retrofit strategy. Those who are not eligible to get those measures for free can still get green deal finance, which will allow them to install energy efficiency measures at no up-front cost. The up-front cost of energy efficiency measures has been a significant barrier in the past, and that is part of the problem that the green deal seeks to address. The benefit of an energy efficiency relief on the land and buildings transaction tax would be an added encouragement.

**The Convener:** I do not want to hog the session, so I invite colleagues to ask questions.
Jamie Hepburn: You might not want to hog the session, but you have already asked some of the questions that I wanted to ask.

The Convener: You always say that.

Jamie Hepburn: The answers that have been given allow us to ask for a bit of further explanation, however. I refer to the existing homes alliance’s specific suggestion about properties that are sold, which is that “a percentage relief could be applied according to the energy rating band of the property.”

My first observation is that it is useful to have a specific proposal, and for it to have been costed, which we do not always get.

The proposed percentage reduction for each band seems quite high with—if I have picked you up correctly—50 per cent for properties rated A and B, 30 per cent for C-rated properties and 20 per cent for D-rated properties. Does the existing homes alliance believe that the reductions need to be that high for the measure to be effective?

Chas Booth: I go back to my previous response. We accept that there might need to be some discussion about the detail of our initial proposal and are happy to discuss with Scottish Government officials whether such levels are appropriate. Of course, the greater the rebate or relief you give, the more impact it will have.

We note that the zero-carbon homes relief, which under current proposals will be removed from the land and buildings transaction tax, was set at 100 per cent, and we think that it would be a major missed opportunity if there were no alternative that greatly incentivised energy efficiency improvements. If you are removing a 100 per cent rebate—albeit a rebate that I accept has not benefited a large number of properties—you could, as an alternative, say, “Okay, the zero-carbon homes relief has not been effective but instead of ditching it altogether let’s see if we can come up with a more effective strategy.”

The advantage of our approach is that it will tackle existing homes, which are by far the biggest problem with regard to fuel poverty and climate change emissions. The zero-carbon homes relief was wholly for new homes and therefore benefited only a small number in absolute terms and had only a small impact on fuel poverty and climate change.

Jamie Hepburn: That tallies with previous evidence that we have heard. I suppose that the advantage of your proposal is that every home put up for sale will have to be rated.

You have indicated the scheme’s likely impact on revenue accruing to the Government through the tax system, but have you assessed its likely impact on market activity?

Elaine Waterson: In terms of people wanting to take up the offer?

Jamie Hepburn: In terms of whether it would be an incentive for people to buy and sell homes.

Elaine Waterson: The only research of which I am aware is UK-wide work that we did about eight years ago and which is therefore quite dated. We spoke to householders about possible reliefs linked to stamp duty land tax and found that they were fairly enthusiastic about the idea. I think that something like 26 per cent of householders with unfilled cavity walls said that they would take up such an incentive. However, as I said, that is quite old research, which was based on specific rebate levels.

Jamie Hepburn: Which were what—if you can remember?

Elaine Waterson: I can, but I should caveat my response by pointing out that we were encouraging people to install cavity wall and loft insulation. Now we would be looking more at solid wall insulation, which is much more expensive and disruptive to install. We had suggested something like £300 to encourage the installation of loft insulation and something like £500 for cavity wall insulation, but that included discounts that people would already get from their energy suppliers for installation.

Chas Booth: The Scottish Government’s consultation found that two thirds of respondents wanted an energy efficiency rebate. That suggests that consumer demand exists for such a measure.

Jamie Hepburn: I am not necessarily saying that this is my perspective on the matter. I have to say that I was surprised by what we were told. However, the cynic in me would say that it is easy for people to say that but, when push comes to shove, how much of a priority will it be? That said, you seem to accept the point and are looking at how we can make it a priority.

Elaine Waterson: If people know that regulation is coming, they might see this as a really good opportunity to look for support from an incentive to get something done instead of waiting until the regulation kicks in and finding that the big incentives are not available any more.

Jamie Hepburn: I note what appears to be a slight contradiction in paragraph 11 of the existing homes alliance’s submission—although to be fair I think that you have posited it as a contradiction with your use of “Alternatively”. You say that the introduction of your proposed relief scheme
“could mean that the most energy efficient homes become cheaper to buy as the transaction costs decline”,

but then go on to say that

“Alternatively, sellers might increase the asking price in the knowledge that savings in transaction costs would be realised by the buyer.”

Those two points are quite different and seem to contradict each other. I realise that you might be hedging your bets a bit but which of those scenarios is more likely and—more important, perhaps—more desirable?

Chas Booth: It is important that we develop an energy efficiency premium for housing to ensure that energy efficiency itself rises up the list of factors that people take into account when they buy properties. We have suggested two possible ways of doing that. If there is a tax relief, that property becomes cheaper than it would otherwise have been; it is, however, possible that the seller will want to reclaim some of that, especially if they have invested significantly in the property’s energy efficiency. I do not see that as a problem as long as energy efficiency rises up the list of factors that people take into account. If a seller is more likely to invest in energy efficiency because they think that they can get a marginally higher sale price, that is a good thing. It is an incentive for them to invest in energy efficiency.

Jamie Hepburn: Does that not wipe out any incentive for the buyer through the reduction in stamp duty—or what will be LBTT?

Chas Booth: The buyer will have a number of incentives for purchasing that property, not least of which is the fact that their fuel bills will be much lower.

Jamie Hepburn: But that comes back to the point that I think we have all accepted, which is that that does not seem to be a priority at the moment. I have to be honest with you—I did not consider energy efficiency when I bought my home and the evidence that we have received is that other people feel the same.

Chas Booth: Indeed. Anyone who says that they can predict where fuel bills are going to go is on to a loser, but there is no doubt that they will be volatile in future. In order to protect themselves from that volatility, sensible home owners will become more and more aware of the energy efficiency of their properties. You might not have looked at your house’s energy performance certificate when you moved in, but I would hazard a guess that you will start to look at these things when you get your next fuel bill and find it significantly higher than you expected. People who are buying properties will become increasingly aware of these issues as fuel bills increase. If our proposed relief scheme were to be introduced, it might prove to be a significant factor in people’s calculations.

Jamie Hepburn: Thank you.

Malcolm Chisholm: In general and in principle, I am sympathetic to the idea, simply because I realise that our existing homes are a massive problem for our climate change objectives, and I think that the proposal is worth taking seriously. However, we need to accept that it will have revenue consequences and that, if we are going to take that route, we will need to be absolutely sure that it is targeted on the right actions. I suppose that that is what I am interested in exploring.

I do not really object to Chas Booth getting a premium when he sells his house, given all the work that he has done on it, so if the change was made to help him that would be good.

Chas Booth: Thanks. [Laughter.]

Malcolm Chisholm: However, I might have a problem if the person who bought it from you also got a premium; after all, they did not take the action. If we put the proposed relief scheme in place, should it be focused on recent actions—or indeed the kind of prospective actions that the Energy Saving Trust focused on in its research—rather than something that might have been done 20 years ago? Why should those sellers get the premium? In other words, should the relief be focused on the property’s rating or on the actions that have been taken to deal with the problem?

Chas Booth: I see where you are coming from, but I do not have an immediate answer to your question. I can consider it and discuss it with colleagues and then come back to you with a response.

I can say, however, that the financial cost of energy efficiency improvements carried out through the green deal stays with the property. In a sense, my situation is unusual in that we paid for our improvements with our own money and an Energy Saving Trust Scotland home loan, which is no longer available. That loan leaves the property with us, whereas green deal finance stays with the property.

When we come to sell, if there is relief, we might get some benefit from that. If the property was a green deal property, the buyer would take on the liability for the green deal finance. There is a reason why the property itself should benefit from the relief rather than the seller who introduced energy efficiency improvements, particularly if they are done through the green deal.

Malcolm Chisholm: But the Energy Saving Trust research really focused on the buyer doing some work. Is that idea still attractive?
Elaine Waterson: It is, in principle, because we would not want to pay people who have not done the work. We want to use the tax system to encourage people to do something; that makes sense. However, since we did the original work, the wider policy environment has changed. As Chas Booth said, we now have the green deal, and the liability for that will stay with the property. The people moving into that property will have to carry on making the repayments on that loan through their fuel bills. That changes the situation slightly and so it needs more thought.

Some have suggested that if a property has a green deal loan attached to it, that could act as a barrier to someone who might want to purchase it. Having some relief linked to LBTT could help people to get over that barrier.

The policy environment has changed since we did our original research. In an ideal world, we would encourage people to take action and only give relief to people who had done so. However, in reality, we need to think about that a wee bit more in the context of the green deal loan staying with the property.

Malcolm Chisholm: I am not sure whether your original proposal would have meant that there would be a rebate after the work was done or that a person who said that they were going to do the work would therefore not have to pay all the tax in the first place. I am not sure which it was. Either way, it leads to my next question. How does your proposal differ from just giving someone a grant to do the work?

Elaine Waterson: When we spoke to householders, we found that they felt differently about taxes and grants. People got quite excited when they were talking about tax and liked the idea of avoiding it. They were more keen to do something if they believed that, rather than getting a grant, it would mean that they could avoid paying tax.

Malcolm Chisholm: Was that the original proposal? Were you basically saying that people who did the work would not have to pay all the stamp duty?

Elaine Waterson: Yes. The buyer would undertake the work and they would get a stamp duty rebate at some point in the future when they had proved that the work had been done.

Gavin Brown: I just want to check the figures from the existing homes alliance. I do not see them in the paper but you gave them verbally. What did you think would be the cost of your proposed relief? You gave a range of figures, but can you remind me what the cost was?

Chas Booth: I apologise. The figures are not in our evidence to the committee; they are in our response to the Scottish Government’s consultation.

One proposal was for a specific 50 per cent rebate for properties rated A and B, reducing to a 20 per cent rebate for D-rated homes. We estimated that the impact of that would be between £80 million and £170 million. I did not do the research so I will have to ask my colleagues whether that is an annual figure or a one-off; I can check on that and get back to you.

Gavin Brown: That would be helpful. I thought that those were the figures that you gave. I ask because, according to the financial memorandum, the receipts in 2010-11—the most recent set of figures—for residential properties in Scotland were £165 million. Even if the cost is £80 million, which is at the lower end, the proposal would effectively chop in half the amount that is collected. It would be helpful if you could revert to the committee and say whether that is an overall figure or an annual figure.

Chas Booth: I will check that and get back to you. However, I stress that that is one proposal that we have made as the basis for a conversation; it is not necessarily our recommendation. An alternative would be a revenue-neutral approach that included a reduction for the most energy efficient properties and an increase for the most energy inefficient properties. We recognise that perhaps that might be more attractive to the Scottish Government, particularly given its desire for a reliable income from the tax.

11:45

Jean Urquhart: Following on from Malcolm Chisholm’s questions and his observations about who benefits, do you agree that a tax allowance would be the least attractive way of realising our ambition for houses?

I agree that people do not want to pay tax—that is a given—but they have to, and when they are being sensible, they see that. Surely what we need to do with the grant system, particularly with new build, is to install energy efficient devices—whether insulation or heating sources—at the time of building. At the moment we are building houses that will be subject to retrofit because that is not happening, which does not seem to make any sense.

If there is money available, should the incentive be given to the developer, rather than an allowance being made at the tax end?

Elaine Waterson: Given that new build represents such a small chunk of the overall housing stock and the majority of carbon emissions are from existing homes, if we are
looking at how the tax system could improve energy efficiency, it makes sense to focus on existing homes. That is not to say that a system could not be developed that would encourage improvements across the board, from G-rated homes through to A-rated or zero-rated new-build homes.

As to whether going through taxes is the right way, as opposed to offering grants, there are already quite a lot of grants available. We know from experience of supplier obligations through the energy efficiency commitment and the carbon emissions reduction target that it has become harder and harder over the years to encourage people to take up energy efficiency measures. During the last part of CERT, some suppliers struggled to give insulation measures away for free. There is a need to look at all policy mechanisms that can be employed to encourage people to take up energy efficiency measures.

Chas Booth: I will expand on Elaine Waterson’s point. Over the past six months to a year, energy companies offered a lot of cavity wall insulation for free and a number of people did not take that up. There will have been a number of reasons for that. They may have been unsure about what they were being offered; they may have thought that the deal was too good to be true; and they may have had concerns about the technical aspects of installing cavity wall insulation, despite the fact that those concerns have been comprehensively addressed and cavity wall insulation is no longer considered to be a risk to the property, as long as it is properly surveyed beforehand.

There are lots of reasons why people turn down offers of free insulation whereas they might take up a tax incentive. We have seen the example of council tax discounts, whereby people are offered a small discount off their council tax bill on the basis that they will install loft and cavity wall insulation. In most Scottish local authorities, that offer is more expensive than it would cost to go out to the general market to install cavity wall insulation, and yet the take-up has been quite substantial because certain people are particularly attracted to seeing that line on their council tax bill: “Reduction due to energy efficiency measures: £50”.

There is a very broad demographic out there. Some people will not accept free loft and cavity wall insulation, but they will accept a discount on their council tax in order to install it. Our proposed energy efficiency rebate would tackle the demographic that is not reached through other measures.

John Mason: I will risk going over the same ground a little bit more, but this is the area that interests me. I asked the previous panel of witnesses about it, but they could not answer me, so I thought that I would ask you.

If we were sitting here offering you a cheque for £20 million to improve the energy efficiency of homes in Scotland, would you put all or some of that into LBTT relief, council tax relief or grants? I still lean towards the idea that grants, or something immediate, would be more effective.

Elaine Waterson: As I said before, we need a range of policies. There are grants available at the moment, but recent work by WWF Scotland suggests that we need increased investment in energy efficiency. That should probably be in the form of increased grants for a wider national retrofit programme, for example.

Absolutely—more grants are required. However, it is important to employ other policies as well if we are to achieve our climate change targets. Those targets are massively challenging. They can be achieved most cost effectively by improving the energy efficiency of homes. Housing energy efficiency is the cheapest sector in which to deliver carbon savings, but the right policies need to be in place for that to happen.

John Mason: We have limited money, so we have to choose priorities—not us personally, but the Government. It would be nice to provide relief on council tax, this, that and the next thing, but where will we get most bang for our buck? Are you totally convinced that an energy efficiency rebate is one of the best places to put it?

Elaine Waterson: I am convinced that it is an important place to put it. We must bear in mind the fact that moving home is the point at which people do not care about energy efficiency; it is really low down on the priority list. An energy efficiency rebate could help people who would not otherwise do work to improve the energy efficiency of their home to undertake it. It would reach people who are not being reached at the moment.

John Mason: It would surely also miss a lot of people. I have lived in my flat for 23 years and have no plans to move, so it would be no incentive to me at all.

Elaine Waterson: Absolutely. I do not know the figures—you probably have a better handle on them than I do—but a relatively small proportion of people stay in their homes for more than 20 years. The majority move before that.

John Mason: Nevertheless, we are talking about quite a long time before some people would get any kind of feedback. The other thing is that I live in an estate with 270 flats, none of which is worth £100,000. The measure is of no incentive at all if the house is worth less than £180,000, is it?

Elaine Waterson: That is why we need a range of policies. It is why we need the national retrofit
programme and still need the supplier obligations. Those measures catch the people who would not be caught at the point of home sale.

**Chas Booth:** Your question was where we would put your £200 million—

**John Mason:** It was £20 million.

**Chas Booth:** Oh well, perhaps I was being a bit more optimistic.

Obviously, we would not put all our eggs in one basket. We would spread the money around to ensure that we had the maximum impact and developed incentives for the widest possible demographic.

As Elaine Waterson said, we have the context of some good Scottish Government programmes. We would like them to be better funded, but we recognise that it is better to have the energy assistance package and the national retrofit programme, which at least receive some taxpayer funding. In England, there is none at all, which is deeply regressive and deeply regrettable.

It should not be an either/or question. We should not be asking whether we tackle fuel poverty through the energy assistance package or offer a rebate for energy efficiency at the point of sale. Ideally, we should do both, because they tackle different demographics.

On how much an energy efficiency rebate would cost, I reiterate that it could be revenue neutral if we introduced a rebate for the most energy efficient and a levy for the most energy inefficient properties.

**John Mason:** I take that point.

I wonder about the practicalities of such a rebate. Building standards are changing all the time. I was down at the Commonwealth games athletes village recently and saw fabulous houses that Mactaggart & Mickel are building. They have a tiny little radiator that will heat a huge room. Mactaggart & Mickel says that it cannot do that commercially at the moment but that it would be the standard in the future. Would we need to change the regulations every year to raise the standard to prevent more and more houses getting a tiny little radiator that will heat a huge room?

**Chas Booth:** I will take off my existing homes alliance hat and put on my Association for the Conservation of Energy hat. Obviously, the existing homes alliance is concerned with existing homes. New build represents a small percentage of the market, but it is the easiest part to get right.

The Scottish Government has a road map. The Sullivan report, which was published in 2007, set out a road map to deliver very low-carbon homes in 2013 and zero-carbon homes in 2016. If we stick to the road map, we will be fine. We will not need a zero-carbon homes rebate.

However, the consultation that the Scottish Government issued last month suggests that it is deviating from its road map by watering down the level of ambition and proposing to delay the introduction of the 2013 standard and, potentially, the 2016 standard. That concerns us greatly, partly because it punches a big hole in the Scottish Government's carbon reduction targets. In addition, it signals a lack of ambition. It says that the Scottish Government is quite happy for new buildings to be built to what, in a European context, are pretty poor standards. The energy standards that we have in Scotland were only recently brought up to the standards that Sweden set in 1978. We are around 30 years behind the best in Europe. We urge that the level of ambition be raised.

**John Mason:** Can I confirm that we are talking only about residential properties and not about any relief for commercial properties?

**Chas Booth:** Yes.

**The Convener:** You said that your scheme would be progressive but, looking at the figures, I have to disagree. Under SDLT, someone who buys a house for £100,000 does not pay any stamp duty. Under your incentive scheme—your A, B, C, D scheme—they would gain nothing, but someone who bought an A-rated house for £200,000 would save 50 per cent; in other words, they would save £1,000. Someone who bought a house for £2 million would save £87,500, which is a big tax relief, given that such a person is not likely to burn much more carbon than someone who buys a house for £100,000 and who gets nothing. Your proposed system appears to be highly regressive. Although the figures for LBTT will not be the same as those for SDLT, the wealthiest people who buy the biggest houses must be the ones who will gain, however you design the system.

You talked about grants. You said that your proposal could be revenue neutral through bands A to G, but if you propose to have grants as well, surely your system would not be revenue neutral. There would be a cost on the Scottish Government. You are not guaranteeing that the people who are on the lowest incomes would gain. To me, your proposed scheme just looks like a subsidy for the better-off.

**Chas Booth:** The Scottish Government's grant scheme—the energy assistance programme—already exists. From memory, the Scottish Government has committed around £65 million to it in the current financial year. Going forward, that will become the national retrofit strategy. Money has been committed to that in the budget.
Eligibility for that existing scheme is specifically related to the benefits that a person is on, so the poorest people will be eligible for 100 per cent grants for a lot of this.

I go back to my previous point. What we are proposing is not an either/or; it is in addition to the existing programmes. To tackle fuel poverty, the Scottish Government has the energy assistance package, which will become the national retrofit programme. We warmly welcome that and encourage the Government to continue to invest in it.

As far as your claim that our proposal would be regressive is concerned, I return to the point that I made earlier. We completely agree that there needs to be discussion about the level at which the relief would be set. Perhaps there should be a cut-off point, whereby properties above a certain value would not benefit. However, I think that there is a genuine need to create an incentive for energy efficiency in the housing market. Such an incentive does not exist at the moment. The energy performance certificates do not seem to have achieved that. We believe that a relief on LBTT would be a sensible way to proceed, although we recognise that we need to look closely at the impact that that would have on those people on modest incomes.

**Elaine Waterson:** For homes that were valued at a level at which LBTT did not have to be paid, there might be ways of including them in the scheme and giving them a rebate anyway. You are frowning.

**The Convener:** Yes, but that would cost money. The issue is that the bill is to be revenue neutral, but you are saying that we could have rebates and grants in addition to what is already being done. It is clear that that would cost more, which would have to come from other areas of the Scottish budget.

**Elaine Waterson:** Absolutely. It would cost more.

**Chas Booth:** Of course, there is also green deal finance. Those people who have an income can apply for green deal finance, which allows them to install such measures at no up-front cost. Those who are in most need will be able to apply for the existing programmes—the energy assistance programme and the national retrofit programme—while people who are not eligible for those will be able to apply for green deal finance, which will give them access to such measures at no up-front cost.

I agree that we need to proceed with caution and to look carefully at what the impacts of our proposal would be, but I believe that, in the context of all the existing programmes, a system that is based on energy performance can be implemented in a way that is progressive rather than regressive.

**The Convener:** Okay.

Thank you very much. I thank colleagues for their questions. At the start of the meeting, the committee agreed to take the next item in private, so I close the public part of the meeting.

12:01

*Meeting continued in private until 12:14.*
The Convener: Our second item of business is to take oral evidence as part of our stage 1 scrutiny of the Land and Buildings Transaction Tax (Scotland) Bill. I welcome to the meeting John Fanning, John Fraser and John King. I will not be calling anyone “John” this morning. You could change your names: one could be Sean and one could be Ian. We will have to call you by your surnames.

I ask the witnesses to make a brief opening statement, after which we will have questions. Who is going to kick off?

John King (Registers of Scotland): I am the senior responsible owner for the land and buildings transaction tax project in Registers of Scotland. We provided a written submission to the committee and we are delighted to be here to help with your evidence gathering, but we have no opening statement.

The Convener: Fair enough. We will move straight to questions.

We have some papers in front of us. The Law Society of Scotland states in its written submission that the stamp duty land tax online system is overly complex and that it “is essential that the new online system for LBTT is ready in sufficient time for it to be adequately tested by practitioners and for guidance to be prepared well before ... 2015.”

The $64,000 question is: will it be?

John King: We have every confidence that it will be. The project that we have set up has a set of milestones and a set of key dates for key deliverables. We intend to have the LBTT system ready by autumn 2014. We appreciate that a degree of clarity is still required about the system’s functionality—what it has to do—and how our users will interact with it. That will become more apparent as the LBTT bill and the tax management bill progress.

We are committed to involving our customers in the development and build of the system and its ultimate testing, and we will start that process with our customers over the next two months.

Regarding the overall timeframe, I refer to the most recent complex technical build that we have delivered, which is the crofting register. The technical phase of that project took approximately eight or nine months from start to completion. We see the LBTT system as being less complex than that, so we are confident that we have ample time...
in which to deliver the system in advance of the go-live date.

I emphasise that we are not overconfident—we realise that there is a lot to do—but we are confident. We have a team in place and we are confident that we have the time to ensure that the system is delivered so that our stakeholders have a reasonable length of time to get used to it.

The Convener: That is reassuring, because concerns regarding the robustness, speed and ease of use of the automated registration of title to land were raised with us by, for example, Brodies LLP, whose written submission stated:

“It is essential that both the LBTT system and the ARTL system work smoothly separately and together and that all teething problems have been addressed before the systems go live.”

Is that level of work being done?

John King: We acknowledge that there are issues with the ARTL system, particularly around robustness and speed of service. The system is still used. It is primarily a remortgage system and some 68,000 transactions have gone through it. We acknowledge that there are issues with it and perhaps my colleague, Mr Fraser, could explain what we are doing to alleviate some of them.

John Fraser (Registers of Scotland): We will make sure that the new LBTT collection system is indeed robust and speedy. The ARTL system to which you referred, convener, has been running for five years; it was built five years ago. We now have access to better and faster equipment and better software, and we are confident that the LBTT collection system will be fit for purpose.

The Convener: There are concerns about strategic planning agreement. Projects worth £6.7 million have been written off. There have been difficulties with information technology development over the years, have there not?

John King: I emphasise that ROS is an IT-dependent organisation. Our core registers have all been IT-enabled for a number of decades, and that IT supports approximately 400,000 registrations each year. Similarly, the public’s access to registers is essentially achieved electronically. That has been the case since 1999, so we are used to working with IT.

We acknowledge that there was a problem with two particular projects, which resulted in the declaration of an impairment in our 2010-11 accounts. One was an electronic case-bank project that had been running since 2006. When the current keeper took office in 2009, the project was reviewed. The review found that there were still a couple of years to go before delivery would take place and that the system would not have the functionality that either we or our customers required and would not meet the obligations that the then Land Registration etc (Scotland) Bill set out.

We, as the senior management team in ROS, felt that it was the right decision—although a difficult one—to halt that particular project. Since then, and certainly since 2010, we have carried out a considerable review of our governance and financial reporting and the controls that we put in place for projects. We have also built up our intelligent client function, project management skills and programme office skills.

It was partly the halted project that resulted in our taking a considered look at our IT partnership with BT. We engaged in a 10-year partnership with BT in 2004, which ended amicably at the end of November last year, and we have transitioned successfully from dependency on BT to in-house control of our IT. That transition was benchmarked by a Scottish Government review team, which concluded that we had transitioned successfully and that we were already beginning to see financial and operational benefits from carrying out our IT development and service work in-house.

I should mention that we have delivered our first major IT project outwith the BT partnership: the crofting register, which went live on St Andrew’s day last year. That was quite a sophisticated technical project, and it was delivered on time and within budget.

The Convener: Paragraphs 8 and 9 of your submission mention costs specifically. You state:

“Set-up costs are estimated to be £335,000 and annual running costs … a maximum £325,000.”

You go on to mention

“three areas where costs may vary from that provided in the Financial Memorandum, namely … Compliance … LBTT helpdesk advice to taxpayers”

and

“Basis of taxation for non-residential leases”.

What level of variance might there be in those figures?

John Fanning (Registers of Scotland): First, let me say good morning—I am the finance director of Registers of Scotland.

We have modelled the cost base closely, based on our knowledge of residential transaction processing in the entire registration space, so we have quite a good idea of the level of business that we will have to manage.

We view compliance as a role primarily for revenue Scotland. Our role in the venture is to collect the tax and remit it to revenue Scotland. Revenue Scotland has considerable provision in its financial forecast for compliance-related
activity, and we will work with it closely in the next three months to identify precisely where the demarcation line between compliance and collection should be.

The committee has identified a number of areas in which further work will be required at stage 2 of the bill. Those areas are more complex, so we will enter into dialogue with revenue Scotland based on what the Parliament has considered in those areas too. We are quite confident that the costs are robust, on the basis of our experience of handling high volumes of land registration-related transactions.

The Convener: I am concerned about helpdesk advice, because people have said in formal and informal evidence to the committee that the current situation is a major concern. When the new tax is introduced, I would think that a lot of people will want to phone for clarification, perhaps before making submissions. If that advice—which one hopes will be of high quality—is to be provided along with everything else, an annual running cost of £325,000 seems to be a modest sum, given the volume of inquiries that I would expect you to have, at least initially.

John King: The amount is difficult to estimate. We appreciate that the collection and administration role will be looked at in the context of the tax management bill. We based the figure on our experience of running the land register and of the land register being extended throughout Scotland, which gave us a feel for the likely volume of inquiries.

In dialogue with revenue Scotland, we will need to consider the inquiries that ROS will handle. We do not know whether our role will be simply to give guidance on filling in the online form or to be more involved in advising on aspects of the tax. At the moment, we think that our role is more likely to be the former.

What we have set aside in our ongoing estimates is the equivalent of four continuous members of staff to deal with inquiries. We modelled the work on the basis that pretty much each tax return with taxes submitted might mean an inquiry. The numbers stack out for modelling the average time that an inquiry takes. Our experience with the land register is that four members of staff would be needed, but we appreciate that, if our role were to expand, costs might need to be reallocated between us and revenue Scotland to accommodate additional helpdesk functions.

We are very aware of the need for helpdesk advice. From our experience of running the land register, we have found that the demand for access to the helpdesk is relatively constant—it does not tail off. For instance, after the first year or two of an area of Scotland moving on to the land register, the volume of inquiries remains pretty constant. The volume has also remained reasonably constant despite the current dip in the property market. That might just reflect considerable churn in the conveyancing profession.

The Convener: I was thinking about an initial surge of inquiries as opposed to a steady decline. Thank you for responding to my questions.

I will now open the session to committee members.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): Paragraph 7 of your submission says:

“there is weekly dialogue between RoS and Revenue Scotland at project team level on common issues.”

What are those issues?

John King: A range of issues is being discussed. I say “issues”, but the appropriate word is perhaps “matters”—they are matters of relevance to the project. When it was announced that ROS would be nominated as a collection body, we established a project in ROS. On the basis of what we know is in the bill, we are developing high-level requirements and informing our understanding of the policy and the system impact of enabling that policy.

The weekly dialogue includes general information that relates to our understanding of the bill and drivers in it. The dialogue is more detailed; for example, we need input from revenue Scotland into the workshops that we are holding to develop requirements. On a range of issues, we are saying, “Does the bill mean this? It could mean something else. What are the implications for an ROS collection role?” That is general fact finding.

Another issue is the potential scope for ROS in relation to compliance work. We appreciate that that will be considered as part of the tax management bill, but we are trying to get a feel for the range of options and potential scenarios, so that we ensure that any exercise to capture system requirements that we undertake notes all the options.

We have been discussing internal training for our staff with revenue Scotland, and we have been considering what general guidance for the profession might involve. A further issue that we have been considering is how best to involve our customers in the development of the system, from both a revenue Scotland perspective and an ROS perspective, ensuring that they dovetail in a meaningful way.
Jamie Hepburn: You have spoken about guidance for professionals. Later in the same paragraph of your submission, you state:

"we will, in tandem with Revenue Scotland, work to deliver clear guidance for taxpayers and their advisers on those matters"—

which essentially means on the respective jurisdictions of Registers of Scotland and HM Revenue and Customs. What will that guidance look like, and how will it be distributed?

John King: It is fairly early days. It is clear from our initial discussions with revenue Scotland that there is a lot more work to be done. We need to engage with revenue Scotland, as people will be using the system to ascertain what medium for distributing information will be appropriate for them and what type of information they will require.

When we launched the stamp duty land tax component of our e-registration system, we provided a range of guidance on the general law and its applicability to conveyancing. We provided a series of frequently asked questions about different aspects of the system and of the tax. We provided some helpdesk functionality, and we did some mailshots. We also did what we call registers updates, which was like a one-to-one communication to all conveyancing professionals about the system, about the delegation of powers from HMRC to ROS and about what that means for solicitors and other users in Scotland. There will be a suite of different types of material.

Jamie Hepburn: That is obviously building on stuff that you have done previously. Were there any issues that you identified in the process that you are learning from this time around?

John King: The one key message that we would take is that different solicitors firms have different preferred ways of receiving communications from ROS. If we wish to be successful in ensuring that people are aware of key messages, we will have to embrace a range of different methods for delivering those messages.

John Fanning: I stress the regular dialogue that we have with advisory firms, which is for all sorts of reasons other than to do with LBTT. We need to understand the needs and requirements of what is our primary customer base. It is not as if we are coming in as an entirely new organisation with our primary customer base. It is not as if we are coming in as an entirely new organisation with some mailshots. We also did what we call registers updates, which was like a one-to-one communication to all conveyancing professionals about the system, about the delegation of powers from HMRC to ROS and about what that means for solicitors and other users in Scotland. There will be a suite of different types of material.

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John Fanning: I stress the regular dialogue that we have with advisory firms, which is for all sorts of reasons other than to do with LBTT. We need to understand the needs and requirements of what is our primary customer base. It is not as if we are coming in as an entirely new organisation with which the entities concerned need to interact—they are already very familiar with what we do. We have numerous contact methods that we use with those firms. We know who they are and they know who we are. There is a continuing dialogue way over and above LBTT.

We are dealing with the implementation of the Land Registration etc (Scotland) Act 2012, which—I hesitate to say this—is arguably a much bigger project for us than LBTT. I say that while in no way diminishing the importance of LBTT. That regular dialogue will be really helpful for us in the next two and a half years, as we roll out both projects.

Gavin Brown (Lothian) (Con): I want to go through some of the costings that have been set out in the financial memorandum, specifically the costings allocated to Registers of Scotland at page 53. The convener asked about information technology costs and referred to previous IT projects. If I understand the financial memorandum correctly, there is £10,000 under "Non staff costs" for helping solicitors to become familiar with the new system, but the total build cost for developing and implementing the new LBTT system is £75,000. Is that your understanding?

John Fanning: Not quite. The vast majority of the staff cost of £250,000 that you will see in the upper part of the table is the cost of our internal IT development staff, who will deliver the project. Had we done the project via outsourced purchasing of IT services from a third party, that would have fallen into the bottom half of the table—it would have been a non-staff cost as bought-in goods and services. However, because we took a strategic decision that we could develop a far more effective system in-house, we will be using our own staff costs.

Accounting standards enable us to capitalise a certain element of those staff costs, so the intellectual property in the new system, its design costs and its build will be a capital asset that we show in our balance sheet and which will depreciate over a period of years.

The essential cost—or much more of the cost—is included in that staff cost element than in the external element. The £75,000 is for pieces of hardware and specialist kit that we need to enable John Fraser's team to develop the IT system.

Gavin Brown: Are you absolutely sure, subject to the caveats that you have laid out, that the £75,000 and the majority of the £250,000 will be enough to design and build the new system?

John Fanning: We certainly think that that is the case. John King mentioned the crofting register. Admittedly, its scope is narrower—it affects a finite group of individuals and customers, whereas LBTT affects the whole country—but the creation of that software, which was a more complicated technical project, cost £100,000, so we are quite confident that we can do the IT development for LBTT for the combined £250,000 plus £85,000.

I stress that that covers the two years fromround about now to April 2015. That is a fairly
generous provision that should enable us to deliver the project on time and to budget.

John Fraser might want to add something on the development side.

John Fraser: We will take advantage of improvements that we are making in our infrastructure in any case. Since the departure of BT, we have had plans to revamp completely the hardware and networks. We will be spending that money anyway and will build and deliver the LBTT collection system on the same infrastructure.

Gavin Brown: Mr Fanning, when you used the word “generous”, did you mean that there is a bit of headroom in the provision? Have you built some risk into the figures?

John Fanning: Yes, I think so. Our IT history has not been unblemished—that is probably the polite way to put it—so we are wise to err on the side of caution.

We have not padded out the numbers to an extravagant degree, but we think that there is sufficient contingency in them. They are people costs in the main, so I am confident that the sum will enable us to deliver a quality product.

Gavin Brown: I have a similar question on figures that are over the page in the financial memorandum, on annual running costs once the system is up and running. Perhaps you can tell me which staff costs would be included, but your non-staff IT costs appear to be only £20,000 a year. I am no expert, but that strikes me as quite low. Will you expand on that and tell me what the overall IT running costs are?

John Fanning: John Fraser can expand on this but, once we have up and running a system that has hardwired into it the capability to modify items such as thresholds and rates, the additional IT costs would relate only to developments to bring on board new legislative requirements.

In the same table, we have the slightly imprecisely described “Additional costs associated with new chargeable transactions”. If a significant new chargeable transaction came within the remit of the tax, that would be where we would make the IT changes. Therefore, it might be fairer to look at the £20,000 plus the £50,000 as the IT provision.

Of course, we are speculating about something that is some time down the track. It is more likely that the discussions about some of the issues that have been deferred until stage 2 will identify an additional requirement for IT design if the Parliament comes up with solutions on commercial leases, property companies or trusts and partnerships. At the moment, that part of the bill is not clear. As and when it crystallises, we will design IT systems on it.

I would like to think that we will potentially expend some money in the design phase that will save money in the running-cost phase.

Gavin Brown: I also want to re-examine a couple of points that have been raised by colleagues already.

You laid out caveats in relation to potential differences in costs. One concerned compliance. My reading of that caveat is that you are suggesting that, if you are involved in compliance, there will be a reallocation of money from revenue Scotland to Registers of Scotland. Is that right?

John Fanning: Yes.

Gavin Brown: So is it your view that there would be no increase in the overall cost of compliance, and that the cost would simply shift from one organisation to another?

John Fanning: That is what I would expect to occur if there was a significant switch. Section 53 allows an agreement between ourselves and revenue Scotland. We have designed our costing assumptions around a relatively light-touch role for us in compliance and a commensurately heavier-touch role for revenue Scotland. If there were a shift in that balance, I would expect our partners in revenue Scotland to recognise that and transfer costs in the way that you describe.

Gavin Brown: You said to the convener that the LBTT helpdesk, for which you have made provision in the budget, would have four members of staff. We have heard complaints from a number of witnesses that the current set-up of the helpdesk is not as helpful as it ought to be. How will having four staff members across Scotland compare with what is currently in place? Is that a huge improvement? Do you have a sense of what the situation is like at the moment?

John Fanning: I do not think that we have a real sense of the situation at the moment. What we have is our experience of introducing other registration services in the way that John King described earlier. You could have an extremely generously staffed-up helpdesk, which could deal with every possible call on every possible matter, but that would be an expensive way of delivering the service. There is quite a tricky balancing act to be struck in getting the right number of advisers to provide a service and not veering over to the stage at which advisers—either deliberately or inadvertently—use us as a source of revenue to cover their own costs.

We think that having four staff will be sufficient for the day-to-day administrative calls. There is also an additional provision in the numbers for more complex inquiries. That is the sort of continuum that we are going for. Clearly, if someone asks, “How do I fill out line 15 in the
That is essential for us and, more important, for maintain that positive relationship with HMRC.

As we go through the transition from stamp duty land tax to LBTT, it is absolutely essential that we obtain that information. However, it has given us informal feedback on the general volume and nature of inquiries, which has helped us with our modelling.

We do not have a note of the percentage of inquiries that HMRC receives through its general helpdesk that relate to stamp duty land tax matters in Scotland. We have asked HMRC for that, but we understand that it is not particularly easy for it to obtain that information. However, it has given us informal feedback on the general volume and nature of inquiries, which has helped us with our modelling.

10:00

As we go through the transition from stamp duty land tax to LBTT, it is absolutely essential that we maintain that positive relationship with HMRC. That is essential for us and, more important, for our customers, so that we can give them clear guidance on the transition and, when the date gets nearer, on whether a particular transaction falls under the ambit of LBTT or remains under the ambit of SDLT. We are represented on two projects that HMRC has set up on the transition, so dialogue is on-going. There is also on-going dialogue between our project manager and colleagues in HMRC.

John Mason: I agree that the relationship is important. However, it does not encourage me to hear that HMRC does not know how many inquiries it has about SDLT and how many of them come from Scotland. That sends a warning signal for the future that things might not be all that smooth. I have to say that I am not a great fan of HMRC. The fact that the Government proposes to use Registers of Scotland and revenue Scotland rather than HMRC suggests that it is somewhat bureaucratic and expensive. Do you feel free to comment on that? Will the new system be more lean and mean?

John Fanning: It is worth making the point that our role vis-à-vis the collection of stamp duty land tax is confined to Scotland and is narrow; all we do is collect the tax. An adviser, or the taxpayer, identifies the tax that they think is due; we take a payment and remit it directly to HMRC. We have very little in the way of a compliance or advisory role at present. Under the new tax, things will be totally different. The concern that John Mason expresses is valid, but I do not think that the situations are directly comparable.

We clearly need to engage in dialogue as soon as we can. When the committee’s hearings and the current phase of the legislative process are complete, that will be an appropriate point to increase the volume of dialogue although, as John King described, it is already in progress. To summarise, our role is narrow at present, but it will widen, and discussions are required.

John King: On the point about bureaucracy, without being in any way disparaging of HMRC—I emphasise that we have a good working relationship with it—the fact that ROS will act as a collection agent should reduce bureaucracy for the customer because we will, in effect, act as a one-stop shop. At present, for the overwhelming majority of transactions—all of them, apart from the ones that go through our online system—our customers have first to interact with HMRC before they can present their land transaction for registration. As we all know, that adds risk, administrative cost and delay to the process.

We have in place an administrative framework, based on our relationship with the solicitor community in Scotland, which we can use to ensure that solicitors’ experience with the land and buildings transaction tax is better than their current
experience with stamp duty land tax. I emphasise that I am in no way having a go at HMRC, because it has been helpful to us.

On the point about the helpdesk, HMRC has told us the overall number of inquiries. However, we do not have a detailed understanding of how many of those inquiries relate to Scottish transactions. That is more just because of the practicalities and the nature of the helpdesk and of inquiries. For instance, a Scottish solicitor could phone up, but might give no indication that they are Scottish. Alternatively, a Scottish solicitor might be dealing with an English transaction or an English solicitor might be dealing with a cross-border commercial transaction. Such examples are where the challenge is for HMRC in providing information.

**John Mason:** That is fair enough. I am not totally reassured, but there you go.

Obviously, the relationship will change; you currently just collect money for HMRC, whereas in the future ROS and revenue Scotland will be an equivalent of HMRC in some ways, albeit smaller. I hope that HMRC will take that on board. Specifics, such as the timings during the switch to the new tax, will depend a lot on the relationship with HMRC. Do you anticipate—based on the bill—that it will be clear who pays SDLT and who pays LBTT? Is there room for uncertainty?

**John King:** In principle, who pays which tax should be clear; we think that it should be very clear for residential transactions. There will be a clear cut-off date for when the new tax applies to a land transaction in Scotland. We hope that it will be clear, too, for non-residential transactions, and I imagine that our customers will hope that it is clear as well.

We appreciate that the details have still to be brought before Parliament, and we understand that that will happen at stage 2. We must be honest and say that because we do not know what the detail of the provisions may be, we do not know what the impact may be in terms of customer guidance to aid the transition.

**John Mason:** Okay. I take it that there are already examples of single sales that involve land or buildings on both sides of the border.

**John King:** Yes.

**John Mason:** Will the practice for that need to change much?

**John King:** Our clear understanding is that any property in Scotland will be subject to LBTT and that any property south of the border will be subject to SDLT. You are right that there are transactions on property that straddle the border, although they are very rare. The same principle applies to land registration: title for property north of the border is registered with ROS and property south of the border must be registered with the Land Registry in England and Wales.

**John Mason:** Does the value need to be split at the moment, or will that be a new provision for the future?

**John King:** The value must be split for registration. I have to be honest and say that I do not know how that will apply for LBTT. I imagine that that is one of the details that will have to be explored.

**John Mason:** Okay.

Apparently, one of the agreements in all this is that all the costs, or the extra costs, of LBTT will be taken from the Scottish side, even though decisions are made at the United Kingdom end. Obviously, we hope to minimise costs. How do you see ROS’s role in that? I perceive an inclination on the part of HMRC to push all the costs in our direction, even though we are not necessarily totally in control of them. Are you able to try to minimise extra costs?

**John Fanning:** To which extra costs are you referring? Is it the transitional costs?

**John Mason:** HMRC is talking about switch-off costs in that just to stop having SDLT will involve extra costs. I do not know whether you have been involved in that or have had discussions about it. It is just that—again—I am nervous that we will have costs landed on us as a result of HMRC saying that it needs a new computer system because Scotland is not involved any more, and so on.

**John Fanning:** We have not discussed that. I am not sure that we regard it as falling within our remit. I think that it is an issue for the Scottish Government and/or revenue Scotland.

**John Mason:** Okay. I think that there is provision that HMRC or the UK Government will be able to get information from you and/or revenue Scotland on an on-going basis. I understand that that is because they need to do statistics and all that sort of stuff. Do you anticipate any extra costs in, for example, IT so that you can provide them with information, or will that all be covered by what we need to do anyway?

**John Fanning:** No; I think that we would build that requirement into the IT design. We have actually included a figure in the financial memorandum, to which Mr Brown referred. I think that the figure is £15,000 for the on-going requirement to remit information to HMRC.

**John Mason:** Will HMRC refund us for that?

**John Fanning:** No, I do not think that it will. I think that that is a requirement on HMRC because, at least until November 2014, the majority of the tax affairs of taxpayers in Scotland will be
managed by HMRC. In fact, that will be the case even beyond 2014 or beyond the introduction of LBTT, if Scotland remains a part of the UK. In that case, a large number of the tax affairs of taxpayers who are resident in Scotland will still be managed by HMRC, so it will still need that information both for the data purposes to which John King referred and for overall management of commercial entity or individual taxpayers’ affairs.

John Mason: It appears, therefore, that we will pay for our own costs and for part of HMRC’s costs as well. You do not need to answer that. [Laughter.]

John Fanning: I will pass on that one.

John Mason: Okay. Thank you.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): There has been quite a lot of discussion about the timing of the payment in relation to registration. I am interested in how that works at present and how it will work under the new arrangements.

My understanding is that, at the moment, it is required that a land transaction return be made in respect of the transaction before land registration can take place, but it is not required that the tax has been paid. If that is correct, could you explain that and explain the relationship between registration and payment of the tax? I will ask about the new system afterwards.

John King: Your summation is spot on. My understanding is that, once the return has been submitted, people have 30 days from the effective date—which, in Scotland, is generally the date on which the transaction is settled; in other words, when the money and the keys pass over—to complete payment. Our understanding is that, with the exception of those transactions that go through our online system—with those transactions, the tax return and the payment happen simultaneously—people submit the return to HMRC, after which they have a set period in which to make payment. There is a range of ways in which payment can be made.

Malcolm Chisholm: I will probably get this wrong now. Is the land transaction return made to you or to HMRC? How does that work?

John King: At present, we collect a very small proportion of stamp duty land tax through our online system. With those transactions, people submit their land transaction return to us, along with any taxes that are due, at the same time as they submit their registration application. However, that is the case with only a very small proportion of the overall number of transactions.

Malcolm Chisholm: That prefigures the new system.

John King: For the other transactions, people would contact HMRC before contacting ROS.

Malcolm Chisholm: I think that that has been the source of some confusion. You are saying that, at present, there are two ways of doing it. That explains some of the contradictions.

As far as the new world that is coming in 2014 is concerned, I suppose that some people are concerned about the fact that both aspects will have to happen at the same time. That is the basic point. I think that the assumption is that that has to be done within 30 days.

We had a useful submission from Pinsent Masons LLP. I will read out part of it, because I think that it is relevant to my subsequent question, too. It said:

“The conveyancing system in Scotland currently relies on a seller’s solicitors issuing a letter of obligation to the purchaser’s solicitors which effectively guarantees that no new entries will appear in the Land Register ... which would prevent the purchaser from obtaining good title, provided the purchaser registers their title document within 14 days of settlement of the transaction.”

Therefore, it was saying that, although the bill talks about a 30-day period, in practice people will have to pay within 14 days. Is that correct?

John King: It is not so much the case that they will have to pay within that period; they will certainly have to submit their return to HMRC—

Malcolm Chisholm: Is it not the case that payment has to happen at the same time?

John King: Payment need not be made to HMRC. I understand that it has a set period, which I think is 30 days, so a person can submit their return on day 1 then submit payment at any point between day 1 and day 30.

Malcolm Chisholm: I thought that ROS was going to receive the payment.

John King: I guess that that comes back to the fact that there are two types of transaction.

Malcolm Chisholm: I am talking about the arrangements in the new world.

John King: I apologise. In the new world, payment will come to us.

We are aware that the Law Society of Scotland is concerned that payment in cleared funds will not be required before an LBTT return can be made to us. The language that is used in the bill mirrors the language that is used in the Land Registration etc (Scotland) Act 2012. Arrangements that are satisfactory for payment to be made must be in place. We understand that that will allow the return to be submitted along with, for instance, a direct debit instruction that says that money should be taken 10 days hence. In other words, there is no requirement to pay on the day on which the return
is submitted, but there is a requirement to have in place arrangements that will ensure that payment follows in due course.

**John Fanning:** I am sorry to jump in, but it might be worth mentioning that that is the methodology that we use at the moment for collecting fees in respect of our day-to-day activities; the vast majority of our business is transacted through such direct debit arrangements. We are quite familiar with that process and have managed it for quite a long time. In 95 per cent of situations, it works extremely effectively. It is also a very cheap way of managing payments. In a small number of situations it might not work perfectly, but we know how to deal with those situations.

I hope that the committee will be reassured to know that if we can replicate those arrangements—I am very confident that we will be able to—the mechanics of collection should work effectively and should give certainty to us and to revenue Scotland that we will get the money. They should also give a degree of certainty to the payers of the tax or their agents that funds will be taken according to prearranged agreements.

10:15

**Malcolm Chisholm:** The advance notice system that is being introduced under the Land Registration etc (Scotland) Act 2012 will, I am told, afford a 35-day period for registration. Will that change the situation significantly? Will it make things easier for people by giving them longer to register?

**John King:** As far as land registration is concerned, that system will remove the period of risk that—as Malcolm Chisholm has suggested—currently arises with the letter of obligation because priority of registration will be preserved as long as advance notice is registered then followed up with registration within 35 days.

**Malcolm Chisholm:** Most of the issues that you have raised in your written evidence have been dealt with. However, as you will know, we have had a lot of discussion about sub-sale relief, which you refer to in the last section of your submission. If the bill is not amended and sub-sale relief is not available, what mechanism would be put in place for registration and taxation in that regard?

**John King:** I hope that I am answering this correctly, but I think that any relief will be built into the system. We are also aware that reliefs might change; after all, new ones might be introduced and existing ones removed and one of the basic requirements of any system would be flexibility to add or remove reliefs.

From a collection point of view, it does not really matter whether sub-sale relief is available. If it is not available, I guess that there will be two options: the transaction will either be exempt from—which we will manage—or be liable to the LBTT regime, which we will also manage.

I do not know whether that answers your question. We know that there has been a fair bit of discussion about various reliefs. Our line is quite simple: if we are asked to accommodate a relief in the system, we will build in that functionality and manage it.

**Malcolm Chisholm:** You have already answered a number of questions about the ARTL system. I would like to ask a final question about it, even though I will probably not understand the answer. What components of the system need to be improved? I realise that you have covered the financial aspects, but I note from your submission that the costs that you cite are estimates based on developments with regard to the SDLT component of ARTL. Are you confident that those cost estimates are reliable?

**John Fanning:** As I mentioned in response to earlier questions, we are quite confident that the time and resource allocation for our IT staff is adequate for delivery of the required solution. John King might have said as much earlier, but the ARTL system was not designed primarily as a tax-collection system; that capability was tagged on to it and is a subsidiary purpose. The system that John Fraser and his colleagues will design will explicitly address LBTT and its various reliefs, exemptions, complications and so on. We are confident that we will have much more fit-for-purpose software than was the case for ARTL.

**The Convener:** That seems to have exhausted committee members’ questions, although I want to explore one or two more issues with you.

Paragraph 7 of your submission says that

> “there is weekly dialogue between RoS and Revenue Scotland at project team level on common issues.”

How clear are you about the eventual roles that your organisation and revenue Scotland will play in delivering LBTT?

**John King:** Although there is a degree of uncertainty about our roles in compliance and in advice and guidance—which is only to be expected, given the timing of the various pieces of legislation—we are clear that our core role will be collection, so we are focusing very much on that. We also recognise that over the course of the year our compliance role and our advice and guidance role will be clarified.

**The Convener:** If you are not sure about your level of responsibility with regard to advice, guidance and compliance, how can you be so sure
about the various costings in the financial memorandum?

John King: We have made various assumptions and, as we have emphasised, if they need to be altered, the balance of funding between ROS and revenue Scotland might also have to alter. Our assumption that we will play a relative minor role in compliance has been factored into the costs and we have assumed that our advice and guidance role, for example, will relate more to administration of form filling than it will to providing guidance on detailed taxation matters.

The Convener: Indeed—and you touch on that in paragraph 9(i) of your submission.

Coming back to the helpdesk issue that I and other members have raised, I wonder how the public will know whom to contact and what to contact them about. It is one thing to say that there will be a helpdesk, but what help will it deliver?

John King: That is a very good question; that is one of the issues that we have identified as requiring further and considerable dialogue between us and revenue Scotland. As a result, I cannot answer your question except to say that we are aware that it is a key issue and that we will explore it over the course of this year and into the next with our key customer groups and with revenue Scotland and HMRC.

The Convener: We have seen a budget and know what the staff complement will be, but we do not really know what questions are going to be answered or who is going to be asking them. Is the whole thing not a bit woolly at this stage?

John King: Its being so is just a natural consequence of the fact that the collection and administration issues will be dealt with in the tax management bill that will follow this bill. That bill will provide more of a catalyst for identifying, focusing in on and resolving these matters.

On a positive note, we still have two years before the tax goes live. We are aware of the issue and have plenty of time to manage it and ensure that a solution is put in place, that a helpdesk is available and that customers are very clear about its purpose and whether their inquiry should be dealt with by our helpdesk or another one.

John Fanning: I do not really want to speak on its behalf, but I note that revenue Scotland will have a £500,000 provision for on-going year-on-year compliance advice. If the balance between our respective roles were to change, there might, as John King said, be a reallocation of costs between us and revenue Scotland. It might be more comforting to think of the money as a pot of about £650,000 for various compliance activities that can be allocated between the two bodies depending on how their respective roles pan out over the next year to 18 months of discussions.

A taxpayer who wants to deal with the revenue authority will go to its web page for a number to call. Those calls can then be routed to us behind the scenes with a call-management system, but it would make taxpayers quite nervous if they felt that responsibility for the tax management of their affairs was being distributed among various bodies. For the comfort and security of individual taxpayers, I think that such activity must be badged or branded as revenue Scotland activity.

The Convener: Indeed. People need to be confident that there is a one-stop shop and that they need to phone only one number, regardless of to whom, as you suggested, the call eventually goes.

I thank the witnesses for their evidence. Jim Johnston tells me that there was a 1970s punk band called The Three Johns, but you all look far too young to have been in it.

I suspend the meeting until 10.30, when we will take evidence from the Cabinet Secretary for Finance, Employment and Sustainable Growth.

10:23
Meeting suspended.

10:32
On resuming—

The Convener: I welcome to the meeting John Swinney, the Cabinet Secretary for Finance, Employment and Sustainable Growth; Eleanor Emberson from revenue Scotland; and Neil Ferguson and John St Clair from the Scottish Government bill team. I invite the cabinet secretary to make a brief opening statement.

John Swinney (Cabinet Secretary for Finance, Employment and Sustainable Growth): Thank you for the opportunity to come and speak to the committee. As the committee knows, the Land and Buildings Transaction Tax (Scotland) Bill is the first of three bills dealing with the Parliament’s new financial powers over taxes on land and property and disposal to landfill. The bills are the first important step towards establishing the principle that taxes that are paid in Scotland are best set, managed and collected by those with Scotland’s best interests at heart.

In my statement to the Parliament last June, I said that taxpayers and expert communities will have an integral role to play in ensuring that our approach to taxation is and remains effective and appropriate. I record my thanks to the numerous stakeholders who continue to give of their time
and ideas to work with the Scottish Government to ensure that the LBTT will be better aligned with Scots law and practices. I am also pleased to note the degree of interest that the committee has been able to stimulate in the wide and informed response to its call for evidence.

At a practical level, progress has been made on preparing for implementation of the land and buildings transaction tax. Earlier this morning, the committee heard from Registers of Scotland, and Eleanor Emberson from revenue Scotland is with me to deal with some of the practical approaches. The preparatory work gives us confidence that we will have the legal and administrative systems in place in good time to collect a fair and robust land and buildings transaction tax in Scotland from April 2015. The Government will pursue that approach and ensure that the required legislative provisions are taken forward in the light of the evidence that the committee hears and the conclusions that it arrives at.

The Convener: Thank you. We move straight to questions. I will begin, and I will then open up the session to colleagues.

No doubt, you will be well aware that much of the evidence that the committee has received is on sub-sale relief. I am sure that both I and my colleagues will touch on that in our questions. We have received a lot of evidence from people who say that there is a strong case for targeted sub-sale relief. For example, the Scottish Property Federation stated:

"it will be important to ensure abolition does not inadvertently damage other government policy initiatives", particularly in relation to the "impact on the residential development market".

I do not want to quote lots of people, but I have similar quotes from Brodies, Pinsent Masons, the Chartered Institute of Taxation, the Institute of Chartered Accountants of Scotland and so on.

Is the Scottish Government considering changes to the bill in relation to sub-sale relief given the evidence that the committee has received? If not, how will the Scottish Government ensure that aspects of what it is trying to do will not cause damage and undermine Scotland’s reputation for competitiveness?

John Swinney: I say at the outset that one of my objectives in the bill is to ensure that Scotland’s reputation for competitiveness in this area of activity is protected. Equally, however, I also want to ensure that I fulfil the commitment that I gave to the Parliament that we will take forward in this legislation—and all the other tax legislation—a robust approach to tackling any tax avoidance. Those are essentially the principles with which we will wrestle. The Parliament has been clear with me that it expects there to be a heavy emphasis on minimising tax avoidance. Indeed, there is a strong emphasis on the need to minimise avoidance in the general commentary and wider debate on the whole issue of taxation. There is a balance to be struck here.

I have not come to a final decision on sub-sale relief. Obviously, I will be interested in what the committee makes of the evidence that it has heard and I will consider that carefully. There is the possibility that we could bring forward proposals at stage 2, and I look to the committee’s report to help inform our view.

I would make one distinction at this stage in the debate. Before I do that, I say—to help the committee—that I am not minded to bring forward targeted relief, but my mind is not fixed on that and I will wait until the committee reports in that respect.

I want to consider forward funding, which is different from sub-sale relief, as a separate issue. Forward funding is about how we enable sites to be developed, and it is a discrete model of site management and site development. I do not want that to get caught up in the discussion about sub-sale relief as I think that it is part of a different discussion.

The Convener: Some witnesses have suggested that the removal of sub-sale relief would have a detrimental impact on forward funding because sub-sales are used to unlock and develop key commercial sites. The bill team said:

“sub-sale relief has become an avenue for avoidance of quite substantial amounts”.

I appreciate that. However, the Chartered Institute of Taxation said:

“avoidance has come around because sub-sale relief has been combined with another relief or exemption.”—[Official Report, Finance Committee, 23 January 2013; c 2089, 2109.]

What the CIT and others are trying to say is that it is that combination—not necessarily sub-sale relief or aspects of it—that allows avoidance to take place.

John Swinney: What I was trying to say about separating off forward funding was designed to try to help us get to the nub of an issue that we have to be careful to avoid. I suppose that the best way to express that is to say that I am anxious to avoid anything happening under the legislation that makes it more difficult or challenging to develop sites where multiple uses may well emerge. That is where the distinction between sub-sale relief and forward funding is quite helpful. The forward funding model enables a more robust picture to be established.
On the convener's question about the Chartered Institute of Taxation's advice and how avoidance arises perhaps only because of a combination of a couple of factors coming together, I take from that that we had better be careful to take steps to close down all possible avoidance routes. It is not that some avoidance routes arise because of one set of circumstances or another that are more or less acceptable; in my book, none of them is acceptable. I want to ensure that we make a very careful judgment to avoid getting into the situation in which we do not take the opportunity in the bill to close down opportunities for avoidance, particularly as I have been clear to Parliament that that is one of my objectives with the bill. I want to remain true to the commitment that I have already given to Parliament.

The Convener: Okay. Thank you. I know that committee colleagues will delve into that issue much more deeply, so I want to touch on other issues before I open out the discussion to them.

Charities and charitable trusts are another issue of contention. We have received evidence from the Office of the Scottish Charity Regulator and the Charity Law Association. There is an issue, in that the bill team has stated that, if any charity wanted to register with OSCR to qualify for relief, the work "would not be onerous and no fee would have to be paid."—[Official Report, Finance Committee, 23 January 2013; c 2090.]

However, OSCR said in evidence:

"Registration can be complex depending on the nature of the organisation and there is no guarantee that this will result in the award of charitable status."

It therefore questioned

"whether bringing such organisations permanently under the full scope of the Scottish charity regulatory regime is a proportionate way of providing assurance that they qualify for what may only be a one-off relief on one transaction."

There is a feeling from the evidence that we have received that that aspect of the bill is perhaps a wee bit like taking a sledgehammer to crack a nut.

John Swinney: We are creating an entirely new framework. We do not have the framework for dealing with the abolition of stamp duty land tax, so we must put one in place to consider all the relevant questions. In the absence of that provision, we would not have sufficient legislative clarity on how we were going to deal with the question of any relief from LBTT for charities. Without the provisions, charities would be exposed to LBTT: we would not have created an exemption measure in the legislation because the whole regime was being abolished. In that respect, I would not describe that aspect of the bill as like taking a sledgehammer to crack a nut. Rather, I suppose that I would describe the requirement as a passport.

The bill will require that, to qualify for LBTT relief, any charity will require to be registered with OSCR. I am sure that registration with OSCR varies charity by charity, and that it is pretty straightforward for some and that a bit more of an examination and exploration of the issues is involved for others, but I think that there is a rather simple connection between whether an organisation passes the test of being a charity and subsequently is or is not eligible for relief. There has to be a rather simple test for that. The test is the same requirement that is placed on charitable and other organisations that wish to claim a reduction or remission of non-domestic rates payable under the Local Government Financial Provisions etc (Scotland) Act 1962. That is why I would describe the requirement as more of a passport than a sledgehammer.

10:45

The Convener: I do not think that OSCR agrees with that, to be honest. Brodies and ICAS suggested that relief should be available to those whose charitable status is granted by HMRC and not just OSCR. That would resolve the issue.

John Swinney: Obviously I will listen to what view the committee comes to on that question. We have already a mechanism in place for reduction or remission of non-domestic rates, and charitable relief accounts for a sizeable part of the relief regime that is in place for non-domestic rates. That is triggered, in essence, by registration with OSCR. I do not really see what the issue would be but if there are practical issues that need to be wrestled with, I will of course consider them.

The Convener: I hope that the purpose of LBTT is also to achieve neutrality in revenue. Although the witnesses all agreed with that objective, many of them wanted as many exemptions and as much relief as possible, which would impact adversely on that target. At the same time, they want to keep the general level of taxation low. I have some sympathy with your trying to square that circle.

John Swinney: The bill takes the Parliament into new territory, because—with the exception of non-domestic rates, which is an issue that we chew over frequently—for the first time the Parliament is required to consider what type of revenue exemptions it wants to give people. Ultimately, a block grant adjustment will be made when stamp duty land tax comes to an end. A sum of money will leave the block grant, leaving a gap that will have to be filled by the same amount of money. If we fill it with less money, we will have to think about how we will fill the gap that is left by whatever decisions we take through legislation on
tax relief. It will put Parliament through a different process that it has not been accustomed to, which will be a fascinating experience.

The Convener: The committee is certainly aware of that. Many witnesses have said that certain measures, if enacted, would discourage wealth creation and ultimately have a deleterious effect on taxation. You obviously have to strike a balance.

I want to touch on licences, which I raised last week. ICAS suggested that “An exemption should be included for licences to occupy” and said that “it should be recognised that most may be below the threshold.”

For example, shops within shops are currently exempt from SDLT. ICAS argued: “These may become less attractive business locations if additional tax charges arise.”

Examples would include shops in airports, malls or wherever. Pinsent Masons LLP said that that has the “potential for rendering Scotland a less competitive place to do business”.

Has the Scottish Government analysed the potential impact, both direct and on the perception of Scotland as a place in which to do business, post LBTT?

John Swinney: As I said at the outset, I am forever mindful of the issues of Scotland’s competitiveness and the perception of Scotland’s competitiveness. However, we must also look at some of the questions of equity across comparable circumstances. If a particular type of shop is in an airport and that type of shop is also on the high street, the one on the high street will be paying stamp duty land tax on the lease. Issues of equity come out of that, because given the challenges faced by town centres, one might say that airports are more captive markets than town centres are. Those issues of equity have to be wrestled with.

I am considering the issue, and I am here to assist the committee with its deliberations because I am interested in the committee’s observations on our proposals. In this area of activity, there is some distinction between what I would call temporary or short-term occupation and longer-term, almost permanent, occupation. For example, there might be an argument that large-scale conference events that take place at a venue operate under a licence and should be eligible for LBTT. I cannot be persuaded of that because that occupation lasts for a limited period of time and it does not strike me as a transaction that should give rise to such a tax charge. Some distinctions have to be made about whether there should be any liability for LBTT.

The Convener: Thank you. At the beginning of the bill process, we talked about the timing of and approach to stage 2 amendments and the option of the Scottish Government lodging all its stage 2 amendments at the outset of the stage 2 process. Where are we with that?

John Swinney: I aim to lodge as many as I can at the outset of the process. The nature of some of the territory that we have to cover is very complex and various questions will require further discussions with stakeholders. I certainly intend to have further discussion of some questions with the non-residential leases working group that I have established, and looking at material that might emerge from those discussions might mean that we are not quite ready to lodge certain stage 2 amendments at the outset. I, along with the bill team, will do my level best to lodge amendments as close to the outset of the process as possible.

The Convener: Thank you for that clarification.

On another point of clarification, witnesses from the Scottish Building Federation and the SPF asked for “clarity on even provisional figures of tax rates or bands”. They are concerned that not having that “goes against the principle of certainty in taxes”. I and others argued against that but I wonder whether the Scottish Government is persuaded of the SBF’s view that there should be a minimum of 12 months between publication and impact. Indeed, it said that 18 months would be preferable. Has the Scottish Government given further thought to that?

John Swinney: In looking at the evidence that the committee has taken on that point, I think that it would be fair to say that the consensus was that the tax rates and bands should be set out anywhere between a week before the start of the financial year and 18 months or two years before the start of the financial year. The committee has managed to create a helpful consensus in that respect.

We need to weigh up the arguments. Giving lots of notice would give clarity and certainty and enable planning, but it might also give rise to behaviour that distorts the marketplace and, consequently, the tax take. That would be an argument for giving notice closer to several weeks before the start of the tax year. Indeed, as Mr Marshall from the Edinburgh Solicitors Property Centre, said:

“Once the decision has been communicated to the public we will want to move as swiftly as possible to
His concern is that steps should be taken to avoid short-term disruption.

Those exchanges force me to think about the best pace. I had assumed that we would most likely set out the tax rates and bands when I set out the draft budget in September 2014. Some of the evidence is making me think that even that may be a bit early. However, I have not come to a fixed view on that, and the committee’s reflections in that respect would be helpful.

The Convener: I should say that anything from a week to 18 months is not our view. It is just that people from whom we have taken evidence have talked about the issue. We have still to deliberate on that.

John Swinney: I was being slightly impertinent.

The Convener: I have a question on an issue about which we have not questioned any of the witnesses, although it has been mentioned in the evidence. In its report on the bill’s delegated powers, the Subordinate Legislation Committee sought clarification from the Scottish Government on the use of the negative resolution procedure. It said:

"the Scottish Government has not provided a compelling argument for a reduction in the level of scrutiny on the second and subsequent exercise of the power. The Committee therefore recommends that the power should always be subject to a form of affirmative procedure."

John Swinney: The nature of the responsibility is an integral part of how the bill is constructed, so it does not strike me that such exercise of the power would confer significantly greater powers or responsibility than are envisaged in the core of the bill. For that reason, the negative procedure is appropriate. Obviously, I will consider the Subordinate Legislation Committee’s views on why that is insufficient. It clearly provides for parliamentary decision making, but we can consider whether a change of direction is merited.

The Convener: Paragraph 245 of the financial memorandum says that the costs in the financial memorandum do not

“include the anticipated one-off costs associated with the ‘switch-off’ of the UK taxes in Scotland which will be incurred by HMRC and charged to the Scottish Government.”

Why is that the case and do you have any updates on the estimates for those costs?

John Swinney: The reason why those costs are not included is that we do not have a definitive figure from HMRC. It has indicated to us that the costs will exceed £500,000, but we still do not have further definitive information from it.

The Convener: Has HMRC given you any breakdown or any indication as to why it would be that fairly rounded figure?

John Swinney: To be fair to HMRC, it gave us an indicative figure.

We must have a rigorous process in place to test and assess any financial costs that we have to meet from HMRC arising out of the memorandum of understanding on tax management that the committee has previously considered. That memorandum of understanding has now been agreed—I think that I confirmed this to the committee—in the aftermath of the Joint Exchequer Committee meeting that took place during the parliamentary recess. It gives us a clear framework within which we can scrutinise any cost requirements that HMRC places on us. I will pay particular attention to the one to which you refer.

11:00

Jamie Hepburn: Thank you for your evidence thus far, cabinet secretary, which has been very helpful.

One of the exemptions in the bill refers to “Acquisitions by the Crown”. Mr St Clair told us previously that that was to do with acquisitions by the Scottish Government and that there was no point in the Scottish Bordersttish Government taxing itself, which made perfect sense. However, when we explored the issue a little further, we came to understand that the exemption also covers UK Government ministers. I seek clarification about who we are talking about with regard to the Crown in this case. Is it the Scottish Government, the UK Government and—presumably theoretically in this case—the Northern Ireland Assembly Government and the Welsh Assembly Government?

John Swinney: I will need to take some guidance from my officials as to whether the reference to “Acquisitions by the Crown” involves bodies other than the Scottish Government and the United Kingdom Government.

John St Clair (Scottish Government): The Scotland Act 2012 lists the bodies that are not to be covered by SDLT, which includes the Crown and a minister of the Crown, which includes the whole UK Parliament. I think that that is all that is included at the moment; it would not include the Welsh Assembly or the Northern Ireland Assembly.

Jamie Hepburn: The provision covers just the Scottish Government and the UK Government.

John St Clair: Yes, but I think that we will have to check on the situation in respect of the Welsh Assembly and the Northern Ireland Assembly and come back to you on that.
Jamie Hepburn: Presumably any other application of the provision is fairly theoretical, because I imagine that it is mainly the Scottish and UK Governments that acquire property in Scotland.

It is interesting that Mr St Clair referred to the Scotland Act 2012 covering exemptions for SDLT. Does that mean that the Scottish Government has no choice in the matter? Or could it in theory replace the current exemption with reference to acquisitions by the Scottish Government?

John Swinney: We have no powers to amend the Scotland Act 2012. If the 2012 act prescribes something, we have no legislative discretion to do anything other than follow that provision.

Jamie Hepburn: Is it that prescriptive?

John St Clair: It is wider than I suggested.

John Swinney: The Land and Buildings Transaction Tax (Scotland) Bill lists the following exemptions:

“(a) the Scottish Ministers,
(b) the Scottish Parliamentary Corporate Body,
(c) a Minister of the Crown,
(d) the Corporate Officer of the House of Lords,
(e) the Corporate Officer of the House of Commons,
(f) a Northern Ireland department,
(g) the Northern Ireland Assembly Commission,
(h) the Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government,
(i) the National Assembly for Wales Commission,
(j) the National Assembly for Wales.”

Those exemptions are driven by those listed in the Scotland Act 2012.

Jamie Hepburn: In other words, the exemptions in the bill are not the result of a policy decision.

John Swinney: No. The 2012 act specifically provided for certain statutory bodies not to be subject to the two devolved taxes. The list that I gave is in paragraph 2 of schedule 1 to the bill and reflects the requirements of the 2012 act.

Jamie Hepburn: I presume that that is reciprocated across the UK if the Scottish Government seeks to acquire property furth of Scotland.

John Swinney: Yes.

Jamie Hepburn: Clearly, the bill is about a new tax, but it might be useful to estimate what the value of such transactions might have been under SDLT in previous years.

John Swinney: We will endeavour to give that information to the committee.

Jamie Hepburn: It is helpful to know that the exemptions are a legal requirement rather than a policy decision.

I turn to the issue of charities relief, to which the convener referred earlier. I am aware that what I am about to explore will arise in only a few circumstances, but it has nonetheless been the focus of some discussion. There is a requirement for overseas charities to register with OSCR to benefit from charities relief. Some witnesses have suggested that that requirement is incompatible with charity law. However, OSCR has set out to us the fact that there is provision under section 14 of the Charities and Trustee Investment (Scotland) Act 2005, whereby charities can represent themselves as charities in Scotland, rather than being registered in Scotland—if that is clear. Is section 14 of the 2005 act the provision by which you suggest overseas charities should register with OSCR?

John Swinney: I think that would be the case.

John St Clair: Our understanding is that anybody can register as a charity and we are particularly concerned about there being some way of checking on foreign charities. The point was raised earlier that that could be onerous, but the situation in which it would be onerous would be onerous for whoever was doing the supervising. It could be a matter of deciding, for instance, whether a charity with a large involvement by a particular family actually was a charity. Such matters will always take time to sort out.

Jamie Hepburn: Presumably, that is no more onerous than if a charity wanted to make use of the same provision now. Anyone who is suggesting that it is incompatible with the law for charities to represent themselves in that way is incorrect. It is helpful to have that clarified.

John Swinney: I will make an additional point that goes back to the character of the legislation. We are trying to create new legislation that, essentially, specifies the conditions for the whole ambit of land and buildings transaction tax. We have to envisage circumstances in which a variety of steps will be taken to undertake transactions and in which, once SDLT is abolished, we will have no legislative provisions in place to enable that to happen. We have to put a comprehensive approach in place.

The test that is being applied in relation to the charities provision and to registration with OSCR is simply to determine who is who—who should be liable for tax and who should be getting access to charities relief. We have to be able to satisfy the Parliament that we have gone through a proper
process of testing who is who. Nobody wants to make that any more onerous, but we must be able to assure the Parliament that the tax legislation has been applied most effectively.

**Jamie Hepburn**: I agree. In essence, the Scottish taxpayer will be agreeing to subsidise charitable work, which is sensible, but we want to know that the organisations are bona fide charities. If the provision exists, it cannot be hard to prevent it from becoming any more onerous than it is now.

Brodies and ICAS made a suggestion—the convener also raised this—that charities relief “should be available to those whose charitable status is granted by HMRC”.

I have concerns about that, and I would be interested to hear your perspective. It is of concern that this Parliament has no legislative authority over HMRC and that the Scottish Government has no executive authority over HMRC. We might hope that HMRC was willing to provide the necessary details and back-up for any inquiry in that regard, but we could not guarantee that. Would that be a fair summation?

**John Swinney**: I have no beef against HMRC, whose officials have been very co-operative and helpful, and my dialogue with the leadership of HMRC is very co-operative. We have signed a memorandum of understanding. I do not want to put in place any obstacles to good working with HMRC.

However, we already have a charity regulator in Scotland. To pass the charities test in Scotland, organisations must go to OSCR. That is a relatively straightforward, routine part of Scotland’s legislative architecture from the Parliament. As we have legislated for that, it seems to me a perfectly reasonable way in which to proceed in asking charities to relate to the bill. Again, it is about ensuring that we make the legislative infrastructure cohesive and compatible in a variety of ways. Our objective is to create an administratively straightforward process.

**Jamie Hepburn**: Thank you.

We have also heard evidence from some organisations that are trying to ensure increased energy efficiency in Scotland’s housing stock that LBTT should be utilised to incentivise that. We are aware that, as things stand, no particular relief is likely to be focused on that area. Is that decision final? The existing homes alliance says that it hopes that there can be dialogue on the issue. Will you keep the issue under review? Are you happy to continue to speak to the bodies calling for such tax relief?

**John Swinney**: My general approach today is to listen to the committee’s suggestions as to how the bill can be strengthened at the outset of the proceedings, so I do not particularly want to close subjects down. I have looked carefully at the question of having some form of zero-carbon homes relief, but at this stage I am not persuaded by the arguments for including it in the bill.

I will explore some of the detail of the issue. A property holder would invest in their property by undertaking environmental measures. The benefit of that would crystallise under LBTT only when the property was sold, at which point the buyer would benefit from relief on LBTT. I suppose that you could say that that would help the market for greener homes—it would be an incentive for people to buy such homes—but it would not incentivise people to make their homes greener. It would incentivise people to acquire homes that other people had made greener, but that still means that somebody has to put their hand in their pocket to make the investment, which strikes me as unlikely.

**Jamie Hepburn**: Someone who wants to sell their home wants to make it as attractive as possible. What about the perspective that says that making it greener makes it a more attractive prospect for someone to buy and makes it easier to sell? I am not saying that that is my perspective; I am just positing it.

**John Swinney**: I think that a couple of big leaps would have to be made in that process. The individual selling the house would have to spend more money on the improvements than a buyer would save on an LBTT reduction. For a large number of properties, if we assume—obviously, I am not confirming the tax rates and tax bands today; I could feel my officials shaking a little bit when I started that sentence. The suggestions in the consultation paper envisage quite a lot of properties being out of the scope of LBTT, which puts a big part of the market off-limits to being encouraged and incentivised.

The Parliament has taken other legislative measures on the issue. When the Climate Change (Scotland) Bill went through, provisions were included in the bill to encourage reductions in council tax for people who made improvements to the energy efficiency of their houses. Subsequently, we have been round the houses a bit on whether local authorities have seized the opportunity of that legislation to provide discount measures. It would be safe to say that more needs to be done in that respect. However, that is a much more tangible way of reducing the costs of a property for the person occupying the property if they invest in some green energy measures.

For those reasons, I am not persuaded at this stage by the arguments for LBTT relief in relation to green measures, but I am happy to consider whatever the committee comes up with.
11:15

**Jamie Hepburn:** That is helpful. Thank you very much.

**Malcolm Chisholm:** Jamie Hepburn has taken all my questions. That is what happens in this committee, I am afraid.

**Jamie Hepburn:** Sorry.

**Malcolm Chisholm:** I was going to ask about charities and energy efficiency, but I will ask a general question about reliefs.

The impression that we get is that—as you state—you want LBTT to be revenue neutral. As far as I can see, and I may have missed something, you are not proposing to extend any reliefs but you are proposing to withdraw certain reliefs. Will that not result in a financial gain for the Scottish Government? Have you got any notional savings for that?

**John Swinney:** I do not have any. That would be conditional on our setting the tax rates and the tax bands.

**Malcolm Chisholm:** If we assumed that the tax bands were the same as at present—which will not be the case—presumably you would make some savings?

**John Swinney:** We are moving to a fundamentally different basis of collecting the tax. We are going from a slab tax to a progressive tax. The committee and the Parliament will have the opportunity to scrutinise my decisions on tax rates and tax bands, which I will make in the light of the legislative decisions that we make on reliefs. I appreciate that those decision-making processes are not taking place at the same time but, ultimately, my decisions will be subject to scrutiny by the Parliament and the committee.

There will be an interaction. For example, if we follow the direction that we have set out in the consultation document and we set quite a high threshold as a starting level for the tax, many properties will be out of the scope of LBTT, so the issue of reliefs will not arise. It is therefore difficult for me to give Mr Chisholm a definitive answer at this stage in the process.

We are trying to take a dispassionate look at the justifications for each particular type of relief. We are looking at this legislation openly and objectively and testing whether we can justify the existing provision, whether the right reliefs are in place and which reliefs make sense in the wider policy and legislative agenda in which we have an interest. Once we have that in place and we are further down the track with the decisions that I make on tax rates and tax bands, we will be able to scrutinise what that does to the tax take. At that stage, the Parliament will be able to scrutinise whether we have delivered a revenue-neutral proposition.

My objective is to deliver a revenue-neutral proposition. When I move to set tax rates and tax bands, I will have to reflect on what we have done on reliefs.

**Malcolm Chisholm:** I accept that there are good reasons for reducing and simplifying reliefs, including in some cases to stop tax avoidance. It sounds as though you are trying to save money—or make some money—through changing the reliefs in order to have a more generous banding system to keep LBTT revenue neutral. That is what it sounds as though you are saying.

**John Swinney:** I do not think that that would be an unfair conclusion to arrive at. However, I stress that the approach that I am taking on reliefs is twofold, as Mr Chisholm said. It is about simplicity, but it is also about tackling avoidance. I am clear on that point and I want there to be no doubt that part of my policy intention is to tackle avoidance. We are dependent on HMRC information on avoidance, and it has been quite open with us about where it sees stamp duty land tax being avoided. I am using that information to ensure that we avoid some of those circumstances.

The way that Mr Chisholm has summed the situation up is fair. I want to close loopholes, tackle avoidance and deliver simplicity, and to reflect that in the tax rates and tax bands.

**Malcolm Chisholm:** Am I right in saying that final decisions on the reliefs do not need to be made in the primary legislation? Is there a regulatory provision to change those? I think that ICAS criticised that, which I took to mean that the bill does have a regulatory provision to change the arrangements around reliefs. I cannot say that I have read the bill in sufficient detail to know that, except at second hand.

**Neil Ferguson (Scottish Government):** Yes, there is such a provision.

**Malcolm Chisholm:** That would be a kind of safety valve if you wanted to change your mind further down the line.

I want to touch on the two issues that Jamie Hepburn dealt with. I was struck by the evidence from David Robb, the chief executive of OSCR, which was that there would be better ways of testing the bona fides of charities from outwith Scotland. He said that

“There are easier ways for charities, particularly those south of the border, which account for the large majority of those involved from outwith Scotland, to be identified as bona fide without their entering themselves on to the register for what might be a single transaction.”—[Official Report, Finance Committee, 6 February 2013; c 2221.]
Would you be willing to enter into discussions with OSCR to see whether you could arrive at some other arrangement?

**John Swinney:** Again, I am very happy to go into such a discussion. My officials will speak to OSCR and David Robb in light of his evidence to see whether there is a more effective way of doing that. The committee’s observations and deliberations will help us with that.

**Malcolm Chisholm:** I have one more question on charities. The issue is intrinsically interesting, although I accept that it is not a massive issue in terms of the money that is involved.

I presume that HMRC must have a method of designating a body as a charity, although I am not quite sure what that is. I suppose that it is relevant that HMRC has taken the view that European legislation requires the equal treatment of charities throughout the European Union. The Scottish Government clearly does not take that view. Would you want to pursue that issue a bit further? I am pretty sure that we heard in evidence that HMRC is required by European law to treat all charities throughout the EU in the same way.

**John Swinney:** In relation to any tax liability?

**Malcolm Chisholm:** In relation to tax relief.

**John Swinney:** I think that we would accept that implicitly, because we would have one regime for charities. There would not be a regime for Scottish charities, UK charities and European charities.

**Malcolm Chisholm:** Yes, but registration would be required.

**John Swinney:** That is a regulatory issue rather than a taxation issue and it means that we know who is a charity and who is not. We are now straying into the territory of charity regulation and I am probably on dangerous ground. We will have a land and buildings transaction tax that is without discrimination across charities. That means that we will treat all European charities in the same way. However, we must have a mechanism for designating who we consider to be a charity. I do not think that that puts us in any different position from HMRC when it defines who is a charity from its perspective.

The territory that we are in highlights some of the factors that arise out of devolution. Charity law is devolved to the Scottish Parliament, so we established OSCR, which is how we regulate our charities. HMRC must also have an idea of who is a charity for it to execute its legitimate functions around taxation. There is an element of duplication in what OSCR and HMRC are doing.

In the bill, we have to decide who will decide who is a charity, and I have opted for OSCR. That is a sensible judgment, given the fact that 23,500 charities are registered with OSCR in Scotland. Mr Chisholm and Mr Hepburn are talking about overseas charities, and I imagine that they form a relatively small proportion of the 23,500.

**Malcolm Chisholm:** We had better not spend too much more time on charities, but I think that David Robb suggested that OSCR could do that without the need for registration. However, perhaps you can pursue that point with OSCR.

**John Swinney:** There may well be some way in which some kind of imprimatur might be applied by OSCR through some kind of bilateral agreement with HMRC. OSCR might agree that it will accept as a charity any organisation that is registered as a charity with HMRC for tax purposes and headquartered in another part of the United Kingdom.

**John St Clair:** That is done at the moment to speed up the registration process.

**Malcolm Chisholm:** I will not press you on that, interesting though it is.

The only other charity-related issue is the suggestion from the Wellcome Trust and others that there be a relief for co-investment, such as where 80 per cent of an investment comes from a charity and 20 per cent comes from non-charitable sources. However, I imagine that you are not really interested in providing what would be an extension of a relief. In principle, would you consider any extensions of charity relief?

**John Swinney:** My mind is open to particular issues, but my position in principle is that I am not particularly keen on creating lots and lots of reliefs.

**Malcolm Chisholm:** However, you are keen on meeting your climate change objectives, which I now want to move on to.

I accept that there are some complexities in this area, but the biggest problems in meeting our climate change objectives are to do with transport and existing homes. I know that you have expressed doubts about providing a relief for existing homes, but should such a relief perhaps be investigated further, given how seriously the Scottish Government takes the issue of climate change? The relief would need to be heavily targeted to incentivise action on those homes in which action is required. Different mechanisms for the relief have been proposed. Either the relief could be made available after the work was done, or the relief could be provided on the basis of an undertaking to do the work upon the purchase of the property—those two different models have been presented to us. I accept that such a relief would have financial implications, but might it be looked at further, given the imperative of doing something about existing homes?
John Swinney: I am completely supportive of fiscal incentives for behavioural change on carbon reduction issues but, to be blunt, I think that we would get more effect if we had more people taking part in a more comprehensive, more effective council tax discount scheme in more parts of the country. I do not think that the numbers are particularly compelling. The council tax discount scheme is already legislated for in the climate change legislation that was passed in the previous parliamentary session.

In his review of taxation, Sir James Mirrlees said:

"Not every tax needs to be ‘greened’ to tackle climate change as long as the system as a whole does so."

From that remark, I take the important point that we have put in place legislative provision through the council tax reduction scheme, and we just need to get people involved in that. Receiving a reduced council tax not just once but every year as a consequence of making improvements to your property is a much bigger fiscal incentive than getting a one-off reduction that will be paid to a third party who acquires your property.

Malcolm Chisholm: Well, I certainly do not object to that as a proposal.

Let me come to my last question. I am very sympathetic to your objective of protecting the revenue from the tax, especially given the public expenditure climate. Reliefs are one side of that, but I am even more worried about ensuring that the UK Government makes a proper assumption about how much money LBTT will raise and therefore how much money will be withheld from us in our budget allocation. The evidence that we received suggested that there are big quarterly variations in the amount of income from stamp duty land tax on commercial property, but the income even from residential properties has also been very variable over the past decade. People have said that the Office for Budget Responsibility tends to overestimate the amount of money that will be raised from SDLT. How will you ensure that Scotland does not lose out in those negotiations?

11:30

John Swinney: That will be a material test, Mr Chisholm—I think that that is the best way to describe it. There are a number of points here that are fundamental to the issue. Mr Chisholm is absolutely correct in that, historically, there has been quite significant volatility. For example, in 2007-08, total Scottish receipts from SDLT were £565 million. These figures are not estimates; they are HMRC data on tax collected. I will give the series of numbers for the record: the tax collected was £565 million in 2007-08; it went down to £320 million in 2008-09 and £250 million in 2009-10; it went up to £330 million in 2010-11; and it went down to £275 million in 2011-12. The highest figure was £565 million and the lowest was £250 million, which shows a significant amount of volatility.

The fair and reliable way of considering the issue is to take an average of those five years and make an adjustment on that basis. The command paper for the Scotland Act 2012 assumed that a one-off change to the block grant adjustment would be made, and the Scotland Bill Committee in the previous Parliament stated that it should be a one-off, non-index-linked adjustment to the block grant. I think that we must take into account the average for that five-year period.

The point that you make about the OBR is a material issue for the committee to consider. The OBR has undertaken two forecasts—one in March 2012 and the other in December 2012—and I expect that we will get another one in the March budget on 20 March. Between the March and December forecasts in 2012 that looked forward from 2012-13 onwards, the OBR reduced the estimated tax-take by 9.75 per cent, 11.1 per cent, 13.6 per cent, 13.3 per cent and 13.4 per cent. I put those numbers on the record to make the point that, given that pattern, the forward estimating of SDLT is very difficult. Therefore think that a retrospective average assessment is a much more reliable way of making the block grant adjustment. Obviously, that is a subject of discussion with the UK Government.

Malcolm Chisholm: So there has been no agreement on that.

John Swinney: There is no agreement on it. I have made the point to the UK Government that I expect to receive the budget numbers for our 2015-16 budget sometime in the next six months and, because this matter will be material to our 2015-16 budget, I presume that those will be net of stamp duty land tax, so we have to reach an agreement about this in relatively short order.

Malcolm Chisholm: Thank you.

The Convener: I have to say that Malcolm Chisholm has done really well for someone who did not have any questions.

I was going to finish on the last point that Malcolm Chisholm asked about, but I will ask a supplementary question now instead. The Scottish Property Federation assessed the OBR’s forecasts as “wildly optimistic” in that the OBR’s prediction, even at December last year, was for an increase of 75 per cent on the figures for 2011-12. I have a point for clarification. If the five-year average that you talk about started from 2007-08, when receipts from SDLT were £565 million, that would make a big difference compared with a five-year average that started from 2008-09. When will
the five-year average start? Whatever the start date, SDLT will be significantly higher than it has been in the past year or two.

**John Swinney:** The five-year average must take into account the period before the commencement of the block grant adjustment in April 2015, so I would think that it will start five years back from April 2015.

**The Convener:** That is fine. Is there any possibility of, as the Scottish Building Federation has suggested, transitional arrangements?

**John Swinney:** No. As the command paper states, there will be a one-off block grant adjustment. We obviously have certain borrowing capacity to manage some of the issues. I will check that with Neil Ferguson. Neil, does that apply only to the Scottish rate of income tax?

**Neil Ferguson:** I beg your pardon?

**John Swinney:** Does any borrowing facility for short-term purposes apply only to the Scottish rate of income tax?

**Neil Ferguson:** Yes.

**John Swinney:** Convener, we have no borrowing facility to make up for loss of income in that respect.

**The Convener:** Will the Parliament be consulted on the issue through the Finance Committee?

**John Swinney:** On the block grant adjustment mechanism?

**The Convener:** Yes.

**John Swinney:** That question raises a very good point. The agreement between the United Kingdom and Scottish Governments envisages that the issue will be resolved by the Joint Exchequer Committee, on which the Chief Secretary to the Treasury, the Exchequer Secretary to the Treasury, the Secretary of State for Scotland, the Deputy First Minister and I sit. In essence, a bilateral agreement must be reached. I am getting into the territory of what would happen if Parliament did not like the block grant adjustment mechanism that we negotiated. Obviously—to return to Malcolm Chisholm’s point—my aim is to protect the public finances of Scotland, so I assume that I would be operating in the interests of Parliament.

I would welcome the committee’s input and observations on the approach to the block grant adjustment mechanism and what it would consider to be a realistic and fair basis for coming to that conclusion. It would be difficult for me—I am happy to provide the committee with an explanation of some of the factors that go into this—to get to a point of agreement with the UK Government in which I had to say to them, “Oh, and I’ll have to take this to Parliament to see if Parliament agrees to it.” I am sure that the UK Government would say—

**The Convener:** “Aye, right.” [Laughter.]

**John Swinney:** It would say, “This is a negotiation.” I cannot give the committee that commitment today. However, as I said, I would welcome the committee’s observations on the approach to the block grant adjustment mechanism.

**The Convener:** We have taken that hint. The OBR is coming to the committee in April, incidentally.

**Jean Urquhart (Highlands and Islands) (Ind):** Cabinet secretary, I am pleased that you appear to be excited about the bill and the collection of tax.

**John Swinney:** It is amazing how finance ministers can be persuaded of the attractiveness of generating tax.

**Jean Urquhart:** I also make the observation that a number of our witnesses—certainly to my mind—welcomed the change. They recognised the imperfections of stamp duty land tax and the opportunity to change it, but they were hesitant about the changes that might be made. There was some anxiety about when the rate would be set; indeed, it was argued that business in Scotland would be put at a disadvantage with regard to commercial transactions. What is your opinion on that? This might not be relevant to the discussion, but I believe that, for about 50 or 60 years before the Scottish Parliament existed, Scotland paid much higher business rates than the rest of the land. Did that not have the same effect on Scotland?

Secondly, on the general anti-avoidance rule, there is genuine concern about tax avoidance, which I, too, find completely unacceptable. How would it work if you moved from a position in which there is no avoidance and there are no allowances on transactions to one in which a few allowances are made? Do you think that the system can be simplified, particularly with regard to some of its more controversial aspects? Do you consider the concern that there will be “challenges in achieving a workable GAAR in the time available” to be reasonable?

**John Swinney:** Jean Urquhart has asked two separate questions. First, as we have already discussed, there is clearly a difference of opinion about whether the tax rates and tax bands should be set close to or way back from implementation. My view, which I made clear in my statement and in the arguments around the bill, is that—and I
think that this is the wording that we have used—the rates would be specified as part of the budget process for the appropriate financial year, which I envisage would be in September when I set out the draft budget. Having looked at the evidence and the difference in views, I am thinking about whether I have got that right. Just to give the committee an indication of my thinking at the moment, I think that I am unlikely to set the tax rates and tax bands earlier than I envisaged and, indeed, might set them later.

I am struck by the comment that David Melhuish made to the committee on 30 January in arguing for longer-term preparations. He said:

“I recognise that SDLT rates can change overnight on a budget day”—[Official Report, Finance Committee, 30 January 2013; c 2158.]

We live in a world where tax changes are announced at 12 o’clock in the afternoon and are implemented at midnight. I am not saying that such an approach is desirable, but I am giving some thought to the right balance in that respect and, again, the committee’s view on the matter will be helpful. I have to say, though, that I am not persuaded by the argument that, in order to give absolute clarity, there has to be a couple of years’ notice because that will simply open up the space and opportunity for certain practices to be developed that avoid the implications of tax rates.

That brings me on to Jean Urquhart’s second question, which was on the general anti-avoidance rule. In the bill, we decided to construct a set of stand-alone propositions that we thought would be robust in minimising avoidance of land and buildings transaction tax. However, we did not replicate in the bill the GAAR in the UK finance bill, which is commonly viewed as complex and not particularly effective. We are going through a consultation on the forthcoming tax management bill which, if my memory serves me right, will come to Parliament towards the end of this year. In that process, we are consulting on the contents of a GAAR.

11:45

We have had a lot of good engagement as part of the tax management bill consultation. I have inaugurated a tax consultation forum in the Government, which has a broad membership. It is supported by my officials, but it brings together a variety of people, including the Chartered Institute of Taxation and the Poverty Alliance, Age Scotland, Young Scot and various other voices, including business voices, to provide diverse perspectives on what the Government should do about tax. I hope that we can reach agreement on having a representative of the religious denominations involved in the process.

I am trying to create a debate about what our correct values and approaches to taxation should be. Part of that will relate to issues such as a GAAR and avoidance, and our obligations as citizens and corporate citizens. The tax consultation forum has had one meeting. Jean Urquhart thinks that I am excited about the bill, but I was hugely excited about the tax consultation forum, because it achieved my objective, which was to bring together people from utterly varying perspectives to have a collegiate discussion about what our values on tax should be. It was an excellent and helpful discussion. I have asked the forum to meet again to consider the response to the consultation on tax management so that, before we start putting a jot of legislation down on paper, the forum has considered our stakeholders’ thoughts on the Government’s approach to taxation.

Jean Urquhart: Is there a disincentive to business if Scotland does not declare its rates far in advance, or is that point a kind of smokescreen? I know that you have already explained that to an extent.

John Swinney: We must be reasonable on the issue. I had thought that the position that I articulated earlier—of setting the rates in September, in advance of the beginning of the next financial year the following April—was pretty reasonable, but the evidence from the gentleman from the ESPC made me think that I might not have that right. However, I will have to consider the matter carefully before I make any change of direction on that.

Gavin Brown: The financial memorandum sets out two scenarios to do with rates and banding for residential property: scenario 1 and scenario 2. Which is your personal preference?

John Swinney: As I have said, I have not set rates. Obviously, I will reflect on those issues as we get closer to the time in considering the way in which to proceed in that respect.

Gavin Brown: You do not want to tell us which one you personally prefer.

John Swinney: I will come to a view when I set the tax rates.

Gavin Brown: Okay. I will return briefly to licences to occupy, which the convener asked about. You helpfully drew a distinction between short and long-term occupation. I think that you referred to a conference of a few days being short-term occupation. As the bill is drafted, would all licences to occupy be caught by the bill?

John Swinney: Yes.

Gavin Brown: I listened carefully and picked up that your personal view is that short-term occupation should not be part of the bill.
John Swinney: That is one of the issues that need to be addressed before the bill proceeds to its final stages.

Gavin Brown: Has the Government given much thought to how it will define “short-term” in law? Obviously, a lease for five years—

John Swinney: I think that I had better remove the definition of “short-term” from the discussion. We have identified a number of different categories in the area, and I would not want my consideration of licences to be characterised as consideration of just short-term things that might get a relief. I am pretty sure that there will be others, and I do not want to create the wrong impression for the committee that that is where our view is settled. There are a number of different categories of licence, and we are going through a process of exhausting the list of what I think might be the range of possibilities so that I can come to a view. What will determine our approach is not consideration of what is short term and what is long term but consideration of the nature of the activity and perhaps the business sector, which will be a product of that. Perhaps that is the best way to describe it.

Gavin Brown: That is helpful. Thank you.

Pretty much every witness accepted that sub-sale relief has been a vehicle for avoidance over a range of areas. There was also a strong view that there ought to be targeted sub-sale relief. You helpfully outlined your views on that in response to the convener. Has the Government done an economic impact analysis of what will happen if sub-sale relief is abolished completely, as is clearly currently planned?

John Swinney: No.

Gavin Brown: Is the Government minded to do that?

John Swinney: That raises an interesting point. I cannot tell the committee what avoidance has taken place because of sub-sale relief. I could not give the committee a number, and HMRC could not give us a number. HMRC has been perfectly helpful to us, and is trying to help us as much as possible on that question, but it cannot give us that information. Because of that, it would be impossible to construct the economic case that Mr Brown is asking about.

I understand exactly the point that has been made but, because I cannot give a picture of what the provision of sub-sale relief generates in Scotland, I could not begin to assemble a case on what would be lost. It is not claimed as a relief from HMRC; essentially, it is an implicit part of how people present transactions to be taxed. Therefore, if they do not present them to be taxed, we cannot assess what that was all about and what economic activity has been created as a consequence.

Gavin Brown: I accept the point that getting an accurate picture will not be easy, but I was comforted by your comments in relation to forward funding, to which you seemed to take a businesslike approach. However, I have a slight fear. In between the tax avoidance under sub-sale relief, which everyone may frown on—even professionals within the sphere—and forward funding, are there other elements of sub-sale relief that are currently being used that are genuinely valuable to the economy and which we might stamp out by abolishing the relief?

John Swinney: I think that that gets to the nub of the issue. The question about what one considers to be a good or an undesirable form of tax management activity is subjective. I might think that something is a wholly unacceptable activity that should be classed as avoidance, but someone else might think that it is a reasonable way of managing one’s affairs to generate economic impact. There is no absolute truth on the point. A judgment must be arrived at. My thinking on the matter is guided by a desire to tackle tax avoidance—I have been clear about that this morning—but not to stifle economic growth. In order to tackle tax avoidance, sub-sale relief will not be offered. In order to encourage economic activity, we will be more sympathetic to forward funding.

Another issue involves the fact that it can be possible to reconstruct transactions to get sub-sale relief. I suppose that you could say that that is utterly legitimate. However, even though we are trying to minimise avoidance, we have almost created the conditions in which avoidance is allowed to happen. That is not the place that I am in with regard to this bill.

Gavin Brown: Are you proactively examining sub-sale relief in the way that you seem to be doing with licences to occupy, or are you literally waiting for the committee report to see our view? Are you doing your own work as well, at the moment?

John Swinney: We are in active dialogue with people on a variety of issues relating to the bill, including sub-sale relief.

This has been a good exercise in open dialogue with stakeholders. A range of stakeholders have spent a lot of time assisting us with the bill. We are continuing to talk to them. On the issue of non-residential leases, we have established a working group that has given us a good amount of assistance already. I want to meet that group before I come to a conclusion on one issue that I am wrestling with, because it has done a lot of
Gavin Brown: Pages 50 to 52 of the financial memorandum outline the set-up and running costs of revenue Scotland. Do you feel that those figures are robust?

John Swinney: I do, yes.

Gavin Brown: Is there contingency room in there? Are the figures on the margins, or have you built in safe assumptions, so that the odds of going over the assumptions are low?

John Swinney: There is a line for contingency throughout the figures—in the non-staff costs, for example, and the other set-up and running costs. I think that the position is reasonable.

John Mason: I want to clarify what we mean by avoidance, as I think that the term has perhaps changed its meaning over the years. My accountant colleagues used to argue that, because all avoidance was legal, it was all okay. I would perhaps take the line that there is good avoidance and bad avoidance.

If I am filling in my tax return and I claim my personal allowance, that is avoidance, but it is good avoidance. Are we saying that there is bad avoidance, that we want to tackle but that we are happy that people arrange their affairs properly?

12:00

John Swinney: I do not take the same view as Mr Mason about his claiming his personal allowance. That is an entirely legitimate element of the tax system. The UK Government says that people will pay no tax on a certain amount of income. As a state, we agree to that. That is the rule, and we are all perfectly entitled to have access to the allowance. That answer is in a similar category to my answer to Mr Chisholm’s question about the balance between the rules, the reliefs and the rates and bands, and what that throws up as a tax take.

The key question is about whether we construct a tax regime that is sufficiently clear and well articulated that it gives rise to tax charges that people respect and have no alternative but to follow or whether we construct a regime that creates myriad opportunities for people to avoid what Parliament has clearly envisaged will be a tax charge. That is the territory that we are in.

I made a point about the tax consultation forum and the breadth of its membership. I did not want to have round the table only the country’s tax experts. I say that with no disrespect to them, because I have a number of them round the table. However, I wanted the forum to include a cross-section of people from our society who could provide a perspective on what matters. What does our approach to tax mean to an older person in Scotland? If we do not get the right approach, that older person will not have the support in society that we all, morally and politically, want them to have.

There is an ethical dimension to tax. There are choices for all of us, when we fill in our tax returns, as to what approach we take. There is an ethical dimension to that, and there will be ethical dimensions to the approaches that accountants take in supporting people when they fill in their tax returns.

What I am trying to do with the bill is to set a standard in Scotland whereby, the first time that we embark on tax legislation, we have some very clear principles ringing out from it about simplicity, convenience to collect and administer, the minimisation of avoidance and the maximisation of clarity.

John Mason: I very much agree with what you say. It seems to me that there is a difference between the spirit of the law and the letter of the law, and you are trying to get society moved along to accept the spirit of the law. I feel that the UK generally—not just in tax law—has relied far too much on the letter of the law. I just wonder whether we can persuade the courts and the professionals to look at the spirit of the law more than the letter of the law.

John Swinney: I have seen some interesting and thoughtful material from tax specialists about how legislation should be designed with a view to capturing the spirit of what is expected in the area—I suppose that it is best to express it as Mr Mason did—rather than defining everything down to the nth degree, which just gets everybody concentrating on what they can do on the periphery by mucking about with their tax return. I am interested in that thinking, and we are chewing it over in relation to the tax management bill.

What we have in the land and buildings transaction tax is an attempt to do two things. The first is to use the opportunity to establish our own system so that we have a land and buildings transaction tax that is, at the terminology level, consistent with Scots law. That is not the case with the SDLT, and some mismatch arises because of that. The second thing is to ensure that we have an approach that is abundantly clear and simple to follow and which involves creating the smallest possible amount of ground for misinterpretation, manipulation or avoidance.

John Mason: You said that you have older people in your tax consultation group who benefit from tax and that tax means that we can pay better pensions and all the other things that we want to do. On that basis, why do you want the bill
to be revenue neutral? Some people might feel that, because we are tight for money, the bill could be an opportunity to raise some extra money.

John Swinney: It is necessary to consider the issues of competitiveness. When we promoted the consultation on the subject, there was quite a bit of media commentary that said that we were using the tax to demonstrate the Government’s interest in a progressive system of taxation, which was an interesting observation. The second observation that was made was that, through the way in which we were constructing the tax, we were using it to create opportunities to activate the housing market in Scotland and, in particular, to incentivise and motivate first-time buyers.

Those observations are relevant to the issue of tax neutrality. In an atmosphere of tax neutrality, I have tried to reflect an economic incentive and to send a signal of a move towards progressive taxation, which is a value that the Government believes in. I thought that it was most appropriate to do that in the context of tax neutrality.

John Mason: You mentioned competitiveness, which has come up a few times. I return to the issue of when the rates and bands for the new tax are announced. Although you have made the point that the UK Chancellor of the Exchequer can change the SDLT rates overnight, witnesses led us to understand that, if a transaction was decided today, today’s SDLT rate would apply even if the tax were not paid for three or four years.

That means that, in England, if someone buys a property now, they know exactly what rate will apply, even if the chancellor changes the rate in the meantime. In Scotland, someone who did the same thing would not know what tax rate they would have to pay, and might not know that for quite some time. It was argued—I am not saying that I totally agree with this—that there is therefore a certainty down south that will not be available here.

John Swinney: I do not see how the situation would be different in Scotland. If a transaction happens on a given day, it is charged at the rate at that time. I cannot see how anything could be different in that scenario. The comparison between Scotland and England is irrelevant in that context. The circumstances will be judged according to the tax rates that are in place at the time of the transaction.

John St Clair: Both the SDLT and the LBTT regimes involve the concept of the effective date, which is the date on which the transaction is completed. That is when the tax is assessed and payable. It does not matter when the chancellor sets the rate; the tax that is payable is dependent on the effective date.

John Swinney: For the avoidance of doubt, I should say that I am not arguing for an approach whereby we announce the rates at 2.30 in a budget statement and effect them that evening. I reassure the wider world that that is not what I have in mind.

John Mason: I might have misunderstood previous witnesses. They seemed to suggest that there is more certainty in England than it appears that there would be under the new regime in Scotland, but maybe we can clarify that elsewhere.

John Swinney: I do not think that that is the case.

John Mason: That is fair enough.

We have touched on the Crown exemptions, but the other exemptions include exemption on death—in future, no LBTT will be payable in such circumstances, as is the case with SDLT—and exemption for a gift. Will that have the result of ensuring that the wealth of very wealthy families in the country will stay in those families and there will be no taxation? What is your thinking behind continuing those exemptions?

John Swinney: One issue that arises is to do with some of the practical issues around gifts of property. Colleagues will be familiar with the circumstances in which parents give their property to a son or a daughter. There are quite clear rules on that. If it is done seven years before the death of the person who is making the gift, no inheritance tax or LBTT will be due. My view is that that is an appropriate provision to have in place because it enables families to manage the process. The issue is not exclusive to wealthy families but is quite broadly shared across society, so it is a reasonable provision to have in place.

John Mason: Okay. Some witnesses have put to us a point on the relationship between LBTT and VAT. Some of them argued that LBTT should be imposed on the net amount without VAT. As I understand it, the proposal is that LBTT should be on top of VAT, which they claim is double taxation. I asked whether they would rather have 6 per cent on the net or 5 per cent on the gross. Their argument was that, because some land transactions have VAT and some do not, the amount of LBTT that would be charged would be uneven.

John Swinney: Our view has been informed by Lord Hope’s judgment in the Court of Session in—this is a blast from the past—Glenrothes Development Corporation v Inland Revenue Commissioners 1994. Lord Hope said:

“The amount of the stamp duty is charged by reference to the amount or value of the consideration for sale, not by reference to the value of the property.”
Our view is that LBTT is essentially a transaction tax, not a tax based on the value of land, which therefore points us in the direction of Lord Hope’s judgment on the question that LBTT should be charged on the total purchase price as the value of the transaction. That would include VAT. That is the foundation of our view on the question, simply because it is driven by the value of the consideration for sale and the size of the total transaction.

John Mason: We took evidence from Registers of Scotland representatives earlier. Registers of Scotland has had some IT problems in the past. Are you comfortable that it will be able to cope, especially with regard to IT?

John Swinney: Yes. Registers of Scotland has had IT problems in the past, which arose out of a contracting-out regime that was not well prepared for within Registers of Scotland. Essentially, control and operation of the IT was put outside the organisation in 2004. The organisation has now taken some pretty difficult steps to bring it back and to rebuild the critical capability in-house to undertake IT activity.

I have seen a number of different enhancements and developments of the system that Registers of Scotland uses, and an increasing number of elements of what will become the LBTT transaction are already taking place with the support of IT through the stamp duty environments. There is a sense of that approach developing to deliver an IT system that is effective and efficient in relation to the needs of the land and buildings transaction tax.

John Mason: Thank you very much.

The Convener: That brings the evidence session to an end. I thank the cabinet secretary and his officials for responding to our questions and deliberations.
ANNEXE C: WRITTEN EVIDENCE

Written submissions

Andy Wightman
Audit Scotland
Brodies
Carnegie UK Trust
CBI Scotland
Charity Law Association
Chartered Institute of Taxation
COSLA
Council of Mortgage Lenders
Energy Saving Trust
ESPC
ESPC revised submission
Existing Homes Alliance Scotland
Homes for Scotland
Hugo Cannon
ICAS
The Law Society of Scotland
Lucy Bailey
Matthew Littlecote
Miller Developments
Pinsent Masons LLP
Royal Institution of Chartered Surveyors
Scottish Building Federation
Scottish Federation of Housing Associations
Scottish Land and Estates
Scottish Property Federation
SCVO
South Lanarkshire Council
The Wellcome Trust

Additional submissions

HM Revenue and Customs
Registers of Scotland
Office of the Scottish Charity Regulator
Existing Homes Alliance Scotland
Brodies LLP
Scottish Property Federation
The Law Society of Scotland
The Law Society of Scotland on licences
1. I am responding to your call for evidence on the Land and Buildings Transaction Tax (Scotland) Bill.

2. I believe that SDLT **should be abolished** and replaced with a wider, more coherent land and property tax. My preference is for an annual levy on the rental value of site values (otherwise known as Land Value Tax).¹

3. During this Parliament, the Scottish Parliament has enacted the Local Government Finance (Unoccupied Properties etc.) (Scotland) and the Scottish Government are proposing reforms to the non-domestic rates system as well as to council tax. All of these plans represent a fairly comprehensive programme of property tax reform. And yet none of these them appear to be informed by any clear set of principles that should underpin why and how land is assessed for taxation. The challenge for reform of property tax is to develop a system that;

   - is coherent, principled and fair
   - treats all land on an equal basis
   - eliminates inefficient allocation of land
   - eliminates speculative gains arising through unproductive activity
   - promotes affordable access to housing and other vital land-based assets.

4. In this context, it is disappointing to note that the Scottish Government appear to have taken no account of the significant review of the UK taxation system led by Professor James Mirrlees, a Scottish economist, Nobel prize winner and member of the Scottish Government’s Council of Economic Advisers.

5. The Mirrlees Review published their findings on 14 September 2011 and observed that:

   *In the UK poor tax design contributes to an inefficient housing market, distortionary taxation of financial services, excessive reliance on debt finance, employment levels lower than they need be and distorted and inefficient savings and investment decisions. The review sets out a long term strategy for reform, and in doing so speaks to immediate policy priorities.*²

6. In relation to SDLT, the Review had this to say:

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¹ Further details of how this might operate in Scotland can be obtained in my report *A Land Value Tax for Scotland* published in October 2010. It can be obtained, together with other source material on the topic at: [www.andywightman.com/?page_id=1050](http://www.andywightman.com/?page_id=1050)

The taxation of housing is a mess. Council tax is still based on 1991 valuations and is unnecessarily regressive. **Stamp duty is among the most inefficient and damaging of all taxes.** And renting is needlessly penalised by the tax system. Stamp duty should be abolished and council tax reformed so that payments are based on up to date values and are fully proportional to house value. This reformed Council Tax, which the review dubs a Housing Services Tax, would effectively stand in place of a VAT on housing. (2)


8. I agree with these conclusions and would urge the Committee to seek evidence from Professor Mirrlees in order to properly assess the value of any tax on land transactions.
1. We write in response to the Committee’s call for evidence on the Land and Buildings Transaction Tax (Scotland) Bill (LBTT Bill) dated 5 December 2012.

2. The Auditor General audits or appoints the external auditors of most central government bodies in Scotland covering around £35 billion of income and expenditure. Accordingly the Auditor General and Audit Scotland have an interest in the audit and governance arrangements for all of the new tax raising provisions flowing from the Scotland Act 2012.

3. We note that the LBTT Bill does not contain any direct provisions relating to the audit of the taxes to be raised under the Bill. However, we recognise that the LBTT Bill is one of three proposed Bills for the implementation of the devolved taxes and that provisions relating to the audit arrangements for Revenue Scotland are expected to be included in the proposed Taxes Management Bill later in 2013.

4. To the extent that the proposed tax will be administered by Registers of Scotland we are content that the existing audit arrangements for that body are sufficient to ensure that appropriate audit scrutiny will be able to take place.

5. In August 2012 Audit Scotland published a report on Managing ICT contracts – an audit of three public sector programmes. In that report we noted that Registers of Scotland had given notice to terminate its current long term Strategic Partnership Agreement for ICT services from April 2013. We further reported that “Termination of the SPA means that RoS has to build an in-house ICT capability to be able to manage future ICT functions and requirements, including a new responsibility to receive and administer returns for the planned Land and Buildings Transaction Tax”.

6. We would be happy to provide the Committee with any further information.

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1. [www.audit-scotland.gov.uk/docs/central/2012/nr_120830_ict_contracts.pdf](http://www.audit-scotland.gov.uk/docs/central/2012/nr_120830_ict_contracts.pdf)
Land and Buildings Transaction Tax (Scotland) Bill
1. We welcome the opportunity to respond to the Call for Evidence on the Land and Buildings Transaction Tax (Scotland) Bill. In response to the call for views on the general principles of the LBTT Bill, we would comment as follows:

Uncertainty
2. We understand that the Scottish Ministers do not intend to announce the rates of LBTT until nearer April 2015. We have spoken with clients and agents regarding the impact of the uncertainty of rates of LBTT and other aspects of the introduction of LBTT and the overriding message from all was that uncertainty may discourage investment in the Scottish market.

3. We believe it would be advisable for Scottish Government to give some indication of the likely level of LBTT rates in Scotland from April 2015, for example, an indication of the maximum rate of LBTT which would be introduced, so that inward investors do not rule out investments in Scotland and the property market as a whole is not adversely affected due to uncertainty.

Clarity and guidance
4. A fundamental problem with SDLT has been the complexity of the provisions and the administrative arrangements. We recommend that the Scottish Government should seek to ensure that the LBTT guidance is readily available and easily understood, and that the guidance is finished and available before LBTT is introduced. Assuming that the LBTT guidance will be made available on the internet, we would point out that there should be a facility to print out the guidance (or parts of it) so that the basis on which a return has been prepared can be supported. This is particularly important if guidance changes in the period between submission of the return and any enquiry into the LBTT return.

5. We also recommend that the Scottish Government should introduce a helpline staffed by adequately trained specialist personnel. The lack of technically trained staff at the HMRC helpline has been very frustrating for those of us completing SDLT Returns on behalf of clients.

Transitional Rules
6. We believe greater clarity is required in relation to the transitional rules between SDLT and LBTT. There were considerable practical difficulties when SDLT was introduced in distinguishing between those transactions which were subject to SDLT and those which remained in the stamp duty regime. This is undesirable from a practical perspective and is also not in the spirit of the changes introduced by the Scotland Act 2012.
7. We would predict that taxpayers will expect that no SDLT returns of any kind will need to be submitted in relation to transactions involving land in Scotland after April 2015 but question whether the transitional rules in the Scotland Act 2012 do achieve this result.

8. We urge the Scottish Government to look into the transitional arrangements carefully, and to seek to ensure (by agreement with the UK government) that after April 2015 only LBTT returns have to be submitted and that only payments of LBTT need to be made.

9. Turning to the particular points listed in the Call for Evidence, we would comment as follows:

**Proportional progressive structure**

10. We support the introduction of progressive tax structure for residential transactions. As well as being a much fairer approach for residential purchasers, this will benefit house builders who are under pressure to ensure selling prices are below the £250,000 threshold in order to benefit from the 1% rate.

11. We have concerns that in relation to commercial properties there could be a disproportionate effect on the high value transactions liable to the top rate of LBTT. Although there is numerically fewer top end value investments these are significant in terms of the implications for Scotland. As we have commented previously, if Scotland is perceived to be more expensive in fiscal terms in comparison with, for example, England, investors will be discouraged from investing in Scotland.

12. There have been indications that the Scottish Government will take measures to restrict the disproportionate effect of the progressive structure on higher value transactions. We would urge Ministers to confirm as soon as possible if this is indeed the case and how it will be achieved.

**Approach to tax avoidance**

13. We are pleased to note that section 75A has not been replicated in the LBTT Bill and that a General Anti Avoidance (or Anti Abuse) Rule is to be included, in the Taxes Management Bill. We believe that this will lead to a more robust system and less likelihood of avoidance activities.

**The proposed exemptions under the Bill**

14. We note the absence of licences to occupy from the exemptions. Licences to occupy have been exempted from SDLT. This immediately throws up a difference in the charging regimes for property taxes in Scotland when compared with the remainder of the UK which in turn may give rise to the perception that property taxes are higher in Scotland. Fuelling such perceptions may have an adverse effect on the market.

15. We understand that the Scottish Government is keen to ensure that long term licences to occupy for valuable consideration do not avoid the requirement to pay LBTT but we would suggest that a blanket removal of the exemption from LBTT of licences to occupy is too big a step to take. We would suggest that the Government
takes the opportunity to review the position on licences when consulting on the treatment of non-residential leases and introduces categories of licences which will be exempt from LBTT.

The proposed reliefs under the Bill

The absence of sub-sale relief
16. As the LBTT Bill is drafted at the moment, no sub-sale relief is available for transactions involving 3 parties, which in a lot of cases will be transactions involving seller (A) selling to developer (B) who then sells on all or part of the property to final purchaser (C).

17. The absence of sub-sale relief will result in party B paying LBTT in situations where they didn't have to pay SDLT before – again leading to a perception, or indeed reality that developers in Scotland face higher costs/double taxation when compared with the rest of the UK. Given the state of the construction industry, such proposals for higher taxation cannot be justified or supported.

18. We are aware that sub-sale relief has been used in schemes devised to avoid paying SDLT, but would point out that in many cases, it is used to facilitate the progress of development deals. Proposals have been introduced in the UK to address the abuse of the sub-sale relief in relation to SDLT. These proposals if introduced would require the middle party in a sub-sale to claim relief if the relevant conditions are met. Although such a change is not ideal from the developer’s perspective in many cases, whichever proposal is eventually adopted, the end result will be that relief is still available in relation to SDLT.

19. We urge the Scottish Ministers to reconsider the blanket removal of sub-sale relief. We would suggest that in circumstances where title to the property is not registered by the middle party, the end purchaser pays not less than market value and the sub-sale satisfies the current conditions of having been completed contemporaneously with the original purchase, no LBTT should be payable by the middle party.

Charities relief
20. We do not believe that LBTT charities relief should only be available to charities which are registered with OSCR. We believe LBTT charities relief should also be available to charities registered with the Charity Commission or recognised as charities by HM Revenue and Customs, and also to overseas charities operating in Scotland, whether or not they are required to register with OSCR. Although UK charities which occupy property in Scotland are required to register with OSCR, this is not a requirement for charities which purchase investment properties here. We do not see why such charities should be denied LBTT charities relief.

Relief for Scottish Limited Partnerships
21. We would suggest that Scottish Limited Partnerships (SLPs) should be treated as bodies corporate for the purposes of LBTT group relief, so that assets can be transferred between sister companies owned by an SLP without an LBTT charge. This is not the case for SDLT because an SLP is not treated as a body corporate but
it is not treated as being transparent for SDLT purposes like an English limited partnership because an SLP has separate legal personality.

**Treatment of non-residential leases**

22. The current complexities in the SDLT lease code should not be mirrored in LBTT - a much simpler system is required. We are pleased that the Government has opted to delay the issuing of provisions dealing with non-residential leases and hope that the opportunity is taken to introduce a system which is more straightforward and works for all types of non-residential leases in Scotland.

23. Available options include a charge based on the average rent, similar to the stamp duty system, a charge on rent actually paid, or an NPV based system but including an option for payment by instalments. The option for payment in instalments could assist in situations where the rent payable under a lease is not confirmed when the tenant takes entry to the property such as in leases with turnover rent provisions.

**Treatment of companies, partnerships and trusts**

24. We believe that the SDLT partnership regime is extremely complicated and that it should not be adopted in the LBTT legislation. A simpler system is required. The inclusion of a GAAR in the Scottish tax legislation should have made it possible for the LBTT rules to be drafted without many of the complexities which have been included in the SDLT partnership code in order to counter a range of planning schemes and perceived avoidance risks. It would appear that the partnership provisions in the LBTT Bill are no less complex than those contained in the SDLT legislation.

25. We welcome the reference to further consideration of the provisions dealing with partnerships and trusts in the Policy Memorandum and would suggest that consideration is given to separate rules for different types of partnerships. For example, property funds which are set up using partnership structures operate quite differently from family farming partnerships. There would be merit in crafting different rules for different types of partnerships, and this could lead to greater clarity.

26. We also believe that in some respects the SDLT treatment of transfers of land into partnerships “connected” with the transferor (where no SDLT is paid even where consideration is paid or provided) is out of line with the treatment of transfers to companies connected with the transferor (where SDLT is generally paid on the market value, even where no consideration is given). We believe the treatment of transfers of land to partnerships and companies should be similar, perhaps with no LBTT charge where there is no consideration, but LBTT being paid where consideration is paid.

**The role of Revenue Scotland**

27. We would reiterate our general comments above in relation to the need for clarity and guidance. There will also need to be clear guidance about the demarcation between the responsibilities of Revenue Scotland and Registers of Scotland. Taxpayers and agents will have to be certain as to whom they should be dealing with for what. For example, will the LBTT return always be submitted to
Registers of Scotland even where title or lease does not require to be registered? It will also be important for information to be shared by Revenue Scotland and Registers of Scotland, for example if Revenue Scotland are dealing with queries from taxpayers or their agents, Revenue Scotland will need to have up to date access to the online land transaction return system.

**The role of Registers of Scotland**

28. We are aware that the introduction of LBTT and the passing of responsibility for collection of LBTT to Registers of Scotland for land transactions requiring registration will coincide with or happen before the introduction of the new system of Automated Registration of Title to Land. ARTL has been heavily criticised for its unworkable nature and we understand that Registers are working hard to improve the functionality of ARTL.

29. It is essential that both the LBTT system and the ARTL system work smoothly separately and together and that all teething problems have been addressed before the systems go live. To facilitate the smooth introduction and subsequent day to day operation of the LBTT system, Registers of Scotland must be given adequate support and resources to deal with it.

**Administration of LBTT**

30. At clause 10(3) the Bill as drafted provides that if a transaction is substantially performed and then completed at a later date by a conveyance, the substantial performance and conveyance are both notifiable transactions. Such a requirement to notify HMRC of the conveyance exists under the current SDLT regime. As far as we are aware, very few taxpayers adhere to this rule if they have paid the SDLT which is due at the point of substantial performance.

31. We would suggest that an additional Return should only be required on conveyance when additional LBTT is payable and that taxpayers should be entitled to make a declaration that no tax is payable at the point of conveyance. If the types of Return required under the SDLT regime are introduced for LBTT, we would suggest that HMRC would have sufficient information at the point of substantial performance. Removing the need for a second Return on conveyance where no further tax is payable would also ease the administrative burden for Revenue Scotland and Registers of Scotland.
1. The Carnegie United Kingdom (UK) Trust welcomes this opportunity to respond to the Finance Committee’s call for evidence on the Land and Buildings Transaction Tax (Scotland) Bill. The Trust works to improve the lives of people throughout the UK and Ireland, by influencing policy, and by changing lives through innovative practice and partnership work. The Carnegie UK Trust was established by Scots-American philanthropist Andrew Carnegie in 1913.

2. We have chosen only to respond to the parts of the consultation where we have experience and relevant evidence. Further information on our work is available on our website www.carnegieuktrust.org.uk.

Proposed exemptions and reliefs within the Bill

3. 2011 Trust research, The Effectiveness of Rural Housing Burdens, highlighted the important role that Rural Housing Burdens (RHBs) can play in generating and retaining private subsidy for affordable housing options in rural areas and sustaining fragile communities. See Appendix for further details.

4. The use of the RHB mechanism by Rural Housing Bodies increases access to a range of affordable housing options, including home ownership in rural areas, and empowers communities to create solutions to local needs. In this way the use of RHBs supports the Scottish Government’s affordable housing priorities as outlined in Homes Fit for the 21st Century: The Scottish Government's Strategy and Action Plan for Housing in the Next Decade.

5. The Trust believes that it is important that the broad benefits to society that Rural Housing Bodies can deliver are recognised and wider uptake of RHBs by Rural Housing Bodies is supported and encouraged. There is a good opportunity to support Rural Housing Bodies and the use of RHBs as a method to deliver low cost home ownership in rural areas via the Land and Buildings Transaction Tax.

6. We are concerned that the Bill in its current form does not adequately support the use of RHBs without a specific relief or exemption for Rural Housing Bodies. Without such an exemption there is a risk that some Rural Housing Bodies, particularly smaller, community led Rural Housing Bodies (which may not have gained charitable status), may find themselves liable for the tax, as they fall out with the list of current reliefs. This could create a barrier to the development of affordable housing options in a rural community.

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1 A Rural Housing Body is any properly constituted bodies that has a stated objective in meeting affordable housing needs in rural areas and has been designated as such by the Scottish Government.
7. Our recommendation is therefore that: Rural Housing Bodies are exempt/relieved from paying Land and Buildings Transaction Tax on land/properties with an RHB or on which an RHB will be created.
APPENDIX

What are Rural Housing Burdens?
- The Rural Housing Burden (RHB) was introduced in 2004 as one of a number of land reforms to the feudal system of land tenure in Scotland and was designed to act as a mechanism to lock in an affordability discount to land for community benefit.
- RHBs may be created in settlements of 10,000 people or less.
- Anyone can seek to create an RHB, but it will only be legally effective when it is in favour of a rural housing body which has expressly consented to such a burden being created;
- Any properly constituted bodies that have a stated objective in meeting affordable housing needs in rural areas may be eligible for designation as a Prescribed Rural Housing Body;
- A RHB gives the rural housing body a pre-emption right when selling a property – which means it has the right to re-purchase the property whenever it is made available for sale and on the buy-back price terms and other conditions which may also be attached to the burden;
- The terms of the RHB are negotiated with the purchaser and may indicate the price and the terms at which the property can be bought back;
- The rural housing body has 42 days when the property becomes available for sale to decide whether it wishes to re-purchase the property or not;
- The rural housing body does not lose its pre-emption right, or any buy-back price conditions attached if it chooses not to exercise them on that occasion. They remain available to be exercised on all future sale occasions although the rural housing body also retains the sole discretion to waive them should it so decide.
- The RHB is one of a number of tools available to support the delivery of affordable housing in rural areas and contribute to the overall flexibility of the housing system.

What are the benefits of Rural Housing Burdens?
- Most families who have purchased a discounted RHB plot are clear that this was the only way in which they could have afforded to build their own home in their preferred community.
- The research suggests that the guarantees which RHBs provide in terms of retaining land within the local community in perpetuity have been helpful in persuading landowners – both public and private – to release sites for affordable housing at heavily discounted rates.
- RHB guarantees have also helped to encourage planning authorities and communities to give their support and approval for the subsequent development of these sites.
- A case study of Glenachulish in the Highlands shows how RHBs have been used to revitalise a small and ageing rural community by providing affordable homes for five young local families.
- This case study also illustrates that RHBs can help bring wider benefits to local rural economies by generating small scale contracts which are won by local firms.

The full research report and policy summary from our 2011 RHB study are available [here](#).
Introduction

1. CBI Scotland is an independent organisation funded by its members in industry and commerce and representing firms of all sizes and from all industrial and commercial sectors.

2. We welcome the opportunity to contribute the Scottish Government’s deliberations on replacing Stamp Duty Land Tax in Scotland with a Land & Buildings Transaction Tax. The revenue accruing to government from taxing land and property transactions is substantial, with the Office for Budget Responsibility\(^1\) (OBR) estimating that the tax will generate £536 million annually in tax receipts in Scotland in 2016/17.

3. With the passing of the Scotland Act earlier this year the devolved government has an expanding arsenal of taxes at its disposal, with new financial responsibilities over a Scottish rate of income tax, stamp duty land tax, landfill tax, borrowing for capital investment, and the ability – with the approval of Westminster – to introduce new taxes which apply across Scotland. The devolved administration already has existing powers over the Scottish Variable Rate, non-domestic rates, council tax, as well as variety of charges and levies.

4. CBI Scotland has had a long standing interest in taxation matters as businesses contribute to the funding of the Scottish Government, its agencies and public authorities through a range of taxes and charges, and their success or otherwise can be affected by the spending and taxation decisions taken. As highlighted in the taxation section of the CBI Scotland business manifesto\(^2\), published ahead of the 2011 Scottish Parliament elections, we want a business taxation environment that supports competitiveness and ensures Scotland is at least as attractive a place to live, work, invest and do business as elsewhere in the UK.

Key messages

5. The Scottish Government is to be commended for moving swiftly following the passing of the Scotland Act to set out some of its early thinking on replacing stamp duty land tax in Scotland with a Land & Buildings Transaction Tax, to be taken forward in a Bill later this year. Scottish Ministers should similarly seek an early opportunity to outline their strategic thinking over the proposed policy direction on the rates and thresholds to be applied, as well as projected revenues, in order to provide an enhanced level of certainty and predictability and to minimise any perceived risk over policy direction during the early years of the new tax.

6. We are encouraged that the Scottish Government is seeking to use the new tax to ‘positively influence’\(^3\) economic activity. Competitiveness must be at the heart of its

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\(^1\) ‘Scottish Tax Forecasts: Economic and Fiscal Outlook’, OBR, March 2012, table 1.1
\(^2\) ‘Energising the Scottish economy: a business agenda for reform and recovery’, CBI Scotland, June 2010
\(^3\) P7 consultation document
agenda when it comes to setting rates and thresholds. While Scottish Ministers have indicated their intention to ensure receipts from the tax are on a ‘revenue neutral’ basis, it is however disappointing that they are not seeking to pursue a more ambitious approach which reduces the tax take and provides a competitive advantage to firms operating in Scotland with lower rates.

7. We share the Scottish Government’s aim that the new tax should be simple, easy to understand and administer and therefore help minimise the bureaucratic burden placed on companies.

8. Given the Scottish Government’s acknowledgement that revenues from taxes on land and property transactions can “fluctuate significantly” depending on property prices and the number of transactions taking place, Scottish Ministers may want to consider inviting the OBR to update its revenue projections and analysis once there is greater clarity on the tax rates and thresholds to be applied under L&BTT, and using more recent data on revenues etc.

RESPONSES TO CONSULTATION QUESTIONS

Q1: TAX STRUCTURE: Do you agree with the Scottish Government’s view that the Land & Buildings Transaction Tax should be structured progressively?

9. Introducing a more progressive approach than is currently the case through the ‘slab’ structure of stamp duty land tax would reduce some of the disincentives to the buying and selling of domestic properties, removing distortions brought about by current stamp duty thresholds. When setting the proposed higher rates on higher valued domestic properties in future Scottish Ministers need to be conscious of the rates that apply elsewhere in the UK, but also of the message it would send out about the attractiveness of Scotland as a place to live and work.

10. While non-residential transactions reportedly account for only one in ten transactions but up to half of the revenues, we would be concerned if the introduction of a more progressive system for land and commercial property transactions (particularly for higher value ones which can have an added symbolic importance) affected the attractiveness and wider reputation of Scotland as a place to invest. Commercial property investors often have a choice of locations in the UK or indeed abroad for their investments and they rigorously evaluate the post-tax returns on the options available to them. It would be concerning if this new tax made it more expensive to invest in Scotland, especially as the Scottish Government’s £95 million business rates retail levy (itself applied on progressive scales) has already made it more expensive for one of the very few bustling sectors of recent years - larger retailers - to invest here than elsewhere in the UK. Maintaining at the very least a level playing field on this tax with the rest of the UK on land and commercial property transactions should be a priority.

Q2: SUPPORTING SCOTTISH GOVERNMENT PRIORITIES: Do you think that the Land & Buildings Transaction Tax should be amended in future to support key Scottish Government priorities? If yes, what objectives should changes focus on and what would be the best way of doing this?

11. Scottish Ministers will want to keep an open mind on how this new tax and indeed the growing basket of taxes at its disposal can be improved and made more efficient in future, particularly in light of Ministerial policy objectives and evolving targets over the environment and the supply of new housing, but also given the potential for volatility in terms of revenues related to trends in property prices and transactions. Ministers will also

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4 ‘Forecasting Scottish taxes’, OBR, March 2012
5 ‘Warning on Stamp Duty reform plan’, p1, Scotland on Sunday, 5 August 2012
6 Introduced in April 2012 following the Scottish Government’s 2011 budget & spending review
want to reflect on the complexity of the system and whether to add to it but also the myriad of other public policy interventions that support its priorities and whether they offer a better route for positively influencing outcomes than L&TT, e.g. the encouragement of business growth in deprived areas is also the objective of the Enterprise Zones/Areas and affected by the new Business Rates Incentivisation Scheme.

12. Regardless, the Scottish Government should ensure that Scotland’s economic competitiveness is at the very heart of any future changes, as well as the need for certainty and predictability. The amount of tax levied on a transaction involving the purchase of a domestic or commercial property or land can be influential in the decision making process, however it is often just one of several outgoings that purchasers have to take into account when deciding whether or not to proceed with a purchase. We would also urge Ministers to ensure business is consulted at an early stage and well before the introduction of any new proposals to alter the tax.

Q3: EXEMPTIONS: Do you agree that the proposed transaction categories should be exempt from Land & Buildings Transaction Tax, and that for these specific transactions no LBTT return should need to be submitted?

13. The proposal to keep exemptions broadly consistent with those currently applicable under stamp duty land tax seems appropriate and ensures consistency across the UK. We welcome the commitment in the consultation document\(^7\) to consult on any proposals to alter the list of exemptions.

14. If Scottish Ministers want to stimulate greater economic activity, in addition to the suggestion above (paragraph 6) to lower rates, they may want to reconsider whether L&BTT should apply upfront on options to buy land. Options to buy land are often conditional, e.g. on conclusion of satisfactory site investigations, with no certainty that it will progress to a final sale. At the moment options to buy trigger a SDLT liability, thus increasing upfront costs for developers. Revising this approach and moving away from an upfront tax liability may stimulate greater activity, so that the tax would still due on the combined sale and option payments but only where the option leads to a sale.

Q4: COMPULSORY PURCHASE ORDER RELIEF: Do you agree with the proposal that the Compulsory Purchase Order relief should be expanded in Scotland to allow local authorities to benefit from the relief where they compulsorily purchase an empty home for onward sale?

15. We would welcome a fuller explanation of the decision outlined in the consultation document not to extend this proposed relief to other bodies (which are not local authorities) with CPO powers.

Q5: RIGHT TO BUY/SHARED OWNERSHIP RELIEFS: Do you agree with the proposal not to provide a Right to Buy or Shared Ownership relief for the Land & Buildings Transaction Tax, on the basis that these reliefs are not needed in Scotland?

16. No comment.

Q6: PROPOSED RELIEFS: Do you agree with the proposed list of reliefs? Please comment on any reliefs which you think should be abolished, amended or added and give reasons.

17. If Ministers seek to introduce a higher threshold for L&BTT on domestic properties that will presumably remove the need for a dedicated First Time Buyer Relief, and therefore we support the decision to remove this relief. We acknowledge the decision to end Disadvantaged Area Relief, and note that other devolved tax and financial public

policy interventions – such as Enterprise Areas and Urban Regeneration Companies – already apply to such areas.

18. We agree with the proposed list of reliefs as identified in section 4.13 of the consultation document.

Q7: RESIDENTIAL LEASES: Do you agree that residential leases of 20 years or less in length should be exempt from LBTT in Scotland and that no LBTT return should be required?
19. Yes.

Q8: CALCULATION OF TAX PAYMENTS FOR COMMERCIAL LEASES: What proposals would you make to ensure that the calculation of tax payments due on commercial leases is better aligned with Scots law and practices?
20. The current application of SDLT to commercial leases is complex, and we would support efforts to improve the approach so that it is straightforward and less onerous for businesses.

Q9: TARGETED ANTI-AVOIDANCE RULES: Do you agree that anti-avoidance measures as described in paragraphs 6.1 and 6.2 should be put in place for the L&BTT, along the lines of those included in UK SDLT legislation?
21. We support a consistency in approach across the UK to ensure simplicity.

Q10: GENERAL ANTI-AVOIDANCE RULE: Do you think that a more general anti-avoidance rule should be put in place instead of or in addition to the proposed targeted anti-avoidance rules to help ensure that L&BTT and other Scottish taxes due are paid?
22. In terms of the broader taxation system, a study group set up by the UK Government has suggested a GAAR should focus on abusive arrangements with no commercial purpose. If this proposal can successfully be targeted at preventing abusive arrangements without creating uncertainty in relation to the tax treatment of normal commercial arrangements, the CBI believes it should be supported. Any Scottish GAAR should be in line with that applying across the rest of the UK to ensure one simple to understand regime.

Q11: ONLINE PAYMENTS: Do you agree that a new online system should be designed to allow for simultaneous submission of an L&BTT return, payment of any tax due and registration of title to the land or property in the Land Register?
23. Ideally there should be an opportunity to perform all three processes simultaneously but there should also be opportunity to perform all three via other means. This would allow for a transaction to occur in the event of systems being inaccessible. The challenges in establishing new online administrative systems ahead of the implementation date in April 2015 should not be underestimated.

Q12: COMPULSORY ONLINE PAYMENTS: Do you agree that all L&BTT returns should be submitted online or should there be an opportunity to submit paper returns?
24. Ideally the onus should be on submitting the return online, however in the event of systems being inaccessible some flexibility must be catered for.

Q13: LINKING TAX PAYMENT TO REGISTRATION OF TITLE: Do you agree that L&BTT must be paid before title to the land or property can be registered in the

8 ‘Tax and British business: making the case’, CBI, 19 April 2012
Land Register or the Register of Sasines or before a document or deed is registered in the Books of Council and Session?

25. In the event of systems being inaccessible some flexibility must be catered for. We note too that for many other forms of taxation those liable are given time to pay.

Q14: PARTNERSHIPS AND TRUSTS: Do you agree that the L&BTT (Scotland) Bill should be aligned to Scots Law and practices in respect of the treatment of Partnerships and Trusts? If so, what measures would you propose?

26. We welcome the Scottish Government’s intention to provide clarity over tax liabilities in this complex area.

Q15: BUSINESS AND REGULATORY IMPACT ASSESSMENT: Do you have any comments on the draft Business & Regulatory Impact Assessment?

27. CBI Scotland has expressed concerns over the lack of a B&RIA for previous Scottish Government taxation regulations and measures, most recently its £95 million larger retailers levy and proposed £36 million reduction in empty properties rates relief. We therefore welcome the publication of the partial B&RIA for the L&BTT proposal and look forward to the full and proper assessment being available in the final B&RIA.

Q16: EQUALITIES IMPACT ASSESSMENT: Do you have any comments on the draft Equalities Impact Assessment?

28. No.

Q17: OTHER COMMENTS: Do you have any other comments in relation to legislation for the L&BTT, which are not covered by your responses to any of the other questions listed above?

29. We note that the new replacement tax will come into effect in April 2015, and that the Scottish block grant will reduce immediately without recourse to any transitional arrangements. Given the Scottish Government’s own admission that revenues from taxes on land and property transactions can “fluctuate significantly” depending on property prices and the number of transactions taking place, Scottish Ministers may want to consider inviting the OBR to update its revenue projections and analysis once there is greater clarity on the tax rates and thresholds to be applied under L&BTT, and using more recent data on revenues etc.

30. Similarly, during the early years of the new tax the new administrative authority, Revenue Scotland, should ensure that the technical support and guidance it offers business and their representatives when making L&BTT returns and submissions is customer focused and of sufficient scale and expertise.

9 CBI Scotland’s written submission to the Local Government & Regeneration Committee’s scrutiny of the business rates levy on larger retailers, March 2012
Introduction

1. The Charity Law Association has over 900 members, mainly lawyers but also accountants and charity professionals. It is concerned with all aspects of the law relating to charities, and has established a Standing Committee on Taxation to consider the application of tax law to charities and their supporters.

2. The members of the Committee are:

Julian Smith – Farrer & Co LLP
Paul Bater – Wellcome Trust
Clive Cutbill – Withers LLP
Graham Elliott – Withers LLP
Trevor James – Sheen Stickland LLP
Neasa Coen - Berwin Leighton Paisner LLP
Ewa Holender – Farrer & Co LLP

3. The members of the Committee serve in a personal capacity and the views expressed in this submission should not be taken to be the formal opinion of the organizations that they represent.

4. We welcome the opportunity to respond to the call for evidence on the Land and Buildings Transaction Tax (Scotland) Bill 2012, and in particular on the charities relief in Schedule 13 of the Bill.

Response call for evidence

Qualification for the charities relief

5. Although Schedule 13 of the Bill provides for exemption from Land and Buildings Transaction Tax (LBTT) to be granted to a charitable buyer, the definition of a qualifying charity in paragraph 15 is restricted to a charity that is registered with OSCR. Paragraph 221 of the Explanatory Notes to the Bill states that "any charity, including an English or foreign charity, may register with OSCR at no cost". This suggests that the Scottish Government intends that the exemption should be available in practice to non-Scottish charities and that the requirement to register with OSCR is not seen as a disproportionate burden.

6. We are concerned that this is in fact unlikely to be the case.

7. Firstly, there is no system of voluntary registration with OSCR. An English or foreign charity may register with OSCR only if it has a presence in Scotland that goes beyond owning land for investment purposes. Unless the OSCR registration policy is changed, English and foreign charities that do not occupy land in Scotland...
or carry out activities in Scotland would not be able to qualify for the exemption if they invest in Scottish property.

8. Secondly, even if OSCR were to accept such applications, we think it is misleading to suggest that registration with OSCR involves no costs. Whilst there is no registration fee, there is a cost to charities that need to amend their constitutions to satisfy the Scottish registration requirements. There are also ongoing compliance costs, including annual reporting costs.

9. This issue will affect not only individual charities investing directly in property in Scotland, but also common investment funds such as the Charities Property Fund (registered with the Charity Commission under charity no.1080290). It would be strange for the Scottish Parliament to put in place tax disincentives for such funds to invest in property in Scotland.

10. We consider that registration as a charity with HMRC in accordance with the provisions of Schedule 6 Finance Act 2010 should be a sufficient requirement for exemption from LBTT.

Co-investment by charities

11. We are also concerned that charities may be unable to benefit from the charity exemption when they co-invest in property in Scotland jointly with other investors.

12. This would reflect the position for SDLT in England following the decision of the Upper Tribunal in The Pollen Estate Trustee Company Ltd and another v Revenue and Customs Commissioners, [2012] UKUT 277 (TCC). However, the effect of that decision has been criticized in England and the Bill is an opportunity for the Scottish Parliament, if it wishes to do so as a matter of policy, to address the lack of relief for charities that co-invest in Scottish property.
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) BILL

SUBMISSION FROM THE CHARTERED INSTITUTE OF TAXATION

1. The Chartered Institute of Taxation (CIOT) is grateful for the opportunity to meet with the Finance Committee to discuss taxation matters. This short paper sets out:

- Who we are
- Comments on the LBTT proposals
- We also include as an annex to the paper

2. Some key principles relating to taxation

- How the CIOT can contribute

The Chartered Institute of Taxation

3. The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. As part of this the CIOT develops syllabuses, exams and works with training providers to educate those wishing to study and have a career in tax. The CIOT would be willing to work with its members in Scotland and the Scottish Government to meet the education needs of both government staff and others in the new taxes. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties.

4. The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. We have many links to wider groups who have an interest in tax matters. Submissions that we have made on Scottish tax proposals have regularly drawn on surveys of our members in practice in Scotland. We have also used mediums such as round tables, conference sessions, webinars and articles in Tax Adviser magazine to disseminate information and discuss issues. We would be pleased to work with Revenue Scotland, or the Finance Committee to make use of these avenues to discuss tax matters.

5. We welcome the extensive consultation which has taken place in the lead up to the publication of this bill, as this fits in well with the policy we have always advocated that all legislation should be subject to consultation. To be meaningful, the UK Cabinet Guidelines should be followed and, to be meaningful, consultation should be timely, listened to (and be seen to be listened to) and lead to dialogue, not immediate conclusions. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

6. The CIOT’s 16,500 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.
7. Our contributions to consultations and general discussions therefore draw the knowledge and experience of both our members in practice and the in-house technical team.

General comments on the LBTT proposals
8. We welcome the removal of the slab system as applied under SDLT and its replacement with a progressive system. The slab system encouraged avoidance where property transactions were taking place around a threshold, with a public mindset being created that excessive values could be placed on curtains to reduce the property sale price below the threshold, thus avoiding significant amounts of SDLT. The Orsman case early in 2012 highlighted this where an allocation of just £800 to fixtures was enough to reduce the SDLT by £5,200. The planned progressive system for LBTT should eliminate this avoidance behaviour.

9. We are disappointed to note that no indication of intended rates has been given to date – this may lead to investment decisions being delayed, or directed elsewhere, contrary to one of the Scottish Government’s policies to encourage investment in Scotland. A business may choose to invest in, say, an English property on the grounds of greater certainty of the tax payable for so doing.

Reliefs
10. We are disappointed to note the complete abolition of the sub-sale relief. While we acknowledge that this relief was the basis on which most SDLT avoidance took place, nevertheless there are valid situations in which this relief would be of benefit – for example by development companies who often buy an individual’s property so that the individual can buy a new house from them. The charge on both the sale of the property by the individual to the development company, and then a further charge on the sale of that property to a third party, would lead to the impression that Scotland was a more expensive place to do business.

11. We are also disappointed to note the restriction of charities relief to those charities registered with OSCR. We believe that this is in clear breach of EC law, and consider that it should be extended to those charities recognised by HMRC or other EC charities which would be recognised by HMRC were they situated in the UK. Indeed HMRC have had to go through a programme of amending UK tax law to be EU compliant in charities in a number of areas. At present only those charities which operate in Scotland are required to register with OSCR; there is no requirement for a charity which purchases property in Scotland as an investment to do so.

12. We note the proposals for a tax on residential property companies. We cannot envisage a situation where pure ownership of a company would give an entitlement to occupy the company’s property as ownership of a company gives no such right and any right is usually pursuant to some other right – we would be grateful for some clarity on this and an illustration of how many property transactions per year this would be expected to catch – is it likely to be sufficient to justify the complications on the reporting process?

13. The new package of measures adopted to counter perceived SDLT avoidance in the case of high value residential properties, namely a 15% rate of SDLT, CGT

\(^1\) Another possible route would be to regard the second contract as not an interest in land and therefore not within LBTT.
charge for non UK resident companies and the Annual Residential Property Tax (ARPT), have perversely increased the use of corporate wrappers to avoid SDLT and instead have caused UK resident but non-domiciled persons to make a choice between paying ARPT or Inheritance tax. We have pointed this out to HMRC in responses and question whether the potential revenue loss from any perceived avoidance is sufficient to justify the extra legislation and complexity.

14. We note that the over-complex anti-avoidance rules on partnerships under SDLT are not intended to be replicated under LBTT. We welcome this. However, we would suggest that the avoidance measures targeted could be dealt with by the introduction of the General Anti-Abuse Rule envisaged by the Taxes Management Consultation or by the introduction of a simple market value charge on the transfer of the property to the partnership. If it is perceived that a more complex set of rules is required, could something along the lines of the CGT rules on partnerships be appropriate?

15. We welcome the current exercise being undertaken, separate from the Bill itself, in respect of the taxation of non-residential leases, and look forward to reviewing the proposals.

16. As the Bill is currently drafted the LBTT will apply to Scottish trusts and to trusts operating under laws of a country outwith the UK. This excludes English Trusts and Northern Ireland Trusts and cannot surely be correct?

17. As the bill is presently drafted, the definition of body corporate is unclear and regrettably mirrors the confusion in the existing SDLT legislation. For example, the different uses of “company” including using it to represent a set of which company is normally itself a subset (hence a circular definition). What is the status of a unit trust? What is the status of a Scottish Limited Partnership? Are these bodies corporate, particularly for the purpose of distribution rules?

**Resources**

18. One of our concerns from the start of this process has been the availability of resources, both financial and in manpower terms. The addition of the responsibility for LBTT to Registers of Scotland will place an additional workload upon them at a time when they will also be attempting to cope with the extension of the ARTL system. Given that LBTT and ARTL will be operating in tandem we hope that sufficient time and resources will be made available to have a fully working, fully tested system (by external users as well as Registers of Scotland) in time for the introduction of LBTT.

**Concluding comment**

19. The CIOT welcomes this opportunity to contribute to the development of the Scottish tax system and will continue to be involved at all levels. We have set out on the attached page some guiding principles for the development of a tax system which members may find of use.

**The Chartered Institute of Taxation**

20. The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation.
One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

21. The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

22. The CIOT’s 16,500 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

Annex

We set out below some extracts from a paper recently submitted to the Finance Committee of the Scottish Parliament

**Key principles for taxation**

The Scottish Parliament has a real opportunity to designs the Scottish tax system in line with proper principles. We are very encouraged by the way it has started: as an example, the Land & Buildings Transaction Tax (LBTT) is being developed through good consultation, aiming for a tax that is simpler than the UK Stamp Duty Land Tax (SDLT) and which will fit well with Scots law and local needs.

We would note a number of key principles to be borne in mind in the design of tax systems:

- Consultation
- Stability
- Certainty
- Simplicity

**Consultation**

We are firm believers in the benefits of proper consultation. The point is to get practical input into the development of new tax law. More subtly, a key benefit is that consultation will make taxpayers and advisers more supportive of the law if they have been involved with its development.

We are very supportive of the UK Government’s framework for tax consultations as set out in ‘Tax Policy Making: a new approach’. Its principles parallel our views on what makes effective consultation, views we have put forward many times over the years:

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• Consult in stages (principles, then direction, then detail)
• Proper evaluation of input and good feedback
• All carried out over a proper timescale
• Only consult if there is a real chance of change – a willingness to listen

The guiding principle must be that all tax policy changes are consulted on. The main exception would be changes in tax rates. We do accept that changes in rates are always going to be a matter for government and would not normally be susceptible to consultation, though there have been instances where the implications of what seemed to be rate changes would have emerged with consultation³.

We would be happy to supply fuller comments about consultation, including reflections on our experience of the consultative process, if that were helpful.

**Stability**

A stable tax system – one that changes only when it needs to – is an important part of the business environment. Investment is encouraged if businesses have confidence in the way the returns from their investment will be taxed. One of the conclusions of the Office of Tax Simplification’s (OTS) first project on Small Business⁴ was that the greatest source of complexity for small business is change.

Ideally taxes should be underpinned by a proper framework – key aims for the tax and principles under which it will operate. For the government, the overriding point is to promote confidence in the tax system. That delivers benefits as taxpayers (business and individual) are more likely to comply with their responsibilities.

**Certainty**

Stability promotes certainty and many businesses put certainty at the top of their list of what a tax system needs to deliver. They want to know what the result of their actions will be in tax terms. For this reason, retrospective changes to tax laws are very damaging and should be avoided: another benefit of consultation, to ‘get it right first time’.

One manifestation of certainty is that taxes should be laid down clearly in statute. In today’s complex environment, guidance notes by the tax authority will often be necessary, particularly for the unrepresented. But such material should be explanations, assistance and guidance, not a way for the tax authority to interpret (or even worse, change) the law to how it thinks it should operate. Citizens should be taxed by law, not by guidance; nor untaxed by concession.

**Simplicity**

Taxes should as far as possible be expressed in clear law and be simple to operate. Administrative burdens on taxpayers should be minimised. When developing new tax laws, it should be part of the planning process to develop the necessary compliance routines and draft the relevant forms to test out the likely burdens that will be imposed and how easy it will be to comply.

³ An example would be the changes to CGT Rates in the summer 2010 Budget.
⁴ See [http://www.hm-treasury.gov.uk/d/ots_small_business_interim_report.pdf](http://www.hm-treasury.gov.uk/d/ots_small_business_interim_report.pdf)
It should be borne in mind that it can be more cost-effective in some cases for the central authority to carry out aspects of the administration on a central basis, rather than devolve the work to taxpayers. That said, we accept that in transaction taxes such as LBTT, those taxpayers who are liable should expect to shoulder most of the compliance burden.

One issue to consider under this heading is the place of digital procedures. In general we support the idea of ‘digital by default’: that in today’s environment, digital communication (e filing, online intelligent forms, information being available on line etc.) should be the norm. But it should not be compulsory: regard must be had to the ‘digitally excluded’. LITRG has a particular interest in this area. This is not solely an issue for individuals; many small businesses still rely on ‘traditional’ methods. In developing tax laws and Revenue Scotland, the Scottish Government needs to have regard to how these groups should be catered for.

**How the CIOT can contribute**

Both the CIOT and LITRG operate across the UK. We employ a number of Technical Officers (TOs) who coordinate and distil input from around 300 of our members who volunteer their time on our various technical committees. Three of these TOs (one CIOT, two LITRG) are resident in Scotland. Many more of our members volunteer their time to help with Education, Branches and Professional Standards activities.

Our contributions to consultations and general discussions therefore draw the knowledge and experience of both our members in practice and the in-house technical team. With LITRG we have many links to wider groups who have an interest in tax matters. Submissions that we have made on Scottish tax proposals have regularly drawn on surveys of our members in practice in Scotland. We have also used mediums such as round tables, conference sessions, webinars and articles in *Tax Adviser* magazine to disseminate information and discuss issues. We would be pleased to work with Revenue Scotland to make use of these avenues to discuss tax matters.

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5 See the LITRG report published in May 2012 on the growing problems of ‘digital exclusion’ at http://www.litrg.org.uk/reports/2012/dig-excl
Introduction
1. COSLA welcomes the opportunity to respond to the Finance Committee’s call for evidence on the Land and Buildings Transaction Tax (Scotland) Bill. COSLA provided a response to the Scottish Government’s consultation on taking forward a Scottish Land and Buildings Tax and much of what is contained in that response is relevant to COSLA’s response on the Bill. A copy of COSLA’s consultation response is attached for the Committee’s information.

2. Some additional brief comments are offered below, drawing on the consultation response, in light of the Bill now introduced.

General principles
3. COSLA broadly welcomes the overall policy objectives of the Bill and the move toward a progressive Tax over time. It is important that care is taken over developing a more progressive structure in order that this does not create a confusing environment and lead to distortions in the Scottish housing market, both commercial and residential.

4. The Bill makes clear that the Government is still to set tax rates and bandings for the new Tax. COSLA’s view is that these need to be known as early as possible in order that local government can plan accordingly.

5. COSLA notes that the Bill is proposing to withdraw a number of reliefs and this is not considered to be an issue for local government.

Compulsory Purchase Order relief
6. The Bill proposes to extend compulsory purchase order relief to allow local authorities to benefit from the relief where they compulsorily purchase an empty home for onward sale. COSLA welcomes this proposal as providing greater flexibility to councils in taking forward policies to bring empty homes back into use.

Non-residential leases
7. COSLA notes that the Bill does not make detailed provision for application of the tax for non-residential leases. As this is an area which could give rise to unintended consequences for local government, COSLA is intending to participate in the stakeholder group which is looking at this issue, ahead of further legislation being brought in.

Administration of the tax
8. COSLA notes that the Bill is proposing that the Scottish Government will set up appropriate arrangements for administering the tax and that there should be no administrative burden for local government arising.
Taking forward a Scottish Land and Buildings Transaction Tax Consultation
Response

Introduction
1. COSLA welcomes the opportunity to respond to the Scottish Government’s consultation on taking forward a Scottish Land and Buildings Transaction Tax. We recognise that the Scottish Government’s consultation forms part of its thinking on the increased responsibilities under the Scotland Act 2012, by which the current UK Stamp Duty Land Tax (SDLT) will cease along with Landfill Tax, and that the consultation on a replacement is with a wide range of stakeholders. To this extent COSLA’s response is limited to those aspects we consider to be important for Local Government, notably around tax incentives, exemptions and reliefs including compulsory order relief.

2. COSLA does not propose therefore responding substantively to the questions as to the structure of the tax, administering the tax or payment of the tax. Where we do offer comments more broadly these take the form of general observations rather than specific responses. COSLA expects of course to offer a separate response to the Landfill Tax consultation once this is issued.

General observations
3. COSLA notes that the consultation does not cover the tax rates, thresholds and scale of revenues to be collected as these will be announced in April 2015 ‘depending on economic circumstances at that time.’ Whilst the amount of revenue from SDLT relating to Scotland is around £330m, a relatively moderate sum, historically this Tax has been subject to variation year on year and is susceptible to economic impacts on the housing and property markets. We do need to recognise therefore that, whereas currently any variation is absorbed at the UK level, in future there will be an increased risk to the overall Scottish Budget at the margins depending on how the replacement Tax performs year on year.

4. COSLA generally welcomes a progressive Tax as being a fairer approach to raising revenue, however the level of rates and thresholds would need to be set carefully to avoid the risk of depressing the Scottish housing market both domestic and commercial. Clearly the economic circumstances at the time will need to be studied closely when setting the new Tax.

Tax Incentives
5. The consultation asks whether a Land and Buildings Transaction Tax could at some time in the future be amended to support Scottish Government priorities through tax incentives, for example to encourage energy efficiency of buildings or to develop regeneration areas by offering a lower rate of taxation in those areas. At present the housing market does not currently attach any additional value to homes with higher standards of energy efficiency. The climate change targets are dependent on not only behavioural change, but a culture shift amongst buyers to value energy efficient properties. The Scottish Government is considering how to encourage greater recognition of the value of energy efficient homes. In particular, how to influence consumers (promoting lower fuel bills) and the housing market. The
energy efficient measures that are advised to be installed must be reasonable and practicable. There is uncertainty about how the Green Deal will be received and lenders are basing mortgages on household income taking little account of energy efficiency. To shift attitudes lenders will need to recognise the importance of energy efficiency when valuing properties and sound financial packages will need to be available.

6. COSLA's observation on this therefore would be that these cultural aspects would need to be addressed first before tax incentives are introduced and that this would need to be a much longer term aim. In any event care would be needed to avoid creating market instability and to avoid creating uncertainty, given the importance of tax planning for organisations and individuals.

Reliefs and Exemptions
7. Perhaps of most interest to Local Government would be the reliefs and exemptions available under the new Tax. Comments are offered on Compulsory Purchase Order Relief below, however more generally COSLA would argue that there is an opportunity to broaden the scheme of reliefs as a key feature of the new Tax. In many ways reliefs are more recognisable as providing incentives to bring about different behaviours such as promoting energy efficiency.

8. However as with offering tax incentives, any change to exemptions or reliefs would need to be considered carefully in order that this does not create instability. We have no issue with the proposal for withdrawal of reliefs for the categories set out in the consultation and the proposed exemptions seem appropriate.

Compulsory Purchase Order Relief
9. The proposal to amend the existing SDLT relief where the local authority transfers land or property through a Compulsory Purchase Order (CPO) to a third party is welcomed. This extension would, we believe, enable local authorities to use CPOs more effectively to purchase empty homes to be subsequently sold on unaltered, whereas the current regime whereby the tax applies for such properties is restrictive. This would undoubtedly make the additional powers due in April 2013 to bring long term empty properties back into use more attractive for Local Government, as providing greater flexibility complementing the additional powers.
Introduction
1. The Council of Mortgage Lenders (CML) is the representative trade association for mortgage lenders. Our 114 members and 82 associates comprise banks, building societies, insurance companies and other specialist mortgage lenders who, together, lend around 95% of the residential mortgages in the UK. In addition, the CML's members have lent over £60 billion UK-wide for new-build, repair and improvement to social housing.

2. CML Scotland welcomes the opportunity to respond to the call for evidence from the Scottish Parliament Finance Committee on the Land and Buildings Transaction Tax (Scotland) Bill.

General
3. Given our interest is in the residential property market we intend to restrict our comments on the Bill to that aspect of the property market.

Questions
Q1: The Scottish Government’s overall policy objectives in introducing the Bill
4. We are of the view that the Scottish Government is adopting a pragmatic approach to the introduction of a Land and Buildings Transaction Tax (LBTT). The principles of the tax with the exception of the move from a slab to a progressive structure follow those which already exist under Stamp Duty Land Tax (SDLT) as also does the method of collection. By following this approach it should allow a smooth transition from SDLT to LBTT.

Q2: The replacement of a “slab” structure with a “proportional progressive structure” and how this is reflected in the Bill
5. The CML has previously suggested to the UK Government that stamp duty should be moved from the slab structure to a progressive structure. This followed research which we conducted in 2003. The slab system of stamp duty causes inefficiencies. Buyers pay stamp duty on the full price of the property when each threshold is reached. This distorts house prices because of the jump in stamp duty at each threshold creating the bunching of prices and sales around the threshold. This can also lead to losses through tax avoidance measures such as sellers artificially boosting the value of fixtures and fittings in their properties although HMRC has been looking closely at such measures. While there would be winners and losers out of any new system we believe a progressive system would be more equitable and overcome some of the inefficiencies created by the slab system.

6. Clearly the setting of rates to avoid any adverse impact on the residential property market will be important, particularly if the market continues in its current fragile state. An issue which might be worth considering is that the lower number of high value transactions in Scotland compared with elsewhere in the UK may result in...
a greater number of winners and losers from the introduction of a progressive
system if its aim was revenue neutrality with what is currently raised from SDLT in
Scotland. The Bill appears to adequately reflect a move towards a more progressive
structure for LBTT.

Q4: The proposed exemptions within the Bill
7. We understand that it is proposed to continue the present exemptions under
SDLT and we are supportive of this. We also note that it is proposed that any further
exemptions or amendments to existing exemptions would be done by regulation
through Scottish Ministers and we assume this would be subject to appropriate
consultation.

Q6: The proposed reliefs within the Bill
8. We understand the list of proposed reliefs is available under SDLT and we
know of no reason why they should not also be available under LBTT.

Q9: The role of Registers of Scotland in the administration of LBTT
9. Registers of Scotland does already act as agents for HMRC in the collection
of SDLT and it is our understanding that this arrangement works well. It would
therefore seem sensible to continue it for the collection of LBTT. We understand that
there is a desire to have an increased amount of the tax collected on line. We would
support this but given the issues which there have been with the Automated
Registration to Title to Land system in Scotland (ARTL) it is important that lessons
are learnt from that project. While the principles behind ARTL are sound there have
been issues around its robustness, speed and ease of use with there being many
claims that it is easier and quicker to submit deeds for registration in paper format. If
ARTL is to be replaced with a system which will also deal with the on line payment of
LBTT then it is vital that these issues are addressed in it.

10. In addition we believe that the principle of payment of SDLT before
registration of the deed conveying the land is a well-established one and therefore
there is no reason why it should also not apply in the case of LBTT. However given
the issue that a real right in land or a real right in security does not take place in
Scotland until the Disposition and the Standard Security have been registered in the
Land or Sasine Registers we would suggest that the system of advance notices to
be introduced through the provisions of the Land Registration, etc. (Scotland) Act
2012 should be enacted before LBTT comes into force.
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) BILL

SUBMISSION FROM ENERGY SAVING TRUST

1. Thank you for providing the Energy Saving Trust with the opportunity to input into the above call for evidence. Our interest in responding to this call for evidence consultation relates to the extent to which the Land and Buildings Transaction Tax (LBTT) could support climate change and energy consumption reduction objectives.

2. This response focuses on the relevant areas of the Energy Saving Trust’s expertise. Specifically – we recommend that the LBTT (Scotland) Bill includes provisions to allow the introduction of specific reliefs (or exemptions) for homes that meet certain energy performance standards. Such reliefs could play a key part in helping to meet Scotland’s challenging climate change targets and play an important role in delivering the Scottish Government’s vision, outlined in its consultation on a Sustainable Housing Strategy, for Scotland to have ‘a housing market where sustainability, for both new and existing housing, is positively valued by consumers and attracts a financial premium’.

3. It is widely accepted that tax measures have an important role to play in promoting energy efficiency in the household sector. To this end the UK Government, over successive years, introduced a number of economic instruments to promote the sustainable and efficient use of energy in households – including a) reducing the rate of VAT to 5% on a range of professionally installed energy saving materials in the home, and b) the Landlords Energy Saving Allowance (LESA). More recently, the Climate Change (Scotland) Act 2009 required local authorities to establish a ‘scheme for reducing the amounts which persons are liable to pay in respect of council tax where improvements are made to the energy efficiency of chargeable dwellings’.

4. In 2005 the Energy Saving Trust published a report entitled ‘Changing Climate Changing Behaviour – Delivering household energy saving through fiscal incentives’. This report explored the likely impacts of introducing changes to existing tax mechanisms to encourage energy efficiency in the household sector. Its findings were based upon detailed policy analysis, underpinned by in-depth interviews with consumers. The research suggested that incentives linked to council tax and incentives linked to Stamp Duty Land Tax (SDLT) were likely to be the most promising measures in terms of encouraging householders to install energy saving measures. Our existing evidence suggests that the incorporation of relevant reliefs (or exemptions) within the LBTT (as the tax that will replace SDLT in Scotland) could be a sensible and effective means of encouraging householders to improve the

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1 Scotland’s housing stock is currently responsible for 36% of Scotland’s CO₂ emissions, and as such action to reduce emissions in this sector will play a key role in meeting wider Scottish climate change targets.

energy performance of their homes. **We therefore recommend that the LBTT (Scotland) Bill include provisions to allow the introduction of specific reliefs (or exemptions) for homes that meet certain energy performance standards.**

5. We believe that some of the detailed analysis in our report[^3] could be helpful in informing decisions about what the best way of doing this might be. The analysis detailed in the report was informed by detailed consumer research and includes, amongst other things, discussion (see pages 23-25) of the relative advantages and disadvantages of different ways of offering incentives linked to these taxes.

6. We would be very happy to discuss our research in this area in more detail with you if you would find it useful.

[^3]: Clearly the policy environment – including the introduction of some of the world’s most challenging climate change targets, the planned introduction of Green Deal and ECO later this year, the introduction of local authority energy efficiency/council tax schemes across Scotland etc. – has moved on considerably since the publication of our report in 2005, and it is important to read it in this context.
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) BILL

SUBMISSION FROM ESPC

Introduction
1. I want to first thank the committee for inviting ESPC to contribute written evidence on the Scottish Government’s proposed Land and Buildings Transaction Tax. Replacing the previous Stamp Duty regime with one more attuned to the unique market conditions found in Scotland holds considerable promise.

2. ESPC is an established member of the East Central Scotland property scene, having been large part of the market for over 40 years. As an organisation comprising 140 solicitor estate agent members, accounting for £1.5 billion worth of sales per annum, we market members’ clients’ homes through digital, online, and print services as well as through events, sponsorships and our walk-in branches.

3. Edinburgh-centric in name only, ESPC has long since expanded beyond the capital, now embracing the Lothians, Fife and the Borders. We deal with nearly 8,000 properties a year, commanding upwards of 90 per cent of the residential market in Edinburgh. Our website attracts over 600,000 visits each month and contains practical tips on buying, selling, letting and mortgages, buttressed by sections for free property advice and house price reports.

4. At our core, we help to maintain and protect the Scottish tradition of selling houses through a trusted and regulated solicitor firm as a one-stop shop to do the marketing as well as conveyancing.

5. ESPC additionally collects an unrivalled amount of hard housing data for the East Central Scotland region, and with growing coordination between ourselves and sister SPC organisations, ESPC has access to a comprehensive trove of housing information covering Scotland’s Central Belt.

6. As a company limited by guarantee, all profits are ploughed back into the business.

Analysis of the LBTT
7. The committee seeks a number of views across a broad swathe of areas from the residential housing and commercial markets to revenue collection and tax evasion. ESPC therefore restricts the areas covered in this submission to only those bearing a direct impact upon our business; namely, the housing market and whether the introduction of a progressive structure will introduce any undue distortions into the marketplace.

8. ESPC agrees in principle with the desire to move away from the current ‘slab’ structure of the Stamp Duty as this creates inequalities in the level of taxation paid, particularly around the thresholds between tax bands. At present, a difference in selling price of just £1 can lead to thousands of pounds in additional tax for the buyer.
9. With the LBTT’s proposed progressive structure, we expect that the tax applied will be more reflective of the total value of the home being sold and would hope to see the end of the inefficiencies we see in the market that results from the current approach.

10. For illustrative purposes, we have done an analysis of the two sample scenarios contained within the Bill’s published Financial Memorandum based on sales in Edinburgh, Lothians and Fife in 2011 in the Appendix at the end of this paper. However, in summary, we find that the first approach would see:

- 39.4% of buyers in these areas would pay less tax
- 39.3% would be unaffected
- 21.3% would pay more tax

11. It should be noted that buyers in the £207,693 - £250,000 bracket would pay more tax while those in the £250,001 - £299,999 bracket pay less. This reflects the inequality of the current system, rather than a flaw in the proposed structure.

12. The second approach would see:

- 49.2% of buyers in these areas would pay less tax
- 28.9% would be unaffected
- 11.9% would pay more tax

13. Although fewer people would pay more, those who do pay more would be more negatively impacted than those in the first scenario.

Comments

14. As the committee unpacks the Bill, it must consider the regional variations that will inevitably arise from the switch to a progressive system. For example, buyers in ESPC’s core area (i.e. Edinburgh, Lothians and Fife) will pay more under the new regime as house prices in this region are higher than the Scottish average. This will be replicated in other areas throughout the country and the Scottish Government should properly consider the impact this is likely to have. Though there may be a case to be made regarding localised taxation levels in an effort to smooth these inequities, this would run counter to the objective of having a simple and easily understood system and is not something we would recommend.

15. The Scottish Government also needs to determine a proper level at which purchasing higher-value homes incurs substantially more tax. Common to both scenarios in the Memorandum is the fact that anyone buying a home worth around £400,000 or above is likely to lose out from any new arrangement.

16. Even whilst acknowledging that one of the aims of a progressive system of taxation is to place a greater burden upon those who have the broadest shoulders, it is worth pointing out that households buying a home worth £400,000 aren’t necessarily ‘rich’. For instance, over the last two years more than 18% of sales of 3 and 4 bedroom homes in Edinburgh sold for £400,000 or more. With buyers of a
£400,000 property paying at least £4,500 more in tax under the example proposals this would place a significant financial burden on families in the Edinburgh area.

17. The scenarios contained in the Memorandum are of course only examples of what could happen, but they nonetheless serve to illuminate some of the issues associated with moving towards a progressive approach. As promised in the Bill’s Policy Memorandum, the Scottish Government will introduce the exact banding closer to April 2015 in order to take into account prevailing market conditions. In finalising the banding, it is important they make considered decisions that will not cause undue harm.

18. In terms of how the LBTT could be structured in order to help first time buyers (FTBs) purchase properties at the lower end of the market, it should be noted that the evidence – most recently the Stamp Duty holiday for FTBs in the £125,000-£250,000 bracket – tends to suggest that exemption from the tax did not stimulate a significant increase in sales. The reason for this is that high deposit requirements remain the single greatest obstacle for FTBs, and those who are able to raise such deposits are usually able to cover Stamp Duty.

19. That said, the lower end of the market continues to face difficulties with lower value properties less likely to achieve Home Report valuation as well as taking longer on average to sell. Any assistance for this end of the market, therefore, is clearly of benefit as it is the sale of smaller properties which stimulates activity further up the property ladder.

Conclusion

20. ESPC supports the introduction of a progressive structure of taxation as it would be a notable improvement over the current ‘slab’ approach taken by Stamp Duty. Though not perfect, it is preferable to the status quo and would smooth out some of the market distortions caused by the current system.

21. One of the committee’s chief concerns is to determine whether the LBTT will ‘impede or distort legitimate housing market activities’. In our view, a move to a progressive system would not be markedly disruptive to activity in the housing market and we would expect business to continue at much the same level it does currently.

22. We would very much welcome the opportunity to expand upon this submission in one of the committee’s upcoming oral evidence sessions and would be happy to lend our expertise to any further work it may be undertaking in this area.
Appendix

Option A

Who pays what?

<table>
<thead>
<tr>
<th>Selling price</th>
<th>Stamp Duty paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Properties under £180,000</td>
<td>No SD paid</td>
</tr>
<tr>
<td>Properties over £180,000 but under £1.5m</td>
<td>7.5% paid on every pound over £180,000</td>
</tr>
<tr>
<td>Properties over £1.5m</td>
<td>10% on every pound £1.5m. 7.5% on amount between £180,000 and £1.5m</td>
</tr>
</tbody>
</table>

Results

39.4% of people would pay less
39.3% would pay the same
21.3% would pay more

Who wins & loses

Everyone under £125,000 continues to pay nothing and is thus unaffected.
Everyone from £125,000 to £207,692 is better off by up to £1,800
Everyone from £207,693 to £249,999 is worse off by up to £2,749
Everyone from £250,000 to £299,999 is better off by up to £2,250
Everyone paying exactly £300,000 is unaffected
Everyone paying more than £300,000 is worse off. A buyer paying £400,000 will pay an additional £4,500. A buyer paying £1 million will pay an additional £11,500.

Total revenue collected

Under existing Stamp Duty, total tax revenue on 2011 sales in Edinburgh, Lothians and Fife was £58,722,898. Option A would generate total tax revenue of £64,935,927.

Option B

Who pays what?

<table>
<thead>
<tr>
<th>Selling price</th>
<th>Stamp Duty paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under £125,000</td>
<td>No SD paid</td>
</tr>
<tr>
<td>£125,000 to £250,000</td>
<td>2% paid on every pound over £125,000</td>
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<td>Over £250,000</td>
<td>9.5% paid on every pound over £250,000 2% paid on every pound between £125,000 and £250,000</td>
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</table>

Results

49.2% would pay less
38.9% would pay the same
11.9% would pay more

Who wins & loses

Everyone under £125,000 continues to pay nothing and is unaffected.
Everyone from £125,000 to £308,823 is better off by up to £5,000. Everyone buying for £308,824 or more will pay more. Households buying a house for £400,000 would pay £7,750 more under this scheme. Households buying a house for £1 million would pay £38,750 more in tax.

**Total revenue collected**
Under existing Stamp Duty, total tax revenue on 2011 sales in Edinburgh, Lothians and Fife was £58,722,898. Option B would generate total tax revenue of £76,634,479.
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) BILL

REVISED SUBMISSION FROM ESPC

Introduction
1. I want to first thank the committee for inviting ESPC to contribute written evidence on the Scottish Government’s proposed Land and Buildings Transaction Tax. Replacing the previous Stamp Duty regime with one more attuned to the unique market conditions found in Scotland holds considerable promise.

2. ESPC is an established member of the East Central Scotland property scene, having been large part of the market for over 40 years. As an organisation comprising 140 solicitor estate agent members, accounting for £1.5bn worth of sales per annum, we market members’ clients’ homes through digital, online, and print services as well as through events, sponsorships and our walk-in branches.

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Analysis of the LBTT
7. The committee seeks a number of views across a broad swathe of areas from the residential housing and commercial markets to revenue collection and tax evasion. ESPC therefore restricts the areas covered in this submission to only those bearing a direct impact upon our business; namely, the housing market and whether the introduction of a progressive structure will introduce any undue distortions into the marketplace.

8. ESPC agrees in principle with the desire to move away from the current ‘slab’ structure of the Stamp Duty as this creates inequalities in the level of taxation paid, particularly around the thresholds between tax bands. At present, a difference in selling price of just £1 can lead to thousands of pounds in additional tax for the buyer.
9. With the LBTT’s proposed progressive structure, we expect that the tax applied will be more reflective of the total value of the home being sold and would hope to see the end of the inefficiencies we see in the market that results from the current approach.

10. For illustrative purposes, we have done an analysis of the two sample scenarios contained within the Bill’s published Financial Memorandum based on sales in Edinburgh, Lothians and Fife in 2011 in the Appendix at the end of this paper. However, in summary, we find that the first approach would see:

- 39.4% of buyers in these areas would pay less tax
- 39.3% would be unaffected
- 21.3% would pay more tax

11. It should be noted that buyers in the £207,693 - £250,000 bracket would pay more tax while those in the £250,001 - £299,999 bracket pay less. This reflects the inequality of the current system, rather than a flaw in the proposed structure.

12. The second approach would see:

- 50.7% of buyers in these areas would pay less tax
- 38.9% would be unaffected
- 10.4% would pay more tax

13. Although fewer people would pay more, those who do pay more would be more negatively impacted than those in the first scenario.

Comments
14. As the committee unpacks the Bill, it must consider the regional variations that will inevitably arise from the switch to a progressive system. For example, buyers in ESPC’s core area (i.e. Edinburgh, Lothians and Fife) will pay more under the new regime as house prices in this region are higher than the Scottish average. This will be replicated in other areas throughout the country and the Scottish Government should properly consider the impact this is likely to have. Though there may be a case to be made regarding localised taxation levels in an effort to smooth these inequities, this would run counter to the objective of having a simple and easily understood system and is not something we would recommend.

15. The Scottish Government also needs to determine a proper level at which purchasing higher-value homes incurs substantially more tax. Common to both scenarios in the Memorandum is the fact that anyone buying a home worth around £400,000 or above is likely to lose out from any new arrangement.

16. Even whilst acknowledging that one of the aims of a progressive system of taxation is to place a greater burden upon those who have the broadest shoulders, it is worth pointing out that households buying a home worth £400,000 aren’t necessarily ‘rich’. For instance, over the last two years more than 18% of sales of 3 and 4 bedroom homes in Edinburgh sold for £400,000 or more. With buyers of a £400,000 property paying at least £4,500 more in tax under the example proposals this would place a significant financial burden on families in the Edinburgh area.
17. The scenarios contained in the Memorandum are of course only examples of what could happen, but they nonetheless serve to illuminate some of the issues associated with moving towards a progressive approach. As promised in the Bill’s Policy Memorandum, the Scottish Government will introduce the exact banding closer to April 2015 in order to take into account prevailing market conditions. In finalising the banding, it is important they make considered decisions that will not cause undue harm.

18. In terms of how the LBTT could be structured in order to help first time buyers (FTBs) purchase properties at the lower end of the market, it should be noted that the evidence – most recently the Stamp Duty holiday for FTBs in the £125,000-£250,000 bracket – tends to suggest that exemption from the tax did not stimulate a significant increase in sales. The reason for this is that high deposit requirements remain the single greatest obstacle for FTBs, and those who are able to raise such deposits are usually able to cover Stamp Duty.

19. That said, the lower end of the market continues to face difficulties with lower value properties less likely to achieve Home Report valuation as well as taking longer on average to sell. Any assistance for this end of the market, therefore, is clearly of benefit as it is the sale of smaller properties which stimulates activity further up the property ladder.

**Conclusion**

20. ESPC supports the introduction of a progressive structure of taxation as it would be a notable improvement over the current ‘slab’ approach taken by Stamp Duty. Though not perfect, it is preferable to the status quo and would smooth out some of the market distortions caused by the current system.

21. One of the committee’s chief concerns is to determine whether the LBTT will ‘impede or distort legitimate housing market activities’. In our view, a move to a progressive system would not be markedly disruptive to activity in the housing market and we would expect business to continue at much the same level it does currently.

22. We would very much welcome the opportunity to expand upon this submission in one of the committee’s upcoming oral evidence sessions and would be happy to lend our expertise to any further work it may be undertaking in this area.
Appendix

Option A

Who pays what?

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</tr>
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</table>

Results

- 39.4% of people would pay less
- 39.3% would pay the same
- 21.3% would pay more

Who wins & loses

- Everyone under £125,000 continues to pay nothing and is thus unaffected.
- Everyone from £125,000 to £207,692 is better off by up to £1,800
- Everyone from £207,693 to £249,999 is worse off by up to £2,749
- Everyone from £250,000 to £299,999 is better off by up to £2,250
- Everyone paying exactly £300,000 is unaffected
- Everyone paying more than £300,000 is worse off. A buyer paying £400,000 will pay an additional £4,500. A buyer paying £1 million will pay an additional £11,500.

Total revenue collected

Under existing Stamp Duty, total tax revenue on 2011 sales in Edinburgh, Lothians and Fife was £58,722,898. Option A would generate total tax revenue of £64,426,662.

Option B

Who pays what?

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</tr>
</tbody>
</table>

Results
- **50.7%** would pay less
- 38.9% would pay the same
- **10.4 %** would pay more

**Who wins & loses**

- Everyone under £125,000 continues to pay nothing and is unaffected.
- Everyone from £125,000 to **£327,000** is better off by up to £5,000
- Everyone buying for **£327,000** or more will pay more. Households buying a house for £400,000 would pay **£4,750** more under this scheme. Households buying a house for £1 million would pay **£23,750** more in tax.

**Total revenue collected**

Under existing Stamp Duty, total tax revenue on 2011 sales in Edinburgh, Lothians and Fife was £58,722,898. Option B would generate total tax revenue of **£66,069,998**.

**NB** – This submission corrects an error in our original submission, in which the figures under Option B were calculated by mistakenly assuming the 2% tax rate would be applied to the whole amount over £125,000 and not just the portion of the selling price between £125,000 and £250,000. The revised figures have been presented in **bold italics**.

These calculations were originally listed as:

**Results**

- 49.2% would pay less
- 38.9% would pay the same
- 11.9% would pay more

**Who wins & loses**

- Everyone under £125,000 continues to pay nothing and is unaffected.
- Everyone from £125,000 to £308,823 is better off by up to £5,000
- Everyone buying for £308,824 or more will pay more. Households buying a house for £400,000 would pay £7,750 more under this scheme. Households buying a house for £1 million would pay £38,750 more in tax.

**Total revenue collected**

Under existing Stamp Duty, total tax revenue on 2011 sales in Edinburgh, Lothians and Fife was £58,722,898. Option B would generate total tax revenue of **£76,634,479**.

The basis of the point raised in the main body of the paper – that those buying at £400,000 would pay significantly more and that properties at this level represent a significant proportion of family homes in areas like Edinburgh – is not materially affected.
Introduction
1. The Existing Homes Alliance Scotland (ExHA) is a coalition of organisations which have come together to seek improvements in the energy performance of Scotland’s existing housing stock. It is an alliance of environmental, anti-poverty, consumer, housing and building organisations who believe that urgent action is required to transform Scotland’s existing housing stock.

2. We welcome the opportunity to feed into the Finance Committee’s consideration of the Scottish Government’s Land and Buildings Transaction Tax Bill.

The case for relief related to the energy performance of housing
3. This response relates to the general principles of the Bill and is focused solely on the matter of reliefs.

4. We understand that one of the principles underlying the Bill is the simplification of the tax and consequently that the Scottish Government proposes to cut the number of available reliefs. While ExHA accepts the rationale for reducing the number of reliefs we believe there is a strong case to include a relief related to energy efficiency.

5. This case includes the following:

i. In response to the consultation on proposals for the Bill regarding whether the tax should be used to help support the Government’s priorities, 66% of respondents felt it should (table 3.2 in the analysis of responses). From those who identified a Scottish Government priority to support ‘by far the most common theme was energy efficiency’ (s. 3.15 ibid). Thus while we sympathise with the Government’s view that ‘There will always be stakeholders with an interest in adding new reliefs to cover their specific interests’ (s.84 Policy Memorandum), there is a clear indication that energy efficiency is the most widely supported proposal for addition.

ii. Alongside the imperative of cutting carbon emissions by 42% by 2020 – (Climate Change (Scotland) Act 2009), the Scottish Government is also committed to ending fuel poverty by 2016 (Housing (Scotland) Act 2001), reducing energy demand (by 12% by 2020), creating thousands of green jobs and growing a sustainable economy. Moreover, home energy efficiency is central to the newly launched Scottish Government Sustainable Housing Strategy.

iii. In proposing to end the current relief for new zero-carbon homes the Scottish Government states it is open to representations on alternatives which will support climate change targets (s.80 Policy Memorandum). A relief related to energy efficiency would, we believe, provide such support.
6. There is then a significant spread of support for the use of Land and Building Transaction Tax to be used to support energy efficiency measures. There are also a wide range of targets and priorities that energy efficiency improvements can help deliver, and a stated openness on the part of the Scottish Government to consider alternatives to the relief for zero-carbon homes. Therefore, it would seem rational to include an energy efficiency related relief in the Bill.

7. It is clear that the principle of using tax to encourage energy efficiency investments has already been established (e.g. through VAT reductions on specified materials at UK level and, at a Scottish level, through requirements within the Climate Change Act for local authorities to develop relief on council tax), and evidence suggests it could be effective in doing so.

8. We also understand the Scottish Government, through this Bill, is looking to establish powers to introduce reliefs at a later date. However, given the 2020 climate change and energy reduction targets, there is a clear need to progress such a relief at the earliest opportunity so it can more fully play its part in changing behaviour and investment decisions in the run up to 2020.

9. It makes much sense therefore to introduce a relief at this stage within the principles of the Bill, and allow the proposed tax to start to shape investment decisions before the Bill is enacted.

10. We do not believe it is necessarily complex to devise a system of reliefs related to the energy efficiency of the housing stock. For example, a percentage relief could be applied according to the energy rating band of the property. As all homes for sale currently require an Energy Performance Certificate this could be used to determine the percentage relief allowable.

11. This could mean that the most energy efficient homes become cheaper to buy as the transaction costs decline. Therefore, demand for energy efficient homes might increase and thus incentivise sellers to invest to improve ratings. Alternatively, sellers might increase the asking price in the knowledge that savings in transaction costs would be realised by the buyer.

12. Both scenarios would add value to better performing homes and are likely to encourage investment by sellers. It is also likely to drive the uptake of available financial support such as the Green Deal and the Energy Assistance Package.

13. We would assume therefore that some degree of market transformation can be developed, similar to that delivered in the white goods sector, through the use of the LBTT.

We would be happy to discuss this matter further.

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2. [www.existinghomesalliancescotland.co.uk/uploaded/files/LBTT%20ExHA%20response%20final.pdf](http://www.existinghomesalliancescotland.co.uk/uploaded/files/LBTT%20ExHA%20response%20final.pdf)
Homes for Scotland

1. Homes for Scotland is the authoritative voice for the home building industry in Scotland. With a membership of 160 organisations together providing 95% of all new homes built for sale in Scotland each year, we are committed to improving the living in Scotland by providing this and future generations with smart and sustainable homes where people want to live.

2. Homes for Scotland responded to the Scottish Government recent consultation on ‘Taking forward a Scottish Land and Buildings Transaction Tax’ and much of this submission is based on that response.

The replacement of a “slab” structure with a “proportional progressive structure”

3. A move away from a "slab" structure (under which tax is charged at the highest rate on the whole purchase price, including the parts below lower thresholds) to a marginal rate system similar to income tax would provide a more equitable structure. Structured well this approach has the potential to reduce some of the disincentives to buying and selling and remove current market distortions around stamp duty thresholds.

4. It is currently very challenging for home builders to sell homes in the £125k to £135k and £250k to £270k price ranges because buyers feel they are paying too much for very little advantage which results in a skewed pricing and product structure on new housing developments. As prices start to edge near the £250k mark, home builders now design that specific product size out of their range altogether, as the market will not pay.

5. New homes are valued per square foot meaning after the location, quality of fittings, demand etc. are taken account, the value of homes relate to the size of the unit, as an example £183 per square foot. Using this value as an example to illustrate the impact of the current slab tax we can show that choosing between a home at 1350 square feet (valued at £247,050) and a home at 1450 square feet (valued at £265,350) would cost the buyer an extra £23,790 for only an extra 100 square feet - £18,300 reflecting the value and £5490 to account for the increase in SDLT.

6. When buyers of a new build home already have the disadvantage of usually requiring at least 20% deposit (compared to 10% for second-hand), the target market for homes around £260k would require savings or equity of at least £65k to fund their deposit (charged at 3% of full value), stamp duty, legal fees and moving costs which, for the majority is unrealistic. Any financial assistance from the home builder to incentivise the purchase is very limited by mortgage lenders’ criteria. For those who
can afford it, the unfairness of paying over £5k of additional tax for the benefit of buying a slightly larger house taking the purchase over £250k acts as a deterrent.

7. This results in an inequitable range of product availability. Depending on local house price conditions in a given area, this could result in a home builders range capping at 1350 square feet then leap-frogging to 1650 square feet with nothing in between to suit growing families on a tighter budget. A move to a rate system should resolve this.

**Tax avoidance**

8. It is important that anti-avoidance rules are in-line with the rest of the UK to ensure rules are consistent and understood. We do not want Scotland to be seen as somewhere more challenging to invest in with a high price to pay for legal/accountancy advice manoeuvring from investment across the border.

**Reliefs within the Bill**

9. During the consultation period we urged the Scottish Government to ensure the following reliefs are protected, we note from the Bill that Section 27 allows for each of them:

- **Acquisition relief** – to allow for land being transferred between companies in the same corporate group as part of reconstruction or acquisition. *We note from the Bill that section 27 provides for relief from LBTT for the intra-group transfer of property held by companies if the relevant conditions are met. (i.e. Companies are defined as members of a group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company)*

- **Certain acquisitions by developers** – to give relief to developers using part-exchange – this is absolutely essential as without this part-exchange schemes would be widely withdrawn throughout the industry to the significant detriment of the overall housing market (as well as Government tax revenues and the wider economy)

- **Incorporation of limited liability partnerships (LLP)** – to allow land to be transferred by a partner in an LLP to an LLP in connection with its incorporation

- **Multiple dwellings relief** – to ensure that in bulk purchases the tax is charged on the average purchase price and not the combined total

- **Complying with Planning Obligations** – where a party is compelled by a Planning Authority to enter a transaction

- **Sale and Lease back relief** – where relief covers the leaseback element

10. We are however unclear from the Bill about the position with **subsale relief** (where land/property is sold on before the contract completes and therefore avoids a double charge) and whether this is considered a ‘chargeable transaction’. Guidance on this would be helpful as the potential for double charging would not be welcome.
11. We suggested that theRegistered social landlord relief definition should be broadened in recognition of the variety of organisations that are now involved with delivering affordable housing, and gaining access to public funds to do so. We suggested that the relief should be extended to include the purchase of any homes that are part-funded with public sector funding for the provision of affordable homes...i.e. 'Affordable Homes Relief'. We note from Schedule 6 of the Bill that this suggestion has not been accounted for and would suggest that the Parliamentary Committee give further consideration to this.

12. We also suggested that ‘temporary’ Zero Carbon Homes relief be amended to ensure the incentivisation of low carbon homes as a practical and achievable aim (also see comments below). This should be linked to the EPC rating. We would urge the Parliamentary Committee to give this careful thought in terms of assisting the Scottish Government with wider policy objectives.

Financial implications

13. We note that the Scottish Government aims to make SDLT in Scotland revenue neutral from the income received through Barnett. The term ‘revenue neutral’ raises a few questions?

- Will the costs of administering the scheme be taken into account before or after the revenue is calculated? i.e. assuming the collection of this tax will require new IT, admin and staff structures in Scotland...will more tax have to be raised to cover this? It is crucial that we avoid any additional tax burden on the public.

- What year will the revenue neutrality be based on? Obviously we would like this to be on a like for like basis given how much the market has changed recently.

14. Although agreeing with a progressive form of tax to avoid distorting the market beneath the existing slab values, and favouring a reduction in SDLT rates to assist the lower end of the market, we do also need to be aware of the impact that a higher tax could have on the attractiveness of the higher end of the market to investors. Also if the tax acts as a disincentive to high end investors will this push investors into the lower end of the market thereby increasing pressure on affordability?

15. Continuing on the investment theme, we must point out our disappointment that a lower top rate for non-residential property than that for residential is being proposed to ensure that tax does not have a significant negative impact on Scottish businesses compared to those based in the UK. Although agreeing entirely with the objective, we are dismayed that the contribution that housing delivery makes to the Scottish economy has not been acknowledged within this proposal. Why should organisations investing in the delivery of much needed new homes while creating significant employment opportunities pay more?

Other comments...linking SDLT with other policy objectives

16. An overarching objective of any change should be to keep Scotland as competitive as possible. This will mean aligning many of the key principles with the rest of the UK to ensure there are no disadvantages to investing in Scotland.
17. Having said that where Scottish Government priorities and policies are already unique in Scotland where devolution has allowed distinct targets to be set, there is a clear opportunity to use SDLT to incentivise organisations and individuals in Scotland to support Scottish Government priorities.

For example:

**Housing Supply**

18. The Scottish Government can structure SDLT in such a way as to promote an active, confident housing market.

19. We would support the reduction of tax chargeable to the lower end of the market from 1% to 0.5%. This would mean a low tax bill for buyers at the low end of the market but relatively high tax take because it would cover a lot of transactions. It should not be forgotten that a change to a more equitable stamp duty system should hopefully have the effect of increasing transactions overall, thereby improving tax revenue.

**Climate Change Targets**

20. Linking SDLT to EPCs would introduce an effective market-led incentive, creating much needed demand for energy efficient homes. This would incentivise home builders to build above and beyond building standards to capture this market, and also encourage existing home owners to retrofit their properties before marketing for sale to try to compete with new build.

Please see our response to *Taking forward a Scottish Land and Buildings Transaction Tax* for extended comments.
1. I believe a land tax system that is different from other parts of the country would unfairly penalise people living in Scotland. We are going to dampen the positive migration of talented people north of the border (particularly the finance expertise from London to Edinburgh) by unfairly penalising them. Some people will have to pay more to purchase their homes in Scotland.

2. Also, this 104-page bill does nothing to simplify tax affairs. To truly become a beacon of Enlightenment, Scotland should follow the lead of countries such as Estonia and adopt a flat tax rate system - even if only for property taxes. Studies have shown a flat tax rate increases the overall tax take and significantly reduces administration costs. Also, it is difficult to argue that a flat tax rate is not progressive. Everyone pays the same tax rate, with no part of society unfairly disadvantaged or favoured.
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) BILL

SUBMISSION FROM THE INSTITUTE OF CHARTERED ACCOUNTANTS OF SCOTLAND

About ICAS

1. 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.

2. 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”.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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;

8. 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

9. 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.

10. 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:

- 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.
• The minimum of rate differences, reliefs or exemptions – limiting the opportunity for tax avoidance.
• Clear legislation, with the opportunity for ‘testing’.
• An experienced and effective compliance and enforcement operation.

11. 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
12. 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.

13. 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
14. 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.

15. It is our understanding that it would be incorrect to say that any English or overseas (i.e. 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.

16. 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 house builders 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.
17. 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

18. 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.

19. 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.

20. 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.

21. 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

22. 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.
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LAND AND BUILDINGS
TRANSACTION TAX (SCOTLAND) BILL

SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND

Introduction
1. The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

2. The Society's Tax and Property Law committees ("the committees") welcome the opportunity to comment on the Land and Buildings Transaction Tax (Scotland) Bill ("the LBTT Bill") and have the following points to make.

The Overall Policy Objectives
3. The committees warmly welcome the various steps which have been taken in the LBTT Bill to introduce legislation which is simpler than the Stamp Duty Land Tax (SDLT) legislation and to make LBTT more closely aligned with Scots law and conveyancing practice. Since virtually all SDLT returns are submitted by solicitors, rather than by accountants or other tax advisers, the administrative burden of complying with the requirements of the SDLT legislation has fallen on members of the Society, and the introduction of a simpler regime for LBTT which is based on Scots law will be of considerable assistance to solicitors, and to their clients, in Scotland.

4. It is generally accepted that the most challenging and problematic aspects of SDLT are the provisions relating to leases, partnerships and trusts.

In relation to leases:-
5. The committees welcome the exemption from LBTT for the grant, assignation or surrender of residential leases.

6. The committees believe it is a positive step that provisions relating to non-residential leases are not included in the LBTT Bill, and that options for a simpler code for non-residential leases are being considered by the LBTT Non-Residential Lease Stakeholder Group in which the committees and other stakeholders are involved.

7. The committees also welcome the commitment of the Scottish Government to undertake further consultation with stakeholders in relation to partnerships and trusts with a view to bringing forward amendments at Stage 2 of the Bill.

Progressive structure
8. The committees support the introduction of a progressive rate structure for LBTT. The slab system of SDLT significantly distorts the market, resulting in the number of house purchases spiking at prices immediately below £250,000 where the rate changes from 1% to 3%. In addition, since SDLT is not payable on moveable
items, there is a temptation for purchasers to apportion more of the price to moveables than is justifiable. We understand that house builders are also under pressure to build houses which can be sold for a price below the £250,000 rate change. We believe that the proposed progressive structure for LBTT will eliminate these market distortions and reduce avoidance activity.

9. In relation to commercial property, the committees are aware of the potential for Scotland to be perceived as non-competitive if the top rate of LBTT is higher than the top rate of SDLT since investors have more choice about where to invest. The committees would urge the government to ensure that this is not the case by giving some indication about the top rate of LBTT on commercial property as soon as possible.

The Scottish Government's approach to tax avoidance

10. We welcome the fact that the notoriously complex anti-avoidance provisions in FA 2003 section 75A - C have not been replicated in the LBTT Bill. We do not believe that section 75A has acted as an effective deterrent as its scope is too wide and its application too uncertain.

11. We also support the decision not to include in the LBTT Bill the 15% charge for the purchase of high value (over £2 million) residential property by companies or other non-natural persons which was introduced by Finance Act 2012. We believe that the proposal to introduce an LBTT charge on the transfer of shares in companies owning residential property is a more direct approach to the perceived mischief of the sale of residential properties in corporate wrappers and look forward to participating in consultation on this proposal.

12. As mentioned in our response to the LBTT consultation, we are of the view that if there is an effective General Anti-Avoidance (or Anti-Abuse) Rule in the Scottish Tax Management Act, the targeted anti-avoidance measures announced this year as well as section 75A will not be necessary. The current situation results from layer upon layer of SDLT anti-avoidance provisions, which of themselves have given rise to more avoidance. This is why an effective GAAR (in conjunction with simplified tax rules) would be of greater benefit. We accept that there will be challenges in achieving a workable GAAR in the time available but look forward to contributing to the debate in connection with the consultation on the Scottish Tax Management Bill.

The proposed exemptions within the Bill

13. The committees support the exemption for residential leases other than ultra-long leases—this is a welcome simplification.

14. The committees believe there should be an exemption for certain categories of licences. It can be difficult to distinguish between a lease and a licence in Scotland and therefore the committees broadly support the proposal for licences not to be treated as exempt interests, so that LBTT will be payable if there is consideration for the grant of the licence. Further consideration needs to be given to whether certain categories of licences do merit exemption from LBTT.
The proposed reliefs within the Bill

Sub-sale relief
15. The LBTT Bill does not include a “sub-sale relief”. SDLT “sub-sale relief” applies where A contracts to sell to B, and B contracts to sell to C, and both contracts are completed at the same time. The SDLT sub-sale provisions mean that in general B does not pay SDLT. Currently the SDLT sub-sale provisions work by disregarding the first (A – B) part of the transaction, however they are currently being rewritten so that there will be a sub-sale relief which has to be claimed in an SDLT return.

16. Very many SDLT avoidance schemes have utilised sub-sale relief, and the committees therefore have some sympathy with the Scottish Government’s decision not to include sub-sale relief in the LBTT Bill. The committees agree that it is highly desirable to ensure that the wide-scale SDLT avoidance activity which has been taking place is not replicated under LBTT.

17. The committees do believe, however, that there is a case for a targeted sub-sale relief which could be available in genuine commercial developments, as otherwise the LBTT payable in relation to developments in Scotland would be twice as much as the SDLT which would be payable on a similar transaction in the rest of the UK.

18. In addition, it will be essential to avoid a double LBTT charge where a purchaser nominates another party to take title to a property. These so-called “nominee clauses” are used frequently, for example where a corporate purchaser has not determined which member of its group should take title to an asset at the time the contract was concluded, or where the company or other entity which is to take title has not yet been set up.

Charities relief
19. The LBTT Bill requires charities to be registered with the Office of the Scottish Charity Regulator (OSCR) in order to claim LBTT charities relief. We do not believe that this restriction is appropriate. Although UK charities which occupy property in Scotland are required to register with OSCR, UK charities which invest in property in Scotland are not, and such charities would therefore be denied LBTT charities relief. In addition, we believe that bodies which are recognised as charities in other jurisdictions should be able to claim LBTT charities relief.

The treatment of non-residential leases
20. In relation to SDLT on leases there are huge complexities which the committees and many other commentators have raised many times. As a consequence, it can be very difficult for solicitors and other tax advisers to calculate the SDLT on lease rentals, particularly for wind farm leases, leases with turnover rents and development leases. The administrative burden is severe - in most cases more than one SDLT return is required, and in some cases many SDLT returns are required in relation to what is in reality a single lease.

21. The committees welcome the fact that the SDLT lease rules have not been replicated and that a Non-Residential Leases Working Group has been established
to assess options for calculating tax chargeable on non-residential leases under LBTT. The committees are confident that this approach will help to achieve the Scottish Government’s objective that the LBTT lease provisions will be a better “fit” with Scots law and practice than the current UK SDLT lease code.

Companies, trusts and partnerships
22. As mentioned above, the committees agree that further work is needed in order to develop a simpler regime for LBTT in relation to partnerships and trusts, as compared with the SDLT rules. The SDLT partnership code is not fit for purpose due to its complexity and inconsistencies. The committees look forward to further consultation in relation to LBTT and partnerships and trusts.

The role of Revenue Scotland
23. The committees welcome the establishment of Revenue Scotland which will perform an essential role in the overall management of the devolved taxes and are encouraged to hear that the Revenue Scotland team is being expanded. The committees also look forward to being involved in the Devolved Tax Collaborative.

24. The committees believe that an effective audit and enquiry system would increase compliance with LBTT and result in more tax being collected. It is particularly important to ensure that audit mechanisms are built into the new system wherever possible, for example an automatic comparison of the price reported to Registers of Scotland in connection with registration and the price included in LBTT returns; and a follow-up enquiry into all cases where there are discrepancies. We see an important role for Revenue Scotland in devising appropriate audit and enquiry systems.

25. Clarity and certainty for taxpayers and their agents are key objectives, not only in relation to complex commercial transactions but also for individuals purchasing houses. Access to comprehensible guidance which is available and has been “road tested” before the introduction of the tax will help enormously in the ease of operation of the tax.

26. For reasons of cost, HMRC has tried to commoditise helplines which in many cases are staffed by non-technical personnel working to a script. This makes the tax payer/agent experience very difficult and the helplines of little use. No one calls the Stamp Taxes Helpline with technical queries, as the Helpline cannot answer them. This approach is counterproductive in terms of revenue-raising. Consideration should be given to adequately staffed LBTT helplines or drop-in centres in addition to comprehensive and easily accessible guidance.

The role of Registers of Scotland
27. The committees welcome the proposal for LBTT returns to be submitted to Registers of Scotland (ROS) using a new online system to be developed by ROS. The committees agree that the alternative of using HMRC to collect the tax would have been more costly and less flexible. Many of the difficulties with SDLT result from the overly complex SDLT online system, the fact that it is very difficult for HMRC to make changes to the online system and the regular periods when the SDLT online system cannot be used because rates are being updated.
28. It is essential that the new online system for LBTT is ready in sufficient time for it to be adequately tested by practitioners and for guidance to be prepared well before April 2015. The timetable is tight but achievable, and the committees look forward to working with the ROS project team to ensure that the LBTT online system is fit for purpose.

29. The committees welcome the proposal for LBTT returns to be dealt with at the same time as registration. Currently an SDLT return has to be submitted to HMRC and an SDLT certificate, SDLT 5, obtained which has to be presented to Registers of Scotland in order for documents to be registered. Given that ROS will be dealing with the collection of tax as well as with registration, we recognise that submission of the LBTT return at the same time as registration will be a more streamlined process.

30. There have been concerns that if it is necessary to pay LBTT before title to property can be registered, rather than 30 days after submission of the return which is the case with SDLT, this could cause serious difficulties as registration is extremely important in relation to land in Scotland, and payment of LBTT should not impede the registration process.

31. We note, however, that payment in cleared funds before registration will not be required. Instead “payment” will involve making arrangements satisfactory to the Tax Authority and we understand that the provision of a direct debit mandate, in the same way as for registration dues, is likely to amount to arrangements satisfactory to the Tax Authority. The committees will be keen to consider the proposed arrangements and guidance in more detail to ensure that the system will not cause any practical difficulties for solicitors or their clients in relation to the completion of property transactions and the registration process.
1. I would like to submit the following as evidence to the committee scrutinising the bill.

2. My husband and I bought a basement flat in the New Town of Edinburgh for £150,000 many years ago. The flat has 2 bedrooms and is now worth around £500,000. We haven't gained at all from this rise. In fact we are being punished by it. We now want to move as someone recently had an accident falling down the steps to our basement. It made us think about the fact that we may have an accident ourselves as we get older. We find we cannot afford to move as the stamp duty cost of moving, even to a flat in the same price bracket, is so high. The proposed new regime is even more punishing. A lot of people in Edinburgh will be trapped in their homes. It is NOT our fault that our flats are now worth so much. We get punished by extra council tax and now we are going to be punished even more by the new regime. Is the Scottish Parliament only there for the people of the Highlands? Do the people of Edinburgh not count?
1. I saw a note on the new subject bill.

2. My only comment, for what it is worth, is that I would support a smooth transition in duty rather than stepwise moves as we have now at certain points on the whole amount. This skews the market [try selling a house at 250-280k] and encourages fraud in terms of chatells claims etc.

3. What I mean is that as a property exceeds a threshold, then the amount above that threshold only attracts the higher tax rate. Seems an obvious point I know, but has never been a feature of UK land tax as far as I am aware.

4. To avoid future "politicking" with the threshold rates also, I would recommend setting bands relative to the Scottish average price level and review on a stated period [so bands will drift up and down with the market naturally].

5. I wish you luck with the successful implementation of the bill.
1. Following the introduction of the LBTT Bill in November, we are concerned to note that sub-sale relief has not been included in the Bill. From a developer’s standpoint, sub-sales are frequently used to unlock and develop key commercial sites. They are an increasingly relevant mechanism in the current economic climate, where alternative funding strategies are required in the absence of available bank finance. We consider that the removal of sub-sale relief is likely to have an adverse effect on decisions to invest north of the border and may result in a loss of much needed property development and investment in Scotland.

2. We would urge the Committee to consider the inclusion of such relief in the Bill and the resultant legislation.
1. Pinsent Masons LLP is an international law firm headquartered in London. In 2012 Pinsent Masons LLP merged with McGrigors LLP which, prior to the merger, was a top 40 UK law firm, headquartered in Scotland with approximately 90 partners and 300 lawyers, one of Scotland's largest law firms and rated as a leader in its field in commercial law including commercial property. The merged firm is ranked as the 12th largest law firm in the UK with 300 partners and 1500 lawyers. Its Scottish property team has around 100 lawyers and has acted on many of the country's most significant real estate projects.

2. Pinsent Masons is pleased to give its views on the Land and Buildings Transaction Tax (Scotland) Bill. Our representations will be based largely on policy and technical observations on relevant aspects of the Bill as currently published. We note that certain elements of the LBTT regime remain to be established such as the approach to non-residential leases, trusts and partnerships and we will be pleased to contribute our further observations on the proposals for those areas once known.

3. In broad terms we support the Bill and its overall objectives. We are very supportive of the introduction of a tax which is properly tailored for Scottish circumstances, and we applaud the efforts of the Scottish Government to develop a regime which learns lessons from SDLT and seeks to improve on the position where felt appropriate. In making the observations which follow, this should not be seen as detracting from our overall support for the Bill.

We have the following observations:-

- Our first observation is a very significant one and a matter of great concern to us. We are very concerned at the decision by the Scottish Government not to incorporate "sub-sale relief" within the LBTT regime. Paragraph 80, bullet 4 of the Policy Memorandum accompanying the Bill explains the basic principle behind sub-sale relief. The practice and commercial reality whereby a person buys land and then sells it on in quick succession has been recognised and supported by SDLT and, before its introduction in 2003, stamp duty, dating back to at least the Stamp Act 1891. There are numerous circumstances where an organisation might legitimately seek to acquire land and then move it on quickly. For example, developers will often agree to buy land, perhaps conditional on obtaining consents or assembling a larger site of which the land in question will form part, and then sell off discreet parcels for development by others. The first developer will no doubt aim to make a profit on the deal, and this is recognition of the risk and effort they have put into the scheme. Mechanisms such as this, which are entirely commercial and should not be viewed as objectionable, facilitate the overall exploitation of land. In those circumstances, where an entity has never actually held the land, subsale relief operates such that tax is only applied to the ultimate purchaser. In the absence of subsale relief under LBTT, the tax could be applied at multiple points in a complex property project. Our concern is that this will generate additional cost for the
developers and inhibit economic development in Scotland at the very time when this is sorely needed.

- The Policy Memorandum correctly observes that there is strong evidence that the sub-sale rules act as a gateway to a significant amount of avoidance activity. This has been recognised under SDLT, and the UK Government has recently consulted on proposals to reform the operation of subsale relief under SDLT resulting in the recent publication of proposed legislation in the draft Finance Bill 2013. It is striking that the UK Government, while addressing the concerns about the misuse of subsale relief, has nevertheless also accepted that sub-sale relief has a justifiable economic purpose and that it should not simply be abolished in its entirety. Instead, the approach taken by the UK Government has been to reform the way in which sub-sale relief works. We do not suggest that the Scottish Parliament should slavishly follow the approach taken by the UK Government for SDLT. However, the fact is that HM Treasury and HM Revenue & Customs do not lightly concede such matters to taxpayers without good reason, and it therefore seems to us to be significant to the debate in the context of LBTT that they have accepted the strength of the case in favour of the retention of some form of sub-sale relief.

- We note that the Policy Memorandum makes no attempt to argue that subsale relief is objectionable on commercial grounds, and instead refers solely to avoidance activity which has involved it. The response should surely be to adjust the operation of subsale relief in order to minimise the risk that it can be utilised for tax avoidance while at the same time retaining the overall effect for use in the majority of normal commercial circumstances where tax avoidance is not the main purpose.

- The abolition of the relief is likely to make Scotland less attractive for certain elements of commercial property activity. Investors have finite resources and the lack of subsale relief will make it less likely that they will direct those resources in the direction of Scotland rather than some other location. We strongly believe that the omission of some form of sub-sale relief from the LBTT legislation is a serious mistake which should be corrected. It should be entirely possible to develop subsale relief provisions which protect tax revenues from unacceptable avoidance while retaining the economic benefits which the relief facilitates.

- The Bill applies LBTT to licences. This is different from the approach under SDLT where licences are exempt from SDLT. The application of LBTT will result in taxation in Scotland in a number of instances where there would be no taxation in the rest of the UK. Examples of higher value licence arrangements which could become subject to LBTT might include: airport concessions; hotel management agreements (which are a commonly used alternative to leases in the hotel sector); and complex property development structures (where the grant of licences on a SDLT-free basis often forms part of the tax analysis and is a specific element of the deal structure which is adopted, without which additional tax could become due). The Committee should make sure it has fully appraised itself of the potential implications for this expansion of the scope of LBTT over SDLT. If LBTT becomes payable in cases where SDLT is not payable then there is potential for rendering Scotland a less competitive place to do business as a result, and the Parliament and the Scottish Government need to have a clear acceptance that this could be the case.
• One specific implication arising from the application of LBTT to licences relates to groups of companies. It is not uncommon for a property to be owned or leased by one company, and for other companies in the same overall corporate group then to occupy the property. Commercial leases typically recognise that this is a common scenario by including a provision stating that group companies of the tenant are allowed to share occupation provided they occupy as licensee rather than subtenant. If LBTT was payable on licences between group companies then, by virtue of the paragraph 22 of the Bill, the licence would be deemed to be granted at market value/market rent, which could be substantial. Group companies would be entitled to claim group relief, but this must be claimed by means of submission of a land transaction return. This would result in significant additional compliance requirements for companies which permit group companies to occupy their premises. This new administrative and compliance burden could be avoided by excluding from the scope of LBTT licences which are granted between group companies.

• One further point of detail arising from the proposal to bring licences within the scope of LBTT – if the intention is for licences to attract LBTT on the same basis as leases, then it should be made clear that the numerous references in the Bill to "rent" also apply to licence fees. This could be achieved by defining "rent" to include "licence fees".

• Paragraph 10(5) of the Bill deals with the situation where a contract is substantially performed without being completed and SDLT is paid, but the contract is afterwards rescinded or annulled or for any other reason not carried into effect. The Bill states that the payment must be claimed by amendment of the transaction return made in respect of the Contract. This provision is the same as the equivalent SDLT provision. However, we suggest that it should be clarified how this sits alongside paragraph 37 of the Bill, which states that an amendment to the Land Transaction Return may not be made more than 12 months after the last day of the period within the Return must be made (i.e. usually 12 months after the filing date of the transaction – see paragraph 29(3)). Within the SDLT regime, HMRC have required to clarify by means of informal guidance that the amendment of a Return under the SDLT equivalent of paragraph 10 (5) is not limited to the one year period set out in the SDLT equivalent of paragraph 37. If one was not aware of that informal guidance and went by the letter of the legislation one might assume that it was not possible to seek repayment in those circumstances more than 1 year after the filing date of the transaction had been triggered by pre-completion substantial performance of the contract. The effect of tax legislation should however be clear to all from the face of the legislation, and rather than inherit the same uncertainty within LBTT, we suggest that the opportunity be taken to make it clear in paragraph 10 (5) that the time limit in paragraph 37 does not apply to amendments to a return in those circumstances.

• We should add that there will certainly be other instances where the effect of the SDLT legislation has required to be clarified by HMRC issuing informal guidance. This is not a satisfactory approach to the management of tax legislation and we would suggest that, where further instances can be identified, the opportunity be
taken to clarify the terms of the LBTT Bill rather than simply replicating the imperfections of the SDLT legislation.

- Paragraph 41 of the Bill deals with applications to defer payment in case of contingent or uncertain consideration. Paragraph 41(2) states that an application must be in the form specified by the Tax Authority and containing information by the Tax Authority. This is the same approach as in the equivalent SDLT provisions, and the procedure itself is then set out in the Stamp Duty Land Tax (Administration) Regulations 2003. It seems to us that it would provide a more meaningful tax code if the relevant information was specified in the Bill itself rather than being left to secondary legislation as was the case for SDLT. On the assumption that the approach under LBTT will be the same as that under SDLT (we have no reason to believe that it would be any different), we are not sure why the relevant measures cannot simply be contained in the LBTT Bill in order to provide a more consolidated set of provisions rather than replicating the more fractured approach seen under SDLT.

- Paragraph 43 states that Keeper of the Registers of Scotland may not accept an application for registration of a document effecting or evidencing a notifiable transaction unless any tax payable in respect of the transaction has been paid. By contrast, under SDLT the Land Transaction Return requires to have been made in respect of the transaction before land registration can take place, but the tax itself does not require to have been paid. The SDLT approach works because, upon submission of the Land Transaction Return, the taxpayer has submitted themselves to the tax system and, in the unlikely event that they do not also pay the SDLT either at the same time or soon thereafter, HMRC will be in a position to take enforcement steps against them. The requirement for the SDLT to have been paid before registration can proceed appears to us to be unnecessarily restrictive. We are not aware that the SDLT approach results in material loss of revenue due to non-payment, and we would respectfully request that the approach be reconsidered.

We have two further comments to make in relation to paragraph 43:

- The conveyancing system in Scotland currently relies on a seller's solicitors issuing a letter of obligation to the purchaser's solicitors which effectively guarantees that no new entries will appear in the Land Register/Register of Sasines which would prevent the purchaser from obtaining good title, provided the purchaser registers their title document within 14 days of settlement of the transaction. This 14 day period is set down by Scottish solicitors' insurers and is therefore not negotiable. It is therefore extremely important for a purchaser to register their title document within that 14 day period. By insisting on payment of the tax before registration can proceed, the Scottish Government is in practice forcing payment of the tax within a 14 day period rather than the 30 day period which the LBTT Bill ostensibly allows - this would seem to be rather unfair on Scottish taxpayers. The use of letters of obligation will no longer be required once new measures in the Land Registration (Scotland) Act 2012 come into force, under which a purchaser will instead be able to lodge with the Registers of Scotland an "advance notice" which will afford them a 35 day priority period within which to register to their title document. However Registers of Scotland require to upgrade their IT systems before this new system can be brought in and our current understanding is that the system is scheduled to
commence in autumn 2014 – though no doubt this could slip. We would suggest that, if the Parliament continues to adopt the requirement for LBTT to have been paid before title registration can take place, this requirement should at least be deferred until the commencement of the system of advance notices, if not already operational by the time LBTT starts to operate in April 2015.

- The requirement in paragraph 43(1)(b) that "any tax payable in respect of the transaction has been paid" before the application for registration can be accepted is misleading. LBTT will be a self-assessed tax, and the Land Transaction Return will be based on the taxpayer's self-assessment as at the date of submission of the Return. It will be open to the Tax Authority to challenge that self-assessment and if felt necessary, to make its own different assessment of the tax due payable in respect of the transaction. If it remains the case that tax must be paid before the Keeper may accept an application for registration, paragraph 43(1)(b) should be amended to make it clear that what requires to be paid is not "any tax payable in respect of the transaction" but, rather, any tax which is declared by the buyer to be payable in terms of the land transaction return which is made at that time.

- Paragraph 47 of the Bill provides for qualifying transfers of interest in residential property holding companies to be treated as land transactions and subject to SDLT. This is not a feature of SDLT. We are concerned that this measure will be detrimental to the development of a professionalised residential property investment sector in Scotland. With the more limited availability of mortgage finance over the last few years, it has been recognised that the property letting market has a significant role to play in fulfilling the demand for residential property. If transfers in the shares of companies which hold or invest residential property in Scotland attract LBTT rather than 0.5% stamp duty (which is the current UK position), this is surely going to inhibit companies from investing in residential property within Scotland. In terms of the mischief which the measures are designed to address, paragraph 103 of the Policy Memorandum refers to "the avoidance of land transaction tax through the use of 'corporate wrappers' in respect of residential property". However we are not aware of evidence that this is a significant problem in Scotland. Normal residential purchasers will not wish to hold their principal residence in a corporate wrapper as this would prevent them from claiming the "principle private residence" (PPR) exemption under capital gains tax, which is much more important to taxpayers than any desire to save SDLT on the purchase of the residence. PPR would not be available for second homes or for property owned by non-UK residents, but we are not aware that the purchase of such properties in corporate wrappers is a significant feature in Scotland. While there was a lot of publicity about the use of corporate wrappers a few months ago, resulting in the introduction of new UK measures to combat their use, our understanding is that this is primarily an issue in certain high value parts of London where the property market bears no relation to that in Scotland. Our concern is that these measures are unnecessary for Scotland and will merely inhibit other forms of economic activity which ought instead to be encouraged.

Two more specific comments on paragraph 47:
- We note that paragraph 47(2)(c) excludes from the charge transfers of shares in companies which are listed on a recognised stock exchange. However, should we
really be drawing a distinction between listed companies and other private investment companies? If the intention is to draw a distinction between rich individuals acquiring high value second properties using corporate wrappers on the one hand, and professional residential property investment activity on the other hand, then we see no reason why non-listed investment companies should be targeted while listed vehicles are exempt. This approach is reflected in the UK Government's proposals for the forthcoming Annual Charge on Residential Property as set out in the draft Finance Bill 2013, and also in proposed exemptions to the 15% SDLT charge on high value residential property owned by non-natural persons – following detailed consultation between HMRC/HMT and stakeholders, these charges will allow a number of exemptions including property rental businesses, property developers, property traders, property occupied by employees, and farmhouses. We believe similar exemptions should be applied to the proposed paragraph 47 charge under LBTT.

- If the decision is made to retain the charge proposed by paragraph 47, then at the very least it should be made clear that on the face of the legislation that multiple dwellings relief under Schedule 5 of the Bill would be available to chargeable transactions under paragraph 47.

- Paragraph 53(4) contains a minor typographical error – in the second line reference to "Authority" should read "Tax Authority".

- In Schedule 1 paragraph 6, the name of the paragraph "Assents and appropriations by personal representatives" is English terminology and should be replaced by relevant Scottish terminology (namely reference to confirmation and transfers by executors). The cross-reference in Schedule 2 paragraph 9 (1) will require the same adjustment.

- Schedule 5 (multiple dwellings relief) – in relation to SDLT, HMRC has required to clarify by means of non-statutory guidance that the provisions of Finance Act 2003 s.116(7) (six or more dwellings treated as non-residential property) do not apply to the operation of multiple dwellings relief (see www.hmrc.gov.uk/manuals/sdltmanual/sdltm29940.htm), and we would suggest that the opportunity be taken to amend the LBTT Bill in order the make that clear on the face of the Bill rather than simply replicating the imperfection of the SDLT legislation.

- Schedule 14 (relief for compulsory purchase facilitating development) – paragraph 3 states that the person entitled to the relief must have made a Compulsory Purchase Order in respect of the chargeable interest for the purpose of facilitating development by another person. However, paragraph 79 of the Policy Memorandum states that this relief is not to be limited to facilitating development, but is to be available in respect of all situations where the local authority transfers land to a third party, without being limited to situations where this facilitates "development". Schedule 14 has therefore not been drafted in a manner which is consistent with the Policy Memorandum and should be adjusted accordingly.

- Schedule 18 Part 2 – Trusts – (Treatment of trusts and beneficiaries generally) – These provisions specify circumstances where property is held in trust under the law of Scotland or of a country or territory outwith the UK on terms such
that, if the trust had effect under the law of England and Wales, a beneficiary would be regarded as having an equitable interest in the trust property. Paragraphs 105 - 111 of the Policy Memorandum state that the Bill simply replicates the existing SDLT provisions of the treatment of trusts and that the Scottish Government's intention is to adjust these provisions and simplify the rules to something more appropriate for use within Scotland. One suggestion we would make is that Schedule 18 Paragraph 2 should be adjusted in a manner which reflects Scots Law rather than requiring an understanding of English law. Paragraph 106 of the Policy Memorandum refers to the need to be consistent with the Recognition of Trusts Act 1987 which was enshrined in UK law by the Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. We are not sure whether this is intended as a justification for the wording used in the Bill, but it does seem to us that the Bill should define trusts in a manner which does not require an understanding of the English laws of trusts and equity in order to be able to apply the LBTT legislation.

- Schedule 18 Part 3 paragraph 5 states that, where a person acquires an interest as bare trustee, the interest will be treated as vested in the person for whom the bare trustee is trustee. This is not consistent with paragraph 111 of the Policy Memorandum – paragraph 111 states that the Scottish Government proposes to make bare trustees liable for LBTT rather than the persons for whom the bare trustee is trustee. If the Policy Memorandum is to be followed, paragraph 5 will require to be adjusted. It may be that paragraph 5 is in its current terms solely due to the initial approach having been taken that the Bill simply replicates the existing SDLT provisions even though those may be inconsistent with policy decisions already set out in the Policy Memorandum, and that this inconsistency will be dealt with when updated provisions relating to trusts are introduced at a later stage in the Bill's passage through Parliament.

- Schedule 2 Paragraph 2 states that the chargeable consideration for a transaction includes VAT which is chargeable in respect of the transaction. The approach is explained in Policy Memorandum paragraph 48 which states that the Scottish Government agrees with the decision of the Court of Session in a 1994 judgment (where, within the context of stamp duty, it was ruled that stamp duty should be charged on an amount including VAT on the price itself). The Policy Memorandum goes on to state that "this means that, like SDLT, LBTT will be charged on the total purchase price, including any VAT". We are disappointed that the Scottish Government has taken this approach. Just because the Court of Session made a particular decision in 1994 in relation to stamp duty is no reason why the same approach should be taken for LBTT. It is entirely open to the Scottish Parliament to frame the LBTT legislation such that LBTT will not be charged on VAT which is payable on the price. VAT is, for most businesses, a matter of cashflow rather than overall "cost" – where a buyer pays the VAT to the seller, the buyer will typically then reclaim the VAT from HMRC, so that the buyer does not ultimately end up having incurred that cost. If LBTT is intended to capture the value of a transaction, then charging LBTT on the VAT amount is not consistent with that intention, and seems to be little more than an opportunity to increase tax revenues. We would urge the Scottish Parliament and the Scottish Government to reconsider the approach for LBTT, and to accept that LBTT should not be charged on VAT which is payable on the price.
• Approach to avoidance under LBTT – we agree that LBTT requires to be framed in a manner which inhibits inappropriate tax avoidance. It is important that the distinction between tax evasion (which is illegal) and tax avoidance (which is not) is recognised, and it is also important to remember that taxpayers are, as a general principle of law, entitled to order their affairs in a tax efficient manner. It should not be the outcome of tax legislation, including anti-avoidance provisions, that taxpayers are prohibited from so doing – the ultimate result would be that taxpayers would be required to pay tax based on the least efficient structure achievable. Having made those observations, we agree in principle with the Scottish Government’s approach to tax avoidance, namely the use of targeted anti-avoidance rules and of a general anti-avoidance rule (see Policy Memorandum Paragraph 59). We also support the Scottish Government’s proposal not to replicate Sections 75A - C of the Finance Act 2003 within LBTT (see Policy Memorandum Paragraph 66). Sections 75A – C have served their purpose within SDLT, and that purpose is being superseded by the introduction of a general anti-abuse rule (see the draft Finance 2013 provisions which have been published). The continued inclusion of provisions equivalent to Section 75A – C within the LBTT legislation would have resulted in unnecessary complexity – if the general anti-abuse rule is felt to be effective then Sections 75A – C are unnecessary.

We would be pleased to elaborate on any of our comments should that be helpful to the Committee.
1. A global organisation, the Royal Institution of Chartered Surveyors (RICS) is the principal body representing professionals employed in the land, property and construction sectors. In Scotland, the Institution represents over 11,000 members comprising chartered surveyors (MRICS or FRICS), associate surveyors (AssocRICS), trainees and students. Our members practise in sixteen land, property and construction markets and are employed in private practice, central and local government, public agencies, academic institutions, business organisations and non-governmental organisations. It is our members that provide us with expertise and advice, in addition to ensuring that we are aware of the level of activity and impressions of the market by practitioners in their respective pathway.

2. As part of its Royal Charter, RICS has a commitment to provide advice to the government[s] of the day and, in doing so, has an obligation to bear in mind the public interest as well as the interests of its members. RICS Scotland is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to the land, property and construction sectors.

3. RICS Scotland welcomes the opportunity to respond to the Scottish Parliament Finance Committee’s call for Evidence on the Land and Building Transaction Tax (Scotland) Bill.

4. This Call for Evidence was distributed to RICS Scotland members for their views on the issues requested, and their responses are contained in the paragraphs below.

5. In general, RICS Scotland agrees with the notion of a progressive land and buildings transaction tax (LBTT) system as outlined in the Bill.

6. RICS Scotland believes that the moving from the current ‘slab’ system to a progressive system could provide a fairer taxation system which is more efficient and equitable.

7. Ideally, the proposed progressive tax structure will “iron out” the house sale price peaks witnessed at the current SDLT (stamp duty land tax) thresholds.

8. Considering the current, fragile state of the residential market, the LBTT must implemented in a way that does not distort markets, encourage tax avoidance or discourage people from undertaking property transactions.
9. RICS Scotland believes that an impact assessment, which covers the implications and impact of a new tax policy, is thoroughly considered during the lead in time to the tax’s proposed introduction in April 2015.

10. The current provision of exemption categories under the SDLT is adequate, and should be continued for use in the LBTT.

11. However, we believe the Scottish Government should consider a possible LBTT exemption for older people; for example, LBTT should not be due (or at least in part) from older people who are downsizing their homes.

12. In line with the current SDLT approach, and as suggested in the Bill, we suggest that the Scottish Ministers should be able to add or remove exemptions from this list, subject to Parliamentary approval, following a Scottish Government consultation on any proposals to amend the list.

13. The provision of reliefs as set of within the Bill is adequate.

14. Additionally, RICS Scotland deems the amendments to the Compulsory Purchase Order (CPO) and the Right to Buy relief provisions to be in accordance with the current view on the use of CPOs held by the Scottish Government, and considers these sensible.

15. RICS Scotland believes that residential and commercial LBTT should be decoupled so the two systems are no longer linked.
1. The Scottish Building Federation is pleased to have the opportunity to submit written evidence to the Finance Committee as part of its Stage 1 consideration of the Land and Buildings Transaction Tax (Scotland) Bill.

About the Scottish Building Federation
2. Founded in 1895, the Scottish Building Federation (SBF) is the lead voice of the construction industry in Scotland, an industry which contributes around £10 billion (c.10%) annually to Scotland’s GDP and – directly and indirectly – provides employment for more than 200,000 Scottish workers. The overall aim of the organisation is to ensure that the important contribution of the Scottish construction industry to Scotland’s economy and society is recognised and valued, and that industry standards are raised. It does this by working with industry, government and the media.

Overall policy objectives
3. In introducing the Bill, we note the Scottish Government’s overarching objective to make “provision for a tax which should be 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.”

4. Parallel to this objective, we are concerned that the Bill must also contribute to the Scottish Government’s stated aim in relation to the taxation of commercial transactions under LBTT, namely “to encourage inward investment and maintain Scotland’s reputation as the most attractive part of the UK in which to do business.”

5. In particular, we would point out the current fragile state of the Scottish construction industry and the need for any new policy measures to contribute actively towards a climate that positively encourages inward investment with a view to revitalising the industry as well as the wider economy.

6. As a general principle, we believe the objective of creating a positive environment for attracting inward investment, particularly as this relates to commercial transactions, must be given equal weight to the overarching objective of the Bill as outlined above.

Revised structure
7. SBF agrees with the view expressed by the majority of respondents to the previous consultation that the replacement of the current “slab” structure with a “proportional, progressive structure” will help to address anomalies in the current system, which act as a significant brake on the housing market. In particular, we are confident that the revised approach will help to eliminate market distortions around existing stamp duty thresholds for the purchase of residential properties and thereby
facilitate the sale of properties valued marginally above those thresholds in particular.

Proposed reliefs
8. We note in particular the proposal not to include the new zero-carbon homes relief originally introduced under the SDLT system in October 2007. While we recognise concerns that this relief has failed to provide the necessary incentive to increase the demand for new zero-carbon homes, we are disappointed that the Scottish Government has not taken the opportunity to introduce alternative measures to stimulate the market transformation needed to drive improved energy efficiency in existing homes, as advocated by the Existing Homes Alliance, of which SBF is a member.

9. In previous submissions, SBF has advocated the piloting through the public sector of a system whereby properties are periodically checked to ensure they are being safely maintained, comparable to the existing system of MOTs for cars. This must be viewed as the first step towards a system that would see buildings systematically checked for energy efficiency over time. In the same way that a car with a full service history will attract a premium on the second hand car market, the introduction of a comparable system for buildings would allow the introduction of energy efficiency measures to be formally recognised as adding value to a property by reducing day-to-day running costs.

10. As advocated by earlier submissions from the Existing Homes Alliance and others, we would strongly support the view that the LBTT could be effectively used as one of a suite of instruments to deliver market transformation and stimulate demand for energy efficient homes. This could be achieved on the basis that homes with a poorer energy efficiency rating would incur a higher rate of LBTT whereas homes with a high energy efficiency rating would incur partial or total relief from the tax. At the same time, in order to be equitable, any such system will need to take account of the relative cost-effectiveness of improving the energy efficiency of individual properties. This will be important so as to avoid placing an undue burden on older buildings, the energy efficiency of which is by nature more difficult and costly to improve.

11. We would welcome further discussion in this area with a view to developing a simple and fair mechanism for incentivising energy efficiency in the implementation of the Land and Buildings Transaction Tax, thereby driving demand for building repair and maintenance work and indirectly supporting the Scottish construction industry.

Conclusion
12. SBF is generally supportive of the aims of the Land and Buildings Transaction Tax (Scotland) Bill as published and believes the restructuring of this tax in particular offers important opportunities to eliminate market-distorting anomalies in the current system for taxing land and buildings transactions in Scotland.

13. At the same time, with particular regard to commercial transactions, it will be important to ensure that the implementation of this legislation actively contributes towards the Scottish Government’s stated objective of encouraging inward
investment and maintaining Scotland’s reputation as the most attractive part of the UK in which to do business. We consider this policy objective to be particularly important in view of the associated benefits to the Scottish construction sector.

14. We would also urge further consideration to be given to potential mechanisms which could enable LBTT to stimulate improved energy efficiency in Scotland’s built environment through a progressive system of higher tax rates for less energy efficient properties and partial and total relief from the tax for those properties that are highly energy efficient while bearing in mind the need to focus on encouraging energy efficiency improvements that are cost-effective.
Introduction
1. As the national representative body for Scottish housing associations and co-operatives, the Scottish Federation of Housing Associations (SFHA) welcomes the opportunity to provide evidence to the Finance Committee for the Stage 1 scrutiny of the Land and Buildings Transaction Tax (Scotland) Bill.

2. We have confined our comments to the specific questions asked in Annex B of your Call for Evidence dated 5th December 2012.

Background
3. Housing associations and co-operatives are active housing developers, building a significant number of affordable homes for rent at modest levels to those on low incomes, involving them in land transactions.

4. They receive public subsidy in order to finance the acquisition and construction of homes, and in recognition of this activity, the current UK Stamp Duty Land Tax regime has two basic reliefs for charities and RSL’s which operate as tenant controlled co-operatives or community based landlords which give 100% relief when land or buildings are acquired for the charitable purposes of the RSL or benefit of the tenant controlled organisation.

5. The Scotland Act 2012 has devolved the raising of land and buildings transaction taxes to the Scottish Government, and the Bill has been submitted to Parliament after a consultation exercise which the SFHA has contributed to. A parallel Bill devolving Landfill Tax will also be advance in due course. There will also be a Tax Management Bill in 2013 which will establish the overall framework for tax administration in Scotland.

6. The Call for Evidence asks for responses to specific questions.

Overall policy objectives
7. The overwhelming number of transactions subject to the new tax will be residential or commercial property sales and the wish for simplicity, placing the minimum administrative burden on the taxpayer or their agent, will be achieved through the Bill for these transactions.

8. Given the link between registering a sale with the Land Register and eligibility for such registration through payment of the correct tax, it makes complete sense to combine the two processes through the Registers of Scotland administering the new Land and Buildings Transaction Tax.
9. Submitting a return and paying tax for land transactions will be done principally by legal agents and we endorse the use of online processes to submit and pay tax electronically. This should also improve accuracy.

**Replacement of a slab structure by a proportional progressive structure**

10. This will reduce the inequities around the threshold areas, where a house costing a few thousand more but above the threshold, can have a tax charge some three times greater than one just under the threshold.

11. Graph 1 in the Policy Memorandum, Page 111 illustrates the effect on the housing market, with large spikes of transactions just below thresholds. In a falling market it has also given purchasers significant leverage to drop prices well below an expressed market value, in order to save Stamp Duty.

12. We note the position with regard to the inclusion of VAT in addition to the price as being the sum on which LBTT will be levied, and Scottish Government’s view that LBTT is a transaction tax, not a tax on the value of land. The only exception is where LBTT is being levied on the basis of a nominal market value, where the VAT element is irrelevant in a hypothetical transaction. This may not affect any transactions undertaken by our members, who can claim relief under the LBTT regime because of their charitable status, but it will continue to affect the property development sector with a tax on a tax.

13. Scenario 12 – exemption under £180,000, thereafter 7.5% on the element of the price over £180,000 up to £1.5 million and 10% above that, is simple. The table given at p58 of the Explanatory Notes does however gloss over what happens with properties priced between £210,000 and £249,999 where more LBTT will be paid than under the current system. The £180,000 threshold is very welcome however, and will catch most low cost home ownership transactions as well as 70% of the current market.

14. It may however depress still further the second stage property purchase market, and result in prices being driven down from the £200,000 plus level to £180,000.

15. Scenario 22 has a lower threshold – no tax under £125,000, then 2% on the difference between the price and £125,000 up to £250,000. As transactions up to £325,000 represent 95% of the current market, this is clearly preferred, although the 9.5% levied on the gap between £125,000 and property prices above £250,000 makes for significant additional cost for larger transactions.

16. The SFHA would support Scenario 1 for the higher no tax threshold of £180,000 because it will reduce costs for first time buyers and those entering low

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1 Policy Memorandum annexed to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19)
2 Paragraph 287 of the Explanatory Notes published to accompany the Bill
3 Paragraph 290 of the Explanatory Notes published to accompany the Bill
cost home ownership programmes. However, we think Scenario 2 is overall fairer and will cause less market distortion from the current position.

17. The SFHA agrees with Scottish Government’s views on the payment of taxes and supports the use of Targeted Anti Avoidance Rules, such as those contained in the Bill to ensure the continuing qualification of transactions for reliefs. We support clear time limits as well as defining when some reliefs at whatever stage they are uncovered, can be reclassified as a as a non-qualifying activity.

Exemptions
18. The SFHA notes the sensible treatment of residential leases as exempt transactions in line with the previous SDLT rules, and that this exemption with therefore apply to all housing association and local authority assured tenancies. The issue relating to long leases which are able to be registered may impact on new community housing initiatives brought about by the abolition of the previous 20 year rule, but presumably community relief can be obtained through the charitable status of most of these groups.

Proposed reliefs
19. The SFHA welcomes the continued reliefs in the LBTT regime for acquisitions by tenant controlled housing associations and by charities, under which the majority of housing association land transactions will proceed.

20. We note the removal however of a small number of reliefs, most of which have a minor effect, with the exception of the new zero carbon homes relief.

21. While this was intended to be a short term measure under the SDLT regime – 5 years from 2007 – and produced no claims for exemption, we believe that this is very short sighted at a time when builders and buyers need to be encouraged to invest in measures to reduce carbon and assist Scotland meeting its climate change targets.

22. We believe that a definition which does not aim for relief for zero carbon homes – which is hard to achieve in any case – but allows relief for people buying homes which can demonstrate through EPC’s or otherwise, attainment of a low carbon standard and significant fuel savings, should be encouraged.

23. The message that the abolition of the zero carbon relief gives to the general public is a poor one and it is our belief that it does not match Scotland’s ambition for a low carbon economy, so we would urge that this relief is reinstated.

24. The reliefs are still complex and as stated above, do also contain Targeted Anti Avoidance Rules so we are not convinced the aim of simplicity has been achieved.

25. We have no comments on non-residential lease treatment or companies, trust and partnerships treatment.
26. The role of Revenue Scotland and Registers of Scotland in administering the tax has already been commented on.

27. Likewise we have no specific comments on the block grant adjustment or financial implications, other than a plea to reintroduce the zero carbon relief as a low carbon relief, despite the financial implications. For example, the relief may only be partial, or linked to the Green Deal or some other way of mitigating the financial consequences of reintroduction of a measure.

28. We note the publication of the Delegated Powers Memorandum in conjunction with the Land and Buildings Transaction Tax (Scotland) Bill, signalling a series of powers which Scottish Ministers may wish to exercise. The SFHA would wish to comment on the specific implementation of these powers at the appropriate time.
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) BILL

SUBMISSION FROM SCOTTISH LAND & ESTATES

General
This paper will be restricted to three points of particular interest to our members.

Response to specific issues
- Taxation of sub-sales
- Conveyances to Nominees
- LBTT on non-residential leases

Introduction
1. Scottish Land & Estates is a member organisation that uniquely represents the interests of both land managers and land-based businesses in rural Scotland. Scottish Land & Estates has over 2,500 members with interests in a great variety of land uses and welcomes the opportunity to submit written evidence on the terms of the Land and Buildings Transaction Tax (Scotland) Bill ("the Bill").

2. This paper will be restricted to three points of particular interest to our members.

Response to specific issues:

Taxation of sub-sales
3. Sub-sales are frequently used to assist in the financing of a land purchase in Scotland.

4. Section 14(1)(c) of the Bill defines substantial performance as when “there is a … subsale…(relating to the whole or part of the subject matter of the contract) as a result of which a person other than the original buyer becomes entitled to call for a conveyance…”.

5. This differs entirely from the current position for Stamp Duty Land Tax which does not include this as part of the definition of “substantial” performance” in terms of the Finance Act 2003 section 44(4 & 5.)

6. Section 10(1) of the Bill provides that, if a contract is substantially performed without having completed, the contract itself is treated as “if it were itself the transaction”.

7. Section 10(2) of the Bill provides that “the effective date of the transaction is when the contract is substantially performed”.

8. Section 28(1) of the Bill provides that a “buyer is liable to pay the tax”.

1
9. Section 29 of the Bill provides that a buyer has to lodge a return within 30 days of the “effective date” and that the tax has to be paid at the same time as the return is lodged (section 40 of the Bill).

10. Section 62 of the Bill provides that the effective date of the transaction is the “date of completion” which can be “substantial performance” (section 62(2)(a) of the Bill).

11. Section 10(4) of the Bill provides a reclaim facility.

12. While it is noted that page 48 of the Explanatory Booklet states that it must be made clear that sub-sale rules will not apply following the introduction of Land and Buildings Transaction Tax (“LBTT”), Scottish Land & Estates is concerned that, unless section 10(4) of the Bill assists, there may be double taxation of the same land in 2 separate land transactions completing on the same day but with the LBTT becoming payable long before the actual purchase is completed by delivery of a conveyance and the lodging of 3 LBTT returns. A worked example is provided in Appendix 1 hereto.

13. Scottish Land & Estates recommends that the Committee makes enquiries:

- To confirm whether it is the Scottish Government’s intention to tax the same land twice
- To clarify whether section 10(4) of the Bill is intended to provide relief in this case.

Conveyances to Nominees
14. It appears that there is no provision in the Bill for nominees of a contracting purchaser of land to take title. Scottish Land & Estates submits that it is essential that clear provision is made for nominees to take title and that those nominees are not perceived as sub-purchasers and, consequently, are not subject to the above provisions on sub-sales.

15. An example is where A sells a farm to B and the missives provide that title will be conveyed to A or his nominee. Before the purchase is completed, it is decided that title will be taken in the name of B’s company C Ltd. Without a provision in the legislation for nominees, it is at least arguable that there is a separate B to C transaction (which may well be chargeable); and, even apart from this, it would seem possible that B would still be treated as the purchaser, whereas both sense and practice dictates that C Ltd should be treated as the purchaser.

16. Scottish Land & Estates recommends that the Committee ensures that conveyances to nominees of a purchaser are treated as conveyances to the purchaser and are not treated as sub-sales.

LBTT on non-residential leases
17. Members of Scottish Land & Estates have a particular interest in the taxation of non-residential leases, whether agricultural or commercial (such as leases for renewable energy projects or the working of minerals).
18. It is noted that section 55(1) of the Bill provides power to make regulations about the application of the Bill to leases.

19. Scottish Land & Estates was one of the consultees which raised concerns and welcomes the fact that the Scottish Government has recognised that additional time is required to formulate policy in this area and that a specialist group has been established to consider this area and to make recommendations.

20. Scottish Land & Estates will consider this further when the Scottish Government has published its proposals for LBTT and leases in due course (whether at Stage 2 or 3 of the Bill or by way of Regulations).

Appendix 1

Example of possible double taxation on a land transaction

- B purchases land from A
- As part of the financing process of the purchase, B subsells part to C (or even sells the whole to C)
- At some point, possibly after the contract between A and B is concluded, but it may be conditional on the contract between A and B being concluded, a contract is concluded between B and C to sell the whole or part of the land being purchased by B
- Section 14(1) of the Bill provides that will be “substantial performance”, probably of the contract between A and B
- LBTT becomes payable within 30 days on the whole of the purchase price with no apparent relief for the subsale by B to C
- In the absence of such relief C pays LBTT on its purchase
- This results in double taxation on that part of the land not purchased by B
- With these 2 land transactions settling on the same day, LBTT becomes payable before the actual purchase is completed by delivery of a conveyance and the lodging of 3 LBTT returns (2 by B and 1 by C).
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) BILL

SUBMISSION FROM SCOTTISH PROPERTY FEDERATION

Introduction to SPF

1. The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We include among our members; property investors, developers, landlords of commercial and residential property, and professional property consultants and advisers.

2. We have broadly welcomed the Scottish Government’s approach to consultation on the Land and Buildings Transaction Tax, albeit with some detailed concerns which we refer to below in line with the Committee’s call for comments.

Overview of new tax

3. The Land and Buildings Transaction Tax is the first new tax to be explicitly designed and implemented by the Scottish Parliament. It is not however being designed in a vacuum and is required to come into force with the legacy of both revenue and policy assumptions from the former SDLT. Nonetheless the new property and land tax will be keenly watched by not just Scottish taxpayers but UK and international investors.

4. In terms of the Scottish Government’s approach to the development of the new tax we support the objectives of achieving consistency, certainty, linking the tax to ability to pay and making it more relevant to Scots land and property law. We would add a further objective however: competitiveness, in order to attract inward investment.

Key points

Revenue neutrality

5. LBTT is constrained in its development because of the requirement to ‘broadly’ achieve revenue neutrality. This requirement sets the parameters within which the tax can be designed and established. This also adds considerable uncertainty at this time for the taxpayer, investor and the government itself because we have little idea on how the Treasury will decide to assume future SDLT revenue pertaining to Scotland after 2015.

6. SDLT has proved to be a highly volatile tax in recent years and is certainly worth far less than had been assumed perhaps even three years ago during the deliberations of the Calman Committee. Clearly if the negotiations with the UK Government end up with a cut from the block grant in lieu of anticipated SDLT revenue that is unreasonable then this will put pressure on the Finance Secretary to introduce rates and thresholds which might raise an unsustainable level of LBTT revenue for the industry. In this scenario revenue and economic activity could actually be impaired as the tax rates reduce the number of transactions that might otherwise have occurred. Table 1 provides a brief look at the changes in SDLT revenue from Scotland in recent years.
Table 1

<table>
<thead>
<tr>
<th>Year</th>
<th>Residential</th>
<th>Non-Residential</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009-10</td>
<td>135mn</td>
<td>115mn</td>
<td>250mn</td>
</tr>
<tr>
<td>2010-11</td>
<td>165mn</td>
<td>165mn</td>
<td>330mn</td>
</tr>
<tr>
<td>2011-12 (Est.)</td>
<td>155mn</td>
<td>120mn</td>
<td>275mn</td>
</tr>
</tbody>
</table>

7. The Table below is taken from Registers of Scotland data for commercial property sales across Scotland in the last eight quarters. Committee members may note that the high Q4 2010 figure for commercial property sales will have informed the 2010-11 SDLT revenue that has supported some of the consultation papers and proposals (see Table 1 above).

Table 2

<table>
<thead>
<tr>
<th>Year</th>
<th>Residential</th>
<th>Non-Residential</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010-12</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

8. The debate on the extent of block grant to be cut in anticipation of LBTT revenue has also exposed further uncertainty on the data pertaining to the revenue attributed to commercial leases. The Scottish Government’s earlier consultation, based on figures obtained from HMRC, suggested that some £65 million (just under £25 million for new leases as opposed to assigned leases) was attributed to SDLT on leases in the last year for which data was available. SPF has questioned this figure with officials and it does appear to clash with information published separately on the Scottish Government’s website and again based on HMRC data, where a figure closer to £17 million appears to be attributed. Such wide fluctuations in the data may have a considerable effect on how Scottish Government policy is worked up and we hope to see some further clarification in this key area of policy.

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1 Scottish Government consultation Taking forward a Scottish Land & Buildings Transaction Tax, p.47
2 The Scottish Government analysis based on data from HMRC can be located at: www.scotland.gov.uk/Topics/Built-Environment/Housing/supply-demand/chma/marketcontextmaterials
9. SPF is working alongside other stakeholders to support the government by helping to identify firm data on the extent of potential SDLT/LBTT lease duty revenue and we understand that the Scottish Government intends to bring forward further proposals to the Scottish Parliament before Stage 2.

Simplicity & fairness
10. We believe the Scottish Government is right to identify simplicity and fairness as key tenets of the new tax. This will be important in achieving support and understanding from the taxpayer as much as from the investment community. Unfortunately these two objectives can sometimes contradict and conflict with each other. The intention to introduce a progressive form of taxation for example is welcome but will inevitably be less clear than a straightforward charge on the full consideration (the slab tax) which is in our view unfair, yet simple. One element of current SDLT that our members believe is patently unfair and wrong is the current position whereby SDLT is applied to a sale or less after VAT has been added. We are aware that the Scottish Government has dismissed this concern within its Policy Memorandum to the Committee. However, SDLT currently double taxes commercial property where a vendor has elected for VAT. The legal verdict referred to by the Memorandum was from nearly twenty years ago and the fact is that continuing with LBTT being applied to consideration plus VAT would be to perpetuate an unfair system of taxation upon taxation, with some transactions liable for this approach and others not. We believe the Scottish Government should consider further abolishing this system of double taxation.

Progressive versus slab approach
11. For many years a number of commentators have argued the case for a change from the slab system of taxation under SDLT to a progressive rate whereby the tax rate is more closely aligned to the value on a step by step basis. This is most appealing in the context of the residential property market whereby a £1 change in consideration might trigger a £5,000 increase in tax payable at the £250,000/£250,001 threshold where the rate jumps from 1% to 3%. Inevitably there are a number of distortions and ‘dead zones’ around such thresholds and this will be smoothed out under a progressive approach to LBTT.

12. In the commercial property market the situation is less clear because high value or very low value property transactions represent a much greater proportion of the market. This means that the value attributed to the top 4% band of SDLT is significant for as greater number of transactions and this perhaps reduces the impact of the slab approach to taxation. However, we recognise that if the government moves to introduce a progressive approach to residential property transactions then commercial property is likely to follow.

Commercial leases
13. One of the more technically difficult areas of the new tax is that of the taxation of leases. The government has decided to abolish duty on residential leases for the good reason that it is unlikely to raise any significant level of revenue. Commercial leases are another matter and as with the development of SDLT in the UK ten years ago, the treatment of leases causes a number of technical concerns, not least with
the interaction of Scots property law and the existing SDLT which has always been problematic and we support the Scottish Government’s intentions to relate the tax more closely with Scots property law.

14. The government has currently included a general clause designed to capture commercial leases, thus providing time to bring forward a more detailed proposal at Stage 2 of the Bill. The question remains though if we were to replace SDLT lease duty then how we would do so and on what basis? And in addition, how much revenue are we talking about? And what of future market practice whereby leases are of shorter duration?  

15. Currently leases are charged 1% of their Net Present Value in order to determine their liability. This is paid up front in one lump sum, above the threshold (£150,000). The NPV is calculated as through taking the highest annual rent in the first five years of the lease and multiplying this by the length of the term of the lease and then applying an annual discount rate in order to reflect the diminishing value of the lease to the tenant over time. SDLT is due only if the NPV is more than £150,000.

16. A number of concerns have been expressed regarding this approach to the tax. First, that it is not transparent through the use of the net present value method. Second, that it does not account for a number of features of leases. How are rent free periods accounted for? And what about turnover or index linked rents for example? Third, that is unfair because if a tenant exits a lease after less than the term they had originally paid for then they have in effect overpaid their SDLT for the lease. Fourth, the requirement to pay a lump sum up-front is a substantial burden on an incoming business to a property. Indeed because of the current weakness of the economy and commercial property market there is some evidence of SDLT lease taxes being paid by the landlord (who will of course have originally paid SDLT for the property as a whole.

17. There are therefore plenty of reasons for wishing to see ‘lease duty’ reformed, but as yet little agreement on what to replace it with. We note also that the memorandum spells out the government’s intention to include license arrangements within the scope of the tax. This would be a new area and it will be important to ensure that such a move does not inhibit business flexibility or capture a broader range of economic activity than might be envisaged by officials.

Reliefs/exemptions
18. The Scottish Government has identified a number of reliefs and exemptions that it would wish to continue under the current regime. Broadly speaking, the SPF is in agreement with this approach and in particular we would support the retention of Disaggregation relief (for bulk purchases of residential property) and inter-company Group relief.

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19. The Bill does propose to abolish sub-sale relief however and while we have some sympathy with the concerns of officials about the extent of use of this relief we would make the point that it will be important to ensure abolition does not inadvertently damage other government policy initiatives. For example we have been asked by our members how such abolition would impact on the residential development market in particular and we would encourage officials and the Committee to make enquiries with the house-building sector on this point. Our members note the prevalence and support for part-exchange agreements with house purchasers and there is a concern that these arrangements could be negatively affected by the removal of sub-sale relief as explained in the Bill (memorandum). Similarly there are concerns among experts involved in commercial transactions about the effect of abolition where certain transactions simply need to be organised in such a way that could now trigger a sub-sale charge. The key point for us is to consider the purposes and intentions of these kinds of arrangements and whether it is intended that LBTT should apply.

20. There are related questions on the treatment of trusts and partnerships. Again we understand that the Scottish Government is intending to draw the practice of LBTT administration into closer alignment with Scots law in these areas which is welcome.

Administration and collection

21. The new tax will inevitably bring costs for central government in terms of administration, organisation and collection. These costs will be reduced if the parliament can construct a less complex LBTT system than its SDLT predecessor but significant costs are not to be entirely avoided and in any event it could be that the taxes management legislation will have a greater influence on the establishment of Revenue Scotland than will LBTT.

22. One cause of considerable concern to members in recent years has been the apparent reduction of HMRC support for professional/taxpayer enquiries when faced with complex compliance regimes. It is inevitable that some transactions will cause uncertainty in terms of liabilities for LBTT and it will be important that Revenue Scotland or Registers of Scotland are able to advise taxpayers and their advisers on tax liability as necessary.

23. The Committee will be aware that for tenants entering new leases the SDLT return is not the only submission detailing rental information that is submitted to government. There is already a requirement for new lessees to submit a Rental Return to the relevant Scottish Assessor for the purposes of keeping rental information up to date for the Business rates system. It appears something of a burden to be requiring similar information for the same economic event designed to support taxation returns to separate authorities: we would welcome any move by the Committee to press Ministers to see if these processes might be reconciled. This could have the benefit of improving and making more up to date central government information on the commercial property market.

24. The Registers of Scotland face a potentially daunting task in terms of upgrading their IT and related systems in order to deliver the collection of LBTT for
the Scottish Government, particularly in the wider context of implementing a new Land Registration Act and Long Leases Act legislation. It will be crucial to ensure their IT systems are adequate to the task. Also, the Scottish Government has considered the issues of paying lease duty upon registration of a lease with the Books of Session as is the current legal practice in Scotland. This may need to be reviewed in the light of wider reforms to LBTT on commercial leases as we understand this is more a matter of good legal practice than actual statutory requirement.

Summary
25. SPF has welcomed the general approach to the implementation of LBTT thus far. We feel that this is an important opportunity to show investors that Scotland is competitive and open for business. Indeed we would go further and suggest that Scottish Ministers seek to differentiate Scotland positively in order to attract property investment, development and business location.

26. It is very difficult for us or the Scottish Government to speculate on the likely value of LBTT to the Scottish Exchequer in years to come. However, from the transaction data we have seen on the commercial property market it is difficult to conclude that for the near future there will be a very great improvement in economic activity. Similarly on the residential side receipts from SDLT in Scotland in recent years are much reduced from their previous levels and it is difficult to envisage this changing markedly in the near future.

27. The replacement of SDLT by LBTT represents an opportunity to improve on a tax that had regularly come in for criticism from the property industry in recent years. However, it is important to ensure that LBTT is perceived positively in relation to UK SDLT and is administered efficiently and effectively. A simpler and fairer tax should bring benefits in terms of compliance and administration. It will certainly be vital for the government to ensure that IT systems and the administrative infrastructure is in place well before 1 April 2015 in order to ensure a smooth transitional period from HMRC to Scottish Ministers as the tax authority.
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) BILL

SUBMISSION FROM SCVO

1. SCVO would like to draw your attention to the provision within this Bill under Schedule 13, for relief from LBTT for charities and charitable trusts. There are also a number of checks and balances built in to the provisions to ensure the intention for charitable purposes under the Charities and Trustee Investment (Scotland) Act 2005 are met.

2. We have consulted colleagues from the UK Charity Tax Group on which SCVO is co-opted as a management committee member. We would like to be reassured of the retention of this relief and consideration of the checks and balances as part of the Finance Committee’s scrutiny of this Bill. The relief is important for the work of SCVO’s members and the wider charitable sector in Scotland.

3. Paragraphs 1, 2, 4 and 7 of Schedule 13 are of relevance here.
1. In principle, it is agreed that a more progressive tax structure (as currently operates in the case of Income Tax) is preferable to the existing ‘slab’ approach as being an inherently fairer way of raising revenue.

2. That said, the rates and thresholds would need to be set at levels that did not significantly increase the overall ‘tax take’ (otherwise accruing as a result of this change) in any given case, at least initially. Otherwise this could of itself lead to a significant negative impact on the Scottish market (particularly in commercial transactions) – as being a less attractive place to do business than other parts of the UK.

3. Ideally, such a tax needs to be as certain as possible and not subject to future (frequent) amendments in order to allow those affected to forward plan. This certainty (of itself) may increase the ‘tax take’ by fostering a stable tax environment.

4. However, the opportunity to support key priorities through tax incentives would be welcomed. The Bill does not contain any provisions, for example, in order to develop areas of social deprivation. It would be welcomed if local authorities had powers to designate suitable areas of social deprivation from time to time with such areas attracting nil or reduced rates of such a tax. It is recommended that identification of such areas should be map-based rather than, for example, by way of postcode designation (this method was used previously in the context of SDLT relief for Disadvantaged Areas but had various problems such as undeveloped land not having full postcodes). Notwithstanding the point that under a more progressive tax, properties in such an area would likely incur less tax than would currently be the case (and so there would be no need for special treatment), we take the view that such a designation would positively encourage investment in such areas. Local authorities should also be able to undesignate such areas from time to time.

5. The proposal is to continue to operate the existing exemptions (as they apply under the SDLT regime). Initially, this would be an appropriate step to ensure there was no significant negative impact on the Scottish market (particularly in commercial transactions) in the short term – as being a less attractive place to do business than other parts of the UK.

6. However, regard should be had to the issue raised at paragraph 2 above: the categories of tax exemptions/reliefs could be extended in order to seek to fulfil such an objective.

7. With reference to Compulsory Purchase Order relief: the existing position is that a local authority does not pay SDLT if it purchases land or property through a CPO with the intention of transferring it directly to a third party to facilitate
development. The third party remains liable for SDLT if the property exceeds the minimum threshold.

8. The proposal is to amend the relief so that it will be available in respect of all CPOs where the local authority transfers land to a third party, without being limited to situations where this will facilitate 'development'. Given the proposal would enable local authorities to use CPOs to purchase empty homes, where the home will not be structurally altered after it is resold (and so would not attract CPO relief under the current definition of 'development') without having to pay the proposed tax - this proposal is welcomed.

9. The proposal is to continue to operate most of the existing reliefs (as they apply under the SDLT regime) at least initially. Again, this would seem a sensible approach at least initially in order not to interfere with the 'tax take'. It is noted that the existing zero-carbon homes relief will not be renewed as a relief. However, if such a relief would encourage energy efficiency of buildings it is thought this relief should be retained. Also, the proposed abolition of sub-sale relief may have a detrimental effect on the Scottish commercial property market compared with other parts of the UK and thus the impact of such an abolition should be reviewed periodically with a view to deciding whether to reintroduce it or not. The proposed relief in respect of social housing provided for Local Authorities through compliance with planning obligations is welcomed.

10. The anti-avoidance measures (including a general anti-avoidance provision) are welcomed particularly to avoid any adverse impact of the Scottish 'tax take' compared with other parts of the UK.

11. We agree with the proposal that LBTT would be paid simultaneously with applications to register title to land or property and that the Registers of Scotland would act as agent for Revenue Scotland. However, this presupposes that sufficient resources are allocated to the Registers by the Scottish Government in order to provide sufficient training for their staff to operate this properly and to provide a user-friendly format. The tax forms and the property forms would have to be properly integrated.

12. It is welcomed to note that the Scottish Government does not expect there to be a material change in costs falling on local authorities as a result of removing SDLT and introducing LBTT. This cannot be confirmed until actual tax rates and bands are finalised. However in light of the financial constraints in which local authorities operate we would ask that this expectation of not materially changing cost is maintained when finalising rates and bands.

13. Acknowledgement of the complexities of commercial leases and the need for more detailed consultation on this area is welcomed. There is a need to balance the administrative complexity and cost of calculating the appropriate rental and tax liability with the desire for a fair assessment. When considering alternative proposals consideration should be given to the need of many small to medium sized businesses for flexibility in their lease arrangements to manage the changing economic and market circumstances.
14. Historically the income from SDLT has been influenced by changing market conditions and seen annual income drop from £565 million in 2007/08 to £330 million in 10/11. The Bill assumes income will remain at current levels in the near future but will increase to £536 million by 2016-17, a growth of 62%. It is not clear if these forecasts will be used for the block grant adjustment. This level of growth is not currently being experienced in the market and caution should be taken in assuming this level in any future block grant adjustment.

15. I note the assumption for operating costs that 90% of applications will be processed on line. Although we welcome on-line applications, the ability to pay on-line presents us with a number of issues due to the payment routes available to us as an organisation. As a result prior to assuming 90% on-line payment, it would be wise to assess user's capability to use this facility.
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) BILL

SUBMISSION FROM THE WELLCOME TRUST

Key points
1. Charity relief from the Land and Buildings Transaction Tax should be available to all charities, regardless of the jurisdiction in which they are established.

2. Charity exemptions should apply irrespective of whether the charity acts alone or with other parties provided tax abuse is not the purpose.

3. Where anti-avoidance provisions are required the legislation should include a motive or purpose test rather than a wholesale denial of the charities exemption.

Introduction
4. Wellcome Trust (“the Trust”) is a charitable trust established under English law and registered with the Charity Commission for England & Wales (registration no. 210183). The objects of the Trust are to advance the health and welfare of mankind by research into any of the biosciences and to advance education by the study of the biosciences or their history. The Trust has a property investment portfolio valued at £1.6 billion at 30 September 2012. The portfolio includes both directly owned properties and indirect participations in various property investment funds involving unit trusts, partnerships and corporate structures.

5. The Trust does not directly carry on any charitable activities in Scotland and is therefore not registered with the Office of the Scottish Charity Regulator (OSCR) as a Scottish charity. However, it regularly awards research grants to Scottish universities and similar institutions; the value of these grants in the year ended 30 September 2012 was around £70 million. The Trust’s property investment portfolio includes interests in residential property in Scotland with a current value in the region of £25 million.

6. As a UK charity the Trust is generally exempted by HMRC from the application of Stamp Duty Land Tax (“SDLT”). Our response is therefore limited to the circumstances where the Land and Buildings Transaction Tax (Scotland) Bill does not currently provide relief from LBTT for property transactions by UK charities.

Response
7. Although Schedule 13 of the Bill provides for exemption from LBTT to be granted to a charitable buyer, the definition of a qualifying charity in paragraph 15 is restricted to a charity that is registered with OSCR. However, the comment in paragraph 221 of the Explanatory Notes to the Bill that “any charity, including an English or foreign charity, may register with OSCR at no cost” suggests that the Scottish Government intends that the exemption should be available in practice to non-Scottish charities and that the requirement to register with OSCR is not seen as a disproportionate burden.
8. We question whether that is in fact likely to be the case. Firstly, we understand that OSCR does not currently accept registration applications by non-Scottish charities that do not occupy land in Scotland or carry out activities in Scotland. This would appear to preclude registration by a non-Scottish charity buying property in Scotland for investment purposes. Secondly, even if OSCR were to accept such applications, we think it is misleading to suggest that registration with OSCR involves no costs. While OSCR does not charge a registration fee, registration nevertheless imposes significant ongoing compliance obligations in addition to those imposed by regulators in other jurisdictions. In these circumstances we believe that there are good grounds for suggesting that the requirement to register with OSCR could be viewed by the European Commission as a disproportionate restriction on the freedom of movement of capital in breach of the Treaty on the Functioning of the European Union. For this purpose we consider that registration as a charity with HMRC in accordance with the provisions of Schedule 6 Finance Act 2010 (which we introduced following the European Commission’s infraction proceedings against the UK on similar grounds and are applicable to SDLT) should be a sufficient requirement for exemption from LBTT.

9. We are also concerned that charities may be unable to benefit from the charity exemption when they co-invest in property in Scotland jointly with other investors.

10. This restriction could arise in the case of both direct and indirect investment.

11. In the direct investment case where a charity acquires an interest in land jointly with other purchasers, we are concerned that the recent decision of the Upper Tribunal in The Pollen Estate Trustee Company Ltd and another v Revenue and Customs Commissioners, [2012] UKUT 277 (TCC) would apply to LBTT. In that case the tribunal held that the SDLT charities exemption could not be claimed in respect of the acquisition of property by a charity jointly with a non-charitable purchaser, even in respect of the charity’s share of purchase.

12. The Upper Tribunal was unable to identify any underlying Government policy that would have led the UK Parliament deliberately to exclude exemption in the cases under appeal, as the following extract from its decision makes clear:

“Further support for that view is found in the charity relief itself. The first condition for obtaining relief is found in paragraph 1(2) of schedule 8 which requires the property acquired to be held for qualifying charitable purposes namely for use in furtherance of the charity’s purposes or as an investment. But paragraph 3 qualifies that requirement by providing for exemption (until a disqualifying event) where the purchaser intends to hold “the greater part of the subject-matter of the transaction for qualifying purposes”. Accordingly, if a charity acquires a property and uses, let us say, 80% of it in the furtherance of its charitable purposes, relief will be obtained in relation to the acquisition of the whole property. Why, it is asked, should not relief, at least as to 80%, be available if the charity acquires 80% of the property and a third party (non-charitable) acquires the other 20%? We return to this question in paragraph 54 below.”
HMRC contends, however, that where there is a joint purchase by a charity and a non-charity, exemption is not available even in relation to the charity’s share. Now, that may be what the legislation, on its true construction provides which is the matter for our decision. We asked Miss Tipples what policy reason there might be for distinguishing the acquisition of an existing undivided share by a charity from the acquisition of an undivided share as the result of a joint purchase with a non-charity. After considering the point with her clients overnight she gave two reasons. The first was that what the position was in relation to stamp duty. We do not see that as a satisfactory answer at all: SDLT is an entirely new tax invented to replace stamp duty because of the unsatisfactory nature of that tax. It is clearly not the case that the new tax carried with it any of the intellectual or other baggage of the old tax. The second reason given was that there was a policy concern that if relief was available where a charity contributed to the purchase price of a property that could lead to avoidance or abuse, for example the charity’s contribution could result in the remainder of the purchase falling into a lower tax band. We bear that in mind but that policy is not clear from the wording of the legislation.

We therefore approach the question of construction of the legislation on the footing that there was no policy of any sort which would have led Parliament deliberately to exclude exemption in the cases under appeal.”

13. Nevertheless, the tribunal felt compelled to hold that the strict wording of the legislation precluded a claim to charity exemption notwithstanding the lack of any underlying policy rationale for the result. We are concerned therefore that, absent more explicit provisions in the Bill, a similar result will prevail in Scotland.

14. Paragraph 39 of Schedule 17 to the Bill provides for the charities exemption to apply to a transfer of an interest in a partnership holding property in Scotland if the transferee is a charity registered with OSCR, provided that every chargeable interest held as partnership property immediately after the transfer is held for qualifying charitable purposes. Although this relief mirrors a similar exemption in the SDLT legislation, it is unclear why a charity should not be entitled to exemption in respect of its share of the partnership property merely because one or more of its partners are not charities. Limited partnerships are a common vehicle for collective property investment and there does not appear to be any policy reason for penalising charities that invest indirectly in property as against those that invest directly.

15. Insofar as it is necessary to address the risk of tax avoidance in the case of land jointly held by charities and other investors and, more generally, land held in collective investment vehicles, it would be more appropriate to include a purpose test than to deny charities the possibility of claiming any exemption at all.
FINANCE COMMITTEE CALL FOR EVIDENCE ON THE LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) BILL

SUBMISSION FROM HM REVENUE & CUSTOMS

1. This submission is in response to the Committee’s invitation of 25 January 2013 to submit written evidence on the following specific issues:
   - The transitional arrangements being made by HMRC with regards the operation of Stamp Duty Land Tax (SDLT) and the switch over in Scotland to Land and Buildings Transactions Tax (LBTT);
   - Liaison with Scottish Government (SG), Registers of Scotland (RoS) and Revenue Scotland over these arrangements;
   - Costs associated with this 'switch over'; and
   - Outline of the present relationship with RoS in gathering SDLT in Scotland.

2. HMRC is responsible for the collection and management of UK taxes (other than those collected by local authorities). As such, it is responsible for SDLT, which currently applies to land transactions in the United Kingdom. Under provisions of the Scotland Act 1998, SDLT will be “switched off” in Scotland and replaced by a devolved tax, the LBTT. This is expected to apply from April 2015.

The transitional arrangements being made by HMRC with regards the operation of SDLT and the switch over in Scotland to LBTT

3. Section 80J(2) of the Scotland Act 1998 (inserted by section 28 of the Scotland Act 2012) has the effect that LBTT cannot be charged on a land transaction if SDLT applies to it. Broadly this means that, if the effective date of a Scottish transaction (for SDLT purposes) is before the date on which SDLT is switched off in Scotland (the switch-off date) it will be subject to SDLT and if that date is on or after the switch-off date it will be subject to LBTT.

4. The “effective date” of a transaction for SDLT purposes is normally the date of settlement (completion) of the contract but may be earlier if “substantial performance” occurs – that is, where the purchaser takes up occupation or pays over the whole (or substantially the whole) of the consideration for the subject-matter of the transaction.

5. A transaction which is subject to LBTT cannot be linked (for SDLT purposes) with a transaction which is subject to SDLT. Where a single transaction includes land both in and outside Scotland, if the effective date of the transaction is on or after the switch-off date it will be necessary to apportion the transaction and return only the part relating to land outside Scotland for SDLT purposes. This will be very similar to the apportionment already made in such cases for the purpose of separate registration in Scotland and England/ Wales.

6. SDLT is a self-assessed tax and it is the responsibility of the taxpayer (with the assistance of his agent and/or HMRC guidance) to correctly return his liability to SDLT (if any).
The land transaction return (SDLT return) includes a field for the local authority (LA) code relevant to the land in question. Where the effective date of a transaction is on or after the switch-off date, it will not be possible to submit an online return including a Scottish (or no) LA code. When paper returns are keyed in, the HMRC IT system will flag up any returns including such a code, which will allow us to contact the person who submitted the return. Returns and payments relating to Scottish transactions, made in error to HMRC after the switch-off date, will be rejected and returned.

Section 29 of the Scotland Act 2012 disapplies the switch-off of SDLT from certain transactions where missives were concluded (contracts exchanged) on or before the day on which the Scotland Act received the Royal Assent (1 May 2012). This means that SDLT returns will be needed in a (probably small) number of cases after the switch-off date. HMRC will make arrangements to ensure that returns in these cases can still be submitted as valid SDLT returns on or after the switch-off date.

In a number of other cases – chiefly cases where the SDLT provisions for contingent, uncertain or unascertained consideration apply and cases involving certain lease provisions – the SDLT rules require a return or further return some time after the transaction took place. (These returns are generally made by letter.) These rules will continue to apply after the switch-off date to SDLT cases where the effective date was before the switch-off date.

In some other cases under the lease provisions, an event in relation to a lease triggers a new transaction for SDLT purposes. In Scottish cases, this new transaction will no longer be subject to SDLT if the effective date of the new transaction is on or after the switch-off date.

The transitional rules around the changeover from SDLT to LBTT in Scotland are straightforward in principle. HMRC proposes to address any uncertainty about how the rules apply in practice by publishing extensive guidance well in advance of the changeover. We are currently preparing this guidance in consultation with stakeholders, including RoS and SG. In particular, we have invited stakeholders to provide examples of cases which may cause difficulty in practice, so that these can be included in the guidance.

Section 42 of the Scotland Act 2012 allows the Treasury, by order, to make provision consequential on section 29 (the SDLT switch-off provision). This power was included to make any changes that are necessary as a consequence of the disapplication of SDLT in Scotland that were not identified at the time the Scotland Bill was drafted. Any exercise of this power, should the need arise, would be a matter for Treasury Ministers.

Liaison with Scottish Government, Registers of Scotland and Revenue Scotland over these arrangements

SG, Revenue Scotland and RoS are key stakeholders in the SDLT devolution project, with representatives on the project board and the overarching Scotland Act
Implementation Programme Board, as well as on the HMRC’s SDLT ‘Working Together Steering Group’ stakeholder forum.

14. HMRC is consulting fully with SG and RoS on the IT requirements and business changes for ‘switching-off’ SDLT in Scotland, to ensure that HMRC’s arrangements for excluding Scottish transactions and payments from SDLT fit with RoS’ plans to introduce the LBTT charge. HMRC is also working with RoS on the decommissioning of their Automated Registration of Title to Land (ARTL) system following switch-over.

15. The Scotland Act 2012 includes provisions to ensure that information regarding land transactions in Scotland remains available to HMRC and the wider UK Government for tax compliance and statistical purposes. HMRC is working with RoS to implement these provisions in respect of transaction information provided to SG in LBTT returns or registration documents.

16. The Scotland Act 2012 also enables HMRC to share relevant information with SG for the purposes of administering LBTT. HMRC will be working with SG and Revenue Scotland in due course to scope their requirements and understand how to provide this in practice.

17. HMRC is committed to a joined-up approach to communicating the SDLT devolution changes across the UK and will be consulting closely with SG, RoS and Revenue Scotland colleagues on the communications plan. HMRC officials will shortly be consulting SG, RoS and Revenue Scotland on a first draft of guidance to taxpayers on the SDLT implications of the transition.

Costs associated with this ‘switch over’

18. HM Treasury’s statement of funding policy, “Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly”, sets out that the costs of devolution must be met by the Devolved Administrations. Therefore, the costs associated with this work will be payable by the Scottish Government. Work is being undertaken to provide costings and an initial estimate will be produced during Summer 2013.

19. The costs for the work carried out by HMRC on SDLT devolution fall broadly into two categories: IT and business changes to enable systems to be ‘switched off’ and costs for communications, including publicity and guidance. The costs will be refined as the work on the project develops and will be shared with the Scottish Government, together with fuller details about the categories, as soon as they are available.

Outline of the relationship with Registers of Scotland in gathering SDLT in Scotland

20. HMRC’s current relationship with RoS (strictly, with the Keeper of the Registers of Scotland) covers two distinct areas: the Keeper’s role as land registrar and the Keeper’s role as agent for HMRC in the submission of land transaction returns and
SDLT payments under the ARTL system.

21. In the Keeper’s role as land registrar, she is responsible under SDLT legislation for ensuring that a Scottish land transaction is not registered in the Registers of Scotland unless the application is accompanied by a land transaction certificate or other prescribed information confirming that SDLT requirements have been complied with in respect of the transaction. (“Other prescribed information” refers to SDLT information submitted through the ARTL system.)

22. Some transactions – those where the chargeable consideration does not exceed £40,000 and some other transactions where the transaction is exempt from charge to SDLT – do not require an SDLT certificate. HMRC routinely liaises with RoS in cases where there is any doubt about whether or not a certificate may be required.

23. The RoS ARTL system includes a version of HMRC’s online land transaction return. Data entered into the system for registration purposes pre-populates the land transaction return, greatly simplifying completion, and completion of the return allows registration to proceed without requiring a certificate. In addition, registered users of ARTL operate a direct debit arrangement with RoS, which is used for payment of registration fees and SDLT.

24. Data from land transaction returns in ARTL is fed to HMRC via the Government Gateway. Payments are sent electronically in a daily batch to HMRC’s Accounts Office accompanied by a data feed allowing payments to be identified with individual returns. The relationship between HMRC and RoS in relation to ARTL is governed by a service level agreement and regular liaison takes place to deal with any issues which may arise in the live service environment.
Purpose
1. This submission is intended to supplement the oral evidence that Registers of Scotland (RoS) will provide to the Committee on 27 February in its scrutiny of the Land and Buildings Transaction Tax (Scotland) Bill.

Delivering an LBTT collection system
2. RoS is committed to developing and implementing a Land and Buildings Transaction Tax (LBTT) collection system that meets the needs of both Revenue Scotland and those who will be paying the tax. We already have a successful record in collecting (for HMRC) a small proportion of the current Stamp Duty Land Tax (SDLT).

3. As of 1 December 2012, RoS took on direct control and responsibility for all our IT assets and services, having successfully managed the transition from an out-sourced arrangement. Our strategy for future IT development is to use in-house expert resource supplemented by contracts for the provision of specific components. This is the approach we will be taking for delivery of the IT to support our collection of LBTT.

4. In developing the LBTT system, and the associated web-based facility for on-line submission of tax returns, we will follow best practice in agile project delivery, as routinely followed by UK Government departments and more generally. Our approach to software development is collaborative, incremental and iterative. This facilitates the creation of on-line systems that are built around the needs of the customer whilst ensuring compliance with the underpinning legislation. We will develop the LBTT system in active collaboration with the ultimate users of the system. Our aim is to create a system that supports the Scottish Government’s Digital Strategy and is the preferred medium for customers’ interaction with RoS for submission of LBTT returns and tax. Mindful of the need for future-proofing, we will develop the system with maximum flexibility to ensure that core features can be changed at short notice (such as reliefs, rates and the basis of tax calculation). This will minimise ongoing maintenance costs.

5. The LBTT system will be developed with links into core registration systems and Revenue Scotland systems as required. This approach will enable re-use of modules across RoS systems, facilitate the separation of non-registration associated LBTT collection and allow interfaces to be published for suppliers of case management systems.

6. In developing the LBTT collection system, we will also apply the lessons learned from the development and operation of our Automated Registration of Title to Land (ARTL) system. This system enables certain registration applications to be submitted on-line. Since the system became
operational in 2008, it has dealt with over 68,000 registrations. In the main, these relate to re-mortgage type transactions, though the system also accommodates transfers of title and the associated submission of SDLT returns and tax. We have already collected in excess of £1.5m of SDLT. The SDLT component of the ARTL system has been well-received though we fully acknowledge that other aspects of the system have received less positive customer feedback. RoS is working to improve the e-registration facilities that we can offer.

Relationship with Revenue Scotland and HMRC
7. We believe that the successful implementation of LBTT requires effective collaborative relationships between Revenue Scotland, RoS and HMRC. To that end, RoS is represented on the Scottish Government’s Tax Administration Project Board, the HMRC Transition Project Board and the HMRC Devolved Taxes Working Group. Revenue Scotland is also represented on the RoS LBTT Project Board. In addition, there is weekly dialogue between RoS and Revenue Scotland at project team level on common issues. Dialogue with HMRC will necessarily focus on the transition arrangements for the switch-off of SDLT in 2015 and also on subsequent cross jurisdiction transactions. In addition to ensuring that RoS and HMRC are aware of their respective dependencies, we will, in tandem with Revenue Scotland, work to deliver clear guidance for taxpayers and their advisers on those matters.

Costs
8. The anticipated costs to RoS are set out in the Financial Memorandum accompanying the Bill. Based on our understanding as to the current potential operation of LBTT, we are confident that we have accurately reflected the set-up and ongoing running costs to RoS. (Set-up costs are estimated to be £335,000 and annual running costs are estimated to be a maximum £325,000.) In estimating the IT build costs, we were informed by the costs of developing the SDLT component of ARTL and more recently by the development costs of the Crofting Register, which became operational in November 2012. Major system changes are already planned at RoS as a result of the Land Registration etc. (Scotland) Act 2012. By building in LBTT requirements from the outset into the design of these registration systems, additional costs will be minimised.

9. There are three areas where costs may vary from that provided in the Financial Memorandum, namely:

(i) **Compliance** - we are in dialogue with Revenue Scotland on whether, and if so how, RoS would be involved in LBTT compliance work. If we become involved, it may mean a reallocation to RoS of costs currently ascribed to Revenue Scotland;

(ii) **LBTT helpdesk advice to taxpayers** - we have factored in to our annual operating costs an allowance for the provision of a customer helpdesk, based on the premise that we may offer customer assistance on defined LBTT matters. Again, this area is one where we are in
dialogue with Revenue Scotland. Depending on the outcome, it may be that costs will require to be re-allocated or re-appraised; and

(iii) **Basis of taxation for non-residential leases** – as the Committee is aware, this is currently under consideration by the Scottish Government with a view to bringing amendments to the Committee at Stage 2. Our annual running cost assumptions have been based on any LBTT liability generating a single upfront payment. If that is not the case, and there is a subsequent requirement for RoS to undertake additional tasks, we will have to reassess our cost estimate for administering the tax.

**Registers of Scotland**
**20 February 2013**
Land and Buildings Transaction Tax (Scotland) Bill  
Scottish Parliament Finance Committee Briefing

1. Introduction
The Office of the Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (2005 Act) as a Non-Ministerial Department forming part of the Scottish Administration. OSCR is the registrar and regulator of charities in Scotland. There are currently over 23,500 charities registered in Scotland.

OSCR has been asked to give evidence to the Scottish Parliament Finance Committee on 6 February 2013 on the Land and Buildings Transaction Tax (Scotland) Bill. This Bill, that will replace the current UK Stamp Duty Tax regime, will allow any charity no matter where it is established to obtain tax relief provided the charity is registered by OSCR. This relief is provided for in section 27 and Schedule 13 of the Bill (the charity relief).

This note is intended to clarify OSCR’s position. In forming our view we have considered our overall vision, which is for charities you can trust and that provide public benefit, underpinned by the effective delivery of our regulatory role.

2. The current position - general
Generally, where an organisation wishes to represent itself as a charity in Scotland, the 2005 Act requires that it must be entered in the Scottish Charity Register. Where an organisation not entered on the Register represents itself as a charity, OSCR has powers to make it stop doing so.

To be registered as a charity in Scotland, an organisation must pass the charity test. This means the organisation must have charitable purposes and provide public benefit in Scotland or elsewhere. Registration can be complex depending on the nature of the organisation and there is no guarantee that this will result in the award of charitable status (in particular, charities established in other jurisdictions such as England and Wales often have to change their constitutions to meet the Scottish charity test). Once a charity is on the Scottish Charity Register it continues to be subject to ongoing regulatory requirements until it is removed or until it winds-up (and even then OSCR must monitor the use of any remaining charitable assets).

3. The current exception
However, the 2005 Act does provide for an exception to this for some charities established outwith Scotland. Section 14 of the 2005 Act states that:
A body which is not entered in the Register may, despite section 13, refer to itself as a 'charity' without being treated as representing itself as a charity if, and only if,

(a) it is-
   I. established under the law of a county or territory other than Scotland
   II. entitled to refer to itself as a ‘charity’ (by any means or in any language) in that country or territory, and
   III. managed or controlled wholly or mainly outwith Scotland

(b) it does not-
   I. occupy land or premises in Scotland, or
   II. carry out activity in any office, shop or similar premises in Scotland, and

(c) in making that reference, it also refers to being established under the law of a county or territory other than Scotland

The intention of section 14 was to ensure that only charities with ‘significant operations’ in Scotland are required to register with OSCR. It therefore allows charities established and registered elsewhere and who own, but do not occupy heritable property in Scotland (usually for investment purposes) to refer to themselves as charities here without being on the Scottish Charity Register.

One misapprehension in some of the written responses to the committee is that charities falling under the section 14 exception cannot register in Scotland. This is not the case. They may apply to OSCR for charitable status, but the section 14 exception means they are not obliged to do so. So a charity looking to claim the reliefs provided by this Bill on a property transaction here would, on a voluntary basis, be able to apply for charitable status in Scotland.

However, the mechanism set out in Schedule 13 of the Bill would have the effect of obliging charities to register with OSCR in order to be eligible for the charity relief where they would not otherwise be required to do so for Scottish charity regulation purposes.

The question is whether the added regulatory burden for the organisation and OSCR is justified and reasonable when the organisation is not carrying out any significant charitable activity in Scotland, nor occupying the property which it is purchasing and in relation to which it is claiming reliefs.

4. The impact of the proposals
We have considered the possible number of organisations this may affect. In terms of charities outwith the UK the numbers are likely to be very low, but there may be a number of charities, for instance in England Wales, which are solely investing in Scotland currently that don’t currently have to register with OSCR and are claiming the current relief legitimately. The drafting of the current Bill would not allow this: they would have to register with OSCR.

5. Conclusion
We understand that the intention of the condition to be registered with OSCR is to provide assurance that organisations seeking this potentially valuable charity
relief are genuinely charitable. There is a question as to whether bringing such organisations permanently under the full scope of the Scottish charity regulatory regime is a proportionate way of providing assurance that they qualify for what may only be a one-off relief on one transaction.

The current Scottish charity law provides for a distinction between charities representing themselves as charities in Scotland and those registered (and therefore regulated by OSCR). This might form the basis of an alternative approach to delivering the policy intention of the Bill, in providing assurance that organisations seeking charity relief are genuinely charitable, whilst avoiding additional registration and regulation workload.

We would be happy to engage in further discussion with a view to finding a solution to this relatively minor, but important, issue.

OSCR
1 February 2013
Existing Homes Alliance Scotland

Supplementary evidence and response to queries raised during evidence to the finance committee, 20 February 2013

1. Point raised by Malcolm Chisholm (11.39 am) about when the proposed relief might apply (Malcolm was making the point about someone who has been in a property for say 20 years and has undertaken no energy efficiency measures but the previous owner had)

1.1. It is difficult to predict the impact such a relief would have on asking/selling prices. It may well be the case that the seller seeks to increase the asking/selling price of the home but wider market conditions will determine their ability to do so.

1.2. What is certain is that the buyer would pay less LBTT on more energy efficient homes. This is therefore likely to make these homes more attractive. Whether, when the buyer in turn comes to sell, they are able to ask a premium due to tax relief will again be dependent upon wider market conditions but its energy performance would clearly indicate a saving to the buyer. Thus it would increase demand for more energy efficient homes which is the desired impact of this proposed relief. This would also help to deliver Government carbon, energy use and fuel poverty targets.

2. Point raised by Gavin Brown (11.44 am) about figures on rebates and over what time period.

2.1. The figures given were not a firm proposal but were merely an illustration of one possible approach. We accept that a revenue-neutral approach which delivered a relief to the most energy efficient properties while introducing an enhanced tax rate for the least efficient would deliver a more stable tax base and would therefore be more attractive to Government. Coincidentally a revenue-neutral approach would probably also enhance the energy efficiency premium and therefore have an increased impact on carbon savings.

2.2. To clarify, the figures that we provided of a cost between £80m and £170m were on the basis of the total LBTT take, including non-domestic buildings. We estimate that the maximum cost of introducing the relief on the basis of a 50% relief for A and B rated homes declining to 20% for D, as we outlined in oral evidence, would be £80m. However, we stress again that this was not a firm proposal but merely an illustration to aid debate.

3. Supplementary evidence

3.1. We would also like to add the following points in response to questions raised during oral evidence by the committee:

3.2. Would an energy efficiency relief be regressive?

3.3. We do not accept that an energy efficiency relief would be regressive. While it is true that the owner of a more expensive property would receive a greater relief than the owner of a less expensive property, they would also pay more in tax overall,
even after applying the relief. In other words if the LBTT on a large property were £20,000 and a 50% energy efficiency relief were achieved, the overall tax due would still be £10,000. If a smaller property with a £5,000 LBTT were to achieve a 50% rebate, the total tax payable would be £2,500, a lower tax payment. However, it may be that a cap on the allowable relief would be justified.

3.4. It should also be noted that larger properties do tend to have significantly higher carbon emissions than smaller properties. According to the Scottish House Condition Survey, the average tenement emits 3.9 tonnes CO2e per annum compared to 8.4 tonnes for the average detached house. It is therefore appropriate that larger homes are eligible for a higher actual rebate, even though the percentage rebate would be the same for all properties with the same energy efficiency rating.

3.5. Finally, the context in which the relief would be introduced should be noted. Specifically, the Scottish Government offers the Energy Assistance Package, shortly to become the National Retrofit Programme, which offers free energy saving measures including free central heating systems to those on benefits. For those who are more able to pay, the Green Deal will allow energy saving measures to be installed at no upfront costs.
Brodies LLP

The need for LBTT sub-sale relief

1. Following on from the oral evidence session on 20 February in which we stressed the importance of sub-sale relief, particularly for forward funding projects, we are attaching some further examples of commercial transactions where sub-sale relief is important.

Forward Funding – investment property

2. A substantial number of the development projects in which our clients are involved make use of forward funding to allow the purchaser of a completed development project to fund the construction costs. Forward funding is particularly important at the present time because bank funding is less readily available. We have been involved in forward funding projects involving investment purchasers as well as owner occupiers.

3. In our experience, forward funding is used for development projects with a wide range of different values – it is important for small scale projects as well as major developments.

4. A typical forward funding project for an investment property could involve the developer identifying a suitable site for an office building, a tenant interested in occupying the office to be built on that site and an investor interested in owning the completed office block and receiving rental income from the tenant.

5. The project would then proceed as follows:-
   • the developer contracts to purchase the site for say £6m
   • the developer contracts to sell the land to the investment purchaser for £6m
   • the developer enters into a development agreement with the investment purchaser to build the building on the land, with the investment purchaser paying the construction costs
   • the purchase of the land and the onward sale of the land to the investment purchaser are completed at the same time. Once the land has been transferred to the investment purchaser the developer constructs the building and the investor pays the construction costs, and the lease is granted to the tenant once the building is finished.

5. Under SDLT, only the investment purchaser would pay SDLT, and the SDLT payable would be £240,000 on the land price of £6m. No SDLT would be paid by the developer because of the SDLT sub-sale rules.

6. Under LBTT as the legislation is currently drafted, both the developer and the investment purchaser would have to pay LBTT on the land price of £6m. Assuming the rates of LBTT were the same as SDLT, both the investment purchaser and the developer would pay £240,000, i.e. the total LBTT would be £480,000. So far as the developer is concerned, the potential return on a project in Scotland would be much less than on a similar project elsewhere in the UK because the developer would have
face an additional £240,000 cost in doing the project in Scotland which would not arise elsewhere.

**Using an onward sale to fund part of a purchase**

7. The land which a seller wishes to sell may be more extensive than the land which a developer needs for a particular project. The developer may sell the excess land to another party so that the bank funding required for the project is reduced (since the proceeds of sale of the excess land helps to fund the purchase of the land from the seller).

8. By way of example, a seller is selling land for £12m. The developer only needs 3/4 of the land for his project and so contracts to sell the remaining 1/4 of the land to a third party for £3m. The developer uses the £3m received from the third party purchaser to pay the seller. The developer is effectively buying the land he needs for £9m.

9. Under SDLT, the developer would only pay SDLT on the land required for the project, i.e. the ¾ of the land which the developer retains for the project. The developer would pay SDLT of £360,000 (4% of £9m). The SDLT sub-sale rules would mean that no SDLT was paid by the developer on the 1/3 of land sub-sold to the third party, and the third party purchaser would pay SDLT of £120,000 on its £3m purchase.

10. As the LBTT legislation is currently drafted, LBTT would be payable by the developer on all of the land, i.e. on £12m and the third party purchaser would also pay LBTT on its £3m purchase. Assuming the rates of LBTT were the same as the rates of SDLT, the developer would pay LBTT of £480,000 (4% of £12m) which is £120,000 more than the developer would have to pay under SDLT. The third party would also pay LBTT of £120,000 on its £4m purchase.

11. The additional £120,000 LBTT payable by the developer if there is no LBTT sub-sale relief would be an additional project cost. This would mean that the project would be less attractive or even non-viable in Scotland as compared with a similar project in the rest of the UK.

**Urban regeneration projects**

12. In urban regeneration projects involving housing, it may be the intention that parts of the site which require particular attention, for example historic or listed elements, may be developed by specialist developers. In addition, parts of the site may include retail elements, and part may include social housing. The planning authority, however, may prefer to deal with a single major house building company or major developer of good covenant rather than with a number of different parties. It is therefore common for one of the well-known house building companies to contract to buy the whole of the site, and to contract to sell on some parts of the site to different developers with particular expertise who will develop different parts of the site.
13. Once the major house builder / developer has obtained planning permission for the development, the purchase of the site and the sale of the various elements of the site which are to be developed by different parties will be completed.

14. Under SDLT, the major house builder / developer will only pay SDLT on that part of the site which it retains and develops. The SDLT sub-sale rules mean that no SDLT is paid by the major housebuilder / developer on those parts of the site which are sold on to other developers.

15. Under LBTT as the Bill is currently drafted, the major house builder / developer in this scenario would have to pay LBTT on the whole of the site. In addition the specialist developer, retail developer and social housing developer would also pay LBTT on the parts of the site they are buying. This means that considerably more LBTT is payable than the SDLT which would be paid on a similar project elsewhere in the UK.

Brodies LLP
March 2013
Comments by the Scottish Property Federation following the Cabinet Secretary’s remarks to the Finance Committee of 27th February 2013

1. I write on behalf of the Scottish Property Federation in relation to the evidence session conducted by the Finance Committee with the Cabinet Secretary for Finance, Employment & Sustainable Growth on 27th February. I refer specifically to two areas of the evidence provided by the Cabinet Secretary: first on the position of the SPF in relation to knowing the rates and thresholds to be applied to Land and Buildings Transaction Tax, which I will clarify; and second, in relation to the Cabinet Secretary’s comments on forward funding and sub-sale relief.

Certainty of rates & thresholds

2. In the course of evidence debated between the Committee and the Cabinet Secretary reference was made to a quote correctly attributed to SPF during verbal evidence. This related to the fact that the current SDLT rates can change overnight on budget day and indeed, the government of the day normally adopts the procedure of not pre-announcing rates in order to avoid market distortion. This is not necessarily an absolute rule or procedure but it is the normal practice. I replicate the full quote from my written evidence below in answer to Mr Gavin Brown MSP:

Col. 2158 - (David Melhuish, representing SPF)

‘I would say that deals and transactions that might take place two years away—certain high-value and major development investments—are probably being considered right now. As early as possible an indication of what the top rate will be would be helpful. I recognise that SDLT rates can change overnight on a budget day, so I add that caveat to our answer.’

Oral evidence to Finance Committee: 30th January 2013, The Scottish Parliament

3. So, although the Cabinet Secretary was quite right to refer to the point that rates can and do change ‘on the day’, it is also true that the Scottish Parliament is not merely carrying on SDLT but is in fact establishing a new tax and with a new approach to the structure of the tax (the progressive approach), which is therefore set to be radically different in terms of rates and thresholds. It follows that there is more speculation and uncertainty on where these rates and thresholds might apply because the market understands that a different approach to structure and rate-setting is to be adopted, as well as to other technical aspects of what is a new tax. This goes beyond the normal levels of speculation and uncertainty for SDLT. In written evidence to the Finance Committee and to the Scottish Government we have of course acknowledged the uncertainty of the level of block grant to be cut in lieu of Scottish SDLT, but also noted how investors will be paying close attention to how the...
Scottish Government structures the new tax (see paragraph 5 of our evidence to your Committee: paragraphs 9 and 10 of our evidence to the Scottish Government).

4. In this context it would be welcome, as we and others have said in our written and verbal evidence for there to be as early a notice period as possible of the intentions of the government in relation to rates and thresholds. We recognise this will need to be informed by progress with the UK Government on the likely SDLT revenue to be attributed to Scotland and thus withdrawn from the Scottish block grant. However, in the context of long term commercial property investment, or divestment, and development our members report that the rates and thresholds are questions that are arising now in terms of interests in Scottish real estate in the next 24 months, after which LBTT will be in force.

**Sub Sale relief and forward funding**

5. We are heartened by the Cabinet Secretary’s apparent recognition of the importance of forward funding in the context of the introduction of Land and Buildings Transaction Tax. We have reservations about the absolute abolition of sub sale relief, which we fear will capture genuine transactions such as forward funding agreements for commercial development and investment. There is relatively little debt finance for this kind of investment currently and it is apparent that this position will continue for the foreseeable future. Therefore forward funding agreements are crucial to support continued commercial development.

6. We noted carefully the Cabinet Secretary’s desire to separate the issue of sub sale relief from forward funding: if this is the policy decision then it will be important to ensure that whatever targeted relief the government identifies must be sound. The difficulty is that the mechanism by which forward funding is achieved in practice typically involves a sub-sale, so protecting forward funding sub-sales (and potentially other ‘virtuous’ cases to which sub-sale relief should perhaps continue to be available) may not be entirely straightforward. We have of course informally offered to engage with the Bill team to seek to ensure that the intention articulated by the Cabinet Secretary on seeking to protect forward funding is achieved should sub sale relief be abolished. Again, it is important to get an early indication of the likely shape of any legislation in this area because our members are reporting that LBTT is already an area they are considering in terms of advice to clients considering commercial deals that may come to fruition in early 2015.
7. The SPF would be pleased to answer any further enquiries arising from this letter and we look forward to the publication of your Stage 1 report on the Land & Buildings Transaction Tax Bill in due course.

Yours sincerely

David Melhuish
Director
Scottish Property Federation
1. To assist the Finance Committee in its consideration of the Land and Buildings Transaction Tax (Scotland) Bill, the Society thought it would be helpful to give some further evidence in relation to sub-sale relief.

2. We therefore set out below details about the kinds of transactions where SDLT sub-sale relief is important, as well as some examples of some of the aggressive SDLT avoidance schemes making use of SDLT sub-sale relief which have been widely marketed.

**FURTHER EVIDENCE IN RELATION TO SUB-SALES COMMERCIAL TRANSACTIONS WHERE SUB-SALE RELIEF IS IMPORTANT**

**Forward Funding**

3. The aim of forward funding is to allow the investment purchaser of a completed development project to fund the construction costs. It is particularly important in the current economic climate because bank funding is more difficult to obtain and developers are less likely to build speculatively.

4. A typical forward funding project could involve the following steps:
   - a developer locates a site on which a building could be built and takes an option over the land or enters into a conditional contract to purchase the land for say £5m
   - the developer finds an investor such as a financial institution, pension fund or similar which is interested in owning the completed building and also finds a tenant to occupy the completed building
   - the developer sells the land to the investment purchaser for £5m, and then constructs the building on the land, with the investment purchaser paying for the construction costs of say £8m.

5. Under SDLT, the investment purchaser would pay SDLT of £200,000 on the land price of £5m because SDLT the sub-sale rules would mean that no SDLT is payable by the developer.

6. Under LBTT as the legislation is currently drafted, both the developer and the investment purchaser would have to pay LBTT on the land price of £5m. Assuming the rates of LBTT were the same as SDLT, both the investment purchaser and the developer would pay £200,000, ie the total LBTT would be £400,000. This would make forward deals much less attractive in Scotland than in the rest of the UK. The LBTT payable by the developer could represent as much as half of the developer’s profit.

7. Forward funding is important a wide range of projects from trophy buildings in city centre sites to much more modest developments.

**Using an onward sale to fund part of a purchase – commercial example**
8. It is frequently the case that the land which a seller wishes to sell is more extensive, and therefore more expensive, than the land which a developer needs for a particular project. The developer may therefore contract to sell the excess land to a third party using the proceeds of sale of the excess land to the third party to partly fund the purchase of the land from the seller.

9. By way of example, a seller is selling land for £12m and is not prepared to sell a smaller amount of land. The developer only needs 2/3 of the land for his project and so contracts to sell the remaining 1/3 of the land to a third party purchaser for £4m. The developer uses the £4m received from the third party purchaser to pay the seller.

10. Under SDLT, the developer would only pay SDLT only the land required for the project, i.e. the developer would pay SDLT of £320,000 (4% of £8m). The SDLT sub-sale rules would mean that no SDLT was paid by the developer on the 1/3 of land sub-sold to the third party, and the third party purchaser would pay SDLT of £160,000 on its £4m purchase.

11. As the LBTT legislation is currently drafted, LBTT would be payable by the developer on all of the land, ie on £12m and the third party purchaser would pay LBTT on its £4m purchase. Assuming the rates of LBTT were the same as the rates of SDLT, the developer would pay LBTT of £480,000 (4% of £12m) and the third party would pay LBTT of £160,000 on its £4m purchase. The additional tax payable by the developer under LBTT would be an additional project cost. This would mean that the project would be less attractive or even non-viable in Scotland as compared with the rest of the UK.

Using an onward sale to fund part of a purchase – agricultural example

12. Similar examples are common in relation to farmland. For example, a farmer wishes to increase the size of his farm. A neighbouring landowner is selling some land for say £2m. The farmer cannot afford to buy all of that land, and the landowner is not prepared to sell only part of it, so the farmer finds a third party to buy part of the land for £500,000. The farmer contracts to buy all of the land from the landowner for £2m and contracts to sell part of the land to the third party for £500,000. Both contracts are completed at the same time.

13. Under SDLT, sub-sale relief would apply to the land which the farmer was selling on to the third party, so the farmer would only pay SDLT on the land retained, ie he would only pay SDLT on £1.5m. The third party would pay SDLT on the £500,000.

14. As the LBTT Bill is currently drafted, the farmer would pay LBTT on the whole of the land price (ie on £2m) and the third party would pay LBTT on £500,000. So under LBTT it would cost the farmer a lot more to acquire the land he wanted.

Enforced sub-sale due to lack of funds

15. A developer may have contracted to purchase land for £5m but cannot complete the purchase because bank funding has proved impossible to obtain. The developer therefore finds a third party who is prepared to buy the land, and contracts to sell the land to that third party. That could be for £5m, or perhaps even a lesser amount if land values have decreased in the meantime. Both contracts are completed at the same time. The SDLT sub-sale rules would mean that the developer would not have to pay SDLT in these circumstances. As the LBTT legislation is currently drafted, the developer would have to
pay LBTT on £5m although the developer may not have the funds to do so (and indeed may have been forced to sell on at a loss).

**Site assembly**

16. In housing development schemes which may also contain an element of mixed use such as retail, a principal developer such as an expert regeneration company will contract to buy a large area of land. The principal developer may be the party putting the overall land holding together, providing planning expertise and putting infrastructure in to facilitate the development of housing by housebuilders in parcels of land covered by the general masterplan. The principal developer will therefore contract to sell different parcels of land within the regeneration site to housebuilders or retail developers. The purchase and onward sale of different parcels of land is likely to be completed at different stages in the development process with the principal developer relying on sub-sale relief under SDLT rules. If there is no sub-sale relief in LBTT, this type of structure would result in double the amount of LBTT being paid as opposed to SDLT and may act as a commercial disincentive to expert regeneration companies undertaking much needed projects in the housing sector in deprived areas.

**Aggressive SDLT avoidance schemes involving the SDLT sub-sale provisions**

17. The following are examples of some of the aggressive SDLT avoidance schemes which have made use of the SDLT sub-sale provisions. Most practitioners, and HMRC, do not believe that these schemes work, however they have been heavily marketed.

**Husband and wife schemes**

18. These widely marketed schemes involved the husband contracting to buy a house for 85% of the price and contracting to sell the house to his wife for 15% of the sale price, with both contracts being completed at the same time. Relying on the SDLT sub-sale rules, the 85% payable by the husband would not be subject to SDLT, and SDLT would only be payable, if at all, on 15% of the price, which could be below the SDLT nil rate band.

**Purchase plus option**

19. In this scheme, the purchaser contracted to buy a house from a third party seller and granted an option to another organisation to acquire the house. Relying on the sub-sale provisions, the purchaser paid no SDLT and nor did the other organisation to whom the option had been granted. A change to the SDLT sub-sale rules in Finance Act 2012 made it clear that the sub-sale provisions do not apply to the grant of an option.

**Sub-sale into partnership**

20. In these schemes, a buyer contracted to buy the land from the third party seller and then contracted to sell the land to a partnership in which the buyer was a party. Both transactions completed at the same time. The buyer paid no SDLT because of sub-sale relief and the partnership paid no SDLT because of the operation of the special partnership rules.

**Sub-sale plus distribution**
21. This scheme was involved in the recent Vardy Properties SDLT case which HMRC won before the First Tier Tax Tribunal. The buyer was an unlimited company which contracted to buy a commercial property for £7.25 million. On completion of the purchase the unlimited company reduced its share capital and distributed the property to its parent company by way of a distribution in specie. The purchaser company claimed that no SDLT was payable because of the sub-sale rules, and the parent company claimed that no SDLT was payable because there is no consideration payable in relation to a distribution in specie. Although the taxpayer lost this case because of a company law issue in the implementation of the scheme, the Tribunal indicated that even without the company law problem, the scheme did not work.
FURTHER EVIDENCE IN RELATION TO LICENCES OF LAND/BUILDINGS

1. To assist the Finance Committee in its consideration of the Land and Buildings Transaction Tax (Scotland) Bill, the Society’s Tax and Property committees thought it would be helpful to give some further evidence in relation to licences to occupy land and buildings.

2. The background to what follows is that there are many, many examples of licences to occupy land and buildings. They are ubiquitous, and far more numerous than traditional "real" property rights such as ownership, lease and servitude (eg access rights). Licences are personal contracts between two parties, like any other contract. They aren't property rights\(^1\). They happen to involve the right to occupy land or buildings but often that occupation right is wholly subsidiary to the main purpose of the contract\(^2\).

3. Examples include (analysed by industry sector):

   **Technology**
   - Satellite dishes
   - Site sharing of radio phone masts
   - Statutory wayleaves

   **Tourism**
   - Festivals
   - Markets: stalls/farmers' markets
   - Hotel rooms
   - Airport concessions (car hire companies/retailers)

   **Construction**
   - Oversailing cranes
   - Access rights
   - Facilitating works on other land – eg widening access to benefit primary project/Section 75 Agreement works
   - Temporary compounds
   - Siting of scaffolding on neighbouring ground

   **Hospitality/Leisure**
   - Concerts

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\(^1\) The classic legal distinction between a "real" property right and a "personal" contractual right to occupy property is that the former holds good: even if the other party changes or goes bust; the latter does not. Thus, the right of a tenant under a lease is a real property right because it holds good even if the landlord changes or goes bust; by contrast the right of the licensee under a licence to occupy property is defeated if the other party changes or goes bust. (General example of the problem with mere personal contractual rights: customers of the failed electrical retail chain Comet holding gift vouchers recently found, following Comet going into administration, that their vouchers were worthless. Why? Because they were only personal contractual rights against Comet. They were worthless if Comet went bust. Put into a property context, the difference between leases and licences is that leases hold good for tenants even if the landlord changes (eg following a sale of the property), or if the landlord goes bust, but licences don't hold good for licensees in similar circumstances. Licensees whose "landlord" changes, or goes bust, face being summarily ejected from the premises they occupy.

\(^2\) Sometimes it isn't, however: in practice, some licences are so like leases that they seem practically indistinguishable. That gives rise to difficulties, both as regards legal analysis and, more importantly, the making of policy decisions about which (if any) licence transactions should be taxed as if they were lease transactions.
Sporting events
Hotel operator management agreements (see annex, which explains various ways in which these arrangements can work)
Conferencing
Rights to occupy boxes in stadiums
Pub licensee/management agreements

Office
Serviced accommodation
Concessions
Client/Industry Events

Retail
Concessions
Stalls
Fit out licences/licences for works
Licences for fire escape over others land

Landed Estates/Agriculture
Contract farming
Wood cutting
Sporting rights (fishing/shooting)
Moorings
Seasonal grazing lets
Landscaping contracts

Site Assembly/Regeneration Projects
Usually include mixture of licences for access, works, construction rights, lighting, landscaping etc as above

Transport
Aviation
Runways/landings
Fuel depots
Storage (fuel/aircraft)

Ships
Moorings in harbours

Buses
Bus stops
Bus depots

4. The list is almost endless: indeed, legally, a licence to occupy exists where there is no commercial motive at all, such as when a café allows a local artist to display his/her works on their walls. Licences also exist even in simple social situations such as when you invite friends round to your house for dinner - the legal reason your guests are not (illegal) trespassers is that they have been authorised (by invitation) to enter your home.

5. The thing that all these transactions have in common is that they involve the permitted occupation of property other than by way of a formal legal property right like
ownership, lease or servitude. Sometimes the permission is given in return for a monetary payment (eg the conference industry); sometimes it is gratuitous (eg the dinner party\(^3\)).

6. The committees are of the view that NO licences to occupy land in Scotland should be subject to LBTT. That view is reached partly as a consideration of the need for the tax regime in Scotland not to be significantly more disadvantageous than the equivalent regime in the rest of the UK (where licences are completely exempt from SDLT), and partly as a result of the legal and commercial difficulties which are likely to arise if the Scottish Government wishes to submit licences to occupy land to LBTT generally (even if some licences – such as forward funding agreements - enjoy specific exemptions). That said, the committees of course accept that it is a matter of policy for the Scottish Government to determine whether (and, if so, to what extent) to tax licence transactions in Scotland. If that is the decision reached, the committees wish to alert the Scottish Government to the legal complexities of the situation, and how easy it would be unwittingly to introduce legislation which could have hugely unintended consequences (and which may even involve, in certain sections of the press, a degree of ridicule).

7. We have already stated above that it is the view of the committees that no licence transactions in Scotland should be subject to LBTT, just as no licence transactions in the rest of the UK are subject to SDLT. However, if the Scottish Government does decide to tax licences in Scotland, it is in the view of the committees essential that they do so on the basis that licences are generally exempt (just as in the rest of the UK) but that certain categories of licence are taxed. In other words, there is a "blacklist" of specific licence transactions which are taxable even though licences are generally exempt (as opposed to there being a "whitelist" of specific licence transactions which are exempt from tax even though licences are generally taxable).

8. The reason for the committees holding that view is that the types of licence that exist are (as demonstrated above) so numerous that it will simply be impossible in practice to create a whitelist. Any attempt to tax licences generally (while specifically exempting whitelist transactions) will inevitably result in many, many categories of licence being unintentionally potentially taxable.

9. Just one example of the unintended consequences which might ensue arises in the context of forward funding transactions. In a forward funding there is normally a sale of bare land by a developer to an investment purchaser/funder and a licence by the investment purchaser/funder back to the developer in relation to the construction by the developer of the building to be constructed and let on the bare land. But, if licences are generally taxed, that will bring the exchange rules into play, as this common situation will involve the exchange of one taxable interest (the sale by the developer to the investment purchaser/funder of the ownership of the site) for another taxable interest (the licence by the investment purchaser/funder allowing the developer and his contractors and professional team to enter the site). The resulting taxation analysis chaos in such a simple

\(^3\) To make matters even more complicated, the property industry throughout the UK (including Scotland) also uses the word "licence" in a similar – but actually quite different – way. If tenants of commercial property want to make (for example) alterations to their premises then they are generally prohibited from doing so unless their landlords consent. Usually landlords do consent. That consent is expressed in a legal document known as a Licence for Works (or similar). It is indeed a licence, as it is essentially a permission to do something which would otherwise be unlawful. (Like a driving licence or a liquor licence – if you don't hold them then you cannot lawfully drive or sell alcohol.) But these licences are wholly different from the licences to occupy that we must consider for LBTT purposes: they are just general permissions to do something. The licences we must consider are permissions to occupy land or buildings. It's important to bear in mind the difference.
and commonplace example will be extremely difficult, if not impossible, to unravel. As we have said above, the ensuing mess would place Scotland in a very difficult position compared to the rest of the UK, and would surely invite ridicule from the press and other commentators.

Annex

Hotel Management Agreements (NB this would include similar agreements relating to the Licensed Trade such as pubs)

It may be helpful to consider some parameters, taking a scenario/parties as follows;

A = Mr Brown, Landowner of hotel or pub

B = Hotel Management Limited (owned by Mrs Black)

Property = Hilton Arms Hotel

There are various options here:

1. Contract for Supply of Services OR Contract for Employment

In this scenario, Mr Brown would employ Hotel Management Limited (either as an employee (this would probably be Mrs Black in her personal capacity) or under a contract for services) to carry out works or services in Hilton Arms Hotel.

So as an employee, Mrs Black might be employed as a cleaner or bar staff or cook. Under a contract for services, Hotel Management Limited might be engaged to carry out building works to refurbish the hotel or to cater weddings and other functions.

In this scenario, Mrs Black or Hotel Management Limited as appropriate are being paid for their services (whether under a contract of employment or a contract for services).

There is a Licence implicit in the arrangement between Mr Brown and his employee/Hotel Management Limited to allow the employee/Hotel Management Limited to enter onto Hilton Arms Hotel. This however cannot amount to a Lease as no payments are flowing from the employee or Hotel Management Limited to A in exchange for fixed rights of occupation.

2. A Lease

The opposite of the scale from category 1. is where Mr Brown grants Hotel Management a Lease of Hilton Arms Hotel.

In order to comprise the Lease, as well as setting out the start and end dates, defining the premises (Hilton Arms Hotel) and specifying all the rights and obligations on Hotel Management as a Tenant under the Lease, the Lease will provide for Hotel Management Limited to pay rent to Mr Brown. This may be a fixed sum or referable to for example turnover but, in this scenario this would constitute a Lease. Depending on the duration and consideration, this Lease would be returned for SDLT purposes and, depending again on duration, registered in either the Books of Council and Session or Land Register.
3. Hotel Management Agreement

This is the ‘middle’ scenario.

Here, Mr Brown in effect “joint ventures” with Hotel Management Limited to run a business. Mr Brown contributes the Hilton Arms Hotel and Hotel Management Limited contributes their expertise in running a hotel and, hopefully, producing a profitable return for the business.

This is seen/dealt with as a commercial contract between the parties i.e. it is treated as a personal agreement between the parties and can be terminated on various events – for example if Hotel Management Limited fail to turn a profit.

The contract between the parties will set out the agreed commercial terms and obligations which will include the extent of Hotel Management Limited’s use of the Hilton Arms Hotel, the basic operational services which Mr Brown expects Hotel Management Limited to provide as part of the business, the responsibilities and obligations of each party in relation to ancillary matters such as obtaining/maintaining liquor licenses etc and, critically, the split of profit sharing/return.

The basic position is that Mr Brown pays Hotel Management Limited an agreed ‘base’ fee to run and operate the hotel. On the basis (and in the hope) that Hotel Management Limited will turn a profit, any profit generated will be paid over by Hotel Management Limited to Mr Brown on a shared basis in accordance with the terms of the Hotel Management Agreement.

In these circumstances Hotel Management Limited accepts that they are partnering in a business relationship rather than acquiring a real right in relation to the property. Hotel Management Limited accepts therefore that, should Mr Brown die or become insolvent, there contractual business arrangement is not transferable to Mr Brown’s successors.

It is often the case that (1) Hotel Management Limited are operators of a number of hotels under similar agreements – either with Mr Brown or with Mr Brown and other owners and/or (2) Mr Brown owns more than one hotel and engages an operator for each on the same terms and conditions.
Further Information Requested by the Finance Committee of the Scottish Parliament

Dear Convener

Please find below the further presentation of the data collected from the Registers of Scotland by the Scottish Property Federation, illustrating the changes in the total value of sales of Scottish commercial property on an April to March annual basis. At this stage of course we have just the three quarters for financial year April 2012 to March 2013. We have provided an exponential value line to illustrate where this total value may eventually lie. However, we believe the true figure will actually be slightly higher than this line suggests and will come to around £1600mn (£1.6bn) for the 2012-13 financial year.

![Chart showing Value of Scottish Commercial Property Sales](chart.png)

The SPF is happy that this information may be published by the Committee and we would be pleased to answer any further questions to the best of our ability.
Subordinate Legislation Committee

15th Report, 2013 (Session 4)

Land and Buildings Transaction Tax (Scotland) Bill

Published by the Scottish Parliament on 19 February 2013
Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a)
   (i) subordinate legislation laid before the Parliament;

   (ii) any Scottish Statutory Instrument not laid before the Parliament but classed as general according to its subject matter;

and, in particular, to determine whether the attention of Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

*(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Nigel Don (Convener)
Jim Eadie
Mike MacKenzie
Hanzala Malik
John Pentland
John Scott
Stewart Stevenson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee
Euan Donald
Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
Subordinate Legislation Committee

15th Report, 2013 (Session 4)

Land and Buildings Transaction Tax (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meetings on 29 January and 19 February 2013 the Subordinate Legislation Committee considered the delegated powers provisions in the Land and Buildings Transaction Tax (Scotland) Bill at Stage 1 ("the Bill")\(^1\). The Committee submits this report to the Finance Committee as lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill ("the DPM")\(^2\).

OVERVIEW OF THE BILL

3. The Land and Buildings Transaction Tax (Scotland) Bill was introduced in the Scottish Parliament by the Scottish Government on 29 November 2012.

4. The Bill is the first of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012. Under the terms of that Act the Scottish Parliament is empowered to make provision in relation to Scotland for devolved taxes. Section 80I of the Scotland Act 1998 provides that a

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\(^1\) The Land and Buildings Transaction Tax (Scotland) Bill is available here: [http://www.scottish.parliament.uk/S4_Bills/Land%20and%20Buildings%20Transaction%20Tax%20Bill/b19s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Land%20and%20Buildings%20Transaction%20Tax%20Bill/b19s4-introd.pdf)

\(^2\) The Land and Buildings Transaction Tax (Scotland) Bill Delegated Powers Memorandum is available here: [http://www.scottish.parliament.uk/S4_Bills/LBBT_Final_DPM.pdf](http://www.scottish.parliament.uk/S4_Bills/LBBT_Final_DPM.pdf)
tax charged on the land transactions listed in that section is a devolved tax. This Bill makes such provision to be called the Land and Buildings Transaction Tax (LBTT). It is intended that this replace the current UK Stamp Duty Land Tax (SDLT) in relation to Scotland.

5. In the consideration of the DPM at its meeting on 29 January, the Committee agreed to write to Scottish Government officials to raise questions on the delegated powers. This correspondence is reproduced in the Annex.

DELEGATED POWERS PROVISIONS

6. The Committee considered each of the delegated powers in the Bill.

7. The Committee determined that it did not need to draw the attention of the Parliament to the following delegated powers:

Section 5(4) – Power to vary the interests in land that are exempt interests;
Section 17(2) – Power to amend Act or make other provision about chargeable consideration;
Section 27(3) – Power to vary reliefs;
Section 30(5) – Power to amend £40,000 notification threshold;
Section 39(1) – Power to amend 30 day period in which returns must be made;
Section 42(1) – Power to make regulations about applications to defer payment in case of contingent or uncertain consideration;
Section 45(6) – Power to make regulations to specify scheme as not being a unit trust scheme;
Section 46(1) – Power to make regulations in relation to open-ended investment companies;
Section 52(2) – Power to provide that a person other than the Scottish Ministers is the Tax Authority;
Section 54(1) – Power to make provision about review and appeal of Tax Authority decisions;
Section 58(9) – Power to change what counts as residential property;
Section 62(1)(b) – Power to prescribe date other than the date of completion as the effective date;
Section 66 – Power to make ancillary provision;
Section 69(2) – power to commence;
Schedule 1, paragraph 8 – Power to vary the transactions that are exempt transactions;
Schedule 2, paragraph 17(3) – Power to modify qualifying public or educational bodies;
Schedule 5, paragraph 14 – Power to prescribe minimum prescribed amount for multiple dwellings relief;
Schedule 8, paragraph 1 – Power to make regulations granting relief concerning alternative finance investment bonds;
Schedule 15, paragraph 5 – Power to prescribe additional public bodies for the purposes of compliance with planning obligations relief;
Schedule 16, paragraph 4 – Power to prescribe additional public bodies for the purposes of transfers involving public bodies’ relief.

8. The Committee’s comments and, where appropriate, recommendations on the other delegated powers are detailed below.

Section 24(1) – Duty to specify tax bands and rates
Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure for the first order, negative thereafter

Background
9. Section 24 provides the mechanism by which the tax bands and the percentage tax rate for each band are set. Separate bands and rates can be specified for residential and non-residential property transactions. For each type of transaction there must be a nil rate tax band and at least two other bands, the tax rate for which is progressively higher.

10. The basic taxation structure of LBTT is therefore set out in section 24 in terms of the number of bands and how they inter-relate. However, the bands and the tax rate are set using subordinate legislation. The first time the power is exercised it is subject to the affirmative procedure. Any subsequent exercise of the power is subject to the negative procedure.

Comment
11. The Committee sought further justification from the Scottish Government as to the choice of negative procedure for the second and subsequent exercise of the power. It was not clear to the Committee why the potential use of the power is any less significant on subsequent occasions and therefore why reduced scrutiny is appropriate.

12. The Scottish Government asserts in its response that subsequent changes “will be in response to market conditions”. The Government also indicates that “it is essential that the Scottish Government is in a position to respond hastily to provide certainty for the property market in Scotland” in response to changing market conditions. Finally, the Scottish Government draws a comparison with the power to set non-domestic rates under section 7B of the Local Government (Scotland) Act 1975 which is subject to the negative procedure.

13. The Committee does not doubt that the current administration only intends to use the power on subsequent occasions to fine tune the tax bands and rates in response to market conditions. However, the administration need not bind itself to do so and cannot bind future administrations at all. The Committee requires to consider the potential use of the power and should not be constrained by the views expressed by the current administration as to how it would be exercised. It remains the case that the power could be used to vary substantially the number of bands and the rates applicable within those bands subject to the limitations set out in paragraph 9. The Committee considers this to afford the Scottish Ministers of
the day a significant discretion as to its tax raising policy. If the Ministers consider that the power merits the affirmative level of scrutiny on the first exercise of the power then the Committee sees no reason why it might not require that level of scrutiny on each occasion.

14. In response to the suggestion that the power may need to be exercised as a matter of urgency, it is for the lead committee to assess how likely that may be in practice. The Committee observes that it takes a full 40 days for a negative instrument to be free from annulment, whereas an affirmative instrument could be approved and therefore free from parliamentary challenge more quickly than that if parliamentary timetabling permits. The more significant difference between the two procedures in terms of timing is that an affirmative instrument cannot be approved at a time when the Parliament is not sitting. However, it is possible to provide a suitable procedure to deal with situations of emergency during such periods which require to be approved on the Parliament’s return in order for the relevant instrument to continue to have effect. The Government’s concerns as to the ability to act in haste are therefore not incompatible with a requirement for parliamentary approval.

15. The Committee has considered the power to set non-domestic rates cited by the Scottish Government. However it considers that the power currently under consideration is broader in its scope given that it can be used to set different bands and rates. It is more sophisticated and could have greater effect on patterns of revenue raising, the property market and other aspects of financial investment.

16. For these reasons the Committee considers that the Scottish Government has not provided a compelling argument for a reduction in the level of scrutiny on the second and subsequent exercise of the power. The Committee therefore recommends that the power should always be subject to a form of affirmative procedure. The Committee would not be resistant to a suitable form of emergency affirmative procedure being available to ministers in the event that the need to exercise the power was to arise during a period when the Parliament was not sitting.

Section 47(1) – Power to make regulations about residential property holding companies

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Background

17. Residential property holdings companies (RHPCs) are used as vehicles for the acquisition of property which does not result in a transfer of title in the ordinary manner. Instead, through a transfer of interests in the company, a person becomes entitled to occupy property owned by the company.

18. Section 47 confers power on the Scottish Ministers to provide for qualifying transfers of interests in RPHCs to be treated as land transactions and to be chargeable transactions. Subsection (4) goes on to specify in more detail what sort
of provision this power can include but this is not an exhaustive list. In short this is a very wide power to set out how RHPCs are to be treated for the purpose of LBTT. The power can be used to modify the Bill once enacted and is not subject to any particular restriction. The power will be subject to the affirmative procedure if it amends primary legislation, but if it merely modifies the effect of primary legislation by setting out how LBTT is to apply in freestanding regulations it will be subject to the negative procedure.

**Comment**

19. The power is very broad and the Committee wished to explore whether the Scottish Government’s policy on RHPC’s could be further refined during the passage of the Bill which would allow the power to become more limited. The Committee also questioned the level of scrutiny proposed.

20. The Scottish Government advises that it plans to bring amendments forward at stage 2 and that these are likely to lead to the deletion or narrowing of the powers presently in the Bill. The Scottish Government considers that the ability to act swiftly is material to their view on the level of scrutiny that is appropriate. The Committee refers to its comments in paragraph 14 above in response to this argument.

21. Given that the Scottish Government has indicated that the scope of this power is likely to change significantly at stage 2 the Committee will await sight of the proposed amendments before reaching a view on the power. The Committee requests that the Scottish Government provides the Committee with early sight of any proposed amendments to facilitate the Committee’s consideration of the power as amended. The Committee refers to its comments in paragraph 16 above regarding procedural requirements in situations where the power might be required to be exercised in an emergency.

**Section 55(1) – Power to make regulations about the application of the Bill to leases**

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**Background**

22. Section 55 confers a duty on the Scottish Ministers to make regulations which provide for the application of this Act in relation to leases. Subsection (2) sets out some of the things which the regulations may cover but is not an exhaustive list. The regulations may modify primary legislation including the Act. The affirmative procedure applies if the regulations amend primary legislation but otherwise the negative procedure applies.

**Comment**

23. The power is very broad and affords the Government a wide discretion in the application of the LBTT regime to leases. This raises significant issues of policy which, as the Bill stands, are to be postponed to subordinate legislation.
The Committee wished to explore whether the Scottish Government’s policy on the application of LBTT to leases could be further refined during the passage of the Bill which would allow the power to become more limited. The Committee also questioned the level of scrutiny proposed.

The Scottish Government advises that it intends to bring forward amendments to the Bill in respect of the application of LBTT to non-residential leases at stage 2. These may well lead to deletion of the regulation making power in section 55. In recognition that this power concerns important issues of policy the Government has already given the Finance Committee an undertaking to share proposed amendments at the earliest opportunity. The Scottish Government considers that the ability to act swiftly is material to their view on the level of scrutiny that is appropriate. The Committee refers to its comments in paragraph 14 in response to this argument.

Given that the Scottish Government has indicated that the scope of this power is likely to change significantly at stage 2 the Committee will await sight of the proposed amendments before reaching a view on the power. The Committee requests that the Scottish Government provides the Committee with early sight of any proposed amendments to facilitate the Committee’s consideration of the power as amended. The Committee refers to its comments in paragraph 16 above regarding procedural requirements in situations where the power might be required to be exercised in an emergency.

Section 67(1) – Inherent power to make ancillary provision

Background

This ancillary power is not referred to in the DPM as it is not a freestanding power. It is parasitic on any other power conferred by the Bill and will therefore be subject to the procedure which applies to the primary power to which it attaches.

The Committee sought clarification from the Scottish Government as to why it was necessary to provide that ancillary powers are available inherently as part of every delegated power in the bill in addition to the separate stand-alone ancillary powers provided in section 66.

Comment

The Committee accepts the explanation provided by the Government is correct in identifying the difference between the inherent power in section 67 and the stand alone power in section 66. The Committee also accepts that the power in section 67 is appropriate and that it should be subject to the affirmative procedure where it amends primary legislation. What the Committee is not any clearer about is why it is necessary or appropriate for every delegated power in the bill to inherently permit the full range of ancillary power to be made standing that such provision could separately be made under section 66.

However, on considering the matter further the Committee observes that the power in section 67(1) does not specifically permit the modification of enactments in contrast to section 66(2). Therefore it considers that should the Ministers wish to make ancillary provision which modifies enactments
then the power in section 66 will require to be used to do so unless the primary power specifically authorises such modifications. On this basis the Committee is content with the power in section 67(1).

Schedule 9, paragraph 3 – Power to prescribe appropriate proportion for crofting community right to buy relief

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Order  
**Parliamentary procedure:** Negative procedure

**Background**
31. Schedule 9 sets out the relief available in relation to chargeable transactions entered into in pursuance of the crofting community right to buy. (The right exercisable by a crofting community body under part 3 of the Land Reform (Scotland) Act 2003.) This relief will reduce the tax payable by the “prescribed proportion”. The DPM explains that this approach is required because LBTT differs from SDLT in that it has progressive tax rates rather than “slabs”. In each case the relief will be calculated by applying the prescribed proportion to the amount of tax that otherwise would be chargeable.

**Comment**
32. The DPM explains that the negative procedure is considered appropriate for “a technical and administrative matter”. The Committee sought further information from the Scottish Government to explore why this power was considered to be administrative in nature.

33. The Scottish Government explains that it does not consider the exercise of the power would be controversial and that the purpose of the relief is to prevent the application of LBTT tax charges from acting as a barrier to the use of a Crofting Community’s right to buy. As a result of that right being exercised by a group of crofters the total tax bill might otherwise be higher than it would if the crofts were acquired individually. The Committee notes that more detailed provisions cannot be included in the bill at this stage since the appropriate percentage cannot be finalised until the tax bands and rates are set under section 24.

34. The Committee accepts that the power is appropriate in principle. The need to provide for the setting of the appropriate rate by order is an inevitable consequence of postponing the setting of tax bands and rates by delegated power. Nevertheless the Committee accepts that it would be sensible to provide a mechanism by which that percentage could be varied in the future. Following the explanation provided by the Scottish Government as to the purpose of the relief the Committee accepts that the negative procedure is a suitable level of scrutiny.
Schedule 11, Part 3, paragraph 6(3) – Power to prescribe proportion for acquisition relief

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Background

35. Schedule 11 sets out relief for certain transactions in connection with the reconstruction and acquisition of companies. The power in paragraph 6(3) enables Ministers to prescribe the proportion of relief in a similar manner to that set out in paragraph 31 above. The reasons given for the power and the choice of negative procedure are the same as for that relief.

Comment

36. The Committee sought further information from the Scottish Government about the effect of the relief so as to assess whether this was properly a technical and administrative matter. The Scottish Government's response has not assisted the Committee in this assessment. The response simply states that the Government does not consider the power to be controversial and that the power is necessary because the percentage must be set at the same time as the LBTT bands and rates are set.

37. As stated in paragraph 33 above, the Committee accepts the need for the power in principle given that the setting of tax bands and rates is postponed. However the Committee is not clear from the information provided whether setting the level of relief afforded in these particular circumstances might merit a higher level of scrutiny than the Scottish Government proposes. The Committee considers that the lead committee is best place to address this question through its scrutiny of the policy underlying this power. The Committee therefore suggests that the lead committee may wish to explore this issue further with the Scottish Government.

Schedule 16, paragraph 2 – Power to relieve certain land transactions involving public bodies

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

38. Schedule 16 provides that certain transfers involving public bodies which are in the process of statutory reorganisation are exempt from charge. The power in paragraph 2 allows for land transactions involving public bodies to be exempt from charge. The DPM explains that the power is taken so that Ministers can "relieve additional types of transaction involving public bodies if it emerges that they are not relieved but ought to be". The DPM considers that the negative procedure is appropriate for this as it is described as a "technical and administrative matter" and the power does not allow for the amendment of the Bill itself.
Comment

39. The Committee sought clarification as to why the Scottish Government considered this power to be a technical and administrative matter although the DPM suggested it could be used to specify additional types of exempt transaction. The Committee considers that provision of additional types of relief is an important matter of policy. The Committee also queried why these exemptions were to be set out in subordinate legislation unlike the other reliefs which are set out in the bill itself.

40. The Scottish Government has explained that in fact this power is intended to be used to exempt particular transactions involving public bodies which do not otherwise qualify for relief under the bill. It is not to create new exempt types of transaction. The power is intended to be a “safety net” to cope with individual circumstances rather than a means by which new reliefs can be created. The DPM is misleading in this respect.

41. Following this clarification the Committee accepts that it is more appropriate to include such exemptions in subordinate legislation. Given that the power is to be used to address individual transactions the Committee also accepts that the negative procedure is a suitable level of scrutiny.
Correspondence with the Scottish Government

On 29 January, the Subordinate Legislation Committee wrote to The Scottish Government as follows:

Land and Buildings Transaction Tax (Scotland) Bill at Stage 1

1. The Subordinate Legislation Committee considered the above Bill on Tuesday 29 January and seeks an explanation of the following matters:

Section 24(1) – Duty to specify tax bands and rates
Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure for the first order, negative thereafter

1. Section 24 provides the mechanism by which the tax bands and the percentage tax rate for each band are set.

2. The power will set the tax bands and tax rates and there are no limits on how these may be set beyond the limited requirements set out in section 24 that these be progressive rates and there be at least two bands in addition to the nil rate band. The power has the potential to significantly affect the raising of revenue whenever exercised and not just on the first occasion.

3. The Committee has expressed concerns as to whether the negative procedure is an adequate level of parliamentary scrutiny over the exercise of the power subsequent to the first exercise of the power and asks the Scottish Government for further explanation of this matter.

Section 47(1) – Power to make regulations about residential property holding companies
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure (if amends an Act), otherwise negative

4. Section 47 confers power on the Scottish Ministers to provide for qualifying transfers of interests in residential property holdings companies to be treated as land transactions and to be chargeable transactions.

5. The Committee asks the Scottish Government:

- When it intends to produce a draft of the proposed regulations?
• Why, when it is clear from the Delegated Powers Memorandum that the
  power permits a wide range of approaches to the application of Land and
  Buildings Transaction Tax to residential property holdings companies, which
  can impact significantly on the operation of the tax regime, the affirmative
  procedure would not be a more appropriate level of scrutiny in all cases?

• For an explanation of the circumstances in which it would be possible to
  make provision for the application of Land and Buildings Transaction Tax
  without making textual amendments to primary legislation and therefore
  without engaging the affirmative procedure?

Section 55(1) – Power to make regulations about the application of the Bill to
leases
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure (if amends an Act),
otherwise negative

6. Section 55 confers a duty on the Scottish Ministers to make regulations
which provide for the application of this Act in relation to leases.

7. The Committee asks the Scottish Government

• When it intends to produce a draft of the proposed regulations or publish
  proposed amendments to the Bill which would replace this power?

• Why, when it is clear from the Delegated Powers Memorandum that the
  power concerns important issues of policy which are also of significance to
  consultees, the affirmative procedure would not be a more appropriate level
  of scrutiny in all cases?

• For an explanation of the circumstances in which it would be possible to
  make provision for the application of Land and Buildings Transaction Tax to
  leases without making textual amendments to primary legislation and therefore
  without engaging the affirmative procedure?

Section 67(1) – Bolt on power to make ancillary provision

8. Section 67 (1) is parasitic on any other power conferred by the Bill and will
therefore be subject to the procedure which applies to the primary power to which
it attaches. It allows the exercise of the power in question to make different
provision for different cases or descriptions of case or for different purposes. But
more significantly it allows Ministers to make the full range of ancillary powers,
including supplementary provision, when exercising any other power in the Bill.
9. The Committee asks the Scottish Government:

- For justification of the need for ancillary powers to be available for all powers under the Bill given the stand alone provision in section 66 which could be combined with the primary power in any event?

- Why the full range of ancillary powers in section 67(1)(b) is applied also to the power to commence the Bill given that section 69(2) separately allows that power to make transitional, transitory and savings provision?

- If this is intended and, if so, why?

Schedule 9, paragraph 3 – Power to prescribe appropriate proportion for crofting community right to buy relief

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

10. Schedule 9 sets out the relief available in relation to chargeable transactions entered into in pursuance of the crofting community right to buy. (The right exercisable by a crofting community body under part 3 of the Land Reform (Scotland) Act 2003.)

11. The Committee asks the Scottish Government:

- To provide further information about the proposed use of the power in paragraph 3 of schedule 9, the effect this may have on the Land and Buildings Transaction Tax regime as a whole or on the market for the transactions concerned, and whether the power might be considered by consultees to be controversial depending on how it is exercised.

Schedule 11, Part 3, paragraph 6(3) – Power to prescribe proportion for acquisition relief

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

12. Schedule 11 sets out relief for certain transactions in connection with the reconstruction and acquisition of companies. The power in paragraph 6(3) enables
Ministers to prescribe the proportion of relief in a similar manner to that set out above in relation to crofting community right to buy relief.

13. The Committee asks the Scottish Government:

- To provide further information about the proposed use of the power in paragraph 6(3) of schedule 11, the effect this may have on the Land and Buildings Transaction Tax regime as a whole or on the market for the transactions concerned, and whether the power might be considered by consultees to be controversial depending on how it is exercised.

Schedule 16, paragraph 2 – Power to relieve certain land transactions involving public bodies

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14. Schedule 16 provides that certain transfers involving public bodies which are in the process of statutory reorganisation are exempt from charge. The power in paragraph 2 allows for additional types of transaction involving public bodies to be exempt from charge.

15. The Committee asks the Scottish Government:

- For explanation as to why this power would allow additional reliefs to be set out in subordinate legislation rather than amending schedule 16 directly so that all the reliefs are retained in the Act?

- For explanation as to why, when the power permits the specification of new transactions which are to be exempt, this power is described as “technical and administrative” rather than concerning the issue of principle – when is a transaction to be liable to tax?

The Scottish Government responded as follows:

Section 24(1) – Duty to specify tax bands and rates

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SLC question
The Committee has asked whether the negative procedure is an adequate level of Parliamentary scrutiny over the exercise of the power to set rates and bands subsequent to the first exercise of the power.

Scottish Government response

As stated in the Delegated Powers Memorandum, affirmative procedure is considered appropriate for the first exercise of the power to specify tax bands and rates at the introduction of the tax. Thereafter, any changes to the tax bands or rates will be in response to market conditions and it is essential that the Scottish Government is in a position to respond hastily to provide certainty for the property market in Scotland. The Committee may wish to note that the power for setting non-domestic rates under section 7B of the Local Government (Scotland) Act 1975 is subject to negative procedure. Therefore, the Scottish Government remains of the view that negative procedure is the most appropriate level of Parliamentary scrutiny once the initial rates for Land and Buildings Transaction Tax (“LBTT”) have been set.

Section 47(1) – Power to make regulations about residential property holding companies

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SLC question

The Committee ask a number of questions in relation to this power. These are when the Scottish Government intends to produce a draft of the regulations, why the Scottish Government does not consider that affirmative procedure would be a more appropriate level of scrutiny in all cases, and finally, for an explanation of the circumstances in which it would be possible to make provision for the application of LBTT without making textual amendments to primary legislation and therefore without engaging the affirmative procedure.

Scottish Government response

The Scottish Government has included section 47 in the Bill as the use of “Residential Property Holding Companies” is viewed as an unacceptable tax avoidance. It is planned that amendments will be brought forward at stage 2 and that these are likely to lead to deletion or narrowing of the powers presently in the section. The Scottish Government considered that, given the form in which section 47 appeared at introduction of the Bill, negative procedure for regulations under it was appropriate to allow the Government to act speedily to tackle avoidance schemes in this area. However, we will consider what procedure is the most appropriate for any regulation making powers that remain once the Bill has been amended at stage 2.
Section 55(1) – Power to make regulations about the application of the Bill to leases

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure (if amends an Act), otherwise negative

SLC question

The Committee ask a number of questions regarding the application of the Bill to leases. They ask when the Scottish Government intends to produce a draft of the proposed regulations or publish proposed amendments to the Bill which would replace the power in the Bill, why affirmative procedure is not considered as a more appropriate level of scrutiny in all cases, and for an explanation of the circumstances in which it would be possible to make provision for the application of LBTT to leases without making textual amendments to primary legislation and therefore without engaging the affirmative procedure.

Scottish Government response

The Scottish Government intends to bring forward amendments to the Bill in respect of the application of LBTT to non-residential leases at stage 2. These may well lead to deletion of the regulation making power in section 55. We fully acknowledge the Committee’s view that the powers in section 55 concern important issues of policy and as such we have already given an undertaking to the Finance Committee to share proposed amendments with them at the earliest opportunity. [Non-residential leases are complex, and as such, the Scottish Government is of the position that any remaining regulation making powers may have to be invoked quickly, and therefore negative procedure is appropriate unless primary legislation needs to be altered.]

Section 67(1) – Bolt on power to make ancillary provision

SLC question

The Committee has asked the Scottish Government for its justification for the need for ancillary powers to be available for all powers under the Bill given the stand alone provision in section 66 which could be combined with the primary power in any event. The Committee has also asked why the full range of ancillary powers in section 67(1)(b) is applied also to the power to commence the Bill given that section 69(2) separately allows that power to make transitional, transitory and savings provision. The Committee asks the Scottish Government if this is intentional and if so why.

Scottish Government response
It is the position of the Scottish Government that the order making power in section 66 cannot be combined with the exercise of regulation making powers such as those in section 67. Therefore it is necessary for both to be included. There is a slight overlap between section 67(1) and section 66 in the case of order making powers. However the tests for making ancillary provision under each power differ. Under section 67(1), ancillary provision can be made only when Scottish Ministers consider it necessary or expedient and the power is parasitic on the exercise of another power in the Bill. Section 66 is wider, and allows ancillary provision to be made for the purposes of, in consequence of, or giving full effect to, any provision made under the Bill. It is considered that both section 66 and section 67(1) are needed in order to give Scottish Ministers the flexibility to make the provision necessary for the operation of Land and Buildings Transaction Tax.

With regard to the Committee’s question as to why the full range of ancillary powers in section 67(1)(b) is applied to the power to commence the Bill given that section “69(2)” (we think that this should have been “69(3)”) separately allows that power to make transitional, transitory and savings provision, we would draw the Committee’s attention to section 67(5) which dissapplies section 67 to any order made under section 69(2).

Schedule 9, paragraph 3 – Power to prescribe appropriate proportion for crofting community right to buy relief.

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

SLC Question

The Committee has asked the Scottish Government to provide further information about the proposed use of the power in paragraph 3 of schedule 9, the effect this may have on the LBTT regime as a whole or on the market for the transactions concerned, and whether the power might be considered by consultees to be controversial depending on how it is exercised.

Scottish Government response

The Scottish Government does not consider that the exercise of this power will be controversial to consultees. On the contrary, the rationale behind the relief is to remove an anomaly in the application of LBTT tax charges that could act as a barrier to the use of a Crofting Community’s right to buy. As this is a group right, there is only one transaction on behalf of a number of individuals, and this may result in the total consideration attracting a higher rate of LBTT than if the crofts were being acquired individually. Due to the progressive tax structure of LBTT, this order making power is included to allow Scottish Ministers to prescribe the proportion of the tax chargeable under LBTT when the rates and bands are being set so that crofters exercising their Right to Buy are not penalised by the higher rate that would apply to the should this relief not be in place.
Schedule 11, Part 3, paragraph 6(3) – Power to prescribe proportion for acquisition relief

- **Power conferred on:** The Scottish Ministers
- **Power exercisable by:** Order
- **Parliamentary procedure:** Negative procedure

**SLC Question**

The Committee ask if the proposed use of the power in paragraph 6(3) of schedule 11, the effect this may have on the Land and Buildings transaction Tax regime as a whole or on the market for the transactions concerned, and whether the power might be considered by consultees to be controversial depending in how it is exercised.

**Scottish Government response**

As with the power contained in Schedule 9, Paragraph 3, the Scottish Government does not consider that the use of this power will be controversial. It is necessary for the proportion to be prescribed in an order at the same time Scottish Ministers set bands and rates for LBTT.

Schedule 16, paragraph 2 – Power to relieve certain land transactions involving public bodies

- **Power conferred on:** The Scottish Ministers
- **Power exercisable by:** Order
- **Parliamentary procedure:** Negative procedure

**SLC question**

The Committee asks the Scottish Government for an explanation as to why this power would allow additional reliefs to be set out in subordinate legislation rather than amending schedule 16 directly so that all reliefs are retained in the Bill. The Committee also asks for an explanation as to why, when the power permits the specification of new transactions which are to be exempt, this power is described as “technical and administrative” rather than concerning the issue of principle, namely when is a transaction to be liable to tax.

**Scottish Government response**

The power does not permit the specification of new transaction types that are to be exempt as such. This power is for Scottish Ministers to relieve particular transactions involving public bodies if it emerges that the transaction is not relieved but ought to be. It is envisaged that the power will only be exercised in the instance of a land transaction which arises as a result of a reorganisation effected by or under an enactment. Such a reorganisation, as defined in paragraph 3, may involve a body that does not fall within the meaning of “public bodies” in paragraphs 4 and 5. Therefore, this power is included as a “safety net” to give
Scottish Ministers flexibility to make provision to relieve a particular transaction if the scenario was to arise that a body involved does not fall within the definition. As circumstances giving rise to such a relief would be for one specific scenario as opposed to for a new type of transaction, it is not considered appropriate to amend primary legislation.
Public Audit Committee
3rd Meeting, 2013 (Session 4),
Wednesday 27 February 2013
Land and Buildings Transaction Tax (Scotland) Bill

Clerk cover note

1. At its meeting on 16 January, the Committee agreed to write to the Scottish Government and the Auditor General for Scotland seeking information on audit arrangements and accountability for Revenue Scotland and Registers of Scotland in relation to the LBTT Bill.

2. The responses are attached along with the original letters from the Convener. The Finance Committee is the lead committee on the Bill at Stage 1. As agreed, the responses have already been sent to the Finance Committee to inform their evidence session with the Cabinet Secretary for Finance, Employment and Sustainable Growth on 27 February 2013.

3. The Public Audit Committee is invited to consider whether there are any specific elements of these responses that it wishes to highlight to the Finance Committee in seeking to inform that Committee’s Stage 1 report.
Letter from the Cabinet Secretary for Finance, Employment and Sustainable Growth dated 14 February 2013, in response to the Public Audit Committee’s letter dated 22 January 2012

Thank you for your letter of 22 January setting out the Public Audit Committee’s queries about the roles and responsibilities of Revenue Scotland and Registers of Scotland in administering Land and Buildings Transaction Tax following its introduction in April 2015 and the anticipated audit arrangements for both organisations.

Taking the questions in turn, I am pleased to respond as follows:

Audit arrangements and accountability

- which of these organisations (Revenue Scotland or Registers of Scotland) would include the accountable officer for this tax? Would there be one accountable officer for administration and one for collection of the tax?

Registers of Scotland already has an accountable officer in relation its core role of registering land transactions and this role will continue. However, the accountable officer of Revenue Scotland will be responsible for Land and Buildings Transaction Tax.

The Land and Buildings Transaction (Scotland) Bill includes a power in section 53 for the tax authority (Revenue Scotland, once it is established on a statutory footing) to delegate the exercise of any of its functions to the Keeper of the Registers of Scotland. That power, however, does not enable Revenue Scotland to delegate its accountability for the tax; that accountability will be retained by Revenue Scotland.

- would all of Registers of Scotland’s new responsibilities be subject to audit by Audit Scotland?

Registers of Scotland is already subject to audit by the Auditor General and I anticipate that the additional functions delegated to Registers of Scotland by Revenue Scotland will also be subject to audit by the Auditor General. It will, of course, be for the Auditor General to decide the audit arrangements.

- would Registers of Scotland be required to publish information on their annual performance in collecting the tax and the levels of tax collected?

Revenue Scotland will provide operational and performance information on the running of Land and Buildings Transaction Tax, including information from Registers of Scotland. Revenue Scotland intends to establish an agreement with Registers of Scotland that will include arrangements on the provision and publication of the management and performance information that will be
needed. As discussed below, Revenue Scotland will have a formal agreement with Registers of Scotland on the delegation of responsibilities.

- **where does the Government envisage responsibility would lie between the two organisations for delegated functions? For example, should there be lower levels of tax collected than anticipated, would Revenue Scotland or Registers of Scotland ultimately be accountable?**

Accountability lies with Revenue Scotland for the running of Land and Buildings Transaction Tax. Within any limits on delegation imposed by the tax management legislation, which as you know is at the consultation stage at present, it will be for Revenue Scotland to decide which of its functions will be delegated to Registers of Scotland. Planning on this is at an early stage and obviously will not be final until the legislation is in place but Revenue Scotland will ensure that early discussions with the Auditor General (or her representatives) take place as part of the planning process. The ultimate responsibility for the collection of tax will lie with Revenue Scotland and the delegation of any particular areas of work, such as activity on compliance, will have to be set out very clearly. In the interests of transparency, I have asked that the final agreement on delegation from Revenue Scotland to Registers of Scotland be a public document.

**Risk management**

- **what does the Government consider to be the key risks associated with establishing Revenue Scotland and adding responsibilities to Registers of Scotland?**

The Government has identified a number of risks associated with the establishment of legal and administrative arrangements for a new tax system. These include the potential for tax avoidance activity, higher than expected administrative and collection costs and the under-collection tax.

- **how are the risks associated with development of new ICT systems being mitigated? For example, the Committee would be interested in whether, if Revenue Scotland issues a contract for ICT system development, lessons will be learned from previous ICT contracts detailed in the AGS report on ‘ICT contracts: an audit of three public sector programmes’?**

As stated above, planning is at an early stage; the Government is putting in place robust programme management arrangements between Revenue Scotland and Registers of Scotland, and these will include a range of mitigating actions in relation to the risks associated with development of ICT systems required to administer the tax.
As the Committee heard from Paul Gray at your session on Managing ICT Contracts on 7 November 2012, the Government has, in response to the issues raised by the AGS report, put in place an ICT Investment Plan Process. This provides assurance at key stages throughout the development of new ICT projects.

Further, the development work to implement the new taxes forms part of our overall Fiscal Responsibility Implementation Programme, which is subject to Gateway Review.

I trust that this response deals with the Committee’s queries.

JOHN SWINNEY
Dear John

I am writing to request information on preparations for the forthcoming land and buildings transaction tax, specifically in relation to the new responsibilities for Registers of Scotland and the establishment of Revenue Scotland.

The Public Audit Committee considered the provisions of the Land and Buildings Transaction Tax (Scotland) Bill at its meeting on 16 January. The Committee noted that, as the legislative provisions for LBTT will come into force in Spring 2015, then Revenue Scotland, in its current form within the Scottish Government, will already be making arrangements with Registers of Scotland for the forthcoming tax well in advance of it being provided with operational independence.

The Committee agreed to write at this early stage seeking information from the Scottish Government on the anticipated respective roles and responsibilities of Revenue Scotland and Registers of Scotland and the audit arrangements for these organisations.

The Committee considers this information will be beneficial if provided to the Finance Committee to inform Stage 1 scrutiny, and also to inform this Committee’s scrutiny of bills stemming from the Scotland Act 2012 over the course of this parliamentary session.

The questions the Committee agreed to raise with you are as follows:

Audit arrangements and accountability

- which of these organisations (Revenue Scotland or Registers of Scotland) would include the accountable officer for this tax? Would there be one accountable officer for administration and one for collection of the tax?

- would all of Registers of Scotland’s new responsibilities be subject to audit by Audit Scotland?

- would Registers of Scotland be required to publish information on their annual performance in collecting the tax and the levels of tax collected?

- where does the Government envisage responsibility would lie between the two organisations for delegated functions? For example, should there be lower levels of tax collected than anticipated, would Revenue Scotland or Registers of Scotland ultimately be accountable?

Risk management

- what does the Government consider to be the key risks associated with establishing Revenue Scotland and adding responsibilities to Registers of Scotland?
how are the risks associated with development of new ICT systems being mitigated? For example, the Committee would be interested in whether, if Revenue Scotland issues a contract for ICT system development, lessons will be learned from previous ICT contracts detailed in the AGS report on *ICT contracts: an audit of three public sector programmes*.

I would intend to send your response to the Finance Committee to inform its evidence sessions with you, Revenue Scotland and Registers of Scotland on 27 February. On that basis I should be grateful for a response by 20 February.

For information, I also intend to write to Audit Scotland on the anticipated accountability and audit arrangements. This response will also be provided to the Finance Committee in advance of 27 February.

Yours sincerely

Iain Gray MSP, Convener

cc: Audit Scotland
Letter from the Auditor General for Scotland dated 18 February 2013, in response to the Public Audit Committee’s letter dated 22 January 2012

Ian Gray MSP
Convenor,
Public Audit Committee
T3.60
Scottish Parliament
Edinburgh
EH99 1SP

18 February 2013

Dear Convenor,

Land and Buildings Transaction Tax

Thank you for your letter of 22 January requesting my views on the proposed arrangements for the collection of the new Land and Buildings Transaction Tax (LBTT).

Audit arrangements

The Land and Buildings Transaction Tax (Scotland) Bill is one of three connected Bills that are being introduced to the Parliament over the next year in order to implement the devolved taxes provisions of the Scotland Act 2012. The Bill to introduce the LBTT deals with arrangements specific to that tax, with the overall tax management arrangements expected to be the subject of a later Bill.

The Scottish Government’s Consultation on Tax Management issued in December 2012 proposes that Revenue Scotland should be established as a non-ministerial department and states that “We expect that Revenue Scotland would come within the scope of the Auditor General for Scotland for purposes of audit and scrutiny”. If Revenue Scotland receives funding directly from the Scottish Consolidated Fund then the audit will automatically fall to the Auditor General. If it does not receive direct funding from the Consolidated Fund then the audit provision will need to be in the Taxes Management Bill. In either event Revenue Scotland will consequently also be within the scope of section 23 of the Public Finance and Accountability (Scotland) Act 2000 allowing the Auditor General to conduct performance audits.

Registers of Scotland (RoS) are already required to send their accounts to the Auditor General for auditing and therefore any amounts relating to the new responsibilities which appear in their accounts will be covered by existing powers, as is the power to examine the economy, efficiency and effectiveness of the way in which it uses its resources.

In addition any amounts of tax revenues that fall to be paid into the Scottish Consolidated Fund will be subject to audit as part of the audit of the Fund.

Whilst we understand that it has not yet been decided which sets of accounts the taxes collected will appear in, the existing audit arrangements together with those proposed in the consultation on Tax Management will ensure that I am able to report to Parliament on the operation of LBTT.

Audit Scotland provides services to the Auditor General for Scotland and the Accounts Commission
Establishment of Revenue Scotland and new responsibilities of RoS

There are a number of risks associated with the establishment of Revenue Scotland that the government will need to address, including its cost effectiveness and its access to expertise. Revenue Scotland will be much smaller than HMRC and will have a limited number of taxes to administer, at least initially. It is therefore important that the government balances the cost of the organisation with the need to have sufficient skills available to undertake its role effectively. Measures already proposed such as integrating LBT with transactions undertaken by RoS should help to mitigate the costs of collection, and measures to standardise collection and enforcement across all Scottish taxes will also help.

I have recently reported on RoS in relation to its management of ICT contracts, and there is a risk that the organisation will find it challenging to make the necessary changes to its systems by 1 April 2015. It is therefore essential that there are strong project management arrangements in place from the start of the project to ensure that it is well scoped and remains on track throughout the period up to implementation.

Audit Scotland had already responded to a call for evidence from the Finance Committee before I received your letter, and a copy of the response is attached for the Committee’s information.

Yours sincerely

Caroline Gardner
Auditor General for Scotland
Finance Committee
The Scottish Parliament
Edinburgh
EH9 1SP

16 January 2013

Dear Convener

Land and Buildings Transaction Tax (Scotland) Bill

We write in response to the Committee's call for evidence on the Land and Buildings Transaction Tax (Scotland) Bill (LBTT Bill) dated 5 December 2012.

The Auditor General audits or appoints the external auditors of most central government bodies in Scotland covering around £35 billion of income and expenditure. Accordingly the Auditor General and Audit Scotland have an interest in the audit and governance arrangements for all of the new tax raising provisions flowing from the Scotland Act 2012.

We note that the LBTT Bill does not contain any direct provisions relating to the audit of the taxes to be raised under the Bill. However, we recognise that the LBTT Bill is one of three proposed Bills for the implementation of the devolved taxes and that provisions relating to the audit arrangements for Revenue Scotland are expected to be included in the proposed Taxes Management Bill later in 2013.

To the extent that the proposed tax will be administered by Registers of Scotland we are content that the existing audit arrangements for that body are sufficient to ensure that appropriate audit scrutiny will be able to take place.

In August 2012 Audit Scotland published a report on Managing ICT contracts – an audit of three public sector programmes. In that report we noted that Registers of Scotland had given notice to terminate its current long term Strategic Partnership Agreement for ICT services from April 2013. We further reported that "Termination of the SPA means that RoS has to build an in-house ICT capability to be able to manage future ICT functions and requirements, including a new responsibility to receive and administer returns for the planned Land and Buildings Transaction Tax".

We would be happy to provide the Committee with any further information.

Yours faithfully

Russell A J Frith
Assistant Auditor General
Audit Scotland

Direct line 0131 625 1607

1 http://www.audit-scotland.gov.uk/docs/central/2012/nr_120830_ict_contracts.pdf
Dear Caroline

I am writing to request your views on the proposed arrangements for the collection of the new land and buildings transaction tax, specifically in relation to the new responsibilities for Registers of Scotland and the establishment of Revenue Scotland.

The Public Audit Committee considered the provisions of the Land and Buildings Transaction Tax (Scotland) Bill at its meeting on 16 January. The Committee noted that, as the legislative provisions for LBTT will come into force in Spring 2015, then Revenue Scotland, in its current form within the Scottish Government, will already be making arrangements with Registers of Scotland for the forthcoming tax well in advance of it being provided with operational independence.

The Committee therefore agreed to write at this early stage seeking information from the Scottish Government on the anticipated respective roles and responsibilities of Revenue Scotland and Registers of Scotland and the audit arrangements for these organisations. This letter is attached for your reference.

The Committee also agreed to write to you seeking your views on what you consider would constitute appropriate audit arrangements for Revenue Scotland and the new responsibilities for Registers of Scotland. In answering this, the questions that the Committee has posed to the Scottish Government may provide useful context. These are as follows:

**Audit arrangements and accountability**

- which of these organisations (Revenue Scotland and Registers of Scotland) would include the accountable officer for this tax? Would there be one accountable officer for administration and one for collection of the tax?

- would all of Registers of Scotland’s new responsibilities be subject to audit by Audit Scotland?

- would Registers of Scotland be required to publish information on their annual performance in collecting the tax and the levels of tax collected?

- where does the Government envisage responsibility would lie between the two organisations for delegated functions? For example, should there be lower levels of tax collected than anticipated, would Revenue Scotland or Registers of Scotland ultimately be accountable?

Please also feel free to provide any thoughts on what would be best practice in mitigating the key risks associated with establishing Revenue Scotland and adding
responsibilities to Registers of Scotland, such as in the development of new ICT systems.

The Committee considers the information from you and the Government will be beneficial if provided to the Finance Committee to inform Stage 1 scrutiny, and also to inform this Committee’s scrutiny of bills stemming from the Scotland Act 2012 over the course of this parliamentary session.

I would intend to send your response and the Government’s response to the Finance Committee to inform its evidence sessions with the Scottish Government, Revenue Scotland and Registers of Scotland on 27 February. On that basis I should be grateful for a response by 20 February.

Yours sincerely

Iain Gray MSP, Convener
Present:
Colin Beattie     Willie Coffey
Bob Doris     James Dornan
Iain Gray (Convener)     Mark Griffin
Colin Keir     Mary Scanlon (Deputy Convener)
Tavish Scott

Also present: Jackie Baillie; Dr Richard Simpson

**Land and Buildings Transaction Tax (Scotland) Bill:** The Committee considered correspondence from the Scottish Government and Audit Scotland on the Land and Buildings Transaction Tax (Scotland) Bill. The Committee agreed to note the correspondence and seek an update on this from Registers of Scotland early in 2014.
Land and Buildings Transaction Tax (Scotland) Bill

11:52

The Convener: Agenda item 4 is the Land and Buildings Transaction Tax (Scotland) Bill. We have received correspondence from the Scottish Government and from Audit Scotland on the audit recommendations in the bill.

Once again, our purpose is to hear members’ comments on how to take the issue forward. We may wish just to note the responses, or we could highlight any specific issues raised to the Finance Committee, which is the lead committee on the bill. I open the discussion for comments from members.

Mary Scanlon: We took significant evidence on the issue from Mr Paul Gray and from Registers of Scotland, if I remember correctly. We were given a lot of assurances, which seemed fair and reasonable at the time. However, as the Government’s response says, under “Risk management”,

“planning is at an early stage”.

I appreciate that the Finance Committee is looking at the bill, but I feel that there are such significant concerns about the ability of Registers of Scotland to collect the new land and buildings transaction tax that I would just like some reassurance that everything that we were told—the planning was to start at about the end of November or the beginning of December—is actually being done. Whether we just ask the Finance Committee to look into that or whether we come back to the issue in six months or a year, I am not quite sure. Personally, I have significant concerns about the abilities of Registers of Scotland, given its experience with costly IT projects that was highlighted by the Auditor General.

I am sorry that I am not making a firm proposal, but I do not want to ignore the verbal assurances that we were given without being given something more.

The Convener: I take that as a proposal that we might want to flag up those concerns to the Finance Committee, which will take evidence from the cabinet secretary and others on the new set-up. We could do that.

Willie Coffey: I am just trying to see where that is. From my reading of the Auditor General’s response about Registers of Scotland, I think that it is true that all its functions will be subject to scrutiny by Audit Scotland, which will be able to keep a close eye on everything that it does. I am content with that response.
James Dornan: I was going to make exactly the point that the convener made. I think that the best thing to do would be to flag up to the lead committee the concerns that are raised in the report and ask the lead committee to keep an eye out for those issues.

Colin Beattie: I agree with that, but I think that this committee should revisit the issue perhaps in a year’s time to see how matters have bedded in.

The Convener: I am informed—we should all have remembered this—that the correspondence was also circulated to the Finance Committee, which is taking evidence today not only from the cabinet secretary but from Registers of Scotland. Hopefully, the Finance Committee will have been exploring those issues while we have been meeting today. However, I think that we can also cover the point by taking up Mr Beattie’s suggestion to come back to the issue in a year.

Mary Scanlon: I would support that.

The Convener: Do we agree to look at the issue again in a year?

Members indicated agreement.
Dear John,

The Finance Committee has now published its stage 1 report on the Land and Buildings Transaction Tax (Scotland) Bill which is available on our website at: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/61649.aspx. You will note from paragraph’s 55-83 of the report that the Committee has made a number of recommendations in relation to the administration of the tax by Revenue Scotland and Registers of Scotland. In the first instance, the Committee would welcome a copy of the milestones and key dates of key deliverables which you referred to in oral evidence. The Committee is also requesting similar information from Revenue Scotland. The Committee would also welcome a 6 monthly progress report from the Registers of Scotland on the implementation and delivery of LBTT and again we will also request similar information from Revenue Scotland. It would be useful to have the first report by the end of September 2013 and it is likely that you will also be invited to give oral evidence to the Committee on each report alongside Revenue Scotland.

Jim Johnston
Clerk to the Finance Committee
Dear Jim,

LAND AND BUILDINGS TRANSACTION TAX BILL – FINANCE COMMITTEE STAGE 1 REPORT

Thank you for your letter of 28 March, highlighting the recommendations made by the Committee in relation to the administration and collection of the Land and Buildings Transaction Tax (LBTT) by, respectively, Revenue Scotland and Registers of Scotland.

You requested a copy of the milestones and dates of key deliverables for Registers of Scotland. A project plan showing the key milestones and timeline is attached.

As requested I will be happy to update the Committee on progress at 6 monthly intervals. In this regard I understand that Revenue Scotland will be writing to you to enquire whether or not the Committee requires separate written submissions from Registers of Scotland and Revenue Scotland, or whether it would prefer to combine these into a single written submission. I would be grateful if you could let me know what best suits the Committee.

I hope this is helpful.

If you require any further information at this juncture please let me know.

Yours sincerely

JOHN KING
Registration Director
LBTT Milestones
Monday 13th May 2013

IT
- IT Build
  - Oct 12 – May 13
  - June 13 – Oct 13
  - April 14 – Aug 14
- Contingency
  - Oct 14 – Apr 15
- Live Monitoring & Small Changes
  - Apr 15 – Oct 15

POLICY & LEGISLATIVE
- Aug 12 – Aug 14
  - Engagement with LBTT & TMB Bill Teams - Developing Collective Policy

STAKEHOLDER ENGAGEMENT
- May 13 – Dec 13
  - Input to Requirements & IT Build
- Jan 14 – April 15
  - System Testing, Road Test Guidance & Familiarisation

GATEWAY REVIEW 1, 4 & 5
- May 13
  - Assessment Meeting
- June 13
  - Business Justification Review
- Mar 14
  - Mini Health Check
- Jan 15
  - Readiness for Service Review
- Oct 15
  - Benefits Evaluation Review

AGREE ROLES & RESPONSIBILITIES WITH REVENUE SCOTLAND
- Oct 12 – April 14
  - Workshops/Process Mapping/Ongoing/Dialogue/Legislation

TRANSITIONAL ARRANGEMENTS
- June – Nov 13
  - Analysis & Agreement of Memorandum of Understanding
- Nov 13 – Oct 14
  - Ongoing dialogue with HMRC
- Oct 14 – Apr 15
  - Implementation

OPERATIONAL
- Aug 12 – Aug 14
  - Training
- Aug 13 - Oct 14
  - Develop Guidance & User Instructions

[Diagram showing timelines and milestones]
Dear Eleanor,

The Finance Committee has now published its stage 1 report on the Land and Buildings Transaction Tax (Scotland) Bill which is available on our website at: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/61649.aspx. You will note from paragraph’s 55-83 of the report that the Committee has made a number of recommendations in relation to the administration of the tax by Revenue Scotland and Registers of Scotland. In the first instance, the Committee has requested a copy of the milestones and key dates of key deliverables which Registers of Scotland referred to in oral evidence and would also welcome similar information from Revenue Scotland. The Committee would also welcome a 6 monthly progress report from Revenue Scotland on the implementation and delivery of LBTT and again we have also requested similar information from Registers of Scotland. It would be useful to have the first report by the end of September 2013 and it is likely that you will also be invited to give oral evidence to the Committee on each report alongside Registers of Scotland.

Jim Johnston
Clerk to the Finance Committee
Dear Jim

LAND AND BUILDINGS TRANSACTION TAX BILL – FINANCE COMMITTEE STAGE 1 REPORT

Thank you for your letter of 28 March, highlighting the recommendations made by the Committee in relation to the administration of the Land and Buildings Transaction Tax (LBTT) by Revenue Scotland and Registers of Scotland.

You requested a copy of the milestones and dates of key deliverables for Revenue Scotland, mirroring a similar request to Registers of Scotland.

We have recently established a Tax Administration Programme, which is a joint programme of work between Revenue Scotland, Registers of Scotland and the Scottish Environment Protection Agency. As you will understand, this programme covers not only LBTT but our work SEPA to develop arrangements to collect the other devolved tax, Scottish Landfill Tax, which the Committee will consider in due course.

We are in an initiation phase for the Tax Administration Programme, and at this point we are working through our milestones and business planning, with a view to having a plan in place when we move to implementation. We expect that implementation phase to start from July, if the Parliament passes the Land and Buildings Transaction Tax Bill in June. As such, our identification of milestones is high-level at present, and represented in the attached diagram.

In terms of tax administration, the key strands of work – against which we are developing those milestones – are as follows:

- Staffing (with Revenue Scotland’s initial staffing complement fully in place from May 2013)
- Agreement on the management of data between RS, Registers of Scotland and SEPA, which will underpin decisions on ICT development
- Process mapping
• Initial estimates of our longer-term staffing expectations in the three organisations

I note further in your letter that the Committee would welcome a 6 monthly progress report on the implementation and delivery of LBTT, with the first report due by the end of September 2013. I will be pleased to provide this, both in writing and, as the Committee requires, through oral evidence. I note that you have requested a similar report from Registers of Scotland; I would be grateful if you could indicate whether the Committee requires separate written submissions from Registers of Scotland and Revenue Scotland, or whether it would be preferable to combine these into a single written submission.

I hope this is helpful. Please let me know if you require anything further ahead of the first progress report in September.

ELEANOR EMBERSON
IT
- Data framework agreement
- ICT development and testing with RoS and SEPA
- Final testing

POLICY AND LEGISLATIVE
- Work with LBTT Bill team on policy development
- Work with policy colleagues on secondary legislation and guidance
- Work with Tax Management Bill team on policy development, secondary legislation and guidance

STAFFING, ROLES AND RESPONSIBILITIES
- Initial Revenue Scotland staffing
- Agree roles and responsibilities with RoS and SEPA; agree and implement required staffing

PROCESS MAPPING
- Scope and complete process maps with RoS and SEPA

STAKEHOLDERS AND COMMS
- Develop initial Comms and engagement
- Ongoing engagement with stakeholders

TRANSITION ARRANGEMENTS
- Agreement with HMRC
- Ongoing engagement with HMRC through transition

GOVERNANCE
- Likely recruitment of Board/Chief Executive

GATEWAY REVIEW
- GR 0
- Schedule of follow-up Gateway Reviews
I am grateful to the Committee for its detailed scrutiny of our proposals set out in the Land and Buildings Transaction Tax (LBTT) Bill, and its conclusions in the Stage 1 report. The Scottish Government welcomes the Committee's support for the general principles of the Bill and notes that the Committee will aim to closely monitor the implementation and delivery of LBTT.

I would like to respond in more detail to the issues raised and the recommendations made in the Report. I have provided this more detailed response by way of the attached Annex.

I hope the Committee finds this information helpful.

JOHN SWINNEY
Land and Buildings Transaction Tax (Scotland) Bill
Finance Committee
Stage 1 Report
Scottish Government Response
24 April 2013
The Scottish Government welcomes the Finance Committee's Stage 1 report on the Land and Buildings Transaction Tax (Scotland) Bill. The Scottish Government has considered the Committee's recommendations and responds to each point as follows:

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<thead>
<tr>
<th>No.</th>
<th>Recommendation</th>
<th>Response</th>
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<tbody>
<tr>
<td>Bands and Rates</td>
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</tr>
<tr>
<td>1.</td>
<td>The Committee recognises that there was a range of views among witnesses regarding the timing of the publication of the proposed LBTT rates and bands but notes that the emphasis on the desirability of advance notice relates especially to commercial property. The Committee therefore, asks the Scottish Government to consider the likely implications of the timing of setting bands and rates for commercial property on investment in the Scottish market. <strong>Paragraphs 16 and 17</strong></td>
<td>The Scottish Government will consider the evidence provided to the Committee regarding the timing of the publication of the proposed LBTT rates and bands for both residential and commercial property transactions.</td>
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<tr>
<td>2.</td>
<td>The Committee invites the Scottish Government to respond further to the view of the SLC that the power to set LBTT bands and rates should always be subject to the affirmative procedure. <strong>Paragraph 21</strong></td>
<td>The Cabinet Secretary for Finance, Employment and Sustainable Growth has written to the Subordinate Legislation Committee to advise that the Government proposes to bring forward an amendment at Stage 2 of the Bill to provide that the order-making power in section 24(1) of the Bill to set bands and rates will be subject to a form of provisional affirmative procedure after the first occasion that the bands and rates are set.</td>
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<tr>
<td>3.</td>
<td>The Committee and the SG have asked government and parliament officials to work together to bring forward proposals for a revised budget process by summer recess. This will include ensuring the effective scrutiny of LBTT. <strong>Paragraph 23</strong></td>
<td>A joint group of Scottish Government officials and Parliamentary Clerks has been formed to consider the implications of the financial provisions in the Scotland Act 2012 and their impact on the budgetary process. The Group has been asked to report to the Finance Committee and to Ministers before the Summer recess</td>
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<td>No.</td>
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<td>Response</td>
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<td>4.</td>
<td>The Committee welcomes the distinction which the Cabinet Secretary has made in relation to sub-sale relief and forward funding and supports the removal of sub-sale relief from LBTT on the basis that any necessary amendments are brought forward at Stage 2 to ensure that forward funding or other legitimate arrangements are not subject to double taxation. Paragraph 36</td>
<td>The Scottish Government welcomes the attention the Committee has paid to the sub-sale issue, and has given careful consideration to the evidence presented to the Committee. The Government is not persuaded of the case for a sub-sale relief to be introduced in the LBTT Bill. While it wishes to support the property development industry, which plays a key role in the Scottish economy, the Government also wishes to reduce as far as possible opportunities for tax avoidance. In striking this balance, the Government wants to ensure that forward funding arrangements are not subject to double taxation under LBTT, and will work with key stakeholders to achieve this objective.</td>
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<tr>
<td>5.</td>
<td>The Committee invites the Scottish Government to consider the proposal from OSCR that the distinction within Section 14 of the Charities and Trustee Investment (Scotland) Act 2005 might form the basis of the eligibility for charities relief. Paragraph 41</td>
<td>The Scottish Government is actively working with OSCR and Revenue Scotland to consider the best approach to take as regards the charities relief qualifying requirements for the small number of organisations who buy (but do not occupy) property in Scotland purely as an investment and who use the profits from this investment for charitable purposes.</td>
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<td>6.</td>
<td>The Committee invites the SG to consider whether there may be some categories of licences which it would be appropriate to exempt from LBTT within the overall policy objectives of the Bill. Paragraph 54</td>
<td>The Scottish Government has carefully considered the evidence presented to the Committee by a range of witnesses and intends to bring forward an amendment at Stage 2 that will set out which licences are within scope of the tax.</td>
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<tr>
<td>No.</td>
<td>Recommendation</td>
<td>Response</td>
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<td><strong>Administration of the Tax</strong></td>
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<td>7.</td>
<td>The Committee recognises that LBTT is not due to be implemented until April 2015 but is nevertheless concerned about the current lack of clarity regarding the respective roles of Revenue Scotland and RoS especially in relation to compliance activity and recommends that this is addressed as a matter of urgency. <strong>Paragraph 72</strong></td>
<td>The Scottish Government agrees that delineating the respective responsibilities of Revenue Scotland (RS) and Registers of Scotland (RoS) is a high priority. This work will be undertaken through the Tax Administration Programme. RS and RoS are working together to map jointly all of the processes that will be followed for the collection of LBTT, with compliance being a high priority. This work will be a key priority for the programme over the months ahead. A good overview of policy and process is an important first step before deciding the responsibilities of individual bodies, as otherwise there would be a risk of unhelpful gaps or duplication of effort. The Scottish Government will report back to the Committee on its progress and, in due course, how the responsibilities are to be divided. This work will culminate in a formal agreement between RS and RoS that the Scottish Government has committed to making public.</td>
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<td>8.</td>
<td>The Committee notes that RoS have developed &quot;a set of milestones and a set of key dates for key deliverables&quot; and will invite the RoS to provide this information and also ask Revenue Scotland to provide similar information. <strong>Paragraph 73</strong></td>
<td>The Scottish Government notes that this information has been requested from both RS and RoS. RS is developing comparable milestones and dates and will be happy to provide this information to the Committee along with updates as part of the progress reporting exercise.</td>
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<tr>
<td>9.</td>
<td>The Committee intends to monitor and scrutinise the implementation and delivery of LBTT and invites RoS and Revenue Scotland to provide a 6 monthly progress report both in writing and in oral evidence. <strong>Paragraph 74</strong></td>
<td>The Scottish Government can confirm that RS and RoS will be happy to provide a 6 monthly report on progress on implementing LBTT.</td>
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<td>10.</td>
<td><strong>The Committee is concerned that while the FM makes provision for an e-Services Helpdesk and complex enquiry helpdesk within RoS there only appears to be provision for a “limited helpline” within Revenue Scotland. The Committee asks the SG to provide further details on the proposed Revenue Scotland helpline including its function, an estimate of costs, staffing levels and whether it will be staffed by adequately trained specialist personnel.</strong> Paragraph 75</td>
<td>The Scottish Government agrees that the issue of providing appropriate help and support to taxpayers is very important. RS, RoS and the Scottish Environment Protection Agency (SEPA) are working together to assess likely demand and plan for the provision of suitable and coordinated support to taxpayers, including via effective helplines. The respective organisations will draw on input from professional bodies and taxpayer representatives to ensure that their planning in this area is as well-informed as possible. RS, RoS and SEPA will be happy to describe these plans to the Committee once drawn up.</td>
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<td>11.</td>
<td><strong>The Committee asks why the indicative costs provided by HMRC were not included in the FM given that the requirement of the Standing Orders is to provide “best estimates” and not a definitive figure.</strong> Paragraph 82</td>
<td>The Scottish Government was informed by HMRC that the £500,000 figure was an informal estimate for part of the work in ‘switching off’ Stamp Duty Land Tax and Landfill Tax and that a formal estimate for the full amount would be provided as soon as this was available. On this basis, the Scottish Government did not consider that the figure met the criteria of a “best estimate” and hence did not include this figure in the Financial Memorandum.</td>
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<td>12.</td>
<td><strong>The Committee also asks that the SG keeps it fully informed of the costs of HMRC’s involvement in the transitional arrangements. The Committee will also seek an update from HMRC when it takes evidence from them on 8 May.</strong> Paragraph 83</td>
<td>The Scottish Government can confirm that £18,153 was paid to HMRC for work done in 2012-13 with respect to the switch off project for SDLT. The Cabinet Secretary for Finance, Employment and Sustainable Growth wrote to the Convenor of the Finance Committee on 4 April setting out this information. HMRC has estimated that its total costs for the three</td>
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<td>12. (cont)</td>
<td>'Scotland Act 2012 projects' (the two devolved taxes and the Scottish Rate of Income Tax) for 2013-14 will be around £1.5m. More detailed cost estimates are being developed.</td>
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Non-residential leases, companies, trusts and partnerships

13. The Committee notes the need to introduce LBTT by April 2015 but emphasises that there is nevertheless a need to ensure that all aspects of the Bill are subject to effective parliamentary scrutiny. On this basis the Committee recommends that sufficient time is made available at Stage 2 to allow oral evidence both with the Cabinet Secretary and key stakeholders prior to consideration of the proposed amendments on non-residential leases, companies, trusts and partnerships. **Paragraph 88**

14. The Committee also recommends that the SG publishes the equivalent of a Policy Memorandum and Explanatory Notes to accompany the proposed amendments in these areas. **Paragraph 89**

Parliamentary Approval

15. The Committee seeks clarification from the SG as to whether it will seek the agreement of the Scottish Parliament to block grant adjustments arising from the devolution of financial powers within the Scotland Act 2012. **Paragraph 101**

The Scottish Government will, as far as it practically can, assist the Committee in ensuring that adequate time is available for scrutiny of the proposed amendments.

The Scottish Government will provide the Committee with appropriate supplementary material to assist the Committee in its consideration of these amendments.

The block grant mechanism with regard to the devolved taxes, including Land and Buildings Transaction Tax, remains under discussion and further work by officials is under way. The Scottish Government's position on the Parliament's involvement in approving an eventual proposal for the block grant adjustment is set out in the letter from the Cabinet Secretary for Parliamentary Business and Government.
15. (cont). ALTERNATIVE APPROACHES

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<td>15.</td>
<td>Strategy to the Secretary for State for Scotland on 21 March 2012. This letter</td>
<td>noted that Scottish Ministers intended to seek the Scottish Parliament’s agreement to changes to Scotland’s funding arrangements, now and in the future, in order to provide democratic oversight and assurance that Scotland’s interests are being properly considered. Such funding arrangements would include arrangements for the block grant adjustment.</td>
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### Alternative Approaches

16. The Committee asks whether the SG considered the findings of the Mirrlees review in bringing forward a replacement tax for SDLT. **Paragraph 108**

The Scottish Government considered the findings of the Mirrlees Review and notes the concerns highlighted in paragraph 104 of the Committee’s report. The Scottish Government considered the possibility of not replacing SDLT in the partial Business Regulatory Impact Assessment (BRIA) which formed part of the LBTT consultation paper published on 7 June 2012. The BRIA noted that the Scottish Government would lose essential revenue that has ranged between £250m and £565m in recent years. This revenue is essential for funding public services in Scotland and so this option was rejected.
Land and Buildings Transaction Tax (Scotland) Bill: The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney) moved motion S4M-06294—That the Parliament agrees to the general principles of the Land and Buildings Transaction Tax (Scotland) Bill.

After debate, the motion was agreed to (DT).
Land and Buildings Transaction Tax (Scotland) Bill: Stage 1

The Deputy Presiding Officer (John Scott):
Good afternoon. The first item of business this afternoon is a stage 1 debate on motion S4M-06294, in the name of John Swinney, on the Land and Buildings Transaction Tax (Scotland) Bill. I call the cabinet secretary, John Swinney, to speak to and move the motion.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney):
The Scotland Act 2012 devolves responsibility for taxes on land and property transactions and disposal to landfill to the Scottish Parliament from April 2015. The bill sets out the provisions and rules for the land and buildings transaction tax, which will replace stamp duty land tax in Scotland from April 2015.

In my statement to Parliament in June, I set out the approach that the Government intends to take on the new taxation responsibilities that have been passed to the Parliament. The proposals are firmly founded on Scottish principles that still hold good today. In “An Inquiry into the Nature and Causes of the Wealth of Nations” in 1776, Adam Smith set out four maxims with regard to taxes: the burden should be proportionate to the ability to pay, and there should be certainty, convenience and efficiency of collection. Those principles provide the bedrock on which to build a system to meet the needs of a modern 21st century Scotland. To those four principles, the Government adds our core purpose of delivering sustainable economic growth for Scotland. In assessing the proposals that we have in front of us, I will consider the four principles that I have set out.

The Government has sought to use what responsibility we have for taxation to ensure that no one is asked to pay more than they can legitimately afford to pay in relation to tax provisions. The Land and Buildings Transaction Tax (Scotland) Bill signals a move away from the United Kingdom Government’s slab tax approach to stamp duty land tax, which distorts the market. Instead, we propose a progressive system of taxation in which the amount paid is more closely related to the value of the property and, therefore, to the ability of the individual to pay. That approach has been warmly welcomed by tax professionals and others during the public consultation process for the bill.

The second principle is the provision of certainty. We consider it important to provide certainty about when and how much tax is due, and that is an important guiding principle for our new system. The consultation on the bill has been extremely helpful and productive, and we will continue to engage with taxpayers and professionals to provide certainty and ensure that tax changes have been properly thought through and communicated before being introduced. Even when we require to move swiftly to tackle threats of tax evasion or avoidance, we will, wherever possible, seek to provide information and clarity about our intentions.

One of the opportunities before us is that of creating a simple and administratively efficient tax collection system. We will ensure that it is easy to fulfil the obligations of a citizen in Scotland to pay taxes. We envisage a system that is simple to operate and digital first. We will develop appropriate information technology systems to ensure that information about Scottish taxes and ways to pay them is easily accessible to all, in line with our broader objectives, while respecting the fact that some taxpayers will continue to want to use non-digital methods.

The fourth of the principles is that the tax system should be efficient. It is clear that taxes and revenues must be devoted to paying for public services and not consumed in tax administration. Scotland will benchmark itself against international standards to ensure that the administration costs are kept to a minimum. Our approach to tax collection is right for Scotland and it will be the most cost efficient for Scotland.

Mary Scanlon (Highlands and Islands) (Con):
I am a member of the Public Audit Committee, which has been looking into the Auditor General for Scotland’s report on Registers of Scotland’s IT system. Paragraph 60 of the Finance Committee’s stage 1 report states:

“Of particular concern to witnesses is the readiness and effectiveness of RoS’s IT system.”

I ask for an assurance from the finance secretary that any difficulties have been overcome and that Registers of Scotland is ready.

John Swinney: I would describe the position as work in progress. As I set out to Parliament last June, Registers of Scotland will be the collection organisation for the new tax. Registers of Scotland is already involved in the collection of a large amount in existing fees for property transactions as part of its routine or rudimentary role and functions, so the collection of the new tax will be essentially a bolt-on to its existing responsibilities. The project board that supervises the implementation of the proposals is acutely monitoring the important issues that Mary Scanlon has fairly raised. As we proceed towards implementation in April 2015, I will continue to
keep Parliament updated about the progress that is being made, as I recognise that the establishment of effective IT systems is an important consideration.

I explained to Parliament last June that we will establish revenue Scotland to assess and collect devolved taxes. By 2015, in line with international best practice, revenue Scotland will be operationally independent and will work alongside Registers of Scotland on LBTT and alongside the Scottish Environment Protection Agency on the landfill tax, which we will introduce into the bargain. Our approach to establishing a new Scottish tax authority has been widely welcomed. We will continue to update Parliament on the steps that are being taken to implement the arrangements around revenue Scotland.

As we made clear when presenting our programme for government last September, we have a legislative programme through which we will put in place the two taxes that are devolved under the Scotland Act 2012. Following the introduction of the LBTT bill, a second bill making provision for a Scottish landfill tax was introduced to Parliament on 17 April. We propose a third measure for the next legislative programme that will deal with tax management. The public consultation on proposals for a tax management bill closed on 12 April, and we propose to introduce the bill in the autumn. The tax management bill will establish revenue Scotland on a statutory basis and set out the underpinning arrangements that are required to support both devolved taxes. The bills are the first important steps to establishing the principle that taxes paid in Scotland are best set, managed and collected here by those with Scotland’s best interests at heart.

The LBTT bill has been developed with two key objectives in mind. First, we have sought to simplify the relevant legislation, both in content and in structure. Over the past decade, stamp duty land tax has suffered from additional layers of new legislation year on year, and taxpayers and their advisers often find its complexity difficult to understand and navigate. By contrast, the LBTT bill has a clear structure, the tax reliefs have been rationalised and grouped logically together and the provisions of the bill are clearly set out.

As I said, we are moving away from the slab rates of stamp duty land tax that distort the property market, particularly for housing, and may encourage taxpayers to record false prices—for example, by overvaluing moveable items included in a sale in order to pay tax in a lower tax band. Instead, we are proposing a progressive system of taxation, under which the amount paid will be more closely related to the value of the property and, therefore, to the ability of the individual to pay. That approach has been warmly welcomed by tax professionals and others during the consultation process.

The scenarios in the consultation paper that we launched last June also indicated a willingness to adjust the tax thresholds in order to support first-time buyers and those at the lower end of the market. To demonstrate the difference that a progressive approach can bring for those purchasing residential property in Scotland, the consultation paper illustrated two revenue-neutral scenarios. The first would remove the tax charge from all house purchases below £180,000, which would significantly benefit first-time buyers. The second would have the effect that anyone purchasing properties at less than £325,000 would pay less tax, which would benefit around 95 per cent of the property market. Those who purchased property at higher values would, of course, pay more.

To further simplify the operation of the tax, the anti-avoidance provisions for stamp duty land tax in section 75A of the Finance Act 2003, which experienced tax practitioners find hard to understand, have not been replicated in the bill. Tax practitioners have welcomed our intention to bring forward a general anti-avoidance rule in the tax management bill, which will be introduced to Parliament in due course.

A second objective in developing the bill was to bring the provisions into line with Scots law and practice. We see it as essential that taxpayers and expert communities should have an integral role in ensuring that our approach to taxation is, and remains, fit for purpose.

The work undertaken by bill team officials with an expert working group on non-residential leases well illustrates that collaborative approach. Input from the expert group will ensure that the tax treatment of non-residential leases in Scotland will be firmly grounded in Scots law and practices. Under the current SDLT system, English property law effectively applies, which creates confusion and conflict with the existing statutes of Scots law.

Having met with members of the working group, I have concluded that the tax payable on non-residential leases will be based on the net present value approach, with a recalculation of the tax due at three-yearly review periods, based on the rent paid over the period. A taxpayer will also be required to submit a return at the end of the lease. The expert working group on non-residential leases is working with the bill team to devise the detailed rules of the new approach to taxing non-residential leases, and I am grateful to it for its input.

I turn to the Finance Committee’s report. I readily acknowledge the penetrating debate on a
wide range of issues that has taken place during the committee’s stage 1 evidence-taking sessions. I am delighted that the committee has supported the general principles of the bill. Yesterday, I wrote to the committee’s convener to respond to the various issues that were raised in its report, and I will comment briefly on some of the key issues covered in the report and my response.

As the bill’s policy memorandum explains, my initial thinking was to set out at the time of the draft budget in September 2014 the land and building transaction tax rates and bands that would apply from April 2015. The committee recognised in its report that witnesses held a range of views about when tax rates and plans should be published, ranging from a week before the introduction of the tax to two years prior to introduction.

I have yet to reach a firm conclusion on the matter, but it is not my intention to announce rates and bands any earlier than September 2014. In light of the views expressed, I will consider carefully whether to wait until nearer April 2015.

The existing stamp duty land tax rules for relieving so called sub-sales are acknowledged to provide opportunities for aggressive tax avoidance activity. Tax avoiders have employed a range of schemes to construct land transactions in a way that means that no tax is paid at all. I am clear that responsible taxpayers do not welcome such attempts to shift the legitimate burden of taxation. I have made clear to Parliament on a number of occasions that we will take a rigorous approach to dealing with tax avoidance.

In the United Kingdom budget in March 2012, the Chancellor of the Exchequer committed to consulting on legislation to narrow the sub-sale relief rules and reduce the scope for avoidance. That consultation has taken place, and the reformed sub-sale rules are making their way through Westminster in the Finance (No 2) Bill. However, I believe that it is necessary to go further than that. I do not intend to replicate in taxes that are devolved to Scotland rules and reliefs that have led to avoidance activity. I therefore introduced the LBTT bill without any form of sub-sale relief.

I welcome the Finance Committee’s support for the removal of sub-sale relief. Having considered the committee’s report carefully I do not intend open the way to any form of sub-sale relief. To do so would open up a significant risk of giving scope to tax avoiders who are intent on reducing their tax burden through artificial schemes that this Parliament does not think merit relief.

Members of the Finance Committee have heard evidence from some stakeholders who have stated the case for a targeted form of relief for a class of property transactions that are referred to as forward funding arrangements. I am giving careful consideration to those arguments, which I believe have been raised with the best of intentions. My question is whether giving those transactions relief under LBTT will open the door to the sort of tax avoidance activity that has been a negative of stamp duty land tax to date.

I am committed to the creation of a tax environment that is supportive of economic activity in Scotland. I wish to ensure that widely accepted development transactions, such as those described to the Finance Committee, continue without an undue tax burden.

The property development industry plays a vital role in supporting economic growth and regeneration. Therefore, we are undertaking further work with stakeholders to ensure that the parties to a forward funding arrangement achieve a fair outcome under LBTT.

Charities relief was also the subject of some discussion at the committee’s stage 1 evidence-taking sessions. Some stakeholders expressed concern about the requirement for charitable organisations that invest in, but do not occupy, property in Scotland and those that use the associated income stream for charitable purposes to register with the Office of the Scottish Charities Regulator to obtain that relief.

I firmly believe that, to protect the tax base, it is vital to have systems in place to ensure that any relief—not just charities relief—fully satisfies rigorous eligibility criteria. Officials are discussing with revenue Scotland and OSCR an alternative approach for the small number of cases affected each year.

I am confident that we will have the legal and administrative systems in place in good time to collect a fair and robust land and buildings transaction tax in Scotland from April 2015. I have covered in this speech the approach that the Government is taking to the formation of the legislation and the issues that have been raised in the Finance Committee. I look forward to considering with colleagues the issues that are raised as a consequence of the debate.

I move,

That the Parliament agrees to the general principles of the Land and Buildings Transaction Tax (Scotland) Bill.

14:46

Kenneth Gibson (Cunninghame North) (SNP): I am pleased to highlight key areas that the Finance Committee considered following its stage 1 evidence taking.

The Scotland Act 2012 devolves a range of taxation and borrowing measures: powers to borrow for capital projects; powers to set a
Scottish rate of income tax to replace a 10p in the pound income tax reduction for Scottish taxpayers across all bands; and powers to set taxes on land transactions and disposal to landfill.

The Landfill Tax (Scotland) Bill was introduced last week and the tax management bill will be introduced later this year. The Land and Buildings Transaction Tax (Scotland) Bill provides for the rules and structure of LBTT as a tax levied on anyone buying, leasing or taking rights—such as options to buy—over land and property. It covers residential and non-residential transactions, including the purchase, lease or licence of options over commercial properties such as shops, offices, factories, land for development and agricultural or forestry land.

Our report identifies issues that emerged from the evidence that was given. I will first highlight tax bands and rates.

The Scottish Government will replace the slab structure of stamp duty land tax—a tax that is to be disappled under the Scotland Act 2012—with a progressive structure, which will include a nil rate band and at least two others.

Witnesses supported that approach. For example, the Edinburgh Solicitors Property Centre is “fully supportive of LBTT being a progressive tax”.—[Official Report, Finance Committee, 6 February 2013; c 2197.]

The Council of Mortgage Lenders Scotland said:

“While there would be winners and losers out of any new system we believe a progressive system would be more equitable and overcome some of the inefficiencies created by the slab system.”

The bill team commented:

“The considerations that ministers will take into account will include the expected amount of revenue to be raised”,

and said that

“the volatility of receipts from stamp duty land tax in Scotland over the past few years will be a factor in ministers’ consideration of how to set rates and thresholds.”—[Official Report, Finance Committee, 23 January 2013; c 2087.]

The committee supports the introduction of a progressive structure.

Some witnesses expressed concerns about how far in advance of its introduction on 1 April 2015 the level of LBTT would be known. That is particularly relevant in respect of commercial property transactions, on which some witnesses argued there could be a risk of discouraging investment.

Our report highlights the fact that the cabinet secretary is not persuaded of the need to provide too much advance notice and that, as he indicated a few minutes ago, even giving notice in next year’s draft budget may be too early. We recognise the range of views on the timing of the announcement of rates and bands and ask the Scottish Government to consider likely implications for the commercial property market.

Regarding scrutiny of the proposed bands and rates, the Subordinate Legislation Committee can see no reason why, if the affirmative procedure is required for the initial use of the power to set them, the same level of scrutiny should not be required for the use of the power thereafter. It also identifies the procedural option that is available should there be a need to act quickly in response to changing market conditions.

I note that the cabinet secretary intends to introduce stage 2 amendments to provide a form of provisional affirmative procedure after the first occasion on which the bands and rates are set.

In its consultation on the tax management bill, which covers issues that are applicable to each tax such as collection, the use of information, penalties for late payment and tax evasion, the Scottish Government states:

“SDLT … has been subject to sustained and aggressive tax avoidance. There is a risk that LBTT could be subject to similar activity.”

The policy memorandum on the Land and Buildings Transactions (Scotland) Bill states:

“all transactions involving land or buildings in Scotland should be liable for LBTT, except in certain limited and specific circumstances set out in legislation.”

The cabinet secretary has said, and he repeated today, that he wants to take a vigorous approach to tax avoidance, and that he will use two different types of anti-avoidance rules. Witnesses broadly supported that approach. There will be an effective general anti-avoidance rule in the tax management bill, and there are targeted anti-avoidance rules in the LBTT bill. The bill team commented on the use of and exemptions from tax relief and on how the Scottish Government has sought to minimise avoidance.

The committee considered in detail the absence of sub-sale relief from the bill. The Scottish Government thinks that the sub-sale rules “act as a gateway to a significant amount of avoidance activity.”

Some witnesses challenged that. Pinsent Masons said:

“There are numerous circumstances where an organisation might legitimately seek to acquire land and then move it on quickly”,

and went on to say:

“It should be entirely possible to develop subsale relief provisions which protect tax revenues from unacceptable avoidance while retaining the economic benefits which the relief facilitates.”
Some witnesses suggested that removal of sub-sale relief would impact on forward funding arrangements, where three parties—the vendor, the property developer and an institutional investor—are involved in the development of a property. Brodies argued that although sub-sale relief has been used to avoid paying SDLT, it has also facilitated development. Brodies thought that, in the absence of sub-sale relief, Scottish developers could face higher costs than developers in the rest of the United Kingdom and concluded:

“such proposals for higher taxation cannot be justified or supported.”

The Scottish Government gave two reasons for excluding sub-sale relief from the bill. The first was:

“although we accept that a piece of land can be bought and sold twice on the same day for perfectly legitimate commercial reasons ... we were not persuaded that there was an obvious case for relieving one of the sets of transactions from tax”.

The second reason was:

“sub-sale relief has become an avenue for avoidance of quite substantial amounts of stamp duty land tax across the UK. We were anxious to limit opportunities for tax avoidance.”—[Official Report, Finance Committee, 23 January 2013; c 2088-9.]

The cabinet secretary told the committee:

“I have not come to a final decision on sub-sale relief.”—[Official Report, Finance Committee, 27 February 2013; c 2312.]

However, today he announced that he has come to a decision. He also distinguished between sub-sale relief and forward funding, expressing a desire to tackle tax avoidance without adversely impacting on economic growth. The committee welcomes that distinction.

The cabinet secretary told the committee:

“I am not minded to bring forward targeted relief, but my mind is not fixed on that and I will wait until the committee reports in that respect.”—[Official Report, Finance Committee, 27 February 2013; c 2312.]

If sub-sale relief were to be accommodated, Registers of Scotland would be prepared to build functionality in that regard into the system and manage it. However, the committee supported the removal of sub-sale relief from LBTT, on the basis that the necessary amendments will be lodged at stage 2 to ensure that forward funding or other legitimate arrangements are not subject to double taxation.

The roles of revenue Scotland and Registers of Scotland are key to the efficient management and collection of LBTT. Revenue Scotland, the tax authority for LBTT and the landfill tax, will be established as a non-ministerial department, which will be accountable to this Parliament rather than to ministers. Its structure, functions and so on will be developed under the tax management bill.

Revenue Scotland’s establishment was welcomed, as was the role of ROS in collecting LBTT. However, as the bill team said:

“Resourcing is important and we are giving it a lot of thought.”—[Official Report, Finance Committee, 23 January 2013; c 2092.]

The Law Society of Scotland said:

“It is essential that the new online system for LBTT is ready in sufficient time for it to be adequately tested by practitioners and for guidance to be prepared well before April 2015.”

I note that, in response to Mary Scanlon, the cabinet secretary said that that is work in progress.

Concern was expressed about the readiness and suitability of the IT infrastructure. There was concern about the robustness, speed and ease of use of the automated registration of title to land system and about the need to replace it with a fully operational system that has been tested by external users as well as by ROS. There is clearly a role for the Scottish Government in providing efficient oversight and management in that regard. The cabinet secretary is confident that ROS will deliver the necessary IT infrastructure, and ROS thinks that the funding will be sufficient to design and build a new system, with “sufficient contingency”.

On information and guidance to taxpayers, provision is made in the financial memorandum to cover costs in relation to staffing, printing and communication and a helpline. The definition of roles and responsibilities is important in ensuring that people know whom to approach for advice and assistance. Well-trained specialist staff and full and accessible guidance will be crucial.

Clarity on compliance activity, with revenue Scotland producing milestones and dates for key deliverables, is important. We will monitor and scrutinise the implementation and delivery of LBTT through progress reports from both bodies.

On transitional arrangements, costs will arise from work to enable systems to be switched off and from communications, including publicity and guidance.

The Office for Budget Responsibility has responsibility for forecasting receipts for the Scottish rate of income tax, SDLT and landfill tax on a six-monthly basis, alongside its economic and fiscal outlook. It has provided forecasts for Scottish taxes to 2017-18 and specific forecasts for SDLT to 2016-17.

The financial memorandum states:
“It is reasonable to assume that receipts from LBTT will be equivalent to those from SDLT at present and the block grant adjustment will be broadly equal to the level of SDLT receipts.”

Homes for Scotland expressed concerns about the strength of the housing market and believes that “significant change is unlikely in the coming years.”—[Official Report, Finance Committee, 30 January 2013; c 2162.]

The Scottish Property Federation believes the OBR forecasts to be “wildly optimistic.” It suggests that the Scottish Government “digs in its heels” when negotiating the SDLT block grant adjustment with Her Majesty’s Treasury.

There will be a one-off reduction in the block grant. The cabinet secretary suggests that, given the volatility in SDLT receipts, the fairest and most reliable means of calculating the size of the reduction would be to calculate a five-year receipt average using actual rather than forecast data when calculating the adjustment, given that “the forward estimating of SDLT is very difficult”—[Official Report, Finance Committee, 27 February 2013; c 2328.]

and that OBR forecasts have already been significantly revised.

The committee is taking evidence on the block grant adjustment and will report before the end of May to help inform discussions of the Joint Exchequer Committee.

The committee has assessed and reflected carefully on the evidence and supports the general principles of the bill. It will now aim to monitor closely the implementation and delivery of LBTT.

Given the time allowed, I have not talked about charities, but I know that colleagues have raised the matter in committee extensively and will do so again in their speeches today.

At stage 2, we will consider issues surrounding sub-sale relief, forward funding and non-residential leases. Given the very technical nature of the amendments that we expect, we are keen to see them as early in the stage 2 process as possible. We greatly appreciate the efforts of the bill team and the cabinet secretary in that regard.

14:56

Ken Macintosh (Eastwood) (Lab): The land and buildings transaction tax is, I believe, Scotland’s first new tax in 300 years. It stems from the conclusions of the Calman commission, established by Wendy Alexander and other party leaders, and it marks the first transfer of substantial fiscal power from Westminster to Holyrood under the Scotland Act 2012.

The bill makes provision for a tax on land transactions in Scotland and is scheduled to replace the UK-wide stamp duty land tax from April 2015. I make it clear from the outset that Scottish Labour broadly supports the principles of LBTT as outlined in the bill and that we believe that the bill is an example of devolution working well.

Given the political contention surrounding the whole issue of tax-raising powers and devolution, concern over rampant tax avoidance and worries over a lack of support for the housing industry, it is worth remarking on the level of cross-party political agreement that has been reached on the bill. The bill affords Scotland the opportunity to design a tax that suits our own needs, redresses some of the current taxation system’s flaws and frees the Scottish housing market from the market distortions of London and the south-east.

No one will be surprised to hear that Scottish Labour supports the principles of a progressive approach to taxation. We believe that replacing stamp duty’s tiered or so-called slab structure with LBTT’s gradual rising scale or progressive approach is a welcome change to the existing tax system. The current slab taxation approach creates disincentives and marked inequities in the level of tax paid, particularly around the tax thresholds, where a difference of £1 in a selling price can lead to an extra tax burden that is measured in thousands of pounds.

Not only will changing to a progressive scale lead—I hope—to a more equitable tax structure, it will help to eliminate the market distortions around tax thresholds and simultaneously facilitate the sale of properties that are valued at marginally above the thresholds. It should also mean that the tax applied to transactions will be more reflective of the total value of the property being sold, which it is hoped will result in a more robust and competitive Scottish property market.

It is worth commenting that, as well as our reaching political agreement, witnesses from the public, private and voluntary sectors all broadly supported the principles underpinning LBTT.

However, it is worth highlighting that ministers have yet to announce one of the most important matters of all, which is what the new tax rates will be. We know that there will be a 0 per cent band and at least two other higher bands, but it is far from clear when the cabinet secretary intends to make that information public. We are also led to expect the effect on the tax take from the change from stamp duty to LBTT to be broadly neutral, but that still leaves quite a deal of uncertainty.

The Confederation of British Industry, among others, noted that a new Scottish system should take UK tax rates into account when setting...
banding levels, as any substantial difference between UK stamp duty and Scottish LBTT rates could have a direct effect on Scotland’s attractiveness as a place in which to work, live or invest.

Several witnesses raised concerns—which the cabinet secretary and Mr Gibson, as convener of the committee, echoed—about the important judgment to be made when announcing the new rates. Particular sensitivity was expressed about the length of time between the announcement of the new tax and its implementation. Many recognised that that period must be short enough to prevent people from delaying or bringing forward transactions in a bid to game the system and therefore benefit from the time lag. Others suggested that that must be weighed against the need to prevent uncertainty in the market. The cabinet secretary suggested in his evidence and confirmed this afternoon that he might not announce the new banding levels even by as late as his budget of September 2014.

Of course, it could be that the cabinet secretary believes that he will be too depressed in September 2014 to make any such decision. I hope—

John Mason (Glasgow Shettleston) (SNP): Will the member take an intervention?

Ken Macintosh: I hope that Mr Mason can demonstrate a sense of humour.

John Mason: Does the member accept that, if the overall indication is that the effect will be broadly neutral, the room for manoeuvre is not huge? The position is not that unpredictable.

Ken Macintosh: Indeed. I was just about to suggest to the cabinet secretary that, if he indicates to the committee and to Parliament when he has agreed on a date, so that we can have some clarity on the matter, that will help.

Every bit as important as the new taxation rates will be the agreement that is reached with Westminster on the consequent reduction in the block grant. I hope that the cabinet secretary will accept our assurances that we will support him in securing a good deal for Scotland. I should emphasise that a good deal for Scotland is one that is fair and is accepted by both sides as just. Basing agreement on figures from the Office for Budget Responsibility could be successful. I would want an agreement as robust as that secured by the no-detriment principle in the Calman commission’s other recommendations on tax.

The Finance Committee fully agreed with the Government that the bill offers an opportunity to tackle the susceptibility of stamp duty to tax avoidance. The cabinet secretary and I have disagreed in the past over the Scottish Government’s support for tax dodgers such as Amazon, so I was very pleased to welcome and support the bill’s general anti-avoidance rule. We hope that the GAAR will minimise the exposure of LBTT and the forthcoming landfill tax to abusive tax arrangements and we believe that the rule should be robust and rigorously enforced.

We support the bill’s general approach, which is to do away with most tax reliefs—again, in the hope that that will help to prevent tax avoidance. There has been much discussion and lobbying on the removal of sub-sale relief. The committee has—rightly—highlighted concern about that. I welcome the cabinet secretary’s earlier comment and his statement in response to the committee that the Government will work with key stakeholders to ensure that forward-funding arrangements are not subject to double taxation. Above-board transactions should not be unnecessarily punished or stifled by the new tax system.

It will be even more important for the cabinet secretary to look long and hard at what he can do to promote more energy-efficient homes. The fact that zero-carbon homes relief has not been successfully applied for in Scotland does not merit the Government backsliding on the climate change cause. Measures to incentivise energy efficiency need to be re-explored, particularly if the Government is serious about making energy efficiency a more significant factor in home buyers’ priorities and if we are to cut carbon emissions by 42 per cent as planned.

John Swinney: The point that I advanced at the committee is that I was not persuaded by a relief for a property transaction whereby the purchaser got the benefit of an investment that an individual householder had made when occupying that property. The provisions that were inserted into the climate change legislation in relation to council tax were one helpful step. We had to ensure that those schemes were more widely available and taken up more than they were. There is no intention not to give due attention to tackling carbon emissions; the issue is finding the right mechanisms to do so.

Ken Macintosh: I welcome the cabinet secretary’s approach. I have sympathy for the non-renewal of a scheme for which there were no successful applications in Scotland.

However, I draw the cabinet secretary’s attention to a proposal, prepared for the UK Green Building Council, that has been circulated in the past couple of days by the Association for the Conservation of Energy. It proposes “an energy efficiency modifier which would be fiscally neutral ... but could be applied to LBTT relatively simply.”
The proposal has emerged since Mr Booth and Ms Waterson addressed the committee. I urge the cabinet secretary to consider that, because it could give the Government an opportunity to address that priority.

Mike MacKenzie (Highlands and Islands) (SNP): Does the member accept that, given the progressive nature of the tax, the proposed measure would help those who are further up the ladder more? Those are the people who least need help in making their homes more energy efficient. It is the people who are lower down the scale who need the help.

Ken Macintosh: Mr MacKenzie raises an interesting point about our desire as a country to reduce carbon emissions. If carbon emissions on larger homes are greater, we need to put greater emphasis on reducing them. It is an interesting dilemma; all that I would urge at this stage is that the cabinet secretary—and, perhaps, the committee members—look at the proposal, as the bill offers an opportunity to make progress on an issue on which I do not think that we are making much progress. We are doing very well on new-build houses, but we are not doing so well on retrofitting existing homes, and the matter is important.

The Scottish Labour Party similarly welcomes the charities and charitable trust relief, which states that tax relief from LBTT will be offered only to charities that are registered with OSCR. As with other measures, we wish to clamp down on potential abuse of the tax system. However, great care must be taken to ensure that legitimate charities are not excluded from relief.

Regarding the administration of the tax, Scottish Labour notes that the tax management bill proposes the creation of revenue Scotland as a non-ministerial body for the “care and management” of devolved tax receipts. The bill states that Registers of Scotland will also have a role in the collection of revenues. We echo the concern of witnesses that the division of duties between revenue Scotland and ROS should be clearly defined and that both organisations should be appropriately staffed and resourced.

I echo Mary Scanlon’s comment that particular focus should be targeted at the IT systems that revenue Scotland and ROS will use for the delivery of LBTT. There is already widespread unease about the readiness and effectiveness of ROS’s IT system, as well as the current stamp duty online system, which has been described as overly complex. It is essential that adequate time and investment are directed into ensuring that the systems for LBTT are effectively designed, tested and proven fit for purpose.

Scottish Labour broadly supports the principles of LBTT, as outlined in the bill. The bill is a clear indication that devolution is robust and effective, as it allows the Scottish Government the opportunity to design from scratch a new tax system that addresses many of the flaws in the existing stamp duty system. The new tax will be responsive to the markets in Scotland and will not be skewed by economic circumstances elsewhere in the UK. We await the two vital announcements—on tax rates and on the adjustment to the block grant—but we are happy to support the new measure.

15:07

Gavin Brown (Lothian) (Con): The Scottish Conservatives support the general principles of the bill and we will vote for it at decision time. Much of the bill and much of what the cabinet secretary has said is non-contentious and has been agreed by all sides.

I particularly welcome the Scottish Government’s decision to get rid of the slab structure. That will remove market distortions as well as the incentive for the bunching that has taken place for quite some time under stamp duty land tax. The measure has support not only among tax professionals but more widely across the Scottish commercial and residential sectors.

I will comment on three points more specifically. I listened carefully to the cabinet secretary’s speech in relation to those three points and read carefully the Scottish Government’s response to the committee’s report on those three points. On one of those three, I was positively encouraged by what the cabinet secretary said. On another, I was slightly discouraged by what he said. On the third one, I was partially encouraged and partially discouraged by what he said.

I will begin on a positive note. I was encouraged more by what the cabinet secretary said about licences in his response than by what he said in his speech. As matters stand, licences will be liable to LBTT, and the view was expressed in paragraph 54 of the committee’s report that some categories of licence should be exempt from LBTT. What the bill says cannot have been the policy objective or indeed the Government’s thinking at the time of drafting the bill.

The time element for licences is one factor—although not the only one—that must be examined, as there is surely a distinction between temporary short-term occupation and longer-term more permanent occupation. The Scottish Government has said that it

*carefully considered the evidence presented to the Committee … and intends to bring forward an amendment
That is welcome news, but perhaps the cabinet secretary could confirm—later or in his closing speech—whether the bill will include a list of the licences that would be covered, as opposed to a list of exemptions. I wonder whether he can share any more about the principles of that or his thinking on it at this stage.

John Swinney: I confirm that there will be an indication of the licences that are included in the scope. The bill will specify which licences will be covered rather than seek to establish a comprehensive list of all the circumstances that are not covered. I hope that that helps members.

Gavin Brown: That is helpful, and it is probably the right way to go about it, so I am even more encouraged on licences than I was to begin with.

Before I get too carried away, I have to say that I was discouraged—as I have expressed in committee a number of times—to hear about the timing of the announcement of the bandings and rates for LBTT. I was not heartened by that at all.

The original plan was to announce them in September 2014, for operation in April 2015. I judge from evidence to the committee that that has led to some uncertainty in the business community, given the absence of any indication of what the rates and bandings will be.

What the cabinet secretary said today—which is similar to what he said in committee—was that there was a range of views that spanned from one week before to two years before. However, that does not reflect what the committee heard, and I invite him to look again carefully at the evidence to the committee from the commercial sector.

I accept the cabinet secretary’s point about the residential sector, as there was evidence from that sector relating to a timescale of one week before. However, almost without exception, every witness from the commercial sector stated that a date of September 2014 would not give the business and commercial sector enough time.

There was a range of views, but they varied between a year and 18 months before September 2014; they did not go up to April 2015 and they were not spread evenly. It was clear to me that the strong view of the business community—from the Law Society of Scotland, the Institute of Chartered Accountants in Scotland, the Scottish Building Federation and many others—was that the announcement should come sooner than September 2014. I think that the sector will be discouraged by what the cabinet secretary has said on that today.

My third item, sub-sale relief, took up a huge amount of the committee’s time. It is an important part of the economy, but I accept that it has in the past led—as I am sure it currently does—to tax avoidance, and the Government must strike a balance between those two aspects. As far as I can recall, no one who gave evidence said that sub-sale relief should be kept exactly as it is, but there was a strong view in the commercial sector that the relief’s wholesale removal was a bit of an overreaction and that there ought to be some exemptions.

I was encouraged by the cabinet secretary’s comments on forward funding, and I hope that progress is made through an amendment at stage 2. However, there are elements of sub-sale relief that are not forward funding and which many or most still consider to be legitimate commercial transactions. I ask the cabinet secretary to look at the subject again to see whether there are areas other than forward funding that could be protected via sub-sale relief without allowing the relief in its entirety to remain as it stands—I accept that it leads to a degree of tax avoidance.

There is a balance to be struck, but I am slightly concerned that, taken together with some of what we have heard today, removing the relief tips the balance slightly away from being competitive. I hope that that issue can be revisited.

The Deputy Presiding Officer: We now move to the open debate. I call Jamie Hepburn, to be followed by Malcolm Chisholm. We are a bit tight for time, so I give Mr Hepburn up to six minutes.

15:14

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I welcome this stage 1 debate. The bill is, of course, the first of three bills arising as a consequence of the Scotland Act 2012, and I look forward to scrutinising the other bills when they come before the Finance Committee.

I very much welcome the bill’s proposed changes to the scope of stamp duty land tax or, as it will become, LBTT. The proposal to move from the slab structure of taxation to a progressive tax structure has been welcomed across the board. That has been welcomed by just about everyone who has given evidence to the committee, because of course a progressive structure has a greater relation to the ability to pay and deals with market distortion. Just now, there is a huge disincentive for builders to build properties that are valued around the margins of the thresholds or for property to be put on the market around the margins, but the new structure will remove that disincentive.

I recognise that there is on-going dialogue or debate about the timing of the announcement of the new bands. We need to be careful, because doing that too late or too early could influence
market behaviour. The cabinet secretary is right to be cautious about that.

The bill will also bring modifications to reliefs and exemptions, including the withdrawal of subsale relief arrangements. I concede that, when the committee took evidence, views on that proposal were more mixed. However, on balance, the bill has got it right in that regard. Clearly, one of the drivers for the legislation is to reduce tax avoidance, and the various reliefs set out in the old tax regime have allowed tax avoidance to arise. I therefore welcome the proposed changes.

I want to raise two issues in particular, if time allows. The first is relief for zero-carbon homes and similar reliefs, and the second is charities relief. I started the process of assessing the bill by being quite sympathetic to the idea that there should be some form of relief to encourage environmental improvements in homes. Organisations out there gave evidence in support of that. However, we should bear in mind the point that Homes for Scotland made, which is that very few people buy their home with environmental improvement uppermost in their mind. Certainly, when I bought my home, its energy efficiency was not particularly uppermost in my mind.

I take on board the cabinet secretary’s point that there may be other, more appropriate ways of incentivising the use of energy efficiency measures than doing so through the bill. If sensible measures are proposed, the committee will consider them. However, on balance, the bill has it just about right at the moment.

Charities relief will ultimately affect very few transactions in any year. However, it took up some of the time that the committee spent on considering the bill at stage 1. I very much support the element of LBTT that will offer relief for charities. Organisations out there doing charitable work should be supported in that way. In essence, the relief will mean that the Scottish taxpayer will subsidise charities, so we must have the right mechanism for charities to benefit. Brodies solicitors and ICAS suggested that charities relief should be available to organisations whose charitable status is granted by HM Revenue and Customs, but I have some concerns about that, notwithstanding the good relations that I am sure exist between the Scottish Government and HMRC.

HMRC is not answerable to this Parliament on a legislative basis or to the Scottish Government on an executive basis. For that reason, OSCR is a much more appropriate organisation for charities to be registered with in order to benefit from charities relief. Some expressed concern that foreign charities cannot register with OSCR, but we have had clear evidence that section 14 of the Charities and Trustee Investment (Scotland) Act 2005 allows for foreign charities to register with OSCR. Concern was also expressed that registering is an onerous task for charities. However, the requirement to register with OSCR already exists, so it will be no more onerous for a charity to register for charities relief purposes. If a foreign charity wants to get a subsidy from the Scottish taxpayer, the least that it can do is register as a charity.

Let me conclude by focusing briefly on an issue that the convener of the committee mentioned—the block grant adjustment.

The Deputy Presiding Officer: You have 30 seconds.

Jamie Hepburn: The block grant will be reduced on a one-off basis for LBTT. We have to get that right. I say to Mr Macintosh that how fairly the Treasury plays on the matter might demonstrate how effective devolution is in comparison with other options that are available to Scotland. I support the methodology that the Scottish Government has suggested. I look forward to looking at that in the committee and to stage 2 of the bill process.

15:20

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I am pleased to take part in this landmark debate, in which we are considering a tax bill for the first time in the history of the Scottish Parliament. I hope that it will be the first of many debates on devolved tax bills, in which we will grapple with the pros and cons and the trade-offs of different rates, reliefs and incentives.

Central to any devolved tax bill is something that is not in the bill at all—namely, the block grant adjustment. We should briefly consider that; it is probably the most important of all the things that we will discuss today, because if we do not get it right it will not be worth our while going down this route at all. As the cabinet secretary and others are, I am concerned that if we rely only on OBR estimates of what might have been or would be raised post-2015, we might have an overestimate from the OBR—that is what it usually does—and then we will have too much money taken off our grant. I am therefore minded to support the cabinet secretary’s proposal in committee that we use how much was raised in the five years up to 2015 as a basis for those negotiations.

Some people who made written submissions regretted that the bill is not more radical, but my understanding is that the tax was devolved subject to its being a tax on land transactions, so obviously the Government had to follow that. However, the decision to raise the same amount of money was, I think, the Government’s decision. I am not quibbling with that decision, but if we
think about it, more restricted reliefs are being proposed in the interest of simplification and in order to target avoidance, which means that, if the same amount of money is to be raised, there will probably be a slightly more generous banding system when the detailed bands and rates are announced. I do not quibble with that either.

Like others, I support the progressive system that is envisaged instead of the slab system. I would like it to be very progressive, as it were, and in that sense—I seem to be agreeing with the cabinet secretary an awful lot today—I am quite pleased by his suggestion about helping first-time buyers and ensuring that people with pretty expensive houses that are worth more than £325,000 pay more. I certainly view that sympathetically.

Different views were expressed about when the cabinet secretary should announce the bands and rates. It was quite a difficult issue for the committee but, on balance, it was the people who are concerned with commercial property who wanted an announcement well in advance, whereas the Edinburgh Solicitors Property Centre in my neck of the woods did not want them to be announced many days before the start of the tax. One conclusion from that might be that we should have different dates for the announcement of the commercial and the residential bands and rates.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Although it closes a loophole, on 21 March 2012, the Chancellor of the Exchequer announced that, with immediate effect, there would be a 15 per cent stamp duty on transactions done through companies and whose value is over £2 million, so a number of changes could be made very quickly indeed.

Malcolm Chisholm: That is a fair point and I would not disagree.

Ensuring that there is no tax avoidance is an important aspect of the bill. The general provision, which will be included in the forthcoming tax management bill, has been mentioned. Specific measures in the Land and Buildings Transaction Tax (Scotland) Bill include those on sub-sale relief. A lot of the debate has been about that. As Ken Macintosh said, we on this side of the chamber generally support what the cabinet secretary is saying on sub-sale relief, while seeking to ensure that forward funding arrangements to enable site development are protected. We should consider Gavin Brown’s suggestion, if there is any territory between tax avoidance and forward funding, but I am not particularly persuaded of that at the moment.

Charities relief took up quite a lot of our time in committee because it is intrinsically interesting, although it is not going to be an enormous issue in terms of the number of charities from outwith Scotland. I note that David Robb, who heads up OSCR, suggested that there are easier ways to identify bona fide charities than registration with OSCR, so perhaps we should follow his advice.

Like the cabinet secretary, the committee was not persuaded about the reliefs for energy efficiency, although I was probably a bit more sympathetic to them than others were. The paper that we received from the UK Green Building Council, which Ken Macintosh mentioned, is worth looking at during our stage 2 consideration, not least because the proposal is revenue neutral. It does not claim to deal with all the issues around incentivising energy efficiency, but it is certainly worth looking at. I will not go into its detail now, but we should keep the paper for consideration.

In my last minute I will briefly discuss administration issues. Mary Scanlon mentioned her concerns about IT systems at Registers of Scotland, although we are assured that those have been sorted out—we certainly hope so.

The main issue to be resolved is the respective roles of revenue Scotland and Registers of Scotland. A witness from Registers of Scotland said words to the effect that he did not know whether they would advise on just forms or aspects of the tax. Clearly, that has to be ironed out in the coming period.

Another concern was that payment will have to be made prior to registration. The Council of Mortgage Lenders said that that would be all right if the system of advance notices under the Land Registration etc (Scotland) Act 2012 was introduced before LBTT. I must say that I do not have a clue as to what the system of advance notices is, but I am very happy to follow the advice of the Council of Mortgage Lenders Scotland in that regard.

John Mason (Glasgow Shettleston) (SNP): It is encouraging that there is widespread welcome for the replacement of SDLT with a simpler and more progressive tax, and especially for the replacement of the slab system, in which a huge increase in tax could come from a tiny increase in price.

The committee as a whole was very positive about the bill and the tax, with the clear conclusion that it supports the bill’s principles. It was mainly around the edges that we had questions or suggestions for improvements.

My first main point is to say how exciting it is that we are having this debate at all, because we are debating the introduction of the first new tax in Scotland. Okay, it is only a small tax, but there is
something symbolic about it: it shows that the country and the Parliament are moving forward to maturity. Not only are we spending a block grant that has been given to us, but we are becoming involved in raising some of the revenues that we can spend. That will be challenging, not least for the Finance Committee, which will have to gain the expertise and find the time to examine properly and challenge the new tax as it is put into effect.

As I said, the tax is relatively small, and there are bigger taxes to come—especially the share of income tax—but it is the first step on the latest stage of the constitutional journey. It is one step closer to fiscal autonomy and one step closer to independence. It seems to be inevitable that we will eventually reach independence; the only real question is when exactly that will take place.

Neil Findlay (Lothian) (Lab): Given that John Mason has expressed his excitement about today, will he express some contrition about opposing the Calman commission and the Scotland Act 2012, which brought us to this very exciting day?

John Mason: That question is not quite on subject. Given that Calman proposed a system of block grant reduction that would have damaged Scotland, I have to say that I am not a fan.

I return to the tax itself. How we implement it will set a precedent for future taxes. The cabinet secretary referred to the principles of getting it right at this stage. I am very comfortable with the four principles that he mentioned when he quoted Adam Smith: certainty, taxpayer convenience, efficiency and proportionality in relation to ability to pay.

We spent a lot of time looking at reliefs and it was interesting that some of the same people who asked for simplification of the tax also seemed to ask for more and more reliefs. In fact, some of the witnesses who appeared did not really want to pay any tax at all. I would like to spend a moment on that point.

The suggestion is that we must be competitive and so we must lower all taxes, but that is far too simplistic a view. Tax is surely one factor when companies come to make decisions about location, but an educated workforce is another, and we cannot have an educated workforce if we do not have taxation to fund schools, colleges and so on. Tax is inherently a good thing; it is how we fund public services, but of course we accept that it has to be at a reasonable level.

I will comment briefly on some of the reliefs that we discussed. On sub-sale relief, there was initially quite a lot of confusion among members of the committee and some of the witnesses about funding mechanisms. The example that was given of a farm that is bought and then split among three neighbouring farmers seemed to be a good one.

Zero-carbon homes relief has not worked under SDLT. We took evidence from a number of witnesses who were enthusiastic about it, but it seems to me that such a relief under LBTT would be a very blunt instrument to use to achieve what is a good aim.

On charities, we are looking for a practical solution. It is clear that OSCR has set the bar for qualifying as a charity very high, and we do not want to compromise that by allowing any charity anywhere to count as a charity here.

We discussed tax avoidance at length. The Scottish Parliament information centre briefing on the bill says:

“Tax avoidance is distinct from tax evasion in that avoidance exploits loopholes in the law, while evasion entails illegal activity.”

It has traditionally been held that avoidance includes moral avoidance—an example of which is people claiming their tax allowance—and immoral avoidance, which involves going against the spirit of the legislation. It seems that the more reliefs there are, the more avoidance there is likely to be. I know that that will be dealt with in the proposed tax management bill, which will include a general anti-avoidance rule.

We spent less time on exemptions. In general, it is assumed that the exemptions will be much as they are at present. I have some questions about exemption on death, as it could maintain the gap between rich and poor by allowing wealth to stay in richer families. However, I take the point that inheritance tax is intended to address that.

The issue of rates and when they should be announced came up. In paragraph 10 of its report, the committee welcomed the progressive structure that is being adopted. It has been said a number of times that some people would like the rates to be announced sooner rather than later, but how can the cabinet secretary make future budget announcements so far ahead? That would tie his hands. We do not know what house prices will be like or what the situation will be in the wider economy, let alone what will happen with the block grant and the related adjustments. It has been indicated that LBTT will be broadly revenue neutral, which I guess gives a pretty strong indication of what level the rates are likely to be set at.

The relationship with HMRC is crucial for all three taxes. So far, it seems that if we make changes that affect Scotland, we must pay the bill, but if Westminster makes such changes, we still have to pay the bill. I do not think that that was the original intention. I am somewhat suspicious of HMRC, but I hope that I will be proved wrong.
I am more than happy to support the bill and the tax that it will introduce. I am especially happy that it marks the first step in the next stage of our journey as a country.

15:32

Michael McMahon (Uddingston and Bellshill) (Lab): This is not the first time I have taken part in a stage 1 debate in which there has been very little to say that has not been said already by the time I have stood up to speak. However, the truth is that, having listened to the often highly technical and complex evidence that an array of witnesses provided, and having read the detailed and informative written submissions to the Finance Committee, we can do no more than conclude that the land and buildings transaction tax is a welcome addition to the powers that are available to the Scottish Government to make decisions here in Scotland that will better reflect the circumstances that exist in relation to property markets in this part of Britain.

Little can be found to criticise in the detail of the bill. The concerns that were raised were more to do with issues such as implementation of the tax within the overall taxation regime across the UK. As others have said, major challenges will now be faced when agreement on block grant adjustments has to be reached between the different legislative jurisdictions.

However, the structure of LBTT is not the subject of any great concern. Indeed, more than one voice was heard to say how welcome it was that the Scotland Act 2012 had provided the opportunity to replace stamp duty land tax, with all its inherent flaws. As has been said, among the most welcome aspects of LBTT is the removal of the slab structure and its replacement with a progressive structure. Witnesses were highly supportive of that approach. No organisation was more supportive of it than the Council of Mortgage Lenders Scotland, which rightly identified that it is inevitable that there would be winners and losers in any new system but preferred to look at the positive side. It highlighted the fact that a progressive system would be more equitable and overcome some of the inefficiencies created by the slab system.

However, there was some concern that there could be a disproportionate effect on high-value transactions that are liable to the top rate of LBTT. The CMLS was joined by the Confederation of British Industry Scotland in identifying that concern, but I am less concerned about that aspect of LBTT, as the Scottish Government will continue to ensure that people in higher-cost houses get a nice wee discount on their properties through the council tax freeze, which gives most to those with the deepest pockets and the biggest homes. However, the CBI is right to argue that, when setting the rates for higher-valued domestic properties, the Scottish Government would need to take cognisance of rates that apply elsewhere in the United Kingdom.

Most concern arises—with some justification—regarding the uncertainty that may emerge around LBTT rates in the lead-up to the introduction of the tax, especially in relation to commercial property, because that may discourage investment in the Scottish market. Although Adam Smith would perhaps be very proud of the cabinet secretary’s adherence to the laissez faire free-market policies that he laid down, he would not be very keen to endorse the cabinet secretary’s position with regard to the uncertainty around taxation. I have read and re-read all the evidence that was made available to the committee, and I cannot find anyone, other than the cabinet secretary himself, who gave evidence that ran counter to the view that such uncertainty might be a problem. For us to conclude that there was a range of views on the subject stretches credulity to the limit. Any statistical analysis of the evidence that was brought before the committee could lead us only to the view that the cabinet secretary is an outlier when it comes to where the weight of evidence lies.

The Law Society of Scotland, while commenting that residential rates would not be quite so important, expressed concern that a forward timescale was important for commercial property. In general, witnesses were very clear regarding their view that the absence of any indication of likely future rates of LBTT creates an additional layer of uncertainty. Most important is the view that was posited by the Institute of Chartered Accountants of Scotland, which argued that the lack of clarity even on provisional figures for tax rates or bands goes against the principle of certainty in taxation.

Given the concerns that have been raised over the slump in construction, which emerged again in this morning’s gross domestic product figures, it is worrying that the Scottish Building Federation conveyed a message to the committee that, in relation to commercial rates, it would prefer a minimum of 12 months between the publication and the impact and that, if we could get towards 18 months, that would be even more preferable for the federation. Homes for Scotland and the Scottish Property Federation were both supportive of that view, and Brodies informed the committee that the feedback that it had received from commercial clients revealed their concern about uncertainty. I urge the cabinet secretary seriously to reconsider his position on the matter, as it could have a direct impact on the construction industry in particular, in its battle out of the economic downturn.
As many witnesses attested, if specific rates cannot be published, guidance about the intentions and an indication of the top rate, at least, would be welcome. That is the very least that people should be able to expect.

Overall, the bill should be a good piece of legislation, delivered under the devolved settlement, which will help Scotland to consider its own property markets and address the concerns that currently exist in the sector.

I would be encouraged if the cabinet secretary could give us some indication that he will reconsider that major point of concern—the only one that divided the committee. It would be useful if we could have the gap closed between those who have concerns and the Government as it pursues the new legislation.

The bill is very worthy of support, although it just needs a little more effort to make it a bit more perfect with regard to what we actually need.

15:38

**Mark McDonald (North East Scotland) (SNP):**

I rise as a former member of the Finance Committee. Although I was not part of the stage 1 deliberations on the Land and Buildings Transaction Tax (Scotland) Bill, I was part of the committee when evidence was being taken regarding the transfer of powers under the Scotland Bill—now the Scotland Act 2012. I will touch on that later in my speech.

There are three key areas that I wish to consider. The first involves the progressive nature of the land and buildings transaction tax as introduced by the Scottish Government. The second is about the administration of taxation in Scotland, specifically in relation to LBTT. Thirdly, there is the principle of greater control.

I start with the progressive nature of the tax. The idea that the burden of payment should reflect the ability of the payer to bear it is the principle that has guided the bill. We can consider some of the supportive comments that have been made in that regard. Isobel d’Inverno, convener of the Law Society of Scotland’s tax law committee said:

“We strongly support the replacement of the slab system of stamp duty land tax, which many perceive as unfair due to the steep rise in tax for properties just above the thresholds. This distorts the market by keeping prices artificially low and gives rise to tax avoidance. We are certain that the proposed new progressive structure will be fairer and simpler for those buying a house.”

The Edinburgh Solicitors Property Centre was quoted in the Evening Times as saying that the current structure of slab duty

“creates inequalities in the level of taxation paid.”

I note that, in its submission to the Finance Committee, the Council of Mortgage Lenders Scotland said:

“While there would be winners and losers out of any new system we believe a progressive system would be more equitable and overcome some of the inefficiencies created by the slab system.”

I think that that will be an important measure. I say that especially as a member who represents North East Scotland, where property prices are high. That means not only that property is expensive and towards the upper end of the scale to which the duty would apply, but that properties that are further down the property ladder also have inflated prices. At the moment, stamp duty is exempted for houses that sell for less than £125,000, but it is difficult to find a decent-sized family property in Aberdeen and other parts of the north-east that would come under that threshold. By raising the threshold under which duty will not apply, the Scottish Government will benefit constituents of mine, many of whom—either young families or first-time buyers—are looking to make that step onto the property ladder. I therefore welcome the move and disagree with those who have said that first-time buyers are not necessarily looking to buy those kinds of properties. In some parts of Scotland, those kinds of properties are the only ones that are available. Therefore, the introduction of the new levels as part of LBTT is welcome.

I welcome the establishment of revenue Scotland. In particular, I welcome the fact that it will be able to deliver greater efficiency in the administration of tax; the administration costs will be around 25 per cent lower than those of HMRC. That will be of benefit not only to the Scottish Government, but to the taxpayer, because it will avoid some of the inefficiencies that might otherwise have existed in the system.

When the Finance Committee took evidence from HMRC on the introduction of new tax powers, I asked whether, in theory, it could refuse to administer the new taxes on behalf of the Scottish Government, were the Scottish Government to take a radically different approach to that which exists in the rest of the UK. I was told that, in theory, it could. That might have meant that the Scottish Government could have found itself unnecessarily hamstrung had it chosen not to establish revenue Scotland and instead to rely on HMRC, because it might have been unable to create a different kind of system along the lines of LBTT. The establishment of revenue Scotland will allow the Scottish Government that flexibility and the ability to do something different.

The creation of revenue Scotland also demonstrates that the Government and this Parliament are capable of handling the burden of
greater power and responsibility being handed to us.

That said, we must accept that, even with the new taxes being transferred to Scotland, 85 per cent of the tax that is paid in Scotland will remain reserved and the Scottish Parliament will have control of and responsibility for only 58 per cent of the revenue that is spent in Scotland. The Government and I want that to shift more towards Scotland having greater control of the revenue of Scotland and having all the revenue and taxation powers of Scotland at its disposal.

If LBTT does nothing else, it serves as a microcosm that shows that this Parliament and this Government can do something radically different from the status quo. We can do something more innovative and progressive on taxation when the powers exist in this Parliament to do so.

I look forward to the day when LBTT comes into force, but I also look forward to the day when this Parliament takes control of the other taxation and revenue-raising powers that would exist with independence, because I believe that what we are doing today demonstrates that a different approach is not only possible but optimal.

15:44

Alison McInnes (North East Scotland) (LD): I, too, welcome today’s stage 1 debate on the first of a series of bills that are being introduced as a result of a number of tax-raising powers being devolved by the Scotland Act 2012. I admit to a certain disadvantage, in that most of those who have spoken up to now have been members of the Finance Committee and I have not had that benefit.

Replacing stamp duty land tax is an opportunity for the Scottish Government to make the most of the new powers and to come up with a Scottish system for taxing land transactions that is modern and efficient, that tackles avoidance and that is better aligned with Scots law and practices. We have heard from John Swinney how he believes that that is the case. It is also an opportunity to pursue some of the Government’s policy priorities. The new powers could be used to design a system that incentivises the reuse of empty properties and the development of brownfield sites as well as tackling fuel poverty and climate change. However, I fear that the Government has not been quite as ambitious as it could have been in designing the land and buildings transaction tax.

Members have spoken about the shift from the current slab structure to a more progressive one. That sounds appealing, but I have a concern about the impact of the change on house prices. The proposed new system avoids the sudden increases in liabilities that are a feature of the slab system and create distortions in the market. That sounds attractive, but does anyone lose out from that? The distortions in the market are where house prices cluster below £125,000 and £250,000. The Government’s proposed system will remove the incentive for sellers to price their property below those thresholds, and house prices could increase as a result.

Although I recognise that the feedback from witnesses has been supportive, we must bear in mind the fact that the committee heard evidence only from estate agents and house builders, which are hardly neutral players in the debate. I do not think that we have really heard the views of those who are trying to buy property. Therefore, I press the cabinet secretary to reassure us that he has considered the specific impact of the bill on property prices. There is a nagging worry that, under the Government’s plans, buyers in particular regions of the market may end up paying more for their houses.

The other issue that I will focus on is the lack of measures that will contribute to the Government’s priorities on tackling climate change and poverty. I note what the cabinet secretary said to Ken Macintosh but, like him, I believe that we must use all the levers that we have in our toolbox to change behaviour. The zero-carbon homes relief has not been included in the bill on the basis that it did not achieve its objectives, and I know that the relief attracted very few applications. Nevertheless, there is still a good case for including in the bill a relief that is related to energy efficiency. Two thirds of respondents to the Government’s consultation wanted the tax to support key Government priorities, with energy efficiency being by far the most supported priority. I therefore ask the cabinet secretary to give further consideration to that at stage 2. The witnesses who gave evidence to the committee made it clear that—as other members have said—the energy efficiency of a property is not a top priority for buyers at the moment, but perhaps it ought to be.

Kenneth Gibson: I thank Alison for taking an intervention. This is meant to be a helpful intervention. The whole Finance Committee was keen to see something along those lines, but the problem was in finding something that could work in practice. The difficulty that the committee struggled with was not the aim or intention, but the practicality of the legislation. If a practical suggestion were made, I am sure that it would be considered.

The Deputy Presiding Officer (Elaine Smith): I remind members to use full names, please.

Alison McInnes: I thank the convener of the Finance Committee for that helpful intervention. I hope that he is open to any suggestions that come
forward at stage 2 that have been worked through and which would provide practical solutions.

Chas Booth from the Existing Homes Alliance explained that energy efficiency clearly is not a significant factor, and part of the reason for introducing the relief is to make it a significant factor. It would not be the magic bullet, but it might just improve the chances of people taking seriously the energy efficiency of their properties. Perhaps with continuously and inexorably rising fuel prices, people will start to look at that.

Mike MacKenzie: Will the member give way?

Alison McInnes: Let me make some progress.

There was much discussion in the committee about how the scheme could work, and I want the committee and the Government to explore that at stage 2. A number of policies are needed, including existing council tax reliefs and Government grants, but the zero-carbon homes relief could play a key role.

There are already concerns that the Government is watering down its ambition by proposing to delay the introduction of energy efficiency standards for private homes, and many respondents to the Government’s sustainable housing strategy consultation support those incentives. There is the potential for the new tax to be used as a lever to influence behaviour and achieve results, so I urge the cabinet secretary to consider that.

There is also an opportunity to have a lower tax on empty property that is brought back into use, or on property that is built on brownfield sites. I ask the minister to set out what consideration has been given to those ideas.

The Government’s recent consultation on the landfill tax refers to “modest new powers ... over a small number of devolved taxes” and then goes on to ask for full tax-raising powers. One of the first questions in the consultation paper seeks views on whether the aggregates levy should be devolved. I would like the Scottish Government to be more ambitious about the taxes over which it already has control. Getting those right could boost the economy directly and indirectly, to the benefit of home buyers, businesses and the environment.

As has already been stated, the Land and Buildings Transaction Tax (Scotland) Bill is a significant piece of legislation, which represents the first transfer of meaningful fiscal power from London to Scotland under the terms of the Scotland Act 2012. The act means that, from April 2015, the Scottish Parliament will be empowered to introduce and manage taxes on the purchase or leasing of land or buildings and on the disposal of waste to landfill.

Even after those measures are in place, 85 per cent of taxes paid in Scotland will be managed by Westminster, and the Scottish Parliament will manage only 15 per cent of our taxes. We should have responsibility for all taxes that are paid in Scotland. I believe that the Scottish Government has demonstrated an approach to taxation that is equitable and fair, especially when we remember the action that it has taken over the council tax.

LBTT will cover a range of property transactions. I believe that LBTT will not be disruptive to activity in the housing market. Indeed, there are features within LBTT that will smooth some undue distortions. With LBTT’s progressive system of taxation, the value of the tax applied will be more reflective of the total value of the property being sold. That may see an end to the inefficiencies in the market that arise from stamp duty.

LBTT may also provide an opportunity to incentivise first-time buyers to enter the market. Evidence suggests that the most recent stamp duty holiday did not greatly assist first-time buyers on to the housing ladder, as high deposit requirements usually remained the single biggest obstacles. I remember how much of a deposit my son had to put down when he bought his first house—it was quite horrendous. Any assistance in the form of discounts or exemptions should be welcomed, as every first-time buyer who gains a foothold on the housing ladder creates a knock-on effect higher up.

I note that the Scottish Government will need to consider carefully the proper levels at which to introduce the rates of tax so as to avoid unnecessary market distortions. Any disparity could introduce inequalities into the market and make it more difficult for households to move up the ladder. While I acknowledge that an aim of the more progressive system of taxation is to place a greater burden on those who have the broadest shoulders, it is worth pointing out that high house prices are not always matched by cash-rich or high-income households. Various sources suggest that the current system results in people paying too much tax at certain points, which distorts the housing market.

In its stage 1 report on the bill, the Finance Committee notes the need to consider the timing
of the announcement of the rates and bands. The timing of that announcement is also extremely important to the residential housing market. We must ensure that the legislation is implemented in a fair and equitable fashion to avoid introducing unnecessary blockages in the market, which would affect the affordability of properties up and down the housing ladder. The announcement should occur as close to the implementation date of the LBTT as is practicable to avoid creating undue distortions. I note the cabinet secretary’s comments on that today.

We have been advised that the tax will be cash neutral, but some of the briefings that we have received present various scenarios, including one that gives winners and losers. Under one of those scenarios, 50.7 per cent would pay less, 38.9 per cent would pay the same amount and more than 10 per cent would pay more than they do under SDLT. I am sure that the Government will give serious consideration to what is best for the market.

Those who buy a house for less than £125,000 will continue to pay nothing and will be unaffected; those who buy a house that costs between £125,000 to £325,000 will be better off by up to £5,000; those who buy a house for £325,000 or more will pay more; those who buy a house that costs £400,000 will pay £4,750 more under the scheme; and those who buy a house for £1 million will pay £23,750 more in tax. The socialist in me agrees with the proposals. Tax should be fair, so I support the bill.

The proposals will help to clamp down on tax avoidance by replacing the current rates of stamp duty land tax. In addition, the current anti-avoidance provisions are complex and difficult to understand, but those will be replaced with a general anti-avoidance or anti-abuse rule.

I welcome the proposals made by the Government and we have seen cross-party support for the bill in the debate. From the quotes that I have seen, nearly everyone supports the proposals and the implementation of the bill. I certainly do.

15:56

Neil Findlay (Lothian) (Lab): I welcome the debate for a variety of reasons. Land and buildings transaction tax generally appears to be a good thing—it moves us in the right direction. As members have said, it should be more responsive to the Scottish housing market.

I am pleased to see that the system will be much more progressive than the stamp duty system that it replaces. It should always be that those with more pay more, and the land and buildings transaction tax sets a good example for the Scottish Government to follow in determining not only that tax but all others. Labour supports the principle of progressive taxation throughout the tax system. Again, that is a good thing.

As far as the bill is concerned, I support the proposal to curtail tax avoidance by ending the loopholes that have been extensively exploited by clever accountants and others. The proposed changes to the reliefs regime are therefore very welcome. Under the proposals, avoiding the tax will be much more difficult and I commend the Scottish Government for introducing that element. That is the right way to go on this bill and, I hope, other bills, too.

We need to ensure that the revenues to pay for public services are collected efficiently. On that note, I hope that there will be further provisions in the forthcoming procurement bill to prevent companies that engage in systematic tax avoidance from winning contracts and securing Government grants.

I was heartened by John Mason’s comments that tax is a good thing and that it should be progressive. I certainly hope that he will use the outstanding influence that I know that he has in his party to convince the Cabinet Secretary for Finance, Employment and Sustainable Growth that his party’s corporation tax policy is exactly the opposite of that.

It is vital that the revenue from tax meets the shortfall that will arise as a result of the adjustment to the block grant, as Malcolm Chisholm eloquently explained. I understand that Mr Swinney’s approach is to promote a position whereby any reduction in the grant would be calculated on the basis of a five-year average. I do not know whether the Treasury will agree to that, but I am sure that that is something for his negotiating team. However, it is vital that, at the very worst, a neutral settlement is the result, because we cannot afford to lose any money from a public services pot that is already under intense pressure.

The bill is a lesson to us. As members have mentioned, it comes as the first of three bills, the two others being on landfill tax and tax management. The bills come as a direct consequence of the Scotland Act 2012, which is an act that shows how devolution has developed and grown in the interests of our people. It shows how, since 1999, devolution has been not a static settlement but one that is adaptable and able to develop over time to deliver Scottish solutions that best meet our needs. It also shows how progressive policies can develop within the framework of devolution, and that imagination and political will are much more important and effective than standing on the sidelines repeatedly stamping your feet and saying that only
independence can deliver change. The bill shoots that fox. It highlights how we do not need independence and all the unknowns and vagaries that come with it and shows how we can develop our own solutions while retaining our link to our brothers and sisters in the rest of the United Kingdom. Perhaps that will encourage the Scottish Government to put more of its energies into using the powers that we have and the ones that we will soon have before squealing about the ones that we do not.

John Mason: The member mentioned corporation tax. Would he not like us to have control of that?

Neil Findlay: I most certainly would not like Mr Mason’s party to have powers over corporation tax. Absolutely not.

Finally, Presiding Officer—[Interruption.]

The Deputy Presiding Officer: Order.

Neil Findlay: Mr Mason set himself up for that.

The bill has emerged from the Scotland Act 2012, which, in turn, arose as a result of the Calman commission. That commission was proposed by Labour and supported by some of the other parties in the Parliament but, unfortunately, not the Scottish National Party. That follows a familiar pattern that we can trace back through the history of devolution: Labour proposes the significant transfer and decentralisation of powers only for the nationalists to rubbish it, refuse to take part in any discussions on it, deride it as a useless waste of time and then—lo and behold—when all the hard graft is done, jump on the bandwagon and claim that it is a progressive step that they fully support.

Jamie Hepburn: Will Neil Findlay give way?

Neil Findlay: Not at the moment.

The nationalists did that with the Scottish Constitutional Convention and they are doing it now.

I support the introduction of the land and buildings transaction tax. It strengthens devolution and reforms land transactions positively and progressively. I urge all parties to support it—even the repentant sinners who opposed the Calman commission and the Scotland Act 2012.

16:01

Mike MacKenzie (Highlands and Islands) (SNP): Although I am not a member of the Finance Committee, I relish the opportunity of speaking in this important debate. Some of our colleagues—none of those who are in the chamber—have suggested that it is a somewhat technical and dry subject. On the contrary, it is interesting and profound.

I congratulate the Finance Committee on producing an excellent report. It is concise and readable but covers all the important points. Most important, it is accessible to someone who, like me, did not sit through all the committee’s deliberations.

Although I welcome further powers coming to the Parliament, I am not a huge fan of the Scotland Act 2012, largely because it was a missed opportunity to do much more. However, the important point is that the Scottish Government and the Parliament have seized the opportunity to address the long-standing neglect of the problems presented by stamp duty—something that the Westminster Parliament failed to do.

That indicates to me the profound difference between the two Parliaments. One is old and slow moving; ours is agile and able and can quickly respond to new opportunities. That is one of its many understated assets.

However, speed is not everything. That brings me back to the bill and the committee’s report, in which it is obvious that quality has not been sacrificed in the process of scrutiny.

A further point that strikes me is how positively the prospect of change has been embraced by those involved in the property sector. All the responses to the committee seem to be positive. Even almost, but not quite, all the responses in the chamber seem to be positive. There is a tangible sense of relish, excitement and positive possibility in the responses that augurs well for the future of Scotland and suggests a widespread appetite for many more powers to come to the Parliament.

I suggest that members should contemplate the power of that effect writ large throughout Scotland as we collectively address the opportunities of independence. I suggest that that effect will bring a boost to the commonweal and our economy. It will bring what we might call an independence bounce.

The approach to the bill signifies a further profound difference between this Parliament and Westminster as we take the opportunity to make the tax fairer and simpler while, at the same time, taking care to avoid distorting the market or having a perverse and detrimental economic effect. That is the essence of good policy, as is amply demonstrated in the approach to the bill, which has the principles of social justice and progressive taxation at its heart.

That is a fairly profound point, I think, which was missed by some of the people who made representations to the committee. Progressive
taxation arrangements that are fair and simple limit the desire and opportunity for tax avoidance. If we overburden the bill with complexity, we will increase the likelihood of unintended consequences and we might generate opportunities for creative and unprincipled avoidance schemes.

Some points about the bill were well made. For example, I sympathise with people who are concerned about sub-sale relief, in some instances, particularly at a time when banks are reluctant to finance property development. I welcome the cabinet secretary’s commitment to consider relief in respect of forward-funding schemes. I also sympathise with people who seek to improve the energy efficiency of the housing stock. They are perfectly correct to do so. However, the bill is not the vehicle through which to achieve that aim.

My main concern is the OBR’s unbridled optimism in its forecasts on stamp duty receipts over the next six years, which I contrast with its supreme and widely discredited pessimism about oil receipts over a similar period. Either the OBR is on another planet or it is merely the political puppet of the Westminster coalition, which is no doubt taking a hollow negotiating position as it seeks to reduce the block grant beyond what is reasonable. I have every faith that common sense will prevail and that such posturing will soon be punctured.

I am glad to welcome the opportunities that the bill presents and I commend the approach of the Scottish Government and of the Finance Committee.

**The Deputy Presiding Officer:** We have a small amount of time in hand for interventions, if members want to take them.

16:07

**Jean Urquhart (Highlands and Islands) (Ind):** I am a member of the Finance Committee, so I have had the opportunity to take part in the evidence sessions on the bill. Two things struck me: the brokenness of stamp duty land tax as a method of taxation, and the fantastic opportunity that Scotland has to begin to recalibrate its taxation system for the public good.

The Institute for Fiscal Studies’ description of stamp duty land tax as

> “a strong contender for the UK’s worst-designed tax”

is appropriate. SDLT’s slab structure discourages sales of residential properties at prices immediately above the threshold, which distorts the market, adding to the angst that is suffered by people who are attempting to buy or sell a home. It is madness that the sale of a house for £125,000 will result in no tax burden while the sale of a house for £1 more than that results in a £1,250 bill. There would be a public scandal if personal income were taxed in such a way; why has it been deemed appropriate for house sales to operate in such a way?

The proposed move from stamp duty’s slab structure to a progressive structure under LBTT is welcome, particularly in the current housing climate. The unsustainable housing bubble already presents enough challenges to men, women and families throughout Scotland who seek affordable housing, and I am glad that we are removing some of those challenges by making commonsense reforms where we can do.

A major problem with the SDLT regime is the amount of money that is lost through tax avoidance schemes. I hope that the removal of sub-sale relief, which has frequently been identified as a facilitator of tax avoidance, will work in tandem with the Government’s other anti-avoidance measures to help to increase the tax take and ensure that everyone pays their fair share.

The proposal to exempt rural housing bodies from LBTT will greatly benefit my constituents. As I have said in the Parliament, any step that we can take to promote the building of affordable housing should be considered. I hope that the approach will encourage more such housing to be built.

Although many elements of the bill are to be considered further at stage 2, and the taxation bands, collection arrangements and block grant adjustments will require further scrutiny in the months and years to come, I think that I speak for the whole committee when I say that we are encouraged by the considered, deliberative and open approach being taken by the Government. Although I am aware that the cabinet secretary is not inclined to support relief for zero-carbon homes, I am aware that a proposal for a fiscally neutral energy efficiency modifier has emerged since oral evidence was given by energy organisations in February. In reference to Alison McInnes’s comments, I am pleased that the committee convener is amenable to looking at that again, because I think that it would represent further progress on progressive taxation.

I confess that in considering the bill I was mindful of the suggestions made in Professor Mirrlees’s review, which were echoed by Andy Wightman in his submission to the consultation on what sort of taxation regime we should have for property. I certainly have sympathy with Mr Wightman’s suggestion for a radical overhaul of the way in which we think about land and property, but I am also aware that the Scotland Act 2012 allows only for any replacement of SDLT to be a tax on transactions. Therefore, although I would
be inclined to support some sort of land value tax, I appreciate that we cannot allow the perfect to be the enemy of the good on this occasion and that the land and buildings transactions tax provides a solid move towards a more equitable system.

I note that this is the first of three pieces of legislation emanating from the Scotland Act 2012 that will begin to increase this Parliament’s powers. I look forward to the day when this Parliament has the full and normal powers of any nation’s Parliament and is able to bring about the substantive changes in our economy and society that we desperately need. I support the bill.

16:12

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I rise as yet another non-member of the Finance Committee.

This is quite a complex bill. One way of deciding that it is complex is to look at it and realise that approximately three quarters of the pages in it form the schedules. My suspicion is always that if a Government wants to hide something, it puts it in the schedules, not in the bill.

I will give an example of that from schedule 5 to the Scotland Act 1998, which I looked at earlier today. I refer to part II, head B3, section B3, which is about elections. I discovered today that we have the power in this Parliament to hold and run elections for members of the House of Lords, because the only things that are excluded from our powers in that regard are elections to the House of Commons, the European Parliament and this Parliament. That is why we can organise local authority elections and, by implication, elections to the House of Lords. It is unlikely that those elected could take their seat, but that is another matter. If one wants to hide difficult things, sometimes the schedules are the place to do so.

Perhaps Neil Findlay and I will introduce a member’s bill to organise elections to the House of Lords, or perhaps we will not bother. I see that Neil Findlay has woken up.

Neil Findlay: If we did that, what would Lord Stevenson’s official title be?

Stewart Stevenson: Well, there have been two Lord Stevensons already. The one of Coddenham, whom we no longer talk about, was the chair of HBOS and the other is a distant relative of mine, whom we no longer talk about, was the chair of Lord Stevensons already. The one of Coddenham, whose official title be?

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): What would Lord Stevenson’s official title be?

Neil Findlay: If we did that, what would Lord Stevenson’s official title be?

Stewart Stevenson: Well, there have been two Lord Stevensons already. The one of Coddenham, whom we no longer talk about, was the chair of HBOS and the other is a distant relative of mine, whom I will pass over as well.

I congratulate the Government on bringing forward this complex but comprehensive piece of legislation, which is clearly receiving a consensus of support. I congratulate parliamentary colleagues of all parties on a committee report that I can describe only as pellucid in its delineation of the issues. It is a good, rattling read and covers the issues extremely well. I want to cover one or two of them in the time available.

First, on subordinate legislation, I am a member of the Subordinate Legislation Committee and the Government has a very good record of responding to what that committee says. I am encouraged that we will be looking seriously at whether the procedures for a number of the powers in the bill should be negative or affirmative.

On the matter of sub-sale, I may not have caught the full nuances of the discussions, given that I have not been sitting in the committee, but I think that there is a case for a taxation regime that has concurrent sales: sales of the big bit and then dispersal to smaller bits. As long as the tax revenue is derived from the big sales rather than the small ones and is therefore protected, we should ensure that we do not exclude the possibility of such sub-sales. We do not want them to be inhibited by an inappropriate tax regime.

Avoidance generally is something that troubles me. If a company owns property and shares in the company are traded, the risk is that that falls outside the taxation provisions. Company law is essentially reserved. That issue has a more general application, in that much property and land is owned beyond the boundaries of Scotland. The situation in Denmark is apposite, where one cannot own property or land unless there is a local representative. That is not to inhibit ultimate beneficial ownership being outside Denmark; however, there is always an accountable person who discharges ownership responsibilities within the boundaries of that state. I have thought for some time that we should look at that issue.

Jamie Hepburn: Given that that is the situation in Denmark, does the member not consider as somewhat ludicrous the suggestion posited by some organisations that the requirement that charities furth of Scotland register here is an onerous one?

Stewart Stevenson: I have not read the data. However, that was certainly my initial reaction. I am confident that the committee will deal with the issue. Of course, it is possible for charities registered elsewhere to represent themselves as being charities in Scotland even though they are not registered in Scotland, so I think that there are wider considerations of which to take account.

The bottom line is that tax avoidance is always a big issue in any taxation system. I look forward to the tax management bill and I hope that when looking at tax avoidance we are able to legislate. That is why I was looking at schedule 5 to the 1998 act, to see whether tax avoidance would be prevented. The test will be the intention rather than the application of rules, which can always be got round. I await what happens with interest.
The work of Registers of Scotland has an important application to the implementation of the bill. I first crossed its threshold in about 1962 in my pursuit of family research. Fifty years later, we have world-beating computer systems that give access to the real records, which practically no other jurisdiction in the world has. With the right incentives and the right application, the work can be done. The Government has the potential to do that, just as Registers of Scotland has done.

On the process for the bill thus far, the work of the Government and the committee demonstrates that there are as yet untapped competences and abilities in this place. I hope in the future to see those abilities applied more widely, not only to taxation issues but, more fundamentally, to the whole range of powers with which a normal independent country would grapple. We have the skills; we now need the opportunity.

16:19

Jayne Baxter (Mid Scotland and Fife) (Lab): I welcome the opportunity to speak in today's debate. I am not on the Finance Committee and am speaking rather far down the queue, so I hope that I can find some new things to say. Forgive me if I cover ground that has already been covered.

The proposals before us have been broadly welcomed across the chamber as an opportunity to move towards a more progressive system of taxation that is better suited to the needs of the Scottish market. A number of the submissions to the Finance Committee's consideration of the land and buildings transaction tax proposals highlighted the inefficiencies of the existing slab structure of stamp duty.

The significance of the proposed change to a more progressive system as an example that shows that devolution can and does work is not to be underestimated. Not only that, but the proposed changes to the tax structure will have an obvious and immediate impact on home buyers.

The attempts to reduce some of the complexities of the tax reliefs that are available under existing stamp duty are also to be welcomed, as are the specific measures to attempt to minimise tax avoidance.

For the past five years, there has been a time-limited zero-carbon homes relief, which was originally introduced to increase public awareness of the benefits of reduced emissions and to stimulate the market for zero-carbon homes. Given that there appears to be little evidence to suggest that the relief has been successful in achieving its intended objectives, the Scottish Government has indicated that it does not intend to make the zero-carbon homes relief available under the proposed land and buildings transaction tax. I note the cabinet secretary's earlier comments on the matter.

Members will be aware that the chamber recently considered the proposals to meet the emissions reduction targets that the Scottish Government put forward in the report on proposals and policies 2. Although I recognise that the zero-carbon homes relief was not considered to have achieved its objectives, one of the criticisms of RPP2 was the silo nature of many of the proposals and the lack of coherence in the overall strategy for emissions reductions. I hope, therefore, that the Scottish Government, in indicating that it is willing to consider possible alternatives to zero-carbon homes relief, will also consider suggestions in other policy areas—not just in relation to property taxation.

There is appetite in some quarters for some regulatory proposals to encourage energy efficiency. The Scottish Building Federation has indicated that it would welcome a tax relief related to energy efficiency. As an alternative, it has suggested tax relief for energy performance certificates. The other major change in the property market in recent years is the introduction of home reports, which currently require energy efficiency ratings as part of the package, so I hope that the Scottish Government will consider those points when it undertakes any review of the home report system in future.

As with the RPP2 debate, although regulatory measures to ensure that we meet our emissions targets are necessary, they must go hand in hand with behavioural change. It is worth quoting the Convention of Scottish Local Authorities on that point. In its evidence to the Finance Committee, COSLA stated:

“At present the housing market does not currently attach any additional value to homes with higher standards of energy efficiency. The climate change targets are dependent on not only behavioural change, but a culture shift amongst buyers to value energy efficient properties.”

It is not just the type of properties, energy efficient or not, that have been considered as part of the proposals in the Land and Buildings Transaction Tax (Scotland) Bill, but the availability of properties. The housing shortage in Scotland and the question marks over our capacity to meet the long-term demand for social housing, especially in rural areas, mean that I am supportive of another of the proposed changes—the extension of access to relief for local authorities that are purchasing land or property through a compulsory purchase order.

Recently, I lodged a number of parliamentary questions on the powers that are available to local authorities to deal with dilapidated buildings. We have a real problem in many communities across Scotland with run-down commercial buildings and
empty homes. The extension of compulsory purchase order relief for local authorities to enable the purchase of empty homes is therefore to be welcomed.

On meeting the challenge of affordable rural homes, other evidence to the Finance Committee highlighted the need for rural housing bodies to be relieved from paying land and buildings transaction tax on land or properties with a rural housing burden, or on which a rural housing burden will be created. However, the Carnegie UK Trust has raised concerns that “smaller, community led Rural Housing Bodies (which may not have gained charitable status), may find themselves liable for the tax, as they fall out with the list of current reliefs.”

As one of the specific objectives of rural housing bodies is to meet affordable housing needs in rural areas, I would be concerned if measures remained in place that could create a barrier to the development of such housing. I hope that that worry can be reviewed and resolved.

Ensuring that we have affordable, accessible housing should be one of the priorities of any Government and I welcome any steps that we can take through this legislation to create a fairer, more progressive tax system and to meet the housing needs of the people of Scotland.

16:24

Marco Biagi (Edinburgh Central) (SNP): I am glad that we are debating the bill. Like many of the recent speakers, I am not a member of the Finance Committee, but I am a member of the Economy, Energy and Tourism Committee, so I have always had half an eye on the bill.

I have to say that my cross-party consensus antennae started tingling very early in the debate. That is often a good sign, but less so when you are speaking last and hoping to find a lot of points in Opposition members’ speeches with which to disagree.

Ken Macintosh’s opening comments in favour of devolution eloquently reminded me of why I support independence, as he focused so well on how responsibly and maturely we have handled the debate on LBTT and constructed the tax. The ability of Scotland’s Parliament today to use wisely the part responsibility that we have can provide us with confidence that we could very well bear the whole responsibility further down the line.

Indeed, we have in the Scottish Parliament already adjusted those tax powers that are under our control. We have adjusted the council tax through the freeze and other smaller measures, and the same is true for business rates. To the Labour Party’s credit, it was not afraid when it was in office to adjust business rates from those that had been set in Westminster—although, of course, the SNP Government has since adjusted them once more.

It is a sign of success and maturity that we have such a consensus. In the political dictionary, next to “Scottish solutions for Scottish problems” we will simply see this debate.

However, I have two questions. First, how has SDLT continued in its current form for so long? The slabbing effect has been rounded and repeatedly criticised from every side—there is no one defending it. As we have heard, the IFS said in February 2013:

“SDLT is a contender for the UK’s worst-designed tax.”

It could be called slabbed or tiered, but I prefer to think of it as lumpy, like a badly stirred custard. A house can sell for £249,999, and someone pays £2,500; but if it sells for £1 more, they pay £7,500. The new structure might be complicated to explain if we were introducing it in a vacuum, but since it resembles the system of income tax with which most of us are familiar, that does not present a problem.

In the hypothetical scenario that we have heard about, the amount of £185,000 functions simply like a personal allowance, with charges being levied on value beyond that. The system has the benefit of being not only fairer, but simple to understand. That is a win-win that is not often found in any field of government, let alone in tax.

Even in Edinburgh, the average house price stands only slightly above the hypothetical £185,000, and for such a property the bill would drop two thirds in that scenario. According to the ESPC, 81 per cent or more of three-bedroom and four-bedroom properties would have lower bills, and that is in Edinburgh, which is one of the warmest property markets in Scotland.

It is a mistake to fixate on the rates. Stamp duty rates, as with all taxes, can vary and have varied, up to and including on budget days. Today’s debate is on the general principles of the bill at stage 1, and we must not hang things on a frame before the structure is in place.

Economic efficiency is a worthy principle, and since the objective of the change is to ensure revenue neutrality—to which John Mason alluded—it is only closer to the time, when we are able to examine the evidence on which the calculations can be based, that we will be able to get a finalised rate. Anyone who is looking will be able to estimate within a broad range of parameters what the liabilities are likely to be.

Having considered all the issues, why has it taken so long to address them? The answer is
simply that we now have a Government and a Parliament that can respond more efficiently.

My second question has been addressed from various quarters. When so many members have supported energy efficiency measures in the bill, why is the market so resistant? The zero-carbon homes relief that was created in the last budget of the Blair regime in 2007 is one of those things that sounds good in a think-tank paper but did not work once it was released into the wild.

The Scottish Building Federation talks about relief for new-build properties, but we already have the lever of building standards. The UK Green Building Council alternative is interesting, but I do not think that it could be applied in practice.

It is not straightforward for residents of tenements to improve their energy efficiency—a particular constituency interest of mine—because co-operation is needed, and the technologies carry substantial up-front costs. Even if such properties came within the LBTT threshold—if it was £185,000—they would be at the lower end, and the relief would almost certainly be insufficient to deal with anything but the most perfunctory or minimal energy efficiency work. So, although there is clearly a good intention there, it is not enough to achieve a material effect. Further, I do not think that it would be understood enough by potential buyers to achieve the desired nudge for behavioural change. All of that is a shame, because we really need an innovative mechanism.

Even the widespread distribution of energy performance certificates and their publication, and rising gas and electricity bills, have all somehow remained external to buyers’ decision making. We need to find a way to address that, because it is a distortion of a properly functioning marketplace. Although the end of getting people to take more notice of energy efficiency in transactions is correct, the means that has been proposed is not, so an alternative one will need to be found.

The bill shows what Scotland can do and, as many of my colleagues have said, our potential for future responsibilities. If health, why not pensions? If schools, why not benefits? If LBTT, why not all the other taxes as well?

The Deputy Presiding Officer: We now move to closing speeches. I am just checking that all members who have participated in the debate are here; as we know, they should all be in the chamber for closing speeches.

There is more than enough time in hand to compensate the closing speakers if they wish to take interventions, but of course that is entirely up to those members. I call Gavin Brown, who has seven minutes.

Gavin Brown: It has been a useful, informative and interesting debate, but I want to reflect mainly on two key issues in my closing remarks, which are the two key issues of contention from the Scottish Conservative Party point of view. I reiterate my earlier point that we will support the bill at 5 o’clock today and that we approve of much that is in it, but I want to focus on the issues of contention, which I hope the cabinet secretary will address in his closing remarks or later in writing.

The first issue relates to the timing of the announcements of bands and rates, which I think goes to the heart of the new tax. Witness after witness stressed to the committee just how important it is that we have advance warning of what the rates are likely to be in the commercial sector. Malcolm Chisholm rightly made the point that the committee made, which is that there is a distinction between the evidence given by the residential and commercial sectors in that regard. However, the commercial sector’s evidence was strongly worded, expressing effectively that the rates should be advertised well in advance and that it should be done before September 2014 in every case and even much earlier in some cases.

Some points were made in opposition to that view. For example, John Mason said that the fact that the intention is to be revenue neutral gives an indication of what the rates are likely to be. I would take issue with that point quite strongly. The fact that the intention is to be revenue neutral overall gives us absolutely no idea what the rates are likely to be for residential or commercial property.

Stewart Stevenson: Will the member take an intervention?

Gavin Brown: I will take it in just a second.

If a project group, for example, puts together a bid to build any kind of building project, what should it put in the space in the documentation where the tax rate is supposed to go? When it has to work out the costs of the project to analyse whether it ought to go ahead, that space will have to be left blank if it does not know the rate. In my view, the fact that the tax is to be revenue neutral overall gives us almost no idea of what the rate is likely to be.

Stewart Stevenson: I return to the point that I made in my previous intervention about the immediate effect of a change made to stamp duty. I amplify that by pointing out that the change in question came into effect four hours before the chancellor got to his feet in the House of Commons to announce it.

There have been examples of where the property market has not collapsed because things have been done in a short timescale. I view with
considerable scepticism some of the demands that there should be an announcement to ensure a long lead-in for a fiscal measure of the kind that we are discussing. It is very uncommon in UK terms for any fiscal announcement to have such a long lead-in.

Gavin Brown: The issue was discussed at length in committee and that point was indeed made. I was going to come to Mr Stevenson’s point anyway, but he has brought it slightly forward. The difference is that we are discussing an entirely new tax and an entirely new framework. As was said to the committee, the absence of any indication of likely future rates creates an additional layer of uncertainty.

Although it is open to any Chancellor of the Exchequer to change tax rates at short notice in a budget—which, as Mr Stevenson said, happened in March 2012—LBTT is an entirely new tax and we do not know the full framework. Indeed, we do not know any of the rates or bandings. That makes it different from simply putting up one of the rates or changing one of the bandings. As the Scottish Property Federation said, with a different structure, which is what we have in the bill, there is an understanding that a more radical rate change might be introduced. That is the distinction between the example that Mr Stevenson gave and what we are discussing today.

I reiterate that I invite the Government to reconsider its approach, particularly in relation to commercial transactions, and I ask for its decision to reflect the evidence that was given to the Finance Committee. If it is not going to do that, it should at least be candid and say that it is rejecting or ignoring the evidence that was given instead of attempting to pretend that the evidence was mixed. The evidence on commercial transactions was not mixed; it was absolutely clear.

I return to sub-sale relief. As I said earlier, I am encouraged that the cabinet secretary has genuinely listened on forward funding. There is no mention of it in the bill, but it is clear that he has listened to industry and will lodge an amendment on it at stage 2.

I invite the cabinet secretary also to listen more closely on areas of sub-sale relief that are not forward funding. Malcolm Chisholm mentioned that issue. In my view, in the space between what might be thought to be illegitimate tax avoidance measures and forward funding, there are areas of commercial transactions that most people would deem to be legitimate and which are important to our economy, particularly as there is reduced bank lending—a point that Mike MacKenzie ably made.

There are examples of other schemes that will, I think, qualify if people take an objective view, and I invite the cabinet secretary to continue to listen to industry so that we can get things right instead of just having wholesale abolition of sub-sale relief. For example, there might be an effect on existing part-exchange schemes, as the Scottish Building Federation said. Scottish Land & Estates gave various rural examples, including the one that was mentioned by John Mason, who talked about the example of a farm. I think he said that, in his view, that was a fair example of where sub-sale relief ought to be given.

We have to get the right balance between, on the one hand, tackling tax avoidance and, on the other, being competitive and doing everything we can to help the Scottish economy. In some ways, the bill does that well, but in the couple of areas that I have mentioned the balance has tipped too far away from being competitive. There are areas that we can improve at stages 2 and 3. The real priority is to make the Scottish economy as competitive as it can be so that we are not put at a disadvantage.

The Deputy Presiding Officer: I call Rhoda Grant. I can give you up to nine minutes.

16:38

Rhoda Grant (Highlands and Islands) (Lab): Thank you, Presiding Officer. This has been a more interesting debate than I might have first thought when I saw it in the Business Bulletin, so I almost welcome the nine minutes that I have been given, which is significantly more than I thought I would be filling.

We in the Scottish Labour Party welcome the Land and Buildings Transaction Tax (Scotland) Bill. It is an example of devolution working as it is allowing the Scottish Government to design and levy a tax to suit the needs of Scotland. It must be responsive to needs, but it must also provide us with revenue to build our public services.

Malcolm Chisholm spoke very thoughtfully about the block grant. There will have to be a reduction in the block grant because of the devolution of this power, and today the cabinet secretary has confirmed that there will be a one-off reduction. He proposes that it should be based on a five-year average of stamp duty land tax receipts and that that average should be based on actual receipts rather than the forecast because of those receipts’ volatility.

We know that income generated by the tax fluctuates from year to year. For example, in 2007-08 we raised £565 million in Scotland, but in 2011-12 that fell to £275 million. That is a huge fluctuation, so it is really important to know which years will be used for that average. A recovering economy will obviously mean that there will be more revenue, but that would be true for the rest
of the UK as well, so we need to devise an amount that is fair and is seen to be fair by ourselves and the rest of the UK. A great deal of thought needs to go into that.

**Marco Biagi:** The OBR predicts a rate of growth that would take us back to the status quo in cash terms by 2017-18. Is that prediction perhaps a bit implausible?

**Rhoda Grant:** Anything that involves looking into the future makes things very difficult to second-guess, as we have seen with a lot of predictions, including the Government’s own predictions on oil and gas—I think that that was the trap that Marco Biagi tried to set for me. It is very important to look at what we get in reality, and we need to have view to the future because, if the economy falls further, a rate that is set too high will damage us. I am asking for more thought to go into the issue.

**Jamie Hepburn:** Will the member give way?

**Rhoda Grant:** Can I make a little progress, please? I have nine minutes, but I see that I am already through three of them and I have not said an awful lot.

A number of members spoke about zero-carbon homes relief. I appreciate that the cabinet secretary is looking further at the issue. Less taxation could mean that greater value is placed on energy efficient homes. That would mean that people would have more money to spend, which could encourage sellers to invest in order to improve the value of their home through such a selling point.

Jayne Baxter said that we need to look across the board on carbon reduction and that we need a joined-up policy. We need to examine closely every opportunity to promote energy efficiency. Marco Biagi said that energy efficiency certificates will not be impacted. We need to look at some research on what things people take into account when they look at houses and consider their ability to buy them. We really need to impress on people that energy efficiency is extremely important. We need to look at new ideas that are coming into place. Mike MacKenzie said that energy efficiency incentives could be regressive, but they could be capped.

**Mike MacKenzie:** I want to reiterate that point. Given that Ken Macintosh seemed to indicate—

**The Deputy Presiding Officer:** Is your microphone on, Mr MacKenzie?

**Mike MacKenzie:** Sorry, Presiding Officer.

Ken Macintosh seemed to indicate that there was some merit in what I said and that it had given him pause for consideration. Rhoda Grant has had some time to consider what I said. Does she accept that, because the tax is progressive, the kind of measure that she proposes would help the people further up the scale, who need it least, and not help the people who need it most: those down at the bottom of the scale?

**Rhoda Grant:** There is an issue in that those at the bottom of the scale probably will not pay any tax at all, so tax relief will not matter. We need to look at Government intervention for people at the bottom of the scale to allow them to afford energy efficiency measures, but energy efficiency incentives could work to change the mindset at the top of the scale. As I said, they could be capped at a certain level, but they might change people’s minds so that they think that improving the carbon and energy efficiency of their homes is a good thing. If we can get that idea into people’s mindset—which we have failed to do with energy efficiency certificates—it will be a step forward. Although I am not advocating a specific approach, I urge the cabinet secretary to look further at the issue and perhaps introduce new proposals on it at stage 2.

Jayne Baxter talked about reliefs for empty homes and compulsory purchase by councils. We need to look at how we can use the tax to make the best use of our resources—our buildings and land. Any move in that direction must be welcomed.

There is concern about charity relief and how we determine whether an organisation is a charity so that it can attract such relief. I note that Malcolm Chisholm mentioned that OSCR has concerns about what is proposed. I, too, have concerns about asking OSCR to be the linchpin because it has a quite different job. If we add to its regulatory authority the ability to determine when and when not to levy a tax, that might skew not just its function but the function of any reliefs that are put in place.

We need to give the issue some thought. Everyone is keen that charities should receive reliefs, but how we ensure that that happens is important. We must be extremely careful that what is put in place does not impact on charitable funding, because charities are all struggling at the moment. We must ensure that anything that we do in the bill does not impact on their funding and mean that they have less money to spend.

Many members have talked about sub-sale relief. I understand the reason for removing it, which is to prevent tax avoidance. That is welcome—indeed, many of the steps in the bill to deal with avoidance are welcome—but I welcome the fact that further discussions are to take place on the issue to ensure that there are no unintended consequences. At a time when our economy is pretty slow, we must ensure that we
do not do anything that impacts on our economy’s ability to recover.

As members across the chamber have done, I welcome the commitment to progressive scales. Many members have talked about the slab approach to the levying of tax that was adopted under SDLT. I had heard it described in many ways, but “as lumpy as a badly stirred custard” is the description that I will probably remember of a tax that has been seen to do nothing very well. I welcome the fact that people who buy properties of lower value will not have to pay the tax.

Mention has been made of the tension between knowing what the taxation rate will be and the ability to evade tax. Michael McMahon, among others, made a plea for early notification, but whether that happens will depend on the bill’s ability to prevent tax avoidance. If the bill is not good at preventing tax avoidance, tax avoidance will eventually take place. We must put in place a solution. If we have a bill that prevents avoidance and minimises the cost of administration, we will have a bill that will deliver more taxation revenue for our services.

I notice that I am running out of time, which I should not be. The bill is about devolution and moving decisions closer to the people who are affected by them, and it will allow the Parliament to take local priorities into account. We welcome the bill and its devolving of that power.

16:48

John Swinney: I think that I quote Mr McMahon and Mr Chisholm—and perhaps even Mr Findlay—correctly when I say that today is a historic occasion, in that it is the first time that the Parliament has considered the application of legislation on particular tax responsibilities. As the finance minister in the Parliament, it gives me a great deal of satisfaction that the Parliament is now wrestling not just with how we spend money, but with how we raise it and, in so doing, how we exercise the necessary responsibility.

Before I deal with some of the issues of contention, I want to refer to one of the points that Mark McDonald made, which was about the decisions that we took about the administration of the land and buildings transaction tax, and the approach of undertaking that through Registers of Scotland under the umbrella of revenue Scotland. Mr McDonald made the very fair point that, if we had decided to implement a scheme to replace stamp duty land tax using HMRC as the collection organisation, the likelihood—albeit not the certainty—is that we would have had to develop a tax very similar in character to stamp duty land tax.

One interesting aspect of the debate—Mr McDonald’s point highlights this point significantly—is the fact that Parliament clearly has an appetite to do something different. The contents of the Land and Buildings Transaction Tax (Scotland) Bill—again, to my satisfaction—have attracted wide political support from across the spectrum, which I welcome. I point out that, had we not taken the steps to undertake the administrative approaches that we have, under the umbrella of revenue Scotland, we would perhaps not have been able to fulfil the aspiration of Parliament to do things differently from the way in which stamp duty land tax legislation was put together. That illustrates our desire to pursue a different and distinctive agenda here in Scotland on issues that matter to us. We have had the power devolved to us, and we have come to a different conclusion. The administration arrangements that we have put in place support that approach into the bargain.

I will talk about three particular issues that have been raised in the debate by a number of colleagues. First, I will comment on the issue of the timing of announcements. I thought that, in a debate that has been heavily weighted towards consensus, Mr McMahon was a little bit unkind to me in suggesting that, somehow, I was the only person who had thought that a range of different views had been expressed among the evidence that was presented to the Finance Committee.

Paragraph 16 of the committee’s stage 1 report says:

“The Committee recognises that there was a range of views among witnesses regarding the timing of the publication of the proposed LBTT rates and bands but notes that the emphasis on the desirability of advance notice relates especially to commercial property.”

I do not think that I was selectively making up the evidence as I was going through the report. The point is made by the committee.

Michael McMahon: Does the cabinet secretary recognise that the range stretched from him on one side to everyone else on the other?

John Swinney: No, because of what the committee report says on the preceding page, at paragraph 14, which quotes what a witness from the Edinburgh Solicitors Property Centre said—and I have no vested interest in the ESPC. The witness stated:

“Once the decision has been communicated to the public we will want to move as swiftly as possible to implementation.”—[Official Report, Finance Committee, 6 February 2013; c 2212.]

That is the view from one of the people who gave evidence, and it was not me.

Gavin Brown: Will the cabinet secretary give way?
John Swinney: I am simply saying that, as the committee report records, there is a range of views among witnesses.

I give way to Mr Brown in the hope of cheering him up, perhaps, with my response.

Gavin Brown: The cabinet secretary will of course know that the ESPC was talking about residential property, not commercial property. He will of course know that, throughout the debate, a distinction has been drawn between residential and commercial property. Can he point to any witnesses, apart from himself, who thought that the provisions should be applied to commercial property after September 2014, as opposed to considerably before that?

John Swinney: I do not quite see what Mr Brown is getting himself all worked up about. I read out the paragraph of the committee report that clearly makes a distinction between commercial property and residential property. I acknowledge the difference of view within the evidence base. I will reflect on the matter and determine whether I need to take any other steps to establish a wider consensus around the matter.

I move on to the second issue, which is sub-sale relief. There is pretty broad agreement that the decisions that the Government has taken on sub-sale relief have been the correct ones. There is space, however, to consider further—to express it in the way that Mr Chisholm did—the distance between avoidance mechanisms and forward funding arrangements. That is the area that I will be exploring.

I was a little bit concerned about the impression that Mr Brown created in his summing-up speech that I was perhaps going beyond that with a commitment that I would legislate for forward funding. I am going to explore that space. I am not yet certain that I can bring to Parliament a proposition that will deliver the necessary constraints on avoidance but make the provision for forward funding.

I am talking to a range of stakeholders, including institutional investors, to try to assist us in coming to a conclusion on that. I agree with Mr Brown that a balance must be struck between tax avoidance and competitiveness, and we must strike that balance in the right fashion in order to maintain competitiveness. The Government’s record in office shows that that is clearly one of our aspirations.

The third issue on which I will comment is block grant adjustment. Mr Chisholm, Jayne Baxter and others highlighted the desirability of the block grant adjustment being undertaken as a consequence of a five-year average of the actual numbers that have been incurred in advance of 2015. That position was also advanced by Jamie Hepburn.

Between 2007-08 and 2011-12, the receipts from stamp duty land tax have varied from a low of £250 million to a high of £565 million. The forward projections of the OBR, as of the March 2013 budget, range from an estimated £348 million in 2013-14 to £509 million in 2017-18. I point out to Parliament that there have been three iterations of the estimated numbers by the OBR of stamp duty land tax in Scotland. Over the duration of those three estimates—which were made in March 2012, December 2012 and March 2013, over the course of one calendar year—there has been a reduction in the estimates for 2016-17 of 15 per cent. That is a significant variation. It is therefore important that, when we come to agree the block grant adjustment mechanism, we do that on the basis that I have suggested to the committee is the appropriate mechanism, which is to take an average of five years of actual receipts under stamp duty land tax in advance of the application of LBTT in April 2015.

My final point concerns the historic occasion that we have witnessed today of the Parliament taking decisions to legislate for taxation. Marco Biagi and John Mason gave strong speeches in which they made the point that, today, Parliament—with the support of Labour, the Conservatives, the Liberal Democrats and our other colleagues—is embracing the desire to take a different course with regard to this particular tax. We are doing that because we think that it is right and is in the interests of the people whom we represent. Marco Biagi and John Mason also made the point that, if we do that on the land and buildings transaction tax, there is no earthly reason why we should not do it with regard to a range of other responsibilities on which we could take decisions that suit the needs and interests of the people of Scotland but which are currently not within our remit. Mr Biagi posed the question: why has stamp duty remained as it is for so long? It is because we have not had the opportunity to design a system that is in the interests of the people of Scotland and meets their needs.

The way in which Parliament has gone about the scrutiny and consideration of this bill is something of which we should all be proud, across the political spectrum. Mr Stevenson said that today demonstrates that the Parliament has as yet untapped competence and talent to resolve issues of taxation responsibilities. That is an important signal that there is much more that we could do to exercise wider responsibilities, because the capability, the talent, the capacity for scrutiny and the capacity to design solutions that are in the interests of the people of Scotland lie in this Parliament. We should move forward with that aspiration as we look to take more powers as part
of the completion of our constitutional journey and the successful outcome of the referendum in 2014, when the Parliament will be able to complete its powers and exercise the full range of responsibilities in the interests of the people whom we have the privilege to represent.

Decision Time

17:00

The Deputy Presiding Officer (Elaine Smith): There is one question to be put as a result of today's business. The question is, that motion S4M-06294, in the name of John Swinney, on the Land and Buildings Transaction Tax (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Land and Buildings Transaction Tax (Scotland) Bill.

Meeting closed at 17:00.
Background

1. The Subordinate Legislation Committee reported on the delegated powers in the Land and Buildings Transaction Tax (Scotland) Bill on 19 February 2013 in its 15th report of 2013.

2. The response from the Scottish Government to this report is reproduced at the annex.

Scottish Government response

Section 24(1) - Duty to specify tax bands and rates

3. Section 24 (1) provides for Scottish Ministers to specify, by order, tax bands and the percentage tax rates for each band. Separate bands and rates can be specified for residential and non-residential property transactions.

4. As currently drafted, the above power would be subject to the affirmative procedure in the first instance and the negative procedure thereafter. The Committee considered that the Scottish Government did not make a wholly convincing argument for this reduction in scrutiny and recommended that the power should always be subject to the affirmative procedure.

5. In his response to the Committee’s stage 1 report, the Cabinet Secretary for Finance and Sustainable Growth (“the Cabinet Secretary”) indicated his intention to bring forward an amendment at stage 2, making section 24(1) subject to the provisional affirmative procedure after the first occasion in which bands and rates are set.

Section 47(1) - Power to make regulations about residential property holding companies

6. Section 47 confers power on the Scottish Ministers to provide for qualifying transfers of interests in residential property holdings companies to be treated as land transactions and to be chargeable transactions.
7. In its stage 1 report, the Committee noted the Scottish Government’s indication that the scope of Section 47(1) was likely to change significantly at stage 2.

8. The Committee agreed to await sight of the proposed amendments before reaching a view on the power. To assist in its consideration of the power, the Committee requested that the Scottish Government allow the Committee early sight of the proposed amendments.

9. In his response to the Committee, the Cabinet Secretary stated that he would undertake to bring the amendments forward in early course.

Section 55(1) - Power to make regulations about the application of the Bill to leases

10. Section 55(1) specifies that Scottish Ministers must, by regulations, make provision about the application of the Act in relation to leases.

11. As with Section 47(1), the Scottish Government have indicated that Section 55(1) is likely to be amended significantly at stage 2. Therefore the Committee will consider the proposed amendments before taking a view on the power. To assist in its consideration, the Committee requested that the Scottish Government allow the Committee early sight of the proposed amendments.

12. In his response to the Committee, the Cabinet Secretary stated that he would undertake to bring the amendments forward in early course.

Conclusion

13. Members are invited to make any comments they wish on the Bill at this stage. Given the Cabinet Secretary’s commitment to bring forward amendments at stage 2, it is probable that the Committee will have a further opportunity to consider the Bill after stage 2.

Recommendation

14. Members are invited to note the Scottish Government’s response on the Bill and to make any comments they wish at this stage.
Correspondence from Scottish Government dated 18 April 2013

I welcome the Subordinate Legislation Committee's (“the Committee”) report on the Delegated Powers Memorandum that accompanies the Land and Buildings Transaction Tax (Scotland) Bill (“the Bill”) and would like to thank the Committee for their thorough scrutiny of the delegated powers contained in the Bill.

The Scottish Government would like to respond to the Committee’s recommendations as set out in paragraphs 16, 21, and 26 of the report.

Section 24(1) - Duty to specify tax bands and rates

The Committee’s report states the following at paragraph 1f):

The Committee considers that the Scottish Government has not provided a compelling argument for a reduction in the level of scrutiny on the second and subsequent exercise of the power. The Committee therefore recommends that the power should always be subject to a form of affirmative procedure. The Committee would not be resistant to a suitable form of emergency affirmative procedure being available to ministers in the event that the need to exercise the power was to arise during a period when the Parliament was not sitting.

Scottish Government response

The Scottish Government acknowledges the Committee’s recommendation on the power contained within section 24(1). When the Bill was introduced to Parliament the Scottish Government considered that the negative procedure was the most appropriate for setting the bands and rates for LBTT, after the first exercise of the power under affirmative procedure. However, I have now had the opportunity to reflect upon the Committee’s report and would like to advise the Committee I intend to bring forward an amendment at stage 2 to provide that the power in section 24(1) will be subject to a form of provisional affirmative procedure after the first occasion that the bands and rates are set. This will allow the Scottish Government the necessary flexibility to respond swiftly to changes in the property market.

I would also draw the Committee’s attention to the Scottish Government’s consultation on tax management, which was published in December 2012 and closed on 12 April:

This includes proposals for an accelerated tax changes regime which would apply to all devolved taxes, and would be subject to a similar provisional affirmative resolution procedure. Both the Subordinate Legislation Committee and the Finance Committee will of course have the opportunity to scrutinise these proposals when the Tax Management Bill is introduced to Parliament, and I look forward to hearing their views.

Section 47(1) - Power to make regulations about residential property holding companies

The Committee’s report states the following at paragraph 21:

Given that the Scottish Government has indicated that the scope of this power is likely to change significantly at stage 2 the Committee will await sight of the proposed amendments before reaching a view on the power. The Committee requests that the Scottish Government provides the Committee with early sight of any proposed amendments to facilitate the Committee’s consideration of the power as amended. The Committee refers to its comments.
in paragraph 16 above regarding procedural requirements in situations where the power might be required to be exercised in an emergency.

Scottish Government response
I intend to lodge amendments in respect of section 47 at stage 2. However, I am still considering the detail of these amendments. I will endeavour to share these amendments with the Finance Committee in due course.

Section 55(1) - Power to make regulations about the application of the Bill to leases

The Committee's report states the following at paragraph 26:-
Given that the Scottish Government has indicated that the scope of this power is likely to change significantly at stage 2 the Committee will await sight of the proposed amendments before reaching a view on the power. The Committee requests that the Scottish Government provides the Committee with early sight of any proposed amendments to facilitate the Committee's consideration of the power as amended.

The Committee refers to its comments in paragraph 16 above regarding procedural requirements in situations where the power might be required to be exercised in an emergency.

Scottish Government response
I note that the Committee would also like early sight of stage 2 amendments in relation to non-residential leases. If feasible, I intend to lodge such amendments with the Finance committee at the earliest opportunity.
Land and Buildings Transaction Tax (Scotland) Bill: The Committee noted the Scottish Government's response to its Stage 1 report.
Land and Buildings Transaction Tax (Scotland) Bill: After Stage 1

10:08

The Convener: This item of business is consideration of the Scottish Government’s response to the committee’s stage 1 report on the bill. Members will have seen the briefing paper and the response from the Scottish Government. Do members have any comments or are we content to note the response and, if necessary, consider the bill again after stage 2?

Mike MacKenzie (Highlands and Islands) (SNP): This is a fairly good example of a lead committee perhaps not being fully aware of this committee’s concerns. My understanding of the issue is restricted to what I have read in the lead committee’s report. Although the lead committee refers to this committee’s observations, I am not convinced that it fully understands the implications of what we were saying. I welcome the Government’s response to our recommendations; the fact that it will come back with some idea of a provisional affirmative procedure is to be welcomed. I raise that in the context of discussions about how we can work more effectively with lead committees.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): It is probably worth noting that our concerns were mentioned a couple of times during the stage 1 debate. The matter has not passed the Parliament by.

The Convener: Are we content to leave it at that for the moment?

John Scott (Ayr) (Con): I endorse what other members said. It is important to acknowledge that the Government has taken account of what we said. We welcome that and we look forward to considering what it brings forward in due course.

The Convener: Indeed. We are content.
Financial Resolution: The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney) moved S4M-05608—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Land and Buildings Transaction Tax (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.

The motion was agreed to (DT).
SUBMISSION FROM CHARTERED INSTITUTE OF TAXATION

1 Introduction
In advance of the appearance by our President, Stephen Coleclough, before the Finance Committee of the Scottish Parliament on 22 May, the Chartered Institute of Taxation (CIOT) is pleased to submit a short briefing paper on areas of concern with the Land & Buildings Transaction Tax (LBTT) Bill. We look forward to the opportunity to develop the points in the oral session.

2 Partnerships
2.1 Multi-tiered partnerships – there is a question over a transfer in a partnership which has an interest in a partnership which in turn owns land in Scotland. Is such a transfer liable to LBTT and/or entitled to the special provisions in schedule 17 of the Act?

2.2 The answer to both should in our view be ‘yes’. This is a question of interpreting para 3(1) which should be done clearly and consistently, with the aim of giving certainty. Regrettably there is inconsistency in the present regime. We think the Scottish Government has implicitly accepted that a transfer of a partner does not give rise to tax. In any case, there may be difficulties in enforcing or collecting tax where the transaction is between foreign parties in foreign partnerships. However, should collection be possible in the future as the world becomes more transparent, then at least the Scottish Government has made its intentions clear.

2.3 We would like to see the partnership provisions in Parts 4, 5, and 6 simplified and understand that this has been examined with advisers. We would support any simplification of the SLP calculation process.

2.4 Where the provisions cover closely held businesses there is scope for avoidance, especially as there is no LBTT equivalent of ss75A-75C FA 2003 (although Scotland is considering its own general anti-avoidance rule). We would recommend that such avoidance can be prevented if the connection test used is one where the connection has to be maintained for the whole of the 12 months prior to the effective date.

3 Exchanges
3.1 The issue here is a simple one. If one exchanges land in whole or in part for any other property, then the SDLT/LBTT is calculated by reference to market value. Some taxpayers have contrived exchanges to replace actual sales where otherwise they would pay SDLT on the VAT element of the price. So HMRC recently amended the rules to include VAT. However, apart from the legislation not being well drafted (it is not even clear it has this effect) it has disastrous consequences.

3.2 The legislation also attacks avoidance where a taxpayer sells a partnership interest. The normal basis is the market value of the property concerned, not net of any debt. An exchange is manufactured on a net of debt basis.

3.3 The problem with the new anti-avoidance measure is as follows. Suppose SC sells land to RB on condition that JW sells land to SC, then that is an exchange. Where this becomes an issue is where a local authority wishes to...
regenerate an area and basically all the landowners agree to transfer their land to a central entity which, after the project is completed, transfers out different parcels to the relevant parties. We understand that this happens regularly in Scotland. A local authority could use its CPO powers and the relief for CPOs could apply, but this is slow, cumbersome and adversarial, so in practice these exercises are done by agreement. The result is now essentially 2 x 4% SDLT on the value of the whole development. This additional SDLT is potentially a deal killer, counter to all government policy and should be avoided in the LBTT rules.

4 Sub-sales
4.1 Due to the avoidance activity in SDLT, the LBTT Bill contains no sub-sale relief. As the Law Society of Scotland said, and the CIOT agrees, this is a mistake. The avoidance arose from the combination of sub-sale with other reliefs, such as the provisions which reduced value.

4.2 As mentioned at the hearing on 22nd January, we believe LBTT should contain a relief for sub-sales, which are in principle valid commercial arrangements. However, to counter the avoidance used in SDLT, taxpayers should have a choice to use sub-sale relief, or another relief or provision which reduces the amount of duty payable, but not both. It is the combination of sub-sale relief with another relief which has led to avoidance.

5 Unit trusts
5.1 Two points occur in relation to unit trusts; in both cases the CIOT does not have views as which route is preferable, simply that the provisions are clear:
   - Does the Government intend that unit trusts have a different treatment (as is proposed)?
   - Will unit trusts be companies for the connected companies provisions (see clause 23)?

6 GAAR
6.1 We can understand the concern in the Scottish Government (and Revenue Scotland) about controlling avoidance. We can accept the need for a GAAR in the LBTT rules, especially as there is no equivalent to s75A in LBTT. We continue to believe that any GAAR should be a narrowly-focussed General Anti-Abuse Rule, rather than a wide anti-avoidance rule. The risk with the latter is uncertainty and a need for a clearance system. We have discussed this issue in our submission on the Taxes Management Act consultation.

7 Enforcement
7.1 SDLT is in principle enforced by review of returns though this is very much the exception. In practice control is mainly by Inspectors looking at things after the event and using the discovery regime. This raises practical issues for Scotland as to whether HMRC will do this for a Scottish transaction. We understand that a Memorandum of Understanding (MOU) is already in place with both HMRC and the Valuations Office Agency.

8 Cross reference to other statutes
8.1 As a general point, we would strongly recommend that where the LBTT Bill makes reference to or uses a term from a provision of a UK statute, that the relevant words be re-stated in the LBTT Act itself rather than effected by cross
reference. This would avoid finding that the LBTT code is amended by some unrelated change to the UK Act, necessitating an amendment to the LBTT Act. It also, pragmatically, makes the LBTT easier to read on its own.

9 The Chartered Institute of Taxation
The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT’s 16,500 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.
STAGE 2 SUBMISSION FROM ICAS

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.

ICAS is pleased to have been asked to give oral evidence at the Stage 2 hearing of the Finance Committee in relation to non-residential leases, companies, trusts and partnerships.

ICAS notes that the Stage 1 report and the Scottish Government responses on this are as follows:

Non-residential leases, companies, trusts and partnerships
13. The Committee notes the need to introduce LBTT by April 2015 but emphasises that there is nevertheless a need to ensure that all aspects of the Bill are subject to effective parliamentary scrutiny. On this basis the Committee recommends that sufficient time is made available at Stage 2 to allow oral evidence both with the Cabinet Secretary and key stakeholders prior to consideration of the proposed amendments on non-residential leases, companies, trusts and partnerships.

The Scottish Government will, as far as it practically can, assist the Committee in ensuring that adequate time is available for scrutiny of the proposed amendments.

14. The Committee also recommends that the SG publishes the equivalent of a Policy Memorandum and Explanatory Notes to accompany the proposed amendments in these areas.

The Scottish Government will provide the Committee with appropriate supplementary material to assist the Committee in its consideration of these amendments.

We look forward to giving oral evidence to the Finance Committee on 22 May but without having seen any of the amendments that are proposed we are unable to provide written evidence at present in relation to this. We have not covered again the detail in the Law Society of Scotland submission and agree with their analysis.
We would, however, reiterate a number of key points that we raised in earlier evidence which we believe will be crucial to the success of LBTT. This is particularly the case in creating an effective transaction tax where the transactions can be complex as is often the case with non-residential leases, companies, trusts and partnerships. The following general principles should not be lost in creating the legislative detail of the tax.

- The Scottish Parliament has the opportunity to avoid complexity; to simplify and modernise the legislation
- We believe that better quality, and tested, legislation should be the aim; although the comparatively slow progress in producing even one tax bill shows the complexity of tax and that it takes time to get right
- Drafting tax legislation needs adequate timescale and resources; the Scottish Government needs the appropriate skills and resources to do this and we are not convinced with the timescale or progress to date to produce legislation that will be fully workable.
- Consideration needs to be given to commercial consequences, not just the domestic housing market (for LBTT); bands and rates should be announced well in advance of the introduction of the tax.

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

The draft Bill does not yet 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. It is 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.
SUBMISSION FROM LAW SOCIETY OF SCOTLAND IN RELATION TO
LBTT AND LEASE AND PARTNERSHIPS

Introduction
1. The Law Society of Scotland is delighted to give evidence to the Finance Committee in relation to commercial and agricultural leases and partnerships.

2. The aim of this paper is to outline the way in which SDLT on commercial leases is calculated, the issues and complexities which arise and the approach taken by the Non-Residential Lease Working Party to address these issues.

Outline of SDLT code for commercial leases
3. The SDLT charge on commercial lease rentals is based on the net present value (NPV) of the rentals discounted at 3.5%. SDLT is payable at 1% to the extent that the NPV exceeds the nil rate band which is currently £150,000.

4. In addition to the NPV based charge on lease rentals, SDLT is also payable on any premium paid by the tenant to the landlord for the grant of the lease. The SDLT charge on lease premiums is at the same rates as for purchases of land.

5. There are many complexities in the SDLT lease code, and there are particular problems for leases in Scotland because the SDLT lease code is based on English law. In England the grant of a lease is an estate or interest in land, whereas in Scotland leases are essentially contracts. It is possible to vary and extend Scots law leases in way which is not possible for leases in England.

6. It can very difficult for solicitors and other tax advisors to calculate the SDLT on lease rentals, particularly for wind farm leases, leases with turnover rents and development leases.

7. The administrative burden is severe - in most cases more than one SDLT return is required, and in some cases many SDLT returns.
8. The SDLT returns for leases ask for a great deal of information which is irrelevant for computation of SDLT liabilities. We understand this is required by the Valuation Office Agency in connection with non-domestic rates.

9. By agreement with HMRC, the extension of a lease in Scotland is treated as if it were the grant of a new lease for SDLT purposes, but there is no provision for this in the SDLT legislation. Clients are therefore paying SDLT on lease extensions when there is no prima facie legal requirement to do so. The system of tacit relocation, where leases are extended by operation of law, is also not dealt with specifically in the legislation and in practice it is thought that lease extensions by this method are often simply ignored.

10. The effective date of a lease where the tenant takes entry to carry out fitting out works is not clear. Furthermore, in general terms, the date of commencement of a lease in Scotland is far from clear. This could be the date of commencement expressed in the lease; the date when the tenant takes actual entry if that is before the date expressed in the lease; the date of last signature if that takes place before the tenant takes entry; or conceivably the date of registration where a lease is registered. The relationship between an agreement for lease and an actual lease is also problematic - it may be intended to be included on the rules from a contract followed by a conveyance, but that terminology does not fit well into the structure of leases and their precursors.

If, as suggested elsewhere, LBTT is tied to the acquisition of real rights (with necessary extensions), then at least some of those problems would be mitigated, but at the moment it is genuinely opaque (it is thought particularly in Scotland) from exactly when obligations to pay SDLT on leases actually arise.

11. Tenants frequently take entry under an agreement for lease or missives, with the formal lease being signed at a later stage. For SDLT purposes taking entry under an agreement for lease or missives is treated as the grant of a notional lease. The notional lease is surrendered when the formal lease is granted, and a second SDLT return may be required. Although SDLT overlap relief may be available to extinguish any SDLT on the grant of the formal lease, the position has to be considered in every case. In many cases SDLT is payable on the formal lease as the term of the formal lease or the rent payable does not exactly match the notional lease, for example because the term runs from
practical completion of a building, which would not be known at the date the agreement for lease was entered into, or because the rent is based on floor area, which cannot be measured until after the building has been completed. In practice the requirement to submit an additional return when the formal lease is granted is generally ignored.

12. SDLT is based on the rent in the first five years and additional returns may be required if any of the rental figures are estimated, for example because there is a rent review during the first five years, or because there is a turnover or other variable rent. It is not clear from the legislation when these additional returns have to be submitted. In practice the requirement to submit additional returns when actual figures are available is not always complied with, particularly where no solicitors or other agents are involved at that time.

13. A number of situations, for example the variation of a lease in the first five years to increase the rent, are treated for SDLT purposes as the grant of a new lease for the excess rent. This can result in a number of different notional SDLT leases co-existing in relation to the same actual lease.

14. Many of the lease provisions are not well understood by tenants, particularly small businesses, who are therefore not complying with the requirements of the legislation because they are not aware of it.

15. Many situations which give rise to an SDLT charge occur without the involvement of solicitors or other professional advisors and so tenants are unaware of the requirement to submit an SDLT return or pay SDLT.

Non-residential Lease Working Group

16. Given the number of issues to be considered, the Society welcomed the decision not to include provisions relating to leases in the LBTT Bill when it was introduced to the Scottish Parliament in November 2012 to allow time for a working group to be convened to consider the options.
17. The Society was delighted to be involved in the work of the Non-residential Lease Working Group which considered the options set out in the Society’s response to the LBTT Consultation, namely: -

- LBTT payable on an annual basis as a percentage of actual rent paid
- LBTT on NPV but payable in instalments at the tenant’s option
- LBTT on NPV but recalculated every [five] years based on actual rent paid
- LBTT paid as a percentage of average rent payable under the lease

18. The objective was to try and ensure that the LBTT code for commercial and agricultural leases is much simpler to understand and comply with, and so far as possible is based on the actual rent paid.

19. LBTT to be paid on an annual basis as a percentage of the actual rent paid was arguably the simplest option, but it was likely to involve higher administrative costs for both tenants and for the Tax Authority due to the need for returns to be submitted on an annual basis, collection of the tax would have been more difficult and there would also have been a cash flow issue for the Scottish Government in the first few years after April 2015 due to the change from the NPV based system.

20. The approach which is to be adopted will be an NPV based charge but it will not use the highest rent in the first five years for years six onwards. Instead the NPV calculation will be based on the actual rents paid. Tenants will submit an initial LBTT return based on estimated rents where necessary, and then submit additional LBTT returns every three years if lease rents have changed (for example because the actual figure for an estimated rent has become known). This will mean that LBTT will be based on the actual rents paid under the lease, and should remove the many complexities which bedevil the SDLT lease code.

**Partnerships**

21. The SDLT partnership rules are one of the most complex areas of the legislation, largely because partnerships were widely used to avoid stamp duty, and the SDLT partnership rules were drafted with that in mind. There have also been numerous changes to the rules since they were introduced.
22. Many aspects of the SDLT partnership rules are difficult to understand and are counter intuitive, for example the SDLT partnership rules are based on income profit shares, whereas in many partnerships capital sharing ratios (which regulate how interests in land and buildings are dealt with) would surely be more appropriate.

23. There are also significant differences between the treatment of transfers of land to a “connected” partnership, where no SDLT is likely to be payable, and the transfer of land to a connected company, where SDLT is payable on market value. It is hard to see the justification for such a different approach to different types of business organisation.

24. It is also hard to see the logic or the policy intent behind some of the SDLT partnership rules. For example, the transfer of land from a company to a “connected” partnership is likely to attract SDLT whereas the transfer from a partnership to a “connected” company does not. In addition, if consideration is paid, why should SDLT not be payable even if the parties are connected?

25. As with other aspects of SDLT, the partnership rules have not been drafted with Scottish partnerships in mind.

26. We believe there is a golden opportunity to simplify the partnership rules for LBTT. We accept, however, that there has not been time to consider the many issues which are involved, given the range of different types of partnerships which need to be catered for, from farming partnerships to investment fund vehicles, and the need to guard against avoidance schemes. We therefore believe a working party should be established to consider LBTT and partnerships in more detail over the coming months.
1. The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We include among our members; property investors, developers, landlords of commercial and residential property, and professional property consultants and advisers.

2. The Scottish Property Federation is pleased to submit specific comments to the Finance Committee as part of its Stage 2 consideration of the Land & Buildings Transaction Tax (LBTT) Bill. Our comments relate to LBTT and non-domestic leases mainly, further to our participation and engagement with the Scottish Government’s Non-Domestic leases working party. We have also provided some brief comments on partnerships.

Non domestic property leases and LBTT

3. We have welcomed the approach to the introduction of this first taxation measure by the Scottish Government and Parliament. We welcome in particular the decision of the Finance Secretary as outlined at Stage 1 to utilise a Net Present Value (NPV) approach based on a one off transaction payment by the taxpayer, albeit reassessed every three years in order to ensure that where particular lease arrangements exist (for example indexed rents or turnover based rents) that taxation obligation have been properly met and discharged. This will move LBTT away from a more uncertain SDLT framework whereby taxpayers may inadvertently not pay due tax.

4. We do not claim that this is the perfect solution on how to apply the tax – but we believe it is a pragmatic approach that has balanced the desire to improve some of the mechanics of the tax without extending its scope undesirably. We consider the merits of simplicity versus wider policy considerations below.

5. The current approach to SDLT on leases has been controversial for a number of reasons but particularly so around the methodology surrounding the charge and in particular, the unfamiliarity of SDLT with Scottish property law. In addition it should not be forgotten that the charge can be a substantive ‘up-front’ tax outlay for businesses at the point of taking on a lease.

6. For the reasons outlined at paragraph 5 a number of constructive suggestions had been made to the Scottish Ministers for reform of this aspect of SDLT/LBTT, including the possibility of charging the tax based upon rent paid annually, to be collected retrospectively by the tax authority.

7. The proposal for an annual charge was without doubt the simplest method of taxing commercial leases but it did suffer from a number of wider policy concerns.

8. First, the Scottish Government would lose significant revenue possibly over the first five years of operation at least. This could amount to some £17-20mn in its first year before gradually reducing over time. Analysis by the Scottish Government demonstrated that this figure of £17-20mn of revenue annually, based on the rental element of leases is actually very consistent over the past five years. The most recent estimates of total non-domestic
SDLT revenue for Scotland is estimated to be £125mn – therefore the rental element is a significant part of the potential overall revenue take for commercial LBTT.\(^1\)

9. A second and related concern is the issue of the threshold of rent at which a retrospective annual charge would be applied. The current NPV threshold is the same as the threshold for sales - £150,000. Oddly for SDLT, the current lease charge only applies to that amount of NPV in excess of this threshold – in other words a ‘progressive’ approach. The problem for LBTT being charged annually is that relatively few leases would be captured by this level of rent at which to pay tax so it was expected that the threshold might have to reduce significantly if revenue was to be collected in sufficient quantity, even after a period of years.

10. A reduction in threshold would have the effect of bringing many more taxpayers into the ambit of the charge. This would be perceived poorly by taxpayers who might have viewed this as amounting to a second business rate. In the opinion of our members across the property industry, this perception should not be underestimated because the vast majority of lease events will not be liable for the charge and those that are able to deal with the charge on a one-off basis. There would also have been associated compliance issue for businesses and the tax authority that were likely to be significant given the greater number of chargeable events that would have been subject to the charge.

11. However, some questions remain on how the new system will be enforced. The Registers of Scotland and Revenue Scotland will need to be aware of the main terms of leases entered into in order to ensure that they are reassessed and where necessary tax adjustments made. The detail of these issues and the three year re-assessment requirements will be critical to the functioning of the tax under LBTT and we look forward to seeing the proposed detail under Clause 55 of the Bill.

12. Related to our views on how to structure LBTT for commercial leases is the intention of the Scottish Government to include certain license arrangements within the scope of the lease regime. This will be different to the position in the UK and will no doubt lead to controversy in some quarters. We understand that the intention is to identify a range of licenses which are to be subject to the LBTT lease charge. We believe that if the regime is to be extended to licenses then it will be important to be specific about which kind of license arrangements are to be included.

**Partnerships and Trusts**

13. The SPF has made little commentary on these matters which we deem to be more pertinent to the Law Society of Scotland. However, we noted the concerns raised consistently by the LSS regarding the lack of clarity of Scottish partnership law factors in the existing SDLT legislation and it seems to us this is clearly an area where LBTT can effect some improvements to ensure that greater certainty and transparency is introduced.

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\(^1\) The Committee will be aware of a larger figure of annual revenue based on the then most recent HMRC figures (amounting to £60mn) attributed to leases within the earlier Scottish Government consultation paper (2012). However, these figures included some £44mn of revenue from assigned leases, whereby a lease is purchased by another party and these transactions are typically charged according to the rates applied to sales.
14. We have therefore supported the Law Society of Scotland’s call for reform in this area and we believe that given the complexity of the issues at stake, the Scottish Government should seek to engage further with appropriate professionals to ensure that at least subordinate legislation can be effectively brought before Parliament to consider. It would appear to be a missed opportunity if we do not at least clarify the law relating to LBTT and partnerships.

15. The SPF will be pleased to answer further questions on these issues in evidence.
Introduction
1. This note provides further information on the Scottish Government’s proposals for taxing leases, partnerships, trusts and residential property holding companies under a Land and Buildings Transaction Tax (LBTT) system, effective 1 April 2015.

Commercial, Agricultural and Residential Leases
2. As outlined at Section 6 of the Policy Memorandum relating to the Land and Buildings Transaction Tax (Scotland) Bill which was introduced in the Scottish Parliament on 29 November 2012, the Scottish Government intends that LBTT should be levied on anyone leasing land or buildings.

Residential leases
3. The Scottish Government proposed at paragraph 87 of the Policy Memorandum relating to LBTT that all residential leases of whatever duration except “qualifying leases” under the Long Leases (Scotland) Act 2012 should be exempt from LBTT. Qualifying leases are ultra-long leases (leases that have been granted for more than 175 years and have more than 100 years to run) that qualify for conversion to ownership on a day to be appointed by the Scottish Ministers. These leases are akin to ownership and without this exception to the LBTT exemption, there might be an incentive for tenants to opt out of conversion to ownership to avoid LBTT on future transactions.

4. The approach the Scottish Government proposes to take in relation to taxing qualifying leases under LBTT is to ignore any rent payable under such leases on the basis that if there is a rent it will invariably be a peppercorn rent. However, the Scottish Government proposes to treat any premium paid on the assignation of such a lease as chargeable consideration in the same way as any chargeable consideration for the acquisition of any other interest in residential property. An assignation is where a tenant transfers his interest in a lease to another person (called an assignee), who thereafter takes his place as tenant under the original contract. The assignee becomes directly liable to the landlord for the rent and other obligations of the lease, and the original tenant is relieved of all responsibilities.

Non – residential leases
5. As outlined at paragraph 90 of the Policy Memorandum relating to LBTT, the Scottish Government convened a working group to further consider the tax treatment of non-residential leases. Membership of the working group consisted of representatives from the LBTT Bill Team, Scottish Government Legal and Analytical Directorates, Chartered Institute of Taxation, Confederation of British Industry, Convention of Scottish Local Authorities, Institute of Chartered Accountants of Scotland, Law Society of Scotland, Registers of Scotland, Scottish Land and Estates, Scottish Property Federation, Scottish Stamp Tax Practitioners Group and the Tenant Farming Forum.
The working group agreed to consider in detail the impact of 5 options for taxing the rental element of non-residential leases under LBTT as follows:

**Option 1:** Retain the current Stamp Duty Land Tax (SDLT) approach of calculating the NPV of expected rental payments and levying the tax on this amount as an upfront charge with no rebate for companies going out of business or early surrender of leases;

**Option 2:** calculate the LBTT payable as a percentage of actual rent paid each year, with the amount of tax due paid annually, varying if the rental payments vary, and stopping if the rental payments stop;

**Option 3:** calculate LBTT payable based on the NPV approach and require payment upfront, but recalculate the tax due every 3 years, based on actual rent paid in the period;

**Option 4:** calculate LBTT payable as a percentage of average rent payable under the lease, but with payment of tax upfront;

**Option 5:** as for Option 1 but allow payment by instalments at the tenant’s option over a set number of years.

The working group agreed that its task was to assess each option against common criteria, to help Ministers to reach an informed decision about which option to select. The criteria selected were:

- Simplicity and certainty of tax calculation;
- Level of tax receipts and the time period over which they would be collected;
- The likely burden of administration for taxpayers, tax practitioners and the tax authority;
- Need for new IT systems for both tax practitioners and tax authorities; and
- Levels of compliance activity that might be required and
- The burden of risk that might be incurred by both taxpayer and the tax authority.

The Working Group met to undertake this analysis on a number of occasions.

**Analysis of the options**

At an early stage in its discussions, the working group agreed that options 4 and 5 above should be rejected. **Option 4** meant a return to the pre-2003 stamp duty system (the precursor to SDLT) which deals with none of the complexities relating to certain types of lease e.g. turnover leases. **Option 5** was rejected because it would replicate all the flaws and complexities of the current SDLT system, while giving the tenant some years to pay the tax due was not considered to be an effective means of addressing the shortcomings identified. Retaining the current SDLT approach (**Option 1**) was not favoured by anyone on the working group.

**Option 2** changes the basis of the charge from a lump sum tax payable at the start of the lease (with further returns in the event that rental payments vary) to what is effectively an annual levy on rental payments, with the amount of tax payable varying year by year if rental payments vary. This would make calculating the amount of tax due each year simple (and remove the need for a
net present value calculation) which would be welcomed by both taxpayers and tax practitioners.

11. However there is likely to be a significant adverse impact on tax revenues. Option 2 would reduce LBTT tax receipts from the rental element of non-residential leases to zero in the first year of operation (since the tax would be payable on rent passing in the tax year, with the tax return being submitted immediately after the end of the year). Receipts would rise thereafter but would remain less each year than under SDLT until around the fifth or sixth year of operations.

12. Our calculations suggest that total SDLT payable on the rental element of non-residential leases in Scotland at present is around £17m a year. For simplicity, SDLT rental payments of £20m per annum have been modelled. We estimate that under option 2, over the first 5 years of LBTT, aggregate tax revenues would be around £60-80 million lower than under SDLT (assuming tax rates are maintained at approximately the same level as at present). Over time, the revenues would equalise, but the lower level of receipts in years 1 to 5 would not be made up in normal operation of the tax.

13. **Option 3** leaves the basis of calculating the tax broadly as it is – in the majority of cases a percentage rate applied to the net present value of expected rental payments for the period of the lease, which therefore would not change existing levels of tax revenue. Option 3 would also include ‘checkpoints’ every 3 years to recalculate the tax to establish whether the amount of tax originally paid should be reduced (as it would if rental payments in practice were lower than originally estimated) or increased (if rental payments exceeded the estimated level).

14. **Option 3** scored well against the majority of evaluation criteria and addressed stakeholders’ concerns about the complexities and difficulties of the current SDLT approach. It provides more certainty to taxpayers about when a further return is needed and reduces the administrative costs to the taxpayer and the tax authority compared to the need for annual returns under option 2. It will secure revenue whilst responding to the need to reduce the workload for taxpayers in relation to leases where the payments are subject to change (e.g. turnover leases and wind-farms) without generating significant extra work for taxpayers or Revenue Scotland.

15. The Working Group met with the Cabinet Secretary for Finance, Employment and Sustainable Growth on 27 March to discuss the remaining options. During the Stage 1 debate on the Land and Buildings Transaction Tax (Scotland) Bill on 24 April 2012, the Cabinet Secretary for Finance, Employment and Sustainable Growth said: “I have concluded that the tax payable on non-residential leases will be based on the net present value approach, with a recalculation of the tax due at three-yearly review periods, based on the rent paid over the period. A taxpayer will also be required to submit a return at the end of the lease”.

**LBTT calculation over the course of a non-residential lease**

16. The chargeable consideration for a lease will be determined by calculating the Net Present Value (“NPV”) of the rent payable over the term of the lease plus any premium payable in addition to rent.
17. A feature of the LBTT non-residential leases regime will be to have a review of the chargeable consideration of the lease transaction every three years and at the end of the lease, which if it is within a three year review period shall be the last review. The tenant must make a return to Revenue Scotland on each review date and at the end of the lease.

18. To give taxpayers certainty as to when a tax return must be submitted, another feature of this approach is that apart from the three yearly return and the return at the end of a lease, there will be no obligation to submit a return either because there has been a variation in the terms of the lease or as a result of the projected figures on which the original NPV was calculated turning out to be different than projected. In short, any recalculation of the tax chargeable will occur only every three years.

Net present value
19. The NPV calculation has three elements:
   - the temporal discount rate
   - the length of term of the lease
   - the amount of rent payable

20. The temporal discount rate will be the same as the rate used Stamp Duty Land Tax NPV calculation - 3.5%. The effect of applying the temporal discount rate is to determine the value today of rents due in the future.

21. Once the rent and term have been determined then a statutory formula must be used to calculate the NPV. This is expressed as follows:

\[ \text{NPV} = \sum_{i=1}^{n} \frac{r_i}{(1 + T)^i} \]

Where
i. \( r_i \) is the rent payable in respect of year \( i \)
ii. \( i \) is the first, second, third etc year of the term
iii. \( n \) is the term of the lease
iv. \( T \) is the temporal discount rate

22. Taxpayers will have access to an on-line calculator to assist them with the NPV calculation.

23. Once the NPV of the rental payments has been calculated then the tax liability can be calculated by reference to the relevant rates and thresholds.

Bringing the legislation into line with Scots Law and Practices
24. Scots property law is different to English property law and the LBTT non-residential lease provisions have been designed, as far as practical, to reflect Scots law and practices. Features of the approach that will be set out in the amending legislation include:
Effective date
25. A number of stakeholders have previously commented to the Bill Team that under SDLT, there can be a lack of clarity over the effective date of a lease where the tenant takes entry to carry out fitting-out works.

26. The effective date under LBTT will be whichever date is the earliest of the tenant taking entry of the premises or the date the lease commences. This would include a tenant taking entry under a fitting out licence. The key element will be who has control of the premises – the landlord or the tenant.

Extension of a lease
27. Leases in Scotland are frequently extended by the execution of a minute of extension. The extension of a Scottish lease does not give rise to an implied surrender and a regrant so unlike the situation that pertains under SDLT, under LBTT any extension to a lease will simply be picked up at the 3 year review point and the NPV recalculated to reflect the revised terms of the lease.

Tacit Relocation
28. There is no limit to the number of times a lease can tacitly relocate (other than the upper limit in Scots law of 175 years). Where a lease continues past its original term by tacit relocation, this may give rise to an LBTT charge, or an additional LBTT charge and it may be necessary to notify the transaction.

29. The issue of tacit relocation can be dealt with at the 3 year review or by an end of lease tax return reminder letter. Tacit relocation would be dealt with as a variation of an existing lease and the LBTT liability recalculated accordingly.

Variation of a lease
30. Any variation in the terms of a lease under LBTT would be picked up at the 3 year review period and the NPV calculation revised accordingly. This means that unlike under SDLT there will be no need to surrender the old lease and grant a new lease to deal with the variation and no need to consider if overlap relief will operate.

Assignment of a lease
31. Under SDLT, an assignation of a lease is treated as a new lease. Under LBTT such assignations will normally be treated as the continuation of an existing lease. The outgoing tenant will be required to notify Revenue Scotland when a lease is assigned and the tenant should submit a final tax return. The incoming tenant may require to submit a tax return when the lease is assigned if a substantial premium has been paid.

32. The exception to the normal rule of assignations not terminating a lease is when the lease was subject to a tax relief with no tax paid. In those cases, tax is charged at assignation with the unexpired period of the lease treated as a new lease.
Partnerships

33. The Bill broadly replicates the existing SDLT provisions on the treatment of partnerships. Therefore, the taxation of land transactions involving partnerships under LBTT would continue to operate as it had before under SDLT. The Scottish Government will continue to work with stakeholders to address any specific issues relating to partnerships and to monitor the operation of the provisions when the collection of LBTT begins.

34. The Scottish Government intends to bring forward an amendment to the Bill to add a power that would allow Scottish Ministers to amend the partnerships schedule in the future. Such a power would be subject to affirmative procedure. The Scottish Government also intends to bring forward some minor technical amendments at stage 2, but none are substantive in nature.

35. The policy rationale underpinning the partnerships provisions contained in Schedule 17 is as follows. Part 2 of Schedule 17 contains general provisions. Paragraph 2 defines the term “partnership”. Paragraph 3 makes it clear that chargeable interests are to be treated as being held by the partners as opposed to by the partnership. In Scots law, partnerships have their own legal personality. Paragraph 4 sets out the general principle that an acquisition of an interest in a partnership is not a chargeable interest except as specifically provided for in Part 4 of Schedule 17, and in paragraphs 17 and 31 of Schedule 17.

36. When a partnership enters into a land transaction, LBTT liability arises in the same manner as it would for private individuals or companies entering a land transaction. However, Part 4 makes special provision for transfers of chargeable interests into partnerships by a partner or a connected person, or by a person transferring a chargeable interest to a partnership in return for an interest in the partnership or a connected person. When this occurs, there is an LBTT “discount” given to the partnership in proportion to the partnership share held by the partner or person transferring the chargeable interest to the partnership. For example, if an existing partner transfers a plot of land to a partnership of four partners who each have a quarter share in the partnership, the LBTT charge to the partnership will be reduced by a quarter to reflect the fact that the partner who transferred the chargeable interest will, through being a partner in the partnership, retain a quarter interest in the land. The method for calculating the chargeable consideration in such circumstances (referred to as the ‘sum of the lower proportions’ calculation) is set out in paragraphs 13 and 14 of Schedule 17.

37. Part 5 of Schedule 17 makes similar provision for transactions involving a transfer from a partnership to one of the partners.

38. Part 6 makes special provision for Property Investment Partnerships (PIPs). PIPS are partnerships whose sole or main activity is investing in or dealing in a chargeable interest. In essence, the provisions are anti-avoidance in nature and aim to prevent the “wrapping” of land and property in a partnership structure to avoid LBTT liability when the underlying partners who indirectly own the partnership property transfer interests in the partnership. Paragraph 31 achieves this by providing that a transfer of an interest in a PIP is treated as a land transaction.
39. Part 7 of Schedule 17 makes special provision for the application of certain exemptions, reliefs (such as group relief and charities relief) and notifications to partnerships.

**Trusts**

40. The LBTT Bill as introduced broadly replicates the SDLT legislation governing trusts. The Scottish Government has now considered the LBTT provisions on trusts, and is proposing to bring forward amendments to the provisions at stage 2, with further possible amendment at stage 3.

41. The SDLT provisions in relation to trusts include English legal concepts, such as Schedule 18 paragraph 3 which provides that a beneficiary in a trust is to be treated as having a beneficial interest in the trust property despite the fact that no such interest is recognised by the law of Scotland. The Scottish Government is working with stakeholders to resolve this, and intends to bring forward an amendment at stage 2.

42. Another issue relating to trusts is the treatment of land transactions involving bare trusts. Bare trusts differ from settlement trusts. In a bare trust, the beneficiary has full entitlement to the assets of a trust. Such trust arrangements are used when a trustee is appointed to deal with property for a minor or a person with a disability. Bare trusts are also used for the when a trustee holds the trust property as nominee for somebody else. In the latter category, it can be the case that the trust is set up to keep the beneficiary’s interest confidential, perhaps for tax avoidance purposes.

43. When the Bill was introduced to Parliament, the Scottish Government stated in the Policy Memorandum accompanying the Bill that it intended to review the provisions relating to bare trusts. It was intimated that the Scottish Government would consider bringing forward an amendment to make the bare trustee liable for LBTT. The Scottish Government has now had the opportunity to consider the position more fully. After careful consideration, we have come to the view that liability to pay LBTT should remain with the beneficiary, who holds the economic interest in the chargeable interest that gives rise to LBTT liability. However, the Scottish Government intends to bring forward an amendment to the Bill to give Revenue Scotland a right of recovery against the bare trustee. We also propose to amend paragraph 3 of Schedule 18 at Stage 2 to better reflect the Scots law of trusts.

**Residential Property Holding Companies**

44. The LBTT Bill contains a power to allow Scottish Ministers to make regulations to ensure that qualifying transfers of interests in “residential property holding companies” are subject to LBTT. When there is a transfer of interest in relation to such a company and the transferee obtains the right to use or occupy that property, such a transfer ought to be subject to LBTT as it would had the ownership of the property been transferred in other types of transactions between private individuals or companies.

45. The Scottish Government intends to bring forward some minor amendments to the regulation making power. One such amendment would give Scottish Ministers
the flexibility to set different tax rates and bands for charging the transfer of interest in a Residential Property Holding Company. A further amendment will be brought forward to clarify that the regulations can be made to cover residential properties that are part of larger property holdings.

46. However, the provisions in section 47 will remain as a regulation making power that can be used by Scottish Ministers in the future should it become apparent that corporate mechanisms are being employed to “wrap” residential property.
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

15th Meeting, 2013 (Session 4)

Wednesday 22 May 2013

Present:
Gavin Brown    Malcolm Chisholm
Kenneth Gibson (Convener)  Jamie Hepburn
John Mason (Deputy Convener)  Jean Urquhart

Apologies were received from Michael McMahon.

Land and Buildings Transaction Tax (Scotland) Bill: The Committee took evidence from—

Alan Barr, member of the ICAS Private Client Sub Committee, Institute of Chartered Accountants of Scotland;

David Melhuish, Director, Scottish Property Federation;

Isobel d'Inverno, Convener of the Tax Law Committee, Law Society of Scotland;

Stephen Coleclough, President, Chartered Institute of Taxation;

John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth, Neil Ferguson, Land and Buildings Transaction Tax Bill Team Leader, and John St Clair, Senior Principal Legal Officer, Scottish Government.
The Convener: The second item on our agenda is an evidence-taking session on the Land and Buildings Transaction Tax (Scotland) Bill with Alan Barr of the Institute of Chartered Accountants of Scotland, David Melhuish of the Scottish Property Federation, Isobel d'Inverno of the Law Society of Scotland, and Stephen Coleclough of the Chartered Institute of Taxation. I welcome the witnesses to this morning's meeting and invite one of them to make a short opening statement.

Isobel d’Inverno (Law Society of Scotland): Shall I start, convener?

The Convener: You can toss a coin if you like.

Isobel d’Inverno: I am convener of the Law Society of Scotland’s tax committee and am delighted to give further evidence on the Land and Buildings Transaction Tax (Scotland) Bill in relation to leases and partnerships. We have been working with the bill team on the non-residential lease stakeholder group and are pleased that that work is coming to fruition in the form of an amendment that will come before the committee shortly. We found our interaction with the bill team through that stakeholder group and in other aspects to be very helpful, and a lot of our comments have been taken on board. We are pleased with how things have gone and we hope that as a result of all the work, certainly on leases, the LBTT provisions will be a lot simpler and easier to operate than the stamp duty land tax provisions, and that they will be more in keeping with Scots law.

Alan Barr (Institute of Chartered Accountants of Scotland): Although I am representing ICAS this morning—I serve on one of its capital tax committees—I am a lawyer by trade. ICAS has contributed a lot to the tax process more generally and has made written submissions on this bill in particular.

All that I would like to do is draw the committee’s attention to some general comments that have remained valid through the process and which are, in fact, probably becoming more valid. The new Scottish tax legislation, of which this bill is the first example, provides an opportunity to avoid complexity and to simplify and modernise the tax system.

I agree entirely with what Isobel d’Inverno said, having worked on some of the same committees as her with the bill team, but it has also been demonstrated that this is very hard stuff to do properly. It is debatable whether enough time has
been devoted to getting the legislation right in order to meet the need to bring it into line with Scottish law and practices. There is still considerable danger of provisions going through because they have to, rather than enough time being taken to get them through correctly and properly, given that the tax is not to be introduced until April 2015.

I hope that Parliament takes the opportunity of the time between now and then to change what needs to be changed and not just to go with what we have but instead, before the system comes in, to change it so that it will work better. We are up against timescales that make it extremely difficult to get everything right.

The subjects for today—leases, partnerships and deed trusts—are prime examples. The committee has not got the provisions on leases yet, because they are not in the bill. The same applies to partnerships; all that we have at the moment is a straight reproduction of very extensive and incredibly complex United Kingdom legislation, which in many ways does not, in the view of the people who work with it, work.

That is what we have at the moment. To get it all right in the timescale that the Parliament has set itself will be extremely difficult—perhaps impossible.

The Convener: On that cheery note, I invite Mr Melhuish to speak.

David Melhuish (Scottish Property Federation): I endorse my two colleagues’ statements, which were fair. Alan Barr made a good point about taking the time to make the bill as good as it can be in the timeframe that is available. Given that the Scottish Property Federation’s particular interest is in leases, as my written submission says, I want to add to what has been said on competitiveness, which is very important to our industry and those who lease properties from it.

Stephen Coleclough (Chartered Institute of Taxation): Since I last appeared before the committee, I have moved from being deputy president to president of the Chartered Institute of Taxation. However, I am not here today in that capacity; I am here because stamp duty land tax is one of my specialist areas.

Wearing another hat, I have been working with the bill team on the partnerships provisions. As they are currently drafted, they are very similar to the UK provisions and are extremely complex. Because of the absence of the specific anti-avoidance provision that is in stamp duty land tax, planning opportunities are available that really should not be available. We have had a lot of discussions with the bill team on that, and I urge that the recommendations from those discussions be taken on board.

I reiterate what I said in January, which is that with the bill you have a great opportunity to make a tax that is simpler and easier than what exists, that conforms with Scots law and that can be run at relatively low cost to the Government and taxpayers.

The Convener: Thank you very much. We will explore some of the comments that you made previously, but I make it clear that the committee is appreciative of all the work that you and your organisations have done on taking the bill to this stage. Clearly, that could not have been done without your expertise.

I will ask questions of the panel generally. You need not all answer each question, but feel free to answer any question. I might direct one or two questions to individuals. I will, of course, let colleagues in, but I might ask more questions later, depending on how things progress and the time that we have left.

On your references to Scots law, the bill team gave evidence at a previous meeting, but also gave some information to the committee in private. What are your views on the designation, as far as reflecting Scots law in practice is concerned? Isobel d’Inverno and Stephen Coleclough touched on that with regard to problems in leases in Scotland because the SDLT lease code is based on English law. How far do you feel we have gone in addressing that? In terms of the relation between Scots law practices and the bill, have we got it just about right without having to make a huge number of amendments that may have unintended consequences?

Isobel d’Inverno: The draft of the proposed lease schedule that we have been looking at with the bill team is probably most of the way there—of course, it is a draft, and we will have to wait to see the actual amendment. As Alan Barr said, this is tricky stuff, and the question is whether the words on the page will work as it is intended they will work. If we assume that all the points that have been discussed are reflected, I think that the draft is most of the way there.

With the best will in the world, there will be glitches, which ought to be fixed. I endorse what Alan Barr said about the need to take the time to do that in the two years until 2015. However, the draft that we have seen much better reflects the reality of how leases work in Scotland than the SDLT legislation does.

The Convener: Yes. In the private discussion it was indicated that work would go on to hone the bill in order to address some issues that have been raised.
The calculation of LBTT is one of the main issues. There are five options, as it says in our papers. For the benefit of the public record, will you take us through the options and explain why option 3 was chosen?

Isobel d’Inverno: I am afraid that I cannot remember the numbering of all the options. We rejected the option of just keeping the SDLT system, because the way SDLT works for leases is terrifically complicated and people waste a lot of time trying to figure out how to apply the legislation. The system works particularly badly for Scottish leases, because we can vary Scottish leases in ways that cannot happen with English leases. For example, the extension of leases is not dealt with at all in the SDLT legislation, and we had to agree working practice with HM Revenue and Customs. All those things meant that maintaining the status quo was not a good plan.

Another option, which was quite attractive to the Law Society of Scotland, was to base LBTT on a percentage of the rent that is paid. The idea was that that approach would be simple and it would not be difficult to find out what rent is paid. However, on further consideration a number of issues emerged. For example, there would be a need for people to do lots of returns, which would be administratively cumbersome. The tax authority might have difficulty getting the LBTT from the tenant, because that would happen over a long period of time rather than in a one-off payment at the beginning.

There was also the question of moving from the current system based on net present value to an annual payment system, which would create a cash-flow issue for the Scottish Government. For those reasons, it was accepted that LBTT as a percentage of the rent was probably not the best way forward.

Other NPV-based options were variations on a theme, such as the option to have an NPV-based calculation but to pay the tax in instalments.

We fixed on an approach whereby the NPV calculation is used, but is periodically recalculated because that will be a lot simpler than dealing with the various rules that we currently have with SDLT. For example, variation of a lease to increase the rent is treated as the grant of a new lease, which means that in SDLT-land there can be lots of new leases floating around, while in the real world there is just one lease.

If you recalculate an NPV calculation, you can do what happens in reality; after all, after a tenant takes a lease, the rent might be changed, its term might be extended and so on. A lease is a moving target, but the problem with SDLT is that it tries to take a snapshot at the beginning and then says, “But that picture might not be right, so here are lots of hoops you can jump through to try to amend your picture and take account of what happens later.” Actually, what you need is a video rather than a snapshot, which is what the option of recalculating NPV tries to achieve. Under that approach, when you as the tenant get to the end of the lease and do your three-year returns, you should have paid LBTT on the actual rents. That is the aim.

10:15

Alan Barr: I endorse the suggestion that where we are getting to with LBTT is better than where we are at present. Speaking personally rather than on behalf of ICAS—I think that the principle of simplicity suits the institute—I was more fundamentalist and thought that it made sense to pay LBTT on the rent that was paid annually, if that was deemed necessary. Nevertheless, what we have is a revision and I absolutely endorse Isobel d’Inverno’s comment that the problem is the snapshot approach. LBTT wants to capture a tax on a transaction that by its very nature goes on for 10, 25 or, theoretically, up to 175 years, and that is very hard to do.

Although the proposed amendments, which we saw only yesterday and to which we have made further input, are a good move towards where we want to go, one should not underestimate the complexity that remains. It will still be necessary—and indeed, it will be more necessary than it is under SDLT—to go back and revise on a more formal and regular basis what has gone before. It is proposed that all that should be based on the rules and rates that are in force at the commencement of leases, but that means that the recalculations will involve a combination of the past—what has happened since either the lease began or the last three-year review—and what will happen in the lease. After all, rates might have changed and might yet change. As a result, a significant amount of estimating and the like will have to go on.

As for the practicalities, those who are much more expert in computer systems than I am tell me that it would be very possible to produce an online calculator that would do this sort of thing more readily—certainly more readily than one could do it with bits of paper and the scratching of heads—but that calculator will still be quite complicated and will not simply mirror the current SDLT calculator. The taxpayer or his or her agents will need that kind of online calculator, rather than their trying to do it without the aid of such tools. In short, the revision is an improvement but, as far as complexity is concerned, I do not think that we are there yet.

I want to take this opportunity to raise two more fundamental points that I do not think have been addressed and which, again, reflect differences
between Scotland and England. First, the date of commencement of a lease and therefore its duration—in other words, how long it lasts—are quite nebulous concepts; for example, there are a number of different days on which one might say that a lease commenced. The date of the last signature on a bit of paper is one such day and the date of entry is another; the link between the two is complicated. That has not been specifically dealt with. In a way, I do not really much care which date is set down, but something needs to be set down to clarify when a lease commences.

My second general point partly goes back to what I was saying about the process’s length and difficulty. A lot of the terminology in leases with regard to SDLT at present and in the bill does not match basic Scots law. For instance, there are references to “lessees” when the Scottish term—technical and otherwise—is “tenant”, which is used throughout Scots law. In my view, such an approach requires a wholly unnecessary series of changes to be made when time could be devoted to addressing more fundamental issues such as, for example, the date of a lease’s commencement.

The Convener: That is a good point and I will certainly put it to the Cabinet Secretary for Finance, Employment and Sustainable Growth when he gives evidence.

Isobel d’Inverno: As well as ensuring that the words on the page reflect what we discussed, we need to be sure that—as Alan Barr said—the computer systems will deal with the mechanisms adequately. That is important, because it will make a huge difference if the online system is easy for tenants or their advisers—a lot of LBTT returns will be done by solicitors—to use. If the system is not easy to use, there will be problems. That is an issue for the future, but I hope that the committee will pay heed to it once the system has been developed.

The Convener: Yes—the bill team has told us that taxpayers will have access to an online calculator to assist them with the NPV calculation. We have before us a very interesting mathematical demonstration of what that will involve.

Under the formula given, NPV equals the sum from i equals 1 to n of r divided by (1 plus T) to the power of i, where r is the rent payable in respect of year i, i is the first, second, third and so on year of the term of the lease, n is the term of the lease and T is the temporal discount rate. However, we will not go into that at the moment.

I will switch to the issue of sub-sale relief. Mr Coleclough, in your submission you state:

“the LBTT Bill contains no sub-sale relief. As the Law Society of Scotland said, and the CIOT agrees, this is a mistake.”

You go on to say:

“taxpayers should have a choice to use sub-sale relief, or another relief or provision which reduces the amount of duty payable, but not both. It is the combination of sub-sale relief with another relief which has led to avoidance.”

How would that work in practice?

Stephen Coleclough: That follows up on our conversation in January. With sub-sale relief, there are always at least three parties: the original vendor, the purchaser in the middle and the final purchaser. It is possible to have a circumstance in which the original vendor does not know about the final purchaser, and vice versa.

The original vendor does not really matter; it does not affect them. The people who are affected are the intermediate purchaser, who is also a vendor, and the final purchaser. I would expect a final purchaser who is expecting to claim a relief, such as a charity or someone who for whatever reason—perhaps they are taking advantage of the partnership provisions in schedule 17—is claiming a reduced amount of tax to ask the person who is selling to them, “Please confirm that you are not taking advantage of sub-sale relief.”

If the person cannot give that confirmation, there must be a conversation between the intermediate purchaser and the purchaser. They should say, “Hang on. If you are taking sub-sale relief, we need to have a discussion about whether I claim my relief—which could be charities relief or whatever—or you claim sub-sale relief.” That discussion would be partly about price.

I would expect that, 99 times out of 100, claiming the relief would be of more value to the final purchaser than to the intermediate purchaser, although one can envisage cases in which it would be better for the intermediate purchaser to do so. There needs to be a grown-up conversation—which is partly a negotiation—to follow an initial statement such as, “I am the charity, so I will be claiming charities relief—please confirm that you are not claiming sub-sale relief.”

At present, with SDLT, sub-sale relief can apply only if both the property transactions are completed on the same day. We do not currently have a situation in which the first leg can be completed and the second leg is completed years later—it all happens on the same day.

There will—or should—be that visibility in the returns process to enable people to see that the same property has gone from A to B to C on the same day. It should not be beyond the wit of man to pick that one up—even just through exception reports—on an automated system.

Before that, the final purchaser and the intermediate purchaser would need to have a negotiation about who is going to claim which relief. At the moment, one of the popular general features of sub-sale relief planning in the UK has
been that it is possible to do it without the vendor knowing. The vendor thinks that the purchaser is paying 100 plus 4 or 5 per cent duty but, in reality, they are not. The vendor would be taking into account the fact that the purchaser is having to pay an extra slug of tax on top of the price, and that will go into the price calculation. The vendor will think that the purchaser is paying 104—they get 100 and the taxman gets 4. Then, the purchaser does a sub-sale without the vendor knowing, that 4 disappears and the purchaser pockets the savings.

The Convener: So we need transparency in the process.

Stephen Coleclough: It is no more transparency than what we would get through the inquiries that someone makes about a building as to its status, survey, environmental condition or the tenants who are currently in it. Those sorts of inquiries and that sort of information would have to be asked about and examined anyway. The one extra thing that would be asked is whether there is an intention to claim sub-sale relief.

The Convener: Colleagues will probably explore that issue further.

Time is marching on, and I want to allow colleagues in, so I will just ask one other question, about partnerships, which are another issue that you have all touched on in your written submissions. Turning to Stephen Coleclough, I note that the CIOT submission states:

“there is a question over a transfer in a partnership which has an interest in a partnership which in turn owns land in Scotland. Is such a transfer liable to LBTT and/or entitled to the special provisions in schedule 17 of the Act?”

You then state:

“The answer ... should in our view be ‘yes’ ... We think the Scottish Government has implicitly accepted that a transfer of a partner does not give rise to tax.”

Could you talk a wee bit more about the whole issue of partnerships and where we should go from here in that regard?

On a point of clarification, there is something in paragraph 2.4 of your paper that has mystified me, and possibly other colleagues. It states:

“there is no LBTT equivalent of ss75A-75C FA 2003”.

Could you tell us a wee bit more about what that is? I personally am baffled by that.

Stephen Coleclough: Referring back to what I said in January, I advise all members to take two Nurofen before we start this conversation.

I will first pick up on the multitiered partnerships point in paragraph 2.2. At the moment, the SDLT rules say that someone should look through all partnerships to the partners. The wording is not clear on whether that means that someone should go just one level through the partnership that owns the land. If one of the partners is themselves a partnership, should the person go up to the partner at the top? If that partner is a company, everybody accepts that, if the company is sold, there is no tax at all. We cannot deal with that.

The question is this: if the top partner sells his interest in a partnership that has an interest in a partnership that owns land in Scotland, does HMRC want the tax? The current position under SDLT is that HMRC will say that it indeed wants the tax. If you ask HMRC, referring to the same provision, whether that means that you can pay a lower rate of tax under the partnership schedule, the answer is no. The words and the provision are the same, but HMRC’s answer is yes, it wants the tax, but no if you want a reduced amount of tax.

I am saying, “Please nail your colours to one mast.” The HMRC should say either yes or no. My advice would be to say yes. That would mean that the provisions of schedule 17 to the bill, parts 4, 5 and 6, would apply all the way up the tiers of partnerships, and so would the charge to tax. Are you with me so far?

The Convener: So far.

Stephen Coleclough: My advice would be to say yes—we look all the way through for all purposes. We should be clear about that.

I do not think that you need to change the wording of the bill in that regard, but you need to be clear in your published policy that that is your view and that is what you think the law says. The position in the UK at the moment, on the other hand, is that the answer to the question depends on the question that you are asking. That is not acceptable, because it creates uncertainty and gives power to the Executive rather than to Parliament.

Sections 75A to 75C of the Finance Act 2003, to which paragraph 2.4 refers, are a targeted anti-avoidance rule that is aimed at stopping avoidance in stamp duty land tax. In summary, that rule involves looking in a series of transactions at who had the land first and who has it at the end, imagining a notional transaction between the first party and the final party for all the money that has flowed between them, and multiplying that by the rate of duty. If that is more than the duty that has been paid, HMRC will have the remaining duty. It is a general provision of that sort.

10:30

That provision came in in 2006. When it came in originally, it said that, in computing the rules for sections 75A to 75C of the 2003 act, account could be taken of what is in parts 4, 5 and 6 of schedule 17 to the bill. That meant that certain
planning schemes could still be carried out, notwithstanding the targeted anti-avoidance rule, because that rule allowed for the provisions that are contained in parts 4, 5 and 6 of schedule 17 to the bill. That was countered in stamp duty land tax by saying that, for the purposes of the anti-avoidance rule, schedule 15 to the UK act—or schedule 17 to the bill—could not be relied on. That is how such planning was stopped. That anti-avoidance provision, as it was amended in 2010, prevents such planning. As the bill does not include such an anti-avoidance provision, what is being implemented in schedule 17 is the pre-2010 version of SDLT partnership rules. That means that, in certain circumstances, a number of planning opportunities will be available, to which the Scottish Government is basically inviting people to help themselves.

In paragraph 2.4 of our submission, we have repeated what we said to the UK Government in 2010 about the best way to deal with the issue. The schemes in question rely on creating what HMRC calls “contrived connections”—in other words, making the seller and the buyer connected for tax purposes through contrived means. In 2010, the way in which we suggested that HMRC could deal with that was to say that people could take advantage of the connection rules that are in schedule 17 to the bill only if they had been connected not only at the time of the transaction, but for the entire 12-month period before that. In reality, if I were someone who wanted to sell a property, I would not hang around for 12 months waiting for a planning scheme to mature so that the purchaser could save money. I would want to sell the building. If the purchaser asked whether we could wait 12 months to save 4 per cent, I would say that I had a better offer.

The Convener: We will come to Alan Barr once we have heard from David Melhuish, who said in his organisation’s submission:

“It would appear to be a missed opportunity if we do not at least clarify the law relating to LBTT and partnerships.”

Will you expand on that?

David Melhuish: I was comparing the situation on partnerships to the constructive engagement that has taken place on the leases side of things and how the Government has worked that through. We are now in a position in which there will be detailed provisions on that in the bill.

I just felt that, to date, partnerships have not had quite the same attention. For the reasons that we have just heard, I think that it would be a missed opportunity if we did not get some clear provisions on partnerships into the bill before the end of stage 3. Touching on some of the comments that Alan Barr made at the beginning, I think that it feels as if partnerships are another area in which, had there been just a few more months’ time, the officials would have had a chance to work up their proposals further and to put them before the Parliament again after holding further deliberations with people who have the kind of expertise that the committee is benefiting from today.

One of the problems with the SDLT legislation is that it has been built on over and over in 2003, 2004, 2007, 2010 and again in 2013, which does not make for good legislation.

The Convener: Indeed. All the submissions talk about that.

Alan Barr: I am going to urge the committee to be much more radical than Stephen Coleclough has urged it to be. As he pointed out, the provisions on partnerships in the bill are, essentially, the partnership legislation on SDLT at a particular point of its evolution. That legislation is a disgrace. In many cases, there is a complete lack of comprehension of it on the part of people who have worked in the area for many years, including those in HMRC. It does not work and, in many cases, is ignored because people do not know that there is a potential liability when transactions happen.

I strongly urge you to start again; instead of trying to build on what is already there, you should in the time available start again completely with the partnership rules and move to a simpler—if I can stick to the same theme—and effective means of dealing with transactions through partnerships. You also have what might be called a Scottish speciality opportunity, given that Scottish partnerships are different from those in England and Wales; they constitute a separate legal person, although I note that that is often a distinction without a difference, particularly in tax terms. If you work with the existing schedules—schedule 15 to the UK legislation and schedule 17 to the bill—you will be using an entirely broken toy. Instead, you should attempt to introduce a completely new system for partnerships.

It is unfortunate that, given the parliamentary process, the provision is essentially a cut and paste from SDLT and there is simply no time available to change it before the bill goes through this year. The other—and entirely reasonable—alternative would be to take it out entirely with the acknowledgement that, before a certain date, it is replaced via the tax management bill or secondary legislation. Otherwise, I regard this to be a huge missed opportunity to deal with some of the most complex and incomprehensible legislation that we have—and I can tell the committee that there are plenty of competitors for that title in the UK tax legislative system. This legislation is one of the absolute top dogs and here is a chance to do something about it. You can either reproduce a version of it or do something different and better,
and I strongly urge the committee to do something different and better.

**The Convener:** I will certainly raise that issue with the cabinet secretary in the next evidence session.

I note that the Law Society's submission has suggested that

"a working party should be established to consider LBTT and partnerships in more detail over the coming months."

**Isobel d’Inverno:** Absolutely. Alan Barr was quite right to call the SDLT partnership legislation a disgrace and a dog. It offends against all of Adam Smith's principles, as mentioned by the cabinet secretary. Stephen Coleclough’s earlier response is an excellent illustration of how complicated the system is and how people cannot understand it. Admittedly, it has to deal with a wide range of different partnerships from big funds set up through partnership vehicles to family partnerships, farming partnerships and so on but, as Alan Barr pointed out, it is often ignored because people do not understand it. It really needs to be looked at again.

Although we should bear in mind that partnerships have been used a lot for tax avoidance, the fact is that SDLT partnership rules are based on income-sharing ratios. People find that difficult to understand because in real partnerships in the real world there are profit-sharing ratios and capital-sharing ratios, which are different. Automatically, therefore, you are off on the wrong foot and trying to work out how the partnership rules apply is like being Alice in Wonderland. It is simply not a good state of affairs.

That said, sorting all this out will not be the simplest thing in the world and certainly would not have been possible in the timescale that we had. As a result, I recommend that, as Alan Barr has suggested, the provision be deleted and a working party be set up to put together a better and more appropriate partnership code.

**Alan Barr:** Although this is all horrendously complicated, the principal starting point—and the Scottish Parliament is rightly a great believer in principles in legislation—is that transfers of economic value of land and buildings through partnership should be treated no better and no worse than the same transfers done directly. That, if you like, is the principle. Although attempts to apply it through the complicated legislation that we have have pretty well failed utterly, if you start with that principle instead of building on what you already have, we have every chance of having a system that embraces it.

**The Convener:** I open out the session to questions from colleagues. The first will be from the deputy convener, John Mason.

**John Mason (Glasgow Shettleston) (SNP):** I want to press Mr Barr on the issue of timescales. The submission from ICAS—I should say that I am a member of ICAS—suggests that we want decisions made more quickly, particularly in relation to the bands and rates. The cabinet secretary has said that he will announce them nearer the time, but ICAS and others have said that they want them sooner. However, Mr Barr now seems to be saying that he wants us to put the whole process on hold while we go away and write some completely new legislation, which would therefore not be ready until very close to the date. Will you explain that?

**Alan Barr:** I appreciate that there is a dichotomy. ICAS's request for an indication of rates is as much for commercial certainty as anything else. Individually, I fully understand that we do not know what the rates will be in April 2015 and that we might not know that before December 2014.

The difference, however, is in the form of the legislation. The issue is not about the fundamentals, but there is a need to concentrate on the details by such means as working parties and, if necessary, schedules to bring in measures by secondary legislation. That is by no means ideal, but I appreciate that we do not live in an ideal world. The suggestion is not at all to put the process on hold; it is to devote the time that we have available between now and the necessary introduction to getting the provisions more and more correct and usable, which would have to be done gradually. That does not at all preclude putting through the fundamentals that can be got through at the earliest possible stage. It is a question of choosing between doing it quickly, doing it cheaply and doing it properly. Maybe we can have only two out of the three. I would rather have it slowly and properly done than quickly and ill done.

**John Mason:** That is perhaps where there is a slight difference between accountants and lawyers. In my opinion, lawyers prefer things to be done properly in the long term, whereas we accountants have to do audits by three weeks after the year end and so on.

A balance has to be struck. I wonder whether the Government has not got the balance right. Frankly, if all that the Parliament had to do was to consider a piece of proposed tax legislation, we could spend the next three years on it but, unfortunately, we also have to consider the landfill tax and the forthcoming tax management bill. We would like five or 10 years or whatever, but is the approach a reasonable compromise? I am also interested in what the other witnesses have to say on that. We have taken some of the SDLT provisions, but that is just inevitable because of
the timescales, and there is not a huge amount that we can do about it.

**Alan Barr:** There is a compromise, but I do not think that it is reasonable yet. We have no detailed provisions on partnerships, which is a good example of our not knowing what we are going to get. We have got what has already been produced. Yesterday, we had first sight of the leases stuff, although the Parliament has not yet had sight of that. On current timescales, the bill is supposed to be enacted by the end of June. That is a swift timescale in any sense, if we are to have time to give even a kind of detailed technical comment—rather than just a comment on the principles—to members of the Scottish Parliament, or time for the bill to be considered by people who are genuinely anxious to assist with getting it right.

There is a compromise, but it would be a better compromise if it was recognised and accepted that some bits require a good deal more work and if that work was done in the time available. That would not need to hold up anything, including the setting up of the practical systems that will be needed so that the first bit of LBTT is collected on 1 April 2015. None of that work needs to stop; indeed, it needs to leap ahead.

**John Mason:** Is it the opinion of the other witnesses that we have not reached a proper compromise between timescales and getting it right?

10:45

**Isobel d'Inverno:** I do not think that we can make that comment about the bill as a whole. You mentioned the difference between lawyers and accountants; the partnership SDLT rules are perhaps often not well known to accountants but they are encountered by lawyers and they do not work well in practice for everyday, regular partnerships. They focus too much on potential tax avoidance and big partnerships.

Those rules are far too complicated and they need to be fixed so, in relation to partnerships, it would be worth trying to do something with the bill rather than leaving it as drafted. The provisions are a cut and paste from SDLT and, as Stephen Coleclough pointed out, need some fixes to prevent some tax avoidance schemes from being able to be pushed through the cracks. Therefore, it would be worth spending some time between now and 2015 on trying to get a better partnership code.

However, our view on the bill as a whole is that it is nowhere near ready. The provisions on partnerships are a particular issue.

**John Mason:** Is it inevitable that we have to go through the partnerships stuff line by line and go through all the nitty-gritty? Is it not possible to have an overarching purpose provision that would sweep some of it together?

**Isobel d'Inverno:** It might well be. Alan Barr’s expression of it is probably valid. However, I do not think that it would be possible to draft and test such an amendment by stage 3. That might be quite a big ask. We should not continue with the cut-and-paste approach that we have at the moment. That is not a good thing for the long term.

As you mentioned, the Parliament has many other things to consider. From dealing with Westminster, we have the experience that, although there may be a focus on legislation when it is being brought through the Parliament, it can be mighty difficult to get the Parliament to go back and look at it afterwards.

**John Mason:** That has very much been the case.

I will move on to another subject. The net present value proposal fills everyone with horror. It is a horrible calculation. I quite liked the idea of using actual rent, but I accept that things have moved on and that everybody accepts that that is not possible. The supplementary information from the Government talks about using the same discount rate to calculate net present value as is used for SDLT. Are any of you able to explain why that is the case and why it is 3.5 per cent?

**David Melhuish:** It is a Treasury set rate and is to do with the Treasury’s green book, if I am correct. I think that it is described as the temporal discount rate. It was set at 3.5 per cent from the outset when the changes to leases—which did not happen immediately with SDLT but came in later—were set. As I understand it, the Scottish ministers will take powers in the bill to enable them to change that rate as the tax is devolved. Therefore, the Scottish Parliament will have the flexibility to change it.

**John Mason:** To my mind, the rate might be related in some way to inflation or interest rates.

**David Melhuish:** It could be.

**John Mason:** It seems quite strange just to choose a figure.

**Stephen Coleclough:** The figure was the UK Government borrowing rate in 2003, which was before the credit crunch. I think that the expectation was that long-term interest rates were moving out and that, therefore, the discount value would increase from 3.5 per cent to whatever the higher rate was. Then, of course, 2007 and 2008 happened and we now have a base rate of 0.5 per cent, so the rate has been stuck at 3.5 per cent and not been amended. That is where it came from. It was the UK Government borrowing rate from 2003.
**John Mason:** There is a risk that, if that became very different, there could be a gain or loss to the public revenue because the figure is way out of line with property prices and inflation.

**Stephen Coleclough:** That could happen, but it will be entirely within your control; you will be able to set what number you want. You could make it 0 per cent, in which case it would be actual rents.

**John Mason:** Okay. That is fine. Thank you.

**Gavin Brown (Lothian) (Con):** We have heard a lot about the partnership provisions, so I will not dwell on them for too long. The witnesses have used all sorts of adjectives and nouns to describe what they think of them. Should the provisions be deleted entirely from the bill and put into the proposed tax management bill or another piece of primary legislation? Do the witnesses have a view on what should happen?

**Alan Barr:** Yes. My view is that they should be deleted in their entirety from the bill. It should be recognised, however, that they will be brought back as an amendment to what will be the LBTT act before it comes into force. Whether that is by means of the proposed tax management bill or by secondary legislation is beyond my parliamentary and constitutional competence to say. However, it could be done by either of those methods.

**Gavin Brown:** Is that view shared by the Law Society?

**Alan Barr:** I am on the same Law Society committee, so with that hat on I share that view. However, Isobel d’Inverno is wearing that hat today.

**Isobel d’Inverno:** Our view is that that would be a better approach.

**Alan Barr:** It would also focus the mind. If there is legislation in place, there will be a temptation to say that we will muddle through with a version of that, perhaps as amended in some of the ways suggested by Stephen Coleclough. However, if there is a gap, and a recognition that that has to be dealt with before 1 April 2015, well, it will have to be dealt with. The worst-case scenario—horror of horrors—would be to say that we have got what is here to fall back on. We could say, “We have not managed to solve the problem. This is how it is done for SDLT now; there was provision for that in our original LBTT bill and we will bring that back.” That would be a counsel of despair, but there it is.

**Gavin Brown:** At the start, the convener asked Isobel d’Inverno how well we have done on getting Scots legal terms into the bill. You answered that you feel that the leases proposal is quite positive, although you have not yet seen the actual amendment. Are there other elements of the bill where you think that we still need to do work to get rid of England-only legal terms, such as “lessee”, and ensure that the bill is Scots-law specific?

**Isobel d’Inverno:** I think that there are. I ask Alan Barr to answer that question, if possible, given that he has concentrated on the issue more than I have.

**Alan Barr:** It is slightly odd that Isobel d’Inverno, who is an accountant, is representing the Law Society and that I, a lawyer, am representing ICAS. We are a small but friendly pond.

I have been looking at a lot of the terminology, with contributions from Professor Kenneth Reid, who was heavily involved in the land law reforms from the Scottish Law Commission that led to the abolition of the feudal system. Some amendments have been lodged as a result of the extremely useful meeting that I had with him and some of the bill team, though I suspect that more need to come.

That gives me an opportunity to mention other things that relate to the balance, which Mr Mason asked about. The committee’s other subjects today include that balance. Trusts, which we have not mentioned at all, are provided for with a particularly egregious and purely English bit of law, extracted from the SDLT legislation, which I believe needs to be changed. I confess that I have not seen whether the amendments to do that have been lodged.

The sub-sale stuff provides another example of where we need to work on the detail. Quite a lot of the detail has been accepted, although the terminology was not in the original bill, and amendments now need to be lodged to bring it into play. I have mentioned the use of the word “lessee” rather than “tenant”, which is just a terminology issue. There are issues that are slightly more than terminological and actually reflect practice. I have mentioned the start date and duration of a lease, which need to be looked at. It is fair to say that we are getting there, rather than that we are there at the moment.

**Gavin Brown:** You mentioned trusts, which prompts me to ask something else. The supplementary information provided to the committee by the Scottish Government says:

“The LBTT Bill as introduced broadly replicates SDLT legislation governing trusts.”

Is that a missed opportunity in the same way as the approach to partnerships is? Is it a less contentious matter with which, broadly speaking, you are happy, subject to seeing the amendments?

**Alan Barr:** Yes—subject to seeing the amendments. I think that that is possibly less of a problem. It is the same sort of issue—the principle
that should be struck at is that the economic value of land is being sold, in this case through a trust, rather than a partnership. That still needs to be looked at. The provision in the bill refers to the trust law of England and Wales; that is the bit that needs to be changed. I have not seen the amendment on that yet, so I do not know whether that is to be changed.

Stephen Coleclough: I have spent a lot of time on the trust provisions independently and with the bill team. In January, we went through one point to which Mrs Urquhart found the solution, which was quite straightforward. The SDLT provisions do not work in Scotland now, and all that has been done is to copy them. They do not address Scots law at all; that is a glaring example of how the provisions need to be made to work with Scots law.

Another point that I should make is the one that I made in paragraph 8 of our submission to the committee. In a lot of places, the bill cross-refers to UK statutes, and we would much prefer it to copy out what the UK statute now says. That would make the bill easier to read and it would mean that, if the UK Government amends a provision, the bill will still have what was wanted rather than LBTT plus bits that the UK Government has tweaked without this Parliament’s consent, power or control.

Alan Barr: We endorse that. That approach has been used on a few occasions, notably in relation to companies acts, and what Stephen Coleclough suggests would be useful. It might use more bits of paper, but I do not think that it is harder to extract and copy into our bill the version that we want to use now.

Gavin Brown: On a separate issue, Stephen Coleclough talks in his paper about exchanges and raises a particular concern about local authority regeneration when landowners transfer their land “to a central entity”. Will you expand on that?

Stephen Coleclough: The starting point in SDLT is that, if land is exchanged for any kind of property rather than cash, SDLT is payable on the market value of that property. Practitioners quickly realised that the market value does not include VAT, and SDLT is normally payable on the price plus VAT, so HMRC thought that it was losing out.

Eventually, HMRC amended the exchange provisions in a way that it believed would allow it to collect VAT and counter tax avoidance. The amendments and the SDLT law as it stands are utterly incomprehensible; I do not know anyone who understands them. The revenue policy starts off from the proposition that HMRC wants 4 per cent SDLT on the market value of the land plus VAT.

That is fine for someone who is swapping an office block for a shopping centre. However, the situation is often that there is a run-down area in a community, such as a town centre, a high street or a redundant industrial complex, and the local authority starts a planning consultation and says that it wants to regenerate the area. The local authority could try to do that on its own with commercial partners and use compulsory purchase provisions to compulsorily acquire the whole lot, and there would be relief in SDLT and in the LBTT bill if it used the compulsory purchase order process.

The local authority would be taking and then giving out later, as there would be no tax on the acquisitions because they were under a CPO. However, the CPO process takes a long time. It is adversarial because people are not agreeing to give away their land—it is being taken from them. CPOs can be subject to judicial review. The process can go on for years while the area of land lies redundant and does not generate value for anyone. The CPO route is rarely used in practice. In practice, local authorities try to work with landowners and developers to regenerate an area.

People will own different bits of the land and those bits will be shaped for whatever the land was used for in the past. If the use is to be changed completely, the land needs to be divided into different bits with different shapes. The mechanism is therefore usually that everyone puts their property into a development vehicle and jointly develops the land, and interests are given out at the end of the process.
system applies in the UK create that problem. I urge you not to repeat the problem, because people will end up in the unsatisfactory position of having to argue that values are minimal, to avoid a tax that HMRC does not want to collect, because no one thinks that is a sensible way of taxing anyone.

You must try to find another solution, whether that is by amending the exchange provisions, which are the root cause of the problem, or extending the CPO reliefs to include quasi-CPOs, if I can call them that—situations in which a local authority could have compulsorily purchased but is proceeding by agreement rather than by CPO. There is a precedent for that in the capital gains tax legislation, which provides for rollover relief when the threat of a CPO is sufficient.

Gavin Brown: Have you had the opportunity to raise the issue with the bill team or others in the Scottish Government before now?

Stephen Coleclough: Yes, I did so when I came up for the Chartered Institute of Taxation’s joint presidents luncheon at the Signet Library—I think that it was on 15 March.

Gavin Brown: You and other witnesses have said that it would be a mistake to lose sub-sale relief entirely. You suggested:

“taxpayers should have a choice to use sub-sale relief, or another relief or provision which reduces the amount of duty payable, but not both.”

Others have suggested that there should be a requirement to apply formally for sub-sale relief, as opposed to simply doing it. Do you want to say anything more about sub-sale relief, to try to persuade the Government to change its view? Have you had further discussions that suggest that the Government might be open to compromise?

Stephen Coleclough: I have not had further discussions. Sub-sale relief should be claimed. Claims are not very formal: under SDLT, reliefs are claimed by ticking a box or putting in a number—that is the full extent of the formality. The system is then policed through the inquiry mechanism or, more often than not, by the tax inspector who is dealing for the purchaser in relation to all the other taxes, such as corporation tax, who will compare what has happened on stamp duty land tax with what is before them in the accounts and tax computations.

In paragraph 7 of my submission, I alluded to the necessity of having that relationship with HMRC, which will look at forms, so that LBTT can be policed. Sub-sale relief should be claimed by ticking a box, to flag up to the tax authority in Scotland—revenue Scotland—that it has been claimed, and there should be a cross-check to see whether anything else has happened on another return on the same property on the same day. If there are flags on the return to show what has happened, there is a mechanism for policing the system.

Isobel d’Inverno: I am not convinced that just making sure that people could claim only sub-sale relief or another relief would counter all the schemes that are going about, which other advisers have offered clients of ours in the past couple of months. I am not quite so sanguine that that would be an answer to the problems of avoidance that has relied on sub-sale relief.

That is why the Law Society has suggested that the way forward is a targeted relief in relation to forward funding, for example. Perhaps such a relief could be subject to a more formal clearance approach, so that it is not just a question of ticking the box or putting the claim code in; it would be more of a formal process with the tax authority, so that it could look at the paperwork and satisfy itself.

Obviously, there is a balance to be struck between the cost of having to do that and the aim of stopping tax avoidance schemes being implemented. We have a concern because some of the schemes would make people’s hair stand on end. We really do not want to have them in Scotland.

Jean Urquhart (Highlands and Islands) (Ind): Would you accept what is being proposed, with exceptions—if you know what I mean—so that there is a default position?

Isobel d’Inverno: What is in the bill is no sub-sale relief at all.

Alan Barr: We have seen no proposals yet for what is to come—if anything.

Jean Urquhart: My understanding is that we will not have sub-sale relief. In relation to Gavin Brown’s questions, if we maintain that position—with the exception of the discussion in advance—will there be so few occasions when it might be considered that it could be the exception? That would be instead of leaving it open to the kind of abuse that I understand has happened through stamp duty land tax.

Isobel d’Inverno: We feel that having targeted reliefs would be a better way forward, so we focused on the forward funding transactions, which the committee has heard evidence about, the possibility of having a targeted relief for those and, perhaps in order to police that more closely, having an advance clearance system. I do not think that we have been urging the Government to bring in sub-sale relief across the board.

Alan Barr: You are asking whether, if there was to be no targeted relief or nothing along the lines that Mr Coleclough suggests, the complete absence of sub-sale relief would be better than...
what we have now. The answer is possibly yes, as long as the question of what I describe as nomineeship is dealt with properly—that concerns title to the property being taken in another name from that of the person with whom the original contract was made, without any economic movement involved. That might be seen as a sub-sale in some sense, but in fact it is just taking title in another name.

If I contract to buy something and instead I wish it to be held by a company that I own 100 per cent of, so I make provision to buy it in the name of myself or my nominee, my company should be able to take title under the original contract. It is not absolutely crystal clear, but I have been told that that is permitted under the bill—it would not involve a sub-sale that would be a second chargeable event, as it were. If that is the case, what we will have is possibly better than what we have under SDLT.

David Melhuish: There have been a lot of discussions. The principal concern that we have had from an industry point of view is about the financing possibilities that could be lost if sub-sale relief just goes away and there is no targeted relief.

We agree that some form of targeted relief to support financing is very important right now. It is a necessary alternative mechanism, because debt finance is simply not available, particularly in the commercial property world, to the extent that it is needed. We therefore see it as essential that there is some form of relief that will cover what sub-sale relief previously achieved.

I slightly disagree with what Alan Barr has just said, because I know from talking to our members in the development and institutional world that they are not agreed that the nominee route would address the problem of the cabinet secretary not wanting to replicate sub-sale relief, for the tax avoidance reasons that were made plain at stage 1. There is concern about the unintended consequences of that decision for the finance and funding of development going forward. We certainly urge the committee to push for targeted relief.

Alan Barr: Just to be clear, I do not think that nomineeship solves the kind of problem that David Melhuish referred to. I agree that targeted relief would be much better for that. The problem is different and real; the difference is that there are financial consequences of forward funding, which there are not in pure nomineeship.

Isobel d’Inverno: The nominee clause is terribly common; it just says that, in exchange for the price, the seller will convey the property to the purchaser or the purchaser’s nominee. That happens in commercial contracts all the time. For SDLT, we are relying on sub-sale relief in order not to have two SDLT charges. We do not have LBTT relief, so we need something that fixes that. The bill team has said that that will be fixed, although we have not seen yet quite how. It might be done by guidance, published statements or whatever.

The Convener: The committee seems to have concluded its questions. We have touched on leases, partnerships, exchanges, sub-sale relief and unit trusts. Would each of you like to make any additional points?

David Melhuish: On leases, the reason for the approach quickly boiled down to a choice between what we have and the proposal to have an annual retrospective charge. The important point to stress is that it is not just about the mechanics and technicalities of how the tax is paid; there was also concern about what might happen to the number of taxpayers who might be caught. If we had an annual charge, the threshold at which the tax is paid could have reduced considerably, which would have meant a much wider net of taxpayers, with obvious implications for administration and compliance. More important is the perception of businesses and taxpayers facing a charge that, under the current system, they probably would not have to pay.

I mentioned competitiveness at the beginning, but we should not forget that, for those who pay the tax at the moment, there is just a single 1 per cent rate on the leases side of things—purchases are different. We should also bear it in mind that many of the taxpayers of SDLT on leases are probably quite large businesses that are often multilift across the country. We must bear it in mind that there will always be some form of competitive comparison in how we structure the charge.

Isobel d’Inverno: To reiterate some earlier points, we have a tight timescale but, as has been said, nothing can really be done about that, because the start date is 2015. To an extent, the date of enactment of the Scotland Act 2012 has eaten up some of the timetable. However, we must not lose the opportunity to make the first Scottish tax as good as it can be. We really do not want to have sections of it that are entirely incomprehensible.

The Convener: As there are no further comments, I thank you very much for your evidence, which as always is much appreciated. I will certainly take up directly with the cabinet secretary some of the points that you have raised.

Alan Barr: Thank you and good luck.

The Convener: We will have a five-minute recess to change witnesses and give members a natural break.
Meeting suspended.

11:22

On resuming—

The Convener: Continuing the committee’s oral evidence taking on the Land and Buildings Transaction Tax (Scotland) Bill, I welcome to the meeting John Swinney, the Cabinet Secretary for Finance, Employment and Sustainable Growth, who is accompanied by Neil Ferguson and John St Clair from the Scottish Government bill team. I invite the cabinet secretary to make a short introductory statement.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): Thank you, convener. I welcome the steps that are being taken to proceed with stage 2 of the bill. We have made substantial progress on considering issues in the bill that were raised at stage 1 and in the parliamentary debate on 25 April and, as the committee will be considering those issues as we move through stage 2, I would like to address some of them.

First of all, I pay tribute to the work of the non-residential leases working group, which has been meeting in parallel with stage 1 consideration of the bill. As the committee will be aware, the group examined a range of options for the taxation of non-residential leases against a number of criteria and, after considering the group’s evidence on each of the options, I met it to discuss and identify the best way forward. Since then, the working group has provided invaluable assistance to officials in preparing provisions on the taxation of non-residential leases that will better align LBTT with Scots property law and practice and it has considered and agreed a comprehensive approach to a whole range of issues affecting the taxation of leases that will be reflected in the amendments that I propose to lodge for stage 2.

I was delighted to note that in its formal stage 2 evidence to the committee the Law Society of Scotland supports the chosen approach on the grounds that it “should remove the many complexities which bedevil the SDLT lease code.”

First, on partnerships and trusts, the provisions in the bill that cover the taxation of transactions involving partnerships broadly mirror those for stamp duty land tax. Although the provisions are complex, they have been working in practice for some years now. We had hoped to undertake a thorough review of the provisions with a view to simplifying the bill but, after carefully examining the issues, we found that even apparently minor changes might give rise to a significant risk of unintended consequences and unpredicted outcomes that would not be in the interests of either the taxpayer or the tax authority.

It has not proved possible to review the partnership provisions and discuss detailed proposals with stakeholders prior to stage 2. Although we will propose minor amendments to the provisions, any major review will have to wait until later. I note the issues that have been raised in this respect, particularly by the Law Society, and I will look carefully at the proposal to establish a working group to consider taxation of partnerships.

Secondly, on the energy efficiency proposals, a number of members noted during the stage 1 debate the existing homes alliance’s proposal to link the amount of LBTT paid in residential transactions to the average energy efficiency rating for housing in Scotland. Given the issue’s importance and our strong support for improving energy efficiency, I have given very careful consideration to the proposals that have been discussed. In doing so, I have sought to balance the need for a simple, certain and efficient tax system with the likely improvements to energy efficiency that would flow from the change proposed to calculating the tax liability on the sale of residential property.

I believe that the proposal would add considerably to the complexity of the tax, because additional information would be required to calculate the liability. That information might change over time and, with every house sale transaction, would have to be checked carefully for reliability and accuracy. Moreover, although I support the proposal’s objectives, I could not see how it would have a direct positive impact on the energy efficiency of Scotland’s housing stock. Against that background, I welcome the interest and enthusiasm that have surrounded the introduction of the proposal but I confirm to the committee that I do not intend to take it forward in the bill process.

Thirdly, on the setting of tax rates and bands for residential transactions, I understand the Edinburgh Solicitors Property Centre’s view that the time between the announcement of the tax rates and bands and the introduction of the tax itself should be short to avoid any freezing of the market. Other factors that should be considered include arrangements for introducing the new tax, testing systems and communicating with taxpayers and their agents. I have also carefully considered the views of witnesses who were looking for earlier certainty on tax rates and bands for non-residential property transactions. The property development industry is key to Scotland’s continued economic prosperity and I am keen to do what I can to support the issues that it has raised. My discussions with stakeholders on the
optimum time for setting out the tax rates and bands are on-going and I will clarify my thinking to the committee as the bill progresses.

On sub-sale relief, in my closing remarks in the stage 1 debate I committed to further exploring options to ensure that the property development industry in Scotland was treated fairly following my decision, supported by the committee, not to replicate stamp duty land tax sub-sale rules, which have been the subject of aggressive avoidance activity. Since then, I have met industry representatives, who have provided a range of suggestions on how we might proceed. Discussions are continuing and I will keep the committee updated on what is happening. Essentially, I am trying to balance, on the one hand, providing the development industry with the ability to structure transactions in a fashion that meets their requirements and, on the other hand, preventing the creation of opportunities for tax avoidance. Preventing tax avoidance has been one of the bill’s hallmarks and I do not wish to undermine the bill’s strength and reputation in that respect. I am weighing up and balancing those two considerations at this stage.

Finally, I want to thank the wide range of stakeholders who have significantly assisted the Government in this very complex policy area and look forward to continuing that consultation and dialogue with them and with the committee into the bargain.

The Convener: Thank you for that comprehensive opening statement. I will of course ask a number of initial questions and then open the discussion up to colleagues around the table. I note that Jean Urquhart has put in a bid before I have even asked my first question.

Cabinet secretary, you addressed in your opening statement many of the points that I was going to put to you. Some of the points that I, and other colleagues, will raise with you will be based not on the committee’s recommendations but on the evidence that we received in the evidence session preceding this one.

My first question is a fairly straightforward one about leases. Alan Barr of ICAS asked whether there will be clarification of when a lease begins for LBTT purposes. Would it be considered to begin from when it was signed or from when someone accesses a property? We received a battery of amendments just this morning, but obviously committee members have not had time to look at each and every one of them. Will clarification be provided on that issue?

11:30

John Swinney: When a lease will commence will be consistent with the rules associated with SDLT. There will be an amendment to section 30 of the bill to provide for that. I will ask my officials to clarify.

Neil Ferguson (Scottish Government): The amendments on leases will be lodged in good time for the second day of the committee’s consideration of amendments—sorry, in fact, this particular issue is dealt with in the amendments to section 30, which were lodged on Monday. The notification section—section 30—deals with that issue. The substantive schedule on leases will be part of the second day of stage 2 consideration of the bill. The committee already has the amendments to section 30, which were lodged on Monday.

The Convener: I want to move on to partnerships, which were discussed at great length earlier this morning. Most of the comments were made by Alan Barr, but other representatives around the table from the Law Society of Scotland, the Scottish Property Federation and the Chartered Institute of Taxation all said much the same—although they perhaps did not say it quite as assertively as Mr Barr. Mr Barr said that there was no detailed legislation on partnerships and that the legislation as it currently stands is “a disgrace” and completely lacking in comprehension. Other witnesses agreed with that and said that it did not work. Mr Barr also said that we should start again from first principles, that what we have is a broken toy and that all that appears to be happening with LBTT is a cut-and-paste job. Witnesses commented that the bill was a missed opportunity. Of greatest significance is the fact that they suggested that at this stage partnerships should be taken out of the bill because there is not enough time to discuss the bill.

Isobel d’Inverno of the Law Society of Scotland said in her submission, at paragraph 26:

“a working party should be established to consider LBTT and partnerships in more detail over the coming months.”

Colleagues around the table suggested that there should perhaps be an amendment to the bill later on or secondary legislation on the matter.

I was taken aback by the vehemence of the evidence on this issue, which we have not really dealt with prior to now. What is your view of those comments?

John Swinney: It sounds as if the committee has had a very fruity morning, given some of the language that has been used.

In your summary of the remarks, I am not sure whether you said that the provisions on LBTT had been described as a cut-and-paste job. I would want to reject that comment very clearly.
The Convener: I was talking specifically about partnerships.

John Swinney: That is slightly different and it is helpful to have that clarified. I assure the committee that I do not view the LBTT legislation as a cut-and-paste job.

On partnerships, what we have decided to do is to replicate the provisions on SDLT, and there will be minor amendments coming forward at stage 2.

There was a very good reason why we did that. I accept that these are complex pieces of legislation; I would not deny that. We commissioned external advice to assist us in the effort to simplify the legislative provisions in relation to partnership rules. The work generated by that external commission demonstrated the complexity in the legislation that I have highlighted, which itself is a product of the commercial complexities in partnership and trust arrangements. Therefore, we were faced with the choice of entering into a debate at this particular stage in the legislative process that would see us doing one of two things.

One option would be to try to amend existing provisions to make them less complicated. I could not be confident that in doing so we would not create unintended consequences as we got to such complex territory in the legislative opportunity that we have now. It would be a dangerous step for Parliament to take.

The alternative would be to remove the provisions altogether and leave a vacuum; and I have no intention of leaving a vacuum. Therefore the rules are there and they are currently operational. I am prepared to consider the issues raised by the Law Society as part of the suggestions that it has made and to consider how best we might proceed on any further review of the question.

The Convener: May I follow up on that? Although the witnesses were broadly supportive of the Scottish Government’s work on LBTT to date, the particular issue of partnerships causes concern. The witnesses said that they understand that you will be going forward with much of what exists in the current SDLT provisions. As they said, though, the problem is that those provisions, as they stand, do not work, so in transferring the provisions to this bill, that is a missed opportunity.

That is why the witnesses suggested that it would be better to work on the partnership issue from first principles, so that we can add it to the LBTT bill later on, rather than include it at this stage.

John Swinney: The Government is lodging an amendment to the bill at stage 2 that will provide us with the power to amend this area of the bill by secondary legislation. Obviously, that will be subject to scrutiny and consideration by Parliament in the usual fashion. That power will enable us, for example, to enact alternative provisions if the need for those arises from the consultation and dialogue that we take forward with stakeholders. As I have said already, I am very keen to explore the suggestions that the Law Society is making.

The provisions are currently part of the SDLT legislation. Although I accept that they are complex, they are part of the existing provision and they are workable. We will seek from Parliament through the legislative process the power to amend those provisions by secondary legislation. I hope that that provides the committee with the reassurance that there is an opportunity for us to explore these questions further.

The Convener: Thank you. In your opening statement you mentioned the issue of reliefs in some detail. In your response to the committee, you said that you want to ensure that forward-funding arrangements are not subject to double taxation under LBTT and that you will work with stakeholders to achieve that objective. You said that progress is on-going. Will targeted relief be considered specifically, given the lack of debt financing? That issue was raised again this morning.

John Swinney: That is a material part of the consideration that I am undertaking. From the evidence that I have been able to discern, that is one of the factors that is a genuine issue in the marketplace. Therefore we need to ensure that opportunities to attract finance are in place to enable developers to take forward transactions of that character. It is important that that is reflected in how we structure any provisions in the bill.

As I said in my opening remarks, essentially I am trying to take forward measures that will assist the development industry and recognise the contribution that it makes to the Scottish economy. However, I do not want to do that in a fashion that opens up the opportunity for avoidance, because we have taken a very clear line on that and I do not want to dissipate that.

I do not think that we could do proper justice to any alternative provisions within the legislative process that we have in front of us, so I do not foresee bringing to the committee or to Parliament stage 2 or stage 3 amendments on this provision. However, I am exploring what opportunities we have to design mechanisms that would enable us to take forward an approach of this type. Of course, that would be provided for through the order-making powers in the bill and would be subject to consideration by Parliament under the affirmative procedure.

The Convener: Before I open up the session to colleagues, I have one final question, which came
from the Law Society this morning. On the deliverability of LBTT, where are we on the computer technology and systems that are needed?

**John Swinney:** Progress on the development of the necessary procedures is assessed on a regular basis to determine whether the plans are on target. The last report that I saw indicates that the work programme is being maintained, so I am confident that the preparations are in order to ensure that the necessary operational arrangements are in place to support the introduction of LBTT in April 2015.

**Jean Urquhart:** Good morning. I have never been the second person to ask a question, which is why it is so extraordinary that I have put my bid in early.

Although I accept that you are making allowances in the bill for changes to be made later on, would you have liked to have had more time to address the bill, in an ideal world? Are you confident that the issues that need to be addressed are going to be addressed in reasonable order?

**John Swinney:** Yes, I am happy with the time that was available. We have undertaken extensive consultation on the formulation of the bill. Some of that throws up issues of genuine disagreement, so on the question of sub-sale relief, for example, I have taken a particular policy position. I did not need any more time to come to that policy position; I had all the time in the world. Arguments are being marshalled now that were marshalled during the consideration of the bill about particular issues in relation to the development industry, which I considered at the time and by which neither I nor the committee were persuaded. In the light of further representations, I am considering those again and I will come to a conclusion about whether there is a satisfactory balance between providing for those issues and not jeopardising our position on tax avoidance.

We have also been able to undertake, for example, quite extensive consultation with stakeholders on issues around leases that were not concluded by the end of stage 1. I understand from this morning's panel that there is general agreement that that work has been well undertaken and well consulted on. Further issues about partnerships have been raised this morning, but they relate to a specific and narrow set of provisions and I am happy to consider what other measures can be taken in that respect. There are provisions in the bill that deal satisfactorily with partnerships.

11:45

**Jean Urquhart:** On the cut-and-paste suggestion, Stephen Coleclough spoke about how the bill cross-refer to the United Kingdom statute. He suggested that we would be vulnerable if the sections of the UK legislation to which the bill cross-refer were changed because we do not have any control over that legislation, and that those provisions should be written out in full. What do you think about that?

**John St Clair (Scottish Government):** There are only one or two references in the bill to UK acts, and they are firmly rooted in company law. There did not seem to be any reason for writing out at great length the provisions in the Companies Act 2006, for example, which are very unlikely to change. If we had time later and there was such a change, we would certainly introduce our own legislation. Our approach also gives users of the legislation some link to the old legislation, so it is easier for them to know where particular provisions came from.

**Jean Urquhart:** Can you give us an example?

**John St Clair:** The definition of “connected persons” in section 1122 of the Corporation Tax Act 2010 is a very long provision, and we reference it in our bill rather than replicate the language. That is the main reference that Stephen Coleclough is talking about. It would have added quite considerably to the length of the bill if, every time we referenced it, we had to write it out in full. It is very unlikely that that definition will change in the near future so there is no immediate risk. What we have done gives users a link to the old legislation, and we think that that is a user-friendly approach. There is not a particularly Scottish thing about “connected persons”.

**Gavin Brown:** On that point, if there are not many such references in the bill, would it not be easier just to cut and paste? Would it not be more user friendly to have the entire text contained within one act instead of people having to go and look at one or two UK statutes?

**John St Clair:** Apart from in one or two cases, we have taken that approach in other areas of the bill, where we have written out at length other, more obscure, references in our own language. We called the balance in this case. It was not thought to be a big issue but we will certainly reflect in future on whether there should be a blanket policy of never referring to UK statutes. That has not been the policy in the drafting of the bill.

**Gavin Brown:** The convener's first question was about the definition of when a lease commences, which has been raised in evidence. I understand that amendments to section 30 have been lodged to address that point. I have just
looked at those amendments, which, if I am right, are amendments 19 to 23. Where is that definition?

John St Clair: The amendments, which the committee will consider on day 2 of stage 2, will introduce the leases schedule, which goes into fine detail on the stage at which a lease becomes an effective land transaction for the purpose of the tax statute. You probably know that lease paperwork is not simple. Missives for let can be a lease, and there can be missives that are acted on and substantially performed, and then that becomes the date of the effect of transaction. All those scenarios will be spelled out in the leases schedule when it is introduced.

Neil Ferguson: I am grateful to Mr Brown for asking that question. The information that I gave earlier was not quite right. In relation to section 30, I was referring to when a lease becomes notifiable—in other words, when a tax return is due. As regards the beginning of the lease, that will be in the schedule that will be considered on the second day of stage 2 consideration. I am grateful to have the opportunity to clarify that.

Gavin Brown: I return to the partnership issue, which the convener raised and which was heavily emphasised in our first evidence session today. The contention of the witnesses was that the proposed provisions are not workable. You spoke about the existing provisions, which you said are workable. The other witnesses used terms such as “broken toy”, “dog” and “disgrace”. Their central contention was that the provisions as drafted are not workable. Is it possible simply to delete them and have the public position that you will not leave a vacuum and will deal with the matter in the fullness of time? By doing that, there would be no way in which we could revert to the current provisions. I am slightly concerned about having a section that says that we can consider the provisions using an order-making power, because that retains the option of keeping them. The evidence from today, at least—I appreciate that it was from only four people—is that the provisions are not workable. Can you not simply delete them? That would force the Government to replace them with something that is deemed to be workable.

John Swinney: People use their own terminology—it is up to them what words they use. I do not find those terms particularly insightful. Things might be complex, complicated, tiresome and exhausting, but they are still workable. That is my contention. The provisions are not easy, simple, straightforward or particularly user friendly; neither are partnerships or trusts particularly user friendly, convenient or simple. The whole area is very complex. It is better to be considerate with regard to how we approach these questions and to reflect on the fact that, although there are complexities, challenges and difficulties, they are of the essence or nature of the activity involved. In my view, the provisions are workable, although they could do with being simplified. I commissioned external advisers to provide me with a route through that, but it was not possible to provide me with one that I could conclude during this legislative process.

Throughout this process, the Government has aimed to act in good faith in all the approaches that we are pursuing. I gave the committee an assurance that I was going to consider the leases question in detail in order to reach a satisfactory outcome. We set up the non-residential leases working group, which has been a highly participative process. I have met the group and, from what I could see, it has had a pretty good go at resolving the issues. The Government will make the necessary amendments to the bill to enact the conclusions that we have reached.

I intend to take exactly the same approach to partnerships. I do not think that anybody would think it particularly appropriate for me to leave a vacuum. I do not think that that would be a responsible thing to do. I give the committee a commitment that we will very actively consider all the areas with stakeholders, as we have done for every other provision in the bill. If there are solutions that we can pursue, we will pursue them through the amendments that we will advance to the committee.

Gavin Brown: If I heard you right, your intention is to set up a working group along the lines of what you did in relation to non-residential leases—or am I putting words in your mouth?

John Swinney: A working group is an option. As I said, I am considering what the Law Society has suggested in its submission to the committee. We will seek order-making powers to enact any changes that are required. I am happy to give the committee an assurance that we will take forward our approach to these matters in the same spirit and ethos in which we have taken forward our approach to non-residential leases.

Gavin Brown: At this stage, you take a different view from that of the witnesses from whom we heard earlier. You feel that the partnership provisions are workable.

John Swinney: I think that they are workable, because they are working at the moment. I am not being facetious—they are working, so they must be workable. That does not mean to say that they are not complicated, difficult or onerous. I am not suggesting that what the witnesses said in that respect is not the case, but the current arrangements are workable. I think that we should
keep them in place and consider the issues that have been raised about them. The amendments for which the Government will seek parliamentary consent will ensure that we have the necessary instruments in place to take forward any alternative provisions.

Gavin Brown: I will leave it there. Suffice it to say that there is a debate about that. The view that our earlier witnesses took was that the partnership provisions are not working or workable, but I appreciate that you take a different view.

John Swinney: I have said that they are working, so I consider them to be workable.

John Mason: We have just been talking about non-residential leases. As I understand it, you and the working group considered five options. When I first read those options, I found the idea of basing the tax on rent that is actually paid quite appealing, because that is a real number rather than a complicated formula. Will you explain to us why that option has not been chosen and we are going down the net present value route?

John Swinney: Essentially, the rent that is actually paid will be a material consideration that underpins the net present value consideration that is undertaken. That is an important strengthening element in the approach that has been taken.

The issue of administrative complexity has a bearing on some of the judgments about making the calculations based on actual rentals paid, as that would increase the amount of bureaucracy that all parties had to become involved in through registering and supplying information. The approach on which we have agreed is designed to minimise that administrative complexity and to strengthen the relevance of the substance of the judgments that are arrived at on the net present value.

John Mason: Was I right to get the impression that the delay in the tax coming in, whereby it would come in only after, rather than ahead of, the end of the year, was a reason for not accepting that option?

John Swinney: In addition to the issue of administrative complexity, there is a likelihood that there would be delays in tax payments, some of which might be difficult for us to overcome in the context of our commitment to the bill being revenue neutral. I think that that would be a genuine risk.

John Mason: So even if the bill were revenue neutral over, say, five or 10 years, would I be right in saying that you do not have the flexibility to cover such delays in payments with your borrowing powers?

John Swinney: I would prefer not to exhaust that. I think that the approach that we have agreed on minimises the administrative bureaucracy and reduces the extent to which we might have to seek to utilise the mechanisms that are available to balance tax revenues.

John Mason: The net present value calculation includes the question of the discount rate, which I asked the previous witnesses about. As I understand it, the 3.5 per cent discount rate is based on UK Treasury borrowing levels some years ago. I think that I am right in saying that you will have the power to vary that rate.

John Swinney: We will have.

John Mason: Will you look at doing that? I would have thought that, because inflation and interest rates are likely to vary over the long term, that could seriously affect the tax that we get in.

John Swinney: That gets to the nub of the calculations that will have to be made around rates and the variety of other financing factors that we have to take into account. Yes, it is a material consideration and it will be part of the financial modelling that I will take forward. Once the block grant adjustment is made, we have to give active consideration to what revenue will be raised as a consequence of the type of measures that we put in place, bearing in mind that there will be an effect on the overall resources that are available to the Scottish Government to support our priorities.

12:00

John Mason: That is reassuring. I was just a bit uneasy at the 3.5 per cent appearing almost out of nowhere, but obviously the figure could vary over time.

The final area that I want to touch on is charities, which we have spent quite a lot of time on. Amendment 13 states:

"the body is registered in a register corresponding to the Scottish Charity Register".

It goes on to detail the alternatives, such as that the body is approved in England and Wales or other European Union countries. Will you expand on that a little bit? The words “corresponding to” seemed a little vague to me and I wondered whether we are happy that the wording will ensure that we really will get charities that fit in with what we mean by charities.

John Swinney: We have endeavoured to recognise the issues that were raised at stage 1 around charities relief and to recognise the status that charities that are not registered with the Office of the Scottish Charity Regulator and are not habitually operating within Scotland have as registered charities in another jurisdiction. The wording that we have put in place is satisfactory in that respect. I think that it provides clarity about our intention. It means that a body would be able
to operate in Scotland in the fashion envisaged without there being the need for separate registration. We are certainly confident that the wording will enable that to happen.

**John Mason:** I think the point was made that if we were too rigid, we would be open to challenge from the European Union that we were excluding European charities. Is the feeling now that this will stand up—

**John Swinney:** Those are the considerations that we have been trying to overcome with the wording that we have put in place. The terms of amendment 13 give us sufficient clarity on that point.

**The Convener:** There are no further questions from committee members, but I want to ask about it on the public record. It is about bringing the legislation into line with Scots law and practices.

The supplementary information from the Scottish Government states:

"Scots property law is different to English property law and the LBTT non-residential lease provisions have been designed, as far as practical, to reflect Scots law and practices."

Will you tell us a wee bit more about that?

**John Swinney:** In essence, we have tried to formulate the legislation in a fashion that is reflective of the character and terminology of Scots law. That was one of the weaknesses of the SDLT provision that has been in place. The exercise that we have gone through has been designed to formulate a set of provisions that are able to be judged consistently and in accordance with the body of Scots law. There will of course be reference points to matters—the point that John St Clair made is relevant here—where terminology that is used in other legislation but which is not significantly material to require to be changed into the terminology of Scots law has been maintained. Our effort has been to provide as comprehensive an exercise as we possibly can in that process.

**The Convener:** Finally, I will touch on the issue of residential property holding companies, which has not been raised today so far.

The supplementary information provided by the Government to the committee states:

"The LBTT Bill contains a power to allow Scottish Ministers to make regulations to ensure that qualifying transfers of interests in 'residential property holding companies' are subject to LBTT."

The submission continues:
Land and Buildings Transaction Tax (Scotland) Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

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Amendments marked * are new (including manuscript amendments) or have been altered.

### Section 1

**John Swinney**

1. In section 1, page 1, line 11, leave out subsection (3) and insert—

   `<( ) The Tax Authority is to be responsible for the collection and management of the tax.>`

### Section 4

**John Swinney**

2. In section 4, page 2, line 23, leave out `<an interest, right or power>` and insert `<a real right or other interest>`

**John Swinney**

3. In section 4, page 2, line 25, leave out `<interest, right or power>` and insert `<right or interest>`

### Schedule 1

**John Swinney**

4. In schedule 1, page 29, line 24, leave out `<such property>` and insert `<property (which is not a prescribed non-residential licence)>`

**John Swinney**

5. In schedule 1, page 29, line 26, leave out `<(1)>` and insert `<(1)(a)>`

**John Swinney**

6. In schedule 1, page 29, line 27, at end insert—
<( ) In sub-paragraph (1)(b), “prescribed non-residential licence” means a licence of a description prescribed by the Scottish Ministers in regulations under section (Application of this Act to licences)(1).>

Schedule 2

John Swinney

7 In schedule 2, page 32, line 26, leave out <transaction> and insert <acquisition>

John Swinney

8 In schedule 2, page 32, leave out lines 28 and 29 and insert <the greater of—
   (i) the amount determined under sub-paragraph (3A) in respect of the acquisition, or
   (ii) the amount which would be the chargeable consideration for the acquisition ignoring this paragraph,>

John Swinney

9 In schedule 2, page 32, line 30, leave out <transactions> and insert <acquisitions>

John Swinney

10 In schedule 2, page 32, leave out lines 32 and 33 and insert <the greater of—
   (i) the amount determined under sub-paragraph (3A) in respect of that acquisition, or
   (ii) the amount which would be the chargeable consideration for that acquisition ignoring this paragraph,>

John Swinney

11 In schedule 2, page 32, line 33, at end insert—
   <(3A) The amount mentioned in sub-paragraph (3)(a)(i) and (b)(i) is—
   (a) the market value of the subject-matter of the acquisition, or
   (b) if the acquisition is the grant of a lease, the rent.>

Schedule 8

John Swinney

12 Leave out schedule 8 and insert—
PART 1
OVERVIEW AND INTERPRETATION

Overview of relief

1 (1) This schedule makes provision for relief in the case of certain land transactions connected to alternative finance investment bonds.

(2) It is arranged as follows—

Part 2 provides that certain events relating to a bond are not to be treated as chargeable transactions (except in certain cases),
Part 3 sets out general conditions for the operation of the reliefs in Part 4,
Part 4 provides for relief in the case of certain transactions (and withdrawal of that relief),
Part 5 makes provision about supplementary matters including when the reliefs in Part 4 are not available.

Meaning of “alternative finance investment bond”

2 In this schedule, “Alternative finance investment bond” means arrangements to which section 564G of the Income Tax Act 2007 (c.3) (investment bond arrangements) applies.

Interpretation

3 In this schedule—

“bond assets”, “bond-holder”, “bond-issuer” and “capital” have the meaning given by section 564G of the Income Tax Act 2007),
“prescribed” means prescribed in regulations made by the Scottish Ministers,
“qualifying interest” means a major interest in land other than a lease for a period of 21 years or less.

PART 2
ISSUE, TRANSFER AND REDEMPTION OF RIGHTS UNDER BOND NOT TO BE TREATED AS CHARGEABLE TRANSACTION

The relief

4 For the purposes of this Act—

(a) the bond-holder under an alternative finance investment bond is not treated as having an interest in the bond assets,
(b) the bond-issuer under such a bond is not treated as a trustee of the bond assets.
Relief not available where bond-holder acquires control of underlying asset

5 (1) Paragraph 4 does not apply if control of the underlying asset is acquired by—
   (a) a bond-holder, or
   (b) a group of connected bond-holders.

   (2) A bond-holder (BH), or a group of connected bond-holders, acquires control of the underlying asset if—
       (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and
       (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise the right of management and control of the bond assets to the exclusion of any other bond-holders.

6 (1) But paragraph 5(1) does not apply (and accordingly, section 564S of the Income Tax Act 2007 applies by virtue of paragraph 4) in either of the following cases.

   (2) The first case is where—
       (a) at the time that the rights were acquired BH (or all the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets to the exclusion of other bond-holders, and
       (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that exercise no longer to be possible.

   (3) The second case is where BH—
       (a) underwrites a public offer of rights under the bond, and
       (b) does not exercise the right of management and control of the bond assets.

   (4) In this paragraph, “underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

PART 3
GENERAL CONDITIONS FOR OPERATION OF RELIEFS ETC.

Introduction

7 This Part of this schedule defines conditions A to G for the purposes of paragraphs 15 to 21.

Condition A

8 Condition A is that one person (P) and another (Q) enter into arrangements under which—
   (a) P transfers to Q a qualifying interest in land (“the first transaction”), and
   (b) P and Q agree that when the interest ceases to be held by Q as mentioned in paragraph 9(b), Q will transfer the interest to P.
Condition B

9 Condition B is that—
(a) Q, as bond-issuer, enters into an alternative finance investment bond (whether before or after entering into the arrangements mentioned in paragraph 8), and
(b) the interest in land to which those arrangements relate is held by Q as a bond asset.

Condition C

10 (1) Condition C is that, for the purpose of generating income or gains for the alternative finance investment bond—
(a) Q and P enter into a leaseback agreement, or
(b) such other condition or conditions as may be specified in regulations made by the Scottish Ministers is or are met.

(2) For the purposes of condition C, Q and P enter into a leaseback agreement if Q grants to P, out of the interest transferred to Q—
(a) a lease (if the interest transferred is the interest of the owner), or
(b) a sub-lease (if the interest transferred is the tenant’s right over or interest in land subject to a lease).

Condition D

11 (1) Condition D is that, before the end of the period of 120 days beginning with the effective date of the first transaction, Q provides the Tax Authority with the prescribed evidence that a satisfactory standard security has been registered in the Land Register of Scotland.

(2) A security is satisfactory for the purposes of condition D if it—
(a) is a security ranking first granted over the interest transferred to Q,
(b) is in favour of the Tax Authority, and
(c) is for the amount mentioned in sub-paragraph (3).

(3) That amount is the total of—
(a) the amount of land and building transaction tax which would (apart from paragraph 15) be chargeable on the first transaction if the chargeable consideration for that transaction had been the market value of the interest at that time, and
(b) any interest and any penalties which would for the time being be payable on or in respect of that amount of tax, if the tax had been due and payable (but not paid) in respect of the first transaction.

Condition E

12 Condition E is that the total of the payments of capital made to Q before the termination of the bond is not less than 60% of the value of the interest in the land at the time of the first transaction.
**Condition F**

13 Condition F is that Q holds the interest in land as a bond asset until the termination of the bond.

**Condition G**

14 (1) Condition G is that—

(a) before the end of the period of 30 days beginning with the date on which the interest in the land ceases to be held as a bond asset, that interest is transferred by Q to P (“the second transaction”), and

(b) the second transaction is effected not more than 10 years after the first transaction.

(2) The Scottish Ministers may by regulations amend sub-paragraph (1)(b) by substituting for the period mentioned there such other period as may be specified.

**PART 4**

**RELIEF FOR CERTAIN TRANSACTIONS**

**The relief: first transaction**

15 (1) The first transaction is exempt from charge if—

(a) it relates to an interest in land in Scotland, and

(b) each of the conditions A to C is met before the end of the period of 30 days beginning with the effective date of the transaction.

(2) This paragraph is subject to—

(a) paragraphs 21 and 22 (where the interest in land is replaced as the bond asset by an interest in other land),

(b) paragraph 24.

**Withdrawal of relief**

16 (1) Relief under paragraph 15 is withdrawn if—

(a) the interest in the land is transferred by Q to P without conditions E and F having been met,

(b) the period mentioned in paragraph (1)(b) expires without each of those conditions having been met, or

(c) at any time it becomes apparent for any other reason that any of the conditions E to G cannot or will not be met.

(2) The relief is also withdrawn if condition D is not met.

**Amount of tax chargeable where relief withdrawn**

17 Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 18.
The amount chargeable is the tax that would have been chargeable in respect of the first transaction (but for the relief under paragraph 15) if the chargeable consideration for that transaction had been an amount equal to—

(a) the market value of the subject matter of the transaction, or

(b) if the acquisition was the grant of a lease, the rent.

Relief from land and buildings transaction tax: second transaction

19 (1) The second transaction is exempt from charge if—

(a) each of conditions A to G is met, and

(b) the provisions of this Act in relation to the first transaction are complied with.

(2) This paragraph is subject to—

(a) paragraphs 21 and 22 (where the interest in land is replaced as the bond asset by an interest in other land),

(b) paragraph 24.

Discharge of security when conditions for relief met

20 If, after the effective date of the second transaction, Q provides the Tax Authority with the prescribed evidence that each of conditions A to C and E to G has been met, the land ceases to be subject to the security registered in pursuance of condition D.

PART 5
SUPPLEMENTARY

Substitution of asset

21 (1) This paragraphs applies if—

(a) conditions A to C and G are met in relation to an interest in land (“the original land”),

(b) Q ceases to hold the original land as a bond asset (and, accordingly, transfers it to P) before the termination of the alternative finance investment bond,

(c) P and Q enter into further arrangements falling within paragraph 8 relating to an interest in other land (“the replacement land”), and

(d) the value of the interest in the replacement land at the time that it is transferred from P to Q is greater than or equal to the value of the interest in the original land at the time of the first transaction.

(2) Paragraphs 15 to 20 apply—

(a) in relation to the original land with the modification set out in sub-paragraph (3), and

(b) in relation to the replacement land with the modifications set out in sub-paragraph (4).

(3) Condition F does not need to be met in relation to the original land if conditions A, B, C, F and G (as modified by sub-paragraph (4)) are met in relation to the replacement land.
(4) In relation to the replacement land—
   (a) condition E applies as if the reference to the interest in the land were a reference to the interest in the original land, and
   (b) condition G applies as if the reference in paragraph 14(1)(b) to the first transaction were a reference to the first transaction relating to the original land.

(5) If the replacement land is in Scotland, the original land ceases to be subject to the security registered in pursuance of condition D when—
   (a) Q provides the Tax Authority with the prescribed evidence that condition G is met in relation to the original land, and
   (b) condition D is met in relation to the replacement land.

(6) If the replacement land is not in Scotland, the original land ceases to be subject to the security registered in pursuance of condition D when Q provides the Tax Authority with the prescribed evidence that—
   (a) condition G is met in relation to the original land, and
   (b) each of conditions A to C is met in relation to the replacement land.

22 (1) Paragraph 21 also applies where the replacement land is replaced by further replacement land.

(2) In that event—
   (a) the references to the original land (except those in paragraph 21(4)) are to be read as references to the replacement land, and
   (b) the references to the replacement land are to be read as references to the further replacement land.

**Tax Authority to register discharge of security**

23 (1) Where a security is discharged in accordance with paragraph 20 or 21(5) or (6), the Tax Authority must register the discharge in the Land Register of Scotland.

(2) The Tax Authority must do so within the period of 30 days beginning with the date on which Q provides the evidence in question.

**Relief not available where bond-holder acquires control of underlying asset**

24 (1) The reliefs provided by paragraphs 15 and 19 (and paragraph 21 so far as it relates to those paragraphs) are not available if control of the underlying asset is acquired by—
   (a) a bond-holder, or
   (b) a group of connected bond-holders.

(2) A bond-holder (BH), or a group of connected bond-holders, acquires control of the underlying asset if—
   (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and
   (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise the right of management and control of the bond assets to the exclusion of any other bond-holders.
(3) In accordance with sub-paragraph (1), in the case of relief provided by paragraph 15—
   (a) if BH, or the group, acquires control of the underlying asset before the end of the period of 30 days beginning with the effective date of the first transaction, paragraph 15 does not apply, and
   (b) if BH, or the group, acquires control of the underlying asset after the end of that period and conditions A to C have been met, the relief is treated as withdrawn under paragraph 16.

25 (1) But paragraph 24 does not prevent the reliefs being available in either of the following cases.

   (2) The first case is where—
      (a) at the time that the rights were acquired BH (or all of the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets to the exclusion of other bond-holders, and
      (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that no longer to be possible.

   (3) The second case is where BH—
      (a) underwrites a public offer of rights under the bond, and
      (b) does not exercise the right of management and control of the bond assets.

   (4) In this paragraph, “underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

Relief not available if purpose of arrangements is improper

26 The reliefs provided by paragraph 15 and 19 (and paragraph 21 so far as it relates to those paragraphs) are not available if the arrangements mentioned in paragraph 8—
   (a) are not effected for genuine commercial reasons, or
   (b) form part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to the tax.

Schedule 13

John Swinney

13 In schedule 13, page 71, line 22, leave out <and “charitable purposes” have> and insert <means—
   (a) a body registered in the Scottish Charity Register, or
   (b) a body which is-
      (i) established under the law of a relevant territory,
      (ii) managed or controlled wholly or mainly outwith Scotland, and
      (iii) meets at least one of the conditions in subsection (2).

   (2) The condition are—
(a) the body is registered in a register corresponding to the Scottish Charity Register,
(b) the body’s purposes consist only of one or more of the charitable purposes.

(3) A relevant territory is—
(a) England and Wales,
(b) Northern Ireland,
(c) a member State of the European Union other than the United Kingdom, or
(d) a territory specified in regulations made by the Scottish Ministers.

15A In this schedule, "charitable purposes" has>

Schedule 14

John Swinney
14 In schedule 14, page 71, line 35, leave out <person mentioned in paragraph 2> and insert <local authority>

John Swinney
15 In schedule 14, page 71, line 37, leave out paragraph 2

John Swinney
16 In schedule 14, page 72, line 5, leave out <person> and insert <local authority>

John Swinney
17 In schedule 14, page 72, line 6, leave out <development> and insert <the undertaking or achievement of an activity or purpose mentioned in section 189 of the Town and Country Planning (Scotland) Act 1997 (c.8)>

John Swinney
18 In schedule 14, page 72, line 11, leave out paragraph 5

After section 27

Malcolm Chisholm
33 After section 27, insert—

<Variations

Schedule (Energy performance variation) provides for variations of the tax in relation to certain land transactions.>

After schedule 16

Malcolm Chisholm
34 After schedule 16, insert—
<SCHEDULE
(introduced by section (Variations))

ENERGY PERFORMANCE VARIATION

The relief

1 The Scottish Ministers must, within 12 months of the coming into force of section 27, make regulations providing for variations of the tax to be payable on the basis of the energy performance of a dwelling in respect of which a land transaction is entered into.

2 Regulations under paragraph 1 must define the energy performance of a dwelling by reference to the measures in an energy performance certificate provided under the Energy Performance of Buildings (Scotland) Regulations 2008 (S.S.I 2008/309) or by reference to such other measures as the Scottish Ministers consider appropriate.

3 Regulations under paragraph 1 must make provision designed to ensure that the total effect of variations of the tax under such regulations results, so far as practicable, in no net change in the total amount of tax collected by the Tax Authority.

4 Before making regulations under paragraph 1, the Scottish Ministers must consult such persons as they consider appropriate.

Section 30

John Swinney

19 In section 30, page 13, line 10, leave out <regulations made under section 55 (application of this Act to leases)> and insert <subsection (1A)>

John Swinney

20 In section 30, page 13, line 11, at end insert—

<(1A) The following transactions in relation to leases are also not notifiable—

(a) the grant of a lease for a period of 7 years or more where—

   (i) any chargeable consideration other than rent is less than £40,000, and
   (ii) the relevant rent is less than £1,000,

(b) the assignation or renunciation of a lease where—

   (i) the lease was originally granted for a period of 7 years or more, and
   (ii) the chargeable consideration for the assignation or renunciation is less than £40,000,

(c) the grant of a lease for a period of less than 7 years where the chargeable consideration does not exceed the nil rate band applicable to the transaction, and

(d) the assignation or renunciation of a lease where—

   (i) the lease was originally granted for a period of less than 7 years, and
   (ii) the chargeable consideration for the assignation or renunciation does not exceed the nil rate band applicable to the transaction.>
John Swinney
21 In section 30, page 13, line 12, leave out <subsection (1)(b) and (c)> and insert <subsections (1) and (1A)>

John Swinney
22 In section 30, page 13, line 16, leave out <subsection (1)(a) to (d)> and insert <subsections (1)(a) to (d) and (1A)>

John Swinney
23 In section 30, page 13, line 24, after <subsection (1)(b)> insert <, (1A)(a)(i) or (b)(ii)>

Section 33

John Swinney
24 In section 33, page 14, line 32, at end insert—
<( ) Part 4 of schedule 8 (relief for alternative finance investment bonds),>

John Swinney
25 In section 33, page 15, line 5, at end insert—
<( ) in relation to the withdrawal of relief under schedule 8, an event mentioned in paragraph 16 of that schedule,>

Section 40

John Swinney
26 In section 40, page 17, leave out lines 8 and 9

John Swinney
27 In section 40, page 17, line 11, at end insert—
<( ) section 29 (land transaction return),>

John Swinney
28 In section 40, page 17, line 17, leave out <this Act> and insert <subsections (2) and (3)>

Section 43

John Swinney
29 In section 43, page 19, line 4, at end insert—
<( ) For the purposes of subsection (1)(b), tax is treated as paid if arrangements satisfactory to the Tax Authority are made for the payment of the tax,>
After section 51

John Swinney

30 After section 51 insert—

*Application of this Act to licences*

(1) The Scottish Ministers may, by regulations, prescribe descriptions of non-residential licences to occupy property, transactions in relation to which are to be land transactions for the purposes of this Act.

(2) The regulations may also make provision, among other things—

(a) for transactions, which result in the acquisition of interests in licences, to be land transactions,

(b) for what the chargeable consideration is to be in relation to a licence,

(c) for the determination of the amount or value of that chargeable consideration,

(d) for the calculation of the tax chargeable,

(e) specifying that certain land transactions relating to a licence are not to be notifiable under section 30.

(3) Regulations under this section may modify any enactment (including this Act).

Section 57

John Swinney

31 In section 57, page 24, line 13, at end insert—

<( ) schedule 8,>

Section 67

John Swinney

32 In section 67, page 27, line 32, at end insert—

<( ) section *(Application of this Act to licences)*,>
Land and Buildings Transaction Tax (Scotland) Bill

1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

**Collection and management of the tax**
1

**Chargeable interest**
2, 3

**Licences**
4, 5, 6, 30, 32

**Chargeable consideration: exchanges**
7, 8, 9, 10, 11

**Relief for alternative finance investment bonds**
12, 24, 25, 31

**Charities relief**
13

**Relief for certain compulsory purchases**
14, 15, 16, 17, 18

**Variations in the tax on the basis of energy performance**
33, 34

**Notifiable transactions: leases**
19, 20, 21, 22, 23

**Satisfactory arrangements for the payment of the tax**
26, 27, 28, 29
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

16th Meeting, 2013 (Session 4)

Wednesday 29 May 2013

Present:
Gavin Brown                Malcolm Chisholm
Kenneth Gibson (Convener)  Jamie Hepburn
John Mason (Deputy Convener) Michael McMahon
Jean Urquhart

Also present: John Swinney (Cabinet Secretary for Finance, Employment and Sustainable Growth) (item 3).

Land and Buildings Transaction Tax (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to (without division): 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29.

The following amendments were disagreed to (by division)—
33 (For 2, Against 5, Abstentions 0)
34 (For 2, Against 5, Abstentions 0)

The following provisions were agreed to without amendment: sections 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27, schedules 3, 4, 5, 6, 7, 9, 10, 11, 12, 15 and 16 and sections 28, 29, 31, 32, 34, 35, 36, 37, 38, 39, 41 and 42.

The following provisions were agreed to as amended: sections 1 and 4, schedules 1, 2, 8, 13 and 14 and sections 30, 33, 40 and 43.

The Committee ended consideration of the Bill for the day section 43 having been agreed to.
On resuming—

Land and Buildings Transaction Tax (Scotland) Bill: Stage 2

The Convener: Item 3 is stage 2 consideration of the Land and Buildings Transaction Tax (Scotland) Bill. We are joined by the Cabinet Secretary for Finance, Employment and Sustainable Growth, whom I welcome to the meeting, and Scottish Government officials Neil Ferguson, John St Clair and Mark Lynch. Members should note that because officials cannot speak on the record at stage 2, all questions should be directed to the cabinet secretary.

Members should have the marshalled list of amendments and the groupings. I will give some information before we start, so that everyone knows the ground rules. There will be one debate on each group of amendments, and I will call the member who lodged the lead amendment in that group to speak to and move that amendment and to speak to the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my attention in the normal fashion. If the cabinet secretary has not spoken in the debate on a group, I will invite him to contribute before I move to the winding-up speech. The debate on the group will conclude when I invite the member who moved the first amendment in the group to wind up.

Following the debate on each group, I will ask whether the member who moved the lead amendment in that group wishes to press it to a vote or withdraw it. If they wish to press their amendment I will put the question on it. If they wish to withdraw their amendment after they have moved it, they must seek the committee’s agreement to do so. If any committee member objects, the committee will immediately move to a vote on the amendment.

If any member does not want to move their amendment when it is called, they should say “not moved”. Please note that any other MSP may move that amendment. If no one moves the amendment, I will call the next amendment on the marshalled list.

Let us press ahead.

Section 1—The tax

The Convener: Group 1 is on collection and management of the tax. Amendment 1, in the name of the cabinet secretary, is the only amendment in the group.
The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): Amendment 1 is a minor and technical amendment to section 1(3) to change the reference to “care and management” of land and buildings transaction tax to “collection and management”. The two terms have the same meaning in law, but the term “collection and management” appears in the Scotland Act 2012 and the Landfill Tax (Scotland) Bill, and will appear in the tax management (Scotland) bill in due course. The purpose of amendment 1 is to provide consistency only.

I move amendment 1.

Amendment 1 agreed to.

Section 1, as amended, agreed to.

Sections 2 and 3 agreed to.

Section 4—Chargeable interest

The Convener: Amendment 2, in the name of the cabinet secretary, is grouped with amendment 3.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): Amendment 2 will replace the reference in section 4(2)(a) to “an interest, right or power” with the term “a real right or other interest”. That will align the definition better with terminology in Scots law. It is not intended to change what is or is not a challengeable interest in Scotland.

Amendment 3 is consequential on amendment 2 and will replace the words “interest, right or power” in section 4(2)(b) with “right or interest”. I thank Professor Ken Reid of the University of Edinburgh and Alan Barr of the Law Society of Scotland for working with officials to ensure that the bill reflects Scots property law as effectively as it can.

I move amendment 2.

Gavin Brown: The addition of the phrase “real right” in amendment 2 is to be welcomed as it represents Scots law. Getting rid of the phrase “interest, right or power” is the right thing to do.

I have a simple question about the term “other interest”. Can the cabinet secretary define that term when he winds up? It is not one that I recognise. Is the Government willing to speak to experts after stage 2 to see whether there is a way of getting a slightly sharper definition? Some practitioners have described the term “other interest” to me as amorphous. The wording in the amendment is better than what it will replace, but I wonder whether there is a way to get something even better for stage 3.

John Swinney: We want to put in place terminology that will enable an application to be determined within the scope of “chargeable interests”. The term “other interest” is not being inserted to create any form of catch-all provision; its purpose is purely and simply to provide some further definition within the context of the definition of “chargeable interest” for the purposes for section 4. I assure Gavin Brown that the terminology is not being used in any way to create a catch-all provision and that it is entirely within the parameters of “chargeable interest”.

Amendment 2 agreed to.

Amendment 3 moved—[John Swinney]—and agreed to.

Section 4, as amended, agreed to.

Sections 5 to 16 agreed to.

Schedule 1—Exempt transactions

The Convener: Amendment 4, in the name of the cabinet secretary, is grouped with amendments 5, 6, 30 and 32.

John Swinney: The bill provides that all licences to occupy non-residential property should be included in the scope of the tax. We have reflected on the evidence that the committee heard at stage 1, and the amendments in this group seek to limit the taxation of licences, by means of a delegated power in the bill.

Amendment 4 will amend schedule 1 so that all transactions that relate to licences, except non-residential licences prescribed under the new section that will be added by amendment 30, will be exempt transactions. Amendment 30 provides for a power to specify, by means of subordinate legislation, particular types of licence that are land transactions and will therefore be subject to the tax. The power will give the flexibility that is needed to provide more easily for additional exceptions at a later date, should that prove necessary.

Amendment 32 will make provision in section 67 for proposed regulations about prescribed non-residential licences to be subject to the affirmative procedure, to allow for full parliamentary scrutiny of the regulations. Amendments 5 and 6 are consequential amendments to schedule 1.

In its written evidence to the committee, the Law Society of Scotland said that its committees “broadly support the proposal for licences not to be treated as exempt interests, so that LBTT will be payable if there is consideration for the grant of the licence.”

However, it went on to say:

“Further consideration needs to be given to whether certain categories of licences do merit exemption from LBTT.”
For various reasons, the occupation of certain types of retail property is made under licence rather than by means of a lease. Such property might include retail units in airports and retail space in larger shops such as department stores and supermarkets. Based on value, such licences are the most likely to incur LBTT and are the main types of licence that I have in mind for including in regulations as being within the scope of the tax.

I move amendment 4.

Gavin Brown: The committee thought that licences broadly should not be included. I am grateful to the cabinet secretary for taking on board much of what we said.

Amendment 30 will allow the Government to set out by regulation which licences will be caught by the bill. In paragraph 6 of its written response to the committee’s stage 1 report, the Government said:

“The Scottish Government has carefully considered the evidence presented to the Committee by a range of witnesses and intends to bring forward an amendment at Stage 2 that will set out which licences are within scope of the tax.”

Will the cabinet secretary say where the Government has got to in that regard? Do we have an idea of which licences will be in the scope of the tax? Will that be made clear at stage 3 or after stage 3?

John Swinney: I think—

Sorry, convener.

The Convener: It is okay. No other member wants to speak, so I was about to say that you may wind up.

John Swinney: Thank you. On Mr Brown’s point, I think that during the passage of the bill we will not define the type of licence that will be considered for LBTT; we will do that separately, through secondary legislation, as is provided for in amendment 30.

I talked about categories that I have in mind. The committee raised with me the Law Society’s supplementary evidence, which set out a variety of possibilities that could be considered as relevant in the context of LBTT. I have gone through the list and although I cannot absolutely say that this is my definitive position, I think that the most likely candidates will be retail units in airports and shops within shops. However, I want to reserve my position on the exact definition until regulations are made.

We decided to go for a position in which everything is opted out but certain licences can subsequently be opted in, as opposed to a position in which everything is opted in and we would have to opt many things out, as is the case in the bill as introduced. The proposed approach is clearer and will be more administratively efficient. Of course, there will be consultation around and consideration of the secondary legislation that emerges on the issue.

Amendment 4 agreed to.

Amendments 5 and 6 moved—[John Swinney]—and agreed to.

Schedule 1, as amended, agreed to.

Section 17 agreed to.

Schedule 2—Chargeable consideration

10:30

The Convener: Amendment 7, in the name of the cabinet secretary, is grouped with amendments 8 to 11.

John Swinney: Amendments 8, 10 and 11 set out a revised approach to calculating the chargeable consideration for exchanges of property. Amendment 8 clarifies that the chargeable consideration should be the greater of the market value of the property and what the chargeable consideration would be in the absence of the rules for exchanges. That would include VAT where applicable. The amendments bring the bill into line with the way in which chargeable consideration for exchanges of property is calculated under stamp duty land tax, reflecting changes that paragraphs 4 and 5 of schedule 21 to the Finance Act 2011 made to schedule 4 to the Finance Act 2003.

Amendments 7 and 9 correct a minor drafting error. In two places in schedule 2—paragraphs 5(3)(a) and 5(3)(b)—the terms “relevant transaction” and “relevant transactions” have been used instead of, respectively, “relevant acquisition” and “relevant acquisitions”. Amendments 7 and 9 resolve the issue.

I move amendment 7.

Amendment 7 agreed to.

Amendments 8 to 11 moved—[John Swinney]—and agreed to.

Schedule 2, as amended, agreed to.

Sections 18 to 27 agreed to.

Schedules 3 to 7 agreed to.

Schedule 8—Relief for alternative finance investment bonds

The Convener: Amendment 12, in the name of the cabinet secretary, is grouped with amendments 24, 25 and 31.
John Swinney: In considering the need for these amendments, my objective is to provide a similar tax outcome in relation to land and buildings transaction tax for alternative finance investment bonds as for their equivalent conventional finance product. Land and buildings transaction tax is a charge on the acquisition of a chargeable interest in land or property situated in Scotland. Issuing a conventional bond secured on a building does not give rise to any land and buildings transaction tax liability. The investor does not have a direct ownership share in the underlying asset, but merely has an interest-bearing certificate. Under an alternative finance investment bond, however, the investor owns part of the underlying asset, and interests in land and property in Scotland may be used as that asset.

Amendment 12 therefore provides a replacement for schedule 8 that provides that no tax will be charged when the land is sold to the issuer of the alternative property investment bonds, nor on the sale back of the land to the originator at the end of the bond term, and no LBTT will arise on the issue, transfer or redemption of the alternative property investment bonds. The new schedule 8 substantially replicates schedule 61 to the Finance Act 2009, in so far as it relates to stamp duty land tax.

Amendments 24, 25 and 31 are consequential technical amendments that adjust the bill to fit in better with the style and approach of the new schedule 8.

I move amendment 12.

Gavin Brown: Paragraph 5 of schedule 8 as it stands, under the heading “Interpretation”, states:

“In this schedule, ‘alternative finance investment bond’ means arrangements to which section 564G of Income Tax Act 2007 ... or section 151N of the Taxation of Chargeable Gains Act 1992 ... applies.”

In the proposed new schedule 8, which the cabinet secretary’s amendment 12 introduces, paragraph 2 provides a new definition of “Alternative finance investment bond”. It is similar to the previous definition, except that it no longer seems to include section 151N of the Taxation of Chargeable Gains Act 1992. I would be grateful if the cabinet secretary, in his summing up, could explain the implications of no longer having that reference in schedule 8.

John Swinney: The definition is the same in both the provisions referred to. For the sake of efficiency, we have referred to the one provision, which essentially conveys the definition in the original proposition. It is the same in both provisions.

Amendment 12 agreed to.

Schedule 8, as amended, agreed to.

Schedules 9 to 12 agreed to.

Schedule 13—Charities relief

The Convener: Amendment 13, in the name of the cabinet secretary, is in a group on its own.

John Swinney: The Scottish Government’s response to the Finance Committee’s stage 1 report advised:

“The Scottish Government is actively working with OSCR and Revenue Scotland to consider the best approach to take as regards the charities relief qualifying requirements for the small number of organisations who buy (but do not occupy) property in Scotland purely as an investment and who use the profits from this investment for charitable purposes.”

As a result of that constructive dialogue with the Office of the Scottish Charity Regulator and revenue Scotland, I am pleased to speak to amendment 13 today.

The amendment means that a body can claim charity relief if it is registered as a charity with the Scottish charity regulator, or if it is “a body which is ... established under the law of a relevant territory”

and is “managed or controlled wholly or mainly outwith Scotland”, subject to certain conditions. Those conditions are that, where the relevant territory has a charity regulatory regime, the body is registered with the charity regulator; or, if the body is not so registered, its purposes must be exclusively charitable.

To protect the tax base, charity relief will be restricted, in the case of bodies that are not entered in the Scottish charity register, to a “relevant territory”. Such territories are:

“England and Wales ... Northern Ireland ... a Member State of the European Union other than the United Kingdom, or ... a territory specified in regulations made by the Scottish Ministers.”

I move amendment 13.

Jamie Hepburn: I suppose that this was not expected to be a big issue, but we took a considerable amount of evidence on it at stage 1. Two things were identified that may be felt to be somewhat in competition with each other. There was a need for simplicity—a desire to avoid placing an onerous requirement on charities—and a need to ensure the bona fides or charitable credentials of organisations based outwith Scotland. I suppose that the relief is effectively a subsidy from the taxpayer in Scotland to the organisations concerned.

I accept that there will not be many such cases, but we must get the provisions right. I think that amendment 13 broadly does that, so I
congratulate the Government on coming up with a sensible provision, which I hope we can support.

Malcolm Chisholm: I, too, welcome amendment 13. It is an effective way of dealing with the problems with the original provisions that were highlighted.

I have a couple of questions. First, who will judge the conditions? Will that be a role for OSCR, or will it be something that the Scottish Government decides?

Secondly, I am intrigued by the reference to “a territory specified in regulations made by the Scottish Ministers.”

I suppose that, at the moment, you cannot really say which those territories might be, but I was wondering what the Government might have in mind as regards how that paragraph could be applied in future.

John Swinney: I welcome Mr Hepburn's comments on the Government's attempts to resolve the issue, and also Mr Chisholm's questions.

The role of determining whether an organisation has satisfied the test in the bill will be exercised by Revenue Scotland, which will determine whether there is a tax liability to be applied. I do not foresee that being determined by OSCR, which makes judgments about charities in Scotland in fulfilment of its priorities. We will look to Revenue Scotland to apply the legislation with regard to the judgment around eligibility for tax.

Mr Chisholm’s second point was about the meaning of “a territory specified in regulations made by the Scottish Ministers.”

We have in mind countries on the periphery of the European Union—most likely Norway and Iceland. Obviously, there is a requirement for the regulations to be scrutinised when they are introduced.

Amendment 13 agreed to.

Schedule 13, as amended, agreed to.

Schedule 14—Relief for compulsory purchase facilitating development

The Convener: Amendment 14, in the name of the cabinet secretary, is grouped with amendments 15 to 18.

John Swinney: This group of amendments widens the availability of compulsory purchase order relief to local authorities in accordance with the intentions set out in the bill’s policy memorandum. Amendment 17 is the most substantive of the five amendments in the group, so I will speak to it before turning my attention to amendments 14 to 16 and 18.

The bill as introduced reflects the current approach to stamp duty land tax whereby the local authority does not pay tax if it purchases land or property through a compulsory purchase order with the intention of transferring it to a third party to facilitate development. Amendment 17 changes the qualifying condition for the relief in paragraph 3 of schedule 14 to ensure that the relief is available to a local authority when it exercises its compulsory purchase order powers for any of the purposes stated in section 189 of the Town and Country Planning (Scotland) Act 1997. The purposes are the “development, redevelopment or improvement” of land, or any other purpose “which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.”

Amendments 14 to 16 restrict the availability of relief to local authorities, on the basis that acquisitions by the Scottish ministers or a minister of the Crown are already exempt under paragraph 2 of schedule 1. Amendment 18 is consequential on amendment 17 and deletes the definition of “development” in paragraph 5 of schedule 14.

I move amendment 14.

Gavin Brown: I support all the amendments in the group. The cabinet secretary’s explanation of amendment 17 was helpful. However, prior to hearing it, I read the amendment, then read in detail section 189 of the 1997 act, and I wondered whether there was potential for confusion, given the breadth and depth of section 189. Would the cabinet secretary be willing to look at that section again to see whether a slightly sharper or clearer definition for people looking at the legislation is possible?

John Swinney: I happily undertake to look at that before stage 3 to determine whether the reference to the provision is too broad and whether the language that I used earlier—“the development, redevelopment or improvement” of land, or any other purpose “which it is necessary to achieve” and so on—could be amended to specify matters more helpfully in the bill. We will certainly reflect on that issue in advance of stage 3.

Amendment 14 agreed to.

Amendments 15 to 18 moved—[John Swinney]—and agreed to.

Schedule 14, as amended, agreed to.

Schedules 15 and 16 agreed to.
After section 27

10:45
The Convener: Amendment 33, in the name of Malcolm Chisholm, is grouped with amendment 34.

Malcolm Chisholm: Everyone in the Parliament is strongly committed to achieving the climate change targets. The two greatest emitters are transport and housing, and we all recognise that urgent action is required in both those areas. I do not present amendments 33 and 34 as a panacea, but I believe that they would make a useful contribution in relation to homes, and particularly existing homes, where we have the biggest problem of poor energy efficiency.

For those who think that my amendments would be a novel approach to taxation, I invoke an example from transport that was enacted fairly recently, when the UK Government legislated for a variation in vehicle excise duty based on the amount of CO$_2$ that an engine emits. The problem that the UK Government is running into is that the legislation has been too effective—the Government is losing tax, because the measure is incentivising drivers to have lower CO$_2$ engines. However, my amendments would address that particular worry. I concede that the cabinet secretary’s main worry on the issue might be loss of revenue, so the idea of tax neutrality is built into amendment 34. In other words, there would be winners and losers, based on the energy efficiency of homes at the point of sale.

I will try to be a bit more concrete and illustrate exactly what I have in mind. Currently, when a house is sold, an energy performance certificate is issued, with a score out of 100. For the sake of argument, let us say that the median SAP—standard assessment procedure—point, as I think it would be called, is 60, although obviously it will change as homes improve their energy efficiency. The buyer of a house with an SAP point that was one above 60 would get perhaps a 0.5 per cent reduction in LBTT. Equally, the buyer of a house that was one point below the median of 60 might get a 0.5 per cent increase in the tax.

Those are merely illustrative examples and do not show what would necessarily happen, because my amendments point towards regulations, where the details could be filled in. However, the point is that the system would be pretty easy to implement, because we already have a score on the energy performance certificate, so the adjusted LBTT could be calculated in seconds, or probably instantaneously, by a computer. I believe that there would be no practical difficulties in establishing the adjusted LBTT.

To achieve tax neutrality, we would have to change the median point from year to year. Another benefit of using regulations is that that could be done whenever it was required to achieve tax neutrality, so that those who gained would be netted off by those who lost. I think that the system would be easy to implement and would make a significant contribution by making people far more conscious of the energy efficiency of their homes. Clearly, higher energy efficiency is in people’s interests because, self-evidently, it will reduce their fuel bills. That potentially makes housing a lot easier to deal with than transport, but we know that it is not uppermost in people’s minds when they buy a house at present.

The amendments would help to move people in the direction of being more aware of energy efficiency and taking it more seriously. The buyer of a house with a high energy performance rating would not only get a discount on their LBTT but have the benefit of lower energy bills when they bought the house. The seller might well get more for their house, because it would be more attractive to buyers. They might well sell it more quickly, because, obviously, it would have an advantage in the market over houses with lower energy efficiency and higher LBTT. The approach would not be a panacea, as I said, but it would make a significant contribution to changing people’s mindset on the energy efficiency of homes.

I do not think that people think that energy efficiency is not important. However, people might think that it is not the most important issue when they are buying a house, although from the point of view of climate change, it probably is the most important issue. Amendments 33 and 34 are climate change amendments—let us be honest about that. We are committed to the targets and objectives in the Climate Change (Scotland) Act 2009 and we must take a range of measures to ensure that we meet the targets.

When we discussed the matter before, the cabinet secretary referred to the discount on council tax and said that he preferred such an approach. The two approaches are not mutually exclusive; we need to do both. If people are asking why the discount on council tax does not work better, we should explore the issue and perhaps take action to make the approach more effective. However, we need a range of measures, including financial incentives, to ensure that the energy efficiency of the housing stock is increased.

Because the detail is left to regulations, different approaches could be taken. I gave an example of how reductions might work. A further variant, which could easily be included in regulations, would be to give people an opportunity to get a rebate within the first 12 months of buying a
The idea that richer people with bigger houses should get a subsidy that poorer people in smaller houses would not get.

On top of that, there are the practicalities—if a house does not change hands, there is no LBTT and no benefit and no change, so again, we would be missing a lot of houses that need to be helped. The evidence that we had at committee was that a similar provision for stamp duty land tax had been very ineffective.

This is the first tax that we are going for in the Scottish Parliament. Simplicity has been one of the key things that the cabinet secretary has argued for and I strongly believe in it myself. Although they might be well intentioned, by bringing in these tiny little variations here and there we lose the bigger picture—we lose the simplicity that we are aiming for.

Jamie Hepburn: I began the process of considering the bill feeling somewhat sympathetic to the notion that there could be some form of energy efficiency relief and I agree entirely with Malcolm Chisholm’s perspective that the commitment to tackle climate change is shared across the board. However, I am somewhat unconvinced by the amendments. I am not sure that they represent an effective measure. Malcolm himself referred to the evidence that energy efficiency is not a big issue for buyers.

I am not clear how revenue neutrality could be applied for a discount, is pretty complicated and I do not think that people to whom we would give £1,000 there would still be expenditure in the context of the people to whom we would give £1,000.

I move amendment 33.

The Convener: A few members want to comment—and I welcome Michael McMahon to the meeting.

Michael McMahon (Uddingston and Bellshill) (Lab): I apologise for being late; I had car trouble this morning.

John Mason: I will speak against amendments 33 and 34. We all sympathise with Malcolm Chisholm’s aim, which is to make all houses more energy efficient—I simply think that he is going about it in the wrong way. He talked about overall neutrality, but it is clear that there would be winners and losers. Some people might pay £1,000 more; others would pay less tax. There would still be expenditure in the context of the people to whom we would give £1,000.

I question whether that is the best way of using £1,000. If someone is buying a house for £200,000, an extra £1,000 is immaterial, whereas if someone is thinking about insulating their home or taking another such measure, £1,000 is a material sum, because it is a larger proportion of the expenditure that they are thinking about incurring. Malcolm Chisholm talked about a reduction of 0.5 per cent—on a £200,000 house that is £1,000, which is major in the context of a small investment but quite small in the context of buying a house. The approach would be a blunt instrument and it would be better to use council tax or direct grants, as we have done in the past.

I also think that the approach would be regressive. I assume that some people at the bottom will not pay LBTT at all, so there would be no help whatever for those people. I represent a poorer constituency, where quite a lot of the houses are of lower value, and I strongly resent the idea that richer people with bigger houses should get a subsidy that poorer people in smaller houses would not get.

The sustainable housing strategy will be published imminently, and I am told that one of the main outcomes in the draft version is that there should be a market premium on warm, high-quality, low-carbon homes. I hope that the cabinet secretary will not delete that outcome from the draft. What I propose would make an important contribution to placing a market premium on warm, high-quality, low-carbon homes, and I hope that the cabinet secretary will give the idea serious consideration.

I move amendment 33.

Jamie Hepburn: We had evidence that the scheme that has been in place—which this one does not necessarily replicate but would be a successor to—has not been particularly successful. It is not clear that we have evidence that these measures would be successful or what a scheme might look like. One of my other concerns about the amendments is that there is no meat on the bones. We do not know exactly what is being proposed.

I am not clear about the efficacy of such a measure if the seller who has invested in energy efficiency does not benefit and the person who benefits is the buyer. A retrospective application, as was suggested by Malcolm Chisholm, with a buyer putting in measures and then seeking to apply for a discount, is pretty complicated and I am not clear how revenue neutrality could be achieved in that case.

No prescriptive measure is set out. I am concerned about passing an amendment that does not really set out what the measures would be. Malcolm Chisholm said that we need to be concrete about what the amendments mean, but we cannot be because, essentially, they pass the job to the Scottish Government. It is not a concrete measure in that sense, so I thank him for lodging
the amendments—it is useful to have this debate—but I am not persuaded by them.

Jean Urquhart: My points have been made. I, too, was sympathetic to the idea. In particular, I was slightly frustrated by some of the evidence that we got, which could have been sharper, clearer and better. I want energy efficiency measures to happen, but I agree that this is just the wrong place for them. Land and buildings transaction tax is just not a phrase that is on everybody’s lips and if we are to really appeal to people and raise their awareness of climate change, house insulation, better building and so on, this is not the place to do it. It is not really about the detail of it—I would just much rather see the issue debated in the context of council tax and in other places that will mean something to everybody in the street, not just those who happen to be buying or selling a house.

Michael McMahon: There is a lot of validity in the arguments that have been made counter to the amendments, because a very technical thing is being introduced but it seems to be in a very simple form. However, having heard the evidence about incentivising people to think about energy efficiency in their homes, I think that in principle this is the right thing to try to do because, in the absence of anything in any other legislation, this is the vehicle that is available.

It is worth considering the amendments on the basis that they might not be perfect but, if they are agreed to just now, the bill could be further amended to address colleagues’ concerns, because I do not see any other vehicle coming forward in the near future that would address all the points that colleagues have made. This is worth considering to try to get us to a place where, when people consider house purchases, energy efficiency becomes much more high profile than it currently is according to the evidence that we heard.

11:00

John Swinney: I thank Mr Chisholm for lodging amendments 33 and 34, both of which seek to introduce into the bill a regulation-making power to vary the amount of LBTT to be paid on residential property transactions on the basis of how an individual property compares with the average energy efficiency rating for housing in Scotland. The proposal has been advanced by the existing homes alliance Scotland and my officials have met the proposers to consider the issues.

The Government is entirely supportive of the importance of taking steps to improve the housing stock’s energy efficiency, as highlighted by not only Mr Chisholm but a number of committee members, and indeed has taken a number of steps in that respect. Although it is important to examine all legislative instruments to determine whether any measures can be taken forward, it is vital that we assess the impact of any proposed measures. In this bill, a balance must be struck between the need for a simple, certain and efficient tax system and the likely improvements to energy efficiency that would flow from the change proposed to calculating the tax liability on the sale of residential property. Far from providing more simplicity and certainty, amendments 33 and 34 would, in fact, add complexity and uncertainty to the tax. No house buyer would know at the outset how much tax would be payable on a house of a particular value, and additional information would be required to calculate the liability. Moreover, that information would change over time and for every house sale would have to be verified carefully to ensure that the tax was calculated accurately.

Apart from the administrative complexity, the proposal would, as Mr Mason pointed out, have no effect whatever on housing in the nil rate band of the tax. In 2011, there were 1.9 million privately owned dwellings in Scotland and 70,000 sales—in other words, 3.7 per cent of the market. The land and buildings transaction tax consultation paper set out two scenarios to illustrate how a progressive tax might operate in the residential property market. In scenario 1, 70 per cent of the market would be excluded from the tax because of the threshold. That would mean that, in any given year, the tax would apply to only 1.1 per cent of the existing housing stock or 21,000 properties. Even if those figures were doubled to reflect more active market conditions, LBTT does not appear to me to represent an effective mechanism for influencing the energy efficiency of the whole of the housing stock, which is the comparison to be made with council tax and other such vehicles.

The proposal would also have a number of disproportionate effects on the housing market. For example, flat owners often find it very difficult to secure other owners’ agreement to undertake any repairs and improvements that would be material to the flats in question securing a better SAP rating in the energy assessment. In my view, it would be unfair to penalise the owners or buyers of flats and listed buildings who would like to increase their EPC rating but find that they cannot do so because of a lack of agreement. I also note that flats comprise about four in 10 of Scotland’s owned dwellings in Scotland and 70,000 sales—

The proposed scheme is intended to apply to every subsequent transaction on the same house, which means that tax benefit would continue to accrue on houses whose owners had made no investment in energy efficiency measures. Another owner might have implemented a number of improvements costing, for example, £5,000 to
achieve a SAP rating of, say, 60 but more tax would still be due on that property than if the scheme did not exist. Furthermore, a SAP rating of 60 can be very challenging to achieve for certain fuels such as liquefied petroleum gas.

A more fundamental point is that it is not clear whether the proposal underpinning amendments 33 and 34 would have a direct positive impact on the energy efficiency of Scotland’s housing stock. As the seller of the house might undertake energy efficiency measures while the buyer of the house would incur the tax benefit on the transaction, the proposal would provide no direct incentive for energy efficiency measures to be introduced into Scotland’s housing stock by the people who actually occupy the properties.

Although I am entirely sympathetic to the desire to improve the energy efficiency of Scotland’s housing stock and I reaffirm the Government’s intention to find additional ways to do that, I do not believe that amendments 33 and 34 contain the correct approach to achieve that aim.

Malcolm Chisholm: I thank people for their contributions. I think that a lot of the responses are in the general territory of, “Well, it’s not going to solve the whole problem,” but I was keen to emphasise on more than one occasion that the proposal is not a panacea. It would be only one of a whole range of measures.

John Mason spoke first and he said that he prefers direct grants. I am not sure whether the cabinet secretary would agree. We have lots of schemes at the moment and some are based on loans, but in effect John Mason was proposing extra expenditure rather than the revenue-neutral proposal that I have made. Having said that, I would not, of course, object to direct grants to deal with the issue of people in homes that are exempt from LBTT. I do not accept the argument that the proposal is regressive. There would have to be a cap on how much people could benefit from it in larger homes, but the fact is that it is larger homes that emit the most CO2, and it is there that action is most urgent.

I think that the argument about simplicity was used by all the speakers. I think that the proposal would be fairly simple to implement, on the basis that all homes have an energy performance certificate. I said that the adjusted LBTT could be calculated almost instantaneously by a computer as long as we know the EPC score, so I do not accept the argument about administrative complexity.

Jamie Hepburn used the argument that I anticipated about the energy efficiency of homes not being a big issue for buyers, but part of the purpose of the proposal is to make it a bigger issue for buyers by making people financially aware of the consequences of the energy performance of buildings. The psychological effect is important as well as the other effects of the proposal.

Jamie Hepburn also objected to the fact that there is “no meat on the bones.” If the proposal is introduced again at the next stage, it may well be that I can work up—or somebody can help me to work up—a more detailed amendment with all the details in it, but in a sense I prefer the simple version because it allows the Government of the day a lot more flexibility to change the detail. That is the usual argument that the Government uses for proposing that detail is put in regulations. However, the issue can certainly be addressed when the proposal is debated at the next stage. I tried to put some meat on the bones with my illustrative examples, but more of that could be provided if that would help Jamie Hepburn and others at the next stage.

The cabinet secretary also used some of the arguments that his colleagues had used in relation to simplicity and the absence of an effect on housing in the nil rate band. I do not want to complicate things too much, but I add that we could, in regulations, also offer an incentive for those homes within the system. Clearly, that would mean that those with larger homes with low energy efficiency would have to pay even more, but potentially and theoretically there is no reason why we could not include those homes in the system if we wanted to do so.

John Swinney raised the issue of flats. I am certainly conscious of that given the constituency that I represent, not to mention the fact that I have lived in a flat all my life. In general, tenements have better energy efficiency ratings than stand-alone homes. I take the point about securing the agreement of owners, but the fact is that, in order to achieve our climate change targets, we are going to have to do something about tenements, just as we have to do something about the housing stock as a whole.

The cabinet secretary concluded with the idea that there would be no incentive for sellers. I dispute that because, apart from the obvious incentive that anyone has to reduce their fuel bills, under the proposal, the seller would be in a better position—the words “market premium” spring to mind again—when he or she was selling the house, because they would have an advantage over other homes with lower energy efficiency ratings and they might well both sell more quickly and achieve a higher price, so I do not believe that there is an absence of incentive for the seller of a home.
I think that the measure that is proposed in amendments 33 and 34 is useful. To be honest, when it was first proposed to me a few weeks ago, I shared some of the concerns and, indeed, scepticism that people have voiced today. However, the more I have thought about it, the more I have believed that it could make a useful contribution.

Of course, what I propose will not deal with all the issues. Jean Urquhart said that she would rather see the issue dealt with through the council tax. We have a council tax measure— that is good, but we should find out why it is not working more effectively. However, the two things are not mutually exclusive. Jean Urquhart said that LBTT was not a term on everyone’s lips—at least not yet, because most people do not even know what it stands for—but the reality is that it will be on the lips of anyone who buys or sells a house. I believe that it is appropriate and useful to introduce energy efficiency measures in this bill.

I will press amendments 33 and 34.

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)

Against
Brown, Gavin (Lothian) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 33 disagreed to.

After schedule 16

Amendment 34 moved—[Malcolm Chisholm].

The Convener: The question is, that amendment 34 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)

Against
Brown, Gavin (Lothian) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 34 disagreed to.

Sections 28 and 29 agreed to.

Section 30—Notifiable transactions

The Convener: Amendment 19, in the name of the cabinet secretary, is grouped with amendments 20 to 23.

John Swinney: This group of five amendments sets out the position with regard to when a land transaction that involves a non-residential lease should be notified to the tax authority. Amendment 20 is the substantive amendment in the group. It is couched in the negative and provides for four situations that involve non-residential leases that are not notifiable land transactions. By implication, all other non-residential leases would be notifiable. Amendment 19 and amendments 21 to 23 are consequential technical amendments that will adjust the bill to fit better with the style and approach of the new provisions that are brought forward by amendment 20.

I move amendment 19.

Amendment 19 agreed to.

Amendments 20 to 23 moved—[John Swinney]—and agreed to.

Section 30, as amended, agreed to.

Sections 31 and 32 agreed to.

Section 33—Further return where relief withdrawn

Amendments 24 and 25 moved—[John Swinney]—and agreed to.

Section 33, as amended, agreed to.

Sections 34 to 39 agreed to.

Section 40—Payment of tax

The Convener: Amendment 26, in the name of the cabinet secretary, is grouped with amendments 27 to 29.

11:15

John Swinney: To ensure prompt payment and deliver administrative efficiencies, the bill requires tax agents to submit a complete tax return and pay any tax due before any application to Registers of Scotland in respect of a land register or books of council and session can be accepted. During the consultation on the proposals for land and buildings transaction tax, certain stakeholders raised concerns in relation to that proposal, based on the fact that in Scotland a buyer or tenant cannot obtain a real right over land or buildings
until registration has taken place. Some stakeholders were concerned that that could create an unnecessary risk for buyers and that it might have unintended knock-on effects on third parties such as lenders.

Following further discussions with the Law Society of Scotland, the Scottish Government believes that the
“arrangements satisfactory to the Tax Authority”
wording in section 40(4), coupled with the introduction of advance notices under the Land Registration etc (Scotland) Act 2012, will address those concerns. However, as it is drafted, the bill could be interpreted in such a way that someone who makes arrangements satisfactory to the tax authority could escape liability to pay tax if those arrangements fall through. This group of four technical amendments will ensure that the fact that the tax authority can accept a return on the basis of arrangements being in place to pay any tax due or that Registers of Scotland can record a disposition on the same basis will not affect the overall liability to pay. The effect of these amendments will be to ensure that no tax avoidance activity will be able to take place by relying on section 40(4).

I move amendment 26.

Amendment 26 agreed to.

Amendments 27 and 28 moved—[John Swinney]—and agreed to.

Section 40, as amended, agreed to.

Sections 41 and 42 agreed to.
Land and Buildings Transaction Tax (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 16 Schedule 1
Section 17 Schedule 2
Sections 18 to 27 Schedules 3 to 16
Sections 28 to 49 Schedule 17
Section 50 Schedule 18
Sections 51 to 65 Schedule 19
Sections 66 to 70 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 47

John Swinney

35 In section 47, page 21, line 14, at end insert—
<(  ) For the purposes of subsection (2)(a) “chargeable interests” includes any interest which
would be a chargeable interest but for the fact that it relates to land outwith Scotland.>

John Swinney

36 In section 47, page 21, line 25, at end insert <(including specifying tax bands and tax rates for
such transfers),>

John Swinney

37 In section 47, page 21, line 27, at end insert—
<(  ) Regulations under subsection (1) may also provide that, for the purposes of this section,
“residential property” includes such other kinds of property as may be specified in the
regulations.>

Section 49

John Swinney

38 In section 49, page 22, line 11, at end insert—
<(2) The Scottish Ministers may, by regulations, modify schedule 17.>
Gavin Brown
64 Leave out section 49 and insert—

<Partnerships
(1) The Scottish Ministers must, by regulations, make provision about the application of this Act in relation to partnerships.
(2) Regulations under this section may modify any enactment (including this Act).>

Schedule 17

John Swinney
39 In schedule 17, page 77, line 33, leave out <section 55 (application of this Act to leases)> and insert <paragraph 28A (application of Parts 3 to 5 to leases)>

John Swinney
40 In schedule 17, page 79, line 6, after <there> insert <is>

John Swinney
41 In schedule 17, page 81, line 29, leave out <section 55 (application of this Act to leases)> and insert <paragraph 28A (application of Parts 3 to 5 to leases)>

John Swinney
42 In schedule 17, page 84, line 17, leave out from <and> to end of line and insert <, 27 and 28A have effect subject to the following modifications.>

John Swinney
43 In schedule 17, page 84, line 20, at end insert—

<( ) In paragraph 27(2) and (3), for “21(1)” substitute “21”.
( ) In paragraph 28A—
(a) in sub-paragraph (2), for “sub-paragraphs (3) to (6)” substitute “sub-paragraph (5)”,
(b) omit sub-paragraphs (3), (4), (6), (7) and (9).>

John Swinney
44 In schedule 17, page 84, line 21, at end insert—

<Part 5A
Application of Parts 3 to 5 to leases

Application of Parts 3 to 5 to leases

28A(1) This paragraph applies in relation to a transaction to which paragraph 12 or 20 applies where the whole or part of the chargeable consideration for the transaction is rent.

(2) Schedule (Leases) (leases) has effect with the modifications set out in sub-paragraphs (3) to (6).>
(3) In paragraph 4—
   (a) in Step 1, for “the net present value (NPV) of the rent payable over the term of the lease” substitute “the relevant chargeable proportion of the net present value (NPV) of the rent payable over the term of the lease”, and
   (b) in Step 2, for “the NPV” substitute “the relevant chargeable proportion”.

(4) In paragraph 5—
   (a) in Step 1, for “the total of the net present values (TNPV) of the rent payable over the terms of all the leases” substitute “the total of the relevant chargeable proportions of the net present values (TNPV) of the rent payable over the terms of all the leases”,
   (b) in Step 2, for “the TNPV” substitute “the total of the relevant chargeable proportions”, and
   (c) in Step 4—
      (i) for “the net present value” substitute “the relevant chargeable proportion”, and
      (ii) for “the TNPV” substitute “the total of the relevant chargeable proportions”.

(5) In paragraph 8(1), for “paragraph 9” substitute “paragraph 13 or 21 of schedule 17 and paragraph 9 of this schedule”.

(6) In paragraph 9(6)—
   (a) in paragraph (a), for “the annual rent” substitute “the relevant chargeable proportion of the annual rent”, and
   (b) in paragraph (b), for “the total of the annual rents” substitute “the relevant chargeable proportion of the total of the annual rents”.

(7) For the purposes of schedule (Leases) as modified by this paragraph, the relevant chargeable proportion is—
    \[(100-\text{SLP})\%\]

where SLP is the sum of the lower proportions.

(8) The following paragraphs apply for determining the sum of the lower proportions—
   (a) in the case of a transaction to which paragraph 12 applies, paragraph 14, and
   (b) in the case of a transaction to which paragraph 20 applies, paragraph 22.

(9) In the case of a transaction to which paragraph 20 applies, this paragraph is subject to paragraph 28.

John Swinney

45 In schedule 17, page 84, line 33, at end insert—
   ( ) For the purposes of sub-paragraph (1) “chargeable interests” includes any interest which would be a chargeable interest but for the fact that it relates to land outwith Scotland.

John Swinney

46 In schedule 17, page 85, line 15, leave out <different> and insert <difference>
In schedule 17, page 90, line 15, at end insert—

<() In paragraph 3, for “A buyer holds the subject-matter of a transaction for qualifying charitable purposes if the buyer holds it” substitute “A chargeable interest is held for qualifying charitable purposes if it is held”.

In schedule 17, page 90, line 16, leave out <3, for “the buyer” (wherever it occurs)> and insert <3(a), for “the buyer”>

In schedule 17, page 90, line 16, at end insert—

<() In paragraph 3(b), for “the buyer” substitute “the partners”.

In schedule 17, page 92, line 9, leave out <or increases a partnership share> and insert <a partnership share or a person’s partnership share increases>

Leave out schedule 17

Schedule 18

In schedule 18, page 93, line 22, at end insert—

<5A However, any tax due by the person or persons may, without prejudice to any other method of recovery, be recovered from T.>

In schedule 18, page 93, line 23, leave out <Paragraph 5 does> and insert <Paragraphs 5 and 5A do>

After section 51

After section 51 insert—

<Application of this Act to licences>

(1) The Scottish Ministers may, by regulations, prescribe descriptions of non-residential licences to occupy property, transactions in relation to which are to be land transactions for the purposes of this Act.

(2) The regulations may also make provision, among other things—
(a) for transactions, which result in the acquisition of interests in licences, to be land transactions,
(b) for what the chargeable consideration is to be in relation to a licence,
(c) for the determination of the amount or value of that chargeable consideration,
(d) for the calculation of the tax chargeable,
(e) specifying that certain land transactions relating to a licence are not to be notifiable under section 30.

(3) Regulations under this section may modify any enactment (including this Act).

Section 55

John Swinney
54 Leave out section 55 and insert—

PART
APPLICATION OF ACT TO LEASES AND LICENCES
Leases

55 Application of this Act to leases
Schedule (Leases) makes provision about the application of this Act to chargeable transactions involving leases, including provision for the calculation of the tax chargeable in relation to such transactions.

John Swinney
55 Move section 55 to after section 51

After schedule 18

John Swinney
53 After schedule 18 insert—

SCHEDULE
(introduced by section 55)
LEASES

PART 1
INTRODUCTORY

Overview
1 (1) This schedule makes provision about the application of this Act in relation to leases.
(2) It is arranged as follows—

Part 2 makes provision for the calculation of the tax chargeable in relation to chargeable consideration which consists of rent,
Part 3 makes provision about the calculation of the tax chargeable in relation to other chargeable consideration,

Part 4 makes provision for the review of tax chargeable at periodic intervals and on certain events,

Part 5 makes provision about chargeable consideration in relation to leases, including consideration which consists of rent, consideration other than rent and consideration that is not treated as chargeable consideration,

Part 6 makes provision about duration of leases and about the application of this Act to transactions involving leases generally.

**Calculation of tax chargeable where chargeable consideration includes rent**

Where the chargeable consideration for a chargeable transaction to which this schedule applies consists of rent (or includes rent and chargeable consideration other than rent), the tax chargeable is the sum of—

(a) any tax chargeable on so much of the chargeable consideration as consists of rent, and

(b) any tax chargeable on so much of the chargeable consideration other than rent.

**PART 2**

**AMOUNT OF TAX CHARGEABLE: RENT**

**Tax rates and tax bands**

(1) The Scottish Ministers must, by order, specify the tax bands and the percentage tax rates for each band applicable to chargeable consideration which consists of rent.

(2) An order under sub-paragraph (1) must specify—

(a) a nil rate tax band and at least two other tax bands,

(b) the tax rate for the nil rate tax band, which must be 0%, and

(c) the tax rate for each tax band above the nil rate tax band so that the rate for each band is higher than the rate for the band below it.

**Amount of tax chargeable in respect of rent**

The amount of tax chargeable on so much of the chargeable consideration as consists of rent is to be determined as follows.

**Step 1**

Calculate the net present value (NPV) of the rent payable over the term of the lease (see paragraph 6).

**Step 2**

For each tax band, multiply so much of the NPV as falls within the band by the tax rate for that band.

**Step 3**

Calculate the sum of the amounts reached under Step 2.

The result is the amount of tax chargeable in respect of rent.
Amount of tax chargeable in respect of rent: linked transactions

Where a chargeable transaction to which this schedule applies is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the amount of tax chargeable in respect of the rent is to be determined as follows.

Step 1

Calculate the total of the net present values (TNPV) of the rent payable over the terms of all the leases (see paragraph 6).

Step 2

For each tax band, multiply so much of the TNPV as falls within the band by the tax rate for that band.

Step 3

Calculate the sum of the amounts reached under Step 2.

The result is the total tax chargeable in respect of rent.

Step 4

Divide the net present value of the rent payable over the term of the lease in question by the TNPV.

Step 5

Multiply the total tax chargeable in respect of rent by the fraction reached under Step 4.

The result is the amount of tax chargeable in respect of rent for the lease in question.

Net present value

The net present value (NPV) of the rent payable over the term of a lease is calculated by applying the following formula—

\[ NPV = \sum_{i=1}^{n} \frac{r_i}{(1+T)^i} \]

where—

- \( r_i \) is the rent payable in respect of year \( i \),
- \( i \) is the first, second, third etc. year of the term of the lease,
- \( n \) is the term of the lease, and
- \( T \) is the temporal discount rate (see paragraph 7).

Temporal discount rate

(1) For the purposes of this schedule the “temporal discount rate” is 3.5% or such other rate as may be specified by the Scottish Ministers by order.

(2) An order under this paragraph may—

(a) specify a rate or make provision for any such rate to be determined by reference to such rate or the average of such rates as may be referred to in the order,
(b) provide for rates to be reduced below, or increased above, what they otherwise would be by specified amounts or by reference to specified formulae,

(c) provide for rates arrived at by reference to averages to be rounded up or down, and

(d) provide for circumstances in which alteration of a rate is or is not to take place.

**PART 3**

**AMOUNT OF TAX CHARGEABLE: CONSIDERATION OTHER THAN RENT**

*Amount of tax chargeable in respect of consideration other than rent: general*

8 (1) Where in the case of a transaction to which this schedule applies there is chargeable consideration other than rent, the provisions of this Act apply in relation to that consideration as in relation to other chargeable consideration (but see paragraph 9).

95 (2) Where a transaction to which this schedule applies falls to be taken into account as a linked transaction for the purposes of section 26, no account is to be taken of rent in determining the relevant consideration.

*Amount of tax chargeable in respect of consideration other than rent: nil rate band*

9 (1) This paragraph applies in the case of a transaction to which this schedule applies where—

(a) there is chargeable consideration other than rent, and

(b) section 25 or 26 applies to the transaction.

(2) If the relevant rent is at least £1,000, the nil rate tax band does not apply in relation to the consideration other than rent and any such consideration that would have fallen within that band is treated as falling within the next tax band.

(3) Sub-paragraphs (4) and (5) apply if—

(a) the transaction to which this schedule applies is one of a number of linked transactions,

(b) the relevant land is partly residential property and partly non-residential property, and

(c) the relevant rent attributable, on a just and reasonable apportionment, to the land that is non-residential property is at least £1,000.

(4) For the purposes of determining the amount of tax chargeable under section 26 in relation to the consideration other than rent, the transactions are treated as if they were two sets of transactions, namely—

(a) one whose subject-matter consists of all of the interests in land that is residential property, and

(b) one whose subject-matter consists of all of the interests in land that is non-residential property.

(5) For that purpose, the chargeable consideration attributable to each of those separate sets of linked transactions is the chargeable consideration so attributable on a just and reasonable apportionment.

(6) In this paragraph “the relevant rent” means—
(a) the annual rent in relation to the transaction in question, or

(b) if that transaction is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the total of the annual rents in relation to all of those transactions.

(7) In sub-paragraph (6) the “annual rent” means—

(a) the average annual rent over the term of the lease, or

(b) if—

(i) different amounts of rent are payable for different parts of the term, and

(ii) those amounts (or any of them) are ascertainable at the effective date of the transaction,

the average annual rent over the term for which the highest ascertainable rent is payable.

(8) In this paragraph “relevant land” means—

(a) the land an interest in which is the main subject-matter of the transaction,

(b) if the transaction in question is one of a number of linked transactions, any land an interest in which is the main subject-matter of any of those transactions.

PART 4

REVIEW OF TAX CHARGEABLE

Regular review of tax chargeable

10 (1) This paragraph applies where, in relation to a chargeable transaction to which this schedule applies—

(a) the buyer made a land transaction return, or

(b) where such a return was not made, the buyer made—

(i) a return under section 31 (return where contingency ceases or consideration ascertained),

(ii) a return under paragraph 21 (return where lease for fixed term continues after end of term),

(iii) a return under paragraph 23 (return in relation to lease for indefinite term), or

(iv) a return under paragraph 32 (return where transaction becomes notifiable on variation of rent or term).

155 (2) The buyer must make a further return to the Tax Authority if, on a review date, the lease—

(a) has not been assigned, or

(b) has not terminated (whether on the term of the lease coming to an end or otherwise).

160 (3) The return must be made before the end of the period of 30 days beginning with the review date.
(4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction at that review date.

165  (5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

(6) In this paragraph, the “review date” is—

(a) in the case of a transaction to which sub-paragraph (1)(a) applies, the day falling on the third anniversary of the effective date of the transaction and on each subsequent third anniversary of that date,

(b) in the case of a transaction to which sub-paragraph (1)(b)(i) applies, the day falling on the third anniversary of the date on which the event mentioned in section 31(2) occurred,

(c) in the case of a transaction to which sub-paragraph (1)(b)(ii) applies, the day falling on the third anniversary of the date on which the 1 year period mentioned in paragraph 21(3) ended and on each subsequent third anniversary of that date,

(d) in the case of a transaction to which sub-paragraph (1)(b)(iii) applies, the day falling on the third anniversary of the date on which the deemed fixed term mentioned in paragraph 23(2) ended and on each subsequent third anniversary of that date,

(e) in the case of a transaction to which sub-paragraph (1)(b)(iv) applies, the day falling on the third anniversary of the date the variation mentioned in paragraph 32 takes effect and on each subsequent third anniversary of that date.

Review of tax chargeable on certain events

185  11 (1) This paragraph applies where, in relation to a chargeable transaction to which this schedule applies—

(a) paragraph 10 applies, and

(b) the lease—

(i) is assigned, or

(ii) terminates (whether on the term of the lease coming to an end or otherwise).

190  (2) The buyer must make a further return to the Tax Authority.

(3) The return must be made before the end of the period of 30 days beginning with the day (the “relevant day”) on which the lease is assigned or terminated.

195  (4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction at the relevant day.

(5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.
PART 5

CHARGEABLE CONSIDERATION: RENT AND CONSIDERATION OTHER THAN RENT

Rent

12 (1) For the purposes of this Act, a single sum expressed to be payable in respect of rent, or expressed to be payable in respect of rent and other matters but not apportioned, is to be treated as entirely rent.

(2) Sub-paragraph (1) is without prejudice to the application of paragraph 4 of schedule 2 (chargeable consideration: just and reasonable apportionment) where separate sums are expressed to be payable in respect of rent and other matters.

Amounts payable in respect of periods before grant of a lease

13 For the purposes of this Act, “rent” does not include any chargeable consideration for the grant of a lease that is payable in respect of a period before the grant of the lease.

Variable or uncertain rent

14 (1) This paragraph applies to determine the amount of rent payable under a lease where that amount—

(a) varies in accordance with provision in the lease, or

(b) is contingent, uncertain or unascertained.

(2) The provisions of this Act apply as in relation to other chargeable consideration and accordingly the provisions of sections 18 and 19 apply if the amount is contingent, uncertain or unascertained.

(3) But section 20(b) does not apply.

(4) For the purposes of this paragraph, the cases where the amount of rent payable under a lease is uncertain or unascertained include cases where there is a possibility of that amount being varied under—

(a) section 13, 14, 15 or 31 of the Agricultural Holdings (Scotland) Act 1991 (c.55), or

(b) section 9, 10 or 11 of the Agricultural Holdings (Scotland) Act 2003 (asp 11).

(5) No account is to be taken for the purposes of this Act of any provision for rent to be adjusted in line with the retail prices index, consumer prices index or any other similar index.

Reverse premium

15 (1) In the case of the grant, assignation or renunciation of a lease a reverse premium does not count as chargeable consideration.

(2) A “reverse premium” means—

(a) in relation to the grant of a lease, a premium moving from the landlord to the tenant,

(b) in relation to the assignation of a lease, a premium moving from the assignor to the assignee,

(c) in relation to the renunciation of a lease, a premium moving from the tenant to the landlord.
Tenant’s obligations etc. that do not count as chargeable consideration

16 (1) In the case of the grant of a lease none of the following counts as chargeable consideration—

(a) any undertaking by the tenant to repair, maintain or insure the leased premises,

(b) any undertaking by the tenant to pay any amount in respect of services, repairs, maintenance or insurance or the landlord’s costs of management,

(c) any other obligation undertaken by the tenant that is not such as to affect the rent that a tenant would be prepared to pay in the open market,

(d) any guarantee of the payment of rent or the performance of any other obligation of the tenant under the lease,

(e) any penal rent, or increased rent in the nature of a penal rent, payable in respect of the breach of any obligation of the tenant under the lease,

(f) any other obligation of the tenant to bear the landlord’s reasonable costs or expenses of or incidental to the grant of a lease,

(g) any obligation under the lease to transfer to the landlord, on the termination of the lease, payment entitlements granted to the tenant under the single payment scheme (that is, the scheme of income support for farmers in pursuance of Title III of Council Regulation (EC) No. 73/2009) in respect of the land subject to the lease).

(2) Where sub-paragraph (1) applies in relation to an obligation, a payment made in discharge of the obligation does not count as chargeable consideration.

(3) The release of any such obligations as mentioned in sub-paragraph (1) does not count as chargeable consideration in relation to the renunciation of the lease.

Assignation of lease: assumption of obligations by assignee

17 In the case of an assignation of a lease the assumption by the assignee of the obligation—

(a) to pay rent, or

(b) to perform or observe any other undertaking of the tenant under the lease,

does not count as chargeable consideration for the assignation.

Loan or deposit in connection with grant or assignation of lease

18 (1) Where, under arrangements made in connection with the grant of a lease—

(a) a tenant, or any person connected with or acting on behalf of the tenant, pays a deposit, or makes a loan, to any person, and

(b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the tenant or on the death of the tenant,

the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Act to be consideration other than rent given for the grant of the lease.

(2) Where, under arrangements made in connection with the assignation of a lease—

(a) the assignee, or any person connected with or acting on behalf of the assignee, pays a deposit, or makes a loan, to any person, and
(b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the assignee or on the death of the assignee, the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Act to be consideration other than rent given for the assignation of the lease.

(3) Sub-paragraph (1) or (2) does not apply in relation to a deposit if the amount that would otherwise fall within the sub-paragraph in question in relation to the grant or (as the case requires) assignation of the lease is not more than twice the relevant maximum rent.

(4) The relevant maximum rent is—
   (a) in relation to the grant of a lease, the highest amount of rent payable in respect of any consecutive 12 month period during the term of the lease,
   (b) in relation to the assignation of a lease, the highest amount of rent payable in respect of any consecutive 12 month period during the term of the lease remaining outstanding as at the date of the assignation.

(5) In determining the highest amount of rent for the purposes of sub-paragraph (4), take into account (if necessary) any amounts determined by virtue of paragraph 14(2) but disregard paragraphs 25(2) and 26(3) (deemed reduction of rent, where further lease granted, for periods during which rents overlap).

(6) Tax is not chargeable by virtue of this paragraph merely because of paragraph 9 (which excludes the nil rate tax band in cases where the relevant rent attributable to non-residential property is not less than £1,000 a year).

Renunciation of existing lease in return for new lease

19 (1) Where a lease is granted in consideration of the renunciation of an existing lease between the same parties—
   (a) the grant of the new lease does not count as chargeable consideration for the renunciation, and
   (b) the renunciation does not count as chargeable consideration for the grant of the new lease.

(2) Paragraph 5 (exchanges) of schedule 2 (chargeable consideration) does not apply in such a case.

PART 6

OTHER PROVISION ABOUT LEASES

Meaning of lease for a fixed term

20 In the application of this schedule to a lease for a fixed term, no account is to be taken of—
   (a) any contingency as a result of which the lease may terminate before the end of the fixed term, or
   (b) any right of either party to terminate the lease or renew it.

Leases that continue after a fixed term

21 (1) This paragraph applies to—
(a) a lease for a fixed term and thereafter until terminated, or
(b) a lease for a fixed term that may continue beyond the fixed term by operation of law.

(2) For the purposes of this Act (except section 30 (notifiable transactions)), a lease to which this paragraph applies is treated—

(a) in the first instance as if it were a lease for the original fixed term and no longer,
(b) if the lease continues after the end of that term, as if it were a lease for a fixed term of 1 year longer than the original fixed term,
(c) if the lease continues after the end of the term resulting from the application of paragraph (b), as if it were a lease for a fixed term 2 years longer than the original fixed term,

and so on.

(3) Where the effect of sub-paragraph (2) in relation to the continuation of the lease for a period (or further period) of 1 year after the end of a fixed term is that additional tax is payable in respect of a transaction or that tax is payable in respect of a transaction where none was payable before—

(a) the buyer must make a return or a further return in respect of that transaction before the end of the period of 30 days beginning with the day after the end of that 1 year period,
(b) the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and
(c) the tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

(4) Sub-paragraph (3) is subject to paragraph 22.

(5) For the purposes of section 30 (notifiable transactions), a lease to which this paragraph applies is a lease for whatever is its fixed term.

(6) Where—

(a) a lease would be treated as continuing for a period (or further period) of 1 year under sub-paragraph (2), but
(b) (ignoring that sub-paragraph) the lease actually terminates at a time during that period,

the lease is to be treated as continuing under sub-paragraph (2) only until that time; and the references in sub-paragraph (3) to that 1 year period are accordingly to be read as references to so much of that year as ends with that time.

Leases that continue after a fixed term: grant of new lease

22 (1) This paragraph applies where—

(a) (ignoring this paragraph) paragraph 21 would apply to treat a lease (“the original lease”) as if it were a lease for a fixed term 1 year longer than the original term,
(b) during that 1 year period the tenant under that lease is granted a new lease of the same or substantially the same premises,
(c) the term of the new lease begins during that 1 year period, and
(d) paragraph 26 (backdated lease granted to tenant where lease continuing on tacit relocation) does not apply.

(2) Paragraph 21 does not apply to treat the lease as continuing after the original fixed term.

(3) The term of the new lease is treated for the purposes of this Act as beginning immediately after the original fixed term.

(4) Any rent which, in the absence of this paragraph, would be payable under the original lease in respect of that 1 year period is to be treated as payable under the new lease (and paragraph 13 does not apply to it).

(5) Where the fixed term of a lease has previously been extended (on one or more occasions) under paragraph 21, this paragraph applies as if references to the original term were references to the fixed term as previously so extended.

**Treatment of leases for indefinite term**

23 (1) For the purposes of this Act (except section 30 (notifiable transactions))—

(a) a lease for an indefinite term is treated in the first instance as if it were a lease for a fixed term of 1 year,

(b) if the lease continues after the end of the term resulting from the application of paragraph (a), it is treated as if it were a lease for a fixed term of 2 years,

(c) if the lease continues after the end of the term resulting from the application of paragraph (b), it is treated as if it were a lease for a fixed term of 3 years,

and so on.

(2) Where the effect of sub-paragraph (1) in relation to the continuation of the lease after the end of a deemed fixed term is that additional tax is payable in respect of a transaction or that tax is payable in respect of a transaction where none was payable before—

(a) the buyer must make a return or further return in respect of that transaction before the end of the period of 30 days after the end of that term,

(b) the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and

(c) the tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

(3) For the purposes of section 30 (notifiable transactions) a lease for an indefinite term is a lease for a term of less than 7 years.

(4) References in this paragraph to a lease for an indefinite term include an interest or right terminable by a period of notice or by notice at any time.

**Treatment of successive linked leases**

24 (1) This paragraph applies where—

(a) successive leases are granted or treated as granted (whether at the same time or at different times) of the same or substantially the same premises, and

(b) those grants are linked transactions.

(2) This Act applies as if the series of leases were a single lease—
(a) granted at the time of the grant of the first lease in the series,
(b) for a term equal to the aggregate of the terms of all the leases, and
(c) in consideration of the rent payable under all of the leases.

(3) The grant of later leases in the series is accordingly disregarded for the purposes of this Act except section 34 (return or further return in consequence of later linked transaction).

Rent for overlap period in case of grant of further lease

25 (1) This paragraph applies where—

(a) A renounces an existing lease to B (“the old lease”) and in consideration of that renunciation B grants a lease to A of the same or substantially the same premises (“the new lease”),

(b) on termination of a lease (“the head lease”) a sub-tenant is granted a lease (“the new lease”) of the same or substantially the same premises as those comprised in the tenant’s original lease (“the old lease”) in pursuance of a contractual entitlement arising in the event of the head lease being terminated, or

(c) a person who has guaranteed the obligations of a tenant under a lease that has been terminated (“the old lease”) is granted a lease of the same or substantially the same premises (“the new lease”) in pursuance of the guarantee.

(2) For the purposes of this Act the rent payable under the new lease in respect of any period falling within the overlap period is treated as reduced by the amount of the rent that would have been payable in respect of that period under the old lease.

(3) The overlap period is the period between the date of grant of the new lease and what would have been the end of the term of the old lease had it not been terminated.

(4) The rent that would have been payable under the old lease is to be taken to be the amount taken into account in determining the tax chargeable in respect of the acquisition of the old lease.

(5) This paragraph does not have effect so as to require the rent payable under the new lease to be treated as a negative amount.

Backdated lease granted to tenant where lease continuing on tacit relocation

26 (1) This paragraph applies where—

(a) a lease continues on tacit relocation after the date on which, under its terms, the lease terminates (“the contractual termination date”),

(b) the tenant is granted a new lease of the same or substantially the same premises, and

(c) the term of the new lease is expressed to begin on or immediately after the contractual termination date.

(2) The term of the new lease is treated for the purposes of this Act as beginning on the date in which it is expressed to begin.

(3) The rent payable under the new lease in respect of any period falling—

(a) after the contractual termination date, and

(b) before the date on which the new lease is granted,
is treated for the purposes of this Act as reduced by the amount of taxable rent that it is payable in respect of that period otherwise than under the new lease.

(4) For the purposes of sub-paragraph (3), rent is “taxable” if or to the extent that it is taken into account in determining liability to the tax.

(5) Sub-paragraph (3) does not have effect so as to require the rent payable under the new lease to be treated as a negative amount.

Agreement for lease substantially performed etc.

27 (1) Where—

(a) there is an agreement (including missives not constituting a lease) under which a lease is to be executed, and

(b) the agreement is substantially performed without a lease having been executed,

the agreement is treated as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of the substantial performance.

(2) The effective date of the transaction is when the agreement is substantially performed.

(3) Where sub-paragraph (1) applies and at some later time a lease (“the actual lease”) is executed, this Act applies as if the notional lease were a lease granted—

(a) on the date the agreement was substantially performed,

(b) for a term which begins with that date and ends at the end of the term of the actual lease, and

(c) in consideration of the total rent payable over that term and any other consideration given for the agreement or the actual lease.

(4) Where sub-paragraph (3) applies the grant of the actual lease is disregarded for the purposes of this Act except section 34 (return or further return in consequence of later linked transaction).

(5) For the purposes of section 34—

(a) the grant of the notional lease and the grant of the actual lease are linked (whether or not they would be linked by virtue of section 56),

(b) the tenant under the actual lease (rather than the tenant under the notional lease) is liable for any tax or additional tax payable in respect of the notional lease as a result of sub-paragraph (3), and

(c) the reference in section 34(2) to the “buyer in the earlier transaction” is to be read, in relation to the notional lease, as a reference to the tenant under the actual lease.

(6) Where sub-paragraph (1) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph is to be (to that extent) repaid by the Tax Authority.

(7) That repayment must be claimed by amendment of the return made in respect of the agreement.

(8) In this paragraph, references to the execution of a lease are to the execution of a lease that either is in conformity with, or relates to substantially the same premises and term as, the agreement.
Missives of let followed by execution of formal lease

28 (1) Where a lease is constituted by concluded missives of let (“the first lease”) and at some later time a lease is executed (“the second lease”), the first lease is treated as if it were a lease granted—

(a) on the date the missives of let were concluded,

(b) for a term which begins with that date and ends at the end of the term of the second lease, and

(c) in consideration of the total rent payable over that term and any other consideration given for the first lease or the second lease.

(2) Where sub-paragraph (1) applies the grant of the second lease is disregarded for the purposes of this Act except section 34 (return or further return in consequence of later linked transaction).

(3) Section 62 (read with section 63) makes provision for the effective dates in relation to the first lease and the second lease.

(4) For the purposes of section 34—

(a) the grant of the first lease and the grant of the second lease are linked (whether or not they would be linked by virtue of section 56),

(b) the tenant under the second lease (rather than the tenant under the first lease) is liable for any tax or additional tax payable in respect of the first lease as a result of sub-paragraph (1), and

(c) the reference in section 34(2) to the “buyer in the earlier transaction” is to be read, in relation to the first lease, as a reference to the tenant under the second lease.

(5) In this paragraph, references to the execution of a lease are to the execution of a lease that either is in conformity with, or relates to substantially the same premises and term as, the missives of let.

Cases where assignation of lease treated as grant of lease

29 (1) This paragraph applies where the grant of a lease is exempt from charge by virtue of any of the provisions specified in sub-paragraph (3).

(2) The first assignation of the lease that is not exempt from charge by virtue of any of the provisions specified in sub-paragraph (3), and in relation to which the assignee does not acquire the lease as a bare trustee of the assignor, is treated for the purposes of this Act as if it were the grant of a lease by the assignor—

(a) for a term equal to the unexpired term of the lease referred to in sub-paragraph (1), and

(b) on the same terms as those on which the assignee holds that lease after the assignation.

(3) The provisions are—

(a) schedule 3 (sale and leaseback relief),

(b) schedule 8 (relief for alternative finance investment bonds),

(c) schedule 10 (group relief),

(d) schedule 11 (reconstruction relief and acquisition relief),
(e) schedule 13 (charities relief),
(f) schedule 16 (public bodies relief).

(4) This paragraph does not apply where the relief in question is group relief, reconstruction relief, acquisition relief or charities relief and is withdrawn as a result of a disqualifying event occurring before the effective date of the assignation.

(5) For the purposes of sub-paragraph (4), “disqualifying event” means—

(a) in relation to the withdrawal of group relief, the event falling within paragraphs 14 and 15 of schedule 10 (purchaser ceasing to be a member of the same group as the seller), as read with paragraphs 32 to 40 of that schedule,

(b) in relation to the withdrawal of reconstruction relief or acquisition relief, the change in control of the acquiring company mentioned in paragraphs 13 and 14 of schedule 11 or, as the case may be, the event mentioned in paragraphs 22 to 24 or 25 to 28 of that schedule,

(c) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraph 5 or 6 of schedule 13.

Assignation of lease: responsibility of assignee for returns etc.

30 (1) Where a lease is assigned, anything that but for the assignation would be required or authorised to be done by or in relation to the assignor under or by virtue of any provision mentioned in sub-paragraph (2) must, if the event giving rise to the adjustment or return occurs after the effective date of the assignation, be done instead by or in relation to the assignee.

(2) The provisions are—

(a) section 31 (return where contingency ceases or consideration ascertained),

(b) section 34 (return or further return in consequence of later linked transaction),

(c) paragraph 10 of this schedule (return on 3-yearly review),

(d) paragraph 11 of this schedule (return on assignation or termination of lease),

(e) paragraph 21 of this schedule (return or further return where lease for fixed term continues after end of term),

(f) paragraph 23 of this schedule (return or further return in relation to lease for indefinite term),

(g) paragraph 32 of this schedule (return where transaction becomes notifiable on variation of rent or term).

(3) So far as necessary for giving effect to sub-paragraph (1) anything previously done by or in relation to the assignor is to be treated as if it had been done by or in relation to the assignee.

(4) This paragraph does not apply if the assignation falls to be treated as the grant of a lease by the assignor (see paragraph 29).

Reduction of rent or term or other variation of lease

31 (1) Where a lease is varied so as to reduce the amount of the rent, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the tenant.
(2) Where any consideration in money or money’s worth (other than an increase in rent) is
given by the tenant for any variation of a lease, other than a variation of the amount of
the rent or of the term of the lease, the variation is treated for the purposes of this Act as
an acquisition of a chargeable interest by the tenant.

(3) Where a lease is varied so as to reduce the term, the variation is treated for the purposes
of this Act as an acquisition of a chargeable interest by the landlord.

Increase of rent or term: notification

32 (1) This paragraph applies where, in relation to a land transaction in respect of a lease which
was not notifiable under section 30 (notifiable transactions)—

(a) the lease is varied so as to—

(i) extend its term, or

(ii) increase the amount of rent, and

(b) the effect of the variation is that the transaction would have been notifiable under
section 30 had it been a lease for that term as so extended or for that rent as so
increased (whether or not the effect of the variation is also that tax is payable in
respect of the transaction where none was payable before).

(2) Where this paragraph applies—

(a) the buyer must make a return in respect of the transaction before the end of the
period of 30 days beginning with the relevant date,

(b) the return must include an assessment of the tax that, on the basis of the
information contained in the return, is chargeable in respect of the transaction, and

(c) any tax so chargeable is to be calculated by reference to the tax rates and tax
bands in force at the effective date of the transaction.

(3) The “relevant date” is the date from which the variation takes effect.

(4) For the purposes of section 30—

(a) a lease to which sub-paragraph (1)(a)(i) applies is a lease for whatever is its term
as so extended, and

(b) a lease to which sub-paragraph (1)(a)(ii) applies is a lease for whatever is its rent
as so increased.

Gavin Brown

53A As an amendment to amendment 53, line 34, leave out <two other tax bands> and insert <one
other tax band>

Section 57

John Swinney

31 In section 57, page 24, line 13, at end insert—

<( ) schedule 8,>

John Swinney

56 In section 57, page 24, line 14, at end insert—
<( ) paragraph 18 of schedule (Leases).>  

Section 62

John Swinney

57 In section 62, page 26, line 10, at end insert—

<( ) paragraph 27(2) of schedule (Leases) (agreement for lease substantially performed etc.).>  

Schedule 19

John Swinney

58 In schedule 19, page 97, line 6, at end insert—

<net present value paragraph 6 of schedule (Leases)>

John Swinney

59 In schedule 19, page 97, line 8, leave out <accommodation> and insert <property>

John Swinney

60 In schedule 19, page 97, line 23, column 2, at end insert <and paragraph 3 of schedule (Leases)>

John Swinney

61 In schedule 19, page 97, line 24, column 2, at end insert <and paragraph 3 of schedule (Leases)>

Section 67

John Swinney

62 In section 67, page 27, line 24, at end insert—

<( ) section 49(2).>

John Swinney

66 In section 67, page 27, line 28, at end insert—

<( ) paragraph 3 of schedule (Leases) (but only the first order).>

John Swinney

32 In section 67, page 27, line 32, at end insert—

<( ) section (Application of this Act to licences),>

John Swinney

63 In section 67, page 27, leave out line 34
In section 67, page 27, line 35, at end insert—

<(3A) An order mentioned in subsection (3B)—
   (a) must be laid before the Scottish Parliament, and
   (b) ceases to have effect on the expiry of the period of 28 days beginning with the
date on which it is made unless, before the expiry of that period, it is approved by
resolution of the Parliament.

(3B) The order is a second or subsequent order under—
   (a) section 24(1), or
   (b) paragraph 3 of schedule (Leases).

(3C) In reckoning any period of 28 days for the purposes of subsection (3A)(b), no account is
to be taken of any period during which the Scottish Parliament is—
   (a) dissolved, or
   (b) in recess for more than 4 days.>
2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Residential property holding companies**
35, 36, 37

**Partnerships**
38, 64, 40, 45, 46, 47, 48, 49, 50, 65, 62

**Leases**
39, 41, 42, 43, 44, 54, 55, 53, 53A, 56, 57, 58, 59, 60, 61, 63

**Bare trusts: recovery of tax from trustee**
51, 52

**Setting tax bands and rates: parliamentary procedure for orders**
66, 67

**Amendments already debated**

**Licences**
With 4 – 30, 32

**Relief for alternative finance investment bonds**
With 12 - 31
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

17th Meeting, 2013 (Session 4)

Wednesday 5 June 2013

Present:
Gavin Brown
Malcolm Chisholm
Kenneth Gibson (Convener)
John Mason (Deputy Convener)
Dave Thompson (Committee Substitute)
Jean Urquhart

Also present: John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth

Apologies were received from Jamie Hepburn, Michael McMahon.

Land and Buildings Transaction Tax (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 2).

The following amendments were agreed to (without division): 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 30, 54, 55, 53A, 53, 31, 56, 57, 58, 59, 60, 61, 62, 66, 32, 63 and 67.

The following amendment was disagreed to (by division)—
64 (For 2, Against 4, Abstentions 0)

Amendment 65 was not moved.

The following provisions were agreed to without amendment: sections 44, 45, 46, 48, 50, 51, 52, 53, 54, 56, 58, 59, 60, 61, 63, 64, 65, 66, 68, 69, and 70 and the long title.

The following provisions were agreed to as amended: sections 47 and 49, schedules 17 and 18, sections 55, 57 and 62, schedule 19 and section 67.

The Committee completed Stage 2 consideration of the Bill.
Land and Buildings Transaction Tax (Scotland) Bill: Stage 2

The Convener: Item 3 is the second day of our stage 2 consideration of the Land and Buildings Transaction Tax (Scotland) Bill. I welcome to the meeting the Cabinet Secretary for Finance, Employment and Sustainable Growth, along with Neil Ferguson, John St Clair and Ian Young from the Scottish Government.

Members should note that the cabinet secretary’s officials cannot speak on the record at stage 2. As in the previous stage 2 session, all questions should be directed to the cabinet secretary. Members should have the marshalled list of amendments and the groupings.

Sections 44 to 46 agreed to.

Section 47—Residential property holding companies

The Convener: Amendment 35, in the name of the cabinet secretary, is grouped with amendments 36 and 37.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): This is a small group of three amendments to section 47, which gives Scottish ministers a power to capture the wrapping of residential properties in company structures to avoid LBTT. Tax avoidance is not welcome in Scotland. The amendments clarify the scope of any regulations that are made under section 47.

Amendment 35 will ensure that the regulations are able to capture the transfer of an interest in a residential property-holding company when the company holds property outside as well as within Scotland. That provision is needed because the definition of “chargeable interest” in section 4 captures property in Scotland only. Regulations that are made under section 47 will ensure that the chargeable consideration on which the LBTT payment is based will be in proportion only to the property that is held by the residential property-holding company in Scotland.

Amendment 36 clarifies that the regulations can specify different LBTT rates and bands for the transfer of an interest in a residential property-holding company.

Amendment 37 will enable the regulations to expand what counts as residential property for the purposes of section 47.

It is imperative that Scottish ministers are able to regulate to ensure that transfers of residential properties cannot avoid LBTT liabilities under section 47 by being held together with some non-residential property in a property-holding company, and amendment 37 will provide the flexibility to do that. For example, it will enable the regulations to capture any residential property that is held as part of a larger mixed-use property.

I move amendment 35.

Amendment 35 agreed to.

Amendments 36 and 37 moved—[John Swinney]—and agreed to.

Section 47, as amended, agreed to.

Section 48 agreed to.

Section 49—Partnerships

The Convener: Amendment 38, in the name of the cabinet secretary, is grouped with amendments 64, 40, 45 to 50, 65 and 62.

John Swinney: I will speak to amendments 38, 40, 45, 50 and 62, and respond to amendments 64 and 65, which Gavin Brown has lodged.

The partnership provisions in the LBTT bill are complex, at least partly because of the complexity and range of the commercial transactions that the provisions bring within the scope of the tax. We took a conscious decision to follow closely the stamp duty land tax provisions in the area of partnerships, knowing that taxpayers and their agents have already been operating under parallel provisions in relation to SDLT for nearly a decade.

Despite the complexity, the provisions deliver policy objectives that I believe will bring about fair and reasonable tax outcomes. The first objective is that partnerships should get a partial relief from LBTT when they acquire a chargeable interest from a partner, to reflect the partner’s retained interest in the property that is transferred. The same principle should apply when a chargeable interest is taken out of a partnership.

Parts 4 and 5 of schedule 17 currently provide for that. The sum of the lower proportions calculation is used in both and has been used in practice since the SDLT partnership provisions were set out in the Finance Act 2004; it ensures that an appropriate amount of relief is obtained in any particular case.

11:00

The second policy objective is to ensure that partnerships and transactions involving them
should not be a means of avoiding LBTT. Schedule 17 contains a number of different provisions to tackle avoidance. In particular, the schedule ensures that land transactions between partners and partnerships are taxed at the market value of the land in question rather than the actual price paid, if any. The schedule also provides for certain events following a land transaction to be taxed as if they were land transactions to prevent tax avoidance. For instance, paragraph 17 treats a partnership transfer as a chargeable land transaction if the transfer is pursuant to arrangements in place at the time of the transaction. Paragraph 18 makes further anti-avoidance provision.

Thirdly, paragraph 6 of schedule 17 contains provisions for property investment partnerships—PIPs—which are partnerships whose sole or main activity is investing or dealing in a chargeable interest in property. In essence, the provisions aim to prevent the wrapping of land and property in a partnership structure to avoid LBTT liability by ensuring that transactions in such wrapped property are liable to tax. Paragraph 31 of schedule 17 achieves that by providing that a transfer of an interest in a PIP is treated as a land transaction.

I reiterate what I said to the committee on 22 May on the issue of partnership provisions. We commissioned external advice to assist us in looking at options to simplify the provisions. The recommendations from that work shed some light on the issues, but further work is required to explore them and to decide what changes should be implemented. I do not believe that significant changes should be made without further engagement with stakeholders on these important matters and without particularly careful consideration of their effect. I accept that there are parts of schedule 17 that could be simplified or improved, but such alterations should not be rushed.

Amendment 38 therefore will enable schedule 17 to be amended by subordinate legislation in the future. That would allow the Scottish Government to revise the provisions on partnerships if that was felt necessary following further work and engagement with stakeholders. Amendment 62 provides that the subordinate legislation will be subject to the affirmative procedure, enabling close parliamentary scrutiny of any future proposals.

One way of helping taxpayers and their agents to navigate complex areas of tax legislation is to provide clear and comprehensive guidance. In my view, there is scope for addressing complexity in that way through revenue Scotland working closely with stakeholders. I therefore propose that officials working with those outside Government who have an interest in and are expert in partnership taxation matters should undertake further work on schedule 17. The aim of the further work will be to identify ways of making the law on the taxation of partnership transactions easier to understand and operate. I would also want that work to ensure that it remains difficult to avoid paying LBTT. Such work will look at addressing the complexity of the provisions by providing clear guidance; it will also consider whether the legislation itself needs revised.

Mr Brown’s amendments 64 and 65 represent an alternative approach to the issue, as they would take out all provisions on partnerships in their entirety. In my view, that would leave a vacuum in the LBTT framework. I stress again what I said to the committee on 22 May, which is that I have no desire to leave a gap in the LBTT bill. I appreciate that Mr Brown now has it in mind that further work would be done to examine the options and then recreate an equivalent schedule 17, which would be added to the eventual act using subordinate legislation, and I accept that that would be an alternative way forward. However, I believe that the most effective approach is for officials to work with stakeholders to explore how best to address any shortcomings with the existing provisions, including through clear guidance. I do not want to anticipate the outcome of that further work, but it would be my intention to keep the committee abreast of progress and, if recommendations to amend schedule 17 emerge, to return to Parliament in due course with legislative proposals for approval.

The other amendments that I have lodged in relation to the partnership provisions can be classified as tidying-up amendments. Amendments 40 and 46 correct minor typographical errors. Amendment 40 inserts a missing “is” in paragraph 17(1)(a) of schedule 17. Amendment 46 changes “different” to “difference” in paragraph 31(5)(b) of schedule 17.

Amendment 45 ensures that a transfer of an interest in a property investment partnership that holds chargeable interests outwith Scotland as well as within Scotland is caught by the LBTT bill, although we note that by introducing the amendment we narrow the scope of the provisions in part 6 of schedule 17 compared with the equivalent provisions for SDLT. Where there is a transfer of an interest in a property investment partnership that holds land in Scotland and outside Scotland, the LBTT that is chargeable will be in proportion to the property or properties that are held by the partnership in Scotland only. That is provided for by paragraph 31.

Amendments 47, 48 and 49 are all amendments to paragraph 39 of schedule 17. Their main purpose is to clarify the application of charities
relief in schedule 13 to transfers of partnership interests. Amendment 47 adds a further modification of paragraph 3 of schedule 13 to clarify what it means to hold property in a partnership for charitable purposes. The way that the provision read when the LBTT bill was introduced did not quite make sense and would have caused difficulties in practice, as it would allow charities relief to be claimed only in instances of the transferee holding the subject matter of a particular transaction, when the test ought to be that the chargeable interest itself is what is held for charitable purposes.

Amendment 48 allows charities relief to be claimed when profits are applied to the charitable purposes of the partners rather than just the partner to whom the interest has been transferred. Amendment 49 is a minor consequential amendment to paragraph 39(5) of schedule 17.

The purpose of amendment 50 is to clarify that a transfer of an interest in a partnership is constituted either when a partner acquires a partnership share or when their partnership share increases. The amendment does not constitute a policy change; it merely adds clarity with regard to the use of the legislation. The position is that a transfer of an interest in a partnership is constituted either when a partner acquires a partnership share or when either partnership share increases. In the latter case, an active step is not needed by a partner who is increasing their partnership share as the result of another partner retiring, for example.

I apologise for that marathon.

I move amendment 38.

**Gavin Brown:** Amendment 64 would compel the Scottish Government to make regulations in relation to how the law applies to partnerships, as opposed to allowing it to do so. Amendment 65 would leave out schedule 17, which deals with provisions for partnerships, in its entirety. I lodged the amendments because two weeks ago the committee had compelling evidence from the stakeholders—some of whom the cabinet secretary has referred to in previous evidence—that the partnership provisions, as they stand, simply do not work. They operate in practice, but as regards being workable for practitioners and those in partnerships, they are simply not up to the job. A number of interesting adjectives and nouns were used to describe how they were in practice—I will not repeat them. The provisions cut against the principles of the bill that the cabinet secretary laid out at the very beginning of the process—or, at least, against three of those principles: convenience, efficiency and certainty.

Consider some of the evidence that we have received. The Scottish Property Federation said:

“One of the problems with the SDLT legislation is that it has been built on over and over in 2003, 2004, 2007, 2010 and again in 2013, which does not make for good legislation.”

I agree with that. That is why I prefer to scrap schedule 17 and build it up from first principles, according to what stakeholders believe ought to happen, as opposed to hoping that we can build on it again and tinker with it.

We heard from the Institute of Chartered Accountants in Scotland, which said:

“In many cases, there is a complete lack of comprehension ... on the part of people who have worked in the area for many years, including those in HMRC. It does not work and, in many cases, is ignored because people do not know that there is a potential liability when transactions happen ... I strongly urge you to start again”.

We also heard that day from the Law Society of Scotland, which said:

“It is often ignored because people do not understand it ... SDLT partnership rules are based on income-sharing ratios. People find that difficult to understand because in real partnerships in the real world there are profit-sharing ratios and capital-sharing ratios, which are different. Automatically, therefore, you are off on the wrong foot”. — [Official Report, Finance Committee, 22 May 2013, c 2648-49.]”

As I said at the beginning, I found those submissions compelling. I have a huge concern that we are simply cutting and pasting 19 pages out of the 97 in the bill straight from the provisions on SDLT, which is acknowledged by certain committee members and, indeed, the Institute for Fiscal Studies and the OBR as a tax that wins numerous prizes for being the worse-designed tax. My amendments would make the new regulations mandatory.

I take on board the cabinet secretary’s point that he would not want a vacuum at the end of this process, but there would be a vacuum only if, when the tax applies on the ground in April 2015, nothing had been put in place. I accept entirely that the matter is complex. However, given the quality of the work done so far by stakeholders and, indeed, the bill team, I cannot see why we are not capable, within the best part of two years, of putting in comprehensive, workable partnership provisions, built up from first principles, which apply the principles that the cabinet secretary described for the bill at the start of the process.

**John Mason:** I will speak briefly to amendments 64 and 65, to which Gavin Brown has already spoken.

As the cabinet secretary has accepted, the reality is that there are arguments on both sides. It gives a degree of certainty to have something in black and white now; there is a lot less certainty if we have nothing down in black and white and just leave a gap. Although it is possibly the case that,
as Gavin Brown feels, two years is plenty of time to come back with something better, I prefer to leave what is already there. If somebody comes up with something better over the next months or years, by all means let us lodge an amendment and change that.

I may be biased, because I am an accountant. When I speak to some of the lawyers, the attitude seems to be that if we had any amount of time and could really start from scratch in an empty room—and so on—we could build a perfect piece of legislation. That is not quite where we are now. It is great that this is the first tax bill that we have had in this Parliament. At the same time, however, we have time constraints; witnesses repeatedly tell us that they want certainty sooner rather than later. We would be going against the principles of predictability and certainty if we were to leave this provision out altogether and I feel that it is right that it remains.

Malcolm Chisholm: To be honest, I find the decision a difficult one. There is a certain irony in the debate today, given that the cabinet secretary and, indeed, John Mason are lifting 17 pages straight out of Westminster legislation and Gavin Brown is saying, "It is rubbish, so let's take more time to deal with it."

The fact that the legislation is not coming into force for almost two years might tip the balance towards Gavin Brown's argument, and I take the force of the cabinet secretary's argument that normally we would not want to leave a significant gap in a piece of legislation. Therefore, I am tempted to cop out and abstain. On balance, however, I have been persuaded by Gavin Brown's argument and shall vote for his amendment.

11:15

John Swinney: I have nothing to add to the comments that I have made, but I will address Mr Brown's argument. On 22 May, I made the point to the committee that the Government has endeavoured to explore in detail and substance an alternative approach. With respect, we have not just cut and pasted 17 pages of UK legislation; we have commissioned external input to give us advice on whether there is a better way of going about this. The recommendations from that work have shed some light on the questions involved, but we need to undertake further detailed study before we can commit to any further legislation. That leads me inevitably to the conclusion that, despite our best endeavours to date, there is no compelling alternative proposition that is superior to the provisions in the bill. If we took them out we would leave a vacuum, and whatever the compulsion of Mr Brown's amendment we might find ourselves back where we started when we came to fill that vacuum—which we would have to do, or we would leave the door wide open to potential evasion of tax. I do not think that the committee would want us to be in that situation.

I have looked again at the evidence that the committee has heard and I do not find it compelling. The witnesses suggested that the legislation operates but does not work, but I am afraid that I do not understand that proposition. If something operates, it must work. That seems a rather incoherent argument to make.

The provisions are complex because we are dealing with a very complex area of business activity. Therefore, the right thing to do is to create the legislation as we have suggested and to resist Gavin Brown's amendments. We can then explore with stakeholders—as we have already done on the question of leases—how to formulate alternative propositions if we can. I stress that it is not a given that we will be able to do that. We have already done part of that exercise and have not found any better or stronger material than what is in the bill at the moment.

I encourage the committee to resist the temptation to leave a vacuum in the bill and to acknowledge that there is a good intention to deliver improved provisions if we can, although the evidence and the work that we have undertaken so far show that that is by no means guaranteed.

Amendment 38 agreed to.

Amendment 64 moved—[Gavin Brown].

The Convener: The question is, that amendment 64 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Brown, Gavin (Lothian) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)

Against
Gibson, Kenneth (Cunninghame North) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)

The Convener: The result of the division is: For 2, Against 4, Abstentions 0.

Amendment 64 disagreed to.

Section 49, as amended, agreed to.

Schedule 17—Partnerships

The Convener: Amendment 39, in the name of the cabinet secretary, is grouped with amendments 41 to 44, 54, 55, 53, 53A, 56 to 61 and 63.
The calculation has three elements. The first is the temporal discount rate, which the bill sets initially at 3.5 per cent, which is the same rate as is used for stamp duty land tax. The discount rate could be varied by order, subject to parliamentary process. The effect of applying the rate is to calculate the value today—the present value—of rents that will be paid in the future. The second element of the calculation is the length of term of the lease. The third element is the amount of rent payable. Once the length of term of the lease and the rent payable have been determined, the statutory formula that is set out in paragraph 6 of the new schedule is used to calculate the net present value of rental payments. That is the amount on which tax due is based.

Scottish taxpayers will be familiar with the formula, as it is very similar to the formula that is used to calculate the net present value for leases that are taxed under stamp duty land tax. Taxpayers and their agents will have access to an online calculator to assist them with the calculation. Once the net present value of the rental payments has been calculated, the tax liability can be arrived at by applying the relevant rates and thresholds.

Leases often include a consideration other than rent, such as a premium payment that is made up front. That must also be taxed, because otherwise such arrangements could be used to minimise the rent payable and therefore the tax due. Tax due on the non-rental element of the consideration will be calculated in the same way as tax on chargeable consideration generally so, for example, section 25, on the amount of tax chargeable, will apply.

The new schedule also provides that, after submitting the initial tax return, a tenant must carry out a review of the tax due based on the rent actually paid in the period. The review period is every three years. The tenant must make a tax return to revenue Scotland at each review date and at the end of the lease. That will ensure that the tenant pays the correct amount of tax over the term of the lease by providing a mechanism for adjusting the tax due and paid if the rental or other payments under the lease vary over time. The review process will also recognise and account for other changes, such as extensions to the duration of a lease or the continuation of a lease beyond its end date by tacit relocation.

That approach, which has been discussed in detail with the Law Society of Scotland and other relevant stakeholders in the working group on non-residential leases, is considered to have advantages over the current system that applies to calculating tax due on leases under stamp duty land tax. For example, the revised system provides greater certainty about the timing of recalculation of tax payable and therefore about tax payments. The revised system also places fewer obligations on the tenant to submit a tax return during the period of the lease. It will no longer be necessary to submit a return every time that the rent changes. For example, the rental payable under some leases is based on turnover and the rent changes annually, depending on turnover figures. Under LBTT, additional returns will be limited to the three-yearly return and the return at the end of the lease. In short, any recalculation of the tax chargeable will generally occur only every three years.

I am grateful to the members of the working group on non-residential leases for their invaluable input into the preparation of the detailed rules for taxing leases that are set out in the new schedule. The group’s work demonstrates what can be done through joint working to achieve an outcome that is suitable to Scotland.

I am sure that it has not escaped the committee’s notice that the leases schedule runs to more than 15 pages. That demonstrates the complexities and technicalities that arise when seeking to apply taxation fairly and reasonably to the range of commercial situations that can arise perfectly legitimately under property law. That said, the system that I have outlined is, in the view of experts in the field, now better aligned with Scots law and practices and will therefore serve taxpayers in Scotland better than the current UK stamp duty land tax system.

The dialogue with the non-residential leases working group to refine the leases schedule continues, and a further meeting of the group has been arranged for 11 June. Following those discussions, it is possible that amendments will be required to the leases provisions at stage 3. At stage 3, I will also lodge technical amendments to earlier provisions of the bill that were considered at last week’s meeting.
All the other amendments in the group are consequential technical amendments to sections in the bill, and to schedules 17 and 19, that are necessitated by the leases schedule that amendment 53 will introduce.

I move amendment 39.

Gavin Brown: Before speaking to amendment 53A, I acknowledge the great work that the non-residential leases working group and the bill team have done. It seems from the evidence that the committee has received that the group’s proposals have had wide acceptance.

I have lodged one simple amendment, which concerns the rates that would apply to leases. I am advised that, under SDLT, there are currently two rates, which are 0 per cent and 1 per cent. My amendment 53A to the cabinet secretary’s amendment 53 would give the Scottish Government flexibility to mirror the situation south of the border or not, but being different would be a proactive decision.

I am not sure what the Scottish Government’s exact thinking is on the rates that it wants to apply or whether there would be two, three, four or more bands but, as amendment 53 stands, the Government would be locked into having a nil rate band and at least two other rates, which would mean that it could not possibly mirror what happens south of the border. The Government might not want to mirror that when the time comes to set the rates, but it might want to.

For that reason, I lodged amendment 53A to keep things entirely flexible. It would give the Government the option of following exactly what happens south of the border or doing whatever it likes when the time comes to make the decision.

Malcolm Chisholm: I hesitate to speak, having made one mistake already this morning. I do not think that Gavin Brown is allowed to reply, which is perhaps a problem with the procedure in our Parliament, but my reading of his amendment 53A is that it would provide no flexibility, because it seems to say that there would have to be a nil rate band and one other tax band. The new schedule would therefore say, “at least one other tax band,” which could be one or more.

Gavin Brown: Convener, may I intervene on Malcolm Chisholm?

The Convener: No, you cannot, but it is okay.

Gavin Brown: If the member reads amendment 53A in conjunction with what the cabinet secretary said, he will see that there would not be just one band. Amendment 53A would replace “two” with “one”, which means that there could be one, two or three bands, or as many as the Scottish Government likes.

Malcolm Chisholm: Convener, am I allowed to come back in?

The Convener: Of course.

Malcolm Chisholm: That is not my reading of amendment 53A, and I do not really understand Gavin Brown’s point, but we do not need to delay things, because I am not going to vote for his amendment anyway.

John Mason: Can I intervene, convener?

The Convener: On you go.

John Mason: If I read amendment 53A correctly—Gavin Brown can correct me if I am wrong—the words “at least” in amendment 53 will stay, so we would just be replacing the phrase “two other tax bands” with the phrase “one other tax band”. The new schedule would therefore say, “at least one other tax band,” which could be one or more.

Malcolm Chisholm: Okay—I understand the point. I have made two mistakes this morning.

John Swinney: I will address the issues that Mr Brown raises in amendment 53A. Paragraph 3(2)(a) in the new schedule that will be inserted by amendment 53, which is lodged in my name, provides for a duty on the Scottish ministers to set “a nil rate band and at least two other tax bands”.

That reflects the move to a progressive tax structure and is in keeping with the provisions in the bill for setting tax bands for other land transactions, such as purchases of property. Gavin Brown’s amendment 53A would change amendment 53 so that the Scottish ministers were under a duty to set a nil rate band and at least one other band.

The committee has just had an extensive debate about the retention of the crucial two words “at least”. Interestingly, that would allow the Scottish ministers to replicate the approach to SDLT if they chose to do so. However, as Mr Brown said, his amendment would not prevent the Scottish ministers from having a nil rate band and two or more other bands for non-residential leases. In the interests of progress and consensus, I am prepared to accept Mr Brown’s amendment 53A.

Amendment 39 agreed to.

Amendments 40 to 50 moved—[John Swinney]—and agreed to.

The Convener: Amendment 65, in the name of Gavin Brown, was debated with amendment 38. Does Gavin Brown wish to move or not move amendment 65?
Gavin Brown: Without amendment 64, amendment 65 would not make sense, so I will not move it.

Amendment 65 not moved.

Schedule 17, as amended, agreed to.

Section 50 agreed to.

Schedule 18—Trusts

11:30

The Convener: Amendment 51, in the name of the cabinet secretary, is grouped with amendment 52.

John Swinney: A bare trust arrangement is used when a trust holds assets for a minor or a person with a disability or when a trustee is appointed to hold property as nominee for someone else. At present, the beneficiary of a bare trust will be liable to pay LBTT.

However, bare trusts are sometimes set up to keep the beneficiary's identity and interest confidential, which might present opportunities for tax avoidance. As a result, the bill’s policy memorandum included an intention to explore the possibility of lodging a stage 2 amendment to make the bare trustee liable for LBTT rather than the current position in which the beneficiary is liable.

Having considered the matter further, I have concluded that reversing the position for LBTT so that the liability fell on the bare trustee could create complications and unintended consequences. It is notable that for a number of taxes, including income tax and capital gains tax, the beneficiary is liable to pay the tax when the liability arises in respect of a bare trust. A better approach to tackling the problem is that proposed in amendment 51, which gives revenue Scotland a right of recovery against a bare trustee, in addition to its ability to recover tax from the beneficiary of a bare trust. For example, revenue Scotland could use that right of recovery when the beneficiary failed to make a tax return or when, following an inquiry, it is found that outstanding tax is due on a transaction.

Amendment 52 is consequential on amendment 51.

I move amendment 51.

Amendment 51 agreed to.

Amendment 52 moved—[John Swinney]—and agreed to.

Schedule 18, as amended, agreed to.

Section 51 agreed to.

After section 51

Amendment 30 moved—[John Swinney]—and agreed to.

Sections 52 to 54 agreed to.

Section 55—Application of this Act to leases

Amendment 54 moved—[John Swinney]—and agreed to.

Section 55, as amended, agreed to.

Amendment 55 moved—[John Swinney]—and agreed to.

After schedule 18

Amendment 53 moved—[John Swinney].

Amendment 53A moved—[Gavin Brown]—and agreed to.

Amendment 53, as amended, agreed to.

Section 56 agreed to.

Section 57—Connected persons

Amendments 31 and 56 moved—[John Swinney]—and agreed to.

Section 57, as amended, agreed to.

Sections 58 to 61 agreed to.

Section 62—Meaning of “effective date” of a transaction

Amendment 57 moved—[John Swinney]—and agreed to.

Section 62, as amended, agreed to.

Sections 63 to 65 agreed to.

Schedule 19—Index of defined expressions

Amendments 58 to 61 moved—[John Swinney]—and agreed to.

Schedule 19, as amended, agreed to.

Section 66 agreed to.

Section 67—Subordinate legislation

Amendment 62 moved—[John Swinney]—and agreed to.

The Convener: Amendment 66, in the name of the cabinet secretary, is grouped with amendment 67.

John Swinney: The bill provides for tax rates and tax bands to be set by order. It also provides that the order for the first setting of tax rates and bands for land transactions other than non-residential leases will be subject to the affirmative procedure. As things stand, subsequent orders
that might change tax rates or bands will be subject to the negative procedure.

Amendment 66 provides for the first order that sets tax rates and bands for non-residential leases to be subject to the affirmative procedure. Amendment 67 provides for subsequent orders that change tax rates or bands for all land transactions, including non-residential leases, to be subject to the provisional affirmative procedure. That will allow changes to the tax rates and bands by subsequent orders to be made with immediate effect, subject to parliamentary approval within 28 days.

Amendments 66 and 67 fulfil the commitment that I made in response to the Subordinate Legislation Committee’s report on the bill at stage 1. My letter to that committee stated:

“I intend to bring forward an amendment at stage 2 to provide that the power in section 24(1) will be subject to a form of provisional affirmative procedure after the first occasion that the bands and rates are set. This will allow the Scottish Government the necessary flexibility to respond swiftly to changes in the property market.”

I move amendment 66.

Amendment 66 agreed to.

Amendments 32, 63 and 67 moved—[John Swinney]—and agreed to.

Section 67, as amended, agreed to.

Sections 68 to 70 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. Members should note that the bill will be reprinted as amended and will be available in print and on the web tomorrow morning. Parliament has not yet determined when stage 3 will take place, but members can now lodge stage 3 amendments at any time with the legislation team. Members will be informed of the deadline for amendments once it has been determined.

I thank the cabinet secretary and his team for their attendance. I am sure that you will all be glad that stage 2 is now complete—I certainly am. Thank you very much.

11:38

Meeting continued in private until 11:50.
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Land and Buildings Transaction Tax (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the taxation of land transactions.

PART 1

LAND AND BUILDINGS TRANSACTION TAX

1 The tax

(1) A tax (to be known as land and buildings transaction tax) is to be charged on land transactions.

(2) The tax is chargeable—
   (a) whether or not there is an instrument effecting the transaction,
   (b) if there is such an instrument, whether or not it is executed in Scotland, and
   (c) whether or not any party to the transaction is present, or resident, in Scotland.

(3) The Tax Authority is to be responsible for the collection and management of the tax.

2 Overview

This Act is arranged as follows—

Part 2 makes provision for the key concepts underlying the tax including—

(a) which transactions are land transactions,

(b) which interests are, and which are not, chargeable interests in land,

(c) when a chargeable interest is acquired and the treatment of transactions involving contracts which require to be completed by conveyance as well as other kinds of transaction,

(d) which land transactions are, and which are not, chargeable transactions,

(e) what is, and what is not, chargeable consideration in relation to a chargeable transaction,

Part 3 makes provision for—

Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.
Land and Buildings Transaction Tax (Scotland) Bill

Chapter 1—Land transactions and chargeable interests

(a) the amount of tax payable,
(b) relief from the tax, and
(c) who is liable to pay the tax,

Part 4 provides for land transaction returns and for the payment of the tax,

Part 5 contains provision about the application of the Act in relation to certain types of buyer, including companies, partnerships and trusts,

Part 6 contains general provision, including provisions about the Tax Authority and definitions of expressions used in the Act,

Part 7 contains provisions on subordinate legislation powers and commencement as well as other final provisions.

PART 2
KEY CONCEPTS

CHAPTER 1

LAND TRANSACTIONS AND CHARGEABLE INTERESTS

Land transaction

A land transaction is the acquisition of a chargeable interest.

Chargeable interest

(1) A chargeable interest is an interest of a kind mentioned in subsection (2) which is not an exempt interest.

(2) The interests are—
(a) a real right or other interest in or over land in Scotland, or
(b) the benefit of an obligation, restriction or condition affecting the value of any such right or interest.

(3) In subsection (2), “land in Scotland” does not include land below mean low water mark.

Exempt interest

(1) An interest is exempt if it is a security interest.

(2) In subsection (1) a “security interest” means an interest or right held for the purpose of securing the payment of money or the performance of any other obligation.

(3) See also paragraphs 21 to 24 of schedule 7 (which make additional provision about exempt interests in relation to alternative property finance arrangements).

(4) The Scottish Ministers may, by regulations, modify this section so as to—
(a) provide that a description of an interest or right in relation to land is an exempt interest,
provide that a description of an interest or right in relation to land is no longer to be an exempt interest,
(c) vary a description of an exempt interest.

**Acquisition and disposal of chargeable interest**

6 **Acquisition and disposal of chargeable interest**

(1) Each of the following is an acquisition and a disposal of a chargeable interest—
(a) the creation of the interest,
(b) the renunciation or release of the interest,
(c) the variation of the interest.

(2) A person acquires a chargeable interest where—
(a) the person becomes entitled to the interest on its creation,
(b) the person’s interest or right is benefitted or enlarged by the renunciation or release of the interest, or
(c) the person benefits from the variation of the interest.

(3) A person disposes of a chargeable interest where—
(a) the person’s interest or right becomes subject to the interest on its creation,
(b) the person ceases to be entitled to the interest on its being renounced or released, or
(c) the person’s interest or right is subject to or limited by the variation of the interest.

(4) Except as otherwise provided, this Act applies however the acquisition is effected, whether by act of the parties, by order of the court or other authority, by or under any enactment or by operation of law.

7 **Buyer and seller**

(1) The buyer, in relation to a land transaction, is the person who acquires the subject-matter of the transaction.

(2) But a person is treated as the buyer only where that person has given consideration for, or is a party to, the transaction.

(3) The seller, in relation to a land transaction, is the person who disposes of the subject-matter of the transaction.

**CHAPTER 2**

**PROVISION ABOUT PARTICULAR TRANSACTIONS**

**General rules for contracts requiring conveyance**

8 **Contract and conveyance**

(1) This section applies where a contract for a land transaction is entered into under which the transaction is to be completed by a conveyance.
(2) A person is not regarded as entering into a land transaction by reason of entering into the contract.

(3) But see sections 9 and 10.

9 Completion without substantial performance

(1) If the transaction is completed without previously having been substantially performed, the contract and the transaction effected on completion are treated as parts of a single land transaction.

(2) In this case the effective date of the transaction is the date of completion.

10 Substantial performance without completion

(1) If the contract is substantially performed without having been completed, the contract is treated as if it were itself the transaction provided for in the contract.

(2) In this case the effective date of the transaction is when the contract is substantially performed.

(3) Where subsection (1) applies and the contract is subsequently completed by a conveyance—

(a) both the contract and the transaction effected on completion are notifiable transactions, and

(b) tax is chargeable on the latter transaction to the extent (if any) that the amount of tax chargeable on it is greater than the amount of tax chargeable on the contract.

(4) Where subsection (1) applies and the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that subsection is to be (to that extent) repaid by the Tax Authority.

(5) That repayment must be claimed by amendment of the land transaction return made in respect of the contract.

Contract providing for conveyance to third party

11 Contract providing for conveyance to third party

(1) This section applies where a contract is entered into under which a chargeable interest is to be conveyed by one party to the contract (A) at the direction or request of the other (B)—

(a) to a person (C) who is not a party to the contract, or

(b) either to C or to B.

(2) B is not regarded as entering into a land transaction by reason of entering into the contract, but the following provisions have effect.

(3) If the contract is substantially performed, B is treated for the purposes of this Act as acquiring a chargeable interest, and accordingly as entering into a land transaction.

(4) In such a case, the effective date of the transaction is when the contract is substantially performed.
(5) Where the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of subsection (3) is to be (to that extent) repaid by the Tax Authority.

(6) Repayment must be claimed by amendment of the land transaction return made in respect of the contract.

(7) Subject to subsection (8), sections 8 to 10 do not apply in relation to the contract.

(8) Where—
(a) this subsection applies by virtue of subsection (1)(b), and
(b) by reason of B’s direction or request, A becomes obliged to convey a chargeable interest to B,
sections 8 to 10 apply to that obligation as they apply to a contract for a land transaction that is to be completed by a conveyance.

(9) Sections 8 to 10 apply in relation to any contract between B and C, in respect of the chargeable interest referred to in subsection (1), that is to be completed by a conveyance.

(10) References to completion in sections 8 to 10, as they apply by virtue of subsection (9), include references to conveyance by A to C of the subject-matter of the contract between B and C.

**Options etc.**

12 **Options and rights of pre-emption**

(1) The acquisition of—
(a) an option binding the grantor to enter into a land transaction, or
(b) a right of pre-emption preventing the grantor from entering into, or restricting the right of the grantor to enter into, a land transaction,

is a land transaction distinct from any land transaction resulting from the exercise of the option or right.

(2) They may be linked transactions (see section 56).

(3) The reference in subsection (1)(a) to an option binding the grantor to enter into a land transaction includes an option requiring the grantor either to enter into a land transaction or to discharge the grantor’s obligations under the option in some other way.

(4) The effective date of the transaction in the case of the acquisition of an option or right such as is mentioned in subsection (1) is when the option or right is acquired (as opposed to when it becomes exercisable).

(5) Nothing in this section applies to so much of an option or right of pre-emption as constitutes or forms part of a land transaction apart from this section.
Exchanges

(1) Where a land transaction is entered into by a person as buyer (alone or jointly) wholly or partly in consideration of another land transaction being entered into by that person (alone or jointly) as seller, this Act applies in relation to each transaction as if each were distinct and separate from the other (and they are not linked transactions within the meaning of section 56).

(2) A transaction is treated for the purposes of this Act as entered into by a person as buyer wholly or partly in consideration of another land transaction being entered into by that person as seller in any case where an obligation to give consideration for a land transaction that a person enters into as buyer is met wholly or partly by way of that person entering into another transaction as seller.

(3) As to the amount of the chargeable consideration in the case of exchanges and similar transactions, see—

(a) paragraphs 5 and 6 of schedule 2,

(b) paragraph 17 of that schedule.

Interpretation

Meaning of “substantial performance”

(1) A contract is substantially performed when—

(a) the buyer, or a person connected with the buyer, takes possession of the whole, or substantially the whole, of the subject-matter of the contract,

(b) a substantial amount of the consideration is paid or provided, or

(c) there is an assignation, subsale or other transaction (relating to the whole or part of the subject-matter of the contract) as a result of which a person other than the original buyer becomes entitled to call for a conveyance to that person.

(2) For the purpose of subsection (1)(a)—

(a) possession includes receipt of rent or the right to receive it, and

(b) it is immaterial whether possession is taken under the contract or under a licence.

(3) For the purposes of subsection (1)(b), a substantial amount of the consideration is paid or provided—

(a) if none of the consideration is rent, where the whole or substantially the whole of the consideration is paid or provided,

(b) if the only consideration is rent, when the first payment of rent is made,

(c) if the consideration includes both rent and other consideration, when—

(i) the whole or substantially the whole of the consideration other than rent is paid or provided, or

(ii) the first payment of rent is made.

(4) For the purposes of subsection (1)(c) the reference to an assignation, subsale or other transaction includes the grant or assignation of an option.
CHAPTER 3

CHARGEABLE TRANSACTIONS AND CHARGEABLE CONSIDERATION

Chargeable transaction

15 Chargeable transaction
A land transaction is a chargeable transaction unless it is—
(a) an exempt transaction, or
(b) otherwise exempt from charge.

16 Exempt transaction
A transaction is exempt if schedule 1 provides that it is so exempt.

Chargeable consideration

17 Chargeable consideration
(1) Schedule 2 makes provision as to the chargeable consideration for a transaction.
(2) The Scottish Ministers may, by regulations, modify this Act relating to chargeable consideration and make such other provision as they consider appropriate about—
(a) what is to be treated as chargeable consideration,
(b) the determination of the amount or value of chargeable consideration.

Contingent, uncertain or unascertained consideration

18 Contingent consideration
(1) Subsection (2) applies where the whole or part of the chargeable consideration for a transaction is contingent.
(2) The amount or value of the consideration is to be determined on the assumption that the outcome of the contingency will be such that the consideration is payable or, as the case may be, does not cease to be payable.
(3) In this Act, “contingent”, in relation to consideration, means—
(a) that it is to be paid or provided only if some uncertain future event occurs, or
(b) that it is to cease to be paid or provided if some uncertain future event occurs.

19 Uncertain or unascertained consideration
(1) Subsection (2) applies where the whole or part of the chargeable consideration for a transaction is uncertain or unascertained.
(2) The amount or value of the consideration is to be determined on the basis of a reasonable estimate.
(3) In this section, “uncertain”, in relation to consideration, means its amount or value depends on uncertain future events.
20 Contingent, uncertain or unascertained consideration: further provision

Sections 18 and 19 have effect subject to—

(a) section 31 (return where contingency ceases or consideration ascertained),

(b) section 32 (contingency ceases or consideration is ascertained: less tax payable),

(c) section 41 (application to defer payment in case of contingent or uncertain consideration).

Annuities etc.

21 Annuities etc.: chargeable consideration limited to 12 years’ payments

(1) This section applies to so much of the chargeable consideration for a land transaction as consists of an annuity payable—

(a) for life,

(b) in perpetuity,

(c) for an indefinite period, or

(d) for a definite period exceeding 12 years.

(2) The consideration to be taken into account is limited to 12 years’ annual payments.

(3) Where the amount payable varies, or may vary, from year to year, the 12 highest annual payments are to be taken into account.

(4) No account is to be taken of any provision for adjustment of the amount payable in line with the retail prices index, the consumer prices index or any other similar index.

(5) References in this section to annual payments are to payments in respect of each successive period of 12 months beginning with the effective date of the transaction.

(6) For the purposes of this section the amount or value of any payment is to be determined (if necessary) in accordance with section 18 (contingent consideration) or 19 (uncertain or unascertained consideration).

(7) References in this section to an annuity include any consideration (other than rent) that falls to be paid or provided periodically.

(8) References to payment are to be read accordingly.

(9) Where this section applies—

(a) sections 31 and 32 (adjustment where contingency ceases or consideration is ascertained) do not apply, and

(b) no application may be made under section 41 (application to defer payment in case of contingent or uncertain consideration).

Deemed market value

22 Deemed market value where transaction involves connected company

(1) This section applies where the buyer is a company and—
Part 2—Key concepts
Chapter 3—Chargeable transactions and chargeable consideration

(a) the seller is connected with the buyer, or
(b) some or all of the consideration for the transaction consists of the issue or transfer of shares in a company with which the seller is connected.

(2) The chargeable consideration for the transaction is to be taken to be not less than—

(a) the market value of the subject-matter of the transaction as at the effective date of the transaction, and
(b) if the acquisition is the grant of a lease, the rent.

(3) In this section—

"company" means a body corporate,

"shares" includes stock and the reference to shares in a company includes reference to securities issued by a company.

(4) Where this section applies, paragraph 1 of schedule 1 (exemption of transactions for which there is no chargeable consideration) does not apply.

(5) But this section has effect subject to any other provision affording exemption or relief from the tax.

(6) This section is subject to the exceptions provided for in section 23.

23 Exceptions from deemed market value

(1) Section 22 does not apply in the following cases.

(2) In the following provisions “the company” means the company that is the buyer in relation to the transaction in question.

(3) Case 1 is where immediately after the transaction the company holds the property as trustee in the course of a business carried on by it that consists of or includes the management of trusts.

(4) Case 2 is where—

(a) immediately after the transaction the company holds the property as trustee, and
(b) the seller is connected with the company only because of section 1122(6) of the Corporation Tax Act 2010 (c.4).

(5) Case 3 is where—

(a) the seller is a company and the transaction is, or is part of, a distribution of the assets of that company (whether or not in connection with its winding up), and
(b) it is not the case that—

(i) the subject-matter of the transaction, or
(ii) an interest from which that interest is derived,

has, within the period of 3 years immediately preceding the effective date of the transaction, been the subject of a transaction in respect of which group relief was claimed by the seller.
PART 3

CALCULATION OF TAX AND RELIEFS

Amount of tax chargeable

24  Tax rates and tax bands

(1) The Scottish Ministers must, by order, specify the tax bands and the percentage tax rates for each band—
(a) for residential property transactions, and
(b) for non-residential property transactions.

(2) An order under subsection (1) must specify, in the case of each type of transaction—
(a) a nil rate tax band and at least two other tax bands,
(b) the tax rate for the nil rate tax band, which must be 0%, and
(c) the tax rate for each tax band above the nil rate tax band so that the rate for each band is higher than the rate for the band below it.

(3) A transaction is a residential property transaction if—
(a) the main subject-matter of the transaction consists entirely of an interest in land that is residential property, or
(b) where the transaction is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of such an interest.

(4) A transaction is a non-residential property transaction if—
(a) the main subject-matter of the transaction consists of or includes an interest in land that is not residential property, or
(b) where the transaction is one of a number of linked transactions, the main subject-matter of any transaction consists of or includes such an interest.

25  Amount of tax chargeable

(1) The amount of tax chargeable in respect of a chargeable transaction is to be determined as follows.

Step 1
For each tax band applicable to the type of transaction, multiply so much of the chargeable consideration for the transaction as falls within the band by the tax rate for that band.

Step 2
Calculate the sum of the amounts reached under Step 1.
The result is the amount of tax chargeable.

(2) In the case of a transaction for which the whole or part of the chargeable consideration is rent this section has effect subject to section 55 (application of this Act to leases).

(3) This section is subject to—
(a) schedule 5 (multiple dwellings relief),
(b) schedule 9 (crofting community right to buy relief),
(c) Part 3 of schedule 11 (acquisition relief).

26 **Amount of tax chargeable: linked transactions**

(1) Where a chargeable transaction is one of a number of linked transactions, the amount of tax chargeable in respect of the transaction is to be determined as follows.

*Step 1*

For each tax band applicable to the type of transaction, multiply so much of the relevant consideration as falls within the band by the tax rate for that band.

*Step 2*

Calculate the sum of the amounts reached under Step 1.

The result is the total tax chargeable.

*Step 3*

Divide the chargeable consideration for the transaction by the relevant consideration.

*Step 4*

Multiply the total tax chargeable by the fraction reached under Step 3.

The result is the amount of tax chargeable.

(2) The relevant consideration is the total of the chargeable consideration for all the linked transactions.

(3) In the case of a transaction for which the whole or part of the chargeable consideration is rent this section has effect subject to section 55 (application of this Act to leases).

(4) This section is subject to—

(a) schedule 5 (multiple dwellings relief),
(b) schedule 9 (crofting community right to buy relief),
(c) Part 3 of schedule 11 (acquisition relief).

**Reliefs**

27 **Reliefs**

(1) The following schedules provide for reliefs from the tax in relation to certain land transactions—

- schedule 3 (sale and leaseback relief),
- schedule 4 (relief for certain acquisitions of residential property),
- schedule 5 (multiple dwellings relief),
- schedule 6 (relief for certain acquisitions by registered social landlords),
- schedule 7 (alternative property finance relief),
- schedule 8 (relief for alternative finance investment bonds),
- schedule 9 (crofting community right to buy relief),
- schedule 10 (group relief),
- schedule 11 (reconstruction relief and acquisition relief),
schedule 12 (relief for incorporation of limited liability partnership),
schedule 13 (charities relief),
schedule 14 (relief for certain compulsory purchases),
schedule 15 (relief for compliance with planning obligations),
schedule 16 (public bodies relief).

(2) Any relief under any of those schedules must be claimed in a land transaction return or an amendment of such a return.

(3) The Scottish Ministers may, by order, modify this Act so as to—
   (a) add a relief,
   (b) modify an existing relief, or
   (c) remove a relief.

(4) An order under subsection (3) may also modify any other enactment that the Scottish Ministers consider appropriate.

Liability for tax

15 28  Liability for tax

(1) The buyer is liable to pay the tax in respect of a chargeable transaction.

(2) As to the liability of buyers acting jointly, see—
   (a) section 48(2)(c) (joint buyers),
   (b) paragraph 3 of schedule 17 (partnerships), and
   (c) paragraphs 14 to 17 of schedule 18 (trusts).

PART 4
RETURNS AND PAYMENT

CHAPTER 1
RETURNS

Duty to make return

29  Duty to make return

(1) The buyer in a notifiable transaction must make a return to the Tax Authority.

(2) If the transaction is a chargeable transaction, the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.

(3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the transaction.
Notifiable transactions

(1) A land transaction is notifiable unless it is—

(a) an exempt transaction,

(b) an acquisition of the ownership of land where the chargeable consideration for the acquisition is less than £40,000,

(c) an acquisition of a chargeable interest other than a major interest in land where the chargeable consideration does not exceed the nil rate tax band applicable to the transaction, or

(d) an acquisition specified in subsection (1A).

(1A) The following transactions in relation to leases are also not notifiable—

(a) the grant of a lease for a period of 7 years or more where—

(i) any chargeable consideration other than rent is less than £40,000, and

(ii) the relevant rent is less than £1,000,

(b) the assignation or renunciation of a lease where—

(i) the lease was originally granted for a period of 7 years or more, and

(ii) the chargeable consideration for the assignation or renunciation is less than £40,000,

(c) the grant of a lease for a period of less than 7 years where the chargeable consideration does not exceed the nil rate band applicable to the transaction, and

(d) the assignation or renunciation of a lease where—

(i) the lease was originally granted for a period of less than 7 years, and

(ii) the chargeable consideration for the assignation or renunciation does not exceed the nil rate band applicable to the transaction.

(2) In subsections (1) and (1A), “chargeable consideration”—

(a) where the transaction is one of a number of linked transactions, means the total of the chargeable consideration for all the linked transactions,

(b) includes any amount in respect of which tax would be chargeable but for a relief.

(3) The exceptions in subsections (1)(a) to (d) and (1A) do not apply where the transaction is a transaction that a person is treated as entering into by virtue of section 11(3).

(4) This section has effect subject to—

(a) section 10(3) (substantial performance without completion),

(b) paragraph 17(6) of schedule 2 (arrangements involving public or educational bodies),

(c) paragraph 12 of schedule 7 (alternative property finance), and

(d) paragraph 40 of schedule 17 (transfer of partnership interests).

(5) The Scottish Ministers may, by order, amend subsection (1)(b), (1A)(a)(i) or (b)(ii) so as to substitute, for the figure for the time being specified there, a different figure.
Adjustments and further returns

31 Return where contingency ceases or consideration ascertained

(1) The buyer in a land transaction must make a return to the Tax Authority if—

(a) section 18(2) or 19(2) (contingent, uncertain or unascertained consideration) applies in relation to the transaction (or to any transaction in relation to which it is a linked transaction),

(b) an event mentioned in subsection (2) occurs, and

(c) the effect of the event is that—

(i) the transaction becomes notifiable,

(ii) additional tax is payable in respect of the transaction, or

(iii) tax is payable where none was payable before.

(2) The events are—

(a) in the case of contingent consideration, the contingency occurs or it becomes clear that it will not occur, or

(b) in the case of uncertain or unascertained consideration, an amount relevant to the calculation of the consideration, or any instalment of consideration, becomes ascertained.

(3) The return must be made before the end of the period of 30 days beginning with the day after the date on which the event occurred.

(4) The return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.

(5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

32 Contingency ceases or consideration ascertained: less tax payable

(1) The buyer in a land transaction may take one of the steps mentioned in subsection (2) to obtain a repayment of tax if—

(a) section 18(2) or 19(2) (contingent, uncertain and unascertained consideration) applies in relation to the transaction (or to any transaction in relation to which it is a linked transaction),

(b) an event mentioned in section 31(2) occurs, and

(c) the effect of the event is that less tax is payable in respect of the transaction than has already been paid.

(2) The steps are—

(a) within the period allowed for amendment of the land transaction return, amend the return accordingly,

(b) after the end of that period (if the land transaction return is not so amended), make a claim to the Tax Authority for repayment of the amount overpaid.
(3) This section does not apply so far as the consideration consists of rent (see section 55 (application of this Act to leases)).

### 33 Further return where relief withdrawn

1. The buyer in a land transaction must make a further return to the Tax Authority if relief is withdrawn to any extent under—
   - (a) Part 5 of schedule 4 (relief for certain acquisitions of residential property),
   - (b) Part 5 of schedule 5 (transfer of multiple dwellings),
   - (ba) Part 4 of schedule 8 (relief for alternative finance investment bonds),
   - (c) Part 3 of schedule 10 (group relief),
   - (d) Part 4 of schedule 11 (reconstruction relief and acquisition relief), or
   - (e) paragraph 4 of schedule 13 (charities relief).
2. The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable.
3. The return must be made before the end of the period of 30 days beginning with the day after the date on which the relevant event occurred.
4. The relevant event is—
   - (a) in relation to the withdrawal of relief under schedule 4, an event mentioned in paragraph 14(a), (b) or (c) or 16(a), (b) or (c) of that schedule,
   - (b) in relation to the withdrawal of relief under schedule 5, an event mentioned in paragraph 19(a) or 21(a) of that schedule,
   - (ba) in relation to the withdrawal of relief under schedule 8, an event mentioned in paragraph 16 of that schedule,
   - (c) in relation to the withdrawal of group relief, the buyer ceasing to be a member of the same group as the seller within the meaning of schedule 10,
   - (d) in relation to the withdrawal of reconstruction relief or acquisition relief, the change of control of the acquiring company mentioned in paragraph 13 of schedule 11,
   - (e) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraphs 5 and 6 of schedule 13.

### 34 Return or further return in consequence of later linked transaction

1. This section applies where the effect of a transaction (“the later transaction”) that is linked to an earlier transaction is that—
   - (a) the earlier transaction becomes notifiable,
   - (b) additional tax is payable in respect of the earlier transaction, or
   - (c) tax is payable in respect of the earlier transaction where none was payable before.
2. The buyer in the earlier transaction must make a return (or further return) in respect of that transaction.
(3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the later transaction.

(4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable as a result of the later transaction.

(5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the earlier transaction.

(6) This section does not affect any requirement to make a land transaction return in respect of the later transaction.

Returns: form and content etc.

Form and content

(1) A return under this Act must—
   (a) be in the form specified by the Tax Authority, and
   (b) contain the information specified by the Tax Authority.

(2) The Tax Authority may specify different forms and information for—
   (a) different kinds of return, and
   (b) different kinds of transaction.

(3) The return is treated as containing any information provided by the buyer for the purpose of completing the return.

Declaration

(1) A return under this Act must also include a declaration by the buyer that the return is, to the best of the buyer’s knowledge, correct and complete.

(2) However, where the buyer authorises an agent to complete the return—
   (a) the agent must certify in the return that the buyer has declared that the information provided in the return, with the exception of the relevant date, is to the best of the buyer’s knowledge, correct and complete, and
   (b) the return must include a declaration by the agent that the relevant date provided in the return is, to the best of the agent’s knowledge, correct.

(3) The relevant date is—
   (a) in relation to a return under section 29, the effective date of the transaction,
   (b) in relation to a return under section 31, the date of the event as a result of which the return is required,
   (c) in relation to a return under section 33, the date on which the relevant event occurred,
   (d) in relation to a return under section 34, the effective date of the later transaction.

Amendment

(1) The buyer in a land transaction may amend a return relating to the transaction by notice to the Tax Authority.
(2) The notice must—
   (a) be in the form specified by the Tax Authority, and
   (b) contain the information specified by the Tax Authority.

(3) An amendment may not be made more than 12 months after the last day of the period within which the return must be made.

Miscellaneous

38 Interpretation
References in this Act to the making of a return are to the making of a return that—
   (a) complies with the requirements of sections 35 and 36, and
   (b) contains an assessment of the tax chargeable in respect of the transaction (if one is required).

39 Power to amend period in which returns must be made
(1) The Scottish Ministers may, by order, amend a provision listed in subsection (2) so as to substitute, for the period for the time being specified there, a different period.

(2) The provisions are—
   (a) section 29(3),
   (b) section 31(3),
   (c) section 33(3).

CHAPTER 2

Payment of tax

40 (1) Tax payable in respect of a land transaction must be paid to the Tax Authority.

(2) Where a return is to be made under any of the following provisions, the tax or additional tax payable must be paid at the same time as the return is made—
   (za) section 29 (land transaction return),
   (a) section 31 (return where contingency ceases or consideration ascertained),
   (b) section 33 (further return where relief withdrawn), or
   (c) section 34 (return or further return in consequence of later linked transaction).

(3) Tax payable as a result of the amendment of a return must be paid at the same time as the amendment is made.

(4) For the purposes of subsections (2) and (3), tax is treated as paid if arrangements satisfactory to the Tax Authority are made for payment of the tax.

(5) This section is subject to section 41 (application to defer payment of tax in case of contingent or uncertain consideration).
41 Application to defer payment in case of contingent or uncertain consideration

(1) The buyer may apply to the Tax Authority to defer payment of tax in a case where—
   (a) the amount of tax payable depends on the amount or value of chargeable
       consideration that, at the effective date of the transaction, is contingent or
       uncertain, and
   (b) the chargeable consideration falls to be paid or provided on one or more future
       dates of which at least one falls, or may fall, more than 6 months after the
       effective date of the transaction.

(2) An application under this section must—
   (a) be in the form specified by the Tax Authority, and
   (b) contain the information specified by the Tax Authority.

(3) An application under this section does not affect the buyer’s obligations as regards
    payment of tax in respect of chargeable consideration that—
    (a) has already been paid or provided at the time the application is made, or
    (b) is not contingent and whose amount is ascertained or ascertainable at the time the
        application is made.

(4) Subsection (3) applies as regards both the time of payment and the calculation of the
    amount payable.

(5) This section does not apply so far as the consideration consists of rent (see section 55
    (application of this Act to leases)).

42 Regulations about applications under section 41

(1) The Scottish Ministers may, by regulations, make further provision about applications
    under section 41.

(2) The regulations may in particular—
    (a) specify when an application is to be made,
    (b) require the buyer to provide such information as the Tax Authority may
        reasonably require for the purposes of determining whether to accept an
        application,
    (c) specify the grounds on which an application may be refused,
    (d) specify the procedure for reaching a decision on the application,
    (e) make provision for postponing payment of tax when an application has been
        made,
    (f) provide for the effect of accepting an application,
    (g) require the buyer to make a return or further return, and to make such payments or
        further payments of tax as may be specified, in such circumstances as may be
        specified.

(3) Regulations under this section may also provide that where the circumstances in
    subsection (4) arise—
    (a) sections 31 and 32 (adjustment where contingency ceases or consideration is
        ascertained) do not apply in relation to the payment, and
(b) instead, any necessary adjustment is to be made in accordance with the regulations.

(4) The circumstances are—

(a) a payment is made as mentioned in section 41(3), and

(b) an application under this section is accepted in respect of other chargeable consideration taken into account in calculating the amount of that payment.

CHAPTER 3

REGISTRATION OF LAND TRANSACTIONS ETC.

43 Return to be made and tax paid before application for registration

(1) The Keeper of the Registers of Scotland (“the Keeper”) may not accept an application for registration of a document effecting or evidencing a notifiable transaction unless—

(a) a land transaction return has been made in relation to the transaction, and

(b) any tax payable in respect of the transaction has been paid.

(2) The Tax Authority must provide the Keeper with such information as the Keeper reasonably requires to comply with subsection (1).

(3) In this section, “registration” means registration or recording in any register under the management and control of the Keeper.

(3A) For the purposes of subsection (1)(b), tax is treated as paid if arrangements satisfactory to the Tax Authority are made for the payment of the tax.

(4) This section is subject to section 41 (application to defer payment of tax in case of contingent or uncertain consideration).

PART 5

APPLICATION OF ACT TO CERTAIN PERSONS AND BODIES

44 Companies and other organisations

(1) Everything to be done by an organisation under this Act is to be done by the organisation acting through—

(a) the proper officer of the organisation, or

(b) another person having for the time being the express, implied or apparent authority of the organisation to act on its behalf for the purpose.

(2) Subsection (1)(b) does not apply where a liquidator has been appointed for the organisation.

(3) For the purposes of this Act—

(a) the proper officer of a company is the secretary, or person acting as secretary, of the company,

(b) the proper officer of an unincorporated association (or of a company that does not have a proper officer within paragraph (a)) is the treasurer, or person acting as treasurer, of the association or, as the case may be, the company.
(4) But, where a liquidator or administrator has been appointed for the organisation, the liquidator or, as the case may be, the administrator is the proper officer.

(5) If two or more persons are appointed to act jointly or concurrently as the administrator of the organisation, the reference to the administrator in subsection (4) is to—

(a) such one of them as is specified in a notice given to the Tax Authority by those persons for the purposes of this section, or

(b) where the Tax Authority is not so notified, such one or more of those persons as the Tax Authority may designate as the proper officer for those purposes.

(6) In this section, “organisation” means—

(a) a company,

(b) an unincorporated association.

Unit trust schemes

(1) This Act (with the exception of the provisions mentioned in subsection (8)) applies in relation to a unit trust scheme as if—

(a) the trustees were a company, and

(b) the rights of the unit holders were shares in the company.

(2) Each of the parts of an umbrella scheme is regarded for the purposes of this Act as a separate unit trust scheme and the umbrella scheme as a whole is not so regarded.

(3) An “umbrella scheme” means a unit trust scheme—

(a) that provides arrangements for separate pooling of the contributions of participants and the profits or income out of which payments are to be made for them, and

(b) under which the participants are entitled to exchange rights in one pool for rights in another.

(4) A “part” of an umbrella scheme means such of the arrangements as relate to a separate pool.

(5) In this Act—

“unit trust scheme” has the same meaning as in the Financial Services and Markets Act 2000 (c.8), and

“unit holder” means a participant in a unit trust scheme.

(6) The Scottish Ministers may, by regulations, provide that a scheme of a description specified in the regulations is to be treated as not being a unit trust scheme for the purposes of this Act.

(7) Section 620 of the Corporation Tax Act 2010 (c.4) (court investment funds treated as authorised unit trusts) applies for the purposes of this Act as it applies for the purposes of that Act, with the substitution for references to an authorised unit trust of references to a unit trust scheme.

(8) A unit trust scheme is not to be treated as a company for the purposes of schedules 10 (group relief) and 11 (reconstruction relief and acquisition relief).
46 Open-ended investment companies

(1) The Scottish Ministers may, by regulations, make such provision as they consider appropriate for securing that the provisions of this Act have effect in relation to—

(a) open-ended investment companies of such description as may be prescribed in the regulations, and

(b) transactions involving such companies,

in a manner corresponding, subject to such modifications as the Scottish Ministers consider appropriate, to the manner in which they have effect in relation to unit trust schemes and transactions involving such trusts.

(2) The regulations may, in particular, make provision—

(a) modifying the operation of any provision in relation to open-ended investment companies so as to secure that arrangements for treating the assets of such a company as assets comprised in separate pools are given an effect corresponding to that of equivalent arrangements constituting the separate parts of an umbrella scheme,

(b) treating the separate parts of the undertaking of an open-ended investment company in relation to which such provision is made as distinct companies for the purposes of this Act.

(3) In this section—

“open-ended investment company” has the meaning given by section 236 of the Financial Services and Markets Act 2000 (c.8),

“umbrella scheme” has the same meaning as in section 45.

47 Residential property holding companies

(1) The Scottish Ministers may, by regulations, provide for qualifying transfers of interests in residential property holding companies—

(a) to be treated as land transactions, and

(b) to be chargeable transactions.

(2) A “residential property holding company” means a company—

(a) whose sole or main activity is holding or investing in chargeable interests in residential property,

(b) whose property consists of or includes chargeable interests in residential property, and

(c) whose shares are not listed on a recognised stock exchange.

(2A) For the purposes of subsection (2)(a) “chargeable interests” includes any interest which would be a chargeable interest but for the fact that it relates to land outwith Scotland.

(3) A “qualifying transfer” is a transfer of an interest in such a company that results in the transferee acquiring the right to occupy some or all of the company’s residential property.

(4) Regulations under subsection (1) may in particular make provision, or further provision, about—

(a) the kinds of interest, transfer of which is a qualifying transfer,
(b) the kinds of transfers which are and are not qualifying transfers,
(c) the rights which are rights to occupy a company’s residential property for the purposes of such transfers,
(d) the chargeable consideration in the case of such transfers,
(e) the tax bands and tax rates that are to apply to such transfers (including specifying tax bands and tax rates for such transfers),
(f) the person who is to be liable to pay the tax,
(g) the application or disapplication of any reliefs in relation to such transfers.

(4A) Regulations under subsection (1) may also provide that, for the purposes of this section, “residential property” includes such other kinds of property as may be specified in the regulations.

(5) Regulations under subsection (1) may modify any enactment (including this Act).

48 Joint buyers
(1) This section applies to a land transaction where there are two or more buyers who are or will be jointly entitled to the interest acquired.

(2) The general rules are that—
   (a) any obligation of the buyer under this Act in relation to the transaction is an obligation of the buyers jointly but may be discharged by any of them,
   (b) anything required or authorised by this Act to be done in relation to the buyer must be done by or in relation to all of them, and
   (c) any liability of the buyer under this Act in relation to the transaction (in particular, any liability arising by virtue of the failure to fulfil an obligation within paragraph (a)), is a joint and several liability of the buyers.

(3) The general rules are subject to the following provisions—
   (a) if the transaction is a notifiable transaction, a single land transaction return is required,
   (b) the declaration required by section 36(1) or (2)(a) (declaration that return is complete and correct) must be made by all the buyers.

(4) This section has effect subject to—
   (a) the provisions of schedule 17 (partnerships), and
   (b) paragraphs 14 to 17 of schedule 18 (trusts).

49 Partnerships
(1) Schedule 17 makes provision about the application of this Act in relation to partnerships.

(2) The Scottish Ministers may, by regulations, modify schedule 17.

50 Trusts
Schedule 18 makes provision about the application of this Act in relation to trusts.
**51 Persons acting in a representative capacity etc.**

(1) The personal representatives of a person who is the buyer in a land transaction—

(a) are responsible for discharging the obligations of the buyer under this Act in relation to the transaction, and

(b) may deduct any payment made by them under this Act out of the assets and effects of the deceased person.

(2) A receiver appointed by a court in the United Kingdom having the direction and control of any property is responsible for discharging any obligations under this Act in relation to a transaction affecting that property as if the property were not under the direction and control of the court.

**PART 5A**

**APPLICATION OF ACT TO LEASES AND LICENCES**

**Leases**

55 Application of this Act to leases

Schedule 18A makes provision about the application of this Act to chargeable transactions involving leases, including provision for the calculation of the tax chargeable in relation to such transactions.

**Licences**

51A Application of this Act to licences

(1) The Scottish Ministers may, by regulations, prescribe descriptions of non-residential licences to occupy property, transactions in relation to which are to be land transactions for the purposes of this Act.

(2) The regulations may also make provision, among other things—

(a) for transactions, which result in the acquisition of interests in licences, to be land transactions,

(b) for what the chargeable consideration is to be in relation to a licence,

(c) for the determination of the amount or value of that chargeable consideration,

(d) for the calculation of the tax chargeable,

(e) specifying that certain land transactions relating to a licence are not to be notifiable under section 30.

(3) Regulations under this section may modify any enactment (including this Act).

**PART 6**

**GENERAL AND INTERPRETATION**

**The Tax Authority**

52 The Tax Authority

(1) For the purposes of this Act, the Tax Authority is the Scottish Ministers.
(2) The Scottish Ministers may, by order, amend subsection (1) to provide that another person is the Tax Authority.

53 Delegation of functions to Keeper

(1) The Tax Authority may delegate the exercise of any of its functions under this Act to the Keeper of the Registers of Scotland.

(2) But subsection (1) does not apply to any function of making an order or regulations.

(3) A delegation under this section may be varied or revoked at any time.

(4) A delegation under this section does not affect the Tax Authority’s responsibility for the exercise of any functions delegated or the Authority’s ability to carry out such functions.

(5) The Tax Authority may reimburse the Keeper for any expenditure incurred which is attributable to the exercise by the Keeper of functions delegated under this section.

54 Review and appeal

(1) The Scottish Ministers may, by regulations, make provision for—

(a) the review by the Tax Authority, on the application of a specified person, of any specified kind of decision by the Tax Authority,

(b) the appeal by a specified person to a tribunal or court against any specified kind of decision by the Tax Authority.

(2) Regulations under this section may modify any provision made by or under this Act.

(3) In this section, “specified” means specified in the regulations.

Linked transactions

56 Linked transactions

(1) Transactions are linked for the purposes of this Act if they form part of a single scheme, arrangement or series of transactions between the same seller and buyer or, in either case, persons connected with them.

(2) Where there are two or more linked transactions with the same effective date, the buyer, or all of the buyers if there is more than one, may make a single land transaction return as if all of those transactions that are notifiable were a single notifiable transaction.

(3) Where two or more buyers make a single return in respect of linked transactions, section 48 applies as if—

(a) the transaction in question were a single transaction, and

(b) those buyers were buyers acting jointly.

(4) This section is subject to section 13(1) (exchanges).

Connected persons

57 Connected persons

Section 1122 of the Corporation Tax Act 2010 (c.4) (connected persons) has effect for the purposes of the following provisions—

(a) section 14,
Part 6—General and interpretation

(b) section 22,
(c) section 23,
(d) section 56,
(e) paragraphs 1, 11 and 13 of schedule 2,
(f) schedule 4,
(g) Part 5 of schedule 5,
(ga) schedule 8,
(h) schedule 17 (but see paragraph 48),
(ha) paragraph 18 of schedule 18A.

Interpretation

58 Meaning of “residential property”

(1) In this Act “residential property” means—

(a) a building that is used or is suitable for use as a dwelling, or is in the process of being constructed or adapted for such use,

(b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or other structure on such land), or

(c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b).

(2) Accordingly, “non-residential property” means any property that is not residential property.

(3) For the purposes of subsection (1) a building used for any of the following purposes is used as a dwelling—

(a) residential accommodation for school pupils,

(b) residential accommodation for students, other than accommodation falling within subsection (4)(b),

(c) residential accommodation for members of the armed forces,

(d) an institution that is the sole or main residence of at least 90% of its residents and does not fall within any of paragraphs (a) to (f) of subsection (4).

(4) For the purposes of subsection (1) a building used for any of the following purposes is not used as a dwelling—

(a) a home or other institution providing residential accommodation for children,

(b) a hall of residence for students in further or higher education,

(c) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder,

(d) a hospital or hospice,

(e) a prison or similar establishment,

(f) a hotel or inn or similar establishment.
(5) Where a building is used for a purpose specified in subsection (4), no account is to be taken for the purposes of subsection (1)(a) of its suitability for any other use.

(6) Where a building that is not in use is suitable for use for at least one of the purposes specified in subsection (3) and at least one of those specified in subsection (4)—

(a) if there is one such use for which it is most suitable, or if the uses for which it is most suitable are all specified in the same paragraph, no account is to be taken for the purposes of subsection (1)(a) of its suitability for any other use,

(b) otherwise, the building is to be treated for those purposes as suitable for use as a dwelling.

(7) In this section “building” includes part of a building.

(8) Where six or more separate dwellings are the subject of a single transaction involving the transfer of a major interest in, or the grant of a lease over, them, then, for the purposes of this Act as it applies in relation to that transaction, those dwellings are treated as not being residential property.

(9) The Scottish Ministers may, by order—

(a) amend subsections (3) and (4) so as to change or clarify the cases where use of a building is, or is not to be, use of a building as a dwelling for the purposes of subsection (1),

(b) amend or repeal subsection (8).

59 Meaning of “major interest” in land

References in this Act to a “major interest” in land are to—

(a) ownership of land, or

(b) the tenant’s right over or interest in land subject to a lease.

60 Meaning of “subject-matter” and “main subject-matter”

References in this Act to the subject-matter of a land transaction or a contract are to the chargeable interest acquired (the “main subject-matter”) by virtue of the transaction or contract, together with any interest or right pertaining to it that is acquired with it.

61 Meaning of “market value”

For the purpose of this Act “market value” is to be determined as for the purposes of the Taxation of Chargeable Gains Act 1992 (c.12) (see sections 272 to 274 of that Act).

62 Meaning of “effective date” of a transaction

(1) Except as otherwise provided, the effective date of a land transaction for the purposes of this Act is—

(a) the date of completion, or

(b) such alternative date as the Scottish Ministers may prescribe by regulations.

(2) Other provision as to the effective date of certain land transactions is made by—

(a) section 10(2) (substantial performance of contract without settlement),
(b) section 11(4) (substantial performance of contract requiring conveyance to third party),
(c) section 12(4) (options and rights of pre-emption), and
(d) paragraph 27(2) of schedule 18A (agreement for lease substantially performed etc.).

63 Meaning of “completion”

(1) In this Act, “completion” means—
(a) in relation to a lease, when it is executed by the parties or constituted by any means,
(b) in relation to any other transaction, the settlement of the transaction.

(2) References to completion are to completion of the land transaction proposed, between the same parties, in substantial conformity with the contract.

64 General interpretation

In this Act—

“acquisition relief” means relief under Part 3 of schedule 11,
“charities relief” means relief under schedule 13,
“company” means (except as otherwise expressly provided) a body corporate other than a partnership,
“contract” includes any agreement,
“conveyance” includes any instrument,
“employee” includes an office-holder and related expressions have a corresponding meaning,
“group relief” means relief under schedule 10,
“jointly entitled” means entitled as joint owners or common owners,
“land transaction return” means a return under section 29(1),
“personal representatives”, in relation to a person, include that person’s executors,
“reconstruction relief” means relief under Part 2 of schedule 11,
“registered social landlord” means a body registered in the register maintained under section 20(1) of the Housing (Scotland) Act 2010 (asp 17),
“the tax” means land and buildings transaction tax.

65 Index of defined expressions

Schedule 19 contains an index of expressions defined or otherwise explained in this Act.
Ancillary provision

(1) The Scottish Ministers may, by order, make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision made by or under this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

Subordinate legislation

(1) Any power conferred by this Act on the Scottish Ministers to make an order or regulations includes the power to make—
(a) different provision for different cases or descriptions of case or for different purposes,
(b) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.

(2) Orders and regulations under the following provisions are subject to the affirmative procedure—
(a) section 5(4),
(b) section 24(1) (but only the first order),
(c) section 27(3),
(ca) section 49(2),
(d) section 52(2),
(e) section 58(9),
(f) paragraph 8 of schedule 1,
(g) paragraph of schedule 8,
(h) paragraph 3 of schedule 18A (but only the first order).

(3) Orders and regulations under the following provisions which add to, replace or omit the text of any Act (including this Act) are also subject to the affirmative procedure—
(a) section 17(2),
(b) section 47(1),
(ba) section 51A,
(c) section 54(1),
(e) section 66(1).

(3A) An order mentioned in subsection (3B)—
(a) must be laid before the Scottish Parliament, and
(b) ceases to have effect on the expiry of the period of 28 days beginning with the date on which it is made unless, before the expiry of that period, it is approved by resolution of the Parliament.

(3B) The order is a second or subsequent order under—

(a) section 24(1), or

(b) paragraph 3 of schedule 18A.

(3C) In reckoning any period of 28 days for the purposes of subsection (3A)(b), no account is to be taken of any period during which the Scottish Parliament is—

(a) dissolved, or

(b) in recess for more than 4 days.

(4) All other orders and regulations under this Act are subject to the negative procedure.

(5) This section does not apply to an order under section 69(2).

Crown application

Nothing in this Act affects Her Majesty in Her private capacity.

Commencement and short title

(1) This section and sections 52, 53, 66, 67 and 70 come into force on the day of Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.

(3) An order under subsection (2) may contain such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.

Short title

The short title of this Act is the Land and Buildings Transaction Tax (Scotland) Act 2013.
SCHEDULE 1
(introduced by section 16)

EXEMPT TRANSACTIONS

No chargeable consideration

1 A land transaction is an exempt transaction if there is no chargeable consideration for the transaction.

Acquisitions by the Crown

2 A land transaction under which the buyer is any of the following is an exempt transaction—
   (a) the Scottish Ministers,
   (b) the Scottish Parliamentary Corporate Body,
   (c) a Minister of the Crown,
   (d) the Corporate Officer of the House of Lords,
   (e) the Corporate Officer of the House of Commons,
   (f) a Northern Ireland department,
   (g) the Northern Ireland Assembly Commission,
   (h) the Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government,
   (i) the National Assembly for Wales Commission,
   (j) the National Assembly for Wales.

Residential leases and licences

3 (1) The grant, assignation or renunciation of—
   (a) a lease of residential property (which is not a qualifying lease), or
   (b) a licence to occupy property (which is not a prescribed non-residential licence),

   is an exempt transaction.

   (2) In sub-paragraph (1)(a), “qualifying lease” has the same meaning as in the Long Leases (Scotland) Act 2012 (asp 9).

   (3) In sub-paragraph (1)(b), “prescribed non-residential licence” means a licence of a description prescribed by the Scottish Ministers in regulations under section 51A(1).

Transactions in connection with divorce etc.

4 A transaction between one party to a marriage and the other is an exempt transaction if it is effected—
   (a) in pursuance of an order of a court made on granting, in respect of the parties, a decree of divorce, nullity of marriage or judicial separation,
Schedule 1—Exempt transactions

(b) in pursuance of an order of a court made in connection with the dissolution or annulment of the marriage, or the parties’ judicial separation, at any time after the granting of such a decree,

(c) in pursuance of—

(i) an order of a court made at any time under section 22A, 23A or 24A of the Matrimonial Causes Act 1973 (c.18), or

(ii) an incidental order of a court made under section 8(2) of the Family Law (Scotland) Act 1985 (c.37) by virtue of section 14(1) of that Act,

(d) at any time in pursuance of an agreement of the parties made in contemplation or otherwise in connection with the dissolution or annulment of the marriage, their judicial separation or the making of a separation order in respect of them.

Transactions in connection with dissolution of civil partnership etc.

A transaction between one party to a civil partnership and the other is an exempt transaction if it is effected—

(a) in pursuance of an order of a court made on granting, in respect of the parties, an order or decree for the dissolution or annulment of the civil partnership or their judicial separation,

(b) in pursuance of an order of a court made in connection with the dissolution or annulment of the civil partnership, or the parties’ judicial separation, at any time after the granting of such an order or decree for dissolution, annulment or judicial separation as mentioned in paragraph (a),

(c) in pursuance of—

(i) an order of a court made at any time under any provision of schedule 5 to the Civil Partnership Act 2004 (c.33) that corresponds to section 22A, 23A or 24A of the Matrimonial Causes Act 1973 (c.18), or

(ii) an incidental order of a court made under any provision of the Civil Partnership Act 2004 (c.33) that corresponds to section 8(2) of the Family Law (Scotland) Act 1985 (c.37) by virtue of section 14(1) of that Act of 1985,

(d) at any time in pursuance of an agreement of the parties made in contemplation or otherwise in connection with the dissolution or annulment of the civil partnership, their judicial separation or the making of a separation order in respect of them.

Assents and appropriations by personal representatives

The acquisition of property by a person in or towards satisfaction of the person’s entitlement under or in relation to the will of a deceased person, or on the intestacy of a deceased person, is an exempt transaction.

(2) Sub-paragraph (1) does not apply if the person acquiring the property gives any consideration for it, other than the assumption of secured debt.

(3) Where sub-paragraph (1) does not apply because of sub-paragraph (2), the chargeable consideration for the transaction is determined in accordance with paragraph 9(1) of schedule 2.

(4) In this paragraph—
“debt” means an obligation, whether certain or contingent, to pay a sum of money either immediately or at a future date, and
“secured debt” means debt that, immediately after the death of the deceased person, is secured on the property.

Variation of testamentary dispositions etc.

A transaction following a person's death that varies a disposition (whether effected by will, under the law relating to intestacy or otherwise) of property of which the deceased was competent to dispose is an exempt transaction if the following conditions are met.

The conditions are—

(a) that the transaction is carried out within the period of 2 years after a person's death, and
(b) that no consideration in money or money's worth other than the making of a variation of another such disposition is given for it.

Where the condition in sub-paragraph (2)(b) is not met, the chargeable consideration for the transaction is determined in accordance with paragraph 9(3) of schedule 2.

This paragraph applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions.

Power to add, vary or remove exemptions

The Scottish Ministers may, by regulations, modify this schedule so as to—

(a) add a description of land transaction as an exempt transaction,
(b) provide that a description of land transaction is no longer an exempt transaction,
(c) vary a description of an exempt transaction.

Money or money's worth

The chargeable consideration for a transaction is, except as otherwise provided, any consideration in money or money’s worth given for the subject-matter of the transaction, directly or indirectly, by the buyer or a person connected with the buyer.

Value added tax

The chargeable consideration for a transaction includes any value added tax chargeable in respect of the transaction, other than value added tax chargeable by virtue of an option to tax any land under Part 1 of schedule 10 to the Value Added Tax Act 1994 (c.23) made after the effective date of the transaction.
Postponed consideration

3 The amount or value of the chargeable consideration for a transaction is to be determined without any discount for postponement of the right to receive it or any part of it.

Just and reasonable apportionment

4 (1) For the purposes of this Act consideration attributable—
(a) to two or more land transactions, or
(b) in part to a land transaction and in part to another matter, or
(c) in part to matters making it chargeable consideration and in part to other matters,
is to be apportioned on a just and reasonable basis.

(2) If the consideration is not so apportioned, this Act has effect as if it had been so apportioned.

(3) For the purposes of this paragraph any consideration given for what is in substance one bargain is to be treated as attributable to all the elements of the bargain, even though—
(a) separate consideration is, or purports to be, given for different elements of the bargain, or
(b) there are, or purport to be, separate transactions in respect of different elements of the bargain.

Exchanges

5 (1) This paragraph applies to determine the chargeable consideration where one or more land transactions are entered into by a person as buyer (alone or jointly) wholly or partly in consideration of one or more other land transactions being entered into by that person (alone or jointly) as seller.

(2) In this paragraph—
“relevant acquisition” means a relevant transaction entered into as buyer,
“relevant disposal” means a relevant transaction entered into as seller, and
“relevant transaction” means any of those transactions.

(3) The following rules apply if the subject-matter of any of the relevant transactions is a major interest in land—
(a) where a single relevant acquisition is made, the chargeable consideration for the acquisition is the greater of—
(i) the amount determined under sub-paragraph (3A) in respect of the acquisition, or
(ii) the amount which would be the chargeable consideration for the acquisition ignoring this paragraph,
(b) where two or more relevant acquisitions are made, the chargeable consideration for each relevant acquisition is the greater of—
(i) the amount determined under sub-paragraph (3A) in respect of that acquisition, or
(ii) the amount which would be the chargeable consideration for that acquisition ignoring this paragraph.

(3A) The amount mentioned in sub-paragraph (3)(a)(i) and (b)(i) is—
(a) the market value of the subject-matter of the acquisition, or
(b) if the acquisition is the grant of a lease, the rent.

(4) The following rules apply if the subject-matter of none of the relevant transactions is a major interest in land—
(a) where a single relevant acquisition is made in consideration of one or more relevant disposals, the chargeable consideration for the acquisition is the amount or value of any chargeable consideration other than the disposal or disposals that are given for the acquisition,
(b) where two or more relevant acquisitions are made in consideration of one or more relevant disposals, the chargeable consideration for each relevant acquisition is the appropriate proportion of the amount or value of any chargeable consideration other than the disposal or disposals that are given for the acquisitions.

(5) For the purposes of sub-paragraph (4)(b) the appropriate proportion is—
\[
\frac{MV}{TMV}
\]
where—
MV is the market value of the subject-matter of the acquisition for which the chargeable consideration is being determined, and
TMV is the total market value of the subject-matter of all the relevant acquisitions.

(6) This paragraph is subject to paragraph 6 (partition etc.: disregard of existing interests).

(7) This paragraph does not apply in a case to which paragraph 17 (arrangements involving public or educational bodies) applies.

Partition etc.: disregard of existing interest

In the case of a land transaction giving effect to a partition or division of a chargeable interest to which persons are jointly entitled, the share of the interest held by the buyer immediately before the partition or division does not count as chargeable consideration.

Valuation of non-monetary consideration

Except as otherwise expressly provided, the value of any chargeable consideration for a land transaction, other than—
(a) money (whether in sterling or another currency), or
(b) debt as defined for the purposes of paragraph 8 (debt as consideration),
is to be taken to be its market value at the effective date of the transaction.

Debt as consideration

(1) Where the chargeable consideration for a land transaction consists in whole or in part of—
(a) the satisfaction or release of a debt due to the buyer or owed by the seller, or
(b) the assumption of existing debt by the buyer,
the amount of debt satisfied, released or assumed is to be taken to be the whole or, as the case may be, part of the chargeable consideration for the transaction.

(2) Where—
(a) a debt is secured on the subject-matter of a land transaction immediately before and immediately after the transaction, and
(b) the rights or liabilities in relation to that debt of any party to the transaction are changed as a result of or in connection with the transaction,
then for the purposes of this paragraph there is an assumption of that debt by the buyer, and that assumption of debt constitutes chargeable consideration for the transaction.

(3) Where in a case in which sub-paragraph (1)(b) applies—
(a) the debt assumed is or includes debt secured on the property forming the subject-matter of the transaction, and
(b) immediately before the transaction there were two or more persons each holding an undivided share of that property, or there were two or more such persons immediately afterwards,
the amount of secured debt assumed is to be determined as if the amount of that debt owed by each of those persons at a given time were the proportion of it corresponding to the person’s undivided share of the property at that time.

(4) If the effect of this paragraph would be that the amount of the chargeable consideration for the transaction exceeded the market value of the subject-matter of the transaction, the amount of the chargeable consideration is treated as limited to that value.

(5) In this paragraph—
“debt” has the same meaning as in paragraph 6(4) of schedule 1,
“existing debt”, in relation to a transaction, means debt created or arising before the effective date of, and otherwise than in connection with, the transaction, and references to the amount of a debt are to the principal amount payable or, as the case may be, the total of the principal amounts payable, together with the amount of any interest that has accrued due on or before the effective date of the transaction.

Cases where conditions for exemption not fully met

9 (1) Where a land transaction would be an exempt transaction under paragraph 6 of schedule 1 (assents and appropriations by personal representative) but for sub-paragraph (2) of that paragraph (cases where person acquiring property gives consideration for it), the chargeable consideration for the transaction does not include the amount of any secured debt assumed.

(2) In this paragraph, “secured debt” has the same meaning as in paragraph 6(4) of schedule 1.
(3) Where a land transaction would an exempt transaction under paragraph 7 of schedule 1 (variation of testamentary dispositions etc.) but for a failure to meet the condition in sub-paragraph (2)(b) of that paragraph (no consideration other than variation of another disposition), the chargeable consideration for the transaction does not include the making of any such variation as is mentioned in that sub-paragraph.

Conversion of amounts in foreign currency

10 (1) References in this Act to the amount or value of the consideration for a transaction are to its amount or value in sterling.

(2) For the purposes of this Act the sterling equivalent of an amount expressed in another currency is to be ascertained by reference to the London closing exchange rate on the effective date of the transaction (unless the parties have used a different rate for the purposes of the transaction).

Carrying out of works

11 (1) Where the whole or part of the consideration for a land transaction consists of the carrying out of works of construction, improvement or repair of a building or other works to enhance the value of land, then—

(a) to the extent that the conditions specified in sub-paragraph (2) are met, the value of the works does not count as chargeable consideration, and

(b) to the extent that those conditions are not met, the value of the works is to be taken into account as chargeable consideration.

(2) The conditions are—

(a) that the works are carried out after the effective date of the transaction,

(b) that the works are carried out on land acquired or to be acquired under the transaction, and

(c) that it is not a condition of the transaction that the works are carried out by the seller or a person connected with the seller.

(3) Where, by virtue of section 10(3) (substantial performance of contract without completion), there are two notifiable transactions (the first being the contract or agreement and the second being the transaction effected on completion or, as the case may be, the grant or execution of the lease), the condition in sub-paragraph (2)(a) is treated as met in relation to the second transaction if it is met in relation to the first.

(4) In this paragraph—

(a) references to the acquisition of land are to the acquisition of a major interest in it,

(b) the value of the works is to be taken to be the amount that would have to be paid in the open market for the carrying out of the works in question.

(5) This paragraph is subject to paragraph 17 (arrangements involving public or educational bodies).
Provision of services

12 (1) Where the whole or part of the consideration for a land transaction consists of the provision of services (other than the carrying out of works to which paragraph 11 applies), the value of that consideration is to be taken to be the amount that would have to be paid in the open market to obtain those services.

(2) This paragraph is subject to paragraph 17 (arrangements involving public or educational bodies).

Land transaction entered into by reason of employment

13 Where a land transaction is entered into by reason of the buyer’s employment, or that of a person connected with the buyer, the consideration for the transaction is to be taken to be not less than the market value of the subject-matter of the transaction as at the effective date of the transaction.

Indemnity given by buyer

14 Where the buyer agrees to indemnify the seller in respect of liability to a third party arising from breach of an obligation owed by the seller in relation to the land that is the subject of the transaction, neither the agreement nor any payment made in pursuance of it counts as chargeable consideration.

Buyer bearing inheritance tax liability

15 Where—

(a) there is a land transaction that is—

(i) a transfer of value within section 3 of the Inheritance Tax Act 1984 (c.51) (transfers of value), or

(ii) a disposition, effected by will or under the law of intestacy, of a chargeable interest comprised in the estate of a person immediately on the person’s death, and

(b) the buyer is or becomes liable to pay, agrees to pay or does in fact pay any inheritance tax due in respect of the transfer or disposition,

the buyer’s liability, agreement or payment does not count as chargeable consideration for the transaction.

Buyer bearing capital gains tax liability

16 (1) Where—

(a) there is a land transaction under which the chargeable interest in question—

(i) is acquired otherwise than by a bargain made at arm’s length, or

(ii) is treated by section 18 of the Taxation of Chargeable Gains Act 1982 (c.12) (connected persons) as so acquired, and

(b) the buyer is or becomes liable to pay, or does in fact pay, any capital gains tax due in respect of the corresponding disposal of the chargeable interest,
the buyer’s liability or payment does not count as chargeable consideration for the transaction.

(2) Sub-paragraph (1) does not apply if there is chargeable consideration for the transaction (disregarding the liability or payment referred to in sub-paragraph (1)(b)).

5

**Arrangements involving public or educational bodies**

17 (1) This paragraph applies in any case where arrangements are entered into under which—

(a) there is a transfer of the ownership, or the grant or assignation of a lease, of land by a qualifying body (A) to a non-qualifying body (B) (“the main transfer”),

(b) in consideration (whether in whole or in part) of the main transfer there is a grant by B to A of a lease or sub-lease of the whole, or substantially the whole, of that land (“the leaseback”),

(c) B undertakes to carry out works or provide services to A, and

(d) some or all of the consideration given by A to B for the carrying out of those works or the provision of those services is consideration in money, whether or not there is also a transfer of the ownership, or the grant or assignation of a lease, of any land by A to B (a “transfer of surplus land”).

(2) The following are qualifying bodies—

(a) public bodies within paragraph 4 of schedule 16,

(b) grant-aided schools within the meaning of section 135(1) of the Education (Scotland) Act 1980 (c.44), and

(c) any body listed in schedule 2 to the Further and Higher Education (Scotland) Act 2005 (asp 6).

(3) The Scottish Ministers may, by order, modify sub-paragraph (2) so as to—

(a) add a person or body to the list of qualifying bodies,

(b) remove a person or body from that list,

(c) vary the description of any qualifying body.

(4) The following do not count as chargeable consideration for the main transfer or any transfer of surplus land—

(a) the leaseback,

(b) the carrying out of building works by B for A, or

(c) the provision of services by B to A.

(5) The chargeable consideration for the leaseback does not include—

(a) the main transfer,

(b) any transfer of surplus land, or

(c) the consideration in money paid by A to B for the building works or other services referred to in sub-paragraph (4).

(6) Sub-paragraphs (4) and (5) are to be disregarded for the purposes of determining whether the land transaction in question is notifiable.
SCHEDULE 3
(introduced by section 27)

SALE AND LEASEBACK RELIEF

The relief

1 The leaseback element of a sale and leaseback arrangement is exempt from charge if the qualifying conditions are met.

Sale and leaseback arrangements

2 A sale and leaseback arrangement is an arrangement under which—
   (a) a person (A) transfers or grants to another person (B) a major interest in land (the “sale”), and
   (b) out of that interest B grants a lease to A (the “leaseback”).

Qualifying conditions

3 The qualifying conditions are—
   (a) that the sale transaction is entered into wholly or partly in consideration of the leaseback transaction being entered into,
   (b) that the only other consideration (if any) for the sale is the payment of money (whether in sterling or another currency) or the assumption, satisfaction or release of a debt (or both), and
   (c) where A and B are both bodies corporate at the effective date of the leaseback transaction, that they are not members of the same group for the purposes of group relief (see schedule 10) at that date.

Interpretation

4 In this schedule, “debt” has the same meaning as in paragraph 6(4) of schedule 1.

SCHEDULE 4
(introduced by section 27)

RELIEF FOR CERTAIN ACQUISITIONS OF RESIDENTIAL PROPERTY

PART 1
INTRODUCTORY

Overview of reliefs

1 (1) This schedule provides for relief in the case of certain acquisitions of residential property.
   (2) It is arranged as follows—

   Part 2 provides for relief in the case of an acquisition by a house-building company from an individual acquiring a new dwelling,
Part 2—Acquisition by house-building company from individual acquiring new dwelling

Full relief

Where a dwelling (“the old dwelling”) is acquired by a house-building company from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the qualifying conditions are met.

Partial relief

Where qualifying conditions (a) to (d) but not (e) are met, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.

Qualifying conditions

In this Part of this schedule, the qualifying conditions are—

(a) that the individual (whether alone or with other individuals) acquires a new dwelling from the house-building company,

(b) that the individual occupied the old dwelling as the individual’s only or main residence at some time in the period of 2 years ending with the date of its acquisition,

(c) that the individual intends to occupy the new dwelling as the individual’s only or main residence,

(d) that each acquisition is entered into in consideration of the other, and

(e) that the area of land acquired by the house-building company does not exceed the permitted area.

Part 3

Acquisition by property trader from individual acquiring new dwelling

Full relief

Where a dwelling (“the old dwelling”) is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the qualifying conditions are met.
Partial relief

6 Where qualifying conditions (a) to (e) but not (f) are met, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.

5 Qualifying conditions

7 In this Part of this schedule, the qualifying conditions are—

(a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals who acquire new dwellings from house-building companies,

(b) that the individual (whether alone or with other individuals) acquires a new dwelling from a house-building company,

(c) that the individual occupied the old dwelling as the individual’s only or main residence at some time in the period of 2 years ending with the date of its acquisition,

(d) that the individual intends to occupy the new dwelling as the individual’s only or main residence,

(e) that the property trader does not intend—

(i) to spend more than the permitted amount on refurbishment of the old dwelling,

(ii) to grant a lease or licence of the old dwelling, or

(iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling, and

(f) that the area of land acquired by the property trader does not exceed the permitted area.

8 Paragraph 7(e)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.

PART 4

ACQUISITION BY PROPERTY TRADER FROM INDIVIDUAL WHERE CHAIN OF TRANSACTIONS BREAKS DOWN

30 Full relief

9 Where a dwelling (“the old dwelling”) is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the qualifying conditions are met.

Partial relief

35 Where qualifying conditions (a) to (g) but not (h) are met, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.
Qualifying conditions

11 In this Part of this schedule, the qualifying conditions are—

(a) that the individual has made arrangements to sell the old dwelling and acquire another dwelling (“the second dwelling”),

(b) that the arrangements to sell the old dwelling fail,

(c) that the acquisition of the old dwelling is made for the purpose of enabling the individual’s acquisition of the second dwelling to proceed,

(d) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals in the circumstances mentioned in conditions (a) to (c),

(e) that the individual occupied the old dwelling as the individual’s only or main residence at some time in the period of 2 years ending with the date of its acquisition,

(f) that the individual intends to occupy the second dwelling as the individual’s only or main residence,

(g) that the property trader does not intend—

(i) to spend more than the permitted amount on refurbishment of the old dwelling,

(ii) to grant a lease or licence of the old dwelling, or

(iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling, and

(h) that the area of land acquired does not exceed the permitted area.

12 Paragraph 11(g)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.

PART 5

WITHDRAWAL OF RELIEF

Introductory

13 (1) Relief under this schedule is withdrawn in the following circumstances.

(2) Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the acquisition but for the relief.

Relief under Part 3

14 Relief under Part 3 of this schedule (acquisition by property trader from individual acquiring new dwelling) is withdrawn if the property trader—

(a) spends more than the permitted amount on refurbishment of the old dwelling,

(b) grants a lease or licence of the old dwelling, or

(c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.
Paragraph 14(b) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.

Relief under Part 4

Relief under Part 4 of this schedule (acquisition by property trader from individual where chain of transactions breaks down) is withdrawn if the property trader—

(a) spends more than the permitted amount on refurbishment of the old dwelling,
(b) grants a lease or licence of the old dwelling, or
(c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.

Paragraph 16(b) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.

PART 6
INTERPRETATION

Meaning of “dwelling” and “new dwelling”

“Dwelling” includes land occupied and enjoyed with the dwelling as its garden or grounds.

A building or part of a building is a “new dwelling” if—

(a) it has been constructed for use as a single dwelling and has not previously been occupied, or
(b) it has been adapted for use as a single dwelling and has not been occupied since its adaptation.

Meaning of “permitted area”

“The permitted area”, in relation to a dwelling, means land occupied and enjoyed with the dwelling as its garden or grounds that does not exceed—

(a) an area (inclusive of the site of the dwelling) of 0.5 of a hectare, or
(b) such larger area as is required for the reasonable enjoyment of the dwelling as a dwelling having regard to its size and character.

Where paragraph 20(b) applies, the permitted area is taken to consist of that part of the land that would be the most suitable for occupation and enjoyment with the dwelling as its garden or grounds if the rest of the land were separately occupied.

Meaning of “acquisition” and “market value” in relation to dwelling and permitted area

References in this schedule to—

(a) the acquisition of a dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling,
(b) the market value of a dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

**Meaning of “house-building company”**

23 A “house-building company” means a company that carries on the business of constructing or adapting buildings or parts of buildings for use as dwellings.

24 References in this schedule to such a company include any company connected with it.

**Meaning of “property trader” and “principal”**

25 (1) A “property trader” means an entity listed in sub-paragraph (2) that carries on the business of buying and selling dwellings.

(2) The entities are—

(a) a company,

(b) a limited liability partnership,

(c) a partnership whose partners are all either companies or limited liability partnerships.

(3) A “principal”—

(a) in relation to a company, means a director,

(b) in relation to a limited liability partnership, means a member,

(c) in relation to a partnership mentioned in sub-paragraph (2)(c) means a partner or a principal of a partner.

26 For the purposes of this schedule—

(a) anything done by or in relation to a company connected with a property trader is treated as done by or in relation to that property trader, and

(b) references to the principals or employees of a property trader include the principals or employees of any such company.

**Meaning of “refurbishment” and “the permitted amount”**

27 “Refurbishment” of a dwelling means the carrying out of works that enhance or are intended to enhance the value of the dwelling, but does not include—

(a) cleaning the dwelling, or

(b) works required solely for the purpose of ensuring that the dwelling meets minimum safety standards.

28 The “permitted amount”, in relation to the refurbishment of a dwelling, is set out in the following table—
Schedule 5—Multiple dwellings relief

Part 1—Introductory

Overview of relief

1 (1) This schedule provides for relief in the case of certain land transactions involving multiple dwellings.

(2) It is arranged as follows—

Part 2 identifies the transactions to which this schedule applies,

Part 3 defines key terms,

Part 4 describes the relief available if a claim is made,

Part 5 provides for withdrawal of the relief,

Part 6 contains rules to determine what counts as a dwelling.

Part 2

Transactions to which this schedule applies

The rule

2 This schedule applies to relevant transactions.

3 A relevant transaction is a transaction that is—

(a) within paragraph 4 or paragraph 5, and

(b) not excluded by paragraph 6.

Single transaction relating to multiple dwellings

4 A transaction is within this paragraph if its main subject-matter consists of—

(a) an interest in at least two dwellings, or

(b) an interest in at least two dwellings and other property.

Linked transactions relating to multiple dwellings

5 A transaction is within this paragraph if—

<table>
<thead>
<tr>
<th>Consideration for acquisition of the dwelling</th>
<th>Permitted amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than £200,000</td>
<td>£10,000</td>
</tr>
<tr>
<td>More than £200,000 but not more than £400,000</td>
<td>5% of the consideration</td>
</tr>
<tr>
<td>More than £400,000</td>
<td>£20,000</td>
</tr>
</tbody>
</table>
(a) its main subject-matter consists of—
   (i) an interest in a single dwelling, or
   (ii) an interest in a single dwelling and other property,
(b) it is one of a number of linked transactions, and
(c) the main subject-matter of at least one of the other linked transactions consists of—
   (i) an interest in some other dwelling or dwellings, or
   (ii) an interest in some other dwelling or dwellings and other property.

Excluded transactions

A transaction is excluded by this paragraph if—
(a) relief under schedule 9 (crofting community right to buy) is available for it, or
(b) relief under schedule 10 (group relief), 11 (reconstruction relief and acquisition relief) or 13 (charities relief) is available for it, or
(ii) has been withdrawn from it.

PART 3

KEY TERMS

Consideration attributable to dwellings and remaining property

In relation to a relevant transaction—
(a) the consideration attributable to dwellings is so much of the chargeable consideration for the transaction as is attributable to the dwellings,
(b) the consideration attributable to remaining property is the chargeable consideration for the transaction less the consideration attributable to dwellings.

Dwellings

“The dwellings” are, in relation to a relevant transaction, the dwelling or dwellings that are, or are part of, the main subject-matter of the transaction.

Interest in a dwelling

A reference in this schedule to an interest in a dwelling is to any chargeable interest in or over a dwelling.

But, in the case of a dwelling subject to a lease granted for an initial term of more than 21 years, any interest that is a superior interest in relation to the lease is to be ignored in determining whether a transaction is a relevant transaction.

For the purposes of paragraph 10, a lease (A) is a superior interest in relation to another lease (B) if B is a sublease of A.
PART 4

THE RELIEF

Calculation of relief

12 The amount of tax chargeable in relation to a relevant transaction is—

\[(DT \times ND) + RT\]

where—

\(DT\) is the tax due in relation to a dwelling,

\(ND\) is the number of dwellings that are, or are part of, the main subject-matter of the transaction, and

\(RT\) is the tax due in relation to remaining property.

13 However, if the result of paragraph 12 would be that the tax chargeable in relation to the transaction is less than the minimum prescribed amount, the tax chargeable is that amount.

14 The minimum prescribed amount is such proportion of the tax that would be chargeable in relation to the transaction but for the relief as may be prescribed by the Scottish Ministers by order.

Tax due in relation to a dwelling

15 The tax due in relation to a dwelling is determined as follows.

Step 1

Find the total consideration attributable to dwellings, that is—

(a) the consideration attributable to dwellings for the transaction, or

(b) where the transaction is one of a number of linked transactions, the sum of—

(i) the consideration attributable to dwellings for the transaction, and

(ii) the consideration attributable to dwellings for all other relevant transactions.

Step 2

Divide the total consideration attributable to dwellings by total dwellings.

“Total dwellings” is the total number of dwellings by reference to which the total consideration attributable to dwellings is calculated.

Step 3

Calculate the amount of tax that would be due in relation to the relevant transaction were—

(a) the chargeable consideration equal to the result obtained in Step 2,

(b) the transaction a residential property transaction, and

(c) the transaction not a linked transaction.

The result is the tax due in relation to a dwelling.
Tax due in relation to remaining property

16 The tax due in relation to remaining property is determined as follows.

Step 1
Calculate the amount of tax that would be due in respect of the transaction but for this schedule.

Step 2
Divide the consideration attributable to remaining property by the chargeable consideration for the transaction.

Step 3
Multiply the amount calculated in Step 1 by the fraction reached in Step 2.

The result is the tax due in relation to remaining property.

General

17 If the whole or part of the chargeable consideration for a relevant transaction is rent, this Part of this schedule has effect subject to section 55.

18 “Attributable” means attributable on a just and reasonable basis.

PART 5
WITHDRAWAL OF RELIEF

Full withdrawal of relief

19 Relief under this schedule is withdrawn in relation to a relevant transaction if—

(a) an event occurs in the relevant period, and

(b) had the event occurred immediately before the effect date of the transaction, the transaction would not have been a relevant transaction.

20 Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the transaction but for the relief.

Partial withdrawal of relief

21 Relief under this schedule is partially withdrawn in relation to a relevant transaction if—

(a) an event occurs in the relevant period, and

(b) had the event occurred immediately before the effect date of the transaction—

(i) the transaction would have been a relevant transaction, but

(ii) more tax would have been payable in respect of the transaction.

22 Where relief is partially withdrawn, tax is chargeable on the transaction as if the event had occurred immediately before the effective date of the transaction.

23 In that case, the tax so chargeable must be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.
Relevant period

24 “The relevant period” means the shorter of—
   (a) the period of 3 years beginning with the effective date of the transaction, and
   (b) the period beginning with the effective date of the transaction and ending with the
date on which the buyer disposes of the dwelling, or the dwellings, to a person
who is not connected with the buyer.

25 In relation to a transaction effected on completion of a contract that was substantially
performed before completion, paragraph 24 applies as if references to the effective date
of the transaction were to the date on which the contract was substantially performed.

Interpretation

26 In this Part of this schedule, “event” includes any change of circumstance or change of
plan.

PART 6

WHAT COUNTS AS A DWELLING

27 This Part of this schedule sets out rules for determining what counts as a dwelling for
the purposes of this schedule.

28 A building or part of a building counts as a dwelling if—
   (a) it is used or suitable for use as a single dwelling, or
   (b) it is in the process of being constructed or adapted for such use.

29 Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds
(including any building or structure on such land) is taken to be part of that dwelling.

30 Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of that
dwelling.

31 The main subject-matter of a transaction is also taken to consist of or include an interest
in a dwelling if—
   (a) substantial performance of a contract constitutes the effective date of that
transaction by virtue of a relevant deeming provision,
   (b) the main subject-matter of the transaction consists of or includes an interest in a
building, or a part of a building, that is to be constructed or adapted under the
contract for use as a single dwelling, and
   (c) construction or adaptation of the building, or the part of a building, has not begun
by the time the contract is substantially performed.

32 In paragraph 31, “relevant deeming provision” means section 10 or 11.

33 Subsections (3) to (6) of section 58 apply for the purposes of this Part of this schedule as
they apply for the purposes of subsection (1)(a) of that section.
SCHEDULE 6
(introduced by section 27)

RELIEF FOR CERTAIN ACQUISITIONS BY REGISTERED SOCIAL LANDLORDS

The relief

1 A land transaction under which the buyer is a registered social landlord is exempt from charge if the qualifying conditions are met.

The qualifying conditions

2 The qualifying conditions are—

(a) that the registered social landlord is controlled by its tenants,

(b) that the seller is one of the following—

(i) a registered social landlord,

(ii) the Scottish Ministers,

(iii) a local authority, and

(c) that the transaction is funded with the assistance of a grant or other financial assistance—

(i) made or given by way of a distribution pursuant to section 25 of the National Lottery etc. Act 1993 (c.39) (application of money by distributing bodies), or

(ii) under section 2 of the Housing (Scotland) Act 1988 (c.43) (general functions of the Scottish Ministers).

Landlord controlled by tenants

3 The reference in paragraph 2(a) to a registered social landlord controlled by its tenants is to a registered social landlord the majority of whose board members are tenants occupying properties owned or managed by it.

4 For the purposes of paragraph 3, “board member” is to be construed as follows—

<table>
<thead>
<tr>
<th>Type of registered social landlord</th>
<th>Board member</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company</td>
<td>A director of the company</td>
</tr>
<tr>
<td>Body corporate whose affairs are managed by its members</td>
<td>A member</td>
</tr>
<tr>
<td>Body of trustees</td>
<td>A trustee</td>
</tr>
<tr>
<td>None of the above</td>
<td>A member of the committee of management or other body to which is entrusted the direction of the affairs of the registered social landlord</td>
</tr>
</tbody>
</table>
SCHEDULE 7
(introduced by section 27)

ALTERNATIVE PROPERTY FINANCE RELIEF

PART 1

INTRODUCTORY

Overview

1 (1) This schedule makes provision for relief in the case of certain land transactions connected to alternative property finance arrangements.

(2) It is arranged as follows—

Part 2 identifies the alternative property finance arrangements that are relieved,

Part 3 makes provision limiting the arrangements that can be relieved,

Part 4 provides for the circumstances in which the chargeable interest acquired by a financial institution under the arrangements is an exempt interest, and

Part 5 defines expressions used in this schedule.

PART 2

ALTERNATIVE PROPERTY FINANCE: ARRANGEMENTS RELIEVED

Land sold to financial institution and leased to person

2 Paragraphs 3 to 6 apply where arrangements are entered into between a person and a financial institution under which the institution—

(a) purchases a major interest in land (“the first transaction”),

(b) grants to the person out of that interest a lease (if the interest acquired is the interest of the owner) or a sub-lease (if the interest acquired is the tenant’s right over or interest in a property subject to a lease) (“the second transaction”), and

(c) enters into an agreement under which the person has a right to require the institution to transfer the major interest purchased by the institution under the first transaction.

3 The first transaction is exempt from charge if the seller is—

(a) the person, or

(b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in paragraph 2 entered into between it and the person.

4 The second transaction is exempt from charge if the provisions of this Act relating to the first transaction are complied with (including payment of any tax chargeable).

5 A transfer to the person that results from the exercise of the right mentioned in paragraph 2(c) (“the third transaction”) is exempt from charge if—

(a) the provisions of this Act relating to the first and second transactions are complied with, and

(b) at all times between the second and third transactions—
(i) the interest purchased under the first transaction is held by a financial institution, and
(ii) the lease or sub-lease granted under the second transaction is held by the person.

5 6 The agreement mentioned in paragraph 2(c) is not to be treated—

(a) as substantially performed unless and until the third transaction is entered into (and accordingly section 14 does not apply), or

(b) as a distinct land transaction by virtue of section 12 (options and rights of pre-emption).

Land sold to financial institution and person in common

7 Paragraphs 8 to 12 apply where arrangements are entered into between a person and a financial institution under which—

(a) the institution and the person purchase a major interest in land as common owners (“the first transaction”),

(b) the institution and the person enter into an agreement under which the person has a right to occupy the land exclusively (“the second transaction”), and

(c) the institution and the person enter into an agreement under which the person has a right to require the institution to transfer to the person (in one transaction or a series of transactions) the whole interest purchased under the first transaction.

8 The first transaction is exempt from charge if the seller is—

(a) the person, or

(b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in paragraph 7 entered into between it and the person.

9 The second transaction is exempt from charge if the provisions of this Act relating to the first transaction are complied with (including payment of any tax chargeable).

10 Any transfer to the person that results from the exercise of the right mentioned in paragraph 7(c) (“a further transaction”) is exempt from charge if—

(a) the provisions of this Act relating to the first transaction are complied with, and

(b) at all times between the first and the further transaction—

(i) the interest purchased under the first transaction is held by a financial institution and the person as common owners, and

(ii) the land is occupied by the person under the agreement mentioned in paragraph 7(b).

11 The agreement mentioned in paragraph 7(c) is not to be treated—

(a) as substantially performed unless and until the whole interest purchased by the institution under the first transaction has been transferred (and accordingly section 14 does not apply), or

(b) as a distinct land transaction by virtue of section 12 (options and rights of pre-emption).
A further transaction that is exempt from charge by virtue of paragraph 10 is not a notifiable transaction unless the transaction involves the transfer to the person of the whole interest purchased by the institution under the first transaction, so far as not transferred by a previous further transaction.

**Land sold to financial institution and re-sold to person**

Paragraphs 14 and 15 apply where arrangements are entered into between a person and a financial institution under which—

(a) the institution—

(i) purchases a major interest in land (“the first transaction”), and

(ii) sells that interest to the person (“the second transaction”), and

(b) the person grants the institution a standard security over that interest.

The first transaction is exempt from charge if the seller is—

(a) the person, or

(b) another financial institution by whom the interest was acquired under other arrangements of the kind mentioned in paragraph 2 or 7 entered into between it and the person.

The second transaction is exempt from charge if the financial institution complies with the provisions of this Act relating to the first transaction (including the payment of any tax chargeable on a chargeable consideration that is not less than the market value of the interest and, in the case of the grant of a lease, the rent).

**PART 3**

**ALTERNATIVE PROPERTY FINANCE: ARRANGEMENTS NOT RELIEVED**

**No relief where first transaction already relieved**

Paragraphs 2 to 12 do not apply to arrangements in relation to which group relief, reconstruction relief or acquisition relief—

(a) is available for the first transaction, or

(b) has been withdrawn from that transaction.

**No relief where arrangements to transfer control of financial institution**

Paragraphs 2 to 12 do not apply to alternative finance arrangements if those arrangements, or any connected arrangements, include arrangements for a person to acquire control of the relevant financial institution.

That includes arrangements for a person to acquire control of the relevant financial institution only if one or more conditions are met (such as the happening of an event or doing of an act).

In paragraphs 17 and 18—

“alternative finance arrangements” means the arrangements referred to in paragraphs 2 and 7,
“connected arrangements” means any arrangements entered into in connection with the making of the alternative finance arrangements (including arrangements involving one or more persons who are parties to the alternative finance arrangements),

“relevant financial institution” means the financial institution which enters into the alternative finance arrangements.

Section 1124 of the Corporation Tax Act 2010 (c.4) applies for determining who has control of the relevant financial institution.

**Part 4**

**Exempt interest**

**Interest held by financial institution an exempt interest**

21 An interest held by a financial institution as a result of the first transaction within the meaning of paragraph 2(a) or 7(a) is an exempt interest for the purposes of the tax.

22 That interest ceases to be an exempt interest if—

(a) the lease or agreement mentioned in paragraph 2(b) or 7(b) ceases to have effect, or

(b) the right under paragraph 2(c) or 7(c) ceases to have effect or becomes subject to a restriction.

23 Paragraph 21 does not apply if the first transaction is exempt from charge by virtue of schedule 10 (group relief) or 11 (reconstruction and acquisition reliefs).

24 Paragraph 21 does not make an interest exempt in respect of—

(a) the first transaction itself, or

(b) a third transaction or a further transaction within the meaning of paragraph 5 or 10.

**Part 5**

**Interpretation**

25 (1) In this schedule “financial institution” has the meaning given by section 564B of the Income Tax Act 2007 (c.3).

(2) For this purpose section 564B(1) applies as if paragraph (d) were omitted.

26 In this schedule—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

references to a person are to be read, in relation to times after the death of the person concerned, as references to the person’s personal representatives.
SCHEDULE 8

(introduced by section 27)

RELIEF FOR ALTERNATIVE FINANCE INVESTMENT BONDS

PART 1

OVERVIEW AND INTERPRETATION

Overview of relief

1 (1) This schedule makes provision for relief in the case of certain land transactions connected to alternative finance investment bonds.

(2) It is arranged as follows—

Part 2 provides that certain events relating to a bond are not to be treated as chargeable transactions (except in certain cases),

Part 3 sets out general conditions for the operation of the reliefs in Part 4,

Part 4 provides for relief in the case of certain transactions (and withdrawal of that relief),

Part 5 makes provision about supplementary matters including when the reliefs in Part 4 are not available.

Meaning of “alternative finance investment bond”

2 In this schedule, “Alternative finance investment bond” means arrangements to which section 564G of the Income Tax Act 2007 (c.3) (investment bond arrangements) applies.

Interpretation

3 In this schedule—

“bond assets”, “bond-holder”, “bond-issuer” and “capital” have the meaning given by section 564G of the Income Tax Act 2007),

“prescribed” means prescribed in regulations made by the Scottish Ministers,

“qualifying interest” means a major interest in land other than a lease for a period of 21 years or less.

PART 2

ISSUE, TRANSFER AND REDEMPTION OF RIGHTS UNDER BOND NOT TO BE TREATED AS CHARGEABLE TRANSACTION

The relief

4 For the purposes of this Act—

(a) the bond-holder under an alternative finance investment bond is not treated as having an interest in the bond assets,

(b) the bond-issuer under such a bond is not treated as a trustee of the bond assets.
Relief not available where bond-holder acquires control of underlying asset

5 (1) Paragraph 4 does not apply if control of the underlying asset is acquired by—
   (a) a bond-holder, or
   (b) a group of connected bond-holders.

5 (2) A bond-holder (BH), or a group of connected bond-holders, acquires control of the underlying asset if—
   (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and
   (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise the right of management and control of the bond assets to the exclusion of any other bond-holders.

6 (1) But paragraph 5(1) does not apply (and accordingly, section 564S of the Income Tax Act 2007 applies by virtue of paragraph 4) in either of the following cases.

   (2) The first case is where—
       (a) at the time that the rights were acquired BH (or all the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets to the exclusion of other bond-holders, and
       (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that exercise no longer to be possible.

   (3) The second case is where BH—
       (a) underwrites a public offer of rights under the bond, and
       (b) does not exercise the right of management and control of the bond assets.

6 (4) In this paragraph, “underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

PART 3
GENERAL CONDITIONS FOR OPERATION OF RELIEFS ETC.

30 Introduction

7 This Part of this schedule defines conditions A to G for the purposes of paragraphs 15 to 21.

Condition A

8 Condition A is that one person (P) and another (Q) enter into arrangements under which—
   (a) P transfers to Q a qualifying interest in land (“the first transaction”), and
(b) P and Q agree that when the interest ceases to be held by Q as mentioned in paragraph 9(b), Q will transfer the interest to P.

**Condition B**

9 Condition B is that—

5 (a) Q, as bond-issuer, enters into an alternative finance investment bond (whether before or after entering into the arrangements mentioned in paragraph 8), and

(b) the interest in land to which those arrangements relate is held by Q as a bond asset.

**Condition C**

10 (1) Condition C is that, for the purpose of generating income or gains for the alternative finance investment bond—

(a) Q and P enter into a leaseback agreement, or

(b) such other condition or conditions as may be specified in regulations made by the Scottish Ministers is or are met.

15 (2) For the purposes of condition C, Q and P enter into a leaseback agreement if Q grants to P, out of the interest transferred to Q—

(a) a lease (if the interest transferred is the interest of the owner), or

(b) a sub-lease (if the interest transferred is the tenant’s right over or interest in land subject to a lease).

**Condition D**

11 (1) Condition D is that, before the end of the period of 120 days beginning with the effective date of the first transaction, Q provides the Tax Authority with the prescribed evidence that a satisfactory standard security has been registered in the Land Register of Scotland.

25 (2) A security is satisfactory for the purposes of condition D if it—

(a) is a security ranking first granted over the interest transferred to Q,

(b) is in favour of the Tax Authority, and

(c) is for the amount mentioned in sub-paragraph (3).

30 (3) That amount is the total of—

(a) the amount of land and building transaction tax which would (apart from paragraph 15) be chargeable on the first transaction if the chargeable consideration for that transaction had been the market value of the interest at that time, and

(b) any interest and any penalties which would for the time being be payable on or in respect of that amount of tax, if the tax had been due and payable (but not paid) in respect of the first transaction.
Condition E

12 Condition E is that the total of the payments of capital made to Q before the termination of the bond is not less than 60% of the value of the interest in the land at the time of the first transaction.

Condition F

13 Condition F is that Q holds the interest in land as a bond asset until the termination of the bond.

Condition G

14 (1) Condition G is that—

(a) before the end of the period of 30 days beginning with the date on which the interest in the land ceases to be held as a bond asset, that interest is transferred by Q to P (“the second transaction”), and

(b) the second transaction is effectuated not more than 10 years after the first transaction.

(2) The Scottish Ministers may by regulations amend sub-paragraph (1)(b) by substituting for the period mentioned there such other period as may be specified.

Part 4

Relief for certain transactions

The relief: first transaction

15 (1) The first transaction is exempt from charge if—

(a) it relates to an interest in land in Scotland, and

(b) each of the conditions A to C is met before the end of the period of 30 days beginning with the effective date of the transaction.

(2) This paragraph is subject to—

(a) paragraphs 21 and 22 (where the interest in land is replaced as the bond asset by an interest in other land),

(b) paragraph 24.

Withdrawal of relief

16 (1) Relief under paragraph 15 is withdrawn if—

(a) the interest in the land is transferred by Q to P without conditions E and F having been met,

(b) the period mentioned in paragraph (1)(b) expires without each of those conditions having been met, or

(c) at any time it becomes apparent for any other reason that any of the conditions E to G cannot or will not be met.
(2) The relief is also withdrawn if condition D is not met.

Amount of tax chargeable where relief withdrawn

17 Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 18.

18 The amount chargeable is the tax that would have been chargeable in respect of the first transaction (but for the relief under paragraph 15) if the chargeable consideration for that transaction had been an amount equal to—

(a) the market value of the subject matter of the transaction, or
(b) if the acquisition was the grant of a lease, the rent.

Relief from land and buildings transaction tax: second transaction

19 (1) The second transaction is exempt from charge if—

(a) each of conditions A to G is met, and
(b) the provisions of this Act in relation to the first transaction are complied with.

(2) This paragraph is subject to—

(a) paragraphs 21 and 22 (where the interest in land is replaced as the bond asset by an interest in other land),
(b) paragraph 24.

Discharge of security when conditions for relief met

20 If, after the effective date of the second transaction, Q provides the Tax Authority with the prescribed evidence that each of conditions A to C and E to G has been met, the land ceases to be subject to the security registered in pursuance of condition D.

PART 5

SUPPLEMENTARY

Substitution of asset

21 (1) This paragraphs applies if—

(a) conditions A to C and G are met in relation to an interest in land (“the original land”),
(b) Q ceases to hold the original land as a bond asset (and, accordingly, transfers it to P) before the termination of the alternative finance investment bond,
(c) P and Q enter into further arrangements falling within paragraph 8 relating to an interest in other land (“the replacement land”), and
(d) the value of the interest in the replacement land at the time that it is transferred from P to Q is greater than or equal to the value of the interest in the original land at the time of the first transaction.
(2) Paragraphs 15 to 20 apply—
   (a) in relation to the original land with the modification set out in sub-paragraph (3), and
   (b) in relation to the replacement land with the modifications set out in sub-paragraph (4).

(3) Condition F does not need to be met in relation to the original land if conditions A, B, C, F and G (as modified by sub-paragraph (4)) are met in relation to the replacement land.

(4) In relation to the replacement land—
   (a) condition E applies as if the reference to the interest in the land were a reference to the interest in the original land, and
   (b) condition G applies as if the reference in paragraph 14(1)(b) to the first transaction were a reference to the first transaction relating to the original land.

(5) If the replacement land is in Scotland, the original land ceases to be subject to the security registered in pursuance of condition D when—
   (a) Q provides the Tax Authority with the prescribed evidence that condition G is met in relation to the original land, and
   (b) condition D is met in relation to the replacement land.

(6) If the replacement land is not in Scotland, the original land ceases to be subject to the security registered in pursuance of condition D when Q provides the Tax Authority with the prescribed evidence that—
   (a) condition G is met in relation to the original land, and
   (b) each of conditions A to C is met in relation to the replacement land.

(1) Paragraph 21 also applies where the replacement land is replaced by further replacement land.

(2) In that event—
   (a) the references to the original land (except those in paragraph 21(4)) are to be read as references to the replacement land, and
   (b) the references to the replacement land are to be read as references to the further replacement land.

Tax Authority to register discharge of security

(1) Where a security is discharged in accordance with paragraph 20 or 21(5) or (6), the Tax Authority must register the discharge in the Land Register of Scotland.

(2) The Tax Authority must do so within the period of 30 days beginning with the date on which Q provides the evidence in question.

Relief not available where bond-holder acquires control of underlying asset

(1) The reliefs provided by paragraphs 15 and 19 (and paragraph 21 so far as it relates to those paragraphs) are not available if control of the underlying asset is acquired by—
   (a) a bond-holder, or
(b) a group of connected bond-holders.

(2) A bond-holder (BH), or a group of connected bond-holders, acquires control of the underlying asset if—

(a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and

(b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise the right of management and control of the bond assets to the exclusion of any other bond-holders.

(3) In accordance with sub-paragraph (1), in the case of relief provided by paragraph 15—

(a) if BH, or the group, acquires control of the underlying asset before the end of the period of 30 days beginning with the effective date of the first transaction, paragraph 15 does not apply, and

(b) if BH, or the group, acquires control of the underlying asset after the end of that period and conditions A to C have been met, the relief is treated as withdrawn under paragraph 16.

(1) But paragraph 24 does not prevent the reliefs being available in either of the following cases.

(2) The first case is where—

(a) at the time that the rights were acquired BH (or all of the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets to the exclusion of other bond-holders, and

(b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that no longer to be possible.

(3) The second case is where BH—

(a) underwrites a public offer of rights under the bond, and

(b) does not exercise the right of management and control of the bond assets.

(4) In this paragraph, “underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

Relief not available if purpose of arrangements is improper

The reliefs provided by paragraph 15 and 19 (and paragraph 21 so far as it relates to those paragraphs) are not available if the arrangements mentioned in paragraph 8—

(a) are not effected for genuine commercial reasons, or

(b) form part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to the tax.
SCHEDULE 9
(introduced by section 27)
CROFTING COMMUNITY RIGHT TO BUY RELIEF

The relief

1. This schedule applies where—
   (a) a chargeable transaction is entered into in pursuance of the crofting community right to buy, and
   (b) under that transaction two or more crofts are being bought.

2. The tax chargeable in respect of the transaction is the prescribed proportion of the tax that would otherwise be chargeable but for this paragraph.

3. The prescribed proportion is such proportion as may be prescribed by the Scottish Ministers by order.

Interpretation

4. In this schedule “crofting community right to buy” means the right exercisable by a crofting community body under Part 3 of the Land Reform (Scotland) Act 2003 (asp 2).

SCHEDULE 10
(introduced by section 27)
GROUP RELIEF

PART 1
INTRODUCTORY

Overview

1. (1) This schedule provides for relief for certain transactions involving companies.

   (2) It is arranged as follows—
   Part 2 provides for when relief is available,
   Part 3 provides for when the relief is withdrawn,
   Part 4 defines expressions used in this schedule.

PART 2
THE RELIEF

2. A land transaction is exempt from charge if the seller and buyer are companies that at the effective date of the transaction are members of the same group.
Restrictions on availability of relief

3 Relief under this schedule is not available if at the effective date of the transaction there are arrangements in existence by virtue of which, at that or some later time, a person has or could obtain, or any persons together have or could obtain, control of the buyer but not of the seller.

4 Paragraph 3 does not apply to arrangements to which paragraph 9 or 10 applies.

5 Relief under this schedule is not available if the transaction is effected in pursuance of, or in connection with, arrangements under which—

(a) the consideration, or any part of the consideration, for the transaction is to be provided or received (directly or indirectly) by a person other than a group company, or

(b) the seller and the buyer are to cease to be members of the same group by reason of the buyer ceasing to be a 75% subsidiary of the seller or a third company.

6 Arrangements are within paragraph 5(a) if under them the seller or the buyer, or another group company, is to be enabled to provide any of the consideration, or is to part with any of it, by or in consequence of the carrying out of a transaction or transactions involving, or any of them involving, a payment or other disposition by a person other than a group company.

7 Paragraph 5(b) does not apply to arrangements to which paragraph 10 applies.

8 Relief under this schedule is not available if the transaction—

(a) is not effected for bona fide commercial reasons, or

(b) forms part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.

Arrangements that do not restrict availability of relief

9 This paragraph applies to arrangements entered into with a view to an acquisition of shares by a company (“the acquiring company”—

(a) in relation to which section 75 of the Finance Act 1986 (c.41) (stamp duty: acquisition relief) will apply,

(b) in relation to which the conditions for relief under that section will be met, and

(c) as a result of which the buyer will be a member of the same group as the acquiring company.

10 This paragraph applies to arrangements in so far as they are for the purpose of facilitating a transfer of the whole or part of the business of a company to another company in relation to which—

(a) section 96 of the Finance Act 1997 (c.16) (stamp duty relief: demutualisation of insurance companies) is intended to apply, and

(b) the conditions for relief under that section are intended to be met.

Interpretation

11 In this Part of this schedule—
“control” has the meaning given by section 1124 of the Corporation Tax Act 2010 (c.4),
“group company” means a company that at the effective date of the transaction is a member of the same group as the seller and the buyer.

PART 3
WITHDRAWAL OF RELIEF

Overview

Paragraphs 13 to 19 provide for circumstances where relief under this schedule is withdrawn,
paragraphs 20 to 31 provide for circumstances in which, despite paragraphs 13 to 19, relief is not withdrawn, and paragraphs 32 to 40 provide for the application of paragraphs 13 to 31 where there are successive transactions.

Withdrawal of relief

Relief under this schedule is withdrawn or partially withdrawn where paragraphs 14 and 15 apply.

This paragraph applies where the buyer in the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”) ceases to be a member of the same group as the seller—
(a) before the end of the period of 3 years beginning with the effective date of the transaction, or
(b) in pursuance of, or in connection with, arrangements made before the end of that period.

This paragraph applies where, at the time the buyer ceases to be a member of the same group as the seller (“the relevant time”), it or a relevant associated company holds a chargeable interest—
(a) that was acquired by the buyer under the relevant transaction, or
(b) that is derived from a chargeable interest so acquired,
and that has not subsequently been acquired at market value under a chargeable transaction for which relief under this schedule was available but not claimed.

Amount of tax chargeable where relief withdrawn

Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 17.

The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for the relief if the chargeable consideration for that transaction had been an amount equal to—
(a) the market value of the subject-matter of the transaction, or
(b) if the acquisition was the grant of a lease, the rent.

**Amount of tax chargeable where relief partially withdrawn**

18 Where relief is partially withdrawn, the amount of tax chargeable is an appropriate proportion of the amount determined in accordance with paragraph 17.

19 An “appropriate proportion” means an appropriate proportion having regard to—

(a) the subject-matter of the relevant transaction, and

(b) what is held at the relevant time by the buyer or, as the case may be, by the buyer and its relevant associated companies.

**Case where relief not withdrawn: winding up**

20 Relief under this schedule is not withdrawn where the buyer ceases to be a member of the same group as the seller by reason of anything done for the purposes of, or in the course of, winding up the seller or another company that is above the seller in the group structure.

**Cases where relief not withdrawn: stamp duty reliefs**

21 Relief under this schedule is not withdrawn where—

(a) the buyer ceases to be a member of the same group as the seller as a result of an acquisition of shares by another company (“the acquiring company”) in relation to which—

(i) section 75 of the Finance Act 1986 (c.41) (stamp duty: acquisition relief) applies, and

(ii) the conditions for relief under that section are met, and

(b) the buyer is immediately after that acquisition a member of the same group as the acquiring company.

22 Relief under this schedule is not withdrawn where—

(a) the buyer ceases to be a member of the same group as the seller as a result of the transfer of the whole or part of the seller’s business to another company (“the acquiring company”) in relation to which—

(i) section 96 of the Finance Act 1997 (c.16) (stamp duty relief: demutualisation of insurance companies) applies, and

(ii) the conditions for relief under that section are met, and

(b) the buyer is immediately after that transfer a member of the same group as the acquiring company.

23 But where, in a case to which paragraph 21 or 22 applies—

(a) the buyer ceases to be a member of the same group as the acquiring company in the circumstances mentioned in paragraph 24, and

(b) at the time the buyer ceases to be a member of the same group as the acquiring company, it or a relevant associated company holds a chargeable interest to which paragraph 25 applies,
this schedule applies as if the buyer had then ceased to be a member of the same group as the seller.

24 The circumstances referred to in paragraph 23(a) are that the buyer ceases to be a member of the same group as the acquiring company—

5 (a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”), or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

25 This paragraph applies to a chargeable interest—

10 (a) that was acquired by the buyer under the relevant transaction, or

(b) that is derived from a chargeable interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction for which relief under this schedule was available but not claimed.

15 Case where relief not withdrawn: seller leaves group

26 Relief under this schedule is not withdrawn where the buyer ceases to be a member of the same group as the seller because the seller leaves the group.

27 The seller is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in—

20 (a) the seller, or

(b) another company that is above the seller in the group structure and as a result of the transaction ceases to be a member of the same group as the buyer.

28 But if there is a change in the control of the buyer after the seller leaves the group, paragraphs 13 to 19 and 22 to 25 have effect as if the buyer had then ceased to be a member of the same group as the seller.

29 Paragraph 28 does not apply where—

30 (a) there is a change in the control of the buyer because a loan creditor (within the meaning given by section 453 of the Corporation Tax Act 2010 (c.4)) obtains control of, or ceases to control, the buyer, and

(b) the other persons who controlled the buyer before the change continue to do so.

30 There is a change in the control of the buyer if—

35 (a) a person who controls the buyer (alone or with others) ceases to do so,

(b) a person obtains control of the buyer (alone or with others), or

(c) the buyer is wound up.

31 For the purposes of paragraph 30 a person does not control, or obtain control of, the buyer if that person is under the control of another person or other persons.
Withdrawal of relief in certain cases involving successive transactions

32 Where the following conditions are met, paragraphs 13 to 31 have effect in relation to the relevant transaction as if the seller in relation to the earliest previous transaction falling within paragraph 37 were the seller in relation to the relevant transaction.

33 The first condition is that there is a change in control of the buyer.

34 The second condition is that the change occurs—

(a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”), or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

35 The third condition is that, apart from paragraph 32, relief under this schedule in relation to the relevant transaction would not be withdrawn under paragraph 13.

36 The fourth condition is that any previous transaction falls within paragraph 37.

37 A previous transaction falls within this paragraph if—

(a) the previous transaction is exempt from charge by virtue of this schedule or schedule 11 (reconstruction relief and acquisition relief),

(b) the effective date of the previous transaction is less than 3 years before the date of the change mentioned in the first condition,

(c) the chargeable interest acquired under the relevant transaction by the buyer in relation to that transaction is the same as, comprises, forms part of, or is derived from, the chargeable interest acquired under the previous transaction by the buyer in relation to the previous transaction, and

(d) since the previous transaction, the chargeable interest acquired under that transaction has not been acquired by any person under a transaction that is not exempt from charge by virtue of this schedule or schedule 11 (reconstruction relief and acquisition relief).

38 Paragraph 33 does not apply where—

(a) there is a change in the control of the buyer because a loan creditor (within the meaning given by section 453 of the Corporation Tax Act 2010 (c.4)) obtains control of, or ceases to control, the buyer, and

(b) the other persons who controlled the buyer before the change continue to do so.

39 If two or more transactions effected at the same time are the earliest previous transactions falling within paragraph 37, the reference in paragraph 32 to the seller in relation to the earliest previous transaction is a reference to the persons who are the sellers in relation to the earliest previous transactions.

40 There is a change in the control of a company if—

(a) a person who controls the company (alone or with others) ceases to do so,

(b) a person obtains control of the company (alone or with others), or

(c) the company is wound up.
Interpretation

41 For the purposes of paragraphs 20 and 27 a company is “above” the seller in the group structure if the seller, or another company that is above the seller in the group structure, is a 75% subsidiary of the company.

42 In this Part of this schedule—

“control” is to be interpreted in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c.4) (but see paragraph 31),

“relevant associated company”, in relation to the buyer, means a company that—

(a) is a member of the same group as the buyer immediately before the buyer ceases to be a member of the same group as the seller, and

(b) ceases to be a member of the same group as the seller in consequence of the buyer so ceasing.

PART 4
INTERPRETATION

When are companies members of the same group?

43 Companies are members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company.

When is a company a subsidiary of another company?

44 A company (A) is the 75% subsidiary of another company (B) if B—

(a) is beneficial owner of not less than 75% of the ordinary share capital of A,

(b) is beneficially entitled to not less than 75% of any profits available for distribution to equity holders of A, and

(c) would be beneficially entitled to not less than 75% of any assets of A available for distribution to its equity holders on a winding-up.

45 For the purposes of paragraph 44(a)—

(a) the ownership referred to is ownership either directly or through another company or companies,

(b) the amount of ordinary share capital of A owned by B through another company or companies is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010 (c.4).

46 “Ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.

47 Chapter 6 of Part 5 of the Corporation Tax Act 2010 (c.4) (group relief: equity holders and profits or assets available for distribution) applies for the purposes of paragraph 44(b) and (c) as it applies for the purposes of section 151(4)(a) and (b) of that Act.

48 But sections 171(1)(b) and (3), 173, 174 and 176 to 178 of that Chapter are to be treated as omitted for the purposes of paragraph 44(b) and (c).
Other definitions

49 In this schedule—

“arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable,

“company” means a body corporate.

SCHEDULE 11
(introduced by section 27)

RECONSTRUCTION RELIEF AND ACQUISITION RELIEF

PART 1
INTRODUCTORY

Overview

1 (1) This schedule provides for relief for certain transactions in connection with the reconstruction and acquisition of companies.

(2) It is arranged as follows—

Part 2 provides for when reconstruction relief is available,

Part 3 provides for when acquisition relief is available,

Part 4 provides for when the relief is withdrawn,

Part 5 defines expressions used in this schedule.

PART 2
RECONSTRUCTION RELIEF

The relief

2 A land transaction is exempt from charge if—

(a) it is entered into for the purposes of or in connection with the transfer of an undertaking or part of an undertaking, and

(b) the qualifying conditions are met.

Qualifying conditions

3 The qualifying conditions are—

(a) that a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”) in pursuance of a scheme for the reconstruction of the target company,

(b) that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to all shareholders of the target company,

(c) that after the acquisition has been made—
(i) each shareholder of each of the companies is a shareholder of the other, and
(ii) the proportion of shares of one of the companies held by any shareholder is 
    the same, or as nearly as may be the same, as the proportion of shares of the 
    other company held by that shareholder,

(d) that the acquisition—
(i) is effected for bona fide commercial reasons, and
(ii) does not form part of arrangements the main purpose, or one of the main 
    purposes, of which is the avoidance of liability to the tax.

4 Where the consideration for the acquisition consists partly of the issue of 
non-redeemable shares as mentioned in the qualifying condition (b), that condition is met 
only if the rest of the consideration consists wholly of the assumption or discharge by 
the acquiring company of liabilities of the target company.

5 If, immediately before the acquisition, the target company or the acquiring company 
holds any of its own shares, the shares are treated for the purposes of qualifying 
conditions (c) and (d) as having been cancelled before the acquisition (and, accordingly, 
the company is to be treated as if it were not a shareholder of itself).

PART 3
ACQUISITION RELIEF

The relief

6 (1) This paragraph applies where—
(a) a land transaction is entered into for the purposes of or in connection with the 
    transfer of an undertaking or part of an undertaking, and
(b) the qualifying conditions are met.

(2) The tax chargeable in respect of the transaction is the prescribed proportion of the tax 
    that would otherwise be chargeable but for this paragraph.

(3) The prescribed proportion is such proportion as may be prescribed by the Scottish 
    Ministers by order.

Qualifying conditions

7 The qualifying conditions are—
(a) that a company (“the acquiring company”) acquires the whole or part of the 
    undertaking of another company (“the target company”),
(b) that the consideration for the acquisition consists wholly or partly of the issue of 
    non-redeemable shares in the acquiring company to—
    (i) the target company, or
    (ii) all or any of the target company’s shareholders,
(c) that the acquiring company is not associated with another company that is a party 
    to arrangements with the target company relating to shares of the acquiring 
    company issued in connection with the transfer of the undertaking or part,
that the undertaking or part acquired by the acquiring company has as its main activity the carrying on of a trade that does not consist wholly or mainly of dealing in chargeable interests,

e) that the acquisition—

(i) is effected for bona fide commercial reasons, and

(ii) does not form part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.

Where the consideration for the acquisition consists partly of the issue of non-redeemable shares as mentioned in qualifying condition (b), that condition is met only if the rest of the consideration consists wholly of—

(a) cash not exceeding 10% of the nominal value of the non-redeemable shares so issued,

(b) the assumption or discharge by the acquiring company of liabilities of the target company, or

(c) both of those things.

Interpretation

For the purposes of qualifying condition (c)—

(a) companies are associated if one has control of the other or both are controlled by the same person or person,

(b) “control” is to be construed in accordance with section 1124 of the Corporation Tax Act 2010 (c.4).

In this Part of this schedule, “trade” includes any venture in the nature of trade.

PART 4
WITHDRAWAL OF RELIEF

Overview

This Part of this schedule is arranged as follows—

paragraphs 12 to 14 provide for circumstances in which relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn,

paragraphs 15 to 21 provide for circumstances in which, despite paragraphs 12 to 14, relief is not withdrawn,

paragraphs 22 to 28 provide for the withdrawal of relief, which would otherwise not be withdrawn by virtue of paragraph 17 or 19, on the occurrence of certain subsequent events,

paragraphs 29 to 32 provide for how the tax chargeable is determined where relief is withdrawn or partially withdrawn.
Withdrawal of relief

12 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn where paragraphs 13 and 14 apply.

13 This paragraph applies where control of the acquiring company changes—

(a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of Part 2, or is subject to a reduced amount of tax by virtue of Part 3, of this schedule ("the relevant transaction"), or

(b) in pursuit of, or in connection with, arrangements made before the end of that period.

14 This paragraph applies where, at the time the control of the acquiring company changes ("the relevant time"), it or a relevant associated company holds a chargeable interest—

(a) that was acquired by the acquiring company under the relevant transaction, or

(b) that is derived from a chargeable interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction in relation to which relief under this schedule was available but was not claimed.

Case where relief not withdrawn: change of control of acquiring company as result of transaction connected to divorce etc.

15 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a share transaction that is effected as mentioned in—

(a) any of paragraphs (a) to (d) of paragraph 4 of schedule 1 (transactions connected with divorce etc.), or

(b) any of paragraphs (a) to (d) of paragraph 5 of schedule 1 (transactions connected with dissolution of civil partnership etc.).

16 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a share transaction that—

(a) is effected as mentioned in paragraph 7(1) of schedule 1, and

(b) meets the conditions in paragraph 7(2) of that schedule (variation of testamentary dispositions etc.).

Case where relief not withdrawn: exempt intra-group transfer

17 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of an exempt intra-group transfer.

18 But see paragraphs 22 to 24 for the effect of a subsequent non-exempt transfer.
Case where relief not withdrawn: share acquisition relief

19 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief applies.

20 But see paragraphs 25 to 28 for the effect of a change in the control of that other company.

Case where relief not withdrawn: controlling loan creditor

21 Relief under Part 2 or Part 3 of this schedule is not withdrawn where—

(a) control of the acquiring company changes as a result of a loan creditor (within the meaning of section 453 of the Corporation Tax Act 2010 (c.4)) becoming, or ceasing to be, treated as having control of the company, and

(b) the other persons who were previously treated as controlling the company continue to be so treated.

Withdrawal of relief on subsequent non-exempt transfer

22 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn if—

(a) control of the acquiring company changes as a result of an exempt intra-group transfer, and

(b) paragraphs 23 and 24 apply.

23 This paragraph applies where a company holding shares in the acquiring company to which the exempt intra-group transfer related, or that are derived from shares to which that transfer related, ceases to be a member of the same group as the target company—

(a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of Part 2, or is subject to a reduced amount of tax by virtue of Part 3, of this schedule (“the relevant transaction”), or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

24 This paragraph applies where the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—

(a) that was transferred to the acquiring company by the relevant transaction, or

(b) that is derived from an interest so transferred,

and that has not subsequently been transferred at market value under a chargeable transaction in relation to which relief under Part 2 or Part 3 of this schedule was available but was not claimed.

Withdrawal of relief where share acquisition relief applied but control of company subsequently changes

25 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn if—
(a) control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief applies, and

(b) paragraphs 26 to 28 apply.

26 This paragraph applies where control of the other company mentioned in paragraph 25(a) changes—

(a) before the end of the period of 3 years beginning with the effective date of the relevant transaction, or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

27 This paragraph applies where, at the time control of that other company changes, it holds shares transferred to it by the transfer mentioned in paragraph 25(a), or any shares derived from shares so transferred.

28 This paragraph applies where the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—

(a) that was transferred to the acquiring company by the relevant transaction, or

(b) that is derived from an interest so transferred,

and that has not subsequently been transferred at market value under a chargeable transaction in relation to which relief under Part 2 or Part 3 of this schedule was available but was not claimed.

Amount of tax chargeable where relief withdrawn

29 Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 30.

30 The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for the relief if the chargeable consideration for that transaction had been an amount equal to—

(a) the market value of the subject-matter of the transaction,

(b) if the acquisition was the grant of a lease, the rent.

Amount of tax chargeable where relief partially withdrawn

30

31 Where relief is partially withdrawn, the tax chargeable is an appropriate proportion of the amount determined in accordance with paragraph 30.

32 An “appropriate proportion” means an appropriate proportion having regard to—

(a) the subject-matter of the relevant transaction, and

(b) what is held at the relevant time by the acquiring company or, as the case may be, by that company and any relevant associated companies.

Interpretation

33 In paragraphs 19 and 25—

(a) “share acquisition relief” means relief under section 77 of the Finance Act 1986 (c.41), and
(b) a transfer is one in relation to which that relief applies if an instrument effecting
the transfer is exempt from stamp duty by virtue of that provision.

34 In this Part of this schedule, references to control of a company changing are to the
company becoming controlled—

(a) by a different person,
(b) by a different number of persons, or
(c) by two or more persons at least one of whom is not the person, or one of the
persons, by whom the company was previously controlled.

35 In this Part of this schedule—

“control” is to be construed in accordance with sections 450 and 451 of the
Corporation Tax Act 2010 (c.4),

“exempt intra-group transfer” means a transfer of shares effected by an instrument
that is exempt from stamp duty by virtue of section 42 of the Finance Act 1930
(c.28) or section 11 of the Finance Act (Northern Ireland) 1954 (c.23 (NI))
(transfers between associated bodies corporate),

“relevant associated company”, in relation to the acquiring company, means a
company—

(a) that is controlled by the acquiring company immediately before the control
of that company changes, and
(b) of which control changes in consequence of the change of control of that
company.

PART 5
INTERPRETATION

When are companies members of the same group?

36 Companies are members of the same group if one is the 75% subsidiary of the other or
both are 75% subsidiaries of a third company.

When is a company a subsidiary of another company?

37 A company (A) is the 75% subsidiary of another company (B) if B—

(a) is beneficial owner of not less than 75% of the ordinary share capital of A,
(b) is beneficially entitled to not less than 75% of any profits available for distribution
to equity holders of A, and
(c) would be beneficially entitled to not less than 75% of any assets of A available for
distribution to its equity holders on a winding-up.

38 For the purposes of paragraph 37—

(a) the ownership referred to in that paragraph is ownership either directly or through
another company or companies, and
The relief

A land transaction by which a chargeable interest is transferred by a person ("the transferor") to a limited liability partnership in connection with its incorporation is exempt from charge if the qualifying conditions are met.

The qualifying conditions

(a) that the effective date of the transaction is not more than 1 year after the date of incorporation of the limited liability partnership,

(b) that at the relevant time the transferor—

(i) is a partner in a partnership, or

(ii) holds the interest transferred as nominee or bare trustee for one or more partners in a partnership,

(c) that at the relevant time the partnership mentioned in paragraph (b) is comprised of all the persons who are or are to be members of the limited liability partnership (and no-one else), and

(d) that either—

(i) the proportions of the interest transferred to which the persons mentioned in paragraph (c) are entitled immediately after the transfer are the same as those to which they were entitled at the relevant time, or

(ii) the amount of ordinary share capital of A owned by B through another company or companies is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010 (c.4).

“Ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.

Chapter 6 of Part 5 of the Corporation Tax Act 2010 (c.4) (group relief: equity holders and profits or assets available for distribution) applies for the purposes of paragraph 37(b) and (c) as it applies for the purposes of section 151(4)(a) and (b) of that Act.

But sections 171(1)(b) and (3), 173, 174 and 176 to 178 of that Chapter are to be treated as omitted for the purposes of paragraph 37(b) and (c).

“arrangements” include any scheme, agreement or understanding, whether or not legally enforceable,

“non-redeemable shares” means shares that are not redeemable shares.
(ii) none of the differences in those proportions has arisen as part of a scheme or arrangement of which the main purpose, or one of the main purposes, is avoidance of liability to the tax.

**Interpretation**

3 In this schedule—

“limited liability partnership” means a limited liability partnership formed under the Limited Liability Partnerships Act 2000 (c.12) or the Limited Liability Partnerships Act (Northern Ireland) 2002 (c.12 (N.I.)),

“the relevant time” means—

(a) where the transferor acquired the interest after the incorporation of the limited liability partnership, immediately after the transferor acquired it, and

(b) in any other case, immediately before the incorporation of the limited liability partnership.

**The relief**

1 A land transaction is exempt from charge if the buyer is a charity and the qualifying conditions are met.

**Qualifying conditions**

2 The qualifying conditions are—

(a) that the buyer intends to hold—

(i) the subject-matter of the transaction, or

(ii) the greater part of that subject-matter, for qualifying charitable purposes, and

(b) that the transaction has not been entered into for the purpose of avoiding the tax (whether by the buyer or any other person).

**Qualifying charitable purposes**

3 A buyer holds the subject-matter of a transaction for qualifying charitable purposes if the buyer holds it—

(a) for use in the furtherance of the charitable purposes of the buyer or of another charity, or

(b) as an investment from which the profits are applied to the charitable purposes of the buyer.
Withdrawal of relief

4 Relief under this schedule is withdrawn, or partially withdrawn, if—

(a) a disqualifying event occurs—

(i) before the end of the period of 3 years beginning with the effective date of the transaction which was exempt from charge under this schedule (“the relevant transaction”), or

(ii) in pursuance of, or in connection with, arrangements made before the end of that period, and

(b) at the time of the disqualifying event the buyer holds a chargeable interest—

(i) that was acquired by the buyer under the relevant transaction, or

(ii) that is derived from an interest so acquired.

5 A “disqualifying event” means—

(a) the buyer ceasing to be established for charitable purposes only, or

(b) the subject-matter of the relevant transaction, or any interest or right derived from it, being held or used by the buyer otherwise than for qualifying charitable purposes.

6 Where the relevant transaction is exempt from charge by virtue of qualifying condition (a)(ii), the following are also disqualifying events—

(a) any transfer by the buyer of a major interest in the whole or any part of the subject-matter of the relevant transaction, or

(b) any grant by the buyer at a premium of a low-rental lease of the whole or any part of that subject-matter,

that is not made for the charitable purposes of the buyer.

7 A lease—

(a) is granted “at a premium” if there is consideration other than rent, and

(b) is a “low-rental” lease if the annual rent (if any) is less than £1,000 a year.

8 Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the relevant transaction but for the relief.

9 Where relief is partially withdrawn, the amount of tax chargeable is an appropriate proportion of the tax that would have been chargeable but for the relief.

10 An “appropriate proportion” means an appropriate proportion having regard to—

(a) what was acquired by the buyer under the relevant transaction and what is held by the buyer at the time of the disqualifying event, and

(b) the extent to which what is held by the buyer at that time becomes used or held for purposes other than qualifying charitable purposes.

11 In relation to a transfer or grant that is, by virtue of paragraph 6, a disqualifying event—

(a) the date of the event for the purposes of paragraph 4 is the effective date of the transfer or grant,

(b) paragraph 4(b) has effect as if, for “at the time” there were substituted “immediately before”,

78
(c) paragraph 10 has effect as if—

(i) in sub-paragraph (a), for “at the time of” there were substituted “immediately before and immediately after”,

(ii) sub-paragraph (b) were omitted.

Charitable trusts

This schedule applies in relation to a charitable trust as it applies to a charity.

“Charitable trust” means—

(a) a trust of which all the beneficiaries are charities, or

(b) a unit trust scheme in which all the unit holders are charities.

In this schedule as it applies in relation to a charitable trust—

(a) references to the buyer in paragraph 3(a) and (b) are to the beneficiaries or unit holders, or any of them,

(b) the reference to the buyer in paragraph 5(a) is to any of the beneficiaries or unit holders,

(c) the reference in paragraph 6 to the charitable purposes of the buyer is to those of the beneficiaries or unit holders, or any of them.

Interpretation

In this schedule, “charity” means—

(a) a body registered in the Scottish Charity Register, or

(b) a body which is—

(i) established under the law of a relevant territory,

(ii) managed or controlled wholly or mainly outwith Scotland, and

(iii) meets at least one of the conditions in subsection (2).

The condition are—

(a) the body is registered in a register corresponding to the Scottish Charity Register,

(b) the body’s purposes consist only of one or more of the charitable purposes.

A relevant territory is—

(a) England and Wales,

(b) Northern Ireland,

(c) a member State of the European Union other than the United Kingdom, or

(d) a territory specified in regulations made by the Scottish Ministers.

In this schedule, "charitable purposes" has the meaning given by section 106 of the Charities and Trustee Investments (Scotland) Act 2005 (asp 10).

In this schedule, “annual rent” means the average annual rent over the term of the lease or, if—

(a) different amounts of rent are payable for different parts of the term, and
(b) those amounts (or any of them) are ascertainable at the time of the disqualifying event,
the average annual rent over the period for which the highest ascertainable rent is payable.

SCHEDULE 14
(introduced by section 27)
RELIEF FOR CERTAIN COMPULSORY PURCHASES

The relief
1 An acquisition of a chargeable interest by a local authority is exempt from charge if the qualifying condition is met.

Qualifying condition
3 The qualifying condition is that the local authority has made a compulsory purchase order in respect of the chargeable interest for the purpose of facilitating the undertaking or achievement of an activity or purpose mentioned in section 189 of the Town and Country Planning (Scotland) Act 1997 (c.8) by another person.

Interpretation
4 For the purposes of this schedule it does not matter how the acquisition is effected (so this provision applies where the acquisition is effected by agreement).

SCHEDULE 15
(introduced by section 27)
RELIEF FOR COMPLIANCE WITH PLANNING OBLIGATIONS

The relief
1 A land transaction that is entered into in order to comply with—
   (a) a planning obligation, or
   (b) a modification of a planning obligation,
is exempt from charge if the qualifying conditions are met.

The qualifying conditions
2 The qualifying conditions are—
   (a) that the planning obligation or modification is enforceable against the seller,
   (b) that the buyer is a public body, and
   (c) the effective date of the transaction is within the period of 5 years beginning with the date on which the planning obligation was entered into or modified.
“Planning obligation” and “modification”

3 “Planning obligation” means an agreement made under section 75 of the Town and Country Planning (Scotland) Act 1997 (c.8).

4 “Modification” of a planning obligation means modification as mentioned in sections 75A and 75B of that Act.

Public authorities

5 The following are public bodies for the purposes of paragraph 2(b)—

   a local authority,

   the common services agency established under section 10(1) of the National Health Service (Scotland) Act 1978 (c.29),

   a health board established under section 2(1)(a) of that Act,

   Healthcare Improvement Scotland established under section 10A of that Act,

   a special health board established under section 2(1)(b) of that Act,

   any other body that is the planning authority for any of the purposes of the planning Acts within the meaning of the Town and Country Planning (Scotland) Act 1997 (c.8),

   a person prescribed for the purposes of this paragraph by the Scottish Ministers by order.

SCHEDULE 16
(introduced by section 27)

PUBLIC CIDITIES RELIEF

The relief

1 A land transaction entered into, in consequence of or in connection with a reorganisation effected by or under an enactment is exempt from charge if the buyer and seller are both public bodies.

2 The Scottish Ministers may, by order, provide that a land transaction that is not entered into as mentioned in paragraph 1 is exempt from charge if—

   (a) the transaction is effected by or under an enactment specified in the order, and

   (b) either the buyer or the seller is a public body.

Meaning of “reorganisation”

3 A “reorganisation” means changes involving—

   (a) the establishment, reform or abolition of one or more public bodies,

   (b) the creation, alteration or abolition of functions to be discharged or discharged by one or more public bodies, or

   (c) the transfer of functions from one public body to another.
Public bodies

4 The following are public bodies for the purposes of this schedule—

the Scottish Ministers,
a Minister of the Crown,

5 the Scottish Parliamentary Corporate Body,
a local authority,

the common services agency established under section 10(1) of the National Health Service (Scotland) Act 1978 (c.29),
a health board established under section 2(1)(a) of that Act,

10 Healthcare Improvement Scotland established under section 10A of that Act,
a special health board established under section 2(1)(b) of that Act,

any other authority that is the planning authority for any of the purposes of the planning Acts within the meaning of the Town and Country Planning (Scotland) Act 1997 (c.8),

15 a body (other than a company) that is established by or under an enactment for the purpose of carrying out functions conferred on it by or under an enactment,

a person prescribed for the purposes of this paragraph by the Scottish Ministers by order.

5 In this schedule, references to a public body include—

20 (a) a company in which all the shares are owned by such a body, and
(b) a wholly-owned subsidiary of such a company.

6 In paragraphs 4 and 5, “company” means a company as defined by section 1 of the Companies Act 2006.

Overview

1 (1) This schedule makes provision about the application of this Act in relation to partnerships.

(2) It is arranged as follows—

Part 2 makes general provision about the treatment of partnerships,

Part 3 makes provision about ordinary transactions involving a partnership,

35 Part 4 makes provision about transactions involving transfers from a partner or certain other persons to a partnership,
Part 5 makes provision about transactions involving transfers from a partnership to a partner or certain other persons (including transfers between partnerships),

Part 6 makes provision about transfers of interest in, and transactions involving, a property investment partnership,

Part 7 makes provision about the application of provisions of this Act on exemptions, reliefs, and notification to transactions falling within Parts 4 to 6,

Part 8 defines expressions used in this schedule.

**PART 2**

**GENERAL PROVISIONS**

10 **Meaning of “partnership”**

2 In this Act, “partnership” means—

(a) a partnership within the Partnership Act 1890 (c.39),

(b) a limited partnership registered under the Limited Partnerships Act 1907 (c.24),

(c) a limited liability partnership formed under the Limited Liability Partnerships Act 2000 (c.12) or the Limited Liability Partnerships Act (Northern Ireland) 2002 (c.12 (N.I.)),

(d) a firm or entity of a similar character to any of those mentioned in paragraphs (a) to (c) formed under the law of a country or territory outside the United Kingdom.

3 **Chargeable interests treated as being held by partners etc.**

For the purposes of this Act—

(a) a chargeable interest held by or on behalf of a partnership is treated as held by or on behalf of the partners, and

(b) a land transaction entered into for the purposes of a partnership is treated as entered into by or on behalf of the partners,

and not by or on behalf of the partnership as such.

(2) Sub-paragraph (1) applies notwithstanding that the partnership is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.

4 **Acquisition of interest in partnership not chargeable except as specially provided**

The acquisition of an interest in a partnership is not a chargeable transaction, notwithstanding that the partnership property includes land, except as provided by—

(a) Part 4 of this schedule (transfer of chargeable interest to a partnership),

(b) paragraph 17 (transfer of partnership interest pursuant to earlier arrangements), or

(c) paragraph 31 (transfer of interest in property-investment partnership).
Continuity of partnership

5 For the purposes of this Act, a partnership is treated as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member after the change.

Partnership not to be regarded as unit trust scheme etc.

6 A partnership is not to be regarded for the purposes of this Act as a unit trust scheme or an open ended investment company.

PART 3
ORDINARY PARTNERSHIP TRANSACTIONS

Introduction

7 This Part of this schedule applies to land transactions entered into as buyer by or on behalf of the members of a partnership, other than transactions within Parts 4 to 6 of this schedule.

Responsibility of partners

8 (1) Anything required or authorised to be done under this Act by or in relation to the buyer in the transaction is required or authorised to be done by or in relation to all the responsible partners.

(2) The responsible partners in relation to a transaction are—
   (a) the persons who are partners at the effective date of the transaction, and
   (b) any person who becomes a member of the partnership after that date.

(3) This paragraph has effect subject to paragraph 9 (representative partners).

Representative partners

9 (1) Anything required or authorised to be done by or in relation to the responsible partners may instead be done by or in relation to any representative partner or partners.

(2) This includes making the declaration required by section 36 (declaration that return is complete and correct).

(3) A representative partner means a partner nominated by a majority of the partners to act as the representative of the partnership for the purposes of this Act.

(4) Any such nomination, or the revocation of such a nomination, has effect only after notice of the nomination, or revocation, has been given to the Tax Authority.

Joint and several liability of responsible partners

10 (1) Where the responsible partners are liable to make a payment of tax, the liability is a joint and several liability of those partners.
(2) No amount may be recovered by virtue of sub-paragraph (1) from a person who did not become a responsible partner until after the effective date of the transaction in respect of which the tax is payable.

**PART 4**

**TRANSACTIONS INVOLVING TRANSFER TO A PARTNERSHIP**

**Overview of Part**

11 This Part of this schedule is arranged as follows—

- paragraphs 12 to 16 make provision about the treatment of certain land transactions involving the transfer of a chargeable interest to a partnership,

- paragraphs 17 and 18 provide for certain events following such transactions to be treated as land transactions.

**Circumstances in which this Part applies**

12 (1) This Part of this schedule applies where—

- a partner transfers a chargeable interest to the partnership,

- a person transfers a chargeable interest to a partnership in return for an interest in the partnership, or

- a person connected with—
  - a partner, or
  - a person who becomes a partner as a result of or in connection with the transfer,

transfers a chargeable interest to the partnership.

(2) This Part of this schedule applies whether the transfer is in connection with the formation of the partnership or is a transfer to an existing partnership.

(3) In this Part of this schedule—

- “the land transfer” means the transaction mentioned in sub-paragraph (1), and
- “the partnership” means the partnership to which the chargeable interest is transferred.

(4) This paragraph has effect subject to any election under paragraph 34.

**Calculation of chargeable consideration etc.**

13 (1) The chargeable consideration for the land transfer is taken to be equal to—

\[ MV \times (100 - SLP)\% \]

where—

- MV is the market value of the interest transferred, and
- SLP is the sum of the lower proportions determined in accordance with paragraph 14.
Paragraphs 8 to 10 (responsibility of partners) have effect in relation to the land transfer, but the responsible partners are—

(a) those who were partners immediately before the transfer and who remain partners after the transfer, and

(b) any person becoming a partner as a result of, or in connection with, the transfer.

This paragraph does not apply if the whole or part of the chargeable consideration for the land transfer is rent (see paragraph 28A (application of Parts 3 to 5 to leases)).

**Sum of the lower proportions**

The sum of the lower proportions in relation to the land transfer is determined as follows.

**Step 1**
Identify the relevant owner or owners.

**Step 2**
For each relevant owner, identify the corresponding partner or partners.

If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil.

**Step 3**
For each relevant owner, find the proportion of the chargeable interest to which the owner was entitled immediately before the land transfer.

Apportion that proportion between any one or more of the relevant owner’s corresponding partners.

**Step 4**
Find the lower of the following proportions (“the lower proportion”) for each corresponding partner—

(a) the sum of the proportions (if any) of the chargeable interest apportioned to the partner (at Step 3) in respect of each relevant owner,

(b) the partner’s partnership share immediately after the land transfer.

**Step 5**
Add together the lower proportions for each corresponding partner.

The result is the sum of the lower proportions.

**Relevant owner**

For the purposes of paragraph 14 (see Step 1), a person is a relevant owner if—

(a) immediately before the land transfer, the person was entitled to a proportion of the chargeable interest, and

(b) immediately after the land transfer, the person is a partner or connected with a partner.
(2) For the purposes of this paragraph and paragraph 14, persons who are entitled to a chargeable interest as joint owners are to be taken to be entitled to the chargeable interest as common owners in equal shares.

**Corresponding partner**

16 (1) For the purposes of paragraph 14 (see Step 2), a person is a corresponding partner in relation to a relevant owner if, immediately after the land transfer—

(a) the person is a partner, and

(b) the person is the relevant owner or is an individual connected with the relevant owner.

(2) For the purposes of sub-paragraph (1)(b) a company is to be treated as an individual connected with the relevant owner in so far as it—

(a) holds property as trustee, and

(b) is connected with the relevant owner only because of section 1122(6) of the Corporation Tax Act 2010 (c.4).

**Transfer of partnership interest pursuant to earlier arrangements**

17 (1) This paragraph applies where—

(a) subsequent to the land transfer, there is a transfer of an interest in the partnership (“the partnership transfer”),

(b) the partnership transfer is made—

(i) if the land transfer falls within paragraph 12(1)(a) or (b), by the person who makes the land transfer,

(ii) if the land transfer falls within paragraph 12(1)(c), by the partner concerned,

(c) the partnership transfer is made pursuant to arrangements that were in place at the time of the land transfer,

(d) the partnership transfer is not (apart from this paragraph) a chargeable transaction.

(2) The partnership transfer—

(a) is to be treated as a land transaction, and

(b) is a chargeable transaction.

(3) The partners are taken to be the buyers under the transaction.

(4) The chargeable consideration for the transaction is taken to be equal to a proportion of the market value, as at the date of the transaction, of the interest transferred by the land transfer.

(5) That proportion is—

(a) if the person making the partnership transfer is not a partner immediately after the transfer, the person’s partnership share immediately before the transfer,

(b) if that person is a partner immediately after the transfer, the difference between that person’s partnership share before and after the transfer.
(6) The partnership transfer and the land transfer are taken to be linked transactions.

(7) Paragraphs 8 to 10 (responsibility of partners) have effect in relation to the partnership transfer, but the responsible partners are—

(a) those who were partners immediately before the transfer and who remain partners after the transfer, and

(b) any person becoming a partner as a result of, or in connection with, the transfer.

Withdrawal of money etc. from partnership after transfer of chargeable interest

18 (1) This paragraph applies where, during the period of 3 years beginning with the date of the land transfer, a qualifying event occurs.

(2) A qualifying event is—

(a) a withdrawal from the partnership of money or money’s worth which does not represent income profit by the relevant person—

(i) withdrawing capital from the person’s capital account,

(ii) reducing the person’s interest, or

(iii) ceasing to be a partner, or

(b) in a case where the relevant person has made a loan to the partnership—

(i) the repayment (to any extent) by the partnership of the loan, or

(ii) a withdrawal by the relevant person from the partnership of money or money’s worth which does not represent income profit.

(3) For this purpose the relevant person is—

(a) where land transfer falls within paragraph 12(1)(a) or (b), the person who makes the land transfer,

(b) where the land transfer falls within paragraph 12(1)(c), the partner concerned or a person connected with the partner.

(4) The qualifying event—

(a) is treated as a land transaction, and

(b) is a chargeable transaction.

(5) The partners are taken to be the buyers under the transaction.

(6) Paragraphs 8 to 10 (responsibility of partners) have effect in relation to the transaction.

(7) The chargeable consideration for the transaction is taken to be—

(a) in a case falling within sub-paragraph (2)(a), equal to the value of the money or money’s worth withdrawn from the partnership,

(b) in a case falling within sub-paragraph (2)(b)(i), equal to the amount repaid,

(c) in a case falling within sub-paragraph (2)(b)(ii) equal to so much of the value of the money or money’s worth withdrawn from the partnership as does not exceed the amount of the loan.
(8) But (in any case) the chargeable consideration determined under sub-paragraph (7) is not to exceed the market value, as at the effective date of the land transfer, of the chargeable interest transferred by the land transfer, reduced by any amount previously chargeable to tax.

(9) The amount of tax payable by virtue of this paragraph in respect of the qualifying event (if any) is to be reduced (but not below nil) by any amount of tax payable by virtue of paragraph 31 (transfer for consideration of interest in property investment partnership) in respect of the event.

**PART 5**

**TRANSACTIONS INVOLVING TRANSFER FROM A PARTNERSHIP**

**Overview of Part**

This Part of this schedule is arranged as follows—

- paragraphs 20 to 26 make provision about certain land transactions involving the transfer of a chargeable interest from a partnership,
- paragraph 27 makes special provision where the transaction involves a transfer from a partnership to a partnership,
- paragraph 28 makes special provision where the partnership consists entirely of bodies corporate.

**Circumstances in which Part applies**

(1) This Part of this schedule applies where a chargeable interest is transferred—

(a) from a partnership to a person who is or has been one of the partners, or

(b) from a partnership to a person connected with a person who is or has been one of the partners.

(2) For the purposes of this paragraph property that was partnership property before the partnership was dissolved or otherwise ceased to exist is to be treated as remaining partnership property until it is distributed.

(3) In this Part of this schedule—

   “the land transfer” means the transaction mentioned in sub-paragraph (1), and
   
   “the partnership” means the partnership from which the chargeable interest is transferred.

(4) This paragraph has effect subject to any election under paragraph 34.

**Calculation of chargeable consideration**

(1) The chargeable consideration for the land transfer is (subject to paragraph 28) taken to be equal to—

\[ MV \times (100 - SLP)\% \]

where—

MV is the market value of the interest transferred, and
SLP is the sum of the lower proportions determined in accordance with paragraph 22.

(2) This paragraph does not apply if the whole or part of the chargeable consideration for the transaction is rent (see paragraph 28A (application of Parts 3 to 5 to leases)).

5 Sum of the lower proportions

22 The sum of the lower proportions in relation to the land transfer is determined as follows.

Step 1
Identify the relevant owner or owners.

Step 2
For each relevant owner, identify the corresponding partner or partners.

If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil.

Step 3
For each relevant owner, find the proportion of the chargeable interest to which the owner is entitled immediately after the land transfer.

Apportion that proportion between any one or more of the relevant owner’s corresponding partners.

Step 4
Find the lower of the following proportions (“the lower proportion”) for each corresponding partner—

(a) the sum of the proportions (if any) of the chargeable interest apportioned to the partner (at Step 3) in respect of each relevant owner,

(b) the partnership share attributable to the partner.

Step 5
Add together the lower proportions of each corresponding partner.

The result is the sum of the lower proportions.

Relevant owner

23 (1) For the purposes of paragraph 22 (see Step 1), a person is a relevant owner if—

(a) immediately after the land transfer, the person is entitled to a proportion of the chargeable interest, and

(b) immediately before the land transfer, the person was a partner or connected with a partner.

(2) For the purposes of this paragraph and paragraph 22, persons who are entitled to a chargeable interest as joint owners are taken to be entitled to the chargeable interest as common owners in equal shares.
Corresponding partner

24 (1) For the purposes of paragraph 22 (see Step 2), a person is a corresponding partner in relation to a relevant owner if, immediately before the land transfer—

(a) the person was a partner, and

(b) the person was the relevant owner or was an individual connected with the relevant owner.

(2) For the purposes of sub-paragraph (1)(b), a company is to be treated as an individual connected with the relevant owner in so far as it—

(a) holds property as trustee, and

(b) is connected with the relevant owner only because of section 1122(6) of the Corporation Tax Act 2010 (c.4).

Partnership share attributable to partner

25 (1) This paragraph provides for determining the partnership share attributable to a partner for the purposes of paragraph 22 (see Step 4).

(2) Where any tax payable in respect of the transfer of the relevant chargeable interest to the partnership has not been paid under this Act, the partnership share attributable to a partner is zero.

(3) Where the partner ceases to be a partner before the effective date of the transfer of the relevant chargeable interest to the partnership, the partnership share attributable to the partner is zero.

(4) In any other case, paragraph 26 applies for determining the partnership share attributable to a partner.

(5) In this paragraph and paragraph 26, the relevant chargeable interest is—

(a) the chargeable interest which ceases to be partnership property as a result of the land transfer, or

(b) where the land transfer is the creation of a chargeable interest, the chargeable interest out of which that interest is created.

26 (1) Where this paragraph applies, the partnership share attributable to the partner is determined as follows.

Step 1

Find the partner’s actual partnership share on the relevant date.

The relevant date—

(a) if the partner was a partner on the effective date of the transfer of the relevant chargeable interest to the partnership, is that date,

(b) if the partner became a partner after that date, is the date on which the partner became a partner.

Step 2

Add to that partnership share any increases in the partner’s partnership share which—
(c) occur in the period starting on the day after the relevant date and ending immediately before the land transfer, and

(d) count for this purpose.

The result is the increased partnership share.

An increase counts for the purpose of paragraph (b) only if any tax payable in respect of the transfer which resulted in the increase has been duly paid under this Act.

Step 3

Deduct from the increased partnership share any decreases in the partner’s partnership share which occur in the period starting on the day after the relevant date and ending immediately before the land transfer.

The result is the partnership share attributable to the partner.

(2) If the effect of applying Step 3 would be to reduce the partnership share attributable to the partner below zero, the partnership share attributable to the partner is zero.

Transfer of chargeable interest from a partnership to a partnership

27 (1) This paragraph applies where—

(a) there is a transfer of a chargeable interest from a partnership to a partnership, and

(b) the transfer is both—

(i) a transaction to which Part 4 of this schedule applies, and

(ii) a transaction to which this Part of this schedule applies.

(2) Paragraphs 13(1) and 21(1) do not apply.

(3) The chargeable consideration for the transaction is taken to be what it would have been if paragraph 13(1) had applied or, if greater, what it would have been if paragraph 21(1) had applied.

Transfer of chargeable interest from a partnership consisting wholly of bodies corporate

28 (1) This paragraph applies where—

(a) immediately before the land transfer all the partners are bodies corporate, and

(b) the sum of the lower proportions is 75 or more.

(2) Paragraphs 21, 27 and 28A have effect subject to the following modifications.

(3) For paragraph 21 substitute—

“21 The chargeable consideration for the land transfer is taken to be equal to the market value of the interest transferred.”.

(3A) In paragraph 27(2) and (3), for “21(1)” substitute “21”.

(3B) In paragraph 28A—

(a) in sub-paragraph (2), for “sub-paragraphs (3) to (6)” substitute “sub-paragraph (5)”;

(b) omit sub-paragraphs (3), (4), (6), (7) and (9).
(4) Paragraph 22 provides for determining the sum of the lower proportions.

**PART 5A**

**APPLICATION OF PARTS 3 TO 5 TO LEASES**

*Application of Parts 3 to 5 to leases*

28A(1) This paragraph applies in relation to a transaction to which paragraph 12 or 20 applies where the whole or part of the chargeable consideration for the transaction is rent.

(2) Schedule 18A (leases) has effect with the modifications set out in sub-paragraphs (3) to (6).

(3) In paragraph 4—

(a) in Step 1, for “the net present value (NPV) of the rent payable over the term of the lease” substitute “the relevant chargeable proportion of the net present value (NPV) of the rent payable over the term of the lease”, and

(b) in Step 2, for “the NPV” substitute “the relevant chargeable proportion”.

(4) In paragraph 5—

(a) in Step 1, for “the total of the net present values (TNPV) of the rent payable over the terms of all the leases” substitute “the total of the relevant chargeable proportions of the net present values (TNPV) of the rent payable over the terms of all the leases”,

(b) in Step 2, for “the TNPV” substitute “the total of the relevant chargeable proportions”, and

(c) in Step 4—

(i) for “the net present value” substitute “the relevant chargeable proportion”, and

(ii) for “the TNPV” substitute “the total of the relevant chargeable proportions”.

(5) In paragraph 8(1), for “paragraph 9” substitute “paragraph 13 or 21 of schedule 17 and paragraph 9 of this schedule”.

(6) In paragraph 9(6)—

(a) in paragraph (a), for “the annual rent” substitute “the relevant chargeable proportion of the annual rent”, and

(b) in paragraph (b), for “the total of the annual rents” substitute “the relevant chargeable proportion of the total of the annual rents”.

(7) For the purposes of schedule 18A as modified by this paragraph, the relevant chargeable proportion is—

\[(100-\text{SLP})\%\]

where SLP is the sum of the lower proportions.

(8) The following paragraphs apply for determining the sum of the lower proportions—

(a) in the case of a transaction to which paragraph 12 applies, paragraph 14, and

(b) in the case of a transaction to which paragraph 20 applies, paragraph 22.
(9) In the case of a transaction to which paragraph 20 applies, this paragraph is subject to paragraph 28.

**PART 6**

**PROPERTY INVESTMENT PARTNERSHIPS**

5 Overview of Part

29 This Part of this schedule is arranged as follows—

   paragraphs 31 to 33 make provision about certain transactions involving the transfer of an interest in a property investment partnership,

   paragraph 34 provides that a property investment partnership may elect to disapply paragraph 12 in relation to certain land transactions.

Meaning of “property investment partnership”

30 (1) In this schedule, “property-investment partnership” means a partnership whose sole or main activity is investing or dealing in chargeable interests (whether or not that activity involves the carrying out of construction operations on the land in question).

15 (1A) For the purposes of sub-paragraph (1) “chargeable interests” includes any interest which would be a chargeable interest but for the fact that it relates to land outwith Scotland.

(2) In sub-paragraph (1) “construction operations” has the same meaning as in Chapter 3 of Part 3 of the Finance Act 2004 (see section 74 of that Act).

Transfer of interest in partnership treated as land transaction

31 (1) This paragraph applies where—

   (a) there is a transfer of an interest in a property-investment partnership, and

   (b) the relevant partnership property includes a chargeable interest.

(2) The transfer—

   (a) is treated as a land transaction, and

   (b) is a chargeable transaction.

25 (3) The buyer in the transaction is the person who acquires an increased partnership share or, as the case may be, becomes a partner in consequence of the transfer.

(4) The chargeable consideration for the transaction is taken to be equal to a proportion of the market value of the relevant partnership property.

30 (5) That proportion is—

   (a) if the person acquiring the interest in the partnership was not a partner before the transfer, the person’s partnership share immediately after the transfer,

   (b) if the person was a partner before the transfer, the difference between the person’s partnership share before and after the transfer.

35 (6) The relevant partnership property, in relation to a Type A transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than—
(a) any chargeable interest that was transferred to the partnership in connection with the transfer,
(b) a lease to which paragraph 32 (exclusion of market rent leases) applies, and
(c) any chargeable interest that is not attributable economically to the interest in the partnership that is transferred.

(7) The relevant partnership property, in relation to a Type B transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than—
(a) any chargeable interest that was transferred to the partnership in connection with the transfer,
(b) a lease to which paragraph 32 (exclusion of market rent leases) applies,
(c) any chargeable interest that is not attributable economically to the interest in the partnership that is transferred,
(d) any chargeable interest in respect of whose transfer to the partnership an election has been made under paragraph 34, and
(e) any other chargeable interest whose transfer to the partnership did not fall within paragraph 12(1)(a), (b) or (c).

(8) A Type A transfer is—
(a) a transfer that takes the form of arrangements entered into under which—
(i) the whole or part of a partner’s interest as partner is acquired by another person (who may be an existing partner), and
(ii) consideration in money or money’s worth is given by or on behalf on the person acquiring the interest, or
(b) a transfer that takes the form of arrangements entered into under which—
(i) a person becomes a partner,
(ii) the interest of an existing partner in the partnership is reduced or an existing partner ceases to be a partner, and
(iii) there is a withdrawal of money or money’s worth from the partnership by the existing partner mentioned in sub-paragraph (ii) (other than money or money’s worth paid from the resources available to the partnership prior to the transfer).

(9) Any other transfer to which this paragraph applies is a Type B transfer.

(10) An interest in respect of the transfer of which this paragraph applies is to be treated as a chargeable interest for the purposes of paragraph 15 of schedule 10 to the extent that the relevant partnership property consists of a chargeable interest.

Exclusion of market rent leases

32 (1) A lease held as partnership property immediately after a transfer of an interest in the partnership is not relevant partnership property for the purposes of paragraph 31(6) or (7) if the following four conditions are met.

(2) The first condition is that—
Partnership interests: application of provisions about exchanges etc.

33 (1) Where paragraph 5 of schedule 2 (exchanges) applies to the acquisition of an interest in a partnership in consideration of entering into a land transaction with an existing partner, the interest in the partnership is to be treated as a major interest in land for the purposes of that paragraph if the relevant partnership property includes a major interest in land.

34 (1) Part 4 of this schedule does not apply to a transfer of a chargeable interest to a property-investment partnership if the buyer in relation to the transaction elects for that paragraph not to apply.

(2) Where an election under this paragraph is made in respect of a transaction—

(a) Part 5 of this schedule (if relevant) is also disappplied,

(b) the chargeable consideration for the transaction is taken to be the market value of the chargeable interest transferred, and

(c) the transaction falls within Part 3 of this schedule.
(3) An election under this paragraph must be included in the land transaction return made in respect of the transaction or in an amendment of that return.

(4) Such an election is irrevocable and a land transaction return may not be amended so as to withdraw the election.

(5) Where an election under this paragraph in respect of a transaction (the “main transaction”) is made in an amendment of the land transaction return—

(a) the election has effect as if it had been made on the date on which the land transaction return was made, and

(b) any land transaction return in respect of an affected transaction may be amended (within the period allowed for amendment of that return) to take account of that election.

(6) In sub-paragraph (5) “affected transaction”, in relation to the main transaction, means a transaction—

(a) to which paragraph 31 applied, and

(b) with an effective date on or after the effective date of the main transaction.

PART 7
APPLICATION OF PROVISIONS ON EXEMPTIONS, RELIEFS AND NOTIFICATION

Overview of Part

This Part of this schedule is arranged as follows—

paragraph 36 makes general provision about the application of exemptions and reliefs to transactions mentioned in Parts 4 to 6 of this schedule,

paragraphs 37 and 38 makes provision about the application of group relief to certain transactions mentioned in Part 4 of this schedule,

paragraph 39 makes provision about the application of charities relief to certain transfers of interest in a partnership,

paragraph 40 makes provision about the notification of certain transfers of interest in a partnership.

Application of exemptions and reliefs: general

(1) Paragraph 1 of schedule 1 (exemption of transactions for which there is no chargeable consideration) does not apply to—

(a) a transaction to which Part 4 applies,

(b) a transaction to which Part 5 applies, or

(c) a transfer of interest in a partnership which is treated as a land transaction by virtue of paragraph 17 or 31.

(2) But subject to paragraphs 37 and 39 this schedule has effect subject to any other provision affording exemption or relief from the tax.
Application of group relief

37 (1) Schedule 10 (group relief) applies with the following modifications to—

(a) a transaction to which Part 4 applies, and

(b) a transfer of interest in a partnership which is treated as a land transaction by virtue of paragraph 17.

(2) For paragraphs 14 and 15 substitute—

“14 This paragraph applies where a partner who was a partner at the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant partner” and “the relevant transaction” respectively) ceases to be a member of the same group as the seller—

(a) before the end of the period of 3 years beginning with the effective date of the transaction, or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

15 This paragraph applies where, at the time the relevant partner ceases to be a member of the same group as the seller (“the relevant time”), a chargeable interest is held by or on behalf of the members of the partnership and that chargeable interest—

(a) was acquired by or on behalf of the partnership under the relevant transaction, or

(b) is derived from a chargeable interest so acquired,

and has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed.”.

(3) For paragraph 19(b), substitute—

“(b) what is held at the relevant time by or on behalf of the partnership and to the proportion in which the relevant partner is entitled at the relevant time to share in the income profits of the partnership.”.

(4) In paragraphs 20 to 42, for “the buyer” (wherever appearing) substitute “the relevant partner”.

38 (1) This paragraph applies where in calculating the sum of the lower proportions in relation to a transaction (in accordance with paragraph 14)—

(a) a company (“the connected company”) would have been a corresponding partner of a relevant owner (“the original owner”) but for the fact that paragraph 16 includes connected persons only if they are individuals, and

(b) the connected company and the original owner are members of the same group.

(2) The charge in respect of the transaction is to be reduced to the amount that would have been payable had the connected company been a corresponding partner of the original owner for the purposes of calculating the sum of the lower proportions.

(3) The provisions of schedule 10 apply to the relief under sub-paragraph (2) as to group relief under paragraph 2 of that schedule, but—

(a) with the omission of paragraph 5(a),
(b) with the substitution for paragraphs 14 and 15 of—

“14 This paragraph applies where a partner (“the relevant partner”) who was, at the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”), a partner and a member of the same group as the transferor, ceases to be a member of the same group as the seller—

(a) before the end of the period of 3 years beginning with the effective date of the transaction, or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

15 This paragraph applies where, at the time the relevant partner ceases to be a member of the same group as the seller (“the relevant time”), a chargeable interest is held by or on behalf of the members of the partnership and that chargeable interest—

(a) was acquired by or on behalf of the partnership under the relevant transaction, or

(b) is derived from a chargeable interest so acquired,

and has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed.”,

(c) with the other modifications specified in paragraph 37(3) and (4).

Application of charities relief

39 (1) Schedule 13 (charities relief) applies to the transfer of interest in a partnership that is a chargeable transaction by virtue of paragraph 17 or 31 with these modifications.

(2) In paragraph 1, for “A land transaction is exempt from charge if the buyer is a charity” substitute “A transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17 or 31 of schedule 17 is exempt from charge if the transferee is a charity”.

(3) For paragraph 2(a), substitute—

“(a) that every chargeable interest held as partnership property immediately after the transfer must be held for qualifying charitable purposes,”.

(4) In paragraph 2(b), for “the buyer” substitute “the transferee”.

(4A) In paragraph 3, for “A buyer holds the subject-matter of a transaction for qualifying charitable purposes if the buyer holds it” substitute “A chargeable interest is held for qualifying charitable purposes if it is held”.

(5) In paragraph 3(a), for “the buyer” substitute “the transferee”.

(5A) In paragraph 3(b), for “the buyer” substitute “the partners”.

(6) For paragraph 4(b) substitute—

“(b) at the time of the disqualifying event the partnership property includes a chargeable interest—

(i) that was held as partnership property immediately after the relevant transaction, or
(ii) that is derived from an interest held as partnership property at that time.”.

(7) In paragraph 5(a), for “the buyer” substitute “the transferee”.

(8) For paragraph 5(b) substitute—

“(b) any chargeable interest held as partnership property immediately after the relevant transaction, or any interest or right derived from it, being used or held otherwise than for qualifying charitable purposes.”.

(9) For paragraph 10 substitute—

“10 An “appropriate proportion” means an appropriate proportion having regard to—

(a) the chargeable interests held as partnership property immediately after the relevant transaction and the chargeable interests held as partnership property at the time of the disqualifying event, and

(b) the extent to which any chargeable interest held as partnership property at that time becomes used or held for purposes other than qualifying charitable purposes.”.

(10) After paragraph 16 insert—

“17 There is a transfer of an interest in a partnership for the purposes of this schedule if there is such a transfer for the purposes of Part 3 of schedule 17 (see paragraph 47 of that schedule).

18 Paragraph 42 of schedule 17 (meaning of references to partnership property) applies for the purposes of this schedule as it applies for the purposes of that schedule.”.

Notification of transfers of partnership interests

40 (1) A transaction which is a chargeable transaction by virtue of paragraph 17 or 31 (transfer of partnership interest) is a notifiable transaction if (but only if) the consideration for the transaction exceeds the nil rate band.

(2) The consideration for a transaction exceeds the nil rate band if—

(a) the chargeable consideration, or

(b) where the transaction is one of a number of linked transactions, the total of the chargeable consideration for all the linked transactions,

exceeds the nil rate band applicable to the transaction.

PART 8

INTERPRETATION

Introduction

41 This Part of this schedule defines expressions used in this schedule.
Partnership property

42 Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business.

Partnership share

43 Any reference to a person’s partnership share at any time is to the proportion in which the person is entitled at that time to share in the income profits of the partnership.

Transfer of chargeable interest

44 References to the transfer of a chargeable interest include—

(a) the creation of a chargeable interest,

(b) the renunciation or release of a chargeable interest, and

(c) the variation of a chargeable interest.

Transfer of chargeable interest to a partnership

45 For the purposes of this schedule, there is a transfer of a chargeable interest to a partnership in any case where a chargeable interest becomes partnership property.

Transfer of chargeable interest from a partnership

46 For the purposes of this schedule, there is a transfer of a chargeable interest from a partnership in any case where—

(a) a chargeable interest that was partnership property ceases to be partnership property, or

(b) a chargeable interest is created out of partnership property and the interest is not partnership property.

Transfer of interest in a partnership

47 For the purposes of this schedule, where a person acquires a partnership share or a person’s partnership share increases there is a transfer of an interest in the partnership (to that partner and from the other partners).

Connected persons

48 In the application of section 1122 of the Corporation Tax Act 2010 (connected persons) for the purposes of this schedule—

(a) that section has effect with the omission of subsection (7) (partners connected with each other), and

(b) for the purposes of paragraph 12 or 22, that section has effect with the omission of subsection (6)(c) to (e) (trustee connected with settlement).
"Arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable.

SCHEDULE 18
(introduced by section 50)

TRUSTS

PART 1

OVERVIEW

Overview
10 1 (1) This schedule makes provision about the application of this Act in relation to trusts.
    (2) It is arranged as follows—

    Part 2 makes provision for the application of this Act to trusts generally,
    Part 3 makes provision for the treatment of certain transactions involving bare trusts,
    Part 4 makes provision for the treatment of certain transactions involving settlements,
    Part 5 makes provision for the liability of trustees of a settlement to pay the tax and make returns and declarations,
    Part 6 defines expressions used in this schedule.

PART 2

TREATMENT OF TRUSTS AND BENEFICIARIES GENERALLY

Interests of beneficiaries under certain trusts
2  Paragraphs 3 and 4 apply where property is held in trust—
    (a) under the law of Scotland, or
    (b) under the law of a country or territory outwith the United Kingdom,

on terms such that, if the trust had effect under the law of England and Wales, a beneficiary would be regarded as having an equitable interest in the trust property.

3  The beneficiary is to be treated for the purpose of this Act as having a beneficial interest in the trust property despite the fact that no such interest is recognised by the law of Scotland or of the country or territory outwith the United Kingdom.

4  An acquisition of the interest of a beneficiary under the trust is to be treated as involving the acquisition of an interest in the trust property.
PART 3

TRANSACTIONS INVOLVING BARE TRUSTS

Acquisition of chargeable interest by bare trustee

5 Where a person (T) acquires a chargeable interest or an interest in a partnership as bare trustee, this Act applies as if the interest were vested in, and the acts of T in relation to it were the acts of the person or persons for whom T is trustee.

5A However, any tax due by the person or persons may, without prejudice to any other method of recovery, be recovered from T.

6 Paragraphs 5 and 5A do not apply in relation to the grant of a lease.

Grant of lease to bare trustee

7 Where a lease is granted to a person as bare trustee, the person is to be treated for the purposes of this Act, as it applies in relation to the grant of a lease, as buyer of the whole of the interest acquired.

Grant of lease by bare trustee

8 Where a person, as bare trustee, grants a lease, the person is to be treated for the purposes of this Act, as it applies in relation to the grant of a lease, as seller of the whole of the interest disposed of.

PART 4

TRANSACTIONS INVOLVING SETTLEMENTS

Acquisition by trustees of settlements

9 Where persons, as trustees of a settlement, acquire a chargeable interest or an interest in a partnership, they are to be treated for the purposes of this Act, as it applies to that acquisition, as buyers of the whole of the interest acquired (including the beneficial interest).

Consideration for exercise of power of appointment or discretion

10 Paragraph 11 applies where a chargeable interest is acquired by virtue of—

(a) the exercise of a power of appointment, or

(b) the exercise of a discretion vested in trustees of a settlement.

11 Any consideration given for the person in whose favour the appointment was made or the discretion was exercised becoming an object of the power or discretion is to be treated for the purpose of this Act as the consideration for the acquisition of the interest.

Reallocation of trust property as between beneficiaries

12 Paragraph 13 applies where—
(a) the trustees of a settlement reallocate trust property in such a way that a beneficiary acquires an interest in certain trust property and ceases to have an interest in other trust property, and

(b) the beneficiary consents to ceasing to have an interest in that other property.

The fact that the beneficiary gives consent does not mean that there is chargeable consideration for the acquisition.

**PART 5**

**SETTLEMENTS: PAYMENT OF TAX AND RETURNS**

**Liability to pay the tax**

Where the trustees of a settlement are liable to pay the tax, the payment may be recovered (but only once) from any one or more of the responsible trustees.

**Liability to make returns**

A return in relation to a land transaction may be made by any one or more of the responsible trustees in relation to the transaction (the “relevant trustees”).

**Duty to make declaration**

The declaration required by section 36(1) or (2)(a) must be made by all the relevant trustees.

**Responsible trustees**

The responsible trustees, in relation to a land transaction, are—

(a) the persons who are trustees at the effective date of the transaction, and

(b) any person who subsequently becomes a trustee.

**PART 6**

**INTERPRETATION**

**Meaning of “bare trust”**

In this schedule, a “bare trust”—

(a) is a trust under which the property is held by a person as trustee—

(i) for a person who is absolutely entitled as against the trustee, or who would be so entitled but for being under a legal disability by reason of non-age or under another disability, or

(ii) for two or more persons who are or would be jointly so entitled, and

(b) includes a case in which a person holds property as a nominee for another.
Meaning of “absolutely entitled”

19 The references in paragraph 18 to a person being absolutely entitled to property as against the trustee are references to a case where the person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustee—

(a) to resort to the property for payment of duty, taxes, costs or other outgoings, or

(b) to direct how the property is to be dealt with.

Meaning of “settlement”

20 In this schedule, “settlement” means a trust that is not a bare trust.

SCHEDULE 18A
(introduced by section 55)

LEASES

PART 1

INTRODUCTORY

Overview

1 (1) This schedule makes provision about the application of this Act in relation to leases.

(2) It is arranged as follows—

Part 2 makes provision for the calculation of the tax chargeable in relation to chargeable consideration which consists of rent,

Part 3 makes provision about the calculation of the tax chargeable in relation to other chargeable consideration,

Part 4 makes provision for the review of tax chargeable at periodic intervals and on certain events,

Part 5 makes provision about chargeable consideration in relation to leases, including consideration which consists of rent, consideration other than rent and consideration that is not treated as chargeable consideration,

Part 6 makes provision about duration of leases and about the application of this Act to transactions involving leases generally.

Calculation of tax chargeable where chargeable consideration includes rent

2 Where the chargeable consideration for a chargeable transaction to which this schedule applies consists of rent (or includes rent and chargeable consideration other than rent), the tax chargeable is the sum of—

(a) any tax chargeable on so much of the chargeable consideration as consists of rent, and

(b) any tax chargeable on so much of the chargeable consideration other than rent.
PART 2

AMOUNT OF TAX CHARGEABLE: RENT

Tax rates and tax bands

3 (1) The Scottish Ministers must, by order, specify the tax bands and the percentage tax rates for each band applicable to chargeable consideration which consists of rent.

(2) An order under sub-paragraph (1) must specify—

(a) a nil rate tax band and at least one other tax band,

(b) the tax rate for the nil rate tax band, which must be 0%, and

(c) the tax rate for each tax band above the nil rate tax band so that the rate for each band is higher than the rate for the band below it.

Amount of tax chargeable in respect of rent

4 The amount of tax chargeable on so much of the chargeable consideration as consists of rent is to be determined as follows.

Step 1

Calculate the net present value (NPV) of the rent payable over the term of the lease (see paragraph 6).

Step 2

For each tax band, multiply so much of the NPV as falls within the band by the tax rate for that band.

Step 3

Calculate the sum of the amounts reached under Step 2.

The result is the amount of tax chargeable in respect of rent.

Amount of tax chargeable in respect of rent: linked transactions

5 Where a chargeable transaction to which this schedule applies is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the amount of tax chargeable in respect of the rent is to be determined as follows.

Step 1

Calculate the total of the net present values (TNPV) of the rent payable over the terms of all the leases (see paragraph 6).

Step 2

For each tax band, multiply so much of the TNPV as falls within the band by the tax rate for that band.

Step 3

Calculate the sum of the amounts reached under Step 2.

The result is the total tax chargeable in respect of rent.
Step 4

Divide the net present value of the rent payable over the term of the lease in question by the TNPV.

Step 5

Multiply the total tax chargeable in respect of rent by the fraction reached under Step 4.

The result is the amount of tax chargeable in respect of rent for the lease in question.

Net present value

The net present value (NPV) of the rent payable over the term of a lease is calculated by applying the following formula—

\[ NPV = \sum_{i=1}^{n} \frac{r_i}{(1 + T)^i} \]

where—

- \( r_i \) is the rent payable in respect of year \( i \),
- \( i \) is the first, second, third etc. year of the term of the lease,
- \( n \) is the term of the lease, and
- \( T \) is the temporal discount rate (see paragraph 7).

Temporal discount rate

(1) For the purposes of this schedule the “temporal discount rate” is 3.5% or such other rate as may be specified by the Scottish Ministers by order.

(2) An order under this paragraph may—

(a) specify a rate or make provision for any such rate to be determined by reference to such rate or the average of such rates as may be referred to in the order,

(b) provide for rates to be reduced below, or increased above, what they otherwise would be by specified amounts or by reference to specified formulae,

(c) provide for rates arrived at by reference to averages to be rounded up or down, and

(d) provide for circumstances in which alteration of a rate is or is not to take place.

PART 3

AMOUNT OF TAX CHARGEABLE: CONSIDERATION OTHER THAN RENT

Amount of tax chargeable in respect of consideration other than rent: general

(1) Where in the case of a transaction to which this schedule applies there is chargeable consideration other than rent, the provisions of this Act apply in relation to that consideration as in relation to other chargeable consideration (but see paragraph 9).

(2) Where a transaction to which this schedule applies falls to be taken into account as a linked transaction for the purposes of section 26, no account is to be taken of rent in determining the relevant consideration.
Amount of tax chargeable in respect of consideration other than rent: nil rate band

9 (1) This paragraph applies in the case of a transaction to which this schedule applies where—
   (a) there is chargeable consideration other than rent, and
   (b) section 25 or 26 applies to the transaction.

(2) If the relevant rent is at least £1,000, the nil rate tax band does not apply in relation to the consideration other than rent and any such consideration that would have fallen within that band is treated as falling within the next tax band.

(3) Sub-paragraphs (4) and (5) apply if—
   (a) the transaction to which this schedule applies is one of a number of linked transactions,
   (b) the relevant land is partly residential property and partly non-residential property, and
   (c) the relevant rent attributable, on a just and reasonable apportionment, to the land that is non-residential property is at least £1,000.

(4) For the purposes of determining the amount of tax chargeable under section 26 in relation to the consideration other than rent, the transactions are treated as if they were two sets of transactions, namely—
   (a) one whose subject-matter consists of all of the interests in land that is residential property, and
   (b) one whose subject-matter consists of all of the interests in land that is non-residential property.

(5) For that purpose, the chargeable consideration attributable to each of those separate sets of linked transactions is the chargeable consideration so attributable on a just and reasonable apportionment.

(6) In this paragraph “the relevant rent” means—
   (a) the annual rent in relation to the transaction in question, or
   (b) if that transaction is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the total of the annual rents in relation to all of those transactions.

(7) In sub-paragraph (6) the “annual rent” means—
   (a) the average annual rent over the term of the lease, or
   (b) if—
      (i) different amounts of rent are payable for different parts of the term, and
      (ii) those amounts (or any of them) are ascertainable at the effective date of the transaction,
      the average annual rent over the term for which the highest ascertainable rent is payable.

(8) In this paragraph “relevant land” means—
   (a) the land an interest in which is the main subject-matter of the transaction,
(b) if the transaction in question is one of a number of linked transactions, any land an interest in which is the main subject-matter of any of those transactions.

**PART 4**

**Regular review of tax chargeable**

10 (1) This paragraph applies where, in relation to a chargeable transaction to which this schedule applies—

(a) the buyer made a land transaction return, or

(b) where such a return was not made, the buyer made—

(i) a return under section 31 (return where contingency ceases or consideration ascertained),

(ii) a return under paragraph 21 (return where lease for fixed term continues after end of term),

(iii) a return under paragraph 23 (return in relation to lease for indefinite term),

or

(iv) a return under paragraph 32 (return where transaction becomes notifiable on variation of rent or term).

(2) The buyer must make a further return to the Tax Authority if, on a review date, the lease—

(a) has not been assigned, or

(b) has not terminated (whether on the term of the lease coming to an end or otherwise).

(3) The return must be made before the end of the period of 30 days beginning with the review date.

(4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction at that review date.

(5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

(6) In this paragraph, the “review date” is—

(a) in the case of a transaction to which sub-paragraph (1)(a) applies, the day falling on the third anniversary of the effective date of the transaction and on each subsequent third anniversary of that date,

(b) in the case of a transaction to which sub-paragraph (1)(b)(i) applies, the day falling on the third anniversary of the date on which the event mentioned in section 31(2) occurred,

(c) in the case of a transaction to which sub-paragraph (1)(b)(ii) applies, the day falling on the third anniversary of the date on which the 1 year period mentioned in paragraph 21(3) ended and on each subsequent third anniversary of that date,
Part 5—Chargeable consideration: rent and consideration other than rent

Rent

12 (1) For the purposes of this Act, a single sum expressed to be payable in respect of rent, or expressed to be payable in respect of rent and other matters but not apportioned, is to be treated as entirely rent.

(2) Sub-paragraph (1) is without prejudice to the application of paragraph 4 of schedule 2 (chargeable consideration: just and reasonable apportionment) where separate sums are expressed to be payable in respect of rent and other matters.

Amounts payable in respect of periods before grant of a lease

13 For the purposes of this Act, “rent” does not include any chargeable consideration for the grant of a lease that is payable in respect of a period before the grant of the lease.

Variable or uncertain rent

14 (1) This paragraph applies to determine the amount of rent payable under a lease where that amount—
(a) varies in accordance with provision in the lease, or
(b) is contingent, uncertain or unascertained.

(2) The provisions of this Act apply as in relation to other chargeable consideration and accordingly the provisions of sections 18 and 19 apply if the amount is contingent, uncertain or unascertained.

(3) But section 20(b) does not apply.

(4) For the purposes of this paragraph, the cases where the amount of rent payable under a lease is uncertain or unascertained include cases where there is a possibility of that amount being varied under—

(a) section 13, 14, 15 or 31 of the Agricultural Holdings (Scotland) Act 1991 (c.55), or
(b) section 9, 10 or 11 of the Agricultural Holdings (Scotland) Act 2003 (asp 11).

(5) No account is to be taken for the purposes of this Act of any provision for rent to be adjusted in line with the retail prices index, consumer prices index or any other similar index.

Reverse premium

15 (1) In the case of the grant, assignation or renunciation of a lease a reverse premium does not count as chargeable consideration.

(2) A “reverse premium” means—

(a) in relation to the grant of a lease, a premium moving from the landlord to the tenant,
(b) in relation to the assignation of a lease, a premium moving from the assignor to the assignee,
(c) in relation to the renunciation of a lease, a premium moving from the tenant to the landlord.

Tenant’s obligations etc. that do not count as chargeable consideration

16 (1) In the case of the grant of a lease none of the following counts as chargeable consideration—

(a) any undertaking by the tenant to repair, maintain or insure the leased premises,
(b) any undertaking by the tenant to pay any amount in respect of services, repairs, maintenance or insurance or the landlord’s costs of management,
(c) any other obligation undertaken by the tenant that is not such as to affect the rent that a tenant would be prepared to pay in the open market,
(d) any guarantee of the payment of rent or the performance of any other obligation of the tenant under the lease,
(e) any penal rent, or increased rent in the nature of a penal rent, payable in respect of the breach of any obligation of the tenant under the lease,
(f) any other obligation of the tenant to bear the landlord’s reasonable costs or expenses of or incidental to the grant of a lease,
(g) any obligation under the lease to transfer to the landlord, on the termination of the
lease, payment entitlements granted to the tenant under the single payment
scheme (that is, the scheme of income support for farmers in pursuance of Title III
of Council Regulation (EC) No. 73/2009) in respect of the land subject to the
lease).

(2) Where sub-paragraph (1) applies in relation to an obligation, a payment made in
discharge of the obligation does not count as chargeable consideration.

(3) The release of any such obligations as in mentioned in sub-paragraph (1) does not count
as chargeable consideration in relation to the renunciation of the lease.

Assignation of lease: assumption of obligations by assignee

In the case of an assignation of a lease the assumption by the assignee of the
obligation—

(a) to pay rent, or

(b) to perform or observe any other undertaking of the tenant under the lease,

does not count as chargeable consideration for the assignation.

Loan or deposit in connection with grant or assignation of lease

Where, under arrangements made in connection with the grant of a lease—

(a) a tenant, or any person connected with or acting on behalf of the tenant, pays a
deposit, or makes a loan, to any person, and

(b) the repayment of all or part of the deposit or loan is contingent on anything done
or omitted to be done by the tenant or on the death of the tenant,

the amount of the deposit or loan (disregarding any repayment) is to be taken for the
purposes of this Act to be consideration other than rent given for the grant of the lease.

Where, under arrangements made in connection with the assignation of a lease—

(a) the assignee, or any person connected with or acting on behalf of the assignee,
pays a deposit, or makes a loan, to any person, and

(b) the repayment of all or part of the deposit or loan is contingent on anything done
or omitted to be done by the assignee or on the death of the assignee,

the amount of the deposit or loan (disregarding any repayment) is to be taken for the
purposes of this Act to be consideration other than rent given for the assignation of the
lease.

(3) Sub-paragraph (1) or (2) does not apply in relation to a deposit if the amount that would
otherwise fall within the sub-paragraph in question in relation to the grant or (as the case
requires) assignation of the lease is not more than twice the relevant maximum rent.

(4) The relevant maximum rent is—

(a) in relation to the grant of a lease, the highest amount of rent payable in respect of
any consecutive 12 month period during the term of the lease,

(b) in relation to the assignation of a lease, the highest amount of rent payable in
respect of any consecutive 12 month period during the term of the lease remaining
outstanding as at the date of the assignation.
(5) In determining the highest amount of rent for the purposes of sub-paragraph (4), take into account (if necessary) any amounts determined by virtue of paragraph 14(2) but disregard paragraphs 25(2) and 26(3) (deemed reduction of rent, where further lease granted, for periods during which rents overlap).

(6) Tax is not chargeable by virtue of this paragraph merely because of paragraph 9 (which excludes the nil rate tax band in cases where the relevant rent attributable to non-residential property is not less than £1,000 a year).

Renunciation of existing lease in return for new lease

19 (1) Where a lease is granted in consideration of the renunciation of an existing lease between the same parties—

(a) the grant of the new lease does not count as chargeable consideration for the renunciation, and

(b) the renunciation does not count as chargeable consideration for the grant of the new lease.

(2) Paragraph 5 (exchanges) of schedule 2 (chargeable consideration) does not apply in such a case.

PART 6
OTHER PROVISION ABOUT LEASES

Meaning of lease for a fixed term

20 In the application of this schedule to a lease for a fixed term, no account is to be taken of—

(a) any contingency as a result of which the lease may terminate before the end of the fixed term, or

(b) any right of either party to terminate the lease or renew it.

Leases that continue after a fixed term

21 (1) This paragraph applies to—

(a) a lease for a fixed term and thereafter until terminated, or

(b) a lease for a fixed term that may continue beyond the fixed term by operation of law.

(2) For the purposes of this Act (except section 30 (notifiable transactions)), a lease to which this paragraph applies is treated—

(a) in the first instance as if it were a lease for the original fixed term and no longer,

(b) if the lease continues after the end of that term, as if it were a lease for a fixed term of 1 year longer than the original fixed term,

(c) if the lease continues after the end of the term resulting from the application of paragraph (b), as if it were a lease for a fixed term 2 years longer than the original fixed term, and so on.
(3) Where the effect of sub-paragraph (2) in relation to the continuation of the lease for a period (or further period) of 1 year after the end of a fixed term is that additional tax is payable in respect of a transaction or that tax is payable in respect of a transaction where none was payable before—

(a) the buyer must make a return or a further return in respect of that transaction before the end of the period of 30 days beginning with the day after the end of that 1 year period,

(b) the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and

(c) the tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

(4) Sub-paragraph (3) is subject to paragraph 22.

(5) For the purposes of section 30 (notifiable transactions), a lease to which this paragraph applies is a lease for whatever is its fixed term.

(6) Where—

(a) a lease would be treated as continuing for a period (or further period) of 1 year under sub-paragraph (2), but

(b) (ignoring that sub-paragraph) the lease actually terminates at a time during that period,

the lease is to be treated as continuing under sub-paragraph (2) only until that time; and the references in sub-paragraph (3) to that 1 year period are accordingly to be read as references to so much of that year as ends with that time.

Leases that continue after a fixed term: grant of new lease

22 (1) This paragraph applies where—

(a) (ignoring this paragraph) paragraph 21 would apply to treat a lease (“the original lease”) as if it were a lease for a fixed term 1 year longer than the original term,

(b) during that 1 year period the tenant under that lease is granted a new lease of the same or substantially the same premises,

(c) the term of the new lease begins during that 1 year period, and

(d) paragraph 26 (backdated lease granted to tenant where lease continuing on tacit relocation) does not apply.

(2) Paragraph 21 does not apply to treat the lease as continuing after the original fixed term.

(3) The term of the new lease is treated for the purposes of this Act as beginning immediately after the original fixed term.

(4) Any rent which, in the absence of this paragraph, would be payable under the original lease in respect of that 1 year period is to be treated as payable under the new lease (and paragraph 13 does not apply to it).

(5) Where the fixed term of a lease has previously been extended (on one or more occasions) under paragraph 21, this paragraph applies as if references to the original term were references to the fixed term as previously so extended.
Treatment of leases for indefinite term

23 (1) For the purposes of this Act (except section 30 (notifiable transactions))—
   a lease for an indefinite term is treated in the first instance as if it were a lease for a fixed term of 1 year,
   (b) if the lease continues after the end of the term resulting from the application of paragraph (a), it is treated as if it were a lease for a fixed term of 2 years,
   (c) if the lease continues after the end of the term resulting from the application of paragraph (b), it is treated as if it were a lease for a fixed term of 3 years,
   and so on.

(2) Where the effect of sub-paragraph (1) in relation to the continuation of the lease after the end of a deemed fixed term is that additional tax is payable in respect of a transaction or that tax is payable in respect of a transaction where none was payable before—
   the buyer must make a return or further return in respect of that transaction before the end of the period of 30 days after the end of that term,
   (b) the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and
   (c) the tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

(3) For the purposes of section 30 (notifiable transactions) a lease for an indefinite term is a lease for a term of less than 7 years.

(4) References in this paragraph to a lease for an indefinite term include an interest or right terminable by a period of notice or by notice at any time.

Treatment of successive linked leases

24 (1) This paragraph applies where—
   successive leases are granted or treated as granted (whether at the same time or at different times) of the same or substantially the same premises, and
   (b) those grants are linked transactions.

(2) This Act applies as if the series of leases were a single lease—
   granted at the time of the grant of the first lease in the series,
   for a term equal to the aggregate of the terms of all the leases, and
   in consideration of the rent payable under all of the leases.

(3) The grant of later leases in the series is accordingly disregarded for the purposes of this Act except section 34 (return or further return in consequence of later linked transaction).
Rent for overlap period in case of grant of further lease

25 (1) This paragraph applies where—

(a) A renounces an existing lease to B ("the old lease") and in consideration of that renunciation B grants a lease to A of the same or substantially the same premises ("the new lease"),

(b) on termination of a lease ("the head lease") a sub-tenant is granted a lease ("the new lease") of the same or substantially the same premises as those comprised in the tenant's original lease ("the old lease") in pursuance of a contractual entitlement arising in the event of the head lease being terminated, or

(c) a person who has guaranteed the obligations of a tenant under a lease that has been terminated ("the old lease") is granted a lease of the same or substantially the same premises ("the new lease") in pursuance of the guarantee.

(2) For the purposes of this Act the rent payable under the new lease in respect of any period falling within the overlap period is treated as reduced by the amount of the rent that would have been payable in respect of that period under the old lease.

(3) The overlap period is the period between the date of grant of the new lease and what would have been the end of the term of the old lease had it not been terminated.

(4) The rent that would have been payable under the old lease is to be taken to be the amount taken into account in determining the tax chargeable in respect of the acquisition of the old lease.

(5) This paragraph does not have effect so as to require the rent payable under the new lease to be treated as a negative amount.

Backdated lease granted to tenant where lease continuing on tacit relocation

26 (1) This paragraph applies where—

(a) a lease continues on tacit relocation after the date on which, under its terms, the lease terminates ("the contractual termination date"),

(b) the tenant is granted a new lease of the same or substantially the same premises, and

(c) the term of the new lease is expressed to begin on or immediately after the contractual termination date.

(2) The term of the new lease is treated for the purposes of this Act as beginning on the date in which it is expressed to begin.

(3) The rent payable under the new lease in respect of any period falling—

(a) after the contractual termination date, and

(b) before the date on which the new lease is granted,

is treated for the purposes of this Act as reduced by the amount of taxable rent that it is payable in respect of that period otherwise than under the new lease.

(4) For the purposes of sub-paragraph (3), rent is “taxable” if or to the extent that it is taken into account in determining liability to the tax.

(5) Sub-paragraph (3) does not have effect so as to require the rent payable under the new lease to be treated as a negative amount.
Agreement for lease substantially performed etc.

27 (1) Where—

(a) there is an agreement (including missives not constituting a lease) under which a lease is to be executed, and

(b) the agreement is substantially performed without a lease having been executed,

the agreement is treated as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of the substantial performance.

(2) The effective date of the transaction is when the agreement is substantially performed.

(3) Where sub-paragraph (1) applies and at some later time a lease (“the actual lease”) is executed, this Act applies as if the notional lease were a lease granted—

(a) on the date the agreement was substantially performed,

(b) for a term which begins with that date and ends at the end of the term of the actual lease, and

(c) in consideration of the total rent payable over that term and any other consideration given for the agreement or the actual lease.

(4) Where sub-paragraph (3) applies the grant of the actual lease is disregarded for the purposes of this Act except section 34 (return or further return in consequence of later linked transaction).

(5) For the purposes of section 34—

(a) the grant of the notional lease and the grant of the actual lease are linked (whether or not they would be linked by virtue of section 56),

(b) the tenant under the actual lease (rather than the tenant under the notional lease) is liable for any tax or additional tax payable in respect of the notional lease as a result of sub-paragraph (3), and

(c) the reference in section 34(2) to the “buyer in the earlier transaction” is to be read, in relation to the notional lease, as a reference to the tenant under the actual lease.

(6) Where sub-paragraph (1) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph is to be (to that extent) repaid by the Tax Authority.

(7) That repayment must be claimed by amendment of the return made in respect of the agreement.

(8) In this paragraph, references to the execution of a lease are to the execution of a lease that either is in conformity with, or relates to substantially the same premises and term as, the agreement.

Missives of let followed by execution of formal lease

28 (1) Where a lease is constituted by concluded missives of let (“the first lease”) and at some later time a lease is executed (“the second lease”), the first lease is treated as if it were a lease granted—

(a) on the date the missives of let were concluded,

(b) for a term which begins with that date and ends at the end of the term of the second lease, and
(c) in consideration of the total rent payable over that term and any other
consideration given for the first lease or the second lease.

(2) Where sub-paragraph (1) applies the grant of the second lease is disregarded for the
purposes of this Act except section 34 (return or further return in consequence of later
linked transaction).

(3) Section 62 (read with section 63) makes provision for the effective dates in relation to
the first lease and the second lease.

(4) For the purposes of section 34—
   (a) the grant of the first lease and the grant of the second lease are linked (whether or
       not they would be linked by virtue of section 56),
   (b) the tenant under the second lease (rather than the tenant under the first lease) is
       liable for any tax or additional tax payable in respect of the first lease as a result of
       sub-paragraph (1), and
   (c) the reference in section 34(2) to the “buyer in the earlier transaction” is to be read,
       in relation to the first lease, as a reference to the tenant under the second lease.

(5) In this paragraph, references to the execution of a lease are to the execution of a lease
that either is in conformity with, or relates to substantially the same premises and term
as, the missives of let.

Cases where assignation of lease treated as grant of lease

29 (1) This paragraph applies where the grant of a lease is exempt from charge by virtue of any
of the provisions specified in sub-paragraph (3).

(2) The first assignation of the lease that is not exempt from charge by virtue of any of the
provisions specified in sub-paragraph (3), and in relation to which the assignee does not
acquire the lease as a bare trustee of the assignor, is treated for the purposes of this Act
as if it were the grant of a lease by the assignor—
   (a) for a term equal to the unexpired term of the lease referred to in sub-paragraph
       (1), and
   (b) on the same terms as those on which the assignee holds that lease after the
       assignation.

30 (3) The provisions are—
   (a) schedule 3 (sale and leaseback relief),
   (b) schedule 8 (relief for alternative finance investment bonds),
   (c) schedule 10 (group relief),
   (d) schedule 11 (reconstruction relief and acquisition relief),
   (e) schedule 13 (charities relief),
   (f) schedule 16 (public bodies relief).

(4) This paragraph does not apply where the relief in question is group relief, reconstruction
relief, acquisition relief or charities relief and is withdrawn as a result of a disqualifying
event occurring before the effective date of the assignation.

40 (5) For the purposes of sub-paragraph (4), “disqualifying event” means—
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(a) in relation to the withdrawal of group relief, the event falling within paragraphs 14 and 15 of schedule 10 (purchaser ceasing to be a member of the same group as the seller), as read with paragraphs 32 to 40 of that schedule,

(b) in relation to the withdrawal of reconstruction relief or acquisition relief, the change in control of the acquiring company mentioned in paragraphs 13 and 14 of schedule 11 or, as the case may be, the event mentioned in paragraphs 22 to 24 or 25 to 28 of that schedule,

(c) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraph 5 or 6 of schedule 13.

30 (1) Where a lease is assigned, anything that but for the assignation would be required or authorised to be done by or in relation to the assignor under or by virtue of any provision mentioned in sub-paragraph (2) must, if the event giving rise to the adjustment or return occurs after the effective date of the assignation, be done instead by or in relation to the assignee.

(2) The provisions are—

(a) section 31 (return where contingency ceases or consideration ascertained),

(b) section 34 (return or further return in consequence of later linked transaction),

(c) paragraph 10 of this schedule (return on 3-yearly review),

(d) paragraph 11 of this schedule (return on assignation or termination of lease),

(e) paragraph 21 of this schedule (return or further return where lease for fixed term continues after end of term),

(f) paragraph 23 of this schedule (return or further return in relation to lease for indefinite term),

(g) paragraph 32 of this schedule (return where transaction becomes notifiable on variation of rent or term).

(3) So far as necessary for giving effect to sub-paragraph (1) anything previously done by or in relation to the assignor is to be treated as if it had been done by or in relation to the assignee.

(4) This paragraph does not apply if the assignation falls to be treated as the grant of a lease by the assignor (see paragraph 29).

Reduction of rent or term or other variation of lease

31 (1) Where a lease is varied so as to reduce the amount of the rent, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the tenant.

(2) Where any consideration in money or money’s worth (other than an increase in rent) is given by the tenant for any variation of a lease, other than a variation of the amount of the rent or of the term of the lease, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the tenant.

(3) Where a lease is varied so as to reduce the term, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the landlord.
Increase of rent or term: notification

32 (1) This paragraph applies where, in relation to a land transaction in respect of a lease which was not notifiable under section 30 (notifiable transactions)—

(a) the lease is varied so as to—

(i) extend its term, or

(ii) increase the amount of rent, and

(b) the effect of the variation is that the transaction would have been notifiable under section 30 had it been a lease for that term as so extended or for that rent as so increased (whether or not the effect of the variation is also that tax is payable in respect of the transaction where none was payable before).

(2) Where this paragraph applies—

(a) the buyer must make a return in respect of the transaction before the end of the period of 30 days beginning with the relevant date,

(b) the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and

(c) any tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

(3) The “relevant date” is the date from which the variation takes effect.

(4) For the purposes of section 30—

(a) a lease to which sub-paragraph (1)(a)(i) applies is a lease for whatever is its term as so extended, and

(b) a lease to which sub-paragraph (1)(a)(ii) applies is a lease for whatever is its rent as so increased.
## SCHEDULE 19
*(introduced by section 65)*

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Land and Buildings Transaction Tax (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the taxation of land transactions.

Introduced by: John Swinney
On: 29 November 2012
Bill type: Government Bill
LAND AND BUILDINGS TRANSACTION TAX
(SCOTLAND) BILL

REVISED EXPLANATORY NOTES

CONTENTS
1. As required under Rule 9.7.8.A of the Parliament’s Standing Orders, these revised Explanatory
   Notes are published to accompany the Land and Buildings Transaction Tax (Scotland) Bill as
   amended at Stage 2

INTRODUCTION
2. These Explanatory Notes have been prepared by the Scottish Government in order to assist
   the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not
   been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to
   be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or
   schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND
4. The Land and Buildings Transaction Tax (Scotland) Bill is the first of three related Bills
   being brought forward as a consequence of measures enacted in the Scotland Act 2012 (c.11) (“the
   2012 Act”) which received Royal Assent on 1 May 2012. Under the terms of the 2012 Act, the
   Scottish Parliament will have responsibility for taxes on land transactions and disposals to landfill.
   The Bill deals with the former responsibility and makes provision for a tax on land transactions in
   Scotland, to be called the Land and Buildings Transaction Tax (“LBTT”). LBTT is based on UK
   Stamp Duty Land Tax (“SDLT”) as enacted in Part 4 of the Finance Act 2003 (c.14). The
   provisions of the 2012 Act disapplying the existing SDLT regime in Scotland will be brought into
   force by a Treasury order in the UK Parliament. The intention is that the provisions introducing
   LBTT will come into force in April 2015, the day after SDLT is disappplied.

5. Discussion and debate on the provisions of this Bill began with the publication of a
   consultation document, Taking forward a Land and Buildings Transaction Tax1, on 7 June 2012.
   The consultation document included 17 questions, as follows:
   • Questions 1-8 covered the proposed structure and scope of the tax including the move
     from a ‘slab’ system to a progressive tax; future amendments to support key Scottish
     Government policies; exemptions and reliefs; and the treatment of both residential and
     non-residential leases.

1 Link to consultation paper http://www.scotland.gov.uk/Publications/2012/06/1301
Questions 9-13 related to anti-avoidance measures; and proposals for online returns and linking payment of tax with registration.

Question 14 sought views on the treatment of partnerships and trusts.

Questions 15 and 16 covered business and regulatory and equalities draft impact assessments.

Question 17 sought any other views.

6. The consultation document was published to enable a wide range of people and representative bodies with an interest in and experience of tax matters to comment. A total of 56 responses was received from individuals and organisations. Copies of the non-confidential responses can be accessed through the Scottish Government’s Library (0131 244 4565) or website. ODS Consulting was appointed by the Scottish Government to undertake an analysis of the responses received to the consultation and their report has been published on the Scottish Government’s website.

7. The Bill is intended to inter-operate with a Tax Management Bill to be introduced to the Scottish Parliament in 2013, providing for special powers of the Tax Authority, appeals and other matters of common relevance to devolved taxes. The Scottish Government published a consultation document on tax management matters on 10 December 2012. The consultation closed on 12 April.

THE BILL

Overview

8. The Bill, as amended at Stage 2, comprises 71 sections and 20 schedules and is divided into 8 Parts as follows:

- Part 1 establishes the LBTT,
- Part 2 makes provision for the key concepts underlying the tax including:
  - which transactions are land transactions,
  - which interests are, and which are not, chargeable interests in land,
  - when a chargeable interest is acquired and the treatment of transactions involving contracts which require to be completed by conveyance as well as other kinds of transaction,
  - which land transactions are, and which are not, chargeable transactions,
  - what is, and what is not, chargeable consideration in relation to a chargeable transaction,
- Part 3 makes provision for:
  - the amount of tax payable,
  - relief from the tax, and
  - who is liable to pay the tax,
- Part 4 provides for land transaction returns and for the payment of the tax,

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2 Link to non-confidential consultation responses: [http://www.scotland.gov.uk/Publications/2012/10/1031/0](http://www.scotland.gov.uk/Publications/2012/10/1031/0)
3 Link to analysis report on consultation responses: [http://www.scotland.gov.uk/Publications/2012/10/8469](http://www.scotland.gov.uk/Publications/2012/10/8469)
Part 5 contains provision about the application of the Bill in relation to certain types of buyer, including companies, partnerships and trusts,

Part 5A contains provision about the application of the Bill in relation to leases and licences

Part 6 contains general provision, including provisions on the Tax Authority and definitions of expressions used in the Bill,

Part 7 contains provisions on subordinate legislation powers and commencement as well as other final provisions.

9. LBTT is a tax on land transactions. A “land transaction” is the acquisition of a chargeable interest (i.e. an interest, right or power in or over land which is not exempt). If a transaction is notifiable (i.e. it is not an exempt transaction and the consideration is above certain thresholds), then a land transaction return must be made, together with payment of any tax due, to the Tax Authority. The amount of tax due is calculated on a progressive basis by reference to the consideration paid but this is subject to special rules for certain cases and the availability of reliefs for certain transactions.
10. The operation of LBTT is described in the flow-chart diagram and the example below.

**Operation of LBTT**

Transaction

- **Is there a land transaction?** i.e. an acquisition (s.6) of a chargeable interest (s.4)?
  - **NO**
  - **YES**
    - **Is the transaction an exempt transaction (s.16)?**
      - **NO**
      - **YES**
        - **No notification required. No charge to tax.**
    - **NO**
      - **YES**
        - **Is the transaction notifiable (s.30)?**
          - **NO**
          - **YES**
            - **Is the transaction exempt from charge by virtue of relief (s.27)?**
              - **NO**
              - **YES**
                - **Complete land transaction return (s.35) and declaration (s.36).**
                - **Submit return (s.29).**
              - **Calculate tax (Part 3) on the chargeable transaction (s.15) based on the chargeable consideration (s.17).**
            - **Submit return (s.29). Pay tax (if any) (s.40).**
Example: Operation of LBTT in relation to a simple house purchase

Justin and Brenda are buying a house from Stacey for £205,000, of which £5,000 is apportioned to moveables such as curtains.

The house purchase is a **land transaction** (section 3) because it is the **acquisition** (section 6) of a chargeable **interest** (section 4), that is to say an interest in land in Scotland that is not an **exempt interest** (section 5).

Justin and Brenda are the **buyers** (section 7), Stacey is the **seller** (section 7). The **subject-matter** (section 60) of the transaction is the house and any heritable rights included such as rights of way or the right to enforce neighbours’ title conditions (but the moveables are not part of the subject-matter of the transaction). The missives of sale are the **contract** (section 64) and the disposition by Stacey in favour of Justin and Brenda is the **conveyance** (section 64). The point at which Justin and Brenda pay the purchase price and receive their keys and the signed disposition is the point of settlement, known as **completion** (section 63), which fixes the **effective date** (section 62).

The house purchase is a **chargeable transaction** (section 15) because it is not an **exempt transaction** (schedule 1) or otherwise exempt from charge. The **chargeable consideration** (schedule 2) is the money given for the subject-matter of the transaction i.e. £200,000 for the land, discounting £5,000 for the moveables.

The transaction is a residential **property transaction** which will have relevance to the amount of tax chargeable (section 24). It is unlikely that Justin and Brenda can claim any **relief** (section 27 and schedules 3 to 18).

Justin and Brenda, the buyers, are **liable** to pay LBTT (section 28). As **joint buyers** they have joint and several liability (section 48).

The transaction is a **notifiable transaction** (section 30) because the transaction is not an exempt transaction and the chargeable consideration is over £40,000. Accordingly, Justin and Brenda, the buyers, must make a **land transaction return** (section 29) to the **Tax Authority** (section 52) (or to Registers of Scotland if the function of processing returns has been delegated to them (section 53)). The land transaction return must include (i) a self-assessment of the tax chargeable and (ii) a **declaration** by Justin and Brenda or their solicitor (section 36). As joint buyers, Justin and Brenda have joint responsibility for the return and must both make the required declaration.

Justin and Brenda must make the return within 30 days of the effective date. They may **amend** the return (for example to correct an error) in the period of 12 months following the deadline for making the return (section 37).

Assuming that the tax bands and rates are such that LBTT is payable on chargeable consideration of £200,000, tax must be paid to the Tax Authority (or Registers of Scotland if the function of processing payments is delegated to them) at the same time.
as the land transaction return is made. Tax is treated as paid if arrangements satisfactory to the Tax Authority are made for payment of tax (section 40).

In order for Justin and Brenda to get ownership of the house, the conveyance (disposition) in their favour must be registered in the Land Register. However, Registers of Scotland will only accept an application for registration if the land transaction return has been made and the self-assessed LBTT has been paid (or is treated as paid) (section 43).

PART 1 – LAND AND BUILDINGS TRANSACTION TAX

11. Part 1 establishes LBTT.

Section 1 – The tax

12. Section 1 introduces LBTT as the replacement for SDLT in Scotland. LBTT is a tax which is charged on land transactions. It clarifies that LBTT will apply irrespective of how a transaction is documented (if at all) and whether the transaction is concluded in Scotland or elsewhere.

13. The reference to the Tax Authority’s responsibility for “collection and management” of LBTT has, by virtue of section 51(3) of the Commissioners for Revenue and Customs Act 2005 (c.11), the same meaning as references to responsibility for “care and management” in historical UK tax statutes. The administrative discretion which responsibility for collection and management confers on tax authorities has been explored in case law including the Scottish case of Al Fayed v Advocate General for Scotland [2002] S.T.C. 910; 2003 S.C. 1.

14. Defined terms used in this section:

“land transaction” section 3
“Tax Authority” section 52

Section 2 – Overview

15. Section 2 provides an overview of the Bill (see paragraph 8 above).

PART 2 – KEY CONCEPTS

16. Part 2 makes provision for the key concepts underlying the tax including:

- which transactions are land transactions,
- which interests are, and which are not, chargeable interests in land,
- when a chargeable interest is acquired and the treatment of transactions involving contracts which require to be completed by conveyance as well as other kinds of transaction,
- which land transactions are, and which are not, chargeable transactions,
- what is, and what is not, chargeable consideration in relation to a chargeable transaction.
CHAPTER 1 OF PART 2 – LAND TRANSACTIONS AND CHARGEABLE INTERESTS

**Land transaction**

**Section 3 – Land transaction**

17. Section 3 defines “land transaction”. If a transaction or other thing involves something other than the acquisition of a chargeable interest then it is not a land transaction and falls outwith the scope of LBTT.

18. Defined terms used in this section:

   - “acquisition” section 6
   - “chargeable interest” section 4

**Chargeable interest**

**Section 4 – Chargeable interest**

19. Section 4 defines “chargeable interest”, the acquisition of which constitutes a land transaction under section 3. A chargeable interest is a real right or other interest, in or over land in Scotland or the benefit of any obligation, restriction or condition affecting the value of any such right or interest. In simple terms, a chargeable interest is an interest in land, so an interest in moveable property such as kitchen “white goods” or furniture falls outside the scope of LBTT. The definition is very broad and captures more than the real rights in land known to Scots law; accordingly options in land, licences to occupy land and statutory rights such as community interests in land are chargeable interests. In some cases, certain interests are treated as being interests in land for the purposes of LBTT (see, for example, Part 6 of schedule 17 (property investment partnerships)).

20. Chargeable interests do not include exempt interests (see section 5). Subsection (3) reflects that under Part 4A of the Scotland Act 1998 (c.46) (as inserted by section 28 of the 2012 Act), a tax on interests in land in Scotland may not be imposed on so much of a transaction as relates to land below mean low water mark - therefore interests in the seabed fall outside the scope of LBTT.

**Section 5 – Exempt interest**

21. Pursuant to section 4(1), exempt interests are not chargeable interests. Section 5 defines “exempt interest” as a security interest, such as a standard security. In addition, certain interests are exempt if they have been acquired by financial institutions under alternative property finance arrangements (see schedule 7, paragraphs 21 to 24).

22. Power is conferred on the Scottish Ministers to vary by regulations the interests in land that are exempt interests. Such regulations will be subject to the affirmative procedure (see section 67).
Section 6 – Acquisition and disposal of chargeable interest

23. Section 6 defines “acquisition” and “disposal”. The section analyses various categories of land transactions in terms of disposals by one party and acquisitions by the other. The creation, renunciation, release or variation of a chargeable interest constitutes an acquisition by one person and a disposal by another.

24. In many cases an acquisition will be where an existing interest is transferred, for example title to a shop is sold and the buyer acquires the property. In other cases acquisition is when a new interest is created, for example a lease of a shop is granted and the tenant acquires the lease. Acquisition also includes where an interest is renounced or released, for example the lease of a shop is surrendered and the owner ceases to be subject to the terms of the lease and acquires free possession.

25. “Disposal” is construed in accordance with the meaning of acquisition. So in the examples given immediately above: the seller of the shop disposes of it when selling it to the buyer; the owner of the shop disposes of the lease in the shop when granting it; and, in the final example, the tenant disposes of the lease when surrendering it.

26. Subsection (4) clarifies that LBTT applies irrespective of how the acquisition is effected, and thus includes transactions arising from a court order or by operation of law, for example transfer by virtue of statute.

Section 7 – Buyer and seller

27. Section 7 defines “buyer” and “seller”. The “buyer” is the person acquiring the subject-matter of the transaction, and “seller” is the person disposing of the subject-matter of the transaction. But a person is not a buyer if they are not a party to or have not provided consideration for the transaction.

28. Defined terms used in this section:

   “subject-matter” section 60

CHAPTER 2 OF PART 2 – PROVISION ABOUT PARTICULAR TRANSACTIONS

General rules for contracts requiring conveyance

Section 8 – Contract and conveyance

29. Sections 8 and 9 establish the general rule that where a contract is to be completed by a conveyance it is the conveyance that represents the land transaction. This rule will apply in the majority of cases and ensures that a transaction is only charged to LBTT once. In a standard house purchase, the missives of sale are the contract and the disposition is the conveyance.

30. Special rules are provided for in sections 9 to 13.

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4 The terms used for SDLT are “purchaser” and “vendor”, reflecting English conveyancing practice.
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill as amended at Stage 2 (SP Bill 19A)

31. Defined terms used in this section:
   “completion” section 63
   “contract” section 64
   “conveyance” section 64

Section 9 – Completion without substantial performance

32. Section 9 provides for the usual case where a contract is completed by a conveyance without having previously been “substantially performed”. The contract and conveyance comprise a single land transaction. In this case, the “effective date” would be the date of completion (i.e. in a normal house purchase, the date of settlement).

33. Defined terms used in this section:
   “completion” section 63
   “contract” section 64
   “effective date” section 62
   “substantial performance” section 14

Section 10 – Substantial performance without completion

34. Modifying the general rule in sections 8 and 9, section 10 provides that if a transaction is substantially performed before it is formally completed (or if it is substantially performed but never completed), then the contract and any subsequent completion are treated as two separate land transactions. In this case, the effective date of the contract for the purposes of LBTT would be the date of substantial performance.

35. The rationale for this provision is to remove any tax benefit in a buyer resting on his or her contract and having the effective enjoyment of the interest despite not proceeding to formal completion.

36. Defined terms used in this section:
   “completion” section 63
   “contract” section 64
   “effective date” section 62
   “land transaction return” section 64
   “substantial performance” section 14

Contract providing for conveyance to third party

Section 11 – Contract providing for conveyance to third party

37. Section 11 makes special provision for where a contract is entered into whereby one party to the contract (B) has the right to direct a conveyance to him/herself or to a third party (C). An example is a development agreement where the developer has the right to enter on the land and build on it and then direct the conveyance of the completed plots. Such a contract is charged to LBTT when it is substantially performed (in the same way as a contract which is to be completed by
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill as amended at Stage 2 (SP Bill 19A)

a conveyance to B). Section 11 also ensures that it is the consideration that is given or is to be given by B that is charged to LBTT once substantial performance occurs.

38. Where B directs the original seller (A) to convey a plot to C, subsections (9) and (10) apply sections 8 to 10 to the contract between B and C and to the conveyance from A to C. The result is that C is liable to pay LBTT on the consideration paid to B, either on completion or on substantial performance by C.

Example: Contract providing for conveyance to third party

Parties A and B agree in a contract that A will provide land for B to build new homes. A and B agree that A will transfer the homes to buyers found by B. B agrees to pay A £1.5 million with an initial deposit of £150,000. The effective date will be the day that B takes possession of the land and starts building the homes. At that point, LBTT is due to be paid by B on the agreed consideration of £1.5 million. Once the homes are built, A transfers ownership of each one to the buyers, each of whom will pay LBTT at the appropriate rates.

39. Defined terms used in this section:

“chargeable interest” section 4
“contract” section 64
“conveyance” section 64
“effective date” section 62
“land transaction” section 3
“substantial performance” section 14

40. The usual meaning of “completion” in section 63 is modified in subsection (10).

Options etc

Section 12 – Options and rights of pre-emption

41. Section 12 deals with the treatment of options and rights of pre-emption (i.e. rights of first refusal). Where such an option or right is acquired, there is a land transaction chargeable (potentially) to LBTT. Where such an option or right is exercised, the transaction that arises as a consequence is a distinct transaction (although the two transactions may be linked) and chargeable to LBTT in its own right. Options fall within subsection (1)(a) even if the grantor can discharge his or her obligation either by entering into a land transaction or in some other way (e.g. payment of money). The effective date in relation to options and rights of pre-emption is when they are acquired, not when they become exercisable. If an option or right of pre-emption is chargeable as a land transaction in its own right, or because it is part of a wider transaction, then it is dealt with as such, rather than dealt with under this section.

42. Defined terms used in this section:

“acquisition” section 6
“effective date” section 62
Example: Options and rights of pre-emption

On 1 January 2016, Mrs Macdonald is granted an option by Mr Brown to buy his house on or before 31 December 2016. Mrs Macdonald paid Mr Brown for the grant of the option.

The acquisition of the option by Mrs Macdonald is a land transaction in its own right. Mrs Macdonald may have to make a land transaction return to the Tax Authority in relation to the option depending on what she paid for it and may be liable for LBTT.

Mrs Macdonald subsequently exercises the option on 1 December 2016.

The exercise of the option by Mrs Macdonald constitutes a separate land transaction from the grant of the option. The effective date of that land transaction is the date of completion of the sale of the house to Mrs Macdonald or, if earlier, the date of substantial performance.

Mrs Macdonald must make a land transaction return in relation to the purchase of the house to the Tax Authority.

A return or further return is also required in respect of the option, which is linked to the purchase since the buyer and the seller in relation to both the option and the purchase are the same (see sections 34 and 56).

The final LBTT payable by Mrs Macdonald in respect of both the grant of the option and the purchase of the house will be determined by the total consideration given by her for both the grant of the option and the purchase of the house. See section 26 for how the tax is calculated and attributed between the option and the purchase.

Exchanges

Section 13 – Exchanges

43. Section 13 provides that, where parties enter into transactions that involve an exchange of land, they are treated as if they had entered into two separate land transactions which are not linked. Exchanges are often known as “excambions” in Scotland.

44. Defined terms used in this section:

“buyer” section 7
“linked transaction” section 56
Interpretation

Section 14 – Meaning of substantial performance

45. Section 14 defines “substantial performance”. This is where either the buyer takes possession of the whole or substantially the whole of the subject-matter of the transaction, or where “a substantial amount of the consideration” is paid or provided or where there is an assignation, subsale or other transaction where a third party takes possession of the whole or substantially the whole of the subject-matter of the transaction. Whichever event happens first will trigger the charge to tax even though the contract has not been completed by, say, a conveyance.

46. One of the ways in which a buyer can take possession is if he or she receives or is entitled to receive rent in respect of the property. A buyer is treated as taking possession whether or not the right to possession is documented in the contract or by a licence.

47. Subsection (3) sets out when a substantial amount of the consideration is paid or provided:
   - if none of the consideration is rent, it is when the whole or substantially the whole of the consideration passes,
   - if the only consideration is rent, it is when the first payment of rent is made,
   - if the consideration is partly rent and partly other consideration, it is when the whole or substantially the whole of the consideration passes, or when the first payment of rent is made.

48. Defined terms used in this section:
   - “buyer” section 7
   - “connected persons” section 57
   - “subject-matter” section 60

CHAPTER 3 OF PART 2 – CHARGEABLE TRANSACTIONS AND CHARGEABLE CONSIDERATION

Chargeable transaction

Section 15 – Chargeable transaction

49. Section 15 defines “chargeable transaction”. Chargeable transactions will give rise to a charge to LBTT although they might not if, for example, they fall within the nil rate tax band referred to in section 24.

50. Where a transaction is not exempt but section 27 (and a schedule referred to in it) provides for a 100% relief from the tax, the Bill uses the words “exempt from charge” to make clear that no tax is payable. (The difference between a relief and an exemption is that a relief will have to be claimed in a land transaction return (see section 29).)

51. Defined terms used in this section:
   - “land transaction” section 3
“exempt transaction” section 16

Section 16 – Exempt transaction

52. Section 16 defines “exempt transaction” by reference to schedule 1. Paragraphs 164 to 170 below comment on that schedule. Where a transaction is an exempt transaction, no tax will be payable and the transaction will not be notifiable (see section 30).

53. As mentioned above, if a transaction falls outside the scope of LBTT (for example a transaction involves only moveable property) then it is not liable to charge or to notification.

Chargeable consideration

Section 17 – Chargeable consideration

54. Section 17 defines “chargeable consideration” by reference to schedule 2. Paragraphs 171 to 188 below comment on that schedule. Chargeable consideration is used to calculate the amount of tax due (see sections 25 and 26).

55. Subsection (2) confers a power on the Scottish Ministers to amend by regulations the definition of chargeable consideration with respect to what is to count as chargeable consideration and as to how chargeable consideration should be calculated in specific cases. Such regulations will be subject to the affirmative procedure if they amend the Bill itself. Otherwise, they will be subject to the negative procedure (see section 67).

Contingent, uncertain or unascertained consideration

Section 18 – Contingent consideration

56. Section 18 provides that where the whole or part of the chargeable consideration for a transaction is contingent, the amount of consideration should be calculated on the assumption that the amount relating to the contingency will be payable, whether or not the occurrence of the contingency means that the amount will be payable or cease to be payable. So where a contingency affects the eventual amount of consideration, buyers must calculate the consideration on the basis that the amount relating to the contingency will be payable. “Contingent” is defined in subsection (3).

Section 19 – Uncertain or unascertained consideration

57. Section 19 provides that where the whole or part of the chargeable consideration for a transaction is uncertain or unascertained, the amount of consideration should be calculated on the basis of a reasonable estimate of the outcome. So where the consideration is uncertain or has not yet been ascertained – for example, where it is based on profits in accounts which have not yet been drawn up – buyers must make a reasonable estimate of the final consideration as at the effective date of the transaction.
Section 20 – Contingent, uncertain or unascertained consideration: further provision

58. Section 20 clarifies that sections 18 and 19 on contingent, uncertain or unascertained consideration are to be read with sections:

- 31 (return where contingency ceases or consideration ascertained),
- 32 (contingency ceases or consideration ascertained: less tax payable), and
- 41 (application to defer payment in case of contingent or uncertain consideration).

59. See paragraphs 90 to 93, 110 and 111 below for explanations of those sections.

Annuities etc.

Section 21 – Annuities etc.: chargeable consideration limited to 12 years’ payments

60. Section 21 determines how LBTT will apply where the chargeable consideration is in the form of an annuity. Where an annuity is paid as consideration for a land transaction, the chargeable consideration will be taken to be a one-off payment comprising twelve years’ payments. Where the payments vary, the twelve highest payments will be taken into account. LBTT will accordingly be payable as a single payment.

61. Subsection (9) clarifies that there is no provision for LBTT payments to be deferred, or for an adjustment of the amount of tax paid if, at a later date, an actual payment differs from a reasonable estimate, say, of the payment made when the tax was assessed.

Deemed market value

Section 22 – Deemed market value where transaction involves connected company

62. LBTT is generally calculated by reference to actual and not deemed market values. However, section 22 provides that LBTT will be charged on the full market value of any land purchased by a company with which the seller is “connected” (within the meaning of UK Corporation Tax law) if the consideration involves the issue or transfer of certain shares. For example, if land is purchased by a company from another company which is connected with the buyer in consideration for the issue of securities whose value is less than that of the land, then the section ensures that LBTT is charged on the market value of the land.

63. A special definition of “company” applies for the purposes of this section (the definition is wider than the general definition of “company” in section 64).

64. The general rule that transactions with zero chargeable consideration are exempt does not apply to transactions falling within this section. Otherwise, this section does not affect situations where specific exemptions or reliefs apply. It is also subject to the exceptions provided for in section 23.

65. Defined terms used in this section:

“connected persons” section 57
Section 23 – Exceptions from deemed market value

66. Section 23 provides three exceptions from the connected company rules in section 22 for transfers to independent corporate trustees and distributions of land, including distributions on liquidation, to corporate shareholders, other than in specific circumstances. Where the exceptions apply, the charge to LBTT will only apply to any chargeable consideration paid for the transaction.

PART 3 – CALCULATION OF TAX AND RELIEFS

67. Part 3 makes provision for—
- the amount of tax payable,
- relief from the tax, and
- who is liable to pay the tax.

Amount of tax chargeable

Section 24 – Tax rates and tax bands

68. The Bill does not set out the bands and rates for LBTT. These must be specified by the Scottish Ministers by order under section 24 (and in the case of leases, paragraph 3 of schedule 18A). Ministers must specify a nil rate tax band and at least two other tax bands. To ensure that the tax is a progressive one, the percentage tax rate for each tax band must be higher than for the band below it. There must be tax bands and rates for both residential and non-residential property transactions.

69. The first order under this section will be subject to the affirmative procedure. Subsequent orders will be subject to the provisional affirmative procedure (see section 67).

70. Defined terms used in this section:

- “linked transaction” section 56
- “residential property” section 58

Section 25 – Amount of tax chargeable

71. This section sets out how to calculate the tax due in relation to a single transaction that is not a linked transaction.

72. Under the “slab” system of SDLT, tax is charged at the applicable rate on the whole consideration for the transaction. For example, if a house is sold for £240,000 the SDLT due is 1% of the whole amount while for a house costing £260,000, the SDLT due is 3% of the whole amount. By contrast, this section (read with section 24) provides for a “progressive system” that includes a nil rate band and at least two other bands. This structure will mean that only the proportion of the consideration above the threshold will be liable to the higher rate. LBTT is therefore to be calculated in a similar way to UK Income Tax.
The tax rates and bands which are applicable to the transaction will depend on whether it is a residential property transaction or a non-residential property transaction.

Defined terms used in this section:

“chargeable consideration” section 17 and schedule 2
“chargeable transaction” section 15

Example: Amount of tax chargeable on a house bought for £260,000

**Tax due under SDLT**

The rate of tax under SDLT for such a purchase is 3%. So the tax payable would be—

£260,000 x 3% = £7,800

**Tax due under LBTT using scenario 1**

Under scenario 1 outlined in paragraphs 287 to 289 of the Financial Memorandum, the applicable rates for the transaction would be:

- Not more than £180,000 0%
- Over £180,000 but not more than £1.5m 7.5%
- Over £1.5m 10%

Applying the calculation in section 25(1), the amount of tax payable would be:

(£180,000 x 0%) + (£80,000 x 7.5%) + (£0 x 10%) = £6,000

**Tax due under LBTT using scenario 2**

Under scenario 2 outlined in paragraphs 290 and 291 of the Financial Memorandum, the applicable rates for the transaction would be—

- Not more than £125,000 0%
- Over £125,000 but not more than £250,000 2%
- Over £250,000 9.5%

Applying the calculation in section 25(1), the amount of tax payable would be:

(£125,000 x 0%) + (£125,000 x 2%) + (£10,000 x 9.5%) = £3,450

**Section 26 – Amount of tax chargeable: linked transactions**

Section 26 applies instead of section 25 where a chargeable transaction is one of a number of linked transactions. The amount of tax due on the total consideration for all the linked transactions is calculated first and then that tax is apportioned to the transaction in question on the basis of the chargeable consideration for the transaction.

Defined terms used in this section:

“linked transaction” section 56
Example: Amount of tax chargeable on a number of linked transactions

A developer agrees to buy three plots of land from a farmer and buys them in three separate transactions on the same day. The consideration given for each plot is:

<table>
<thead>
<tr>
<th>Plot</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>100,000</td>
</tr>
<tr>
<td>B</td>
<td>200,000</td>
</tr>
<tr>
<td>C</td>
<td>300,000</td>
</tr>
</tbody>
</table>

Because the three transactions are linked, section 26 applies for the purposes of calculating the tax due in relation to each transaction.

Applying the calculation set out in section 26(1) to each transaction in turn gives the following results under the scenario for non-residential property transactions outlined in paragraphs 292 and 293 of the Financial Memorandum. The rates and bands under that scenario are:

<table>
<thead>
<tr>
<th>Band Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than £150,000</td>
<td>0%</td>
</tr>
<tr>
<td>Over £150,000 but not more than £250,000</td>
<td>3%</td>
</tr>
<tr>
<td>Over £250,000</td>
<td>4.4%</td>
</tr>
</tbody>
</table>

**Plot A**

To calculate the tax on an individual linked transaction, the total tax chargeable on the total consideration for all the linked transactions must be calculated first. Following Steps 1 and 2, the total tax chargeable on £600,000 would be:

\[
(£150,000 \times 0\%) + (£100,000 \times 3\%) + (£350,000 \times 4.4\%) = £18,400
\]

The amount of tax payable in relation to Plot A would therefore be (following Steps 3 and 4)—

\[
£18,400 \times £100,000/£600,000 = £3,067
\]

**Plot B**

Using the total tax chargeable calculated in relation to Plot A, the amount of tax payable in relation to Plot B would be:

\[
£18,400 \times £200,000/£600,000 = £6,133
\]

**Plot C**

Again using the total tax chargeable calculated in relation to Plot A, the amount of tax payable in relation to Plot C would be:

\[
£18,400 \times £300,000/£600,000 = £9,200
\]

Note that, had the three plots been purchased in a single transaction, section 25 would have applied instead and the tax payable (on the same scenario) would have been £18,400, i.e. the same as the total tax payable in the example.
Reliefs

Section 27 – Reliefs

77. Section 27 introduces schedules 3 to 16 concerning reliefs, as described from paragraph 189 below. Reliefs do not apply automatically and must be claimed (see subsection (2)). Subsection (3) provides a power for the Scottish Ministers to add, modify or remove reliefs by order. Orders under this section are subject to the affirmative procedure (see section 67).

78. Defined terms used in this section:
   “land transaction return” section 64

Liability for tax

Section 28 – Liability for tax

79. Section 28 provides that the buyer is liable to pay the LBTT due in respect of a chargeable transaction. Further provision about liability where there is more than one buyer can be found in sections 48 on joint buyers, paragraph 3 of schedule 17 on partnerships and paragraphs 4 to 17 of schedule 18 on trusts.

80. Defined terms used in this section:
   “chargeable transaction” section 15

PART 4 – RETURNS AND PAYMENT

81. Part 4 provides for land transaction returns (Chapter 1) and for the payment of the tax (Chapter 2).

CHAPTER 1 OF PART 4 - RETURNS

Duty to make return

Section 29 – Duty to make return

82. Section 29 provides that, for every notifiable transaction, a completed land transaction return (tax return), including a self-assessment of liability to LBTT, must be made by the buyer to the Tax Authority within 30 days of the effective date of the transaction.

83. Further particular rules concerning returns are set out in sections 48(3) (joint buyers) and 56(2) (linked transactions), paragraph 34(3) of schedule 17 (partnerships), paragraph 15 of schedule 18 (trusts) and paragraphs 10(2), 11, 21(3)(a), 23(2)(a), 30 and 32(2)(a) of schedule 18A (leases).

84. Defined terms used in this section:
   “chargeable transaction” section 15
   “effective date” section 62
   “make a return” section 38
   “notifiable transaction” section 30
“Tax Authority” section 52

**Notifiable transactions**

**Section 30 – Notifiable transactions**

85. Section 30 specifies which land transactions are notifiable. The general rule is that all transactions are notifiable unless excluded by subsection (1). If the transaction is the acquisition of ownership in land then it is notifiable unless it is an exempt transaction under schedule 1. This may include cases where no tax is payable. However, notification is not required where the consideration for the transaction falls below a threshold of £40,000. Transactions relating to leases are notifiable unless excluded by subsection (1A).

86. Transactions which do not involve the acquisition of a major interest in land are only notifiable if they are not exempt transactions and the consideration is above the nil rate band. In other words, where some tax is payable.

87. Subsection (5) confers a power on the Scottish Ministers to amend by order the notification threshold of £40,000 in subsections (1)(b), (1A)(a)(i) or (b)(ii). Such an order will be subject to the negative procedure (see section 67).

88. Further particular rules concerning notification are set out in section 10(3)(a) (substantial performance without completion) and paragraphs 21(5) and 23(3) of schedule 18A (leases).

89. Defined terms used in this section:
   - “chargeable consideration” section 17 and schedule 2
   - “land transaction” section 3
   - “linked transaction” section 56
   - “major interest” section 58

**Adjustments and further returns**

**Section 31 – Return where contingency ceases or consideration ascertained**

90. Section 31 provides for the amount of LBTT payable to be adjusted in cases where LBTT was paid on the basis of the rules in sections 18 or 19 because the whole or part of the consideration for the transaction was contingent, uncertain, or unascertained at the outset. If more tax is payable, the section provides that a return must be made and the tax paid.

91. Defined terms used in this section:
   - “make a return” section 38
   - “Tax Authority” section 52
Section 32 – Contingency ceases or consideration ascertained: less tax payable

92. Section 32 is connected with section 31 and provides for a claim to repayment if tax has been overpaid.

93. Defined terms used in this section:

“land transaction return” section 64

Section 33 – Further return where relief withdrawn

94. Section 33 applies where a relief is withdrawn under provisions in schedules 4, 5, 8, 10 and 11 which withdraw reliefs in certain circumstances. The buyer must make a further return because the assessment of tax chargeable will have to change (generally, with more tax being payable).

95. Defined terms used in this section:

“make a return” section 38

Section 34 – Return or further return in consequence of later linked transaction

96. Section 34 provides for a requirement to make a return, or a further return, where a transaction becomes notifiable, or tax or additional tax becomes payable, as a result of a later linked transaction. The buyer under the earlier transaction must deliver a return, or a further return, in respect of the earlier transaction, and pay any tax or additional tax due, within 30 days of the effective date of the later transaction.

97. Defined terms used in this section:

“effective date” section 62
“make a return” section 38
“notifiable” section 30

Example: effect of later linked transaction

Using the example from section 12 where Mrs Macdonald is granted an option by Mr Brown to buy his house, say that Mrs Macdonald pays Mr Brown £150,000 for the option and, for the house, she pays £300,000.

Using scenario 1 outlined in paragraphs 287 to 289 of the Financial Memorandum, the LBTT due at the stage Mrs Macdonald acquires the option would be nil, as the consideration for the option falls below the nil rate tax band threshold (£180,000). And the transaction would not be notifiable under section 30, so no land transaction return would be required.

Mrs Macdonald subsequently exercises the option on 1 December 2016.

The exercise of the option by Mrs Macdonald constitutes a separate land transaction and she must make a land transaction return in relation to the purchase of the house to the
A return is also required in respect of the option, which is linked to the purchase since the buyer and the seller in relation to both the option and the purchase are the same (see section 56).

The LBTT payable by Mrs Macdonald will be determined by reference to the total consideration given by her for both the grant of the option and the purchase of the house (£450,000).

Taking scenario 1 as outlined in the Financial Memorandum, the tax due in relation to the option and the house purchase would be calculated as follows:

Applying the calculations in Steps 1 and 2 of section 26(1), the total tax chargeable for both transactions would be—

\[(£180,000 \times 0\%) + (£270,000 \times 7.5\%) + (£0 \times 10\%) = £20,250\]

The tax chargeable in relation to the option (applying Steps 3 and 4) would now be—

\[£20,250 \times £150,000/£450,000 = £6,750\]

And the tax chargeable in relation to the purchase would be—

\[£20,250 \times £300,000/£450,000 = £13,500\]

**Section 35 – Form and content**

98. Section 35 provides for the form of returns and the information to be included within them to be specified administratively by the Tax Authority. In the case of partnerships, see also paragraph 34(3) of schedule 17.

99. Defined terms used in this section:

   “Tax Authority” section 52

**Section 36 – Declaration**

100. Section 36 provides that returns must include a declaration by the buyer. Special rules as to declarations by particular types of buyer are set out in section 48(3)(b) (joint buyers), paragraph 9 of schedule 17 (partners) and paragraph 16 of schedule 18 (trustees).

101. Subsection (2) makes provision to allow agents such as solicitors to make declarations (for example using an electronic submission system) on behalf of the buyer.

102. A declaration may be given by an attorney pursuant to a power of attorney or factory and commission, for example if a buyer is incapacitated or is outwith Scotland and unable to deal with
his or her affairs. The position is the same where a representative appointed by a court acts for an incapacitated person (see paragraph 134 below).

103. Defined terms used in this section:
   “effective date” section 62

Section 37 – Amendment

104. Section 37 allows buyers to amend their returns by notice to the Tax Authority within 12 months after the last day of the period within which the return must be made. This might be to correct typographic errors, to claim a relief that the buyer is eligible to claim but did not claim in the initial return or to claim a repayment where a contract which required a conveyance was substantially performed but then rescinded (see section 10(4) and (5)). Section 37 is subject to paragraph 34(4) of schedule 17 in the case of partnerships.

105. Defined terms used in this section:
   “land transaction” section 3
   “Tax Authority” section 52

Miscellaneous

Section 38 – Interpretation

106. Section 38 defines the meaning of references to “make a return”.

Section 39 – Power to amend period in which returns must be made

107. Section 39 confers a power on the Scottish Ministers to amend by order the 30 day period set out in various provisions within which returns must be made. Such an order will be subject to the negative procedure (see section 67).

CHAPTER 2 OF PART 4 –PAYMENT OF TAX

Section 40 – Payment of tax

108. Section 40 provides that LBTT is payable to the Tax Authority and deals with the due dates for payment of tax where a return is made or amended, or where tax is due following the withdrawal of a relief. Tax must be paid at the same time as a return, further return or amendment of a return is made.

109. Defined terms used in this section:
   “land transaction” section 3
   “land transaction return” section 64
   “Tax Authority” section 52
Section 41 – Application to defer payment in case of contingent or uncertain consideration

110. Section 41 provides that a buyer may make an application for LBTT to be deferred. The application may be made where the whole or part of the chargeable consideration for a transaction is contingent or uncertain and where some or all of the consideration may fall more than 6 months after the effective date of the transaction. Sections 18, 19, 31 and 32 contain provisions about contingent or uncertain consideration.

111. Defined terms used in this section:
   “chargeable consideration” section 17 and schedule 2
   “Tax Authority” section 52

Section 42 – Regulations about applications under section 41

112. Section 42 is linked to preceding section 41 and confers a power on the Scottish Ministers to make, by regulations, further provision about the circumstances under which an application may be made and the administrative framework to deal with the application procedure and the payments or repayments of LBTT which may result. Such regulations will be subject to the negative procedure (see section 67).

CHAPTER 3 OF PART 4 – REGISTRATION OF LAND TRANSACTIONS ETC.

Registration of land transactions etc.

Section 43 – Return to be made and tax paid before application for registration

113. Section 43 creates a link between land registration and payment of LBTT by providing that documents effecting or evidencing a land transaction may not be registered by, or otherwise reflected in an entry in a register under the management and control of, the Keeper of the Registers of Scotland unless a land transaction return has been made and any LBTT payable has been paid. “Paid” for this purpose does not necessarily mean that the Tax Authority has cleared funds in respect of the tax. The Authority may accept arrangements satisfactory for payment, such as a solicitor’s cheque or direct debit instruction. It is for the Authority to decide what will count as satisfactory. If registration proceeds but the arrangement for payment falls through the sum due is still payable to the Tax Authority.

114. This rule will have most relevance to standard conveyancing transactions where the buyer cannot obtain a real right in land until the disposition in the buyer’s favour has been registered in the Land Register. But the rule will also have relevance in relation to other registers under the management and control of the Keeper, for example the Books of Council and Session if a short non-residential lease is registered there voluntarily for preservation and execution.

115. If a document effecting or evidencing a notifiable transaction does not require to be registered and is not registered voluntarily then the link with registration does not apply.

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5 Similar provisions exist in relation the payment of land registration fees - see section 22(1)(c)(ii) of the Land Registration etc. (Scotland) Act 2012 (asp 5)

7 A “short” lease is a lease of under 20 years. “Long” commercial leases i.e. those over 20 years must be registered in the Land Register. New long residential leases are generally incompetent, subject to exceptions.
116. Defined terms used in this section:

   “land transaction return” section 64
   “notifiable transaction” section 30
   “paid” section 40

PART 5 – APPLICATION OF ACT TO CERTAIN PERSONS AND BODIES

117. Part 5 contains provision about the application of the Bill in relation to certain types of buyer, including companies, partnerships and trusts.

Section 44 – Companies and other organisations

118. Section 44 specifies who is responsible for notifying transactions and paying LBTT in the case of companies (as defined in section 64) and unincorporated associations. It specifies which individuals within such organisations are responsible for:

   • making returns under section 29,
   • giving declarations under section 36, and
   • paying any tax due under section 40.

119. Partnerships are dealt with in section 49 and schedule 17.

120. Defined terms used in this section:

   “Tax Authority” section 52

Section 45 – Unit trust schemes

121. Section 45 provides that a unit trust scheme is treated as if it were a company for the purposes of paying LBTT when it acquires land, except in relation to group relief, reconstruction relief and acquisition relief.

122. The section also provides that issues, surrenders and transfers of units are not within the scope of LBTT.

123. Subsection (6) confers a power on the Scottish Ministers to make, by regulations, further provision which specifies that a scheme of a description specified in the regulations is to be treated as not being a unit trust scheme for the purposes of the Bill. Such regulations will be subject to the negative procedure (see section 67).

Section 46 – Open-ended investment companies

124. Section 46 confers a power on the Scottish Ministers to make, by regulations, further provision to ensure that the LBTT provisions apply to open-ended investment companies (OEICs) in the same way as they apply to unit trust schemes. Such regulations will be subject to the negative procedure (see section 67).
Section 47 – Residential property holding companies

125. Section 47 confers a power on the Scottish Ministers to make regulations treating certain transfers of interest in residential property holding companies (“RPHCs”) as land transactions and chargeable transactions. This includes taxing the transfer of interests in RPHCs that hold property both in and outwith Scotland. These provisions are aimed at the “enveloping” of residential property in a holding company and transferring interests in the company instead of transferring title to the property in the ordinary manner. A key feature of the transactions that are covered by this section is that they will carry with them a right to occupy property owned by the company. A broad parallel can be drawn with the rules for LBTT and property investment partnerships (“PIPs”) in Part 6 of schedule 17.

126. For the purposes of this section, “residential property” includes such other kind of property as may be specified in regulations. Regulations made under this section will be subject to the affirmative procedure if they modify any Act. Otherwise, they will be subject to the negative procedure (see section 67).

127. Defined terms used in this section:
   “chargeable transactions” section 15
   “land transaction” section 3

Section 48 – Joint buyers

128. Section 48 sets out the treatment of joint buyers (other than partners and trustees, for which see sections 49 and 50). Joint buyers, for example a couple buying a house, have joint and several liability to comply with the LBTT regime. This includes compliance with making returns under section 29 and paying any tax due under section 40. But declarations under section 36 must be made by all the buyers (without prejudice to the ability of agents such as solicitors to give declarations under subsection (2) of that section).

129. The definition of “jointly entitled” in section 64 covers both common ownership and joint ownership.

130. Defined terms used in this section:
   “jointly entitled” section 64
   “land transaction return” section 64
   “notifiable transaction” section 30

Section 49 – Partnerships

131. Section 49 introduces schedule 17 concerning partnerships (see paragraphs 248 to 253 below). Subsection (2) confers a power on the Scottish Ministers to make provision by regulations to modify schedule 17.
Section 50 – Trusts

132. Section 50 introduces schedule 18 concerning trusts (see paragraphs 254 to 256 below).

Section 51 – Persons acting in a representative capacity etc.

133. Section 51 concerns the executors or administrators of the estate of deceased persons. It provides for them to fulfil the obligations relating to LBTT arising from a land transaction entered into by the deceased person before he or she died. The section also concerns receivers appointed by a UK court. The person acting in a representative capacity is responsible for making returns under section 29, giving declarations under section 36 and paying any tax due under section 40.

134. No special provision is contained in the Bill for incapacitated persons or minors. The general legal framework for assisting people who lack capacity, including the Adults with Incapacity (Scotland) Act 2000 (asp 4), will operate in relation to LBTT. For the position of attorneys see paragraph 102 above.

135. Defined terms used in this section:

“land transaction” section 3

PART 5A – APPLICATION OF ACT TO LEASES AND LICENCES

136. Part 5A contains provision about the application of the Bill to leases and licences.

Section 55 – Application of this Act to leases

137. Section 55 introduces schedule 18A concerning leases, as described from paragraph 257 below. See also paragraph 3(1)(a) of schedule 1, which exempts the grant, assignation or renunciation of most leases of residential property.

Section 51A – Application of this Act to licences

138. Section 51A confers a power on the Scottish Ministers to prescribe in regulations particular types of non-residential licences to occupy property which for the purposes of this Bill are to be treated as land transactions and will therefore be subject to the tax. Such regulations will be subject to the affirmative procedure if they modify an Act. Otherwise, they will be subject to the negative procedure (see section 67).

139. See also paragraph 3(1)(b) of schedule 1, which exempts the grant, assignation or renunciation of licences other than prescribed non-residential licences.
PART 6 – GENERAL AND INTERPRETATION

140. Part 6 contains general provisions, including provision about the Tax Authority and definitions of expressions used in the Bill.

The Tax Authority

Section 52 – The Tax Authority

141. Section 52 defines the “Tax Authority” as the Scottish Ministers. The Tax Authority has the care and management of LBTT (see section 1(3)) and accordingly returns must be made to the Tax Authority (see section 29) and tax must be paid to the Tax Authority (see section 40).

142. Subsection (2) confers a power on the Scottish Ministers to provide by order that another person is the Tax Authority. This provision could be used to allow for Revenue Scotland to become the Tax Authority, at a future point when Revenue Scotland has a legal personality separate to that of the Scottish Ministers, subject to Parliamentary agreement of provisions for Revenue Scotland. Such an order will be subject to the affirmative procedure (see section 67).

Section 53 – Delegation of functions to Keeper

143. Section 53 allows for the delegation of Tax Authority functions to the Keeper of the Registers of Scotland. For example, functions around returns and payment may be delegated so that returns would be made to the Keeper and tax paid to the Keeper on behalf of the Tax Authority.

Section 54 – Review and appeal

144. Section 54 confers a power on the Scottish Ministers to make provision by regulations for the review and appeal of Tax Authority decisions. Such regulations will be subject to the affirmative procedure if they modify the Bill itself. Otherwise, they will be subject to the negative procedure (see section 67).

Linked transactions

Section 56 – Linked transactions

145. Section 56 defines “linked transactions”. The section provides that linked transactions can be reported on a single return and imports the rules relating to joint buyers (section 48) if linked transactions with joint buyers are reported on a single return.

146. Defined terms used in this section:
   “connected persons” section 57

8 Government proposals for Revenue Scotland were set out in the consultation paper on Tax Management. See: http://www.scotland.gov.uk/Publications/2012/12/5404
Example: Linked transactions

A property speculator agrees to buy three new houses from a builder. The builder offers a special price for the houses because the speculator agrees in advance to buy three. It is agreed that the buyer will pay £200,000 for each house once it is complete. The purchases take place in January 2017, February 2017 and March 2018.

The three transactions are linked transactions because they are between the same buyer and seller and form part of a single arrangement. (The length of time between transactions does not in itself affect whether the transactions are linked.)

Separate land transaction returns will be required under section 29 in relation to each transaction because they do not take place on the same date and further returns may be required under section 34 in relation to earlier transactions. See section 26 for the calculation of the amount of tax due.

Connected persons

Section 57 – Connected persons

147. Section 57 defines “connected persons” by reference to section 1122 of the Corporation Tax Act 2010 (c.4). The meaning of “connected persons” is modified in schedule 17 by paragraph 48 of that schedule.

Interpretation

Section 58 – Meaning of “residential property”

148. Section 58 defines “residential property”. Pursuant to section 24, bands and rates for LBTT must be set separately for residential property transactions and non-residential property transactions. If property is not residential property, it is non-residential property (examples of which are commercial and agricultural property). The power in subsection (9) allows for the rules in section 58 to be amended by order so as to change what counts as residential property. Orders will be subject to the affirmative procedure (see section 67).

149. Defined terms used in this section:
   “major interest” section 58

Section 59 – Meaning of “major interest” in land

150. Section 59 defines “major interest”, which has particular relevance to the notification rules in section 30. Major interest means ownership of land or a tenant’s right. Less common interests in land such as real burdens, servitudes and options are not major interests. Now that the feudal system of land tenure has been abolished pursuant to the Abolition of Feudal Tenure (Scotland) Act 2000 (asp 5), the interest of a feudal superior is no longer an interest in land recognised in the law of Scotland.
Section 60 – Meaning of “subject-matter” and “main subject-matter”

151. Section 60 provides that “subject-matter” includes the main subject-matter of the transaction and any interest or right pertaining to it. So the acquisition of the ownership of land and the connected right to enforce a real burden over neighbouring property are not to be dealt with as two separate transactions.

Section 61 – Meaning of “market value”

152. Section 61 defines “market value” by reference to UK Capital Gains Tax rules. This is relevant to, among other provisions, section 22.

Section 62 – Meaning of “effective date” of a transaction

153. Section 62 defines “effective date”. This date is the tax point that determines when liability to tax and notification obligations arise. In most cases the effective date will be when the buyer pays the price and settles the transaction. Special rules apply for contracts that are substantially performed before completion, for the grant of options and rights of pre-emption and for agreements for lease which are substantially performed. The power in subsection (1)(b) allows for regulations to prescribe a date other than the date of completion as the effective date. Such regulations will be subject to the negative procedure (see section 67).

Section 63 – Meaning of “completion”

154. Section 63 defines “completion”. Completion generally means settlement. In the case of a routine house purchase that would be the point at which the buyer has paid the purchase price and receives a signed disposition (the “conveyance”) and the keys to the house. In this case, the point of completion is earlier than the point of registration of the disposition in the Land Register, at which point the buyer obtains the real right in land. The usual rule about completion/settlement would not always work effectively in the particular case of leases, so completion in that context means when the lease is executed by the parties or otherwise constituted.

Section 64 – General interpretation

155. Section 64 sets out certain definitions used in the Bill. In particular the section provides broad, inclusive definitions for “contract” and “conveyance”. Whilst for the routine conveyance of a real right in land the terms “missives” and “disposition” would be common, the concept of “chargeable interest” in section 4 is very broad and covers interests other than real rights in land; therefore it is appropriate to use broader terminology. A contract or conveyance might, for example, be subject to the law of a jurisdiction other than Scotland (see section 1(2)). These definitions are sufficiently broad to accommodate electronic documents as referred to in Part 10 of the Land Registration etc. (Scotland) Act 2012 (asp 5).

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10 As electronic conveyancing practices become more common the process of delivering dispositions, paying tax and obtaining registration will become more streamlined. The “effective date” may then be the same date as the date of registration.
Section 65 – Index of defined expressions

156. Section 65 introduces schedule 19 which provides an index to definitions used in the Bill.

PART 7 – FINAL PROVISIONS

157. Part 7 contains provisions on subordinate legislation powers and commencement as well as other final provisions.

Ancillary provision

Section 66 – Ancillary provision

158. Section 66 empowers the Scottish Ministers to make ancillary provision by order concerning LBTT. Orders under this section will be subject to the affirmative procedure if they modify an Act. Otherwise, they will be subject to the negative procedure (see section 67).

Subordinate legislation

Section 67 – Subordinate legislation

159. Section 67 sets out general provisions for subordinate legislation under the Bill.

Crown application

Section 68 – Crown application

160. Section 68 provides that the Bill does not apply to Her Majesty in Her private capacity. By virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), the Bill otherwise applies to the Crown.

161. For the position of Crown bodies as buyers in land transactions see paragraph 2 of schedule 1.

Commencement and short title

Section 69 – Commencement

162. Section 69 provides for the commencement of the Bill.

Section 70 – Short title

163. Section 70 sets out the short title of the Bill by which it may be cited for legal purposes.
Schedule 1 – Exempt transactions

164. This schedule is introduced by section 16 and lists seven types of land transaction which are exempt from LBTT as well as providing the Scottish Ministers with a power, by regulations, to add to the list of exemptions, modify an exemption or remove an exemption (paragraph 8 of schedule 1). Regulations under paragraph 8 will be subject to the affirmative procedure (see section 67).

165. The first exemption is where there is no chargeable consideration (paragraph 1 of schedule 1).

166. The second exemption covers Crown bodies listed in section 80J of the Scotland Act 1998, who may not be made liable to pay LBTT (paragraph 2 of schedule 1).

167. The third exemption covers leases and licences of residential property (paragraph 3 of schedule 1). Because generally a lease of residential property over 20 years in duration may not be granted in Scotland, this exemption covers leases in Scotland that would be unlikely, because of their short duration, to attract tax. The only exception that has been made, set out in sub-paragraph (2), is to exclude residential leases that are “qualifying leases” under the Long Leases (Scotland) Act 2012. Pursuant to section 1 of that Act a residential lease is “qualifying” if:

- it is registered in the Register of Sasines or the Land Register;
- it was granted for more than 175 years;
- it has more than 100 years left to run from the appointed day laid down under the Act;
- the annual rent does not exceed £100.

168. A license to occupy property (which is not a prescribed non-residential license within the meaning of section 51A) is also an exempt transaction for the purposes of this schedule.

169. The fourth and fifth exemptions cover transactions if effected respectively in matrimonial break-up proceedings and proceedings for dissolution of a civil partnership (paragraphs 4 and 5 of schedule 1).

170. The sixth and seventh exemptions cover transactions if effected in implementation of wills or the variation of testamentary dispositions provided there is no consideration (paragraphs 6 and 7 of schedule 1).

Schedule 2 – Chargeable consideration

171. This schedule, which is introduced by section 17, sets out the provisions for determining the amount of the chargeable consideration in relation to a land transaction.

172. Paragraph 1 defines the chargeable consideration for the transaction to be any consideration given in money or money’s worth for the subject-matter of the transaction, directly or indirectly by the buyer or a connected party.
173. Paragraph 2 clarifies that any VAT due on the consideration is included as chargeable consideration. But where the seller has the option to charge VAT but has not actually made an election to do so by the effective date of the transaction, then any VAT that subsequently becomes payable does not count as chargeable consideration.

174. Paragraph 3 ensures that, where some or all of the consideration is to be paid at a later date, it is the amount agreed that comprises chargeable consideration, and no discount is available for the delay in payment.

175. Paragraph 4 provides for just and reasonable apportionment of consideration where the subject-matter of a transaction does not just consist of a chargeable interest (for example, where a business such as a public house, hotel or care home is sold as a going concern and the consideration includes an element of value attributed to “goodwill”) or where the transaction is part of a bargain including other transactions.

176. Paragraph 5 sets out how the chargeable consideration for each transaction will be calculated when land transactions are entered into as consideration for each other. The rule will depend on whether the subject-matter of any of the transactions is a major interest in land as defined in section 59. If this is the case, the chargeable consideration for each acquisition will be the greater of the amount determined under sub-paragraph (3A) or the amount which should be the chargeable consideration if the rule for exchange was not being applied. The amount determined under sub-paragraph (3A) is the market value of the subject-matter of the acquisition or if the acquisition is the grant of a lease, the rent. If the subject-matter of all the transactions are minor interests then the values of the interests being exchanged are disregarded but any other chargeable consideration will remain liable to tax. This paragraph is subject to paragraph 6 (Petitions etc.: disregard of existing interest). This paragraph does not apply in a case to which paragraph 17 (Arrangements involving public or educational bodies) applies.

177. Paragraph 6 provides that where land is partitioned, the share of that land held by the buyer immediately before the partition does not comprise chargeable consideration.

178. Paragraph 7 provides a general rule that any non-monetary consideration is to be valued at its market value, unless provided otherwise. Non-monetary consideration comprises all consideration except money and debt.

179. Paragraph 8 ensures that the assumption or release of debt by the buyer counts as chargeable consideration for a transaction, but that the amount so chargeable cannot exceed the market value of the subject-matter of the transaction. The assumption of debt for the purposes of this clause does not include any mortgage or similar security taken out in order to acquire the property.

180. Paragraph 9 sets out how the chargeable consideration will be calculated for transactions where the exemptions provided for at paragraph 6 (Assents and appropriations by personal representatives) and paragraph 7 (Variation of testamentary dispositions etc.) of schedule 1 (Exempt Transactions) do not apply because of paragraph 6(2) and paragraph 7(3) of that schedule.
181. Paragraph 10 provides for consideration in a foreign currency to be translated into sterling on the effective date of the transaction.

182. Paragraph 11 sets out how to calculate chargeable consideration where the buyer or the seller carries out works of construction, improvement or repair of a building or other structure. Where those works are carried out after the effective date on land acquired or to be acquired by the buyer under the transaction (or on any of the buyer’s other land) and it is not a condition of the transaction that the seller carry them out on the buyer’s behalf, then the works do not comprise chargeable consideration. In other cases they do, at their open market value. Where by virtue of section 10(3) (substantial performance of contract without completion) there are two notifiable transactions, the condition in sub-paragraph 2 is treated as being met in relation to the second transaction if it is met in relation to the first. This paragraph is subject to paragraph 17 (Arrangements involving public or educational bodies).

183. Paragraph 12 sets out that where the buyer provides services (other than works of construction, improvement or repair of a building or other structure), the chargeable consideration is the open market value of those services. This paragraph is subject to paragraph 17 (Arrangements involving public or educational bodies).

184. Paragraph 13 deals with the situation where the seller is an employer and the buyer the employee of that employer. The chargeable consideration is not less than the market value of the subject-matter on the effective date of the transaction.

185. Paragraph 14 ensures that indemnities given by the buyer to the seller for any ongoing liabilities relating to the land do not count as chargeable consideration.

186. Paragraph 15 ensures that where a buyer in a land transaction is required to pay any UK Inheritance Tax associated with the transaction, then the amount paid does not count as part of the chargeable consideration for LBTT purposes.

187. Paragraph 16 ensures that where a buyer in a land transaction is required to pay any UK Capital Gains Tax associated with the transaction, then the amount paid does not count as part of the chargeable consideration for LBTT purposes.

188. Paragraph 17 applies in the situation where certain public or educational bodies sell or grant a long lease to another party over land/property and then the other party leases the land back to the public or educational body. The public or educational body is not liable for LBTT because the leaseback by the public or educational body and any money for works or services are not considered as part of the chargeable consideration. The other party also does not have to pay LBTT based on the market value of the land/property that party buys or leases, so the party only has to pay it on the actual cash premium or rent the party pays the public or educational body in exchange for entering into the deal. Sub-paragraph 2 lists the qualifying bodies. Sub-paragraph 3 confers a power on the Scottish Ministers to modify, by order, the list of qualifying bodies set out at sub-paragraph 2. Orders under paragraph 17 will be subject to the negative procedure (see section 67).
Schedule 3 – Sale and leaseback relief

189. This schedule, introduced by section 27, provides complete relief from LBTT for the leaseback part of the transaction where there is a sale and leaseback arrangement. The relief is available where the only other consideration for the sale element, other than the leaseback, is money or money equivalent. Where the buyer and seller are both companies, the leaseback will qualify for the relief only where they are not members of the same group.

Schedule 4 – Relief for certain acquisitions of residential property

190. Paragraph 1 of this schedule, introduced by section 27, provides an overview of Parts 2 to 6 of this schedule.

191. Paragraphs 2 and 3 make provision for full and partial relief from LBTT in relation to the acquisition of a dwelling by a house-building company from an individual who is also buying a new house from the company. Paragraph 4 sets out the qualifying conditions for the full and partial relief.

192. Paragraphs 5 and 6 make provision for full and partial relief from LBTT in relation to the acquisition of a dwelling by a property trader from an individual who is buying a new house from a house-building company. Paragraphs 7 and 8 set out the qualifying conditions for the relief.

193. Paragraphs 9 and 10 make provision for full and partial relief from LBTT in relation to the acquisition of a dwelling by a property trader from an individual where a chain of transactions involving the individual breaks down. Paragraphs 11 and 12 set out the qualifying conditions for the relief.

194. Paragraphs 13 to 17 set out the circumstances in which relief under this schedule may be withdrawn. See also section 33 which requires there to be a further return to the Tax Authority where relief is withdrawn.

195. Part 6 defines various terms used in this schedule.

Schedule 5 – Multiple dwellings relief

196. This schedule, introduced by section 27, provides relief from LBTT in relation to purchases of multiple dwellings to ensure that the single transaction involving a number of dwellings is not taxed at a high tax band when it involves dwellings that, individually, may each involve a consideration only falling within lower bands. This relief is given only in so far as the transaction relates to dwellings: consideration that relates to property other than dwellings is taxed in the normal way.

197. The relief applies in respect of single transactions involving multiple dwellings and multiple linked transactions which, taken together, involve multiple dwellings.
198. The calculation of the relief is set out in Part 4. It involves calculating an average price per dwelling and then calculating the tax that would be paid on such a price. The tax due on the average price per dwelling is then multiplied by the number of dwellings covered by the transaction to produce the amount of tax due in respect of the dwellings. To that figure is added any tax payable in respect of property other than dwellings. The result is the tax payable in respect of the transaction.

199. However, it is possible, for example, that a number of dwellings bought in a single transaction may have an average price that falls in the nil tax rate band, in which case 100% relief would be provided and no tax would be due. The provisions in paragraphs 13 and 14 enable the Scottish Ministers to make regulations to introduce a “tax floor” to ensure that if the tax on a particular transaction involving multiple dwellings would be lower than a prescribed amount, then the tax payable would be the prescribed amount. The method for calculating the prescribed amount will be set out by order.

200. Part 5 deals with the withdrawal of the relief. See also section 33 which requires there to be a further return to the Tax Authority where relief is withdrawn.

Schedule 6 – Relief for certain acquisitions by registered social landlords

201. This schedule, introduced by section 27, covers provision for relief from LBTT for certain acquisitions by registered social landlords. Paragraph 2 sets out the qualifying conditions for this relief.

Schedule 7 – Alternative property finance relief

202. This schedule, introduced by section 27, makes provision for relief from LBTT in the case of certain land transactions connected to alternative property finance arrangements. The demand for alternative finance products comes mainly from Muslims, although they may be used by any consumer. Islamic (or Shari’a) law prohibits transactions that involve interest, gambling, speculation or unethical investment.

203. The most pronounced difference between Islamic financing and existing equivalent products is the prohibition on interest. For customers wishing to adhere to Shari’a law, this rules out financial products that result in either payment or receipt of interest, such as conventional deposit accounts and loans. However, Shari’a law does not prohibit the making of a return on capital if the provider of the capital is willing to share in the risks of a productive enterprise. Thus profit and loss sharing arrangements are considered acceptable, provided there is shared risk.

204. Islamic financial transactions are structured using contracts, or combinations of contracts that satisfy the requirements of Shari’a law. Financial institutions in the UK offer Shari’a compliant alternative finance products that are economically equivalent to conventional banking products but do not involve interest or speculative returns.

205. Part 2 of the schedule details a series of reliefs from LBTT for the granting of particular transactions, all of which are designed to avoid the charging or payment of interest. Paragraphs 2 to 6 cover arrangements where a financial institution buys an interest in land and then leases it to a
person where the person has a right to acquire the land from the institution or have it transferred to another person (or to another financial institution).

206. The “first transaction” that occurs as part of these arrangements (the purchase) will usually be chargeable to LBTT (unless it is a transfer from the person to the institution or from another financial institution to the institution – all effectively being re-mortgaging arrangements). The “second transaction” – the lease to the person – will generally be relieved, provided the provisions of the Bill in relation to the first transaction have been complied with. The “third transaction” – the transfer that the person can require the financial institution to make – will also be relieved provided it is a transfer to the person and provided the other conditions in paragraph 5 are met. Paragraph 6 states that sections 12 and 14 do not apply to the agreement mentioned in paragraph 2(c) so that the person’s right to require the institution to transfer the interest in land is not treated as an option and so that the agreement, under which the person can require the institution to transfer the interest, is not treated as substantially performed unless and until the third transaction (the transfer to the person) takes place.

207. Paragraphs 7 to 12 cover a different set of arrangements, where the financial institution and the person acquire an interest in land in common, with the person having an exclusive right to occupy the land and with the person and the institution agreeing to transfer the interest to the person (usually in a series of transactions). As before, the “first transaction” – the purchase – will usually be chargeable to LBTT. Paragraph 8 specifies the conditions under which the first transaction is relieved, namely where there is a refinancing arrangement. Paragraph 9 provides for relief for the “second transaction” – the right to occupy – provided the provisions of the Bill in relation to the first transaction are complied with. Paragraph 10 allows for relief for “further transactions” – transfers to the person from the financial institution. Paragraph 11 makes similar provision as paragraph 6. Paragraph 12 states the notification requirement of this relief.

208. Paragraphs 13 to 15 cover a third set of arrangements, where the financial institution purchases an interest in land, sells it to the person and, in return, the person grants the institution a standard security over the land. Usually LBTT will be due on the “first transaction” – the purchase by the institution. But paragraph 14 details the specific circumstances in which the first transaction is also exempt from LBTT (i.e. where the acquisition is part of a refinancing arrangement). Paragraph 15 provides for relief from LBTT for the “second transaction” – the sale to the person – where the provisions of the Bill in relation to the first transaction are complied with. The grant of the standard security by the person to the institution is not a land transaction, as security interests are exempt interests (see section 5).

209. Part 3 deals with transactions connected to alternative property finance arrangements which are not relieved from LBTT. Paragraph 16 provides that relief under this schedule is not available where group, reconstruction or acquisition relief is available in relation to the first transaction. Paragraphs 17 to 20 contain anti-avoidance provisions and provide that no relief is available under Part 2 where the arrangements involve the acquisition by the person of control of the financial institution.

210. Part 4 provides that an interest held by a financial institution as a result of the “first transaction” within the meaning of paragraph 2(a) or 7(a) is an “exempt interest” for the purposes of LBTT. Paragraph 22 provides that the interest will cease to be an exempt interest if certain
specified circumstances prevail. Paragraph 23 provides that the interest held by the financial institution is not an exempt interest if the “first transaction” is exempt from charge by virtue of schedule 10 (group relief) or 11 (reconstruction and acquisition reliefs). Paragraph 24 provides that the exemption provided by paragraph 21 does not make an interest exempt in the case of certain specified transactions.

211. Part 5 defines a number of terms for the purposes of this schedule.

Schedule 8 – Relief for alternative finance investment bonds

212. This schedule is introduced by section 27 and makes provision for relief from LBTT for land transactions undertaken in relation to the issue of alternative finance investment bonds (“AFIBs”). In a normal securitisation the investor does not have a direct ownership in the underlying asset but merely an interest-bearing certificate. With AFIBs, however, the investors own part of the underlying asset. This necessary change in ownership of the underlying asset may involve LBTT issues. Part 1 of the schedule provides an overview of the schedule and at paragraph 2 sets out the meaning of AFIBs in this schedule. Paragraph 3 defines a number of terms for the purposes of this schedule.

213. Part 2 of the schedule makes provision for the issue, transfer and redemption of rights under a bond not to be treated as a chargeable transaction for the purposes of LBTT. Specifically at paragraph 4, the bond holder under an AFIB is not treated as having an interest in the bond assets and the bond issuer under such a bond is not treated as a trustee of the bond assets. Paragraph 5(1) states that the tax treatment of AFIBs outlined at paragraph 4 is not available where a bond holder, or a group of connected bond-holders, acquire control of the underlying asset. Paragraph 5(2) sets out the circumstances in which it may be possible for a single bond-holder or a group of connected bond-holders, to acquire control of the underlying asset.

214. Paragraph 6 outlines two instances where paragraph 5(1) does not apply. The first is where, at the time the rights under the bond were acquired, a bond holder, or all of a group of connected bondholders, did not know or had no reason to suspect that the bonds enabled the exercise of the rights of management and control of the bond assets and, having subsequently become aware of the rights attached to the bonds, the bond-holder(s) transferred sufficient bonds, as soon as reasonably possible so that they could no longer exercise control. The second instance is available for persons acting as underwriters of the bond issuance providing they do not exercise control and management of the bond asset.

215. Part 3 of the schedule introduces 7 conditions (A to G) for the application of paragraphs 15 to 21 of the schedule to provide relief from LBTT. Paragraph 8 provides condition A. This is that a person (“P”) transfers a qualifying interest in land to another person (“Q”) and P and Q agree that at a later time (when Q ceases to hold that interest as a bond asset in relation to an AFIB of which Q is the issuer) Q will transfer that interest to P. The transfer of the qualifying interest to Q is described in the schedule as “the first transaction”. Paragraph 9 provides condition B. This is that Q acts as bond issuer in relation to an AFIB, and holds the interest in land as a bond asset. Paragraph 10 provides condition C. This is that Q and P enter into a leaseback agreement to generate income and gains for the AFIB. Sub-paragraph (1)(b) provides that the Scottish Ministers may, by regulations extend the scope of condition C to include financing structures other than those involving a sale
and leaseback. Sub-paragraph (2) explains what is meant by “leaseback arrangement” in condition C. This is that Q grants P a lease or sub-lease out of the interest acquired in the first transaction.

216. Paragraph 11 provides condition D. This is that, the bond issuer (Q) is required to provide prescribed evidence that a satisfactory standard security has been entered in the Land Register of Scotland. The evidence needs to be provided to the Tax Authority within 120 days of the first transaction. “Prescribed evidence” is evidence prescribed by regulations made by the Scottish Ministers. Sub paragraph (2) provides rules relating to the security over the land referred to in sub-paragraph (1). Sub paragraph (3)(a) provides that the amount of the charge is to include the amount of the LBTT that would be due on the market value of the transfer of the interest at the date of transfer. Sub paragraph 3(b) provides that the charge also includes any interest and penalties that would be payable if the tax had been due (but not paid) on the first transactions.

217. Paragraph 12 provides condition E. This is that over the life of the AFIB, Q receives payments of capital of at least 60 per cent of the value of the interest in land at the time of the first transaction. The purpose of condition D is to ensure that the main use of the interest in land is as a bond asset. Paragraph 13 provides condition F. This is that throughout the life of the AFIB, Q holds the interest in land as a bond asset. Paragraph 14 provides condition G. This is that at the termination of the bond, when the interest in land ceases to be a bond asset, the interest is transferred to P by Q (this transfer is described as “the second transaction”), and that the second transaction takes place no later than 10 years after the first transaction. This effectively puts a term of 10 years on the AFIB. Sub-paragraph (2) provides that the period of 10 years referred to in condition G may be altered by the Scottish Ministers by way of regulations.

218. Part 4 of the schedule makes provision for relief from LBTT for certain transactions. Paragraph 15(1) sets out the requirements for relief from LBTT on the first transaction. These are that the interest acquired is of land in Scotland and that each of the conditions A to C are met within 30 days of the date of the transfer of interest in land from P to Q. Paragraph 15(2)(a) provides that the relief is subject to conditions relating to asset substitution at paragraphs 21 and 22. Paragraph 15(2)(b) provides that relief on the first transaction is also subject to the provisions of paragraph 24 which provides that relief on the first transaction is not available where a bond-holder, or group of connected bond-holders, acquires control of the underlying asset.

219. Paragraph 16 details the circumstances where the relief on the first transaction will be withdrawn. Sub paragraph (1)(a) provides for the first circumstance, where the asset is returned to P but the requirement to issue bonds to the value of 60 per cent of the asset is not satisfied and the asset is not held as a bond asset until the termination of the bond. Sub paragraph (1)(b) provides that the relief is also withdrawn where a period of 10 years has elapsed since the first transaction without conditions E and F having been satisfied. Sub paragraph (1)(c) provides that relief is also withdrawn if at any time it becomes evident that any of conditions E to G cannot or will not be met. Sub paragraph (2) provides that relief is withdrawn where Q fails to provide prescribed evidence to the Tax Authority that they have registered a standard security within 120 days of the transaction (see paragraph 212 above). Paragraph 17 provides that where relief is withdrawn under paragraph 16 then the tax chargeable is calculated in accordance with paragraph 18. Paragraph 18 provides that the amount of LBTT chargeable is the tax that would have been charged on the market value of the subject matter of the transaction or if the acquisition was a lease, the rent. See also section 33 which requires there to be a further return to the Tax Authority where relief is withdrawn.
220. Paragraph 19 provides relief from LBTT on the transfer of the land asset from Q back to P. Sub paragraph (1) provides that this second transaction is exempt from charge if conditions A to G described above have been met and the provisions of this Bill in relation to the first transaction have been complied with. Sub-paragraph (2)(a) provides that the relief is subject to conditions relating to asset substitution at paragraphs 21 and 22. Sub-paragraph (2)(b) provides that relief is not available in respect of the second transaction if paragraph 24 applies because a bond-holder or a group of connected bond-holders acquires control of the underlying assets. Paragraph 20 provides that if following the transfer of the land asset back from Q to P, Q provides prescribed evidence to the Tax Authority that conditions A to C and E to G have been met then the land ceases to be subject to the security registered in pursuance of condition D.

221. Part 5 covers a number of supplementary provisions. Paragraph 21 sets out rules for the case where the interests in land that was subject of the first transaction ceases to be a bond asset (before the end of the bond) and is replaced as bond asset by an interest in other land. These rules allow such a substitution of bond assets to take place without disturbing the reliefs under paragraphs 15 to 20. Sub-paragraph (1) lists the circumstances in which this paragraph applies. Sub-paragraph (2) provides modifications to the application of paragraphs 15 to 20 to the original land and the replacement land.

222. The modifications in respect of the original land are in sub-paragraph (3), and those in respect of the replacement land in sub-paragraph (4). Sub-paragraph (3) provides that condition F (the requirement that Q should hold the original land as a bond asset throughout the life of the bond) need not be met in relation to the original land, provided that conditions A, B, C, F and G (taking account of the modifications made by sub-paragraph (4)) are met in relation to the replacement land. Sub-paragraph (4) provides that following the substitution of the replacement land (a) condition E continues to apply by reference to the value of the original land at the time of the first transaction relating to that land (so that the amount of capital that Q must receive to satisfy condition E is unchanged by the substitution of land); and (b) the ten year time limit for condition G continues to apply by reference to the first transaction relating to the original land.

223. Sub-paragraph (5) provides that, if the replacement land is in Scotland, the security on the original land will be discharged when, Q provides the Tax Authority with the prescribed evidence that the original land has been returned to P and a security has been registered in relation to the replacement land. Sub-paragraph (6) provides that, if the replacement land is not in Scotland, the security on the original land will be discharged when Q provides the Tax Authority with the prescribed evidence that all of conditions A to C are met for the replacement land and that the original land had been returned to the original owner. Paragraph 22 provides for the rules in relation to asset substitution to apply where there is more than one substitution of land during the lifetime of a bond.

224. Paragraph 23 provides that, where a security on the land is discharged because the land has ceased to be a bond asset, either at the expiration of the bond with all of conditions A to G having been met, or because of a substitution of land to which paragraph 21 applies, the Tax Authority must take the necessary action to remove the security from the land register. This must be done within 30 days of Q providing the prescribed evidence that enables the security to be removed. Paragraph 24 provides rules for the situation where a bond-holder, or a group of connected bond-holders, acquires control of the bond assets. The circumstances in which the paragraph applies are the same as for paragraphs 5 and 6 of the schedule.
225. Paragraph 25 provides that paragraph 24 does not prevent relief being available in 2 instances. Sub-paragraph (2) provides that where, at the time the rights under the bond were acquired, a bond-holder, or all of a group of connected bond-holders, did not know or had no reason to suspect that the bonds enabled the exercise of the rights of management and control of the bond assets and, having subsequently become aware of the rights attached to the bonds, the bond-holder(s) transferred sufficient bonds, as soon as reasonably possible so that they could no longer exercise such control. Sub-paragraph (3) provides for a second exclusion for persons acting as underwriters of the bond issuance providing they do not exercise the right of control and management of the bond asset.

226. Paragraph 26 provides that the reliefs under paragraphs 15 and 19 (extended where appropriate by paragraph 21 in relation to substitutions of land) are only available where the arrangements are (a) entered into for genuine commercial reasons; and (b) are not part of arrangements whose main purpose, or one of whose main purposes is the avoidance of liability to pay the tax.

Schedule 9 – Crofting community right to buy relief

227. This schedule, introduced by section 27, relates to transactions made by virtue of the “crofting community right to buy”, which enables crofting communities to apply to the Scottish Ministers for the right to buy crofting land where they live and work from the landlord who owns it. Paragraph 1 describes the type of transaction to which this schedule applies. Paragraph 2 describes the tax chargeable in relation to the transaction as the prescribed portion of the tax that would be payable but for this paragraph. Paragraph 3 provides for the prescribed portion of the tax to be prescribed by the Scottish Ministers by order. Orders will be subject to negative procedure (see section 67). Paragraph 4 defines “crofting community right to buy" for the purposes of this schedule.

Schedule 10 – Group relief

228. The schedule is introduced by section 27. Part 2 provides for relief from LBTT for the intra-group transfer of property held by companies if the relevant conditions are met. Part 3 provides for when relief is wholly or partially withdrawn and Part 4 contains interpretation provisions.

229. Paragraph 2 provides the relief from LBTT for acquisitions of property by companies within groups.

230. Companies are defined as members of a group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company (paragraph 43). Company means a body corporate and therefore as such includes a limited liability partnership. Such a member of a group having no share capital cannot be a subsidiary, only a parent company. Paragraphs 44 and 45 further elaborate that ownership means beneficial ownership of the share capital and can include indirect ownership through another company or companies. The amount of ordinary share capital owned is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010.

231. The schedule sets out in paragraphs 3 to 8 specific anti-avoidance rules (with exceptions in paragraphs 9 and 10) which restrict the availability of group relief. Availability is restricted where
different types of arrangements are entered into relating to control of the companies, the provision of consideration from outside the group, or where the seller and buyer are to cease being members of the same group. Where such arrangements exist at the effective date of the transaction, group relief is not available. Finally, in terms of paragraph 8, relief is unavailable if the transaction itself is not for genuine commercial reasons, or forms part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to LBTT.

232. Paragraphs 13 to 19 cover the situation where group relief is withdrawn. It is withdrawn if, following a successful claim for group relief, the buyer ceases to be a member of the same group as the seller within three years of the date of the transaction (or under arrangements made during the three-year period).

233. Paragraphs 20 to 31 provide exceptions from the withdrawal of group relief in certain cases where companies leave groups, and related anti-avoidance provisions. These are:

- where the de-grouping arises because of anything done in the course of winding up the seller,
- where there is an acquisition of shares in the buyer by another company to which section 75 of Finance Act 1986 (c.41) applies (subject to exceptions) and the buyer leaves the group as a result,
- the buyer ceases to be a member of the same group as the seller in the context of the demutualisation of an insurance company, or
- where the seller leaves the group.

234. Paragraphs 32 to 40 provide for withdrawal of relief in certain cases involving successive transactions. See also section 33 which requires there to be a further return to the Tax Authority where relief is withdrawn.

Schedule 11 – Reconstruction relief and acquisition relief

235. This schedule, introduced by section 27, provides for relief from LBTT for land transactions connected to the transfer of the whole or part of an undertaking by a company where the consideration is non-redeemable shares. Relief from all LBTT due is provided if the transfer of the undertaking, including any land held by it, is under a scheme of reconstruction in exchange for non-redeemable shares ("Reconstruction relief"). A key condition is that shareholdings remain the same after the reconstruction. As with group relief, the reconstruction must be for a genuine commercial purpose and must not form part of any arrangement to avoid liability to tax (paragraphs 2 to 5).

236. Separately, under “Acquisition relief” (paragraphs 6 to 10), where a land transaction forms part of the transfer of an undertaking acquired for consideration of shares (but without the shareholdings having to remain the same), the amount of LBTT chargeable is reduced to a proportion (to be prescribed by Scottish Ministers by order) of the tax that otherwise would be chargeable but for the relief. Orders will be subject to the negative procedure (see section 67).

237. Paragraphs 11 to 14 provide for withdrawal of this relief where control of the acquiring company changes within three years, beginning with the effective date of the transaction (or there
are arrangements under which control will change after three years which are entered into within the three-year period).

238. Paragraphs 15 to 22 set out situations where reconstruction relief or acquisition relief is not withdrawn despite control of the acquiring company changing. They include:

- where control changes as a result of a share transaction in connection with divorce, dissolution of a civil partnership or for similar reasons,
- where control changes as a result of a share transaction in connection with transactions which vary dispositions following death,
- where control changes as result of an exempt intra-group transfer of shares (defined in paragraph 36),
- where control changes as a result of a transfer to another company to which share acquisition relief applies (defined in paragraph 34), and
- where control changes as a result of a loan creditor becoming or ceasing to be treated as having control.

239. Paragraphs 23 to 29 provide for the withdrawal of reconstruction relief or acquisition relief on a subsequent non-exempt transfer and where share acquisition relief applies but control of the company subsequently changes. See also section 33 which requires there to be a further return to the Tax Authority where relief is withdrawn.

Schedule 12 – Relief for incorporation of limited liability partnership

240. This schedule is introduced by section 27. Paragraph 1 provides for relief from LBTT where land is transferred to a limited liability partnership in connection with its incorporation. Paragraph 2 sets out the qualifying conditions that require to be satisfied to attract the relief. Paragraph 3 defines “limited liability partnership” and “relevant time” for the purposes of this schedule.

Schedule 13 – Charities relief

241. This schedule, introduced by section 27, provides relief from LBTT for charities and charitable trusts. For the purposes of this schedule a charity is defined at paragraph 15(1) as a body registered in the Scottish Charity Register or a body which is established under the law of a relevant territory, managed or controlled mainly or wholly outwith Scotland and which meets at least one of the conditions set out in subsection (2). The conditions are: (i) that the body is registered in a register corresponding to the Scottish Charity Register, (ii) the body’s purposes consist only of one or more of the charitable purposes. Sub-paragraph (3) provides that a “relevant territory” is England and Wales, Northern Ireland, a member State of the European Union other than the United Kingdom or a territory specified in regulations made the Scottish Ministers. Paragraph 15(A) provides that in this schedule “charitable purposes” has the meaning given in Section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

242. Paragraph 1 provides for relief from LBTT if the buyer is a charity, provided that the two conditions in paragraph 2 are met. Firstly, the purchasing charity must intend to hold the land or the
greater part of the land for qualifying charitable purposes (within the meaning of section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (paragraph 16)). Secondly, the purchasing charity must not be entering into the land transaction for the purpose of avoiding LBTT.

243. Paragraph 4 provides for charities relief to be withdrawn wholly or partially where a charity claims the relief in relation to a land transaction and, within three years of the transaction, the buyer ceases to be a charity or the land is used otherwise than for qualifying charitable purposes. Relief may also be lost if these events occur more than three years after the transaction but pursuant to arrangements made during the three-year period.

244. The relief is also wholly or partially withdrawn if the buyer transfers a major interest in the whole or part of the subject-matter of the transaction or grants a low rental lease at a premium (paragraph 7). See also section 33 which requires there to be a further return to the Tax Authority where relief is withdrawn.

Schedule 14 – Relief for certain compulsory purchases

245. This schedule is introduced by section 27. Paragraph 1 provides for relief from LBTT for acquisitions by a local authority of land using compulsory purchase powers. Paragraph 3 clarifies that the relief is available to a local authority when it exercises its compulsory purchase order powers for any of the purposes stated in section 189 of the Town and Country Planning (Scotland) Act 1997. These purposes are: the development, redevelopment or improvement of land, or any other purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

Schedule 15 – Relief for compliance with planning obligations

246. This schedule is introduced by section 27. Paragraphs 1 and 2 comprise the main relief provisions. A transaction will be relieved when it is entered into with a public body in order to comply with a planning obligation or a modification of a planning obligation, subject to certain conditions being satisfied. Paragraphs 3 and 4 define “planning obligation” and “modification”. Paragraph 5 lists which bodies fall within the definition of “public bodies” and allows the Scottish Ministers to add bodies to the list by order. Such an order will be subject to the negative procedure (see section 67).

Schedule 16 – Public bodies relief

247. This schedule is introduced by section 27. Paragraph 1 describes the type of transaction, under a statutory reorganisation, which is relieved under this schedule. Paragraph 2 provides that the Scottish Ministers may by order provide that certain other land transactions which do not fall under paragraph 1 are also relieved from LBTT subject to certain conditions. Orders will be subject to the negative procedure (see section 67). Paragraph 3 defines what is meant by a reorganisation for the purposes of paragraph 1 and paragraph 4 lists those bodies which are to be regarded as “public bodies” for the purposes of this schedule. Paragraph 5 includes, in the reference to a public body for the purposes of this schedule, a company which is wholly owned by such a body or a wholly-owned subsidiary of such a company. Paragraph 6 defines “company” for the purposes of paragraphs 4 and 5 of this schedule.
Schedule 17 – Partnerships

248. This schedule, introduced by section 49, provides for the treatment of partnerships in respect of LBTT. It sets out the responsibilities of partners, how LBTT applies in relation to the acquisition of interests in land by partners or partnerships, and excludes certain transactions relating to partnerships from LBTT.

249. Paragraph 2 defines “partnership” to include the various types of UK partnerships and also firms or entities outside Scotland having similar character.

250. Although a Scottish partnership has legal personality, anything done by the partnership is, for the purposes of LBTT, to be done by or in relation to all the partners (paragraph 8). The partners are jointly and severally liable for payment of the tax (paragraph 9). Chargeable interests held by a partnership are treated as held by the partners, whether or not a partnership has legal personality or is a body corporate. A partnership is also held to have continuity notwithstanding that partners change from time to time.

251. Where a partnership acquires land from a third party (or a third party acquires land from a partnership), the transaction is treated the same as any other transaction for the purposes of LBTT (see Part 3 of the schedule).

252. Where partners or prospective partners introduce land into the partnership and where existing partners take land out of the partnership, the transfer is taken to have a chargeable consideration equal to a proportion of the market value of the land transferred (see Parts 4 and 5 of the schedule). The proportion reflects, in the first case, that the partner or prospective partner retains a share of the land as a partner and, in the second case, that the partner already owned a share of the land as a partner.

253. There are special rules for the transfer of interests in property investment partnerships whose sole or main activity is holding or investing in land. In such cases there is no transfer of land except indirectly through the change of ownership structure of the partnership holding vehicle. In such a case the Bill looks to the underlying land (excluding non-land assets held) attributable to the buyer through the acquisition of the interest in the partnership and deems the chargeable consideration to be the market value of that land.

Schedule 18 – Trusts

254. This schedule, introduced by section 50, provides for the treatment of trusts in respect of LBTT.

255. Trusts are divided into “bare trusts” and “settlements” with settlements defined as trusts which are not bare trusts (paragraph 20). Bare trusts are trusts where the beneficiary is absolutely entitled to the property as against the trustee (paragraph 18) and includes the bilateral type of trust where the bare trustee holds the property as nominee for another.

256. The liability to pay the tax is imposed, subject to one exception, on the trustees, with the tax able to be recovered from any one of the trustees. The exception is where there is a bare trust, with
the beneficiaries are liable for the payment of the tax. Section 5A however, provides for a right of recovery also against the “bare trustee” when the beneficiary has failed to make a return or payment.

**Schedule 18A – Leases**

257. This schedule, introduced by section 55, provides for the tax treatment of leases under the Bill. Part 2 provides for the amount of tax chargeable on rent. Part 3 provides for the amount of tax chargeable in respect of consideration other than rent. Part 4 provides for review of the tax chargeable. Part 5 provides for the chargeable consideration in relation to rent and consideration other than rent and Part 6 covers other provisions about leases.

258. Paragraph 2 provides that where the chargeable consideration for a chargeable transaction consists of both a rental element and other consideration (e.g. a premium) then the tax due on the two elements of the consideration should be calculated separately and added together to determine the total tax to be paid.

259. The schedule does not set out the bands and rates for the chargeable consideration which consists of rent. As set out in paragraph 3, these must be specified by the Scottish Ministers by order. Ministers must specify a nil rate band and at least one other tax band. To ensure the tax is a progressive one, the percentage rate tax band for each tax band must be higher than for the band below it. Paragraph 4 sets out how the tax on the rental element of the chargeable consideration should be determined. Paragraph 5 makes specific provision for the same calculation in relation to linked transactions. Paragraph 6 sets out the formula for calculating the net present value (“NPV”) of the rent payable over the term of a lease. That formula is used in the calculations under paragraphs 4 and 5. Paragraph 7 provides that the “temporal discount rate”, which forms part of the NPV formula set out in paragraph 6, is 3.5 per cent and empowers the Scottish Ministers to vary this rate by order.

260. Paragraphs 8 and 9 set out the rules for calculating the tax chargeable where the consideration is other than rent e.g. where a premium is paid. Essentially, the provisions of the Bill on chargeable consideration generally apply for the purposes of calculating the tax due on consideration other than rent. Paragraph 9(2) provides that the nil rate tax band does not apply in relation to the consideration other than rent where the relevant rental is at least £1,000. Paragraph 9(3) provides for the conditions that must pertain for sub-paragraphs (4) and (5) to apply. Sub-paragraph (4) provides for the determination of the tax chargeable in respect of transactions that are linked and sub-paragraph (5) provides that the apportionment of the chargeable consideration between the linked transaction should be carried out on a just and reasonable basis. Sub-paragraphs (6) and (8) define the terms “the relevant rent”, and “relevant land” respectively for this paragraph and sub-paragraph (7) defines “annual rent” for the purposes of sub-paragraph (6).

261. Paragraph 10 makes provision for regular reviews of the tax chargeable. Sub-paragraph (1) provides that this paragraph applies where a buyer has made a land transaction return (in terms of section 29(1)) or where such a return was not made but a return has been made under section 31 (return where contingency ceases or consideration ascertained) or under the following paragraphs of this schedule, namely, paragraph 21 (return where lease for fixed term continues after end of term), paragraph 23 (return in relation to lease for an indefinite term) or paragraph 32 (return where
transaction becomes notifiable on variation of rent or term). Sub-paragraph (2) provides that the buyer must make a further return to the Tax Authority if, on a review date, the lease has not been assigned or terminated. Sub-paragraph (6) sets out what the “review date” is in the case of each of the returns set out at sub-paragraph (1).

262. Paragraph 11 makes provision for a review of the tax chargeable in relation to a chargeable transaction to which paragraph 10 applies where the lease is assigned or terminated. Sub-paragraphs (2) and (3) provide that the buyer must make a further return to the Tax Authority before 30 days beginning with the day on which the lease is assigned or terminated.

263. Paragraphs 12 and 13 make provision about certain aspects of rent generally, although “rent” is not as such defined.

264. Paragraph 14 sets out the rules for determining the rent payable under a lease where the rent varies in accordance with provisions in the lease or where a rent is contingent, uncertain or unascertained. This will be necessary for the purposes of calculating the tax due on the rent under paragraph 4 or 5. Paragraph 15 provides that, in the case of the grant, assignation or renunciation of a lease, a reverse premium does not count as a chargeable consideration. Sub-paragraph (2) defines what a “reverse premium” means. Paragraph 16 sets out a list of tenants obligation (for example, any undertaking by the tenant to repair, maintain or insure the leased premises) which in the case of the grant of a lease do not count as part of the chargeable consideration.

265. Paragraph 18(1) provides that where a tenant, or any person connected with or acting on behalf of the tenant, makes a loan or pays a deposit (whether to the landlord or to a third party), the repayment of which is contingent on anything to be done or not to be done by the tenant, then the amount of the loan or the deposit is to be treated as consideration other than rent paid by the tenant for the grant of the lease. Sub-paragraph (2) makes similar provision to sub-paragraph (1) in relation to arrangements in connection with the assignation of a lease. Sub-paragraph (3) provides that sub-paragraphs (1) and (2) do not apply where the deposit does not exceed twice the relevant maximum rent. Sub-paragraph (4) defines the relevant maximum rent in relation to the grant of a lease – the highest amount of rent payable in respect of any consecutive 12 month period during the term of the lease - and in relation to the assignation of a lease - the highest amount of rent payable in respect of any consecutive 12 month period during the term of the lease remaining outstanding at the date of the assignation. Sub-paragraph (5) makes further provision for determining the highest amount of rent for the purposes of sub paragraph (4).

266. Paragraph 19 makes provision for the renunciation of an existing lease in return for a new lease and further provides that paragraph 5 (exchanges) of schedule 2 (chargeable consideration) does not apply in such a case.

267. Paragraphs 20 to 32 make provision for dealing with a number of aspects of leases not covered elsewhere in the schedule. Paragraphs 20 to 22 make provision about leases for fixed terms and for such leases where they continue after the end of the fixed term, as well as for the situation where a lease of substantially the same premises is granted to a tenant during a period after the end of a fixed term lease. Paragraph 23 makes provision for leases which are granted for an indefinite term, in particular for the term of such leases to be determined by how long the lease lasts. This
may trigger notification of the lease, and possibly may result in tax being chargeable, if the lease persists.

268. Paragraph 24 makes provision to the effect that successive leases of the same premises between the same parties (or are otherwise linked transactions) are to be treated as one lease for the purposes of the Bill.

269. Paragraph 25 treats rent paid during an “overlap period” between the end of one lease and the grant of another as, in certain circumstances, paid under the old lease and not the new lease. Paragraph 26 makes provision for the situation where a lease has continued on tacit relocation and the tenant is granted a lease, backdated to the date when term of the old lease expired.

270. Paragraph 27 deals with the situation where parties enter into an agreement to grant a lease, but then substantially perform the agreement, followed by the grant of a lease in implement of the agreement. Paragraph 28 makes equivalent provision where a lease, say concluded missives of let, is followed by the execution of a formal lease.

271. Paragraph 29 provides for the circumstances in which an assignation of a lease is to be treated as if it were the grant of a lease, essentially where the initial grant of the lease was relieved from LBTT under one of the reliefs mentioned in sub-paragraph (3).

272. Paragraph 30 makes clear that, where a lease is assigned, the assignee inherits many of the assignor’s duties under the Bill in relation, for instance, to the making of certain returns.

273. Paragraph 31 specifies which variations of leases are treated for the purposes of the tax as acquisitions of chargeable interests. Variations are not, generally, treated under Scots law as creating new leases. Paragraph 32 provides for a return to the Tax Authority, where there has not already been one, in the case where a lease is varied so as to extend its term or increase the rent payable.

Schedule 19 – Index of defined expressions

274. Schedule 19 provides an index to definitions used in the Bill.
SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee ("the Committee") in its consideration of the Land and Buildings Transaction Tax (Scotland) Bill ("the Bill"). This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2

Section 24(1) – Duty to specify tax rates and bands for residential and non-residential property transactions

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure for the first order, provisional affirmative, as provided for in section 67(3A), thereafter

2. As indicated in correspondence with the Committee, the Scottish Government has amended the order-making power in section 24 of the Bill at stage 2.

Reason for taking power

3. The Bill as introduced contained an order-making power to allow the Scottish Ministers to set the tax rates and bands for Land and Buildings Transaction Tax (LBTT) alongside the budget process for 2015-2016. As the Delegated Powers Memorandum accompanying the Bill at introduction states, the order-making power is required to allow Scottish Ministers to respond to fluctuations in the property market.

Choice of procedure

4. At introduction, the Bill provided for the order-making power for the first setting of rates and bands to be subject to the affirmative procedure. This remains the position. The Bill also provided that the second setting of rates and bands would be subject to the negative procedure.

5. The Committee’s stage 1 report on the Bill recommended that the power should be subject to a form of affirmative procedure. The Cabinet Secretary for Finance, Employment and Sustainable Growth wrote to the Committee on 18 April 2013 to advise that he would bring
forward an amendment to the Bill at stage 2 so that the power at section 24(1) would be subject to a form of provisional affirmative procedure after the first occasion that bands and rates are set.

6. The amended power will allow the Scottish Government the necessary flexibility to respond swiftly to changes in the property market, whilst allowing the Scottish Parliament to fully scrutinise the rates and bands as set out in the order.

Section 30(5) – Power to amend £40,000 notification threshold

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<td>Parliamentary procedure:</td>
<td>Negative procedure</td>
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7. As the Delegated Powers Memorandum that accompanied the Bill at introduction indicated, the power in section 30(5) allows for the variation of the £40,000 figure in section 30(1)(b). This power has subsequently been amended to allow amendment of the £40,000 figure in section 30(1A)(a)(i) and (b)(ii).

Reasons for amending the power

8. The introduction of schedule 18A (Leases) at stage 2 resulted in the need for consequential amendments to be made to section 30 (notifiable transactions) to set out when transactions in relation to the grant, assignation or renunciation of a lease are not notifiable. In some cases, the transactions are not notifiable where the chargeable consideration is less than £40,000. Enabling the Scottish Ministers to amend the £40,000 figure by order will provide a degree of flexibility which will assist with the efficient administration of the LBTT system for the reasons set out at paragraph 26 of the Delegated Powers Memorandum referred to at paragraph 7 above.

Choice of Procedure

9. Although the power allows for amendment of the Bill, it does so only to a very limited extent. It is considered that this is a technical and administrative matter and that the negative procedure is appropriate.

Section 47(1) – Power to make regulations about residential property holding companies

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<th>Power conferred on:</th>
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<td>Parliamentary procedure:</td>
<td>Affirmative procedure (if amends an Act), otherwise negative</td>
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10. The power enables the Scottish Ministers to make regulations to capture the “wrapping” of residential properties in company structures to avoid LBTT. Such regulations would treat certain transfers of interest in Residential Property Holding Companies (“RPHCs”) as land transactions that will be chargeable to LBTT.
The Scottish Government brought forward an amendment of this power at stage 2, new subsection (4A). The amendment enables the regulations to expand what counts as “residential property” for the purposes of section 47. It is imperative that Scottish Ministers are able to regulate to ensure that transfers of residential properties cannot avoid LBTT liability under section 47 by being held together with some non-residential property in a property holding company. The amendment provided the flexibility to do that. For example, it would enable the regulations to capture any residential property held as part of a larger mixed-use property. Other than that, the power remains substantially unchanged.

**Reason for taking power**

As the Delegated Powers Memorandum accompanying the Bill at introduction stated, the use of RPHCs is a complex matter. However, the Scottish Government considers that the “corporate wrapping” of residential properties in company structures would be an unacceptable avoidance of LBTT. The regulation-making power ensures that the Scottish Ministers have the flexibility to make regulations to prevent such activity occurring in Scotland.

**Choice of procedure**

When introduced, the power in section 47(1) of the Bill was subject to affirmative procedure should the regulations made add to, replace, or omit the text of any Act (including the Bill itself).

In the Committee’s stage 1 report, it was indicated that the Committee would await sight of the proposed amendments before reaching a view on the power. The amendment made is minor, and merely clarifies the scope of the power. Given that any regulations made under section 47 would add to the LBTT legislation, they would remain subject to affirmative procedure.

**Section 49 – Power to modify schedule 17 (partnerships)**

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The power enables the Scottish Ministers to make regulations about the LBTT treatment of partnerships.

**Reason for taking power**

Schedule 17 of the Bill contains provisions on partnerships. The provisions are complex, but broadly replicate the legislative framework that has been in place for Stamp Duty Land Tax (SDLT). In order to address stakeholder concerns about the complexity of the provisions, a stage 2 amendment was brought forward to allow the Scottish Ministers the flexibility to make regulations to modify schedule 17 in the future.
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill as amended at Stage 2 (SPBill19A)

Choice of procedure

17. Any regulations made under the power in section 49(2) will be subject to affirmative procedure. The Scottish Government considers that partnership structures are fundamental to commerce, and it is important that the regulations are subject to the full Parliamentary scrutiny that the affirmative procedure affords.

Section 51A – Power to make regulations about licences

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure (if amends an Act), otherwise negative

18. The power in section 51A allows the Scottish Ministers to specify in secondary legislation particular types of licences that are land transactions and will therefore be subject to the tax. For various reasons, the occupation of certain types of property is made under licence rather than by means of a lease. As such licence arrangements are akin to leases, they ought to be subject to the same treatment under LBTT.

Reasons for taking power

19. The Bill at introduction provided that all licences to occupy non-residential property should be included in the scope of the tax. However, the Scottish Government has reflected further on the evidence the Finance Committee heard during stage 1 of the Bill process, and has amended the Bill at stage 2 to limit the taxation of licences by means of a delegated power in the Bill.

Choice of procedure

20. The power in section 51A of the Bill added at stage 2 is subject to affirmative procedure should the regulations made add to, replace, or omit the text of any Act (including the Bill itself). The Scottish Government considers that affirmative procedure is appropriate, as the LBTT treatment of licence arrangements will be commercially significant.

21. As the Bill stands, other regulations made under section 51A are subject to the negative procedure. However, in recognition of the fact that the regulations may extend the scope of the tax by adding certain licences to occupy non-residential property, the Scottish Government intends to bring forward an amendment at stage 3 to make these regulations subject to the affirmative procedure.
Schedule 8, paragraph 10(1)(b) – Relief for alternative finance investment bonds: power to specify conditions

Power conferred on: The Scottish Ministers  
Power exercisable by: Regulations  
Parliamentary procedure: Negative procedure

22. The power at paragraph 10(1)(b) of schedule 8 is a regulation-making power which allows the Scottish Ministers to specify additional conditions to those set out at paragraph 10(1)(a).

Reasons for taking power

23. The provisions relating to Alternative Finance Investment Bonds are complex and technical. The new schedule 8 substantially replicates schedule 61 to the Finance Act 2009 which includes equivalent powers in so far as it relates to Stamp Duty Land Tax. Schedule 8 specifies a number of conditions on the face of the schedule but the Scottish Government considers that some flexibility to specify different conditions is needed.

Choice of Procedure

24. This power will provide flexibility around prescribing condition C which in part determines eligibility for the relief and is in line with equivalent UK tax provisions. The conditions are likely to change over time in line with commercial practice. It is considered that this is a technical and administrative matter that does not affect the scope of the tax and that the negative procedure is appropriate.

Schedule 8, paragraphs 3, 11(1), 20 and 21(5)(a) and (6) – Relief for alternative finance investment bonds: power to prescribe evidence

Power conferred on: The Scottish Ministers  
Power exercisable by: Regulations  
Parliamentary procedure: Negative procedure

25. Paragraphs 11(1), 20, 21(5)(a) and 21(6) of this schedule enable the Scottish Ministers to prescribe in regulations the evidence that requires to be submitted to the Tax Authority in relation to a number of paragraphs of the schedule. These paragraphs need to be read with paragraph 3 of schedule 8, which defines “prescribed”.

Reasons for taking powers

26. The provisions relating to Alternative Finance Investment Bonds are complex and technical. The new schedule 8 substantially replicates schedule 61 to the Finance Act 2009 in so far as it relates to Stamp Duty Land Tax.
Choice of Procedure

27. These powers will provide flexibility around prescribing the evidence to be submitted to the Tax Authority in relation to claims for the relief and are in line with equivalent UK tax provisions. The required evidence is likely to change over time in line with practice. It is considered that these are technical and administrative matters that do not affect the scope of the tax and that the negative procedure is appropriate.

Schedule 8, paragraph 14(2) – Relief for alternative finance investment bonds: power to specify period

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Introduction

28. The power at paragraph 14(2) of schedule 8 enables the Scottish Ministers to vary, by regulations, the period of 10 years referred to in condition G at paragraph 14(1)(b).

Reasons for taking powers

29. The provisions relating to Alternative Finance Investment Bonds are complex and technical. The new schedule 8 substantially replicates schedule 61 to the Finance Act 2009 in so far as it relates to Stamp Duty Land Tax.

Choice of Procedure

30. This power will provide flexibility around prescribing the period provided for in condition G and is in line with equivalent UK tax provisions. It is considered that this is a technical and administrative matter that does not affect the scope of the tax and that the negative procedure is appropriate.

Schedule 13, paragraph 15(3) – Power to specify relevant territories in which a body must be established to be eligible for charities relief

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

31. Paragraph 15(3)(d) of schedule 13 provides that regulations can be made by the Scottish Ministers to specify the territories in which a body must be established to be eligible for charities relief.
Reason for taking power

32. Sub-paragraph (3) defines a “relevant territory” as being England and Wales, Northern Ireland, a member State of the EU other than the UK or a territory specified in regulations. The power provides the Scottish Ministers with the flexibility to add to this list of relevant territories through secondary legislation.

Choice of Procedure

33. Although the power allows for amendment of the Bill, it only does so to a very limited extent. It is considered that this is a technical and administrative matter and that the negative procedure is appropriate.

Schedule 18A – Leases

34. Section 55 of the Bill as introduced contained a duty on Scottish Ministers to make regulations for the application of LBTT to leases. In its stage 1 report, the Committee highlighted that it realised that the scope of section 55 was likely to change at stage 2, and that it would await sight of the amendments before reaching a view on the power.

35. The Scottish Government brought forward substantial amendments to the Bill at stage 2 to make provision about the application of LBTT in relation to leases. The power in section 55 was removed at stage 2, and replaced with the provisions in schedule 18A to the Bill. There are two delegated powers within schedule 18A, which are set out below.

Schedule 18A, paragraph 3(1) – Duty to set tax rates and bands (leases)

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<td>Affirmative procedure for the first order, provisional affirmative, as provided for in section 67(3A), thereafter</td>
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36. Paragraph 3(1) of schedule 18A places a duty on the Scottish Ministers to lay an order before the Scottish Parliament setting out the tax bands and percentage tax rates for each band for the chargeable consideration which consists of rent.

Reason for taking power

37. The order-making power in section 24(1) of the Bill requires the Scottish Ministers to set rates and bands for residential property transactions, and non-residential property transactions. Due to the nature of the provisions in schedule 18A, the LBTT framework on leases requires to make specific provision for the setting of tax rates and bands.
Choice of procedure

38. The order-making power in paragraph 3(1) of schedule 18A is subject to affirmative procedure at the first setting of bands and rates, and a form of provisional affirmative procedure thereafter. This is to ensure parity with the order-making power in section 24(1). Provisional affirmative procedure is provided for by virtue of section 67(3A).

Schedule 18A, paragraph 7(2) – Power to specify the “temporal discount rate” to be applied to the calculation of chargeable consideration for leases

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39. The “temporal discount rate” in paragraph 7(1) is relevant to the calculation of the Net Present Value of the rent payable over the term of a lease. The Bill provides that this is 3.5%, as this is the current rate used for SDLT. The power allows the Scottish Ministers to change the temporal discount rate.

Reason for taking power

40. The temporal discount rate is set at 3.5% as this is the standard rate to be used to convert all costs and benefits to “present values” as set out in the HM Treasury Green Book “Appraisal and Evaluation in Central Government”. The same rate is used across government areas in Scotland including transport, housing and culture. This allows comparisons to be made on a consistent basis.

41. However, as the use in a LBTT context represents revenue to the Scottish Government but cost to the private sector (which generally uses higher discount rates in financial planning) there is some rationale for considering the use of a different value. Therefore, the power enables the Scottish Ministers to vary the rate. A similar power is provided for SDLT in paragraph 8 of schedule 5 to the Finance Act 2003.

Choice of procedure

42. As the Bill stands, the power to amend the ‘temporal discount rate’ is subject to the negative procedure. However, in recognition of the fact that a change to the discount rate would change the amount of tax to be paid in relation to transactions involving leases, the Scottish Government intends to bring forward an amendment at stage 3 to make these regulations subject to the affirmative procedure.
Delegated Powers and Law Reform Committee

37th Report, 2013 (Session 4)

Land and Buildings Transaction Tax (Scotland) Bill as amended at stage 2

Published by the Scottish Parliament on 19 June 2013
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
      (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
      (ii) [deleted]
      (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Christian Allard
Nigel Don (Convener)
Mike MacKenzie
Hanzala Malik
John Pentland
John Scott
Stewart Stevenson (Deputy Convener)
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
INTRODUCTION

1. At its meeting on 18 June 2013, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Land and Buildings Transaction Tax (Scotland) Bill as amended at Stage 2 (“the Bill”). The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Land and Buildings Transaction Tax (Scotland) Bill was introduced in the Scottish Parliament by the Scottish Government on 29 November 2012.

3. The Bill is the first of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012. Under the terms of that Act, the Scottish Parliament is empowered to make provision in relation to Scotland for devolved taxes. Section 80I of the Scotland Act 1998 provides that a tax charged on the land transactions listed in that section is a devolved tax. This Bill makes such provision to be called the Land and Buildings Transaction Tax (LBTT). It is intended that this replace the current UK Stamp Duty Land Tax in relation to Scotland.

4. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”).

5. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its 15th report of 2013.

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DELEGATED POWERS PROVISIONS

6. The Committee considered each of the new or substantially amended delegated powers provisions in the Bill after Stage 2.

7. The Committee determined that it did not need to draw the attention of the Parliament to the following delegated powers provisions:

- Section 24(1) – Duty to specify tax bands and rates
- Section 30(5) – Power to amend £40,000 threshold
- Section 47(1) – Power to make regulations about residential property holding companies
- Section 49 – Power to modify schedule 17 (partnerships)
- Schedule 8, paragraph 10(1)(b) – Power to specify conditions
- Schedule 8, paragraphs 3, 11(1), 20 and 21(5)(a) and (6) – Power to prescribe evidence
- Schedule 8, paragraph 14(2) – Power to specify period
- Schedule 13, paragraph 15(3) – Power to specify relevant territories re eligibility for charities relief
- Schedule 18A, paragraph 3(1) – Duty to set tax rates and bands (leases)

8. The Committee’s comments and recommendations on the remaining delegated powers are considered below.

Section 51A – Power to make regulations about the application of the Bill to licences

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure (if amends an Act), otherwise negative

9. This is a new power. Schedule 18A inserted at stage 2 which applies the Bill to leases does not apply to licences to occupy. This power permits the Scottish Ministers to prescribe descriptions of non-residential licences to occupy property which are to be treated as land transactions and therefore potentially liable to LBTT. The regulations are subject to the affirmative procedure if they modify primary legislation but otherwise they are subject to the negative procedure.
10. The effect of the exercise of the power would be to impose liability to pay tax where no liability currently exists. The Committee considers that the extension of liability to tax to a significant class of persons is an important matter and one which should be subject to the affirmative procedure. The Committee raised this issue informally with the Scottish Government. Having reflected on the matter, the Scottish Government has confirmed that it will lodge an amendment at Stage 3 to make this power subject to the affirmative procedure in all cases.

11. The Committee considers the power to be acceptable subject to the affirmative procedure being applicable in all cases. The Committee notes the Government’s commitment to lodge an amendment to this effect at Stage 3.

Schedule 18A, paragraph 7(2) – Power to specify the “temporal discount rate”

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

12. This power permits the Scottish Ministers to vary the “temporal discount rate” (TDR) referred to in paragraph 7(1) of schedule 18A. The rate is currently 3.5%. The TDR is relevant to the calculation of the tax chargeable in respect of leases and is a means of discounting the annual rent for the purposes of calculating the chargeable value of the lease for tax purposes.

13. The SDPM describes this power as a technical and administrative matter which only amends the Bill to a very limited extent. The Committee does not agree with this analysis. Varying the TDR will affect how the capital value of the lease is calculated and therefore has a significant effect on how liability to tax is calculated. The Committee therefore considers that this power, being of significance, should be subject to the affirmative procedure.

14. The Committee raised this issue with the Scottish Government. Having reflected on the matter, the Scottish Government has confirmed that it will lodge an amendment at Stage 3 to make this power subject to the affirmative procedure in all cases.

15. The Committee considers the power to vary the temporal discount rate acceptable subject to the affirmative procedure being applicable in all cases. The Committee notes the Government’s commitment to lodge an amendment to this effect at Stage 3.
Land and Buildings Transaction Tax (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 70
Schedules 1 to 19
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 2

John Swinney

1. In section 2, page 2, line 4, leave out <land transaction returns> and insert <returns relating to land transactions>

John Swinney

2. In section 2, page 2, line 6, at end insert—

   <Part 5A contains provision about the application of the Act to leases and non-residential licences.>

Section 5

John Swinney

3. In section 5, page 2, line 29, leave out <an interest or right> and insert <a real right or other interest in or over land>

John Swinney

4. In section 5, page 2, line 34, leave out <an interest or right in relation to> and insert <a real right or other interest in or over>

John Swinney

5. In section 5, page 3, line 1, leave out <an interest or right in relation to> and insert <a real right or other interest in or over>

Section 6

John Swinney

6. In section 6, page 3, line 9, at end insert <(but not the variation of a lease).>
( ) The variation of a lease is treated as an acquisition and a disposal of a chargeable interest only where paragraph 31 of schedule 18A (reduction of rent or term or other variation of lease) applies.

**John Swinney**

7 In section 6, page 3, line 21, leave out second <the> and insert <a>

**Section 10**

**John Swinney**

8 In section 10, page 4, line 24, at end insert—

<( ) Where paragraph 27 of schedule 18A (leases) applies, it applies in place of this section.>

**Section 24**

**Gavin Brown**

9 In section 24, page 10, line 13, at end insert—

<( ) The first order containing provision under subsection (1)(b) must be laid before the Scottish Parliament at least 12 months before the tax is first charged on non-residential property transactions.>

**John Swinney**

10 In section 24, page 10, line 23, at end insert—

<( ) In the case of a transaction for which the whole or part of the chargeable consideration is rent, see paragraph 3 of schedule 18A (leases) for the tax rates and tax bands applicable to such consideration.>

**Section 25**

**John Swinney**

11 In section 25, page 10, line 35, leave out <section 55 (application of this Act to leases)> and insert <schedule 18A (leases)>

**Section 26**

**John Swinney**

12 In section 26, page 11, line 19, leave out <section 55 (application of this Act to leases)> and insert <schedule 18A (leases)>
Section 27

John Swinney
13 In section 27, page 12, line 6, leave out <a land transaction return or an amendment of such a> and insert <the first return made in relation to the transaction or in an amendment of that>

After section 27

Patrick Harvie
69 After section 27, insert—

<Variations>
Schedule (energy performance variation) provides for variations of the tax in relation to certain land transactions.>

Gavin Brown
70 After section 27, insert—

<Relief for transactions involving transfer of rights>
(1) Before the tax is first charged, the Scottish Ministers must consult such persons as appear to them to be appropriate for the purposes of considering the circumstances in which relief should be provided for transactions involving transfer of rights.
(2) The Scottish Ministers must, by order, modify this Act before the tax is first charged so as to provide for relief for such transactions involving transfer of rights as appear to them to be appropriate.>

Section 30

John Swinney
14 In section 30, page 13, line 20, after <rate> insert <tax>

John Swinney
15 In section 30, page 13, line 24, after <rate> insert <tax>

John Swinney
16 In section 30, page 13, line 28, at end insert—

<( ) In subsection (1A)(a)(ii), “relevant rent” means—
(a) the annual rent (as defined in paragraph 9(7) of schedule 18A), or
(b) in the case of the grant of a lease to which paragraph 28A of schedule 17 applies, the relevant chargeable proportion of the annual rent (as calculated in accordance with that paragraph).>
Section 31

John Swinney

17 In section 31, page 14, line 23, at end insert—

<( ) This section does not apply so far as the consideration consists of rent (see schedule 18A (leases)) unless the effect of the event mentioned in subsection (2) is that the transaction becomes notifiable.>

Section 32

John Swinney

18 In section 32, page 15, line 1, leave out <section 55 (application of this Act to leases)> and insert <schedule 18A (leases)>

Section 36

John Swinney

19 In section 36, page 16, line 34, at end insert—

<( ) in relation to a return under paragraph 10 of schedule 18A (leases), the review date (see paragraph 10(6)),

( ) in relation to a return under paragraph 11 of that schedule, the day on which the lease is assigned or terminated,

( ) in relation to a return under paragraph 21 of that schedule, the date on which the 1 year period mentioned in paragraph 21(3) ended,

( ) in relation to a return under paragraph 23 of that schedule, the date on which the deemed fixed term mentioned in paragraph 23(2) ended,

( ) in relation to a return under paragraph 32 of that schedule, the date from which the variation mentioned in that paragraph takes effect.>

Section 39

John Swinney

20 In section 39, page 17, line 18, at end insert—

<( ) in schedule 18A (leases)—

(i) paragraph 10(3),

(ii) paragraph 11(3),

(iii) paragraph 21(3)(a),

(iv) paragraph 23(2)(a),

(v) paragraph 32(2)(a).>
Section 40

John Swinney

21 In section 40, page 17, line 28, at end insert—

<( ) in schedule 18A (leases)—
(i) paragraph 10 (return on 3-yearly review),
(ii) paragraph 11 (return on assignation or termination of lease),
(iii) paragraph 21 (return where lease for fixed term continues after end of term),
(iv) paragraph 23 (return in relation to lease for indefinite term),
(v) paragraph 32 (transactions which become notifiable on variation of rent or term).>

Section 41

John Swinney

22 In section 41, page 18, line 19, leave out subsection (5) and insert—

<(5) Unless the Scottish Ministers provide otherwise by order, this section does not apply to consideration so far as it consists of rent.>
(1D) Where this subsection applies, the Scottish Ministers must, before the tax is first charged, lay before the Scottish Parliament a report on the review under subsection (1A), giving their reasons for not exercising the power.

Section 50

John Swinney

24 In section 50, page 22, line 37, at end insert—

<(2) The Scottish Ministers may, by regulations, modify schedule 18.>

Section 55

John Swinney

25 In section 55, page 23, line 17, at end insert—

<(2) The Scottish Ministers may, by regulations, modify schedule 18A.>

Section 51A

Gavin Brown

26 In section 51A, page 23, line 30, at end insert—

<( ) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) such persons as appear to them to have an interest in non-residential licences to occupy property, and

(b) such other persons as they consider appropriate.>

Section 56

John Swinney

27 In section 56, page 24, line 26, leave out <land transaction>

Section 67

Gavin Brown

72 In section 67, page 28, line 22, at end insert—

<( ) section (relief for transactions involving transfer of rights)(2),>

John Swinney

28 In section 67, page 28, line 23, at end insert—

<( ) section 50(2),>
In section 67, page 28, line 23, at end insert—

\(<(\textcolor{red}{\text{section 55(2),}})\)\)

In section 67, page 28, line 23, at end insert—

\(<(\textcolor{red}{\text{section 51A(1),}})\)\)

In section 67, page 28, leave out line 27

In section 67, page 28, line 27, at end insert—

\(<(\textcolor{red}{\text{paragraph 1 of schedule (energy performance variation),}})\)\)

In section 67, page 28, line 28, at end insert—

\(<(\textcolor{red}{\text{paragraph 7(1) of that schedule.}})\)\)

In section 67, page 28, leave out line 33

In section 69, page 29, line 18, after <67> insert <, 68>

\textbf{Section 69}\)

In schedule 1, page 30, line 25, at end insert—

\(<(\textcolor{red}{\text{For the purposes of sub-paragraph (1)(a), a transaction in respect of a lease of residential property is exempt only if—}})\)\)

(a) the main subject-matter of the transaction consists entirely of an interest in land that is residential property, or

(b) where the transaction is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of such an interest.>
Schedule 2

John Swinney

36 In schedule 2, page 36, line 1, after <would> insert <be>

Schedule 5

John Swinney

37 In schedule 5, page 45, line 23, after second <transaction> insert <(other than a transaction to which schedule 18A (leases) applies)>

John Swinney

38 In schedule 5, page 46, line 30, leave out paragraphs 10 and 11

John Swinney

39 In schedule 5, page 48, line 13, leave out paragraph 17

John Swinney

40 In schedule 5, page 48, line 21, leave out <effect> and insert <effective>

Schedule 8

John Swinney

41 In schedule 8, page 57, line 30, leave out <land and building transaction> and insert <the>

John Swinney

42 In schedule 8, page 58, line 31, leave out <(1)(b)> and insert <14(1)(b)>

Schedule 13

John Swinney

43 In schedule 13, page 79, line 23, leave out <subsection> and insert <sub-paragraph>

After schedule 16

Patrick Harvie

74* After schedule 16, insert—
SCHEDULE
(introduced by section (variations))

ENERGY PERFORMANCE VARIATION

1 The Scottish Ministers may make regulations providing for variations of the tax to be payable on the basis of the energy performance of a dwelling in respect of which a land transaction is entered into.

2 Regulations under paragraph 1 may define the energy performance of a dwelling by reference to the measures in an energy performance certificate provided under the Energy Performance of Buildings (Scotland) Regulations 2008 (S.S.I 2008/309) or by reference to such other measures as the Scottish Ministers consider appropriate.

3 Regulations under paragraph 1 may provide for different variations to apply to different categories of buildings.

4 Regulations under paragraph 1 may make provision designed to ensure that the total effect of variations of the tax under such regulations results, so far as practicable, in no net change in the total amount of tax collected by the Tax Authority.

5 Before making regulations under paragraph 1, the Scottish Ministers must consult such persons as they consider appropriate.

Schedule 17

John Swinney

44 In schedule 17, page 100, line 27, after <rate> insert <tax>

John Swinney

45 In schedule 17, page 100, line 28, after <rate> insert <tax>

John Swinney

46 In schedule 17, page 100, line 32, after <rate> insert <tax>

Schedule 18A

John Swinney

47 In schedule 18A, page 109, line 23, after <with> insert <the day after>

John Swinney

48 In schedule 18A, page 109, line 29, at end insert—

<( ) Where less tax is payable in respect of the transaction than has already been paid, the overpayment is to be repaid by the Tax Authority.>
John Swinney  
49  In schedule 18A, page 109, line 34, leave out <in the case of a transaction to which sub-paragraph (1)(b)(i) applies> and insert <where the return mentioned in sub-paragraph (1)(b)(i) is the first return made in relation to the transaction> 

John Swinney  
50  In schedule 18A, page 109, line 37, leave out <in the case of a transaction to which sub-paragraph (1)(b)(ii) applies> and insert <where the return mentioned in sub-paragraph (1)(b)(ii) is the first return made in relation to the transaction> 

John Swinney  
51  In schedule 18A, page 110, line 1, leave out <in the case of a transaction to which sub-paragraph (1)(b)(iii) applies> and insert <where the return mentioned in sub-paragraph (1)(b)(iii) is the first return made in relation to the transaction> 

John Swinney  
52  In schedule 18A, page 110, line 5, leave out <in the case of a transaction to which sub-paragraph (1)(b)(iv) applies> and insert <where the return mentioned in sub-paragraph (1)(b)(iv) is the first return made in relation to the transaction> 

John Swinney  
53  In schedule 18A, page 110, line 17, after <with> insert <the day after> 

John Swinney  
54  In schedule 18A, page 110, line 23, at end insert—

<( ) Where less tax is payable in respect of the transaction than has already been paid, the overpayment is to be repaid by the Tax Authority.> 

John Swinney  
55  In schedule 18A, page 110, line 34, leave out paragraph 13 

John Swinney  
56  In schedule 18A, page 111, line 13, leave out <Act> and insert <paragraph> 

John Swinney  
57  In schedule 18A, page 113, line 3, leave out <paragraphs 25(2) and 26(3)> and insert <paragraph 25(2)> 

John Swinney  
58  In schedule 18A, page 114, leave out lines 1 to 4 and insert—
<(3) In a case where no land transaction return or any other return has been made in relation to the transaction, where the effect of sub-paragraph (2) in relation to the continuation of the lease for a period (or further period) of 1 year after the end of a fixed term is that the transaction becomes notifiable—>

John Swinney

59 In schedule 18A, page 114, line 5, leave out <or a further return>

John Swinney

60 In schedule 18A, page 114, line 14, leave out <whatever is its> and insert <its original>

John Swinney

61 In schedule 18A, page 114, leave out lines 30 and 31

John Swinney

62 In schedule 18A, page 114, line 36, leave out <(and paragraph 13 does not apply to it)>

John Swinney

63 In schedule 18A, page 115, leave out lines 10 to 13 and insert—

<(2) In a case where no land transaction return or any other return has been made in relation to the transaction, where the effect of sub-paragraph (1) in relation to the continuation of the lease after the end of a deemed fixed term is that the transaction becomes notifiable—>

John Swinney

64 In schedule 18A, page 115, line 14, leave out <or further return>

John Swinney

65 In schedule 18A, page 116, line 24, leave out paragraph 26

John Swinney

66 In schedule 18A, page 120, line 13, after <with> insert <the day after>

Schedule 19

John Swinney

67 In schedule 19, page 122, line 8, column 1, after <rate> insert <tax>

John Swinney

68 In schedule 19, page 122, line 8, column 2, at end insert <and paragraph 3 of schedule 18A>
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Returns relating to land transactions**
1, 13, 23, 27

**Group 2: Minor changes consequential on Stage 2 and other technical amendments**
2, 7, 14, 15, 31, 36, 40, 41, 42, 43, 44, 45, 46, 67

**Group 3: Chargeable interest**
3, 4, 5

**Group 4: Leases**
6, 8, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 25, 29, 32, 35, 37, 38, 39, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68

Debate to end no later than 20 minutes after proceedings begin

**Group 5: Procedure for orders setting rates and bands**
9

**Group 6: Energy performance variation**
69, 73, 74

Debate to end no later than 50 minutes after proceedings begin
Group 7: Relief for transactions involving transfer of rights
70, 72

Group 8: Partnerships
71

Debate to end no later than 1 hour 20 minutes after proceedings begin

Group 9: Trusts
24, 28

Group 10: Licences
26, 30, 33

Group 11: Crown application
34

Debate to end no later than 1 hour 30 minutes after proceedings begin
Note: (DT) signifies a decision taken at Decision Time.

**Business Motion:** Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-07130—That the Parliament agrees that, during stage 3 of the Land and Buildings Transaction Tax (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

- Groups 1, 2, 3 and 4: 20 minutes,
- Groups 5 and 6: 50 minutes,
- Groups 7 and 8: 1 hour and 20 minutes,
- Groups 9, 10 and 11: 1 hour and 30 minutes.

The motion was agreed to.

**Land and Buildings Transaction Tax (Scotland) Bill - Stage 3:** The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 and 68.

The following amendments were disagreed to (by division)—
- 9 (For 50, Against 66, Abstentions 0)
- 69 (For 40, Against 77, Abstentions 0)
- 70 (For 14, Against 102, Abstentions 0)
- 71 (For 51, Against 65, Abstentions 0)
- 26 (For 49, Against 67, Abstentions 0).

The following amendments were not moved: 72, 73 and 74.

The Deputy Presiding Officer extended the time-limits under Rule 9.8.4A(c).

**Land and Buildings Transaction Tax (Scotland) Bill:** The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney) moved S4M-07107—That the Parliament agrees that the Land and Buildings Transaction Tax (Scotland) Bill be passed.
After debate, the motion was agreed to (DT).
The Deputy Presiding Officer: The next item of business is consideration of business motion S4M-07130, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a timetable for the stage 3 consideration of the Land and Buildings Transaction Tax (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during stage 3 of the Land and Buildings Transaction Tax (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1, 2, 3 and 4: 20 minutes,
Groups 5 and 6: 50 minutes,
Groups 7 and 8: 1 hour and 20 minutes,
Groups 9, 10 and 11: 1 hour and 30 minutes.—[Joe FitzPatrick]

Motion agreed to.
Land and Buildings Transaction Tax (Scotland) Bill: Stage 3

The Deputy Presiding Officer (John Scott): The next item of business is stage 3 proceedings on the Land and Buildings Transaction Tax (Scotland) Bill. In dealing with the amendments, members should have the bill as amended at stage 2, the marshalled list and the groupings.

The division bell will sound and proceedings will be suspended for five minutes for the first division. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate.

Section 2—Overview

The Deputy Presiding Officer: Group 1 is on returns relating to land transactions. Amendment 1, in the name of John Swinney, is grouped with amendments 13, 23 and 27.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): Amendment 13 changes section 27, which allows for tax reliefs to be claimed. The amendment is consequential to the introduction at stage 2 of provisions on the taxation of leases. It is possible that, when a transaction that involves a lease first takes place, there is no requirement to notify the tax authority and therefore no land transaction return is made. Later, however, if the rent is increased or if the period of the lease is extended, the lease may become notifiable and taxable. Amendment 13 will allow the tenant to claim a relief at that point on a return other than a land transaction return.

Amendments 1, 23 and 27 are minor amendments that broaden out references to land transaction returns in sections 2, 48 and 56 so that the sections relate to other returns as well.

I move amendment 1.

Amendment 1 agreed to.

Section 5—Exempt interest

The Deputy Presiding Officer: Group 2 is on minor changes that are consequential on stage 2 and other technical amendments. Amendment 2, in the name of the cabinet secretary, is grouped with amendments 7, 14, 15, 31, 36, 40 to 46 and 67.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): Amendment 13 changes section 27, which allows for tax reliefs to be claimed. The amendment is consequential to the introduction at stage 2 of provisions on the taxation of leases.

It is possible that, when a transaction that involves a lease first takes place, there is no requirement to notify the tax authority and therefore no land transaction return is made. Later, however, if the rent is increased or if the period of the lease is extended, the lease may become notifiable and taxable. Amendment 13 will allow the tenant to claim a relief at that point on a return other than a land transaction return.

Amendments 1, 23 and 27 are minor amendments that broaden out references to land transaction returns in sections 2, 48 and 56 so that the sections relate to other returns as well.

I move amendment 1.

Amendment 1 agreed to.

Section 5—Exempt interest

The Deputy Presiding Officer: Group 3 is on chargeable interest. Amendment 3, in the name of the cabinet secretary, is grouped with amendments 4 and 5.

John Swinney: Amendments 3 to 5 will amend section 5, “Exempt interest”. They are minor consequential drafting amendments that result from changes made to section 4 during stage 2. The phrase “an interest or right”, which occurs three times in section 5—at subsections (2), (4)(a) and (4)(b)—refers to what section 4 used to say, which was:

“an interest, right or power in or over land”.

Now that section 4 uses the phrase
“a real right or other interest in or over land”,
section 5 should be amended accordingly.

I move amendment 3.

Gavin Brown (Lothian) (Con): Amendments 3 to 5 flow from a change at stage 2 to the definition of chargeable interest. The definition was changed from

“an interest, right or power in or over land”

to

“a real right or other interest in or over land”.

There is no doubt in my mind that all three amendments are an improvement, as was the amendment at stage 2.

However, there is still some doubt about the use of the expression

“other interest in or over land”.

One of the sources that the cabinet secretary quoted at stage 2 is adamant that the definition still lacks clarity. In the absence of a better definition, we will support amendments 3 to 5, but will the cabinet secretary assure Parliament that the door is not entirely closed if further information comes to light from the experts whom he has previously quoted?

John Swinney: As part of formulating the bill, the Government sourced well informed advice to enable us to provide the clearest possible legislation. I am satisfied that the provisions that we strengthened at stage 2, which are reflected in the amendments in the group, will put us in a
position to have the best amount of clarity that we can have in what is a complex area of activity.

If, with the passage of time and the utilisation of the bill, we see deficiencies in the application and interpretation of the wording, the Government will reflect on the points that Gavin Brown has made. However, I am satisfied that the provisions before Parliament today are appropriate and worthy of Parliament’s support.

Amendment 3 agreed to.

Amendments 4 and 5 moved—[John Swinney]—and agreed to.

Section 6—Acquisition and disposal of chargeable interest

The Deputy Presiding Officer: Group 4 is on leases. Amendment 6, in the name of the cabinet secretary, is grouped with amendments 8, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 25, 29, 32, 35, 37, 38, 39, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and 68.

John Swinney: I apologise for the long speeches that you have to make in chairing the proceedings, Presiding Officer.

The amendments in group 4, which the Presiding Officer read out, are all to do with the tax treatment of leases. Members will be relieved to hear that I do not intend to speak to every amendment in the group; instead, I will highlight some of the more important provisions that are covered.

Schedule 18A runs to more than 15 pages. As members will recall, it was introduced by amendment at stage 2. The length of the schedule demonstrates the complexities and technicalities that arise in seeking to apply taxation fairly and reasonably to the range of commercial situations that arise perfectly legitimately under property law.

In the Finance Committee’s stage 2 session on 5 June, I indicated that my officials and the non-residential leases working group would have a further meeting on 11 June, which might necessitate further refining amendments to the leases schedule. A number of the amendments that are before members are the direct result of the constructive dialogue that took place in that meeting.

For example, amendment 55 will delete paragraph 13 of schedule 18A, which provides that any payment that is made before a lease is granted is to be treated not as rent but as a premium and taxed accordingly. Deleting that paragraph will remove an unnecessary presumption and mean that a payment that is made before the grant of a lease may be treated as rent if it is in fact rent, or as a premium, depending on the nature of the payment.

Other amendments that flowed from the discussions between my officials and the working group include amendment 6, which will ensure that the variation of a lease is not treated as the deemed grant of a new lease, except when paragraph 31 of schedule 18A applies; and amendment 65, which will remove paragraph 26 of schedule 18A. That paragraph would have covered something that does not happen in commercial practice.

I also indicated in the Finance Committee meeting that I would lodge further technical amendments to the bill at stage 3. Those are mainly amendments to earlier parts of the bill that were considered in the committee’s stage 2 session on 29 May.

Many of the amendments in the group were lodged to meet the commitment that I gave. For example, amendment 21 is a consequential amendment to section 40 that flows from the addition of schedule 18A at stage 2. That amendment will mean that, when a tax return is made under paragraphs 10, 11, 21, 23 or 32 of schedule 18A, the tax due or additional tax due must be paid at the same time as the return is made.

Amendments 10 and 20 are other amendments that fall into the technical category. Amendment 10 will insert a reference to paragraph 3 of schedule 18A into section 24 to alert someone who reads section 24 to the fact that the tax rates and tax bands for rent will be set not under that section but under schedule 18A. Amendment 20 will amend section 39 so that it will refer to the various paragraphs in schedule 18A under which returns are made and in relation to which there is a power to specify a different period for making a return.

Perhaps the key amendment of the 40 amendments is amendment 25, which will add a power to amend schedule 18A by regulations. Amendment 29 will ensure that any regulations that are made will be subject to the affirmative procedure.

In light of the complexity of schedule 18A, I consider it prudent for ministers to take a power that will enable them to amend it by secondary legislation. That will provide flexibility for the Scottish ministers to respond quickly and effectively to changing commercial situations.

I can provide further detail in response to issues raised by members.

I move amendment 6.

Amendment 6 agreed to.

Amendment 7 moved—[John Swinney]—and agreed to.
I ask the Government to consider that evidence and accept amendment 9, to give at least some certainty and remove one layer of uncertainty from the business community.

I move amendment 9.

Ken Macintosh (Eastwood) (Lab): I support Gavin Brown’s amendment 9. I accept that the cabinet secretary has spoken against such a proposal in the past, and there is a genuine concern about gaming the system and advance knowledge meaning that property deals are brought forward to reduce tax liability. However, the prospect of such activity taking place on any substantive scale must be balanced against the desire of most respectable Scottish businesses to have certainty and confidence in the system.

It is notable that nearly all those who gave evidence were united on that point: Brodies, CBI Scotland, the Chartered Institute of Taxation, the Convention of Scottish Local Authorities, ICAS and the Scottish Property Federation all expressed concern that the rates will not be known.

The fact that the cabinet secretary’s decision seems to pivot on a political date—the date of the referendum, which is September 2014—adds to the worry that he is making a political decision rather than a business-oriented one and that the decision is not driven by the needs of the public finances. It sounds as if, by not announcing a decision until September 2014, he is picking a day to bury bad news, rather than providing stability and certainty for the Scottish property market. I support amendment 9.

Willie Rennie (Mid Scotland and Fife) (LD): I, too, support Gavin Brown’s eminently sensible amendment 9. We are not suggesting that in every single year a year’s notice should be given for any changes. We are suggesting that that should happen in the first year, to provide greater certainty for the sector.

As we know, the construction sector has gone through significant difficulties in recent years, and we should try to reduce as far as possible the uncertainty that might be caused by the situation. Gavin Brown’s suggestion is eminently sensible.

As the finance secretary said this morning, there is a difference of only five months between what he suggests and what Gavin Brown suggests. That gap is not unbridgeable. I suggest that the finance secretary listens to the evidence that has been set out and that he agrees with Gavin Brown.  

15:30

Patrick Harvie (Glasgow) (Green): I had not intended to speak to the group, but I am a little disappointed at the level of support across the chamber for amendment 9. I challenge the use of...
the phrase “evidence-based policy”. That phrase is generally used in relation to policy that should be informed by objective data and scientific evidence; we do not use it for the assertion of want.

The evidence that Gavin Brown referred to was simply an expression of the wishes and self-interest of the witnesses who gave evidence. Tax bands and rates are matters on which we have not objective data but the assertion of the business community’s self-interest. It is worth making the distinction between the two.

John Swinney: The issue has certainly attracted commentary. Gavin Brown has set out the opinions of business organisations and companies in the private sector. He is perfectly entitled to do that; their views are stated on the record.

Ken Macintosh’s contribution reinforced Mr Brown’s points and suggested a political motivation on my part for the timing that I originally suggested as being appropriate for the setting of tax rates and bands. None of the contributors made a passing reference to the fact that my motivation—which shows that Mr Macintosh was completely misguided in what he said—in identifying the setting of the tax rates in September 2014 concerns the relationship between the setting of tax rates and the implications for the Scottish Government’s budget. I would not have thought that I had to make that connection in Parliament, given that Parliament requires me to present a budget in September each year.

In the years ahead, Parliament will have to become accustomed to an increasing relationship between the decisions that we take on tax and the decisions that we make on public expenditure. The link between setting our tax rates and bands and the budget that I propose to Parliament is inextricable. I cannot go around setting tax rates at a different stage in the financial year from the setting of the budget, because I could end up setting tax rates in a particular context, such as the one that Mr Brown suggests, and find myself dealing with a different financial circumstance as it emerges during the Parliament’s consideration of the budget process.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I thank the cabinet secretary for his interesting explanation, but how does that fit in with the commitment that the tax will be revenue neutral? I am struggling to see how that is consistent with the idea that the setting of tax rates and bands might change with the general public expenditure situation.

John Swinney: My point is that we should link in the Parliament clearly and simply the decisions that we make about tax rates to the setting of our budget and the commitments that we make that follow from that. For example, the block grant adjustment will apply from April 2015, and we need to know the context and the circumstances in which we take such decisions.

Following the Finance Committee’s call for evidence, it received representations indicating that, in the residential property sector, there was an argument in favour of not setting tax rates in September as I suggest, but setting them much closer to the start of the financial year to avoid any market distortions. If I listened to that evidence, I would delay the setting of tax rates and tax bands until much closer to the start of the financial year, which in my opinion would be unjustifiable and unsustainable.

It is important that we establish the connection between the setting of tax rates and tax bands and the formulation of the budget. I have listened carefully to the points of view that interested parties put forward and, on balance, I recommend that we set tax rates and bands for all transactions as part of the budget process in 2014. I encourage members not to support amendment 9 in Gavin Brown’s name.

Gavin Brown: I am grateful to members for their comments. I was slightly surprised by Patrick Harvie’s definition of evidence. He said that evidence cannot be classed as such unless it is scientific, objective data. What do people do at every committee of this Parliament, week in and week out? They submit written evidence and they give oral evidence. To suggest that none of that is evidence is to take a rather narrow view.

Patrick Harvie: Will the member give way on that point?

Gavin Brown: No, I will not.

On the substantive point, the cabinet secretary gave a fairly weak reason for not bringing forward the setting of the rates. He said that the rates cannot be set at any time of the year other than September 2014, when he produces the draft budget. In amendment 9, I propose that the rates should be set “at least 12 months” before the tax is charged. The cabinet secretary could in September 2013—or earlier than that—make the order that set out the thresholds and rates that he has in mind.

The cabinet secretary said clearly that he would consider the evidence and listen to representations from industry. Every single representative said that rates for commercial property—which is what amendment 9 is about—should be set earlier.

John Mason (Glasgow Shettleston) (SNP): Does the member accept that all the evidence that the Finance Committee took came from business
representatives and that we did not hear from normal residents and constituents of the country? We must act on their behalf, not just on behalf of business.

Gavin Brown: The idea is that committees— and John Mason is deputy convener of the Finance Committee—decide who is most likely to represent the stakeholders whom they want to consult and invite them to give written and oral evidence. Of course, there is no limit on who can provide written evidence. The idea that we should ignore the evidence that is presented and prefer what we think might be the view of people from whom we have not heard is a little surprising. Why bother having committees if we are not going to take account of the evidence that they hear?

We should use all the levers that are at our disposal to help business in this country; we should not just use the levers that suit us. I will press amendment 9.

The Deputy Presiding Officer: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As this will be the first division in stage 3, I suspend the meeting for five minutes.

15:38

Meeting suspended.

15:43

On resuming—

The Deputy Presiding Officer: We will proceed with the division on amendment 9.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Erftrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross- shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)  
McDonald, Mark (Aberdeen Donside) (SNP)  
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
McLeod, Aileen (South Scotland) (SNP)  
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)  
McMillan, Stuart (West Scotland) (SNP)  
Neil, Alex (Airdrie and Shotts) (SNP)  
Paterson, Gil (Clydebank and Milngavie) (SNP)  
Robison, Shona (Dundee City East) (SNP)  
Russell, Michael (Argyll and Bute) (SNP)  
Salmond, Alex (Aberdeenshire East) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Stewart, Kevin (Aberdeen Central) (SNP)  
Sturgeon, Nicola (Glasgow Southside) (SNP)  
Swinney, John (Perthshire North) (SNP)  
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)  
Torrance, David (Kirkcaldy) (SNP)  
Urquhart, Jean (Highlands and Islands) (Ind)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
Wheelhouse, Paul (South Scotland) (SNP)  
White, Sandra (Glasgow Kelvin) (SNP)  
Wilson, John (Central Scotland) (SNP)  

The Deputy Presiding Officer: The result of the division is: For 50, Against 66, Abstentions 0.

Amendment 9 disagreed to.

Amendment 10 moved—[John Swinney]—and agreed to.

Section 25—Amount of tax chargeable

Amendment 11 moved—[John Swinney]—and agreed to.

Section 26—Amount of tax chargeable: linked transactions

Amendment 12 moved—[John Swinney]—and agreed to.

Section 27—Reliefs

Amendment 13 moved—[John Swinney]—and agreed to.

After section 27

15:45

The Deputy Presiding Officer: We move to group 6, on energy performance variation. Amendment 69, in the name of Patrick Harvie, is grouped with amendments 73 and 74.

Patrick Harvie: Taken together, the amendments rehearse a debate that Malcolm Chisholm pursued at stage 2 with the proposal to have variations in the level of tax related to energy efficiency as an incentive for property owners to invest in the energy performance of their property, not in order that they will pay a lower level of tax but in order that they can secure a better price for their property because the buyer will pay a lower level of tax.

I have changed the amendments, to some extent, to take account of some of the arguments that were made at stage 2, including by the cabinet secretary. It is worth returning to the general arguments. Even if the Government remains unpersuaded by the amendments, I hope that it will use the opportunity of this discussion to indicate how else it might seek to secure the same objectives.

The basic case in favour of improving the energy performance of our building stock and reducing overall energy waste and energy demand has been well made over many years. In housing, we have taken action in the social rented sector on building standards, and we have put in place some support schemes to allow home owners to access advice and support through particular measures. We are debating an additional tool—an additional mechanism—to provide an incentive for some properties to be brought up to standard.

John Mason: I agree with what the member is trying to do, but does he feel that it is the most effective way of doing it? There would be a cost. Would it not be better to use the money either to reduce council tax or to give a direct grant for energy efficiency?

Patrick Harvie: That is one of my favourite Sir Humphrey objections—“Ah, but is this the best way, minister?” I am sure that Mr Mason made objections at stage 2 to which he would like to return. For example, he argued that the provision would cover only a small proportion of properties. The measures that we take to improve building standards also apply to only a small proportion of properties in any one year, yet we think that building standards are an important measure—one of the many tools in the box—in improving standards.

Also at stage 2, Mr Mason made the argument that the owners of £1 million mansions might benefit. I do not find that a convincing objection either. Those are often the properties that cost the most to bring up to standard in terms of energy performance. So, to secure a better price on an expensive property such as that, an owner would have to pay more. There is also the question of the context of the bill as a whole, which is that the Government intends to introduce a more progressive form of taxation than the current one, so the owners of such properties would already be paying more under the Government’s proposals. What I propose is a small variation to give them an incentive to consider energy performance.

Mike MacKenzie (Highlands and Islands) (SNP): Will the member take an intervention?
Patrick Harvie: Are we tight for time, Presiding Officer?

The Deputy Presiding Officer: You have time to take an intervention.

Mike MacKenzie: Does the member not accept that almost the opposite argument to the one that he is making could apply? What he is suggesting could result in a situation in which very poor people become trapped in poor and poorly insulated houses.

Patrick Harvie: I do not accept that argument at all. As the Government is at pains to stress—and it is something that I welcome—low-value properties will be exempt from the tax altogether. The tax simply will not come into play for those properties, and the people in them are often those who will get the most support from the various Government schemes that provide energy efficiency advice and support. For them, an incentive such as the one that I propose is less relevant.

The Government has argued for simplicity as opposed to complexity, which is one of the reasons why I have changed aspects of the amendment that was debated at stage 2. The amendment no longer contains a requirement on Government to introduce such variations; it simply enables Government to introduce variations. There is no 12-month time limit to ensure that the Government has to get it done before it gets it right; it will have the time to develop a system of variation that fits into the wider context of how it wants the taxation to work.

I turn to the objection that the cabinet secretary raised at stage 2 in relation to tenement dwellers and the need to secure the agreement of neighbours if improvements across a whole building are required to achieve the intended objective. As a tenement dweller, I take that very seriously. That is why I introduced in amendment 74 an additional line that will enable the Government to apply the measure differently to different building categories. I hope that that will give the Government the flexibility it will need to ensure that the appropriate effect is had on all building categories.

I hope that there is a degree of support for the measure. If the real objection is that it is the wrong way to achieve the right aim, I would like to hear from the cabinet secretary a clear commitment on the measures that he intends to take to drive up energy performance in the private sector as a whole and an indication of when he will introduce requirements at the point of sale or let of privately owned properties. It is not enough simply to offer a few subsidised measures on a means-tested basis, as presently happens. The Government will not meet the CO₂ emissions reduction targets for the housing sector unless we are proactive in pushing up energy efficiency right across the housing stock.

I move amendment 69.

Malcolm Chisholm: I thank Patrick Harvie for lodging his amendments. I think that he has listened very carefully to the debate that took place in committee and has realised that the Government strongly objected to his proposal. That is why he has modified his proposal by changing “must” to “may”, which is a highly significant change, because it means that amendment 74 is a permissive amendment and one to which no time limit is attached. Therefore, in a sense, the Government can be unconvinced at this stage but still think that the provision is worth putting in the bill, because—who knows?—in a few years’ time, other factors and considerations might be at play. Amendment 74 means that it would be possible to introduce such regulations at that point.

John Mason asked whether Patrick Harvie’s method was the best way of doing things. I think that that is the wrong way of thinking about this crucial matter. There is not one way of dealing with the problem of energy inefficiency in homes; there are many ways, and Patrick Harvie’s proposed measure could be part of the suite of measures to address it. We should remember that the two biggest challenges for us when it comes to climate change are transport, which we are not discussing today, and existing homes, which we are discussing. Basically, the measure in question is an attempt to help to deal with the energy inefficiency of existing homes.

John Mason also said that there would be a cost. In fact, there would not be. The amendment is designed in such a way as to be revenue neutral. At this stage, I do not think that I would be allowed to make a speech that was long enough to explain how it would operate, although John Mason might well be going to ask me that very question.

John Mason: Does the member accept that although, overall, the measure would be revenue neutral, if a bit more tax is to be raised from one person and spent on someone else, there would be a cost?

Malcolm Chisholm: It is clear that some people in energy-inefficient homes would be affected but, as Patrick Harvie said, people in homes of modest value would not be affected, because of the commitments that the cabinet secretary has given on the starting point for the tax.

Another argument that was used in committee that may well be used again is that energy efficiency is not uppermost in people’s minds when they buy a house. That is an argument in favour of amendment 74, because it will put the
issue in people’s minds when they buy a house. That is what we need. We should all think about energy efficiency when we buy houses and, indeed, when we heat them, which seems to be every day of the year—at least, that is how it seems at present.

It seems to me that the measure would be to the advantage of sellers and buyers. Some people ask how it would be to the advantage of sellers. They would be in a better position to sell their house, they would have the advantage of being able to sell it more quickly and they might be likely to get slightly more money for it than they would otherwise get. From the buyer’s point of view, the advantage is obvious, in that they would pay less of the new tax.

I know that the Government is very sceptical about the proposal. I was very sceptical when it was first put to me, but the more I have thought about it, the more I have become convinced that it is one—and only one—of several measures that are needed to deal with the urgent issue of the energy inefficiency of all homes, but particularly of existing homes.

John Mason: As I said in my intervention, I have a lot of sympathy for the aim of Patrick Harvie’s amendments and what he is trying to do. Although Malcolm Chisholm said that he drifted from being sceptical to being positive, I think that I went the other way after the committee had listened to the evidence, which, I have to say, was not very convincing at all. At first, several of us thought that something like this might be feasible. However, when we considered the suggestion in detail, it became apparent that it was a very blunt instrument.

As I have tried to point out already, there is a cost to the proposal, even if, overall, it is revenue neutral. If we are going to raise a bit more tax, the question is, what is the best that we can do with those resources? I am far from being convinced that the best thing to do is to create incentives through LBTT, when, perhaps, we could do better by using a grant to directly help people to improve their homes, or a council tax reduction, which would give them an incentive immediately, or at least the following year.

The kind of adjustment that we are talking about helps people only if the house is sold or purchased. If a house is not sold or purchased, there is no incentive whatever. Malcolm Chisholm suggests that the proposal is a way of raising awareness. I think that there are other and perhaps better ways of raising awareness.

The strongest reason against the proposal, for me, is that a lot of my constituents are buying houses for less than £100,000. That means that they will pay no LBTT, so there will be no incentive. The amendment would affect better-off people in the bigger houses, and would do nothing for the less well-off people in the smaller houses. For me, that is a convincing argument that this is not the way in which to use the limited resources that we have.

Willie Rennie: John Mason’s last point was interesting, because he is implying that we are really only interested in carbon emissions in relation to the smaller, less expensive houses. I think that the opposite is the case. We should be looking to tackle climate change wherever the emissions come from. That, to me, is the most important aspect of what we are trying to do. Some of the biggest houses emit some of the greatest amounts of carbon. Therefore, I support Patrick Harvie’s amendment. I think that it gives us an opportunity to change the way in which we view buildings. When people buy and sell properties, they should think not only of the value of the property but also of its long-term, sustainable future and how much it will cost to run it, part of which should involve a consideration of tax. That would be a valuable way in which to proceed, and the fact that the proposal does not deal with every house in the country does not mean that it is not worth proceeding with. It seems to be an eminently sensible way of focusing people’s minds and getting them to think about the energy efficiency of their properties, just in case they want to sell at some point in the future.

Further, including this proposal in the bill does not prevent other measures from coming forward in other bills. A variety of different measures can be introduced by the Government.

I support the amendment in Patrick Harvie’s name, and urge the Government to support it too.

Ken Macintosh: I, too, want to speak in support of Patrick Harvie’s amendment, which is similar to one that Malcolm Chisholm lodged at stage 2.

The key motivation behind the proposal is the desire to encourage the uptake of energy efficiency measures and to help Scotland—and, for that matter, the Scottish Government—to meet its carbon reduction targets.

Many of the arguments at stage 2 were evenly balanced. On the Government’s part, there is a desire not to introduce new tax relief, but to remove tax relief from the stamp duty system and to not replace it in the LBTT system. Broadly, we support that approach. However, the Government did not think that that should be applied absolutely across the board. In its consultation on the bill, the Government said:

“The replacement of SDLT with a Land and Buildings Purchase Tax also offers the opportunity to support key Scottish Government priorities through incentivisation.”
Clearly, meeting our carbon emission targets is a priority.

The Government’s Climate Change (Scotland) Act 2009 requires local authorities to establish a scheme for reducing the amounts that persons are liable to pay in respect of council tax where improvements are made to the energy efficiency of chargeable dwellings. In other words, the Government acknowledges that there is a way for taxation to be used to establish better energy efficiency. Why not do so in the case of LBTT?

I encourage the Government to support Patrick Harvie’s amendment.

The Deputy Presiding Officer: As we are nearing the agreed time limit, I am prepared to exercise my power under rule 9.8.4A(c) to allow the debate on the group to continue beyond the time limit, to avoid the debate being unreasonably curtailed.

16:00

John Swinney: I thank Mr Harvie for lodging the amendments. He and I have form in parliamentary debates on energy efficiency and home insulation issues. Hopefully, we can make progress today where we might not have managed it in the past.

Amendments 69, 73 and 74 are intended to introduce a regulation-making power to the bill that allows for the amount of LBTT to be paid for a residential property transaction to vary, depending on the energy efficiency rating for the house. Although the amendments do not provide for it, presumably there would have to be some sort of benchmark against which the energy rating of each house would be assessed in order to calculate the tax due. That benchmark might, for example, be the average energy rating for all housing in Scotland. That proposal has been advanced by the existing homes alliance and my officials have met the proposers to consider the issues.

The Government is entirely supportive of steps to improve the energy efficiency of Scotland’s housing stock and has taken a number of steps to make such improvements. While it is important to examine all legislative instruments to determine whether any measures can be taken forward, it is vital also to assess the impact that any proposed measures might have.

In the bill, there is a balance to be struck between the need for a simple, certain and efficient tax system and the likely energy efficiency improvements that would flow from the change proposed to the calculation of tax liability on the sale of residential property. Far from providing more simplicity and certainty, the amendments would add complexity and uncertainty to the tax. No house buyer would know at the outset how much tax would be payable on a house of a particular value. Additional information would be required in order to calculate the liability, and that information might change over time.

Following the submission of a tax return, the energy rating for every house sale would have to be verified by revenue Scotland to ensure that the tax was calculated accurately. That requirement would add considerably to revenue Scotland’s administrative burden. Aside from the administrative complexity, the proposal would have no effect whatever on housing in the nil rate band of the tax.

In 2011, there were 1.9 million privately owned dwellings in Scotland, and 70,000 sales, representing 3.7 per cent of the market. The land and buildings transaction tax consultation paper set out two scenarios to illustrate how a progressive tax might operate in the residential property market. In scenario 1, 70 per cent of the housing market would be excluded from the tax. That means that, in any given year, the tax would apply to only 1.1 per cent of the existing stock, or 21,000 properties.

Mr Rennie encouraged us to support amendment 69 on the basis that it does not deal with every single house. There is a long way to go from 1.1 per cent of existing stock to 100 per cent. Even if the figures were doubled to reflect a more active property market, the land and buildings transaction tax does not appear to represent an effective mechanism to influence the energy efficiency of the entire housing stock.

The proposal would also have a number of disproportionate effects on the housing market. First, as has been commented upon already, under the proposal the least energy-efficient properties would, arguably, be less attractive to buyers as they would incur more tax. Owners of flats would find it very difficult to secure the agreement of other owners to undertake any form of repairs or improvements. In my view, it would be unfair to penalise the owners and buyers of flats who would like to increase their energy performance certificate rating but find that they cannot do so because of a lack of agreement. Flats comprise around four in 10 of Scotland’s housing stock and 74 per cent of the housing stock in the city of Glasgow.

Secondly, the scheme is intended to apply—

Patrick Harvie: Does the cabinet secretary accept that I have taken account of that concern in the changes to the amendment? Surely it is not beyond the wit of him or his colleagues in the civil service to come up with variations on the measure
find them here. That will not stop us looking for
direct incentive for additional energy efficiency
that disconnect, the proposal would provide no
achieve a standard assessment procedure—or
energy efficiency measures to be introduced to Scotland’s housing
Finally, and fundamentally, it is not clear that the
that underpins these amendments would
be due on that property than if the scheme did not exist. Achieving a rating of 60 can be very
Finally, and fundamentally, it is not clear that the
If the Government wants to add a relief, it will have
I want to make two further points in relation to
The Deputy Presiding Officer: Please make them briefly, if you would.
John Swinney: I will, Presiding Officer.
Malcolm Chisholm said that the amendment
I have to admit that I am
disappointed that the cabinet secretary did not specify what measures he will bring forward, given
It seems to me that dramatic improvements in
The cabinet secretary is still concerned that
I would like to respond to all the members who have spoken, but I am aware that the Presiding
Ken Macintosh kind of implied that he was
does not say “must”. Section 27(3) of the bill provides that
“The Scottish Ministers may, by order, modify this Act so as to ... add a relief”.
If the Government wants to add a relief, it will have
Ken Macintosh kind of implied that he was
does not say “must”. Section 27(3) of the bill provides that
“The Scottish Ministers may, by order, modify this Act so as to ... add a relief”.
If the Government wants to add a relief, it will have
John Swinney: I appreciate that point, but it
definition of those different building
categories.
John Swinney: I appreciate that point, but it
perhaps reinforces the point that I have just made
to Parliament about complexity, because we would then have to design a variety of different reliefs
and exemptions to deal with different housing
structures, all of which would have to be verified
by revenue Scotland to guarantee that the
appropriate tax had been paid.
The scheme is intended to apply to every
subsequent transaction involving the same house,
so tax benefit would therefore continue to accrue
on houses in which home owners had undertaken
no investment in energy efficiency measures.
However, another owner might have implemented
a number of improvements, costing say £5,000, to
achieve a standard assessment procedure—or
SAP—rating of say 60, but more tax would still be
due on that property than if the scheme did not exist. Achieving a rating of 60 can be very
challenging for properties, often in our island and
Highland communities, that are using certain types
of fuel such as liquefied petroleum gas.

I want to make two further points in relation to
these amendments.

The Deputy Presiding Officer: Please make them briefly, if you would.

John Swinney: I will, Presiding Officer.

Malcolm Chisholm said that the amendment
says “may” rather than “must”. Section 27(3) of the bill provides that
“The Scottish Ministers may, by order, modify this Act so as to ... add a relief”.

If the Government wants to add a relief, it will have
that power already—providing that the Parliament
agrees to pass the bill.

Ken Macintosh kind of implied that he was
criticising the Government for even asking in the
consultation paper whether there were energy efficiency measures that we could take. We asked
that question to try to design measures that were
able to have an impact. We have not been able to
find them here. That will not stop us looking for
other measures in terms of our capital programme
to put energy efficiency measures into Scottish
houses; since 2008, 540,000 Scottish houses
have received over 620,000 free or subsidised
cavity wall or loft insulation measures. We will
continue with that. We will also continue to encourage local authorities to take up council tax
discount schemes, which strike me as a more
effective approach, which was provided for in the
Climate Change (Scotland) Act 2009.

Although my arguments have run contrary to the
proposals put forward by Patrick Harvie, the
Government is committed to working to improve
the energy efficiency of Scotland’s housing stock
and we will find other ways of ensuring that
effective measures can be taken in that respect.

The Deputy Presiding Officer: Many thanks.
As we are now pressed for time, I call Patrick
Harvie to wind up briefly and to indicate whether
he will press or withdraw amendment 69.

Patrick Harvie: I have to admit that I am
disappointed that the cabinet secretary did not specify what measures he will bring forward, given
that he thinks that the ones that I am suggesting
are the wrong ones.

It seems to me that dramatic improvements in
the energy performance of our housing stock can
be achieved by paying for them directly by
subsidising measures, by providing incentives,
such as the one that I am suggesting, or by
providing compulsion. I have worked long and
hard persuading the Government to do more on
subsidising measures and it has come some way
over that time. We need to start putting in place
real incentives. It might be necessary in the longer
term to look at compulsion, but if we want to avoid
that, we need to get all the incentives in place that
we can.

The cabinet secretary is still concerned that
what I propose will benefit buyers, not sellers and
that sellers will have to invest and buyers will gain
the benefit. I think that that point was answered
best by Malcolm Chisholm, who was the first
member to recognise that this is a bit of a trigger
idea. Let us remember that buyers and sellers are
the same people. If someone buys a property,
they are likely to sell it on at some point. It is about
encouraging people to think about that transaction
in thinking about how they can address energy
performance.

I would like to respond to all the members who
have spoken, but I am aware that the Presiding
Officer asked me to be brief. I simply put on record
my gratitude to the members who spoke in support
of my amendments. The cabinet secretary’s
disagreement with them is on the basis that they
would not deal with every single home and that we
have a long way to go before we can deal with
every single home. That is absolutely the correct argument, but the answer has to be, "If this isn’t the best way, what is?" In pressing amendment 69 to the vote, but anticipating that it will fall, I urge the cabinet secretary to return to the chamber after the summer recess with clear proposals on how else the important objective of ensuring energy efficiency will be secured.

**The Deputy Presiding Officer:** The question is, that amendment 69 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mallik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Smith, Drew (Glasgow) (Lab)

**Against**

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an t-Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Cofey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Peterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Barnashire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
The Deputy Presiding Officer: The result of the division is: For 40, Against 77, Abstentions 0.

Amendment 69 disagreed to.

The Deputy Presiding Officer: Group 7 is on relief for transactions involving transfer of rights. Amendment 70, in the name of Gavin Brown, is grouped with amendment 72.

Gavin Brown: The objective is to make the business environment as competitive as possible. Amendments 70 and 72 specifically relate to sub-sale relief and forward funding. In my view, that is a potentially important relief. We should reject the aspects that are abused in relation to stamp duty, but we should retain the aspects that help our economy, especially at a time when bank lending is being reduced and forward funding is becoming more important—at least for now—within our economy.

Amendment 70 would introduce a mandatory measure in the sense that it would force the Government to consult and to bring in a relief. It would, however, give the Government a fairly wide degree of flexibility on precisely what ought to be encapsulated to produce a targeted approach to sub-sale relief.

Amendment 72 simply follows on from amendment 70 and would mean that any regulations that were made would have to be subject to affirmative procedure.

In evidence to the Finance Committee, it was suggested that it would be possible to reduce tax avoidance through making people claim formally for the relief, through allowing it only when no other reliefs were being claimed at the same time, and by having a focused and targeted range of options, particularly in relation to house building, part exchange, certain rural and farming transactions and forward funding as a whole.

The Scottish Government’s response to the committee’s report said:

“the Government wants to ensure that forward funding arrangements are not subject to double taxation under LBTT, and will work with key stakeholders to achieve this objective.”

Amendments 70 and 72 would make that objective more likely.

I move amendment 70.

Ken Macintosh: Although we have some sympathy for Gavin Brown’s amendments, I will move against him on this issue. We know that SDLT is susceptible to a number of avoidance measures, and the evidence suggests that the existing sub-sale relief, which involves transfer of property to a third party, is a significant avenue for tax avoidance. Two of the chief aims of the bill are to simplify SDLT and to reduce the high incidence of tax avoidance. I appreciate that it is not the intention behind Gavin Brown’s amendment 70, but it seems that it would be contrary to the spirit of the bill to support amendments that could lead to tax-avoidance measures being watered down.

That said, we are sympathetic to the arguments that have been put forward by the Scottish Property Federation, which has suggested that an unintended consequence of the withdrawal of sub-sale relief would be to inhibit forward-funding arrangements, which are important in the context of financing major commercial developments. It is important, in seeking to protect LBTT against tax avoidance, that we do not inadvertently introduce a competitive disadvantage that could drive commercial developments to other parts of the UK. The SPF has suggested that the Government commit to identifying a relief using section 27 of the bill; I would welcome the cabinet secretary’s comments on that.

16:15

John Swinney: I agree with an awful lot of what Gavin Brown and Ken Macintosh have said. The issue is a difficult one with which the Finance Committee has wrestled. Mr Brown made the fair point that nobody wants to make Scotland less competitive for such transactions, and Mr Macintosh made the fair point that we do not want to open Scotland up for tax avoidance. I sympathise with both those positions.

However, I cannot support Mr Brown’s amendments. The fundamental weakness at their heart is the absence of a definition of “transfer of rights”. That term could apply to any property transaction, so if we were to accept Mr Brown’s amendments we could open up a wide possibility for additional reliefs. I do not think, having listened to Mr Brown, that that is his intention, but it would be a consequence of the amendments in the group.

As I have stated to the Finance Committee and in the chamber at stage 1, I have no intention of replicating in devolved taxes the particular provisions that have given rise to tax-avoidance activity. That is why I chose not to replicate the sub-sale rules in the UK legislation when the bill was introduced. The Finance Committee and key stakeholders have supported that stance. However, concerns have been raised—with which that committee is familiar—that the absence of a form of sub-sale relief could have a negative impact on transactions that depend on forward-funding arrangements.

I do not at this stage want to introduce measures that might, without proper due consideration, simply create opportunities for tax-
avoidance activity. I have no wish for history to repeat itself in the formulation of such measures.

When the Finance Bill 2003—which became the Finance Act 2003—was introduced at Westminster, it contained no equivalent of what became section 45 of the act, which sets out the so-called transfer of rights rules. Section 45 was inserted following lobbying by the development sector during the bill’s passage. I believe that that was done with the best of intentions, but I draw the parallel to highlight the fact that making a hasty amendment to legislation could lead to a provision that has a far wider scope than Parliament intended. Scottish ministers have no intention of making the same mistake.

However, I acknowledge two things. First, the revamped transfer of rights rules are currently making their way through Westminster in the Finance Bill 2013, and we will monitor their progress with interest. Secondly, the valuable meetings that stakeholders have had with me and with officials have highlighted the importance of being able to apply a form of sub-sale relief in development transactions. Those discussions have also highlighted the complexity of such transactions, and the consequent need to take care to ensure that we do not inadvertently create opportunities for avoiding LBTT, as has been the case with stamp duty land tax.

I am therefore prepared to consider further whether measures can be drafted to address the issues that the industry has raised with me without jeopardising the integrity of the bill. I am prepared to consider a measure by which relief should be available only when development is contemplated and takes place within a given period. I will not agree to relief being available to parties who acquire land speculatively and do not bring that land into use.

I would require that any relief ought to be subject to pre-clearance, which would involve the taxpayer alerting the tax authorities in advance to a claim for relief on their part of a transaction, and the tax authority—in this case revenue Scotland—indicating whether such a claim would be accepted or rejected on the basis of the information that has been provided.

I envisage that a form of clawback of any relief that was granted by the tax authority will be applied. The principle of granting relief and then withdrawing it if circumstances change is already established in the bill in the case of group relief. That clawback would involve the tax authority being able to call for payment of LBTT that had been relieved if the conditions of the relief were not met. The provision would most likely be used if development did not take place within a certain timeframe.

There are other considerations. For instance, we need to settle the basis for the LBTT charge where there are several options, and we need to adopt an approach that is fair to the taxpayer but which also reflects the right amount of tax. We will also want to ensure that the correct LBTT charge is levied where part of the plot is sold on to another developer at an enhanced value. Those issues require further work, including with stakeholders.

Commercial arrangements are complex and many contracts are confidential, so many of the questions are not easy to answer. A further key consideration is what anti-avoidance provision the legislation should make. To assist me in answering the questions and resolving issues, I will convene a working group. I have written today to invite a number of interested parties to join that group to explore those issues. One outcome of the group’s work might be that I decide to use the power that will be afforded by section 27(3) of the bill, to which Mr Macintosh referred, to provide a new relief that would apply to sub-sale transactions. I have made clear, however, the conditions that I believe should apply to any such relief. Any such order would, of course, be subject to parliamentary scrutiny.

I want to be very clear with Parliament and the industry that if the outcome of the working group’s work does not convince me that a relief can be given without significant risk of tax-avoidance activity, the Government will not bring an order to Parliament. I reiterate that I have no intention of devolved taxes becoming vehicles for avoidance.

In all those circumstances, and given the Finance Committee’s strong support for not giving scope for tax-avoiding behaviour, I invite Mr Brown to acknowledge the commitment that the Government has demonstrated in considering the issue, and not to press amendment 70 in advance of further detailed work being undertaken as quickly as we can do it.

Gavin Brown: I start by saying that Mr Swinney has engaged on the issue during the passage of the bill and I welcome many of his remarks, particularly on the convening of a working group of expert stakeholders.

I still think that we are probably still slightly apart in terms of what I want and what the cabinet secretary wants. His premise rests on section 27 using the word “may” while my amendment rests more on use of the word “must”, in that the amendment says that the Government must bring an order to Parliament.

I do not think that amendment 70 is quite as wide as the cabinet secretary has suggested. It would allow the Government to decide on the appropriate stakeholders to consult, although that
group is almost obvious from the work that has been done already. It would also allow the Government to decide on the rights that appear to be appropriate, but it would have to make an order.

John Swinney: I hear the distinction that Mr Brown makes between his position and mine and the use of “must” as opposed to “may”. The position that I have adopted is safer for Parliament because it protects the bill’s integrity, which is what I have to consider. I do not want Parliament to oblige the Government to introduce legislation, because we might find that it is impossible to provide a sufficiently robust proposition to prevent any tax avoidance. The whole Parliament wishes not to repeat the mistakes that were made with the stamp duty land tax legislation.

Gavin Brown: I welcome the cabinet secretary’s intervention, but things have moved on substantially since the stamp duty land tax legislation was brought into force. Indeed, as he said, changes have been afoot for some time at UK level to substantially minimise tax avoidance.

We are still some distance apart. There is a balance to be struck between being competitive and minimising aggressive avoidance of tax. I find it difficult to foresee circumstances in which the cabinet secretary could convene a working group that could propose no form of tax relief whatever. From examining what has happened south of the border and listening to the evidence that has been given at the Finance Committee, I am sure that the legislation will be far tighter up here. I cannot foresee any circumstances in which nothing can be proposed.

The Scottish Government has tipped the balance slightly away from our being competitive, although I do not think that we are miles apart, Presiding Officer, but on that basis, I will press amendment 70.

The Deputy Presiding Officer: The question is, that amendment 70 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bibby, Neil (West Scotland) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

Against

Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Neil (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Edie, Helen (Cowdenbeath) (Lab)
Edie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (Lab)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mallik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
The result of the division is: For 14, Against 102, Abstentions 0.

Amendment 70 disagreed to.

Section 30—Notifiable transactions
Amendments 14 to 16 moved—[John Swinney]—and agreed to.

Section 31—Return where contingency ceases or consideration ascertained
Amendment 17 moved—[John Swinney]—and agreed to.

Section 32—Contingency ceases or consideration ascertained: less tax payable
Amendment 18 moved—[John Swinney]—and agreed to.

Section 36—Declaration
Amendment 19 moved—[John Swinney]—and agreed to.

Section 39—Power to amend period in which returns must be made

Amendment 20 moved—[John Swinney]—and agreed to.

Section 40—Payment of tax
Amendment 21 moved—[John Swinney]—and agreed to.

Section 41—Application to defer payment in case of contingent or uncertain consideration
Amendment 22 moved—[John Swinney]—and agreed to.

Section 48—Joint buyers
Amendment 23 moved—[John Swinney]—and agreed to.

Section 49—Partnerships

The Deputy Presiding Officer: Group 8 is on partnerships. Amendment 71, in the name of Gavin Brown, is the only amendment in the group.

Gavin Brown: The partnership provisions have received a fair bit of criticism from stakeholders throughout the passage of the bill. The bill is trying to create a tax that is based on Scots law—its principles and practice—and in many areas, it has achieved that remarkably well. However, the partnership provisions, which are a considerable part of the bill, broadly mirror the much criticised stamp duty land tax provisions, give or take a few amendments.

At stage 2, I tried to have schedule 17 deleted in its entirety; that attempt was defeated. The cabinet secretary’s primary argument at stage 2 was that he was concerned about there being a vacuum. Amendment 71 has tried to take on board the main concerns that were raised by the Government. It means that the Government must review schedule 17 before the tax is first charged and that it must consult. However, it would not force the Government to use the regulatory power; it simply says that when the Government does not use that power under section 49, it has to explain why. It is an attempt to take on board criticisms and complaints and to take things forward in a different direction.

I move amendment 71.

Ken Macintosh: I support amendment 71, which is in Gavin Brown’s name. Clearly, much concern was expressed in evidence to the committee about the effectiveness of schedule 17, which has been pretty well copied in its entirety from the stamp duty land tax legislation. Amendment 71, as I understand it from Mr Brown, simply asks for a review. It will be two years before the legislation is implemented, which I would have thought is plenty of time for the minister to carry out a review. On balance, given the timeframe, it
seems reasonable to accept Mr Brown’s amendment.

John Swinney: As I acknowledged previously to the Finance Committee, the partnership provisions in the bill are complex, but having been part of the SDLT legislation, they will deliver two policy objectives that I believe are fair and which I wish to retain. The first is that partnerships will get partial relief from LBTT when they acquire a chargeable interest in property from a partner, to reflect the partner’s retained interest in the property. The same principle will apply when a chargeable interest is taken out of a partnership. At this stage, I have no intention of interfering with that well-established relief.

The second objective is to minimise the risk that transactions involving partnerships become a means of avoiding LBTT. Schedule 17 contains a number of provisions to tackle avoidance. On 5 June, I gave an assurance to the Finance Committee in response to amendments on the provision that were lodged at stage 2 by Mr Brown. I undertook that officials would discuss with stakeholders the issues that they felt should be addressed. In making that commitment, I was conscious that it may be possible to address many of the issues by having clear guidance to accompany the legislation. If legislative change proves to be necessary to address the issues, we have already included at stage 2 a regulation-making power that will enable us to amend schedule 17.

As I stated to the Finance Committee on 5 June, I do not want to anticipate the outcome of the discussions on the partnership provisions. I will keep the committee abreast of progress in those discussions and, if recommendations to amend schedule 17 emerge, I will return to Parliament in due course with legislative proposals for its approval.

From his amendment 71, I infer that Gavin Brown wishes to use the bill to oblige me and my officials to work with stakeholders on the partnership provisions without defining the objectives. In the light of my earlier commitment—which I have repeated today—that officials will work with stakeholders to understand their concerns about the provisions, and to seek to meet those concerns through either better guidance, legislative change or both, and in the light of my commitment to update the Finance Committee on any progress, I invite Mr Brown to seek to withdraw amendment 71.

16:30

The Deputy Presiding Officer: I invite Gavin Brown to wind up the debate and to press or withdraw amendment 71.

Gavin Brown: The provisions are complex. Many professionals say that they simply do not understand properly how the provisions operate, so there is a need for root-and-branch reform. Many of the provisions are also rooted in English law, as opposed to Scots law.

I had thought that the cabinet secretary would go slightly further today. The idea of consulting or speaking with stakeholders is well and good, but the Government will not be obliged to do anything. I have a genuine fear that, because the issue is complex and may be seen as unexciting, the matter might drift slightly, such that we end up in April 2015 with exactly the same—or broadly the same—schedule 17 as we have currently.

Having listened carefully to the evidence that has been given by stakeholders and people who engage with such issues daily and weekly, I think that the issue is too important to leave to chance. I believe that we need a provision that would force the Government to follow the matter through. On that basis, I will press amendment 71.

The Deputy Presiding Officer: The question is, that amendment 71 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Edie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Ayr, Carrick and Cumnock) (SNP)
Mackay, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Neil, Alex (Glasgow) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McKelvie, Christina (Edinburgh Western) (SNP)
McLeod, Angus (Highlands and Islands) (SNP)
McArdle, Michael (Inverclyde) (Lab)
McDonald, Mark (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Surjan, John (Perthshire North) (SNP)
Thomson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 51, Against 65, Abstentions 0.

Amendment 71 disagreed to.

Section 50—Trusts

The Deputy Presiding Officer: Group 9 is on trusts. Amendment 24, in the name of the cabinet secretary, is grouped with amendment 28.

John Swinney: Amendment 24 will add a power to amend schedule 18, entitled “Trusts”, by regulations.

Amendment 28 will ensure that any regulations that are made will be subject to affirmative procedure. Given that we amended the bill at stage 2 to modify schedule 17, and given that partnerships and trusts are intrinsically linked, we consider it necessary to have the flexibility to amend schedule 18, too.

I move amendment 24.

Amendment 24 agreed to.

Section 55—Application of this Act to leases

Amendment 25 moved—[John Swinney]—and agreed to.

Section 51A—Application of this Act to licences

The Deputy Presiding Officer: Group 10 is on licences. Amendment 26, in the name of Gavin Brown, is grouped with amendments 30 and 33.

Gavin Brown: I start by acknowledging the work that has been carried out by the Scottish Government bill team and John Swinney, who have listened to much of what has been said. We have therefore ended up with a very different position at stage 3 from what we had when the bill was introduced.

Amendment 26 would force a consultation before any new types of licence are brought into the scope of the tax. Stakeholders have raised a particular concern about hotel operator licences. Does the cabinet secretary have anything to say about that?
Amendment 30 would mean that changes would have to be subject to affirmative procedure, and amendment 33 would remove them from a slightly lighter procedure.

As I said, the Government has listened, but there is one issue on which I will contend slightly. In response to what I said in the stage 1 debate, the cabinet secretary said:

"I confirm that there will be an indication of the licences that are included in the scope. The bill will specify which licences will be covered rather than seek to establish a comprehensive list of all the circumstances that are not covered. I hope that that helps members."—[Official Report, 25 April 2013; c 19063.]

We know that none is covered at the moment, but we do not have a clear enough indication from the Government of what the cabinet secretary is thinking about covering.

I move amendment 26.

Ken Macintosh: I indicate our support for Gavin Brown's amendments 26, 30 and 33.

Currently, property under licence will be exempt from LBTT. My understanding of amendment 26 is that it relates to prescribing certain types of property made under licence that would be treated as land transactions and would therefore be liable for the tax, and I understand that the cabinet secretary suggested earlier that he would consult stakeholders on those matters before introducing regulations. My understanding is that the amendment simply calls for consultation and suggests that subordinate legislation on licences would be subject to affirmative procedure. That strikes me as something that members would support.

John Swinney: I will speak to amendment 26 before I turn my attention to amendments 30 and 33.

As Mr Brown has explained, amendment 26 would place a duty on the Scottish ministers to consult interested parties before prescribing which licences to occupy non-residential property are to be subject to land and buildings transaction tax. I have already given a commitment at stage 2 to consult on such proposals. In response to a question from Mr Brown in the Finance Committee meeting on 29 May, I explained that "during the passage of the bill we will not define the type of licence that will be considered for LBTT; we will do that separately, through secondary legislation".

I went on to say:

"The proposed approach is clearer and will be more administratively efficient. Of course, there will be consultation around and consideration of the secondary legislation that emerges on the issue."—[Official Report, Finance Committee, 29 May 2013; c 2699-2700.]

I am happy to repeat that assurance today. In that light, I ask Mr Brown to seek to withdraw amendment 26.

Mr Brown asked me specifically about hotel operator licences. I think that I made it clear in what I said on the record at stage 2—although I will have to confirm this—that hotel operator licences would not be part of the scope of consideration. I will check whether that is correct.

The purpose of amendments 30 and 33 is to ensure that all regulations that are made under section 51A(1) of the bill are subject to affirmative procedure. Those amendments are entirely in order, and I encourage members to support them, but I invite Mr Brown to seek to withdraw amendment 26.

Gavin Brown: Because the Government said at stage 1 that it would say what is included, I am minded to press amendment 26 purely so that it forces the Government to consult. On that basis, I press amendment 26.

The Deputy Presiding Officer: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eilean an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Cathness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
McDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLed, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen South) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

John Swinney: Amendment 34 is a minor amendment that will ensure that section 68, which relates to the application of the bill to the Crown, will come into force on the day that the bill receives royal assent. The amendment adds a reference to section 68 into section 69(1).

I move amendment 34.
Amendment 34 agreed to.

Schedule 1—Exempt transactions
Amendment 35 moved—[John Swinney]—and agreed to.
Land and Buildings Transaction Tax (Scotland) Bill

The Deputy Presiding Officer (Elaine Smith): The next item of business is a debate on motion S4M-07107, in the name of John Swinney, on the Land and Buildings Transaction Tax (Scotland) Bill.

16:46

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): Today’s stage 3 debate on land and buildings transaction tax is something of a landmark for this Parliament: it is the first tax bill in Scotland for 300 years—308 years to be exact.

The chamber may be interested to know that the last tax bill passed by a Scottish Parliament was in 1705. In “the Act in favors of the toun of Glasgow for two pennies on the pint”, “their Majesties King William and Queen Mary did thereby grant and dispone to said toun of Glasgow and community thereof the imposition of two pennys Scots upon the pint of all ale and beer to be vended and sold within the said toun and liberties thereof”.

It is interesting that the last tax act was about setting alcohol taxation in Scotland—not much has changed after 308 years.

To bring the debate up to date, an article in the New Statesman of 25 June starts with the words: “Good news if you’re Scottish: your government is fixing one of the most ridiculously broken parts of the British tax system!”

Alex Hearn, the gentleman who wrote the article, makes the point that the Scottish Parliament’s reforms represent a significant transformation in how taxation of property is being handled in Scotland as a consequence of this Parliament acquiring those responsibilities and having the opportunity to legislate for change.

The Land and Buildings Transaction Tax (Scotland) Bill is coming to a conclusion this afternoon. The second tax bill in 308 years, the Landfill Tax (Scotland) Bill, is following hard on its heels, and preparations continue for the introduction of the tax management bill in the autumn. I also report to Parliament that both revenue Scotland and Registers of Scotland are making good progress, working together on the implementation of the legislation.

Those two taxes, devolved under the provisions of the Scotland Act 2012, are a modest start, but they are only a first step in strengthening the tax powers of this Parliament and enabling it to take the decisions on taxes and revenues that match Scotland’s interests and create opportunities for Scotland to flourish economically and socially.
As I first articulated in this chamber just more than a year ago, the Government’s proposals for taxation are firmly based on Scottish principles that have stood the test of time. In 1776, Adam Smith set out four maxims on taxes in his “Inquiry into the Nature and Causes of the Wealth of Nations”: the burden proportionate to the ability to pay, certainty, convenience and efficiency of collection.

Those maxims may have been too late for the beer tax of 1705, but they point towards a system that will meet the needs of a modern, 21st century Scotland, grounded on solid foundations. To those four principles, this Government will seek to ensure that the devolved taxes will contribute to our core purpose of delivering sustainable economic growth for and meeting the distinctive needs of Scotland.

Land and buildings transaction tax represents a significant improvement on the tax that it replaces—the United Kingdom’s stamp duty land tax. We will do away with the nonsense of the slab structure of SDLT in which three times as much tax is paid when a house value nudges above the £250,000 threshold. That has caused market distortions and leads to the false recording of house prices in an effort to avoid paying tax at the higher rate.

Land and buildings transaction tax will solve the problem at a stroke in Scotland, by substituting a progressive structure in which only the amount above the threshold will incur tax at the higher rate. The Council of Mortgage Lenders and others have been calling for such a change since stamp duty land tax was introduced in 2003. It was clear during the earlier stages of the bill that there is cross-party support for the approach. The Government and indeed the Parliament have shown the vision to get on and do the right thing.

There are a number of other areas in which the bill improves on the equivalent legislation for stamp duty land tax. To encourage prompt payment of tax, a tax return and payment arrangements that are satisfactory to the tax authority will have to be made before Registers of Scotland can accept an application to register a land transaction. Revenue Scotland and Registers of Scotland have started planning for an information technology solution that will allow for the submission of a tax return and payment, with a paper alternative for people who cannot use the online system.

We rationalised the number of tax reliefs that will be available, to simplify the tax and the statute book. Under SDLT, some tax reliefs apply only in England and Wales and others are not being claimed; those reliefs have not been replicated in the bill. Wherever possible, we adopted Scottish legal terminology, to make the legislation more comprehensible to the Scottish reader.

For a number of years, the sub-sale rules for stamp duty land tax have been the subject of aggressive tax-avoidance activity. People have found a number of different ways of taking advantage of the rules, in an effort to avoid paying any stamp duty land tax. Such activity is not welcome in Scotland. I am keen to encourage a culture of responsible tax paying. Those who doubt that can expect to see timely and effective action from revenue Scotland to protect the tax base.

In my closing remarks in the stage 1 debate, I committed to exploring options to ensure that the property development industry in Scotland is treated fairly in the absence of sub-sale rules. Since then I have met representatives from the industry, who provided a range of insights and suggestions. I hope that the conclusion at which the Parliament arrived after considering amendments today gives the industry satisfaction that the Government is engaging seriously on the matter and—this is crucial—reassures the Parliament that the Government is resolute in its determination that the integrity of the bill should not be undermined by avoidance activity.

We also considered partnerships and trusts and came to conclusions about how to advance issues in that regard.

During the bill’s development, a great deal of work was done to develop legislative provisions in relation to the taxation of non-residential leases. I single out work in that area as an example of good practice. We had the benefit of being able to discuss complex issues with members of the non-residential leases working group, which included representatives from the Scottish stamp tax practitioners group, the Institute of Chartered Accountants of Scotland, the Law Society of Scotland, the Chartered Institute of Taxation and the Scottish Property Federation. I thank the members of the group for the way in which they enabled consideration of and agreement on a comprehensive approach, which covers a range of issues. Their giving their time and expertise greatly strengthened parliamentary scrutiny of the matters.

The establishment of the non-residential leases working group is a good example of how the legislative process in Scotland can be made accessible to stakeholders. Close working with stakeholders has been a feature of the bill and is something that I am keen to continue as we take forward the examination of tax issues. Such an approach is the hallmark of the tax consultation forum, which is already giving the Government substantial advice on the formulation of the tax
management bill, which will shortly be introduced in Parliament.

I thank the Finance Committee for its detailed scrutiny of the bill at stages 1 and 2. The bill covers a number of policy areas, and the committee heard evidence from a broad range of stakeholders. We can take pride in the fact that today we are giving evidence of the Parliament’s ability to shape legislation that addresses diverse and significant issues. The bill is an example of what the Parliament can achieve if we work collaboratively. I hope that at decision time this evening it will attract support from across the political spectrum.

I move,

That the Parliament agrees that the Land and Buildings Transaction Tax (Scotland) Bill be passed.

The Deputy Presiding Officer: We are extremely tight for time. I now call Ken Macintosh—you have a maximum of seven minutes.

16:54

Ken Macintosh (Eastwood) (Lab): Thank you, Presiding Officer.

There has been very little fuss about the bill, which has broad political agreement across the chamber and broad support among home owners and businesses. However, it is worth noting for the record that, even if it is not the most earth-changing legislation, it is introducing Scotland’s first new tax in more than 300 years. The bill is another example of devolution working well, with the Scottish Parliament taking control of this property transaction tax and designing a system to suit Scotland’s needs while retaining all the advantages of working within the political, social and economic union that is the UK.

Although we have agreed today on the principles of the new land and buildings transaction tax, there is still a great deal of detail to be worked out. For example, there is the practical issue of how the collection agency, Registers of Scotland, will interact with the new supervisory body, revenue Scotland; there is the rather important matter of negotiation and agreement on how much the block grant will be reduced by when the new tax is introduced; and of course there is the question that I suspect most home buyers and businesses will most want to hear answered, which is how much they will pay and what the rates at which LBTT is introduced will be.

On the first of those points, alongside the devolution of LBTT, perhaps the most practical, immediate and positive benefit will be the move from an inefficient, unfair tiered or slab structure of stamp duty to the progressive, rising scale of LBTT. Stamp duty has long been broadly redistributive; in other words, a high rate of tax has generally applied to more expensive properties, with no stamp duty on properties below a value of £125,000. However, applying higher percentage rates to all the properties above a certain threshold has created highly marginal rates of tax at those new banding levels and has led to distortions in the housing market and in the application of the tax. The new system will smooth out those inequities and ensure an efficient market that will be fairer to buyers and sellers alike.

When the bill is implemented, the block grant will of course be adjusted to remove a sum equivalent to the money that we currently receive from stamp duty levied across the UK. It is worth noting, at the very least, that the UK and Scottish Governments have already offered us widely varying estimates of how much the grant should be reduced by. That is perhaps not surprising, given the collapse of the property market and the consequent drop in the number of sales on which stamp duty has been levied over the past few years, but it is important that an agreement is reached that is fair not just for Scotland but for the rest of the UK, too. The Cabinet Secretary for Finance, Employment and Sustainable Growth has placed great stock in the past on providing stability in the public finances, so for that reason alone I urge him to work towards reaching agreement on the block grant reduction sooner rather than later.

I am certainly not asking members to rethink their support for the bill, but I suspect that there might be a marginal downside to devolving LBTT. I have not made the exact calculation but, given that stamp duty is a broadly redistributive tax and, I believe, the proportion of expensive properties is far higher in London and the south-east of the UK than in Scotland, Scotland will currently be among those parts of the UK that marginally gain from the redistributive effect of the stamp duty tax.

I mention that point as it is also worth noting that, when LBTT is introduced in Scotland, many of the properties at the higher end of the scale will be in Aberdeen, Aberdeenshire, Edinburgh and Glasgow. At the very least, the new system will create a tension between our support for localism and local control and our belief in a nationally applied, progressive and redistributive system of taxation.

One of the most important issues that are still to be resolved is the timescale for the publication of the new tax rates. I will not repeat all the arguments that we have just heard debated at stage 3 and which were debated at stage 2 in committee, but I hope that the cabinet secretary...
will bear it in mind that business in particular is clamouring for greater certainty.

The cabinet secretary has stated that his broad approach is to try to maintain revenue neutrality, but even within that policy intention there is scope for winners and losers. I believe that, when the bill was first outlined, the cabinet secretary suggested that 95 per cent of people would be better off under LBT. If that is the case, clearly the 5 per cent who would be worse off might be disproportionately affected.

There is a particular worry in the commercial property sector that high-value commercial property might bear some of that disproportionate impact. Businesses are used to testing our words as politicians against our actions as parliamentarians or Government ministers. I urge the Government and the particular minister involved to publish his proposals as soon as possible in order to introduce some certainty.

The fact that the cabinet secretary has repeated his intention not to publish the information before September 2014—in other words, it will not be published before the referendum—has not helped assuage the anxiety. His intention suggests that it is less of a priority and it begs the question: if there is nothing to be worried about and everyone will be broadly unaffected or even slightly better off, why the delay in making the announcement?

John Mason (Glasgow Shettleston) (SNP): Does the member accept that Chancellors of the Exchequer at Westminster tend to make tax announcements quite late in the day?

Ken Macintosh: I do—but I am not sure that that is a killer point or that it answers the point about the certainty that we are looking for. We do not have certainty at the moment, and the cabinet secretary has it within his power to offer that to businesses and home owners.

I turn to the administration of the new tax. The bill states that Registers of Scotland will have a role in the collection of revenues alongside revenue Scotland. Having two organisations involved in one tax creates room for complexity and confusion, and I urge the cabinet secretary to clarify their roles as soon as possible.

As the cabinet secretary knows, we have given our strong support to the introduction of a robust general anti-avoidance measure. However, one of the exceptions that we made was on energy efficiency, and I urge the cabinet secretary to return to that.

There are a number of issues still to be resolved, and much detail remains to be published. However, the Parliament is of one mind that today marks a major step forward in improving the tax system in Scotland. The bill reflects a number of principles on which we can agree and an approach that is both progressive and redistributive, which we believe can help to shape a modern, prosperous and socially just Scotland of which we can all be proud.

17:01

Gavin Brown (Lothian) (Con): We welcome the devolution of the tax along with the Land and Buildings Transaction Tax (Scotland) Bill, which we will support at decision time at 5.40. When the cabinet secretary talked about its being the first new tax for well over 300 years, I was reminded of one practitioner in tax, who shall remain nameless, saying that new taxes are a bit like buses and that, by the end of 2013, we will have another one with which to contend in the shape of the Scottish landfill tax.

We welcome many elements of the bill. One of the Scottish Government’s strongest decisions is to remove the existing slab structure that is found in SDLT. Without any shadow of a doubt, that structure has previously led to market distortions, and the one simple move of removing it will make a big difference to the marketplace. I have yet to find anybody from any profession who has a bad word to say about that decision.

Over the course of the bill’s passage, the Scottish Government has made strong progress in certain areas, as has been indicated in the stage 3 voting on amendments, and it ought to be credited for the work that it has done. The cabinet secretary talked about the working group on non-residential leases that he set up, and I join him in commending the work of that group, whose members sat down, rolled up their sleeves and pulled together some provisions that are complex but far superior to those that they replace. Indeed, as I said earlier, I commend the decision that the cabinet secretary took in relation to licences, which were initially to be a part of the tax but are now not to be, apart from those that may be granted at a later date.

We have had discussions about issues on which we disagree, too. As the cabinet secretary will know, I find myself holding a different position from him in two areas. The first relates to the timings of the rates. I will not rehearse all the arguments; I will simply respond to John Mason’s intervention on Ken Macintosh. He is right to say that the Chancellor of the Exchequer has raised stamp duty. Budget day in March 2012 was an example of that. However, the concern that businesses are raising with me at the moment is that this is an entirely new tax and a new framework with new thresholds—we do not know exactly how many—and new rates at every level apart from the nil rate. There is greater uncertainty over an entirely
new tax than there is over an existing tax, even when there are changes late in the day.

We also disagree on sub-sale relief. I will not rehearse all the arguments. Suffice it to say that I feel that the Scottish Government has slightly overstated the case in relation to tax avoidance. It has not quite taken into account enough areas of competition. The cabinet secretary has outlined what he intends to do, but we are in a slightly different place. Most of the group on non-residential leases that he mentioned—including ICAS, the Law Society, the Chartered Institute of Taxation, the Scottish Property Federation and others—take a view that is broadly closer to what I have suggested than to the Scottish Government’s approach of trying to exclude everything and looking at bringing in only one or two aspects.

The fact that there is still work to be done is acknowledged in the specific regulatory powers that the bill provides. Mr Swinney quoted the New Statesman article that said that the Scottish Government was “fixing one of the most ridiculously broken parts of the British tax system”, but there are some parts of the bill that people would deem to be broken—not just the provisions on partnerships but those on trusts, which need to be looked at. I am glad that the regulatory power on that was brought in at stage 3.

As I said at the outset, we will support the bill at decision time, but there are a couple of areas on which we still disagree with the Government, and I press it, even at this late stage, to look at where it can make progress on them.

The Deputy Presiding Officer: We come to the open debate. I can give members only three minutes and, even at that, I might have to drop speakers.

17:05

Kenneth Gibson (Cunninghame North) (SNP): As convener of the Finance Committee, which was the lead committee for consideration of the bill, I am pleased to take part in the debate, which is on a subject that has featured heavily in our work this year.

The complexity of establishing a fair and workable taxation system is apparent. It has not been easy to iron out inequity and to learn from the mistakes of old, repeatedly altered legislation while trying to simplify the system within the Scottish Parliament’s powers. I thank the committee clerks, committee colleagues and all those who contributed to the evidence-gathering sessions for their input as the bill progressed, which was invaluable and helped to offer a fuller picture of how the new tax could, should and will operate.

The bill is the first of three related tax-raising bills to come before the Finance Committee and the Parliament following the passage of the Scotland Act 2012. It is clearly in everyone’s interest to ensure that new taxes are progressive and are relatively simple and effective.

LBTT will replace stamp duty land tax, which the Institute for Fiscal Studies described as “wholly ill-conceived”. Perhaps the most notable of SDLT’s faults is the fact that it is charged on the basis of a slab system, which creates significant distortions. For example, as the Ernst & Young report “Grasping the thistle”—which is not to be confused with Mike Russell’s book of the same title—pointed out, a non-residential property that is acquired for £249,000 attracts stamp duty of 1 per cent, or £2,490, whereas one that is bought for £251,000 incurs a charge of 3 per cent, or £7,530. LBTT will offer a more progressive tax that avoids the sudden increases in liabilities that are a feature of the slab system.

Furthermore, as an article in The Sunday Times on 28 April pointed out, stamp duty is open to a series of tax avoidance schemes that Her Majesty’s Revenue and Customs is trying desperately to close. Although the finer details of stamp duty mitigation schemes are kept secret by some legal firms, it is known that, through a complex system that involves setting up third-party companies, sub-sale relief can be exploited on behalf of a buyer. I am pleased that the bill addresses that issue. I am aware that many property developers use sub-sale relief for wholly commercial purposes, but the bill will properly legislate to cover such specific commercial transactions.

It is clear that tax avoidance is an important issue that has received much attention in recent months, so I am pleased that the bill takes steps to close tax loopholes. As the Scottish Government does not intend to increase the overall revenue take, everyone should pay less.

Of course, the Scottish Government intends to tighten things up even further by introducing a general anti-avoidance rule through the proposed tax management bill later in the parliamentary session. That move will enjoy public support but, according to the Ernst & Young survey that I cited earlier, it also has the support of 78 per cent of businesses that operate in Scotland across an array of sectors. As an aside, I believe that that shows that the Government can act in the public interest by collecting taxes that are duly owed by businesses without scaring them away or damaging the economy, which is a scenario that some are all too keen to depict. I suggest that the UK Government might wish to reflect on that.
The introduction of LBTT is the first step towards a Scottish approach to a fairer taxation system, and it is important that it is achieved with as much consensus as possible. I am encouraged that that has been the case, in committee and in the chamber, with a majority of amendments being agreed to without division. I am confident that, following the bill’s passage and when the improvements and benefits of it are realised, it will become apparent that all—and not some—tax powers should be devolved to the Parliament.

17:09

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I very much welcome the bill, which will soon become the first tax act in Scotland since the tax on alcohol in Glasgow act of 1705—I thank the cabinet secretary for that interesting information.

The cabinet secretary said that he hoped that the bill would be the first step in strengthening the Parliament’s tax powers. I certainly agree with that—I would like a few more taxes to be devolved to the Parliament. In committee, he said that he wanted all taxes to be devolved to the Parliament. I pointed out to him that that was devo max, but he assured me that he still supported independence.

Unless or until we raise all the revenue that we spend, the key issue of the block grant adjustment will remain. It is not in the bill but, clearly, it will be one of the major issues in the next year or two. We wish the cabinet secretary all the best in his negotiations with the UK Government. I am sure that we would all urge him to strike the best possible deal.

There are many things in the bill that I welcome, including the process. There was a good process in the committee and with the stakeholders, so I welcome the changes that have been made in relation to charities, for example, and the additions, such as the provisions on non-residential leases. I also welcome the general emphasis on tackling tax avoidance. Part of that involves dealing with reliefs that encourage it, such as sub-sale relief. I also welcome the bill’s progressive nature.

The first controversy that came up today concerned when the rates will be announced. In a sense, that is still a live issue, since nothing in the bill says when that should be done. The distinction between the setting of residential rates and the setting of non-residential, commercial, rates is important. Gavin Brown in particular emphasised the range of bodies that think that commercial rates should be set earlier, and I was persuaded by that argument.

I was not persuaded by the cabinet secretary’s argument against that, which was that the rates must be set in September because of the budget bill. There is a commitment to revenue neutrality, so I do not see why the decision on the rates should depend on the overall levels of public expenditure at the time.

Obviously, I was disappointed in relation to energy efficiency, but there is no time to say anything else about that. I was also disappointed by the partnership sections, which were lifted straight from what is generally agreed to be a bad part of Westminster legislation. However, the cabinet secretary has agreed to consider that before 2015, and I am sure that that will be done.

Kenneth Gibson mentioned “Grasping the thistle”, which is quite an interesting document. A lot of the discussion on the bill has been about business, but that publication says that there is a lack of awareness in the business community and calls for a concerted programme of communication to boost awareness of the switch. I am sure that it is not just the business community that needs that, so communication will be important over the next couple of years.

The other big issue is the practical issues that have to be sorted out. I am glad that Registers of Scotland and revenue Scotland are making good progress but, clearly, there are issues that concerned the committee, such as who will give advice on the tax. The committee will keep a watching eye on progress on that as well.

17:12

John Mason (Glasgow Shettleston) (SNP): It has been fascinating to follow the progress of the bill, which introduces the first new tax in this Scottish Parliament. That is both exciting and symbolic. As we start the process of replacing UK taxes with more appropriate Scottish taxes, it does no harm to repeat the four principles of Scottish taxation, which the cabinet secretary has laid down, having drawn them from Adam Smith: they are the burden being proportionate to the ability to pay; certainty; convenience; and efficiency of collection.

It is also worth saying again that tax is a good thing. We live in a world where many complain of paying too much tax and where there is an idea that, for some days in the year, everyone is working for the Government. However, that is clearly not true. We pay tax for the good of our fellow citizens. The Parliament has a duty to argue for taxation and to say why it is both necessary and good.

Gavin Brown, who is not here at the moment, made a point about witnesses coming to the committee. Of course, people come to committee with special interests, but we have a responsibility to all the citizens of this country. They are not
always at our committee meetings, and we must take their views into account.

I welcome the principle of simplicity in the bill and the fact that the cabinet secretary has resisted the requests for a range of reliefs. On the surface, some of those might have seemed attractive, but they could open the door to those who seek to artificially avoid paying the tax.

We have debated the issue of encouraging environmentally friendly housing. We all want to encourage that, but I continue to believe that the money would be best used to finance grants or reductions in council tax, rather than a tax reduction.

The question of when rates should be announced has been discussed. We have not spent a great deal of time on the block grant adjustment. That is an issue for all the new taxes—LBTT, the Scottish rate of income tax and landfill tax. It certainly should be simpler to work out the formula for LBTT than for the Scottish rate of income tax, for example. However, we cannot have the same system for all three taxes. The Finance Committee will want to keep a close eye on the discussions between the two Governments.

Something exciting is happening here today. For the first time, the Parliament is introducing a new tax. I accept that it is a small tax that replaces a similar existing one, but there is something symbolic about that. Until now, only the block grant has been available to us and we have had choices about how to spend it. Now, for the first time, we will be able to raise some of our own revenues.

The ability to raise tax was a key issue on the road towards independence for the United States. At that time, London made serious mistakes in how it handled things. Westminster has over the years made serious mistakes in its quest to hang on to Scotland, too. First, it made the mistake of giving us our own Parliament, which has only helped to boost Scotland’s sense of identity and our ability to do things ourselves. Now, it is giving us the power to raise some of our own taxes. Again, that could be a serious misjudgment on its part. The more powers we have and the better we use them, the more likely it is that we will go the whole hog and opt for complete freedom. Especially for that reason, I very much welcome the passage of the bill.

Many members have mentioned that the bill is historic—it is a landmark. The bill has been greeted with great enthusiasm. However, we should not forget that it is part of the powers in the Scotland Act 2012, which many ministers described as a poison pill and which they threatened to veto. Many red lines were drawn and then painted over with Tipp-Ex.

Now we have the bill. I welcome it, because I am in favour of more powers for the Parliament. However, we should not forget that those who are enthusiastic about the bill today threatened its introduction. We should not forget that those who are in favour of more powers sometimes adopt strange positions.

For such a historic bill, we have adopted quite a timid approach to its implementation. We could have implemented something quite interesting to incentivise people in relation to the environment. We could have made significant steps today. However, that approach was turned down, which is a shame. I hope that the Government reflects on that and introduces measures in other areas to address the climate change targets that we have missed on two successive occasions.

I do not want to be completely negative this afternoon. I welcome the replacement of the slab structure with something that is more in line with the income tax proposals. That is a sensible, progressive way to proceed. However, I am disappointed that the finance secretary did not listen to Gavin Brown’s wise words and introduce much more notice for business and others of how the tax will be structured. There is still an opportunity for him to indicate that he will do that. I hope that he does, but I might be disappointed, too.

17:15

Willie Rennie (Mid Scotland and Fife) (LD): It is interesting that the independence revolution starts with LBTT. That is obviously the most revolutionary development that has happened in the Parliament and I look forward to joining John Mason on that fantastic, exciting journey.

Jean Urquhart (Highlands and Islands) (Ind): Having heard the evidence sessions in the Finance Committee, I am convinced of the merits of the land and buildings transaction tax. The slab system of rate setting in the stamp duty land tax is outdated and inefficient. I commend the Scottish Government for striving to meet the four principles of tax legislation that it has committed itself to and particularly for the LBTT’s shift to a proportional and efficient progressive rate of tax. The evidence makes it all too apparent that land prices have been distorted by the slab system, as it discourages the sale of residential property at prices immediately above the thresholds. The move to a progressive tax is a welcome shift in the current housing climate.

On Willie Rennie’s comments, the Scottish people would welcome the rejection of Gavin Brown’s amendments because, largely, tax
dodging is abhorrent to everybody in this country. We struggle to provide good public services on endlessly reduced taxes, yet it has been recommended that in some of the areas in which tax has been dodged most, we should not implement the regulations.

This is the first tax to be introduced after the 2012 act; it is a moment of history. If I have any personal comment to make about that, it is that the bill is almost premature. After a resounding yes result next autumn, we will be in charge of all taxes. However we deal with tax in this country, we will not have to accept a block grant adjustment accordingly, which in effect could leave us no better off.

The Deputy Presiding Officer: You are in your final minute.

Jean Urquhart: As I did at stage 1, I note that this is the first of three bills to emanate from the 2012 act that will begin to increase the Parliament’s powers. It is important that we get it right so as to make another statement about Scotland’s competence with regard to tax. I look forward to the day when the Parliament has the full, normal powers of a nation to bring about the substantive changes in our economy and society that we desperately need. I support the bill.

17:21

Gavin Brown: John Mason said that this was an exciting piece of tax. I have to say that, in a way, he is right: elements of it are quite exciting and interesting. The idea that we will be responsible for setting the rates of and collecting LBTT, instead of just expenditure, is a new development for the Parliament. It will force all of us as legislators, and the Finance Committee in particular, to step up to the plate a little.

We will also have to begin to understand concepts such as behavioural economics and what happens when we change the rate of a tax up or down—will we get anywhere near what we think we will collect and will we get anywhere close to what we fear we might have lost? That is an exciting development for the Parliament, and I look forward to the rates being set and the discussions going on until April 2015 and thereafter.

Obviously, I take a slightly different view from Mr Mason of where this will lead. He thought that this was the beginning of the independence march. My view is slightly different, but I agree that the concept is exciting.

As I said in my opening speech, there is still work to be done. Sometimes it can sound a bit trite to say that, so I will get one example on the record to show what I am talking about. Schedule 18, which we looked at briefly, relates to trusts. Some of the provisions on stamp duty land tax have simply been copied over to that. Part 2 of schedule 18 basically defines some of what beneficiaries are entitled to in terms of their interest under the law of England. It states:

“Paragraphs 3 and 4 apply where property is held in trust ... on terms such that, if the trust had effect under the law of England and Wales, a beneficiary would be regarded as having an equitable interest in the trust property.”

I cite that minor example to illustrate the point that, although much in the bill is good, certain aspects have simply been cut and pasted. It is critical that, in advance of April 2015, work is done via the various working groups and parties that the cabinet secretary has talked about.

I make another plea for the cabinet secretary to say a little more about the setting of rates in his closing speech, although I suspect that he might not. The reason why I say that is that, if I heard Mr Gibson correctly—he will correct me if I did not—he said that everyone should pay less. I want to probe that a little and ask the cabinet secretary simply, “Is Mr Gibson right?”

Kenneth Gibson: All else being equal, if everyone pays their fair share and avoidance is eliminated, people will pay less than would otherwise be the case. That is what I should have said.

Gavin Brown: Perhaps the cabinet secretary will confirm in his closing speech whether everybody will pay less in terms of the rates that we will face, compared with stamp duty land tax. I would be very interested to hear about that.

There is much to commend in the bill but, as I have said, there is still work to be done, particularly on rates but also in relation to sub-sale relief. Jean Urquhart was particularly harsh on sub-sale relief. It has been an avenue for avoidance, but I do not think that we should suggest that everybody who has used sub-sale relief has done so purely as a method of avoidance. Forward funding proposals are popular now because many of the banks are not lending to commercial property in the way that they used to. Forward funding has grown because of that. I ask that we do not cut those avenues off and that we are not too hasty in hitting the economy with that.

17:25

Rhoda Grant (Highlands and Islands) (Lab): The Labour Party supports the principles of the land and buildings transaction tax. This has indeed been an interesting debate. The bill is an example of devolution working well and affording the Scottish Government the opportunity to design a tax that suits its needs and redresses some of the flaws of the current UK system. The tax will be
responsive to Scottish markets, especially our housing markets, and will free us from the other market distortions that happen when tax is levied more widely. The bill is a good example of decisions being taken as close as possible to those who are affected by them, illustrating one of devolution’s real benefits.

I take slight issue with people who have said that we have not had tax-raising powers before. We have. Indeed, the Parliament was set up with tax-raising powers, although we have never used them. It is a point of fact—we did have tax-raising powers. Other members have said that the land and buildings transaction tax is the first tax that we have devised. That is possibly correct, although we did devise the social responsibility levy, and I very much hope that the new tax that we are now providing for will raise more revenue than that other one did—it will probably never raise any revenue again.

I turn briefly to sub-sale relief and welcome the cabinet secretary’s points on the subject. I very much welcome the setting-up of a working group on the matter and the provisos that the cabinet secretary has put in place to ensure that speculative land purchasers cannot apply for sub-sale relief. I also welcome the fact that there will be clawback if people apply for it, are granted it and then do not fulfil the terms of the agreement. We very much agree that if the balance between relief and avoidance is not met, we will perhaps not pursue the issue further. However, I welcome the fact that the cabinet secretary is examining the matter in greater detail. I re-emphasise the importance of ensuring that tax avoidance is not part of the new tax.

Tax avoidance has been a big issue with stamp duty. We welcome the general anti-avoidance rule that will be part of the forthcoming tax management bill, ensuring that people cannot abuse tax arrangements in Scotland. We look forward to working with the Government to ensure that those provisions are as stringent and rigorous as possible.

I turn now to a point that has not been raised so far in the debate: that of revenue Scotland and Registers of Scotland working together. I welcome what the cabinet secretary said in his opening speech about good progress being made on that front. I urge the cabinet secretary not to take his eye off the ball with regard to the IT system. We need a good IT system to deliver the tax. It must be fit for purpose, and we know that the Registers of Scotland has had problems with computer systems—its systems have not proved to be very efficient, and we very much hope that the new system that is being devised is fit for purpose and can deliver the system that we require.

Malcolm Chisholm spoke about the block grant. That issue has not been discussed very much in the debate, but it is hugely important. We know that we will face a one-off reduction in the block grant, and how that happens will impact on our future revenue. We need a fair settlement. It will be for the Scottish Government to deal in its budget with the peaks and troughs that arise from devising the tax and what it brings in, but we need to be sure that the one-off cut to the block grant is fair and that we do not lose out.

Like other members, I welcome the changes in the taxation system, which move us towards a much more progressive system. Many members have spoken today about the distortions that were caused by the old slab system that was part of stamp duty land tax. There were high thresholds, and people tended to keep their prices below the threshold to encourage sales and purchase. The new system will be much fairer and more progressive, and will start from a higher amount to reflect our market conditions.

The bill is devolution in practice, and it gives the Scottish Government the levers that it needs to promote economic development as well as revenue-raising powers. It is always a challenge to reach the right balance between two aspects of our economy—raising the revenue that is needed to provide our public services and encouraging economic development—but we very much welcome the bill.

17:31

John Swinney: I am delighted that we have been joined in the chamber for the debate’s conclusion by my colleague and friend Michael Russell, the Cabinet Secretary for Education and Lifelong Learning. He must have heard the phrase “grasping the thistle” mentioned while he sat in his office. However, I must disabuse him of any notion that it was a plug by Kenny Gibson for the illustrious publication that Mr Russell perhaps thought was being discussed. Mr Gibson in fact referred to the thoughtful and comprehensive report from Ernst & Young on the issues around
tax policy in Scotland, which is a welcome contribution to the debate.

The contributions of colleagues to the final stage of proceedings have also been welcome. I say to Malcolm Chisholm that, earlier this afternoon, before I came down to the chamber, I was viewing in the Government archives the 1705 act to which I referred. The act itself is somewhat more elegantly presented than the purple sheets that are before me today. Nonetheless, it is a very significant moment when the Parliament here in Scotland is, for the first time, able to exercise responsibility for the formulation of tax legislation that will be effective in this country.

John Mason made a powerful argument for the purpose of taxation. He highlighted that it is our duty in Parliament to scrutinise the application of that taxation and, sometimes, to take a robust view of some of the information that is presented to us, taking into account as well our wider responsibility—as Mr Mason expressed it—to the citizens who may not be at the parliamentary committees that are hearing the evidence and having the discussions.

Mr Mason's points about the purpose of taxation and its importance in funding public services lie at the heart of the Government's aspirations in formulating the legislation. They also lie at the heart of the composition of the tax consultation forum that I have now established. The forum brings together not an exclusive group of tax experts—although there are plenty of tax experts in the room; it includes representatives of youth organisations, older people's organisations, the people who represent individuals on low pay and so on. That will ensure that we have a challenging debate about the approach that we should take to taxation as we acquire these wider responsibilities.

One of the characteristics that I have been anxious to ensure is reflected in the first bill to legislate on tax in this country that has been introduced in 308 years is the taking of the firmest, hardest line on tax avoidance, to tackle it from the very beginning. In that respect, Jean Urquhart is absolutely correct: we should not in any way give a signal in the bill that we are interested in anything other than good, strong tax compliance.

I welcome what Rhoda Grant said in response to my comments about sub-sale relief. Whether we like it or not, sub-sale relief has been used as a tax-avoidance mechanism, and the comments that I have put on the record are designed to make it absolutely clear that, although we are prepared to consider the issues, if there is any possibility that we will open up an avenue to tax avoidance, the Government will not go down that route. Our approach of ensuring the robustness of the legislation is crystal clear.

Mr Rennie said that he did not want to sound all negative, although he did a pretty good job of pulling off such an act in the process. If Mr Rennie was so desperately troubled by the absence of a measure to assist in meeting the environmental challenge, there have been limitless opportunities for an amendment to be lodged, considered and scrutinised. I am not aware of a single Liberal Democrat amendment that would have assisted us in resolving the issues.

Willie Rennie: The cabinet secretary might find this difficult to believe, but partnership is not a bad idea. He finds it increasingly difficult, as we saw today in his rejection of Gavin Brown's sensible suggestions. I work together with those of like mind; the cabinet secretary just seems to reject them.

John Swinney: That was a very elaborate Liberal Democrat way of saying, "I haven't lifted a finger in this debate."

I also point out to Mr Rennie that he marshalled arguments about comments that we made about the Scotland Act 2012 provisions. I remind Mr Rennie that the Scotland Act 2012 provisions differ substantially from the Calman commission's proposition and that advanced initially by the UK Government. We thought that the change to the mechanism for adjusting the block grant in relation to income tax-varying powers had a deflationary bias. The UK Government deserted that position and the Holtham methodology was applied. Some of our criticism was well founded in protecting the legitimate interests of the people of Scotland.

Willie Rennie: Will the minister give way?

John Swinney: We are to get another intervention from Mr Rennie, so I suppose that we had better be gracious and generous and give him a platform, because he has not been involved in the debate for some considerable time.

Willie Rennie: Does the minister deny that he described the Scotland Act 2012 provisions as a "poison pill" and dangerous and that he was prepared to veto the bill? He had six red lines; however, those red lines completely disappeared. Will he not admit that?

John Swinney: I do not think that this Parliament is a great place for unionists to talk about red lines. There were all these red lines in the sand, but they have all gone away again.

As for Mr Brown, he said that Mr Mason made an undue link between Parliament getting these tax powers and getting further powers. I gently remind Mr Brown that his party was against the establishment of this institution. It said that it would go thus far and no further, then thus far and no further, then thus far and no further—[Interruption.]
The Deputy Presiding Officer: Order. Cabinet secretary, you are in the final minute of your speech.

John Swinney: Then it gave us the Calman commission, which was apparently designed to put our gas at a peep. After the election, when we won a majority, it came around—although it drew a line in the sand, we were to have more powers. I do not think that the Conservatives are in a strong position to lecture us on how transferring one power or responsibility to the Scottish Parliament does not lead to further constitutional change—[Interruption.]

The Deputy Presiding Officer: Order, please, so that we can hear the end of the cabinet secretary’s speech.

John Swinney: This is a significant day. It is the first time in 308 years that the Scottish Parliament has had the opportunity to formulate legislation on tax and to implement taxation in our country. We believe that that is an indication of the strengthening of Scottish democracy, which will be complete when this Parliament has all the financial and economic powers that come with being an independent country.
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An Act of the Scottish Parliament to make provision about the taxation of land transactions.

PART 1

LAND AND BUILDINGS TRANSACTION TAX

1 The tax

5 (1) A tax (to be known as land and buildings transaction tax) is to be charged on land transactions.

(2) The tax is chargeable—

(a) whether or not there is an instrument effecting the transaction,

(b) if there is such an instrument, whether or not it is executed in Scotland, and

(c) whether or not any party to the transaction is present, or resident, in Scotland.

(3) The Tax Authority is to be responsible for the collection and management of the tax.

2 Overview

This Act is arranged as follows—

Part 2 makes provision for the key concepts underlying the tax including—

(a) which transactions are land transactions,

(b) which interests are, and which are not, chargeable interests in land,

(c) when a chargeable interest is acquired and the treatment of transactions involving contracts which require to be completed by conveyance as well as other kinds of transaction,

(d) which land transactions are, and which are not, chargeable transactions,

(e) what is, and what is not, chargeable consideration in relation to a chargeable transaction,

Part 3 makes provision for—

Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.
Part 2—Key concepts

Chapter 1—Land transactions and chargeable interests

(a) the amount of tax payable,
(b) relief from the tax, and
(c) who is liable to pay the tax,

Part 4 provides for returns relating to land transactions and for the payment of the tax,

Part 5 contains provision about the application of the Act in relation to certain types of buyer, including companies, partnerships and trusts,

Part 5A contains provision about the application of the Act to leases and non-residential licences,

Part 6 contains general provision, including provisions about the Tax Authority and definitions of expressions used in the Act,

Part 7 contains provisions on subordinate legislation powers and commencement as well as other final provisions.

PART 2

KEY CONCEPTS

CHAPTER 1

LAND TRANSACTIONS AND CHARGEABLE INTERESTS

Land transaction

A land transaction is the acquisition of a chargeable interest.

Chargeable interest

(1) A chargeable interest is an interest of a kind mentioned in subsection (2) which is not an exempt interest.

(2) The interests are—

(a) a real right or other interest in or over land in Scotland, or

(b) the benefit of an obligation, restriction or condition affecting the value of any such right or interest.

(3) In subsection (2), “land in Scotland” does not include land below mean low water mark.

Exempt interest

(1) An interest is exempt if it is a security interest.

(2) In subsection (1) a “security interest” means a real right or other interest in or over land held for the purpose of securing the payment of money or the performance of any other obligation.
(3) See also paragraphs 21 to 24 of schedule 7 (which make additional provision about exempt interests in relation to alternative property finance arrangements).

(4) The Scottish Ministers may, by regulations, modify this section so as to—

(a) provide that a description of a real right or other interest in or over land is an exempt interest,

(b) provide that a description of a real right or other interest in or over land is no longer to be an exempt interest,

(c) vary a description of an exempt interest.

Acquisition and disposal of chargeable interest

10

Acquisition and disposal of chargeable interest

(1) Each of the following is an acquisition and a disposal of a chargeable interest—

(a) the creation of the interest,

(b) the renunciation or release of the interest,

(c) the variation of the interest (but not the variation of a lease).

(1A) The variation of a lease is treated as an acquisition and a disposal of a chargeable interest only where paragraph 31 of schedule 18A (reduction of rent or term or other variation of lease) applies.

(2) A person acquires a chargeable interest where—

(a) the person becomes entitled to the interest on its creation,

(b) the person’s interest or right is benefitted or enlarged by the renunciation or release of the interest, or

(c) the person benefits from the variation of the interest.

(3) A person disposes of a chargeable interest where—

(a) the person’s interest or right becomes subject to the interest on its creation,

(b) the person ceases to be entitled to the interest on its being renounced or released, or

(c) the person’s interest or right is subject to or limited by the variation of the interest.

(4) Except as otherwise provided, this Act applies however the acquisition is effected, whether by act of the parties, by order of a court or other authority, by or under any enactment or by operation of law.

7

Buyer and seller

(1) The buyer, in relation to a land transaction, is the person who acquires the subject-matter of the transaction.

(2) But a person is treated as the buyer only where that person has given consideration for, or is a party to, the transaction.

(3) The seller, in relation to a land transaction, is the person who disposes of the subject-matter of the transaction.
CHAPTER 2

PROVISION ABOUT PARTICULAR TRANSACTIONS

General rules for contracts requiring conveyance

8 Contract and conveyance

5 (1) This section applies where a contract for a land transaction is entered into under which the transaction is to be completed by a conveyance.

(2) A person is not regarded as entering into a land transaction by reason of entering into the contract.

(3) But see sections 9 and 10.

9 Completion without substantial performance

(1) If the transaction is completed without previously having been substantially performed, the contract and the transaction effected on completion are treated as parts of a single land transaction.

(2) In this case the effective date of the transaction is the date of completion.

10 Substantial performance without completion

(1) If the contract is substantially performed without having been completed, the contract is treated as if it were itself the transaction provided for in the contract.

(2) In this case the effective date of the transaction is when the contract is substantially performed.

(3) Where subsection (1) applies and the contract is subsequently completed by a conveyance—

(a) both the contract and the transaction effected on completion are notifiable transactions, and

(b) tax is chargeable on the latter transaction to the extent (if any) that the amount of tax chargeable on it is greater than the amount of tax chargeable on the contract.

(4) Where subsection (1) applies and the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that subsection is to be (to that extent) repaid by the Tax Authority.

(5) That repayment must be claimed by amendment of the land transaction return made in respect of the contract.

(6) Where paragraph 27 of schedule 18A (leases) applies, it applies in place of this section.

11 Contract providing for conveyance to third party

(1) This section applies where a contract is entered into under which a chargeable interest is to be conveyed by one party to the contract (A) at the direction or request of the other (B)—
(a) to a person (C) who is not a party to the contract, or
(b) either to C or to B.

(2) B is not regarded as entering into a land transaction by reason of entering into the contract, but the following provisions have effect.

(3) If the contract is substantially performed, B is treated for the purposes of this Act as acquiring a chargeable interest, and accordingly as entering into a land transaction.

(4) In such a case, the effective date of the transaction is when the contract is substantially performed.

(5) Where the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of subsection (3) is to be (to that extent) repaid by the Tax Authority.

(6) Repayment must be claimed by amendment of the land transaction return made in respect of the contract.

(7) Subject to subsection (8), sections 8 to 10 do not apply in relation to the contract.

(8) Where—

(a) this subsection applies by virtue of subsection (1)(b), and
(b) by reason of B’s direction or request, A becomes obliged to convey a chargeable interest to B,

sections 8 to 10 apply to that obligation as they apply to a contract for a land transaction that is to be completed by a conveyance.

(9) Sections 8 to 10 apply in relation to any contract between B and C, in respect of the chargeable interest referred to in subsection (1), that is to be completed by a conveyance.

(10) References to completion in sections 8 to 10, as they apply by virtue of subsection (9), include references to conveyance by A to C of the subject-matter of the contract between B and C.

Options etc.

12 Options and rights of pre-emption

(1) The acquisition of—

(a) an option binding the grantor to enter into a land transaction, or
(b) a right of pre-emption preventing the grantor from entering into, or restricting the right of the grantor to enter into, a land transaction,

is a land transaction distinct from any land transaction resulting from the exercise of the option or right.

(2) They may be linked transactions (see section 56).

(3) The reference in subsection (1)(a) to an option binding the grantor to enter into a land transaction includes an option requiring the grantor either to enter into a land transaction or to discharge the grantor’s obligations under the option in some other way.
(4) The effective date of the transaction in the case of the acquisition of an option or right such as is mentioned in subsection (1) is when the option or right is acquired (as opposed to when it becomes exercisable).

(5) Nothing in this section applies to so much of an option or right of pre-emption as constitutes or forms part of a land transaction apart from this section.

13 Exchanges

(1) Where a land transaction is entered into by a person as buyer (alone or jointly) wholly or partly in consideration of another land transaction being entered into by that person (alone or jointly) as seller, this Act applies in relation to each transaction as if each were distinct and separate from the other (and they are not linked transactions within the meaning of section 56).

(2) A transaction is treated for the purposes of this Act as entered into by a person as buyer wholly or partly in consideration of another land transaction being entered into by that person as seller in any case where an obligation to give consideration for a land transaction that a person enters into as buyer is met wholly or partly by way of that person entering into another transaction as seller.

(3) As to the amount of the chargeable consideration in the case of exchanges and similar transactions, see—

(a) paragraphs 5 and 6 of schedule 2,
(b) paragraph 17 of that schedule.

14 Meaning of “substantial performance”

(1) A contract is substantially performed when—

(a) the buyer, or a person connected with the buyer, takes possession of the whole, or substantially the whole, of the subject-matter of the contract,
(b) a substantial amount of the consideration is paid or provided, or
(c) there is an assignation, subsale or other transaction (relating to the whole or part of the subject-matter of the contract) as a result of which a person other than the original buyer becomes entitled to call for a conveyance to that person.

(2) For the purpose of subsection (1)(a)—

(a) possession includes receipt of rent or the right to receive it, and
(b) it is immaterial whether possession is taken under the contract or under a licence.

(3) For the purposes of subsection (1)(b), a substantial amount of the consideration is paid or provided—

(a) if none of the consideration is rent, where the whole or substantially the whole of the consideration is paid or provided,
(b) if the only consideration is rent, when the first payment of rent is made,
(c) if the consideration includes both rent and other consideration, when—
(i) the whole or substantially the whole of the consideration other than rent is paid or provided, or

(ii) the first payment of rent is made.

(4) For the purposes of subsection (1)(c) the reference to an assignation, subsale or other transaction includes the grant or assignation of an option.

CHAPTER 3

CHARGEABLE TRANSACTIONS AND CHARGEABLE CONSIDERATION

Chargeable transaction

A land transaction is a chargeable transaction unless it is—

(a) an exempt transaction, or

(b) otherwise exempt from charge.

Exempt transaction

A transaction is exempt if schedule 1 provides that it is so exempt.

Chargeable consideration

(1) Schedule 2 makes provision as to the chargeable consideration for a transaction.

(2) The Scottish Ministers may, by regulations, modify this Act relating to chargeable consideration and make such other provision as they consider appropriate about—

(a) what is to be treated as chargeable consideration,

(b) the determination of the amount or value of chargeable consideration.

Contingent, uncertain or unascertained consideration

(1) Subsection (2) applies where the whole or part of the chargeable consideration for a transaction is contingent.

(2) The amount or value of the consideration is to be determined on the assumption that the outcome of the contingency will be such that the consideration is payable or, as the case may be, does not cease to be payable.

(3) In this Act, “contingent”, in relation to consideration, means—

(a) that it is to be paid or provided only if some uncertain future event occurs, or

(b) that it is to cease to be paid or provided if some uncertain future event occurs.
19 Uncertain or unascertained consideration

(1) Subsection (2) applies where the whole or part of the chargeable consideration for a transaction is uncertain or unascertained.

(2) The amount or value of the consideration is to be determined on the basis of a reasonable estimate.

(3) In this section, “uncertain”, in relation to consideration, means its amount or value depends on uncertain future events.

20 Contingent, uncertain or unascertained consideration: further provision

Sections 18 and 19 have effect subject to—

(a) section 31 (return where contingency ceases or consideration ascertained),

(b) section 32 (contingency ceases or consideration is ascertained: less tax payable), and

(c) section 41 (application to defer payment in case of contingent or uncertain consideration).

Annuities etc.

21 Annuities etc.: chargeable consideration limited to 12 years’ payments

(1) This section applies to so much of the chargeable consideration for a land transaction as consists of an annuity payable—

(a) for life,

(b) in perpetuity,

(c) for an indefinite period, or

(d) for a definite period exceeding 12 years.

(2) The consideration to be taken into account is limited to 12 years’ annual payments.

(3) Where the amount payable varies, or may vary, from year to year, the 12 highest annual payments are to be taken into account.

(4) No account is to be taken of any provision for adjustment of the amount payable in line with the retail prices index, the consumer prices index or any other similar index.

(5) References in this section to annual payments are to payments in respect of each successive period of 12 months beginning with the effective date of the transaction.

(6) For the purposes of this section the amount or value of any payment is to be determined (if necessary) in accordance with section 18 (contingent consideration) or 19 (uncertain or unascertained consideration).

(7) References in this section to an annuity include any consideration (other than rent) that falls to be paid or provided periodically.

(8) References to payment are to be read accordingly.

(9) Where this section applies—

(a) sections 31 and 32 (adjustment where contingency ceases or consideration is ascertained) do not apply, and
(b) no application may be made under section 41 (application to defer payment in case of contingent or uncertain consideration).

Deemed market value

22 Deemed market value where transaction involves connected company

(1) This section applies where the buyer is a company and—
   (a) the seller is connected with the buyer, or
   (b) some or all of the consideration for the transaction consists of the issue or transfer of shares in a company with which the seller is connected.

(2) The chargeable consideration for the transaction is to be taken to be not less than—
   (a) the market value of the subject-matter of the transaction as at the effective date of the transaction, and
   (b) if the acquisition is the grant of a lease, the rent.

(3) In this section—
   “company” means a body corporate,
   “shares” includes stock and the reference to shares in a company includes reference to securities issued by a company.

(4) Where this section applies, paragraph 1 of schedule 1 (exemption of transactions for which there is no chargeable consideration) does not apply.

(5) But this section has effect subject to any other provision affording exemption or relief from the tax.

(6) This section is subject to the exceptions provided for in section 23.

23 Exceptions from deemed market value

(1) Section 22 does not apply in the following cases.

(2) In the following provisions “the company” means the company that is the buyer in relation to the transaction in question.

(3) Case 1 is where immediately after the transaction the company holds the property as trustee in the course of a business carried on by it that consists of or includes the management of trusts.

(4) Case 2 is where—
   (a) immediately after the transaction the company holds the property as trustee, and
   (b) the seller is connected with the company only because of section 1122(6) of the Corporation Tax Act 2010 (c.4).

(5) Case 3 is where—
   (a) the seller is a company and the transaction is, or is part of, a distribution of the assets of that company (whether or not in connection with its winding up), and
   (b) it is not the case that—
      (i) the subject-matter of the transaction, or
(ii) an interest from which that interest is derived, has, within the period of 3 years immediately preceding the effective date of the transaction, been the subject of a transaction in respect of which group relief was claimed by the seller.

PART 3

CALCULATION OF TAX AND RELIEFS

Amount of tax chargeable

24 Tax rates and tax bands

(1) The Scottish Ministers must, by order, specify the tax bands and the percentage tax rates for each band—

(a) for residential property transactions, and

(b) for non-residential property transactions.

(2) An order under subsection (1) must specify, in the case of each type of transaction—

(a) a nil rate tax band and at least two other tax bands,

(b) the tax rate for the nil rate tax band, which must be 0%, and

(c) the tax rate for each tax band above the nil rate tax band so that the rate for each band is higher than the rate for the band below it.

(3) A transaction is a residential property transaction if—

(a) the main subject-matter of the transaction consists entirely of an interest in land that is residential property, or

(b) where the transaction is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of such an interest.

(4) A transaction is a non-residential property transaction if—

(a) the main subject-matter of the transaction consists of or includes an interest in land that is not residential property, or

(b) where the transaction is one of a number of linked transactions, the main subject-matter of any transaction consists of or includes such an interest.

(5) In the case of a transaction for which the whole or part of the chargeable consideration is rent, see paragraph 3 of schedule 18A (leases) for the tax rates and tax bands applicable to such consideration.

25 Amount of tax chargeable

(1) The amount of tax chargeable in respect of a chargeable transaction is to be determined as follows.

Step 1

For each tax band applicable to the type of transaction, multiply so much of the chargeable consideration for the transaction as falls within the band by the tax rate for that band.
Step 2

Calculate the sum of the amounts reached under Step 1.

The result is the amount of tax chargeable.

(2) In the case of a transaction for which the whole or part of the chargeable consideration is rent this section has effect subject to schedule 18A (leases).

(3) This section is subject to—
   (a) schedule 5 (multiple dwellings relief),
   (b) schedule 9 (crofting community right to buy relief),
   (c) Part 3 of schedule 11 (acquisition relief).

26 Amount of tax chargeable: linked transactions

(1) Where a chargeable transaction is one of a number of linked transactions, the amount of tax chargeable in respect of the transaction is to be determined as follows.

   Step 1
   For each tax band applicable to the type of transaction, multiply so much of the relevant consideration as falls within the band by the tax rate for that band.

   Step 2
   Calculate the sum of the amounts reached under Step 1.
   The result is the total tax chargeable.

   Step 3
   Divide the chargeable consideration for the transaction by the relevant consideration.

   Step 4
   Multiply the total tax chargeable by the fraction reached under Step 3.
   The result is the amount of tax chargeable.

(2) The relevant consideration is the total of the chargeable consideration for all the linked transactions.

(3) In the case of a transaction for which the whole or part of the chargeable consideration is rent this section has effect subject to schedule 18A (leases).

(4) This section is subject to—
   (a) schedule 5 (multiple dwellings relief),
   (b) schedule 9 (crofting community right to buy relief),
   (c) Part 3 of schedule 11 (acquisition relief).

Reliefs

27 Reliefs

(1) The following schedules provide for reliefs from the tax in relation to certain land transactions—
   schedule 3 (sale and leaseback relief),
schedule 4 (relief for certain acquisitions of residential property),
schedule 5 (multiple dwellings relief),
schedule 6 (relief for certain acquisitions by registered social landlords),
schedule 7 (alternative property finance relief),
schedule 8 (relief for alternative finance investment bonds),
schedule 9 (crofting community right to buy relief),
schedule 10 (group relief),
schedule 11 (reconstruction relief and acquisition relief),
schedule 12 (relief for incorporation of limited liability partnership),
schedule 13 (charities relief),
schedule 14 (relief for certain compulsory purchases),
schedule 15 (relief for compliance with planning obligations),
schedule 16 (public bodies relief).

(2) Any relief under any of those schedules must be claimed in the first return made in relation to the transaction or in an amendment of that return.

(3) The Scottish Ministers may, by order, modify this Act so as to—
   (a) add a relief,
   (b) modify an existing relief, or
   (c) remove a relief.

(4) An order under subsection (3) may also modify any other enactment that the Scottish Ministers consider appropriate.

**Liability for tax**

28 **Liability for tax**

(1) The buyer is liable to pay the tax in respect of a chargeable transaction.

(2) As to the liability of buyers acting jointly, see—
   (a) section 48(2)(c) (joint buyers),
   (b) paragraph 3 of schedule 17 (partnerships), and
   (c) paragraphs 14 to 17 of schedule 18 (trusts).
PART 4
RETURNS AND PAYMENT

CHAPTER 1
RETURNS

Duty to make return

(1) The buyer in a notifiable transaction must make a return to the Tax Authority.

(2) If the transaction is a chargeable transaction, the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.

(3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the transaction.

Notifiable transactions

(1) A land transaction is notifiable unless it is—

(a) an exempt transaction,

(b) an acquisition of the ownership of land where the chargeable consideration for the acquisition is less than £40,000,

(c) an acquisition of a chargeable interest other than a major interest in land where the chargeable consideration does not exceed the nil rate tax band applicable to the transaction, or

(d) an acquisition specified in subsection (1A).

(1A) The following transactions in relation to leases are also not notifiable—

(a) the grant of a lease for a period of 7 years or more where—

(i) any chargeable consideration other than rent is less than £40,000, and

(ii) the relevant rent is less than £1,000,

(b) the assignation or renunciation of a lease where—

(i) the lease was originally granted for a period of 7 years or more, and

(ii) the chargeable consideration for the assignation or renunciation is less than £40,000,

(c) the grant of a lease for a period of less than 7 years where the chargeable consideration does not exceed the nil rate tax band applicable to the transaction, and

(d) the assignation or renunciation of a lease where—

(i) the lease was originally granted for a period of less than 7 years, and

(ii) the chargeable consideration for the assignation or renunciation does not exceed the nil rate tax band applicable to the transaction.
(2) In subsections (1) and (1A), “chargeable consideration”—
(a) where the transaction is one of a number of linked transactions, means the total of
the chargeable consideration for all the linked transactions,
(b) includes any amount in respect of which tax would be chargeable but for a relief.

(2A) In subsection (1A)(a)(ii), “relevant rent” means—
(a) the annual rent (as defined in paragraph 9(7) of schedule 18A), or
(b) in the case of the grant of a lease to which paragraph 28A of schedule 17 applies,
the relevant chargeable proportion of the annual rent (as calculated in accordance
with that paragraph).

(3) The exceptions in subsections (1)(a) to (d) and (1A) do not apply where the transaction
is a transaction that a person is treated as entering into by virtue of section 11(3).

(4) This section has effect subject to—
(a) section 10(3) (substantial performance without completion),
(b) paragraph 17(6) of schedule 2 (arrangements involving public or educational
bodies),
(c) paragraph 12 of schedule 7 (alternative property finance), and
(d) paragraph 40 of schedule 17 (transfer of partnership interests).

(5) The Scottish Ministers may, by order, amend subsection (1)(b), (1A)(a)(i) or (b)(ii) so as
to substitute, for the figure for the time being specified there, a different figure.

Adjustments and further returns

31 Return where contingency ceases or consideration ascertained

(1) The buyer in a land transaction must make a return to the Tax Authority if—
(a) section 18(2) or 19(2) (contingent, uncertain or unascertained consideration)
applies in relation to the transaction (or to any transaction in relation to which it is
a linked transaction),
(b) an event mentioned in subsection (2) occurs, and
(c) the effect of the event is that—
   (i) the transaction becomes notifiable,
   (ii) additional tax is payable in respect of the transaction, or
   (iii) tax is payable where none was payable before.

(2) The events are—
(a) in the case of contingent consideration, the contingency occurs or it becomes clear
that it will not occur, or
(b) in the case of uncertain or unascertained consideration, an amount relevant to the
calculation of the consideration, or any instalment of consideration, becomes
ascertained.

(3) The return must be made before the end of the period of 30 days beginning with the day
after the date on which the event occurred.
(4) The return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.

(5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

(6) This section does not apply so far as the consideration consists of rent (see schedule 18A (leases)) unless the effect of the event mentioned in subsection (2) is that the transaction becomes notifiable.

32 Contingency ceases or consideration ascertained: less tax payable

(1) The buyer in a land transaction may take one of the steps mentioned in subsection (2) to obtain a repayment of tax if—

(a) section 18(2) or 19(2) (contingent, uncertain and unascertained consideration) applies in relation to the transaction (or to any transaction in relation to which it is a linked transaction),

(b) an event mentioned in section 31(2) occurs, and

(c) the effect of the event is that less tax is payable in respect of the transaction than has already been paid.

(2) The steps are—

(a) within the period allowed for amendment of the land transaction return, amend the return accordingly,

(b) after the end of that period (if the land transaction return is not so amended), make a claim to the Tax Authority for repayment of the amount overpaid.

(3) This section does not apply so far as the consideration consists of rent (see schedule 18A (leases)).

33 Further return where relief withdrawn

(1) The buyer in a land transaction must make a further return to the Tax Authority if relief is withdrawn to any extent under—

(a) Part 5 of schedule 4 (relief for certain acquisitions of residential property),

(b) Part 5 of schedule 5 (transfer of multiple dwellings),

(ba) Part 4 of schedule 8 (relief for alternative finance investment bonds),

(c) Part 3 of schedule 10 (group relief),

(d) Part 4 of schedule 11 (reconstruction relief and acquisition relief), or

(e) paragraph 4 of schedule 13 (charities relief).

(2) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable.

(3) The return must be made before the end of the period of 30 days beginning with the day after the date on which the relevant event occurred.

(4) The relevant event is—

(a) in relation to the withdrawal of relief under schedule 4, an event mentioned in paragraph 14(a), (b) or (c) or 16(a), (b) or (c) of that schedule,
(b) in relation to the withdrawal of relief under schedule 5, an event mentioned in paragraph 19(a) or 21(a) of that schedule,

(ba) in relation to the withdrawal of relief under schedule 8, an event mentioned in paragraph 16 of that schedule,

(c) in relation to the withdrawal of group relief, the buyer ceasing to be a member of the same group as the seller within the meaning of schedule 10,

(d) in relation to the withdrawal of reconstruction relief or acquisition relief, the change of control of the acquiring company mentioned in paragraph 13 of schedule 11,

(e) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraphs 5 and 6 of schedule 13.

34 Return or further return in consequence of later linked transaction

(1) This section applies where the effect of a transaction (“the later transaction”) that is linked to an earlier transaction is that—

(a) the earlier transaction becomes notifiable,

(b) additional tax is payable in respect of the earlier transaction, or

(c) tax is payable in respect of the earlier transaction where none was payable before.

(2) The buyer in the earlier transaction must make a return (or further return) in respect of that transaction.

(3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the later transaction.

(4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable as a result of the later transaction.

(5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the earlier transaction.

(6) This section does not affect any requirement to make a land transaction return in respect of the later transaction.

35 Form and content

(1) A return under this Act must—

(a) be in the form specified by the Tax Authority, and

(b) contain the information specified by the Tax Authority.

(2) The Tax Authority may specify different forms and information for—

(a) different kinds of return, and

(b) different kinds of transaction.

(3) The return is treated as containing any information provided by the buyer for the purpose of completing the return.
36 Declaration

(1) A return under this Act must also include a declaration by the buyer that the return is, to the best of the buyer’s knowledge, correct and complete.

(2) However, where the buyer authorises an agent to complete the return—

(a) the agent must certify in the return that the buyer has declared that the information provided in the return, with the exception of the relevant date, is to the best of the buyer’s knowledge, correct and complete, and

(b) the return must include a declaration by the agent that the relevant date provided in the return is, to the best of the agent’s knowledge, correct.

(3) The relevant date is—

(a) in relation to a return under section 29, the effective date of the transaction,

(b) in relation to a return under section 31, the date of the event as a result of which the return is required,

(c) in relation to a return under section 33, the date on which the relevant event occurred,

(d) in relation to a return under section 34, the effective date of the later transaction,

(e) in relation to a return under paragraph 10 of schedule 18A (leases), the review date (see paragraph 10(6)),

(f) in relation to a return under paragraph 11 of that schedule, the day on which the lease is assigned or terminated,

(g) in relation to a return under paragraph 21 of that schedule, the date on which the 1 year period mentioned in paragraph 21(3) ended,

(h) in relation to a return under paragraph 23 of that schedule, the date on which the deemed fixed term mentioned in paragraph 23(2) ended,

(i) in relation to a return under paragraph 32 of that schedule, the date from which the variation mentioned in that paragraph takes effect.

37 Amendment

(1) The buyer in a land transaction may amend a return relating to the transaction by notice to the Tax Authority.

(2) The notice must—

(a) be in the form specified by the Tax Authority, and

(b) contain the information specified by the Tax Authority.

(3) An amendment may not be made more than 12 months after the last day of the period within which the return must be made.

38 Interpretation

References in this Act to the making of a return are to the making of a return that—

(a) complies with the requirements of sections 35 and 36, and
(b) contains an assessment of the tax chargeable in respect of the transaction (if one is required).

39 **Power to amend period in which returns must be made**

(1) The Scottish Ministers may, by order, amend a provision listed in subsection (2) so as to substitute, for the period for the time being specified there, a different period.

(2) The provisions are—
   (a) section 29(3),
   (b) section 31(3),
   (c) section 33(3),
   (d) in schedule 18A (leases)—
      (i) paragraph 10(3),
      (ii) paragraph 11(3),
      (iii) paragraph 21(3)(a),
      (iv) paragraph 23(2)(a),
   (v) paragraph 32(2)(a).

**CHAPTER 2**

**PAYMENT OF TAX**

40 **Payment of tax**

(1) Tax payable in respect of a land transaction must be paid to the Tax Authority.

(2) Where a return is to be made under any of the following provisions, the tax or additional tax payable must be paid at the same time as the return is made—
   (za) section 29 (land transaction return),
   (a) section 31 (return where contingency ceases or consideration ascertained),
   (b) section 33 (further return where relief withdrawn), or
   (c) section 34 (return or further return in consequence of later linked transaction),
   (d) in schedule 18A (leases)—
      (i) paragraph 10 (return on 3-yearly review),
      (ii) paragraph 11 (return on assignation or termination of lease),
      (iii) paragraph 21 (return where lease for fixed term continues after end of term),
      (iv) paragraph 23 (return in relation to lease for indefinite term),
      (v) paragraph 32 (transactions which become notifiable on variation of rent or term).

(3) Tax payable as a result of the amendment of a return must be paid at the same time as the amendment is made.
(4) For the purposes of subsections (2) and (3), tax is treated as paid if arrangements satisfactory to the Tax Authority are made for payment of the tax.

(5) This section is subject to section 41 (application to defer payment of tax in case of contingent or uncertain consideration).

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41  

Application to defer payment in case of contingent or uncertain consideration

(1) The buyer may apply to the Tax Authority to defer payment of tax in a case where—

(a) the amount of tax payable depends on the amount or value of chargeable consideration that, at the effective date of the transaction, is contingent or uncertain, and

(b) the chargeable consideration falls to be paid or provided on one or more future dates of which at least one falls, or may fall, more than 6 months after the effective date of the transaction.

(2) An application under this section must—

(a) be in the form specified by the Tax Authority, and

(b) contain the information specified by the Tax Authority.

(3) An application under this section does not affect the buyer’s obligations as regards payment of tax in respect of chargeable consideration that—

(a) has already been paid or provided at the time the application is made, or

(b) is not contingent and whose amount is ascertained or ascertainable at the time the application is made.

(4) Subsection (3) applies as regards both the time of payment and the calculation of the amount payable.

(5) Unless the Scottish Ministers provide otherwise by order, this section does not apply to consideration so far as it consists of rent.

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42  

Regulations about applications under section 41

(1) The Scottish Ministers may, by regulations, make further provision about applications under section 41.

(2) The regulations may in particular—

(a) specify when an application is to be made,

(b) require the buyer to provide such information as the Tax Authority may reasonably require for the purposes of determining whether to accept an application,

(c) specify the grounds on which an application may be refused,

(d) specify the procedure for reaching a decision on the application,

(e) make provision for postponing payment of tax when an application has been made,

(f) provide for the effect of accepting an application,
(g) require the buyer to make a return or further return, and to make such payments or further payments of tax as may be specified, in such circumstances as may be specified.

(3) Regulations under this section may also provide that where the circumstances in subsection (4) arise—

(a) sections 31 and 32 (adjustment where contingency ceases or consideration is ascertained) do not apply in relation to the payment, and

(b) instead, any necessary adjustment is to be made in accordance with the regulations.

(4) The circumstances are—

(a) a payment is made as mentioned in section 41(3), and

(b) an application under this section is accepted in respect of other chargeable consideration taken into account in calculating the amount of that payment.

CHAPTER 3

REGISTRATION OF LAND TRANSACTIONS ETC.

43 Return to be made and tax paid before application for registration

(1) The Keeper of the Registers of Scotland (“the Keeper”) may not accept an application for registration of a document effecting or evidencing a notifiable transaction unless—

(a) a land transaction return has been made in relation to the transaction, and

(b) any tax payable in respect of the transaction has been paid.

(2) The Tax Authority must provide the Keeper with such information as the Keeper reasonably requires to comply with subsection (1).

(3) In this section, “registration” means registration or recording in any register under the management and control of the Keeper.

(3A) For the purposes of subsection (1)(b), tax is treated as paid if arrangements satisfactory to the Tax Authority are made for the payment of the tax.

(4) This section is subject to section 41 (application to defer payment of tax in case of contingent or uncertain consideration).

PART 5

APPLICATION OF ACT TO CERTAIN PERSONS AND BODIES

44 Companies and other organisations

(1) Everything to be done by an organisation under this Act is to be done by the organisation acting through—

(a) the proper officer of the organisation, or

(b) another person having for the time being the express, implied or apparent authority of the organisation to act on its behalf for the purpose.

(2) Subsection (1)(b) does not apply where a liquidator has been appointed for the organisation.
(3) For the purposes of this Act—

(a) the proper officer of a company is the secretary, or person acting as secretary, of the company,

(b) the proper officer of an unincorporated association (or of a company that does not have a proper officer within paragraph (a)) is the treasurer, or person acting as treasurer, of the association or, as the case may be, the company.

(4) But, where a liquidator or administrator has been appointed for the organisation, the liquidator or, as the case may be, the administrator is the proper officer.

(5) If two or more persons are appointed to act jointly or concurrently as the administrator of the organisation, the reference to the administrator in subsection (4) is to—

(a) such one of them as is specified in a notice given to the Tax Authority by those persons for the purposes of this section, or

(b) where the Tax Authority is not so notified, such one or more of those persons as the Tax Authority may designate as the proper officer for those purposes.

(6) In this section, “organisation” means—

(a) a company,

(b) an unincorporated association.

**Unit trust schemes**

(1) This Act (with the exception of the provisions mentioned in subsection (8)) applies in relation to a unit trust scheme as if—

(a) the trustees were a company, and

(b) the rights of the unit holders were shares in the company.

(2) Each of the parts of an umbrella scheme is regarded for the purposes of this Act as a separate unit trust scheme and the umbrella scheme as a whole is not so regarded.

(3) An “umbrella scheme” means a unit trust scheme—

(a) that provides arrangements for separate pooling of the contributions of participants and the profits or income out of which payments are to be made for them, and

(b) under which the participants are entitled to exchange rights in one pool for rights in another.

(4) A “part” of an umbrella scheme means such of the arrangements as relate to a separate pool.

(5) In this Act—

“unit trust scheme” has the same meaning as in the Financial Services and Markets Act 2000 (c.8), and

“unit holder” means a participant in a unit trust scheme.

(6) The Scottish Ministers may, by regulations, provide that a scheme of a description specified in the regulations is to be treated as not being a unit trust scheme for the purposes of this Act.
(7) Section 620 of the Corporation Tax Act 2010 (c.4) (court investment funds treated as authorised unit trusts) applies for the purposes of this Act as it applies for the purposes of that Act, with the substitution for references to an authorised unit trust of references to a unit trust scheme.

(8) A unit trust scheme is not to be treated as a company for the purposes of schedules 10 (group relief) and 11 (reconstruction relief and acquisition relief).

46 Open-ended investment companies

(1) The Scottish Ministers may, by regulations, make such provision as they consider appropriate for securing that the provisions of this Act have effect in relation to—

(a) open-ended investment companies of such description as may be prescribed in the regulations, and

(b) transactions involving such companies,

in a manner corresponding, subject to such modifications as the Scottish Ministers consider appropriate, to the manner in which they have effect in relation to unit trust schemes and transactions involving such trusts.

(2) The regulations may, in particular, make provision—

(a) modifying the operation of any provision in relation to open-ended investment companies so as to secure that arrangements for treating the assets of such a company as assets comprised in separate pools are given an effect corresponding to that of equivalent arrangements constituting the separate parts of an umbrella scheme,

(b) treating the separate parts of the undertaking of an open-ended investment company in relation to which such provision is made as distinct companies for the purposes of this Act.

(3) In this section—

“open-ended investment company” has the meaning given by section 236 of the Financial Services and Markets Act 2000 (c.8),

“umbrella scheme” has the same meaning as in section 45.

47 Residential property holding companies

(1) The Scottish Ministers may, by regulations, provide for qualifying transfers of interests in residential property holding companies—

(a) to be treated as land transactions, and

(b) to be chargeable transactions.

(2) A “residential property holding company” means a company—

(a) whose sole or main activity is holding or investing in chargeable interests in residential property,

(b) whose property consists of or includes chargeable interests in residential property, and

(c) whose shares are not listed on a recognised stock exchange.
(2A) For the purposes of subsection (2)(a) “chargeable interests” includes any interest which would be a chargeable interest but for the fact that it relates to land outwith Scotland.

(3) A “qualifying transfer” is a transfer of an interest in such a company that results in the transferee acquiring the right to occupy some or all of the company’s residential property.

(4) Regulations under subsection (1) may in particular make provision, or further provision, about—

(a) the kinds of interest, transfer of which is a qualifying transfer,
(b) the kinds of transfers which are and are not qualifying transfers,
(c) the rights which are rights to occupy a company’s residential property for the purposes of such transfers,
(d) the chargeable consideration in the case of such transfers,
(e) the tax bands and tax rates that are to apply to such transfers (including specifying tax bands and tax rates for such transfers),
(f) the person who is to be liable to pay the tax,
(g) the application or disapplication of any reliefs in relation to such transfers.

(4A) Regulations under subsection (1) may also provide that, for the purposes of this section, “residential property” includes such other kinds of property as may be specified in the regulations.

(5) Regulations under subsection (1) may modify any enactment (including this Act).

48 Joint buyers

(1) This section applies to a land transaction where there are two or more buyers who are or will be jointly entitled to the interest acquired.

(2) The general rules are that—

(a) any obligation of the buyer under this Act in relation to the transaction is an obligation of the buyers jointly but may be discharged by any of them,
(b) anything required or authorised by this Act to be done in relation to the buyer must be done by or in relation to all of them, and
(c) any liability of the buyer under this Act in relation to the transaction (in particular, any liability arising by virtue of the failure to fulfil an obligation within paragraph (a)), is a joint and several liability of the buyers.

(3) The general rules are subject to the following provisions—

(a) if a return is required in relation to the transaction, a single return must be made,
(b) the declaration required by section 36(1) or (2)(a) (declaration that return is complete and correct) must be made by all the buyers.

(4) This section has effect subject to—

(a) the provisions of schedule 17 (partnerships), and
(b) paragraphs 14 to 17 of schedule 18 (trusts).
Part 5A—Application of Act to leases and licences

49 Partnerships

(1) Schedule 17 makes provision about the application of this Act in relation to partnerships.

(2) The Scottish Ministers may, by regulations, modify schedule 17.

50 Trusts

(1) Schedule 18 makes provision about the application of this Act in relation to trusts.

(2) The Scottish Ministers may, by regulations, modify schedule 18.

51 Persons acting in a representative capacity etc.

(1) The personal representatives of a person who is the buyer in a land transaction—

(a) are responsible for discharging the obligations of the buyer under this Act in relation to the transaction, and

(b) may deduct any payment made by them under this Act out of the assets and effects of the deceased person.

(2) A receiver appointed by a court in the United Kingdom having the direction and control of any property is responsible for discharging any obligations under this Act in relation to a transaction affecting that property as if the property were not under the direction and control of the court.

PART 5A

APPLICATION OF ACT TO LEASES AND LICENCES

Leases

55 Application of this Act to leases

(1) Schedule 18A makes provision about the application of this Act to chargeable transactions involving leases, including provision for the calculation of the tax chargeable in relation to such transactions.

(2) The Scottish Ministers may, by regulations, modify schedule 18A.

Licences

51A Application of this Act to licences

(1) The Scottish Ministers may, by regulations, prescribe descriptions of non-residential licences to occupy property, transactions in relation to which are to be land transactions for the purposes of this Act.

(2) The regulations may also make provision, among other things—

(a) for transactions, which result in the acquisition of interests in licences, to be land transactions,

(b) for what the chargeable consideration is to be in relation to a licence,

(c) for the determination of the amount or value of that chargeable consideration,

(d) for the calculation of the tax chargeable,
(e) specifying that certain land transactions relating to a licence are not to be notifiable under section 30.

(3) Regulations under this section may modify any enactment (including this Act).

**PART 6**

**GENERAL AND INTERPRETATION**

**The Tax Authority**

52 **The Tax Authority**

(1) For the purposes of this Act, the Tax Authority is the Scottish Ministers.

(2) The Scottish Ministers may, by order, amend subsection (1) to provide that another person is the Tax Authority.

53 **Delegation of functions to Keeper**

(1) The Tax Authority may delegate the exercise of any of its functions under this Act to the Keeper of the Registers of Scotland.

(2) But subsection (1) does not apply to any function of making an order or regulations.

(3) A delegation under this section may be varied or revoked at any time.

(4) A delegation under this section does not affect the Tax Authority’s responsibility for the exercise of any functions delegated or the Authority’s ability to carry out such functions.

(5) The Tax Authority may reimburse the Keeper for any expenditure incurred which is attributable to the exercise by the Keeper of functions delegated under this section.

54 **Review and appeal**

(1) The Scottish Ministers may, by regulations, make provision for—

   (a) the review by the Tax Authority, on the application of a specified person, of any specified kind of decision by the Tax Authority,

   (b) the appeal by a specified person to a tribunal or court against any specified kind of decision by the Tax Authority.

(2) Regulations under this section may modify any provision made by or under this Act.

(3) In this section, “specified” means specified in the regulations.

**Linked transactions**

56 **Linked transactions**

(1) Transactions are linked for the purposes of this Act if they form part of a single scheme, arrangement or series of transactions between the same seller and buyer or, in either case, persons connected with them.

(2) Where there are two or more linked transactions with the same effective date, the buyer, or all of the buyers if there is more than one, may make a single return as if all of those transactions that are notifiable were a single notifiable transaction.
(3) Where two or more buyers make a single return in respect of linked transactions, section 48 applies as if—
   (a) the transaction in question were a single transaction, and
   (b) those buyers were buyers acting jointly.

(4) This section is subject to section 13(1) (exchanges).

Connected persons

Section 1122 of the Corporation Tax Act 2010 (c.4) (connected persons) has effect for the purposes of the following provisions—

(a) section 14,
(b) section 22,
(c) section 23,
(d) section 56,
(e) paragraphs 1, 11 and 13 of schedule 2,
(f) schedule 4,
(g) Part 5 of schedule 5,
(ga) schedule 8,
(h) schedule 17 (but see paragraph 48),
(ha) paragraph 18 of schedule 18A.

Interpretation

Meaning of “residential property”

(1) In this Act “residential property” means—
   (a) a building that is used or is suitable for use as a dwelling, or is in the process of being constructed or adapted for such use,
   (b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or other structure on such land), or
   (c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b).

(2) Accordingly, “non-residential property” means any property that is not residential property.

(3) For the purposes of subsection (1) a building used for any of the following purposes is used as a dwelling—
   (a) residential accommodation for school pupils,
   (b) residential accommodation for students, other than accommodation falling within subsection (4)(b),
   (c) residential accommodation for members of the armed forces,
(d) an institution that is the sole or main residence of at least 90% of its residents and does not fall within any of paragraphs (a) to (f) of subsection (4).

(4) For the purposes of subsection (1) a building used for any of the following purposes is not used as a dwelling—

(a) a home or other institution providing residential accommodation for children,
(b) a hall of residence for students in further or higher education,
(c) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder,
(d) a hospital or hospice,
(e) a prison or similar establishment,
(f) a hotel or inn or similar establishment.

(5) Where a building is used for a purpose specified in subsection (4), no account is to be taken for the purposes of subsection (1)(a) of its suitability for any other use.

(6) Where a building that is not in use is suitable for use for at least one of the purposes specified in subsection (3) and at least one of those specified in subsection (4)—

(a) if there is one such use for which it is most suitable, or if the uses for which it is most suitable are all specified in the same paragraph, no account is to be taken for the purposes of subsection (1)(a) of its suitability for any other use,
(b) otherwise, the building is to be treated for those purposes as suitable for use as a dwelling.

(7) In this section “building” includes part of a building.

(8) Where six or more separate dwellings are the subject of a single transaction involving the transfer of a major interest in, or the grant of a lease over, them, then, for the purposes of this Act as it applies in relation to that transaction, those dwellings are treated as not being residential property.

(9) The Scottish Ministers may, by order—

(a) amend subsections (3) and (4) so as to change or clarify the cases where use of a building is, or is not to be, use of a building as a dwelling for the purposes of subsection (1),
(b) amend or repeal subsection (8).

59 **Meaning of “major interest” in land**

References in this Act to a “major interest” in land are to—

(a) ownership of land, or
(b) the tenant’s right over or interest in land subject to a lease.

60 **Meaning of “subject-matter” and “main subject-matter”**

References in this Act to the subject-matter of a land transaction or a contract are to the chargeable interest acquired (the “main subject-matter”) by virtue of the transaction or contract, together with any interest or right pertaining to it that is acquired with it.
61 Meaning of “market value”

For the purpose of this Act “market value” is to be determined as for the purposes of the Taxation of Chargeable Gains Act 1992 (c.12) (see sections 272 to 274 of that Act).

62 Meaning of “effective date” of a transaction

(1) Except as otherwise provided, the effective date of a land transaction for the purposes of this Act is—
   (a) the date of completion, or
   (b) such alternative date as the Scottish Ministers may prescribe by regulations.

(2) Other provision as to the effective date of certain land transactions is made by—
   (a) section 10(2) (substantial performance of contract without settlement),
   (b) section 11(4) (substantial performance of contract requiring conveyance to third party),
   (c) section 12(4) (options and rights of pre-emption), and
   (d) paragraph 27(2) of schedule 18A (agreement for lease substantially performed etc.).

63 Meaning of “completion”

(1) In this Act, “completion” means—
   (a) in relation to a lease, when it is executed by the parties or constituted by any means,
   (b) in relation to any other transaction, the settlement of the transaction.

(2) References to completion are to completion of the land transaction proposed, between the same parties, in substantial conformity with the contract.

64 General interpretation

In this Act—

“acquisition relief” means relief under Part 3 of schedule 11,
“charities relief” means relief under schedule 13,
“company” means (except as otherwise expressly provided) a body corporate other than a partnership,
“contract” includes any agreement,
“conveyance” includes any instrument,
“employee” includes an office-holder and related expressions have a corresponding meaning,
“group relief” means relief under schedule 10,
“jointly entitled” means entitled as joint owners or common owners,
“land transaction return” means a return under section 29(1),
“personal representatives”, in relation to a person, include that person’s executors,
“reconstruction relief” means relief under Part 2 of schedule 11,
“registered social landlord” means a body registered in the register maintained
under section 20(1) of the Housing (Scotland) Act 2010 (asp 17),
“the tax” means land and buildings transaction tax.

65 Index of defined expressions
Schedule 19 contains an index of expressions defined or otherwise explained in this Act.

PART 7
FINAL PROVISIONS
Ancillary provision

66 Ancillary provision
(1) The Scottish Ministers may, by order, make such incidental, supplementary,
consequential, transitory, transitional or saving provision as they consider appropriate
for the purposes of, in consequence of, or for giving full effect to, any provision made
by or under this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

Subordinate legislation

67 Subordinate legislation
(1) Any power conferred by this Act on the Scottish Ministers to make an order or
regulations includes the power to make—

(a) different provision for different cases or descriptions of case or for different
purposes,
(b) such incidental, supplementary, consequential, transitional, transitory or saving
provision as the Scottish Ministers consider necessary or expedient.

(2) Orders and regulations under the following provisions are subject to the affirmative
procedure—

(a) section 5(4),
(b) section 24(1) (but only the first order),
(c) section 27(3),
(ca) section 49(2),
(cb) section 50(2),
(cc) section 55(2),
(cd) section 51A(1),
(d) section 52(2),
(e) section 58(9),
(f) paragraph 8 of schedule 1,
(h) paragraph 3 of schedule 18A (but only the first order),
(i) paragraph 7(1) of that schedule.

(3) Orders and regulations under the following provisions which add to, replace or omit the text of any Act (including this Act) are also subject to the affirmative procedure—

(a) section 17(2),

(b) section 47(1),

(c) section 54(1),

(e) section 66(1).

(3A) An order mentioned in subsection (3B)—

(a) must be laid before the Scottish Parliament, and

(b) ceases to have effect on the expiry of the period of 28 days beginning with the date on which it is made unless, before the expiry of that period, it is approved by resolution of the Parliament.

(3B) The order is a second or subsequent order under—

(a) section 24(1), or

(b) paragraph 3 of schedule 18A.

(3C) In reckoning any period of 28 days for the purposes of subsection (3A)(b), no account is to be taken of any period during which the Scottish Parliament is—

(a) dissolved, or

(b) in recess for more than 4 days.

(4) All other orders and regulations under this Act are subject to the negative procedure.

(5) This section does not apply to an order under section 69(2).

Crown application

68 Crown application

Nothing in this Act affects Her Majesty in Her private capacity.

Commencement and short title

69 Commencement

(1) This section and sections 52, 53, 66, 67, 68 and 70 come into force on the day of Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.

(3) An order under subsection (2) may contain such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.

70 Short title

The short title of this Act is the Land and Buildings Transaction Tax (Scotland) Act 2013.
SCHEDULE 1
(introduced by section 16)

EXEMPT TRANSACTIONS

No chargeable consideration

1 A land transaction is an exempt transaction if there is no chargeable consideration for the transaction.

Acquisitions by the Crown

2 A land transaction under which the buyer is any of the following is an exempt transaction—

(a) the Scottish Ministers,
(b) the Scottish Parliamentary Corporate Body,
(c) a Minister of the Crown,
(d) the Corporate Officer of the House of Lords,
(e) the Corporate Officer of the House of Commons,
(f) a Northern Ireland department,
(g) the Northern Ireland Assembly Commission,
(h) the Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government,
(i) the National Assembly for Wales Commission,
(j) the National Assembly for Wales.

Residential leases and licences

3 (1) The grant, assignation or renunciation of—

(a) a lease of residential property (which is not a qualifying lease), or
(b) a licence to occupy property (which is not a prescribed non-residential licence),

is an exempt transaction.

(1A) For the purposes of sub-paragraph (1)(a), a transaction in respect of a lease of residential property is exempt only if—

(a) the main subject-matter of the transaction consists entirely of an interest in land that is residential property, or
(b) where the transaction is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of such an interest.

(2) In sub-paragraph (1)(a), “qualifying lease” has the same meaning as in the Long Leases (Scotland) Act 2012 (asp 9).

(3) In sub-paragraph (1)(b), “prescribed non-residential licence” means a licence of a description prescribed by the Scottish Ministers in regulations under section 51A(1).
Transactions in connection with divorce etc.

A transaction between one party to a marriage and the other is an exempt transaction if it is effected—

(a) in pursuance of an order of a court made on granting, in respect of the parties, a decree of divorce, nullity of marriage or judicial separation,

(b) in pursuance of an order of a court made in connection with the dissolution or annulment of the marriage, or the parties' judicial separation, at any time after the granting of such a decree,

(c) in pursuance of—

(i) an order of a court made at any time under section 22A, 23A or 24A of the Matrimonial Causes Act 1973 (c.18), or

(ii) an incidental order of a court made under section 8(2) of the Family Law (Scotland) Act 1985 (c.37) by virtue of section 14(1) of that Act,

(d) at any time in pursuance of an agreement of the parties made in contemplation or otherwise in connection with the dissolution or annulment of the marriage, their judicial separation or the making of a separation order in respect of them.

Transactions in connection with dissolution of civil partnership etc.

A transaction between one party to a civil partnership and the other is an exempt transaction if it is effected—

(a) in pursuance of an order of a court made on granting, in respect of the parties, an order or decree for the dissolution or annulment of the civil partnership or their judicial separation,

(b) in pursuance of an order of a court made in connection with the dissolution or annulment of the civil partnership, or the parties' judicial separation, at any time after the granting of such an order or decree for dissolution, annulment or judicial separation as mentioned in paragraph (a),

(c) in pursuance of—

(i) an order of a court made at any time under any provision of schedule 5 to the Civil Partnership Act 2004 (c.33) that corresponds to section 22A, 23A or 24A of the Matrimonial Causes Act 1973 (c.18), or

(ii) an incidental order of a court made under any provision of the Civil Partnership Act 2004 (c.33) that corresponds to section 8(2) of the Family Law (Scotland) Act 1985 (c.37) by virtue of section 14(1) of that Act of 1985,

(d) at any time in pursuance of an agreement of the parties made in contemplation or otherwise in connection with the dissolution or annulment of the civil partnership, their judicial separation or the making of a separation order in respect of them.

Assents and appropriations by personal representatives

The acquisition of property by a person in or towards satisfaction of the person’s entitlement under or in relation to the will of a deceased person, or on the intestacy of a deceased person, is an exempt transaction.
(2) Sub-paragraph (1) does not apply if the person acquiring the property gives any consideration for it, other than the assumption of secured debt.

(3) Where sub-paragraph (1) does not apply because of sub-paragraph (2), the chargeable consideration for the transaction is determined in accordance with paragraph 9(1) of schedule 2.

(4) In this paragraph—

“debt” means an obligation, whether certain or contingent, to pay a sum of money either immediately or at a future date, and

“secured debt” means debt that, immediately after the death of the deceased person, is secured on the property.

Variation of testamentary dispositions etc.

7 (1) A transaction following a person's death that varies a disposition (whether effected by will, under the law relating to intestacy or otherwise) of property of which the deceased was competent to dispose is an exempt transaction if the following conditions are met.

(2) The conditions are—

(a) that the transaction is carried out within the period of 2 years after a person's death, and

(b) that no consideration in money or money's worth other than the making of a variation of another such disposition is given for it.

(3) Where the condition in sub-paragraph (2)(b) is not met, the chargeable consideration for the transaction is determined in accordance with paragraph 9(3) of schedule 2.

(4) This paragraph applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions.

Power to add, vary or remove exemptions

8 The Scottish Ministers may, by regulations, modify this schedule so as to—

(a) add a description of land transaction as an exempt transaction,

(b) provide that a description of land transaction is no longer an exempt transaction,

(c) vary a description of an exempt transaction.

SCHEDULE 2
(introduced by section 17)

CHARGEABLE CONSIDERATION

Money or money's worth

1 The chargeable consideration for a transaction is, except as otherwise provided, any consideration in money or money's worth given for the subject-matter of the transaction, directly or indirectly, by the buyer or a person connected with the buyer.
Value added tax

2 The chargeable consideration for a transaction includes any value added tax chargeable in respect of the transaction, other than value added tax chargeable by virtue of an option to tax any land under Part 1 of schedule 10 to the Value Added Tax Act 1994 (c.23) made after the effective date of the transaction.

Postponed consideration

3 The amount or value of the chargeable consideration for a transaction is to be determined without any discount for postponement of the right to receive it or any part of it.

Just and reasonable apportionment

4 (1) For the purposes of this Act consideration attributable—

(a) to two or more land transactions, or

(b) in part to a land transaction and in part to another matter, or

(c) in part to matters making it chargeable consideration and in part to other matters,

is to be apportioned on a just and reasonable basis.

(2) If the consideration is not so apportioned, this Act has effect as if it had been so apportioned.

(3) For the purposes of this paragraph any consideration given for what is in substance one bargain is to be treated as attributable to all the elements of the bargain, even though—

(a) separate consideration is, or purports to be, given for different elements of the bargain, or

(b) there are, or purport to be, separate transactions in respect of different elements of the bargain.

Exchanges

5 (1) This paragraph applies to determine the chargeable consideration where one or more land transactions are entered into by a person as buyer (alone or jointly) wholly or partly in consideration of one or more other land transactions being entered into by that person (alone or jointly) as seller.

(2) In this paragraph—

“relevant acquisition” means a relevant transaction entered into as buyer,

“relevant disposal” means a relevant transaction entered into as seller, and

“relevant transaction” means any of those transactions.

(3) The following rules apply if the subject-matter of any of the relevant transactions is a major interest in land—

(a) where a single relevant acquisition is made, the chargeable consideration for the acquisition is the greater of—

(i) the amount determined under sub-paragraph (3A) in respect of the acquisition, or
(ii) the amount which would be the chargeable consideration for the acquisition ignoring this paragraph,

(b) where two or more relevant acquisitions are made, the chargeable consideration for each relevant acquisition is the greater of—

5 (i) the amount determined under sub-paragraph (3A) in respect of that acquisition, or

(ii) the amount which would be the chargeable consideration for that acquisition ignoring this paragraph.

(3A) The amount mentioned in sub-paragraph (3)(a)(i) and (b)(i) is—

10 (a) the market value of the subject-matter of the acquisition, or

(b) if the acquisition is the grant of a lease, the rent.

(4) The following rules apply if the subject-matter of none of the relevant transactions is a major interest in land—

15 (a) where a single relevant acquisition is made in consideration of one or more relevant disposals, the chargeable consideration for the acquisition is the amount or value of any chargeable consideration other than the disposal or disposals that are given for the acquisition,

(b) where two or more relevant acquisitions are made in consideration of one or more relevant disposals, the chargeable consideration for each relevant acquisition is the appropriate proportion of the amount or value of any chargeable consideration other than the disposal or disposals that are given for the acquisitions.

(5) For the purposes of sub-paragraph (4)(b) the appropriate proportion is—

\[
\frac{MV}{TMV}
\]

where—

25 MV is the market value of the subject-matter of the acquisition for which the chargeable consideration is being determined, and

TMV is the total market value of the subject-matter of all the relevant acquisitions.

(6) This paragraph is subject to paragraph 6 (partition etc.: disregard of existing interests).

30 (7) This paragraph does not apply in a case to which paragraph 17 (arrangements involving public or educational bodies) applies.

Partition etc.: disregard of existing interest

6 In the case of a land transaction giving effect to a partition or division of a chargeable interest to which persons are jointly entitled, the share of the interest held by the buyer immediately before the partition or division does not count as chargeable consideration.

Valuation of non-monetary consideration

7 Except as otherwise expressly provided, the value of any chargeable consideration for a land transaction, other than—

(a) money (whether in sterling or another currency), or
(b) debt as defined for the purposes of paragraph 8 (debt as consideration),
is to be taken to be its market value at the effective date of the transaction.

Debt as consideration

8 (1) Where the chargeable consideration for a land transaction consists in whole or in part of—
   (a) the satisfaction or release of a debt due to the buyer or owed by the seller, or
   (b) the assumption of existing debt by the buyer,

the amount of debt satisfied, released or assumed is to be taken to be the whole or, as the case may be, part of the chargeable consideration for the transaction.

(2) Where—
   (a) a debt is secured on the subject-matter of a land transaction immediately before and immediately after the transaction, and
   (b) the rights or liabilities in relation to that debt of any party to the transaction are changed as a result of or in connection with the transaction,

then for the purposes of this paragraph there is an assumption of that debt by the buyer, and that assumption of debt constitutes chargeable consideration for the transaction.

(3) Where in a case in which sub-paragraph (1)(b) applies—
   (a) the debt assumed is or includes debt secured on the property forming the subject-matter of the transaction, and
   (b) immediately before the transaction there were two or more persons each holding an undivided share of that property, or there were two or more such persons immediately afterwards,

the amount of secured debt assumed is to be determined as if the amount of that debt owed by each of those persons at a given time were the proportion of it corresponding to the person’s undivided share of the property at that time.

(4) If the effect of this paragraph would be that the amount of the chargeable consideration for the transaction exceeded the market value of the subject-matter of the transaction, the amount of the chargeable consideration is treated as limited to that value.

(5) In this paragraph—
   “debt” has the same meaning as in paragraph 6(4) of schedule 1,
   “existing debt”, in relation to a transaction, means debt created or arising before the effective date of, and otherwise than in connection with, the transaction, and references to the amount of a debt are to the principal amount payable or, as the case may be, the total of the principal amounts payable, together with the amount of any interest that has accrued due on or before the effective date of the transaction.
Cases where conditions for exemption not fully met

9 (1) Where a land transaction would be an exempt transaction under paragraph 6 of schedule 1 (assents and appropriations by personal representative) but for sub-paragraph (2) of that paragraph (cases where person acquiring property gives consideration for it), the chargeable consideration for the transaction does not include the amount of any secured debt assumed.

(2) In this paragraph, “secured debt” has the same meaning as in paragraph 6(4) of schedule 1.

(3) Where a land transaction would be an exempt transaction under paragraph 7 of schedule 1 (variation of testamentary dispositions etc.) but for a failure to meet the condition in sub-paragraph (2)(b) of that paragraph (no consideration other than variation of another disposition), the chargeable consideration for the transaction does not include the making of any such variation as is mentioned in that sub-paragraph.

Conversion of amounts in foreign currency

10 (1) References in this Act to the amount or value of the consideration for a transaction are to its amount or value in sterling.

(2) For the purposes of this Act the sterling equivalent of an amount expressed in another currency is to be ascertained by reference to the London closing exchange rate on the effective date of the transaction (unless the parties have used a different rate for the purposes of the transaction).

Carrying out of works

11 (1) Where the whole or part of the consideration for a land transaction consists of the carrying out of works of construction, improvement or repair of a building or other works to enhance the value of land, then—

(a) to the extent that the conditions specified in sub-paragraph (2) are met, the value of the works does not count as chargeable consideration, and

(b) to the extent that those conditions are not met, the value of the works is to be taken into account as chargeable consideration.

(2) The conditions are—

(a) that the works are carried out after the effective date of the transaction,

(b) that the works are carried out on land acquired or to be acquired under the transaction, and

(c) that it is not a condition of the transaction that the works are carried out by the seller or a person connected with the seller.

(3) Where, by virtue of section 10(3) (substantial performance of contract without completion), there are two notifiable transactions (the first being the contract or agreement and the second being the transaction effected on completion or, as the case may be, the grant or execution of the lease), the condition in sub-paragraph (2)(a) is treated as met in relation to the second transaction if it is met in relation to the first.

(4) In this paragraph—

(a) references to the acquisition of land are to the acquisition of a major interest in it,
(b) the value of the works is to be taken to be the amount that would have to be paid in the open market for the carrying out of the works in question.

(5) This paragraph is subject to paragraph 17 (arrangements involving public or educational bodies).

5 **Provision of services**

12 (1) Where the whole or part of the consideration for a land transaction consists of the provision of services (other than the carrying out of works to which paragraph 11 applies), the value of that consideration is to be taken to be the amount that would have to be paid in the open market to obtain those services.

10 (2) This paragraph is subject to paragraph 17 (arrangements involving public or educational bodies).

**Land transaction entered into by reason of employment**

13 Where a land transaction is entered into by reason of the buyer’s employment, or that of a person connected with the buyer, the consideration for the transaction is to be taken to be not less than the market value of the subject-matter of the transaction as at the effective date of the transaction.

**Indemnity given by buyer**

14 Where the buyer agrees to indemnify the seller in respect of liability to a third party arising from breach of an obligation owed by the seller in relation to the land that is the subject of the transaction, neither the agreement nor any payment made in pursuance of it counts as chargeable consideration.

**Buyer bearing inheritance tax liability**

15 Where—

(a) there is a land transaction that is—

(i) a transfer of value within section 3 of the Inheritance Tax Act 1984 (c.51) (transfers of value), or

(ii) a disposition, effected by will or under the law of intestacy, of a chargeable interest comprised in the estate of a person immediately on the person’s death, and

(b) the buyer is or becomes liable to pay, agrees to pay or does in fact pay any inheritance tax due in respect of the transfer or disposition,

the buyer’s liability, agreement or payment does not count as chargeable consideration for the transaction.

**Buyer bearing capital gains tax liability**

16 (1) Where—

(a) there is a land transaction under which the chargeable interest in question—

(i) is acquired otherwise than by a bargain made at arm’s length, or
(ii) is treated by section 18 of the Taxation of Chargeable Gains Act 1982 (c.12) (connected persons) as so acquired, and

(b) the buyer is or becomes liable to pay, or does in fact pay, any capital gains tax due in respect of the corresponding disposal of the chargeable interest,

the buyer’s liability or payment does not count as chargeable consideration for the transaction.

(3) Sub-paragraph (1) does not apply if there is chargeable consideration for the transaction (disregarding the liability or payment referred to in sub-paragraph (1)(b)).

Arrangements involving public or educational bodies

17 (1) This paragraph applies in any case where arrangements are entered into under which—

(a) there is a transfer of the ownership, or the grant or assignation of a lease, of land by a qualifying body (A) to a non-qualifying body (B) (“the main transfer”),

(b) in consideration (whether in whole or in part) of the main transfer there is a grant by B to A of a lease or sub-lease of the whole, or substantially the whole, of that land (“the leaseback”),

(c) B undertakes to carry out works or provide services to A, and

(d) some or all of the consideration given by A to B for the carrying out of those works or the provision of those services is consideration in money, whether or not there is also a transfer of the ownership, or the grant or assignation of a lease, of any land by A to B (a “transfer of surplus land”).

(2) The following are qualifying bodies—

(a) public bodies within paragraph 4 of schedule 16,

(b) grant-aided schools within the meaning of section 135(1) of the Education (Scotland) Act 1980 (c.44), and

(c) any body listed in schedule 2 to the Further and Higher Education (Scotland) Act 2005 (asp 6).

(3) The Scottish Ministers may, by order, modify sub-paragraph (2) so as to—

(a) add a person or body to the list of qualifying bodies,

(b) remove a person or body from that list,

(c) vary the description of any qualifying body.

(4) The following do not count as chargeable consideration for the main transfer or any transfer of surplus land—

(a) the leaseback,

(b) the carrying out of building works by B for A, or

(c) the provision of services by B to A.

(5) The chargeable consideration for the leaseback does not include—

(a) the main transfer,

(b) any transfer of surplus land, or
(c) the consideration in money paid by A to B for the building works or other services referred to in sub-paragraph (4).

(6) Sub-paragraphs (4) and (5) are to be disregarded for the purposes of determining whether the land transaction in question is notifiable.

SCHEDULE 3
(introduced by section 27)

SALE AND LEASEBACK RELIEF

The relief

1 The leaseback element of a sale and leaseback arrangement is exempt from charge if the qualifying conditions are met.

Sale and leaseback arrangements

2 A sale and leaseback arrangement is an arrangement under which—

(a) a person (A) transfers or grants to another person (B) a major interest in land (the “sale”), and

(b) out of that interest B grants a lease to A (the “leaseback”).

Qualifying conditions

3 The qualifying conditions are—

(a) that the sale transaction is entered into wholly or partly in consideration of the leaseback transaction being entered into,

(b) that the only other consideration (if any) for the sale is the payment of money (whether in sterling or another currency) or the assumption, satisfaction or release of a debt (or both), and

(c) where A and B are both bodies corporate at the effective date of the leaseback transaction, that they are not members of the same group for the purposes of group relief (see schedule 10) at that date.

Interpretation

4 In this schedule, “debt” has the same meaning as in paragraph 6(4) of schedule 1.
SCHEDULE 4
(introduced by section 27)

RELIEF FOR CERTAIN ACQUISITIONS OF RESIDENTIAL PROPERTY

PART 1

INTRODUCTORY

Overview of reliefs

1 (1) This schedule provides for relief in the case of certain acquisitions of residential property.

(2) It is arranged as follows—

Part 2 provides for relief in the case of an acquisition by a house-building company from an individual acquiring a new dwelling,

Part 3 provides for relief in the case of an acquisition by a property trader from an individual acquiring a new dwelling,

Part 4 provides for relief in the case of an acquisition by a property trader from an individual where a chain of transactions breaks down,

Part 5 provides for the withdrawal of those reliefs in certain circumstances,

Part 6 defines expressions used in this schedule.

PART 2

ACQUISITION BY HOUSE-BUILDING COMPANY FROM INDIVIDUAL ACQUIRING NEW DWELLING

20 Full relief

2 Where a dwelling (“the old dwelling”) is acquired by a house-building company from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the qualifying conditions are met.

Partial relief

3 Where qualifying conditions (a) to (d) but not (e) are met, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.

Qualifying conditions

4 In this Part of this schedule, the qualifying conditions are—

(a) that the individual (whether alone or with other individuals) acquires a new dwelling from the house-building company,

(b) that the individual occupied the old dwelling as the individual’s only or main residence at some time in the period of 2 years ending with the date of its acquisition,

(c) that the individual intends to occupy the new dwelling as the individual’s only or main residence,
(d) that each acquisition is entered into in consideration of the other, and
(e) that the area of land acquired by the house-building company does not exceed the permitted area.

PART 3

ACQUISITION BY PROPERTY TRADER FROM INDIVIDUAL ACQUIRING NEW DWELLING

Full relief

Where a dwelling (“the old dwelling”) is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the qualifying conditions are met.

Partial relief

Where qualifying conditions (a) to (c) but not (f) are met, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.

Qualifying conditions

In this Part of this schedule, the qualifying conditions are—

(a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals who acquire new dwellings from house-building companies,

(b) that the individual (whether alone or with other individuals) acquires a new dwelling from a house-building company,

(c) that the individual occupied the old dwelling as the individual’s only or main residence at some time in the period of 2 years ending with the date of its acquisition,

(d) that the individual intends to occupy the new dwelling as the individual’s only or main residence,

(e) that the property trader does not intend—

(i) to spend more than the permitted amount on refurbishment of the old dwelling,

(ii) to grant a lease or licence of the old dwelling, or

(iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling, and

(f) that the area of land acquired by the property trader does not exceed the permitted area.

Paragraph 7(e)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.
PART 4

ACQUISITION BY PROPERTY TRADER FROM INDIVIDUAL WHERE CHAIN OF TRANSACTIONS BREAKS DOWN

Full relief

Where a dwelling (“the old dwelling”) is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the qualifying conditions are met.

Partial relief

Where qualifying conditions (a) to (g) but not (h) are met, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.

Qualifying conditions

In this Part of this schedule, the qualifying conditions are—

(a) that the individual has made arrangements to sell the old dwelling and acquire another dwelling (“the second dwelling”),

(b) that the arrangements to sell the old dwelling fail,

(c) that the acquisition of the old dwelling is made for the purpose of enabling the individual’s acquisition of the second dwelling to proceed,

(d) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals in the circumstances mentioned in conditions (a) to (c),

(e) that the individual occupied the old dwelling as the individual’s only or main residence at some time in the period of 2 years ending with the date of its acquisition,

(f) that the individual intends to occupy the second dwelling as the individual’s only or main residence,

(g) that the property trader does not intend—

(i) to spend more than the permitted amount on refurbishment of the old dwelling,

(ii) to grant a lease or licence of the old dwelling, or

(iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling, and

(h) that the area of land acquired does not exceed the permitted area.

Paragraph 11(g)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.
**Part 5**

**Withdrawal of Relief**

**Introductory**

13 (1) Relief under this schedule is withdrawn in the following circumstances.

5 (2) Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the acquisition but for the relief.

**Relief under Part 3**

14 Relief under Part 3 of this schedule (acquisition by property trader from individual acquiring new dwelling) is withdrawn if the property trader—

10 (a) spends more than the permitted amount on refurbishment of the old dwelling,

(b) grants a lease or licence of the old dwelling, or

(c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.

15 Paragraph 14(b) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.

**Relief under Part 4**

16 Relief under Part 4 of this schedule (acquisition by property trader from individual where chain of transactions breaks down) is withdrawn if the property trader—

20 (a) spends more than the permitted amount on refurbishment of the old dwelling,

(b) grants a lease or licence of the old dwelling, or

(c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.

17 Paragraph 16(b) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.

**Part 6**

**Interpretation**

**Meaning of “dwelling” and “new dwelling”**

18 “Dwelling” includes land occupied and enjoyed with the dwelling as its garden or grounds.

19 A building or part of a building is a “new dwelling” if—

30 (a) it has been constructed for use as a single dwelling and has not previously been occupied, or

(b) it has been adapted for use as a single dwelling and has not been occupied since its adaptation.
Meaning of “permitted area”

20 “The permitted area”, in relation to a dwelling, means land occupied and enjoyed with the dwelling as its garden or grounds that does not exceed—

(a) an area (inclusive of the site of the dwelling) of 0.5 of a hectare, or

(b) such larger area as is required for the reasonable enjoyment of the dwelling as a dwelling having regard to its size and character.

21 Where paragraph 20(b) applies, the permitted area is taken to consist of that part of the land that would be the most suitable for occupation and enjoyment with the dwelling as its garden or grounds if the rest of the land were separately occupied.

Meaning of “acquisition” and “market value” in relation to dwelling and permitted area

22 References in this schedule to—

(a) the acquisition of a dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling,

(b) the market value of a dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

Meaning of “house-building company”

23 A “house-building company” means a company that carries on the business of constructing or adapting buildings or parts of buildings for use as dwellings.

24 References in this schedule to such a company include any company connected with it.

Meaning of “property trader” and “principal”

25 (1) A “property trader” means an entity listed in sub-paragraph (2) that carries on the business of buying and selling dwellings.

(2) The entities are—

(a) a company,

(b) a limited liability partnership,

(c) a partnership whose partners are all either companies or limited liability partnerships.

(3) A “principal”—

(a) in relation to a company, means a director,

(b) in relation to a limited liability partnership, means a member,

(c) in relation to a partnership mentioned in sub-paragraph (2)(c) means a partner or a principal of a partner.

26 For the purposes of this schedule—

(a) anything done by or in relation to a company connected with a property trader is treated as done by or in relation to that property trader, and
(b) references to the principals or employees of a property trader include the principals or employees of any such company.

Meaning of “refurbishment” and “the permitted amount”

27 “Refurbishment” of a dwelling means the carrying out of works that enhance or are intended to enhance the value of the dwelling, but does not include—

(a) cleaning the dwelling, or

(b) works required solely for the purpose of ensuring that the dwelling meets minimum safety standards.

28 The “permitted amount”, in relation to the refurbishment of a dwelling, is set out in the following table—

<table>
<thead>
<tr>
<th>Consideration for acquisition of the dwelling</th>
<th>Permitted amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than £200,000</td>
<td>£10,000</td>
</tr>
<tr>
<td>More than £200,000 but not more than £400,000</td>
<td>5% of the consideration</td>
</tr>
<tr>
<td>More than £400,000</td>
<td>£20,000</td>
</tr>
</tbody>
</table>

SCHEDULE 5
(introduced by section 27)
MULTIPLE DWELLINGS RELIEF

PART 1
INTRODUCTORY

Overview of relief

1 (1) This schedule provides for relief in the case of certain land transactions involving multiple dwellings.

(2) It is arranged as follows—

Part 2 identifies the transactions to which this schedule applies,

Part 3 defines key terms,

Part 4 describes the relief available if a claim is made,

Part 5 provides for withdrawal of the relief,

Part 6 contains rules to determine what counts as a dwelling.

PART 2
TRANSACTIONS TO WHICH THIS SCHEDULE APPLIES

The rule

2 This schedule applies to relevant transactions.
A relevant transaction is a transaction (other than a transaction to which schedule 18A (leases) applies) that is—
(a) within paragraph 4 or paragraph 5, and
(b) not excluded by paragraph 6.

Single transaction relating to multiple dwellings

A transaction is within this paragraph if its main subject-matter consists of—
(a) an interest in at least two dwellings, or
(b) an interest in at least two dwellings and other property.

Linked transactions relating to multiple dwellings

A transaction is within this paragraph if—
(a) its main subject-matter consists of—
   (i) an interest in a single dwelling, or
   (ii) an interest in a single dwelling and other property,
(b) it is one of a number of linked transactions, and
(c) the main subject-matter of at least one of the other linked transactions consists of—
   (i) an interest in some other dwelling or dwellings, or
   (ii) an interest in some other dwelling or dwellings and other property.

Excluded transactions

A transaction is excluded by this paragraph if—
(a) relief under schedule 9 (crofting community right to buy) is available for it, or
(b) relief under schedule 10 (group relief), 11 (reconstruction relief and acquisition relief) or 13 (charities relief)—
   (i) is available for it, or
   (ii) has been withdrawn from it.

**PART 3**

**KEY TERMS**

Consideration attributable to dwellings and remaining property

In relation to a relevant transaction—
(a) the consideration attributable to dwellings is so much of the chargeable consideration for the transaction as is attributable to the dwellings,
(b) the consideration attributable to remaining property is the chargeable consideration for the transaction less the consideration attributable to dwellings.
Dwellings

8 “The dwellings” are, in relation to a relevant transaction, the dwelling or dwellings that are, or are part of, the main subject-matter of the transaction.

Interest in a dwelling

9 A reference in this schedule to an interest in a dwelling is to any chargeable interest in or over a dwelling.

PART 4

THE RELIEF

Calculation of relief

10 The amount of tax chargeable in relation to a relevant transaction is—

\[(\text{DT} \times \text{ND}) + \text{RT}\]

where—

\(\text{DT}\) is the tax due in relation to a dwelling,

\(\text{ND}\) is the number of dwellings that are, or are part of, the main subject-matter of the transaction, and

\(\text{RT}\) is the tax due in relation to remaining property.

11 However, if the result of paragraph 10 would be that the tax chargeable in relation to the transaction is less than the minimum prescribed amount, the tax chargeable is that amount.

12 The minimum prescribed amount is such proportion of the tax that would be chargeable in relation to the transaction but for the relief as may be prescribed by the Scottish Ministers by order.

Tax due in relation to a dwelling

15 The tax due in relation to a dwelling is determined as follows.

Step 1

Find the total consideration attributable to dwellings, that is—

(a) the consideration attributable to dwellings for the transaction, or

(b) where the transaction is one of a number of linked transactions, the sum of—

(i) the consideration attributable to dwellings for the transaction, and

(ii) the consideration attributable to dwellings for all other relevant transactions.

Step 2

Divide the total consideration attributable to dwellings by total dwellings.

“Total dwellings” is the total number of dwellings by reference to which the total consideration attributable to dwellings is calculated.
Step 3
Calculate the amount of tax that would be due in relation to the relevant transaction were—
(a) the chargeable consideration equal to the result obtained in Step 2,
(b) the transaction a residential property transaction, and
(c) the transaction not a linked transaction.
The result is the tax due in relation to a dwelling.

Tax due in relation to remaining property
The tax due in relation to remaining property is determined as follows.
Step 1
Calculate the amount of tax that would be due in respect of the transaction but for this schedule.
Step 2
Divide the consideration attributable to remaining property by the chargeable consideration for the transaction.
Step 3
Multiply the amount calculated in Step 1 by the fraction reached in Step 2.
The result is the tax due in relation to remaining property.

General
“Attributable” means attributable on a just and reasonable basis.

Part 5
Withdrawal of relief

Full withdrawal of relief
Relief under this schedule is withdrawn in relation to a relevant transaction if—
(a) an event occurs in the relevant period, and
(b) had the event occurred immediately before the effective date of the transaction, the transaction would not have been a relevant transaction.
Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the transaction but for the relief.

Partial withdrawal of relief
Relief under this schedule is partially withdrawn in relation to a relevant transaction if—
(a) an event occurs in the relevant period, and
(b) had the event occurred immediately before the effective date of the transaction—
(i) the transaction would have been a relevant transaction, but
(ii) more tax would have been payable in respect of the transaction.

Where relief is partially withdrawn, tax is chargeable on the transaction as if the event had occurred immediately before the effective date of the transaction.

In that case, the tax so chargeable must be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

**Relevant period**

“The relevant period” means the shorter of—

(a) the period of 3 years beginning with the effective date of the transaction, and

(b) the period beginning with the effective date of the transaction and ending with the date on which the buyer disposes of the dwelling, or the dwellings, to a person who is not connected with the buyer.

In relation to a transaction effected on completion of a contract that was substantially performed before completion, paragraph 24 applies as if references to the effective date of the transaction were to the date on which the contract was substantially performed.

**Interpretation**

In this Part of this schedule, “event” includes any change of circumstance or change of plan.

**PART 6**

WHAT COUNTS AS A DWELLING

This Part of this schedule sets out rules for determining what counts as a dwelling for the purposes of this schedule.

A building or part of a building counts as a dwelling if—

(a) it is used or suitable for use as a single dwelling, or

(b) it is in the process of being constructed or adapted for such use.

Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on such land) is taken to be part of that dwelling.

Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of that dwelling.

The main subject-matter of a transaction is also taken to consist of or include an interest in a dwelling if—

(a) substantial performance of a contract constitutes the effective date of that transaction by virtue of a relevant deeming provision,

(b) the main subject-matter of the transaction consists of or includes an interest in a building, or a part of a building, that is to be constructed or adapted under the contract for use as a single dwelling, and

(c) construction or adaptation of the building, or the part of a building, has not begun by the time the contract is substantially performed.
32 In paragraph 31, “relevant deeming provision” means section 10 or 11.

33 Subsections (3) to (6) of section 58 apply for the purposes of this Part of this schedule as they apply for the purposes of subsection (1)(a) of that section.

SCHEDULE 6
(introduced by section 27)

RELIEF FOR CERTAIN ACQUISITIONS BY REGISTERED SOCIAL LANDLORDS

The relief

1 A land transaction under which the buyer is a registered social landlord is exempt from charge if the qualifying conditions are met.

The qualifying conditions

2 The qualifying conditions are—

(a) that the registered social landlord is controlled by its tenants,

(b) that the seller is one of the following—

(i) a registered social landlord,

(ii) the Scottish Ministers,

(iii) a local authority, and

(c) that the transaction is funded with the assistance of a grant or other financial assistance—

(i) made or given by way of a distribution pursuant to section 25 of the National Lottery etc. Act 1993 (c.39) (application of money by distributing bodies), or

(ii) under section 2 of the Housing (Scotland) Act 1988 (c.43) (general functions of the Scottish Ministers).

Landlord controlled by tenants

3 The reference in paragraph 2(a) to a registered social landlord controlled by its tenants is to a registered social landlord the majority of whose board members are tenants occupying properties owned or managed by it.

4 For the purposes of paragraph 3, “board member” is to be construed as follows—

<table>
<thead>
<tr>
<th>Type of registered social landlord</th>
<th>Board member</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company</td>
<td>A director of the company</td>
</tr>
<tr>
<td>Body corporate whose affairs are managed by its members</td>
<td>A member</td>
</tr>
<tr>
<td>Body of trustees</td>
<td>A trustee</td>
</tr>
<tr>
<td>None of the above</td>
<td>A member of the committee of management or other body to which is entrusted the direction of the affairs of the registered social landlord</td>
</tr>
</tbody>
</table>
Overview

1 (1) This schedule makes provision for relief in the case of certain land transactions connected to alternative property finance arrangements.

(2) It is arranged as follows—

Part 2 identifies the alternative property finance arrangements that are relieved,

Part 3 makes provision limiting the arrangements that can be relieved,

Part 4 provides for the circumstances in which the chargeable interest acquired by a financial institution under the arrangements is an exempt interest, and

Part 5 defines expressions used in this schedule.

Part 2

ALTERNATIVE PROPERTY FINANCE: ARRANGEMENTS RELIEVED

Land sold to financial institution and leased to person

2 Paragraphs 3 to 6 apply where arrangements are entered into between a person and a financial institution under which the institution—

(a) purchases a major interest in land (“the first transaction”),

(b) grants to the person out of that interest a lease (if the interest acquired is the interest of the owner) or a sub-lease (if the interest acquired is the tenant’s right over or interest in a property subject to a lease) (“the second transaction”), and

(c) enters into an agreement under which the person has a right to require the institution to transfer the major interest purchased by the institution under the first transaction.

3 The first transaction is exempt from charge if the seller is—

(a) the person, or

(b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in paragraph 2 entered into between it and the person.

4 The second transaction is exempt from charge if the provisions of this Act relating to the first transaction are complied with (including payment of any tax chargeable).

5 A transfer to the person that results from the exercise of the right mentioned in paragraph 2(c) (“the third transaction”) is exempt from charge if—

(a) the provisions of this Act relating to the first and second transactions are complied with, and

(b) at all times between the second and third transactions—
(i) the interest purchased under the first transaction is held by a financial institution, and

(ii) the lease or sub-lease granted under the second transaction is held by the person.

6 The agreement mentioned in paragraph 2(c) is not to be treated—

(a) as substantially performed unless and until the third transaction is entered into (and accordingly section 14 does not apply), or

(b) as a distinct land transaction by virtue of section 12 (options and rights of pre-emption).

Land sold to financial institution and person in common

7 Paragraphs 8 to 12 apply where arrangements are entered into between a person and a financial institution under which—

(a) the institution and the person purchase a major interest in land as common owners (“the first transaction”),

(b) the institution and the person enter into an agreement under which the person has a right to occupy the land exclusively (“the second transaction”), and

(c) the institution and the person enter into an agreement under which the person has a right to require the institution to transfer to the person (in one transaction or a series of transactions) the whole interest purchased under the first transaction.

8 The first transaction is exempt from charge if the seller is—

(a) the person, or

(b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in paragraph 7 entered into between it and the person.

9 The second transaction is exempt from charge if the provisions of this Act relating to the first transaction are complied with (including payment of any tax chargeable).

Any transfer to the person that results from the exercise of the right mentioned in paragraph 7(c) (“a further transaction”) is exempt from charge if—

(a) the provisions of this Act relating to the first transaction are complied with, and

(b) at all times between the first and the further transaction—

(i) the interest purchased under the first transaction is held by a financial institution and the person as common owners, and

(ii) the land is occupied by the person under the agreement mentioned in paragraph 7(b).

10 The agreement mentioned in paragraph 7(c) is not to be treated—

(a) as substantially performed unless and until the whole interest purchased by the institution under the first transaction has been transferred (and accordingly section 14 does not apply), or

(b) as a distinct land transaction by virtue of section 12 (options and rights of pre-emption).
A further transaction that is exempt from charge by virtue of paragraph 10 is not a notifiable transaction unless the transaction involves the transfer to the person of the whole interest purchased by the institution under the first transaction, so far as not transferred by a previous further transaction.

**Land sold to financial institution and re-sold to person**

Paragraphs 14 and 15 apply where arrangements are entered into between a person and a financial institution under which—

(a) the institution—

(i) purchases a major interest in land ("the first transaction"), and

(ii) sells that interest to the person ("the second transaction"), and

(b) the person grants the institution a standard security over that interest.

The first transaction is exempt from charge if the seller is—

(a) the person, or

(b) another financial institution by whom the interest was acquired under other arrangements of the kind mentioned in paragraph 2 or 7 entered into between it and the person.

The second transaction is exempt from charge if the financial institution complies with the provisions of this Act relating to the first transaction (including the payment of any tax chargeable on a chargeable consideration that is not less than the market value of the interest and, in the case of the grant of a lease, the rent).

**PART 3**

**Alternative property finance: arrangements not relieved**

**No relief where first transaction already relieved**

Paragraphs 2 to 12 do not apply to arrangements in relation to which group relief, reconstruction relief or acquisition relief—

(a) is available for the first transaction, or

(b) has been withdrawn from that transaction.

**No relief where arrangements to transfer control of financial institution**

Paragraphs 2 to 12 do not apply to alternative finance arrangements if those arrangements, or any connected arrangements, include arrangements for a person to acquire control of the relevant financial institution.

That includes arrangements for a person to acquire control of the relevant financial institution only if one or more conditions are met (such as the happening of an event or doing of an act).

In paragraphs 17 and 18—

“alternative finance arrangements” means the arrangements referred to in paragraphs 2 and 7,
“connected arrangements” means any arrangements entered into in connection with the making of the alternative finance arrangements (including arrangements involving one or more persons who are parties to the alternative finance arrangements),

“relevant financial institution” means the financial institution which enters into the alternative finance arrangements.

Section 1124 of the Corporation Tax Act 2010 (c.4) applies for determining who has control of the relevant financial institution.

**PART 4**

**EXEMPT INTEREST**

**Interest held by financial institution an exempt interest**

21 An interest held by a financial institution as a result of the first transaction within the meaning of paragraph 2(a) or 7(a) is an exempt interest for the purposes of the tax.

22 That interest ceases to be an exempt interest if—

(a) the lease or agreement mentioned in paragraph 2(b) or 7(b) ceases to have effect, or

(b) the right under paragraph 2(c) or 7(c) ceases to have effect or becomes subject to a restriction.

23 Paragraph 21 does not apply if the first transaction is exempt from charge by virtue of schedule 10 (group relief) or 11 (reconstruction and acquisition reliefs).

24 Paragraph 21 does not make an interest exempt in respect of—

(a) the first transaction itself, or

(b) a third transaction or a further transaction within the meaning of paragraph 5 or 10.

**PART 5**

**INTERPRETATION**

**Interpretation**

25 (1) In this schedule “financial institution” has the meaning given by section 564B of the Income Tax Act 2007 (c.3).

(2) For this purpose section 564B(1) applies as if paragraph (d) were omitted.

26 In this schedule—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

references to a person are to be read, in relation to times after the death of the person concerned, as references to the person’s personal representatives.
SCHEDULE 8
(introduced by section 27)
RELIEF FOR ALTERNATIVE FINANCE INVESTMENT BONDS

PART 1

OVERVIEW AND INTERPRETATION

Overview of relief

1 (1) This schedule makes provision for relief in the case of certain land transactions connected to alternative finance investment bonds.

(2) It is arranged as follows—

Part 2 provides that certain events relating to a bond are not to be treated as chargeable transactions (except in certain cases),

Part 3 sets out general conditions for the operation of the reliefs in Part 4,

Part 4 provides for relief in the case of certain transactions (and withdrawal of that relief),

Part 5 makes provision about supplementary matters including when the reliefs in Part 4 are not available.

Meaning of “alternative finance investment bond”

2 In this schedule, “alternative finance investment bond” means arrangements to which section 564G of the Income Tax Act 2007 (c.3) (investment bond arrangements) applies.

Interpretation

3 In this schedule—

“bond assets”, “bond-holder”, “bond-issuer” and “capital” have the meaning given by section 564G of the Income Tax Act 2007 (c.3),

“prescribed” means prescribed in regulations made by the Scottish Ministers,

“qualifying interest” means a major interest in land other than a lease for a period of 21 years or less.

PART 2

ISSUE, TRANSFER AND REDEMPTION OF RIGHTS UNDER BOND NOT TO BE TREATED AS CHARGEABLE TRANSACTION

The relief

4 For the purposes of this Act—

(a) the bond-holder under an alternative finance investment bond is not treated as having an interest in the bond assets,

(b) the bond-issuer under such a bond is not treated as a trustee of the bond assets.
Relief not available where bond-holder acquires control of underlying asset

5 (1) Paragraph 4 does not apply if control of the underlying asset is acquired by—
   (a) a bond-holder, or
   (b) a group of connected bond-holders.

5 (2) A bond-holder (BH), or a group of connected bond-holders, acquires control of the underlying asset if—
   (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and
   (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise the right of management and control of the bond assets to the exclusion of any other bond-holders.

6 (1) But paragraph 5(1) does not apply (and accordingly, section 564S of the Income Tax Act 2007 applies by virtue of paragraph 4) in either of the following cases.

   (2) The first case is where—
       (a) at the time that the rights were acquired BH (or all the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets to the exclusion of other bond-holders, and
       (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that exercise no longer to be possible.

   (3) The second case is where BH—
       (a) underwrites a public offer of rights under the bond, and
       (b) does not exercise the right of management and control of the bond assets.

   (4) In this paragraph, “underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

PART 3
GENERAL CONDITIONS FOR OPERATION OF RELIEFS ETC.

Introduction

7 This Part of this schedule defines conditions A to G for the purposes of paragraphs 15 to 21.

Condition A

8 Condition A is that one person (P) and another (Q) enter into arrangements under which—
   (a) P transfers to Q a qualifying interest in land (“the first transaction”), and
   (b) P and Q agree that when the interest ceases to be held by Q as mentioned in paragraph 9(b), Q will transfer the interest to P.
Condition B

9 Condition B is that—
   (a) Q, as bond-issuer, enters into an alternative finance investment bond (whether
      before or after entering into the arrangements mentioned in paragraph 8), and
   (b) the interest in land to which those arrangements relate is held by Q as a bond
      asset.

Condition C

10 (1) Condition C is that, for the purpose of generating income or gains for the alternative
       finance investment bond—
       (a) Q and P enter into a leaseback agreement, or
       (b) such other condition or conditions as may be specified in regulations made by the
           Scottish Ministers is or are met.

       (2) For the purposes of condition C, Q and P enter into a leaseback agreement if Q grants to
           P, out of the interest transferred to Q—
           (a) a lease (if the interest transferred is the interest of the owner), or
           (b) a sub-lease (if the interest transferred is the tenant’s right over or interest in land
               subject to a lease).

Condition D

11 (1) Condition D is that, before the end of the period of 120 days beginning with the
       effective date of the first transaction, Q provides the Tax Authority with the prescribed
       evidence that a satisfactory standard security has been registered in the Land Register of
       Scotland.

       (2) A security is satisfactory for the purposes of condition D if it—
           (a) is a security ranking first granted over the interest transferred to Q,
           (b) is in favour of the Tax Authority, and
           (c) is for the amount mentioned in sub-paragraph (3).

       (3) That amount is the total of—
           (a) the amount of the tax which would (apart from paragraph 15) be chargeable on the
               first transaction if the chargeable consideration for that transaction had been the
               market value of the interest at that time, and
           (b) any interest and any penalties which would for the time being be payable on or in
               respect of that amount of tax, if the tax had been due and payable (but not paid) in
               respect of the first transaction.
Condition E

12 Condition E is that the total of the payments of capital made to Q before the termination of the bond is not less than 60% of the value of the interest in the land at the time of the first transaction.

Condition F

13 Condition F is that Q holds the interest in land as a bond asset until the termination of the bond.

Condition G

14 (1) Condition G is that—

(a) before the end of the period of 30 days beginning with the date on which the interest in the land ceases to be held as a bond asset, that interest is transferred by Q to P (“the second transaction”), and

(b) the second transaction is effected not more than 10 years after the first transaction.

(2) The Scottish Ministers may by regulations amend sub-paragraph (1)(b) by substituting for the period mentioned there such other period as may be specified.

Part 4

Relief for certain transactions

The relief: first transaction

15 (1) The first transaction is exempt from charge if—

(a) it relates to an interest in land in Scotland, and

(b) each of the conditions A to C is met before the end of the period of 30 days beginning with the effective date of the transaction.

(2) This paragraph is subject to—

(a) paragraphs 21 and 22 (where the interest in land is replaced as the bond asset by an interest in other land),

(b) paragraph 24.

Withdrawal of relief

16 (1) Relief under paragraph 15 is withdrawn if—

(a) the interest in the land is transferred by Q to P without conditions E and F having been met,

(b) the period mentioned in paragraph 14(1)(b) expires without each of those conditions having been met, or

(c) at any time it becomes apparent for any other reason that any of the conditions E to G cannot or will not be met.

\[\text{Condition E}\]

\[\text{Condition F}\]

\[\text{Condition G}\]

\[\text{Part 4}\]

\[\text{The relief: first transaction}\]

\[\text{Withdrawal of relief}\]
(2) The relief is also withdrawn if condition D is not met.

**Amount of tax chargeable where relief withdrawn**

17 Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 18.

18 The amount chargeable is the tax that would have been chargeable in respect of the first transaction (but for the relief under paragraph 15) if the chargeable consideration for that transaction had been an amount equal to—

(a) the market value of the subject-matter of the transaction, or

(b) if the acquisition was the grant of a lease, the rent.

**Relief from land and buildings transaction tax: second transaction**

19 (1) The second transaction is exempt from charge if—

(a) each of conditions A to G is met, and

(b) the provisions of this Act in relation to the first transaction are complied with.

(2) This paragraph is subject to—

15 (a) paragraphs 21 and 22 (where the interest in land is replaced as the bond asset by an interest in other land),

(b) paragraph 24.

**Discharge of security when conditions for relief met**

20 If, after the effective date of the second transaction, Q provides the Tax Authority with the prescribed evidence that each of conditions A to C and E to G has been met, the land ceases to be subject to the security registered in pursuance of condition D.

**PART 5**

**SUPPLEMENTARY**

**Substitution of asset**

21 (1) This paragraphs applies if—

(a) conditions A to C and G are met in relation to an interest in land (“the original land”),

(b) Q ceases to hold the original land as a bond asset (and, accordingly, transfers it to P) before the termination of the alternative finance investment bond,

(c) P and Q enter into further arrangements falling within paragraph 8 relating to an interest in other land (“the replacement land”), and

(d) the value of the interest in the replacement land at the time that it is transferred from P to Q is greater than or equal to the value of the interest in the original land at the time of the first transaction.
Paragraphs 15 to 20 apply—

(a) in relation to the original land with the modification set out in sub-paragraph (3), and

(b) in relation to the replacement land with the modifications set out in sub-paragraph (4).

(3) Condition F does not need to be met in relation to the original land if conditions A, B, C, F and G (as modified by sub-paragraph (4)) are met in relation to the replacement land.

(4) In relation to the replacement land—

(a) condition E applies as if the reference to the interest in the land were a reference to the interest in the original land, and

(b) condition G applies as if the reference in paragraph 14(1)(b) to the first transaction were a reference to the first transaction relating to the original land.

(5) If the replacement land is in Scotland, the original land ceases to be subject to the security registered in pursuance of condition D when—

(a) Q provides the Tax Authority with the prescribed evidence that condition G is met in relation to the original land, and

(b) condition D is met in relation to the replacement land.

(6) If the replacement land is not in Scotland, the original land ceases to be subject to the security registered in pursuance of condition D when Q provides the Tax Authority with the prescribed evidence that—

(a) condition G is met in relation to the original land, and

(b) each of conditions A to C is met in relation to the replacement land.

(1) Paragraph 21 also applies where the replacement land is replaced by further replacement land.

(2) In that event—

(a) the references to the original land (except those in paragraph 21(4)) are to be read as references to the replacement land, and

(b) the references to the replacement land are to be read as references to the further replacement land.

Where a security is discharged in accordance with paragraph 20 or 21(5) or (6), the Tax Authority must register the discharge in the Land Register of Scotland.

The Tax Authority must do so within the period of 30 days beginning with the date on which Q provides the evidence in question.

The reliefs provided by paragraphs 15 and 19 (and paragraph 21 so far as it relates to those paragraphs) are not available if control of the underlying asset is acquired by—

(a) a bond-holder, or
(b) a group of connected bond-holders.

(2) A bond-holder (BH), or a group of connected bond-holders, acquires control of the underlying asset if—

(a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and

(b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise the right of management and control of the bond assets to the exclusion of any other bond-holders.

(3) In accordance with sub-paragraph (1), in the case of relief provided by paragraph 15—

(a) if BH, or the group, acquires control of the underlying asset before the end of the period of 30 days beginning with the effective date of the first transaction, paragraph 15 does not apply, and

(b) if BH, or the group, acquires control of the underlying asset after the end of that period and conditions A to C have been met, the relief is treated as withdrawn under paragraph 16.

(1) But paragraph 24 does not prevent the reliefs being available in either of the following cases.

(2) The first case is where—

(a) at the time that the rights were acquired BH (or all of the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets to the exclusion of other bond-holders, and

(b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that no longer to be possible.

(3) The second case is where BH—

(a) underwrites a public offer of rights under the bond, and

(b) does not exercise the right of management and control of the bond assets.

(4) In this paragraph, “underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

Relief not available if purpose of arrangements is improper

(1) The reliefs provided by paragraph 15 and 19 (and paragraph 21 so far as it relates to those paragraphs) are not available if the arrangements mentioned in paragraph 8—

(a) are not effected for genuine commercial reasons, or

(b) form part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to the tax.
SCHEDULE 9
(introduced by section 27)

CROFTING COMMUNITY RIGHT TO BUY RELIEF

The relief

1 This schedule applies where—
   (a) a chargeable transaction is entered into in pursuance of the crofting community
   right to buy, and
   (b) under that transaction two or more crofts are being bought.

2 The tax chargeable in respect of the transaction is the prescribed proportion of the tax
   that would otherwise be chargeable but for this paragraph.

3 The prescribed proportion is such proportion as may be prescribed by the Scottish
   Ministers by order.

Interpretation

4 In this schedule “crofting community right to buy” means the right exercisable by a
   crofting community body under Part 3 of the Land Reform (Scotland) Act 2003 (asp 2).

SCHEDULE 10
(introduced by section 27)

GROUP RELIEF

PART 1

INTRODUCTORY

Overview

1 (1) This schedule provides for relief for certain transactions involving companies.
   (2) It is arranged as follows—
       Part 2 provides for when relief is available,
       Part 3 provides for when the relief is withdrawn,
       Part 4 defines expressions used in this schedule.

PART 2

THE RELIEF

2 A land transaction is exempt from charge if the seller and buyer are companies that at
   the effective date of the transaction are members of the same group.
Restrictions on availability of relief

3 Relief under this schedule is not available if at the effective date of the transaction there are arrangements in existence by virtue of which, at that or some later time, a person has or could obtain, or any persons together have or could obtain, control of the buyer but not of the seller.

5 Paragraph 3 does not apply to arrangements to which paragraph 9 or 10 applies.

4 Relief under this schedule is not available if the transaction is effected in pursuance of, or in connection with, arrangements under which—

(a) the consideration, or any part of the consideration, for the transaction is to be provided or received (directly or indirectly) by a person other than a group company, or

(b) the seller and the buyer are to cease to be members of the same group by reason of the buyer ceasing to be a 75% subsidiary of the seller or a third company.

6 Arrangements are within paragraph 5(a) if under them the seller or the buyer, or another group company, is to be enabled to provide any of the consideration, or is to part with any of it, by or in consequence of the carrying out of a transaction or transactions involving, or any of them involving, a payment or other disposition by a person other than a group company.

7 Paragraph 5(b) does not apply to arrangements to which paragraph 10 applies.

8 Relief under this schedule is not available if the transaction—

(a) is not effected for bona fide commercial reasons, or

(b) forms part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.

Arrangements that do not restrict availability of relief

9 This paragraph applies to arrangements entered into with a view to an acquisition of shares by a company (“the acquiring company”)—

(a) in relation to which section 75 of the Finance Act 1986 (c.41) (stamp duty: acquisition relief) will apply,

(b) in relation to which the conditions for relief under that section will be met, and

(c) as a result of which the buyer will be a member of the same group as the acquiring company.

10 This paragraph applies to arrangements in so far as they are for the purpose of facilitating a transfer of the whole or part of the business of a company to another company in relation to which—

(a) section 96 of the Finance Act 1997 (c.16) (stamp duty relief: demutualisation of insurance companies) is intended to apply, and

(b) the conditions for relief under that section are intended to be met.

Interpretation

11 In this Part of this schedule—
“control” has the meaning given by section 1124 of the Corporation Tax Act 2010 (c.4),
“group company” means a company that at the effective date of the transaction is a member of the same group as the seller and the buyer.

PART 3
WITHDRAWAL OF RELIEF

Overview

12 This Part of this schedule is arranged as follows—
paragraphs 13 to 19 provide for circumstances where relief under this schedule is withdrawn,
paragraphs 20 to 31 provide for circumstances in which, despite paragraphs 13 to 19, relief is not withdrawn, and
paragraphs 32 to 40 provide for the application of paragraphs 13 to 31 where there are successive transactions.

Withdrawal of relief

13 Relief under this schedule is withdrawn or partially withdrawn where paragraphs 14 and 15 apply.
14 This paragraph applies where the buyer in the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”) ceases to be a member of the same group as the seller—
(a) before the end of the period of 3 years beginning with the effective date of the transaction, or
(b) in pursuance of, or in connection with, arrangements made before the end of that period.
15 This paragraph applies where, at the time the buyer ceases to be a member of the same group as the seller (“the relevant time”), it or a relevant associated company holds a chargeable interest—
(a) that was acquired by the buyer under the relevant transaction, or
(b) that is derived from a chargeable interest so acquired,
and that has not subsequently been acquired at market value under a chargeable transaction for which relief under this schedule was available but not claimed.

Amount of tax chargeable where relief withdrawn

16 Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 17.
17 The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for the relief if the chargeable consideration for that transaction had been an amount equal to—
(a) the market value of the subject-matter of the transaction, or
(b) if the acquisition was the grant of a lease, the rent.

*Amount of tax chargeable where relief partially withdrawn*

18 Where relief is partially withdrawn, the amount of tax chargeable is an appropriate proportion of the amount determined in accordance with paragraph 17.

19 An “appropriate proportion” means an appropriate proportion having regard to—

(a) the subject-matter of the relevant transaction, and

(b) what is held at the relevant time by the buyer or, as the case may be, by the buyer and its relevant associated companies.

*Case where relief not withdrawn: winding up*

20 Relief under this schedule is not withdrawn where the buyer ceases to be a member of the same group as the seller by reason of anything done for the purposes of, or in the course of, winding up the seller or another company that is above the seller in the group structure.

*Cases where relief not withdrawn: stamp duty reliefs*

21 Relief under this schedule is not withdrawn where—

(a) the buyer ceases to be a member of the same group as the seller as a result of an acquisition of shares by another company (“the acquiring company”) in relation to which—

(i) section 75 of the Finance Act 1986 (c.41) (stamp duty: acquisition relief) applies, and

(ii) the conditions for relief under that section are met, and

(b) the buyer is immediately after that acquisition a member of the same group as the acquiring company.

22 Relief under this schedule is not withdrawn where—

(a) the buyer ceases to be a member of the same group as the seller as a result of the transfer of the whole or part of the seller’s business to another company (“the acquiring company”) in relation to which—

(i) section 96 of the Finance Act 1997 (c.16) (stamp duty relief: demutualisation of insurance companies) applies, and

(ii) the conditions for relief under that section are met, and

(b) the buyer is immediately after that transfer a member of the same group as the acquiring company.

23 But where, in a case to which paragraph 21 or 22 applies—

(a) the buyer ceases to be a member of the same group as the acquiring company in the circumstances mentioned in paragraph 24, and

(b) at the time the buyer ceases to be a member of the same group as the acquiring company, it or a relevant associated company holds a chargeable interest to which paragraph 25 applies,
this schedule applies as if the buyer had then ceased to be a member of the same group as the seller.

24 The circumstances referred to in paragraph 23(a) are that the buyer ceases to be a member of the same group as the acquiring company—

(a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”), or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

25 This paragraph applies to a chargeable interest—

(a) that was acquired by the buyer under the relevant transaction, or

(b) that is derived from a chargeable interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction for which relief under this schedule was available but not claimed.

15 Case where relief not withdrawn: seller leaves group

26 Relief under this schedule is not withdrawn where the buyer ceases to be a member of the same group as the seller because the seller leaves the group.

27 The seller is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in—

(a) the seller, or

(b) another company that is above the seller in the group structure and as a result of the transaction ceases to be a member of the same group as the buyer.

28 But if there is a change in the control of the buyer after the seller leaves the group, paragraphs 13 to 19 and 22 to 25 have effect as if the buyer had then ceased to be a member of the same group as the seller.

29 Paragraph 28 does not apply where—

(a) there is a change in the control of the buyer because a loan creditor (within the meaning given by section 453 of the Corporation Tax Act 2010 (c.4)) obtains control of, or ceases to control, the buyer, and

(b) the other persons who controlled the buyer before the change continue to do so.

30 There is a change in the control of the buyer if—

(a) a person who controls the buyer (alone or with others) ceases to do so,

(b) a person obtains control of the buyer (alone or with others), or

(c) the buyer is wound up.

31 For the purposes of paragraph 30 a person does not control, or obtain control of, the buyer if that person is under the control of another person or other persons.
Withdrawal of relief in certain cases involving successive transactions

32 Where the following conditions are met, paragraphs 13 to 31 have effect in relation to the relevant transaction as if the seller in relation to the earliest previous transaction falling within paragraph 37 were the seller in relation to the relevant transaction.

5 The first condition is that there is a change in control of the buyer.

34 The second condition is that the change occurs—

(a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”), or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

35 The third condition is that, apart from paragraph 32, relief under this schedule in relation to the relevant transaction would not be withdrawn under paragraph 13.

36 The fourth condition is that any previous transaction falls within paragraph 37.

37 A previous transaction falls within this paragraph if—

(a) the previous transaction is exempt from charge by virtue of this schedule or schedule 11 (reconstruction relief and acquisition relief),

(b) the effective date of the previous transaction is less than 3 years before the date of the change mentioned in the first condition,

(c) the chargeable interest acquired under the relevant transaction by the buyer in relation to that transaction is the same as, comprises, forms part of, or is derived from, the chargeable interest acquired under the previous transaction by the buyer in relation to the previous transaction, and

(d) since the previous transaction, the chargeable interest acquired under that transaction has not been acquired by any person under a transaction that is not exempt from charge by virtue of this schedule or schedule 11 (reconstruction relief and acquisition relief).

38 Paragraph 33 does not apply where—

(a) there is a change in the control of the buyer because a loan creditor (within the meaning given by section 453 of the Corporation Tax Act 2010 (c.4)) obtains control of, or ceases to control, the buyer, and

(b) the other persons who controlled the buyer before the change continue to do so.

39 If two or more transactions effected at the same time are the earliest previous transactions falling within paragraph 37, the reference in paragraph 32 to the seller in relation to the earliest previous transaction is a reference to the persons who are the sellers in relation to the earliest previous transactions.

40 There is a change in the control of a company if—

(a) a person who controls the company (alone or with others) ceases to do so,

(b) a person obtains control of the company (alone or with others), or

(c) the company is wound up.
Interpretation

41 For the purposes of paragraphs 20 and 27 a company is “above” the seller in the group structure if the seller, or another company that is above the seller in the group structure, is a 75% subsidiary of the company.

5 42 In this Part of this schedule—

“control” is to be interpreted in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c.4) (but see paragraph 31),

“relevant associated company”, in relation to the buyer, means a company that—

(a) is a member of the same group as the buyer immediately before the buyer ceases to be a member of the same group as the seller, and

(b) ceases to be a member of the same group as the seller in consequence of the buyer so ceasing.

PART 4
INTERPRETATION

15 When are companies members of the same group?

43 Companies are members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company.

When is a company a subsidiary of another company?

44 A company (A) is the 75% subsidiary of another company (B) if B—

(a) is beneficial owner of not less than 75% of the ordinary share capital of A,

(b) is beneficially entitled to not less than 75% of any profits available for distribution to equity holders of A, and

(c) would be beneficially entitled to not less than 75% of any assets of A available for distribution to its equity holders on a winding-up.

45 For the purposes of paragraph 44(a)—

(a) the ownership referred to is ownership either directly or through another company or companies,

(b) the amount of ordinary share capital of A owned by B through another company or companies is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010 (c.4).

46 “Ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.

47 Chapter 6 of Part 5 of the Corporation Tax Act 2010 (c.4) (group relief: equity holders and profits or assets available for distribution) applies for the purposes of paragraph 44(b) and (c) as it applies for the purposes of section 151(4)(a) and (b) of that Act.

48 But sections 171(1)(b) and (3), 173, 174 and 176 to 178 of that Chapter are to be treated as omitted for the purposes of paragraph 44(b) and (c).
Other definitions

49 In this schedule—

“arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable,

“company” means a body corporate.

SCHEDULE 11
(introduced by section 27)

RECONSTRUCTION RELIEF AND ACQUISITION RELIEF

PART 1
INTRODUCTORY

Overview

1 (1) This schedule provides for relief for certain transactions in connection with the reconstruction and acquisition of companies.

(2) It is arranged as follows—

Part 2 provides for when reconstruction relief is available,
Part 3 provides for when acquisition relief is available,
Part 4 provides for when the relief is withdrawn,
Part 5 defines expressions used in this schedule.

PART 2
RECONSTRUCTION RELIEF

The relief

2 A land transaction is exempt from charge if—

(a) it is entered into for the purposes of or in connection with the transfer of an undertaking or part of an undertaking, and

(b) the qualifying conditions are met.

Qualifying conditions

3 The qualifying conditions are—

(a) that a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”) in pursuance of a scheme for the reconstruction of the target company,

(b) that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to all shareholders of the target company,

(c) that after the acquisition has been made—
(i) each shareholder of each of the companies is a shareholder of the other, and
(ii) the proportion of shares of one of the companies held by any shareholder is the same, or as nearly as may be the same, as the proportion of shares of the other company held by that shareholder,

(d) that the acquisition—
(i) is effected for bona fide commercial reasons, and
(ii) does not form part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.

Where the consideration for the acquisition consists partly of the issue of non-redeemable shares as mentioned in the qualifying condition (b), that condition is met only if the rest of the consideration consists wholly of the assumption or discharge by the acquiring company of liabilities of the target company.

If, immediately before the acquisition, the target company or the acquiring company holds any of its own shares, the shares are treated for the purposes of qualifying conditions (c) and (d) as having been cancelled before the acquisition (and, accordingly, the company is to be treated as if it were not a shareholder of itself).

**PART 3**

**ACQUISITION RELIEF**

**The relief**

(1) This paragraph applies where—

(a) a land transaction is entered into for the purposes of or in connection with the transfer of an undertaking or part of an undertaking, and

(b) the qualifying conditions are met.

(2) The tax chargeable in respect of the transaction is the prescribed proportion of the tax that would otherwise be chargeable but for this paragraph.

(3) The prescribed proportion is such proportion as may be prescribed by the Scottish Ministers by order.

**Qualifying conditions**

The qualifying conditions are—

(a) that a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”),

(b) that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to—

(i) the target company, or

(ii) all or any of the target company’s shareholders,

(c) that the acquiring company is not associated with another company that is a party to arrangements with the target company relating to shares of the acquiring company issued in connection with the transfer of the undertaking or part,
(d) that the undertaking or part acquired by the acquiring company has as its main activity the carrying on of a trade that does not consist wholly or mainly of dealing in chargeable interests,

(e) that the acquisition—

(i) is effected for bona fide commercial reasons, and

(ii) does not form part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.

Where the consideration for the acquisition consists partly of the issue of non-redeemable shares as mentioned in qualifying condition (b), that condition is met only if the rest of the consideration consists wholly of—

(a) cash not exceeding 10% of the nominal value of the non-redeemable shares so issued,

(b) the assumption or discharge by the acquiring company of liabilities of the target company, or

(c) both of those things.

Interpretation

For the purposes of qualifying condition (c)—

(a) companies are associated if one has control of the other or both are controlled by the same person or person,

(b) “control” is to be construed in accordance with section 1124 of the Corporation Tax Act 2010 (c.4).

In this Part of this schedule, “trade” includes any venture in the nature of trade.

PART 4

WITHDRAWAL OF RELIEF

Overview

This Part of this schedule is arranged as follows—

paragraphs 12 to 14 provide for circumstances in which relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn,

paragraphs 15 to 21 provide for circumstances in which, despite paragraphs 12 to 14, relief is not withdrawn,

paragraphs 22 to 28 provide for the withdrawal of relief, which would otherwise not be withdrawn by virtue of paragraph 17 or 19, on the occurrence of certain subsequent events,

paragraphs 29 to 32 provide for how the tax chargeable is determined where relief is withdrawn or partially withdrawn.
Withdrawal of relief

12 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn where paragraphs 13 and 14 apply.

13 This paragraph applies where control of the acquiring company changes—

(a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of Part 2, or is subject to a reduced amount of tax by virtue of Part 3, of this schedule (“the relevant transaction”), or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

14 This paragraph applies where, at the time the control of the acquiring company changes (“the relevant time”), it or a relevant associated company holds a chargeable interest—

(a) that was acquired by the acquiring company under the relevant transaction, or

(b) that is derived from a chargeable interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction in relation to which relief under this schedule was available but was not claimed.

Case where relief not withdrawn: change of control of acquiring company as result of transaction connected to divorce etc.

15 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a share transaction that is effected as mentioned in—

(a) any of paragraphs (a) to (d) of paragraph 4 of schedule 1 (transactions connected with divorce etc.), or

(b) any of paragraphs (a) to (d) of paragraph 5 of schedule 1 (transactions connected with dissolution of civil partnership etc.).

16 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a share transaction that—

(a) is effected as mentioned in paragraph 7(1) of schedule 1, and

(b) meets the conditions in paragraph 7(2) of that schedule (variation of testamentary dispositions etc.).

Case where relief not withdrawn: exempt intra-group transfer

17 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of an exempt intra-group transfer.

18 But see paragraphs 22 to 24 for the effect of a subsequent non-exempt transfer.
Case where relief not withdrawn: share acquisition relief

19 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief applies.

20 But see paragraphs 25 to 28 for the effect of a change in the control of that other company.

Case where relief not withdrawn: controlling loan creditor

21 Relief under Part 2 or Part 3 of this schedule is not withdrawn where—

(a) control of the acquiring company changes as a result of a loan creditor (within the meaning of section 453 of the Corporation Tax Act 2010 (c.4)) becoming, or ceasing to be, treated as having control of the company, and

(b) the other persons who were previously treated as controlling the company continue to be so treated.

Withdrawal of relief on subsequent non-exempt transfer

22 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn if—

(a) control of the acquiring company changes as a result of an exempt intra-group transfer, and

(b) paragraphs 23 and 24 apply.

23 This paragraph applies where a company holding shares in the acquiring company to which the exempt intra-group transfer related, or that are derived from shares to which that transfer related, ceases to be a member of the same group as the target company—

(a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of Part 2, or is subject to a reduced amount of tax by virtue of Part 3, of this schedule (“the relevant transaction”), or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

24 This paragraph applies where the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—

(a) that was transferred to the acquiring company by the relevant transaction, or

(b) that is derived from an interest so transferred,

and that has not subsequently been transferred at market value under a chargeable transaction in relation to which relief under Part 2 or Part 3 of this schedule was available but was not claimed.

Withdrawal of relief where share acquisition relief applied but control of company subsequently changes

25 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn if—
(a) control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief applies, and
(b) paragraphs 26 to 28 apply.

26 This paragraph applies where control of the other company mentioned in paragraph 25(a) changes—
(a) before the end of the period of 3 years beginning with the effective date of the relevant transaction, or
(b) in pursuance of, or in connection with, arrangements made before the end of that period.

27 This paragraph applies where, at the time control of that other company changes, it holds shares transferred to it by the transfer mentioned in paragraph 25(a), or any shares derived from shares so transferred.

28 This paragraph applies where the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—
(a) that was transferred to the acquiring company by the relevant transaction, or
(b) that is derived from an interest so transferred,
and that has not subsequently been transferred at market value under a chargeable transaction in relation to which relief under Part 2 or Part 3 of this schedule was available but was not claimed.

29 Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 30.

30 The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for the relief if the chargeable consideration for that transaction had been an amount equal to—
(a) the market value of the subject-matter of the transaction,
(b) if the acquisition was the grant of a lease, the rent.

31 Where relief is partially withdrawn, the tax chargeable is an appropriate proportion of the amount determined in accordance with paragraph 30.

32 An “appropriate proportion” means an appropriate proportion having regard to—
(a) the subject-matter of the relevant transaction, and
(b) what is held at the relevant time by the acquiring company or, as the case may be, by that company and any relevant associated companies.

33 In paragraphs 19 and 25—
(a) “share acquisition relief” means relief under section 77 of the Finance Act 1986 (c.41), and
(b) a transfer is one in relation to which that relief applies if an instrument effecting the transfer is exempt from stamp duty by virtue of that provision.

34 In this Part of this schedule, references to control of a company changing are to the company becoming controlled—

5 (a) by a different person,
(b) by a different number of persons, or
(c) by two or more persons at least one of whom is not the person, or one of the persons, by whom the company was previously controlled.

35 In this Part of this schedule—

10 “control” is to be construed in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c.4),

“exempt intra-group transfer” means a transfer of shares effected by an instrument that is exempt from stamp duty by virtue of section 42 of the Finance Act 1930 (c.28) or section 11 of the Finance Act (Northern Ireland) 1954 (c.23 (NI)) (transfers between associated bodies corporate),

15 “relevant associated company”, in relation to the acquiring company, means a company—

(a) that is controlled by the acquiring company immediately before the control of that company changes, and
(b) of which control changes in consequence of the change of control of that company.

**PART 5**

**INTERPRETATION**

*When are companies members of the same group?*

36 Companies are members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company.

*When is a company a subsidiary of another company?*

37 A company (A) is the 75% subsidiary of another company (B) if B—

(a) is beneficial owner of not less than 75% of the ordinary share capital of A,

(b) is beneficially entitled to not less than 75% of any profits available for distribution to equity holders of A, and

(c) would be beneficially entitled to not less than 75% of any assets of A available for distribution to its equity holders on a winding-up.

38 For the purposes of paragraph 37—

35 (a) the ownership referred to in that paragraph is ownership either directly or through another company or companies, and
(b) the amount of ordinary share capital of A owned by B through another company or companies is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010 (c.4).

39 “Ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.

40 Chapter 6 of Part 5 of the Corporation Tax Act 2010 (c.4) (group relief: equity holders and profits or assets available for distribution) applies for the purposes of paragraph 37(b) and (c) as it applies for the purposes of section 151(4)(a) and (b) of that Act.

41 But sections 171(1)(b) and (3), 173, 174 and 176 to 178 of that Chapter are to be treated as omitted for the purposes of paragraph 37(b) and (c).

Other definitions

42 In this schedule—

15 “arrangements” include any scheme, agreement or understanding, whether or not legally enforceable,

“non-redeemable shares” means shares that are not redeemable shares.

SCHEDULE 12
(introduced by section 27)

RELIEF FOR INCORPORATION OF LIMITED LIABILITY PARTNERSHIP

The relief

A land transaction by which a chargeable interest is transferred by a person (“the transferor”) to a limited liability partnership in connection with its incorporation is exempt from charge if the qualifying conditions are met.

The qualifying conditions

2 The qualifying conditions are—

(a) that the effective date of the transaction is not more than 1 year after the date of incorporation of the limited liability partnership,

(b) that at the relevant time the transferor—

(i) is a partner in a partnership, or

(ii) holds the interest transferred as nominee or bare trustee for one or more partners in a partnership,

(c) that at the relevant time the partnership mentioned in paragraph (b) is comprised of all the persons who are or are to be members of the limited liability partnership (and no-one else), and

(d) that either—

(i) the proportions of the interest transferred to which the persons mentioned in paragraph (c) are entitled immediately after the transfer are the same as those to which they were entitled at the relevant time, or
(ii) none of the differences in those proportions has arisen as part of a scheme or arrangement of which the main purpose, or one of the main purposes, is avoidance of liability to the tax.

**Interpretation**

3 In this schedule—

“limited liability partnership” means a limited liability partnership formed under the Limited Liability Partnerships Act 2000 (c.12) or the Limited Liability Partnerships Act (Northern Ireland) 2002 (c.12 (N.I.)),

“the relevant time” means—

(a) where the transferor acquired the interest after the incorporation of the limited liability partnership, immediately after the transferor acquired it, and

(b) in any other case, immediately before the incorporation of the limited liability partnership.

**The relief**

1 A land transaction is exempt from charge if the buyer is a charity and the qualifying conditions are met.

**Qualifying conditions**

2 The qualifying conditions are—

(a) that the buyer intends to hold—

(i) the subject-matter of the transaction, or

(ii) the greater part of that subject-matter, for qualifying charitable purposes, and

(b) that the transaction has not been entered into for the purpose of avoiding the tax (whether by the buyer or any other person).

**Qualifying charitable purposes**

3 A buyer holds the subject-matter of a transaction for qualifying charitable purposes if the buyer holds it—

(a) for use in the furtherance of the charitable purposes of the buyer or of another charity, or

(b) as an investment from which the profits are applied to the charitable purposes of the buyer.
Withdrawal of relief

4 Relief under this schedule is withdrawn, or partially withdrawn, if—
   (a) a disqualifying event occurs—
      (i) before the end of the period of 3 years beginning with the effective date of
           the transaction which was exempt from charge under this schedule (“the
           relevant transaction”), or
      (ii) in pursuance of, or in connection with, arrangements made before the end
           of that period, and
   (b) at the time of the disqualifying event the buyer holds a chargeable interest—
      (i) that was acquired by the buyer under the relevant transaction, or
      (ii) that is derived from an interest so acquired.

5 A “disqualifying event” means—
   (a) the buyer ceasing to be established for charitable purposes only, or
   (b) the subject-matter of the relevant transaction, or any interest or right derived from
       it, being held or used by the buyer otherwise than for qualifying charitable
       purposes.

6 Where the relevant transaction is exempt from charge by virtue of qualifying condition
   (a)(ii), the following are also disqualifying events—
   (a) any transfer by the buyer of a major interest in the whole or any part of the
       subject-matter of the relevant transaction, or
   (b) any grant by the buyer at a premium of a low-rental lease of the whole or any part
       of that subject-matter,

   that is not made for the charitable purposes of the buyer.

7 A lease—
   (a) is granted “at a premium” if there is consideration other than rent, and
   (b) is a “low-rental” lease if the annual rent (if any) is less than £1,000 a year.

8 Where relief is withdrawn, the amount of tax chargeable is the amount that would have
   been chargeable in respect of the relevant transaction but for the relief.

9 Where relief is partially withdrawn, the amount of tax chargeable is an appropriate
   proportion of the tax that would have been chargeable but for the relief.

10 An “appropriate proportion” means an appropriate proportion having regard to—
   (a) what was acquired by the buyer under the relevant transaction and what is held by
       the buyer at the time of the disqualifying event, and
   (b) the extent to which what is held by the buyer at that time becomes used or held for
       purposes other than qualifying charitable purposes.

11 In relation to a transfer or grant that is, by virtue of paragraph 6, a disqualifying event—
   (a) the date of the event for the purposes of paragraph 4 is the effective date of the
       transfer or grant,
   (b) paragraph 4(b) has effect as if, for “at the time” there were substituted
       “immediately before”,


(c) paragraph 10 has effect as if—
   (i) in sub-paragraph (a), for “at the time of” there were substituted “immediately before and immediately after”,
   (ii) sub-paragraph (b) were omitted.

5 Charitable trusts

12 This schedule applies in relation to a charitable trust as it applies to a charity.

13 “Charitable trust” means—
   (a) a trust of which all the beneficiaries are charities, or
   (b) a unit trust scheme in which all the unit holders are charities.

14 In this schedule as it applies in relation to a charitable trust—
   (a) references to the buyer in paragraph 3(a) and (b) are to the beneficiaries or unit holders, or any of them,
   (b) the reference to the buyer in paragraph 5(a) is to any of the beneficiaries or unit holders,
   (c) the reference in paragraph 6 to the charitable purposes of the buyer is to those of the beneficiaries or unit holders, or any of them.

Interpretation

15 (1) In this schedule, “charity” means—
   (a) a body registered in the Scottish Charity Register, or
   (b) a body which is—
      (i) established under the law of a relevant territory,
      (ii) managed or controlled wholly or mainly outwith Scotland, and
      (iii) meets at least one of the conditions in sub-paragraph (2).

(2) The conditions are—
   (a) the body is registered in a register corresponding to the Scottish Charity Register,
   (b) the body’s purposes consist only of one or more of the charitable purposes.

(3) A relevant territory is—
   (a) England and Wales,
   (b) Northern Ireland,
   (c) a member State of the European Union other than the United Kingdom, or
   (d) a territory specified in regulations made by the Scottish Ministers.

15A In this schedule, "charitable purposes" has the meaning given by section 106 of the Charities and Trustee Investments (Scotland) Act 2005 (asp 10).

16 In this schedule, “annual rent” means the average annual rent over the term of the lease or, if—
   (a) different amounts of rent are payable for different parts of the term, and
(b) those amounts (or any of them) are ascertainable at the time of the disqualifying event,

the average annual rent over the period for which the highest ascertainable rent is payable.

SCHEDULE 14
(introduced by section 27)

RELIEF FOR CERTAIN COMPULSORY PURCHASES

The relief

An acquisition of a chargeable interest by a local authority is exempt from charge if the qualifying condition is met.

Qualifying condition

The qualifying condition is that the local authority has made a compulsory purchase order in respect of the chargeable interest for the purpose of facilitating the undertaking or achievement of an activity or purpose mentioned in section 189 of the Town and Country Planning (Scotland) Act 1997 (c.8) by another person.

Interpretation

For the purposes of this schedule it does not matter how the acquisition is effected (so this provision applies where the acquisition is effected by agreement).

SCHEDULE 15
(introduced by section 27)

RELIEF FOR COMPLIANCE WITH PLANNING OBLIGATIONS

The relief

A land transaction that is entered into in order to comply with—

(a) a planning obligation, or

(b) a modification of a planning obligation,

is exempt from charge if the qualifying conditions are met.

The qualifying conditions

The qualifying conditions are—

(a) that the planning obligation or modification is enforceable against the seller,

(b) that the buyer is a public body, and

(c) the effective date of the transaction is within the period of 5 years beginning with the date on which the planning obligation was entered into or modified.
“Planning obligation” and “modification”

3 “Planning obligation” means an agreement made under section 75 of the Town and Country Planning (Scotland) Act 1997 (c.8).

4 “Modification” of a planning obligation means modification as mentioned in sections 75A and 75B of that Act.

Public authorities

5 The following are public bodies for the purposes of paragraph 2(b)—

a local authority,

the common services agency established under section 10(1) of the National Health Service (Scotland) Act 1978 (c.29),

a health board established under section 2(1)(a) of that Act,

Healthcare Improvement Scotland established under section 10A of that Act,

a special health board established under section 2(1)(b) of that Act,

any other body that is the planning authority for any of the purposes of the planning Acts within the meaning of the Town and Country Planning (Scotland) Act 1997 (c.8),

a person prescribed for the purposes of this paragraph by the Scottish Ministers by order.

SCHEDULE 16
(introduced by section 27)

PUBLIC BODIES RELIEF

The relief

1 A land transaction entered into on, in consequence of or in connection with a reorganisation effected by or under an enactment is exempt from charge if the buyer and seller are both public bodies.

2 The Scottish Ministers may, by order, provide that a land transaction that is not entered into as mentioned in paragraph 1 is exempt from charge if—

(a) the transaction is effected by or under an enactment specified in the order, and

(b) either the buyer or the seller is a public body.

Meaning of “reorganisation”

3 A “reorganisation” means changes involving—

(a) the establishment, reform or abolition of one or more public bodies,

(b) the creation, alteration or abolition of functions to be discharged or discharged by one or more public bodies, or

(c) the transfer of functions from one public body to another.
Public bodies

4 The following are public bodies for the purposes of this schedule—

the Scottish Ministers,

a Minister of the Crown,

the Scottish Parliamentary Corporate Body,

a local authority,

the common services agency established under section 10(1) of the National Health Service (Scotland) Act 1978 (c.29),

a health board established under section 2(1)(a) of that Act,

Healthcare Improvement Scotland established under section 10A of that Act,

a special health board established under section 2(1)(b) of that Act,

any other authority that is the planning authority for any of the purposes of the planning Acts within the meaning of the Town and Country Planning (Scotland) Act 1997 (c.8),

a body (other than a company) that is established by or under an enactment for the purpose of carrying out functions conferred on it by or under an enactment,

a person prescribed for the purposes of this paragraph by the Scottish Ministers by order.

5 In this schedule, references to a public body include—

(a) a company in which all the shares are owned by such a body, and

(b) a wholly-owned subsidiary of such a company.

6 In paragraphs 4 and 5, “company” means a company as defined by section 1 of the Companies Act 2006.
Part 5 makes provision about transactions involving transfers from a partnership to a partner or certain other persons (including transfers between partnerships),

Part 6 makes provision about transfers of interest in, and transactions involving, a property investment partnership,

Part 7 makes provision about the application of provisions of this Act on exemptions, reliefs, and notification to transactions falling within Parts 4 to 6,

Part 8 defines expressions used in this schedule.

**PART 2**

**GENERAL PROVISIONS**

Meaning of “partnership”

10 In this Act, “partnership” means—

(a) a partnership within the Partnership Act 1890 (c.39),

(b) a limited partnership registered under the Limited Partnerships Act 1907 (c.24),

(c) a limited liability partnership formed under the Limited Liability Partnerships Act 2000 (c.12) or the Limited Liability Partnerships Act (Northern Ireland) 2002 (c.12 (N.I.)),

(d) a firm or entity of a similar character to any of those mentioned in paragraphs (a) to (c) formed under the law of a country or territory outside the United Kingdom.

Chargeable interests treated as being held by partners etc.

20 (1) For the purposes of this Act—

(a) a chargeable interest held by or on behalf of a partnership is treated as held by or on behalf of the partners, and

(b) a land transaction entered into for the purposes of a partnership is treated as entered into by or on behalf of the partners,

and not by or on behalf of the partnership as such.

(2) Sub-paragraph (1) applies notwithstanding that the partnership is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.

Acquisition of interest in partnership not chargeable except as specially provided

30 The acquisition of an interest in a partnership is not a chargeable transaction, notwithstanding that the partnership property includes land, except as provided by—

(a) Part 4 of this schedule (transfer of chargeable interest to a partnership),

(b) paragraph 17 (transfer of partnership interest pursuant to earlier arrangements), or

(c) paragraph 31 (transfer of interest in property-investment partnership).
Continuity of partnership

5 For the purposes of this Act, a partnership is treated as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member after the change.

5 Partnership not to be regarded as unit trust scheme etc.

6 A partnership is not to be regarded for the purposes of this Act as a unit trust scheme or an open ended investment company.

PART 3

ORDINARY PARTNERSHIP TRANSACTIONS

Introduction

7 This Part of this schedule applies to land transactions entered into as buyer by or on behalf of the members of a partnership, other than transactions within Parts 4 to 6 of this schedule.

Responsibility of partners

8 (1) Anything required or authorised to be done under this Act by or in relation to the buyer in the transaction is required or authorised to be done by or in relation to all the responsible partners.

(2) The responsible partners in relation to a transaction are—
   (a) the persons who are partners at the effective date of the transaction, and
   (b) any person who becomes a member of the partnership after that date.

(3) This paragraph has effect subject to paragraph 9 (representative partners).

Representative partners

9 (1) Anything required or authorised to be done by or in relation to the responsible partners may instead be done by or in relation to any representative partner or partners.

(2) This includes making the declaration required by section 36 (declaration that return is complete and correct).

(3) A representative partner means a partner nominated by a majority of the partners to act as the representative of the partnership for the purposes of this Act.

(4) Any such nomination, or the revocation of such a nomination, has effect only after notice of the nomination, or revocation, has been given to the Tax Authority.

Joint and several liability of responsible partners

10 (1) Where the responsible partners are liable to make a payment of tax, the liability is a joint and several liability of those partners.
Part 4

Transactions involving transfer to a partnership

Overview of Part

This Part of this schedule is arranged as follows—

- paragraphs 12 to 16 make provision about the treatment of certain land transactions involving the transfer of a chargeable interest to a partnership,
- paragraphs 17 and 18 provide for certain events following such transactions to be treated as land transactions.

Circumstances in which this Part applies

12 (1) This Part of this schedule applies where—

- a partner transfers a chargeable interest to the partnership,
- a person transfers a chargeable interest to a partnership in return for an interest in the partnership, or
- a person connected with—
  - a partner, or
  - a person who becomes a partner as a result of or in connection with the transfer,

transfers a chargeable interest to the partnership.

12 (2) This Part of this schedule applies whether the transfer is in connection with the formation of the partnership or is a transfer to an existing partnership.

12 (3) In this Part of this schedule—

- “the land transfer” means the transaction mentioned in sub-paragraph (1), and
- “the partnership” means the partnership to which the chargeable interest is transferred.

12 (4) This paragraph has effect subject to any election under paragraph 34.

Calculation of chargeable consideration etc.

13 (1) The chargeable consideration for the land transfer is taken to be equal to—

\[ MV \times (100 - SLP)\% \]

where—

- MV is the market value of the interest transferred, and
- SLP is the sum of the lower proportions determined in accordance with paragraph 14.
Land and Buildings Transaction Tax (Scotland) Bill
Schedule 17—Partnerships
Part 4—Transactions involving transfer to a partnership

(2) Paragraphs 8 to 10 (responsibility of partners) have effect in relation to the land transfer, but the responsible partners are—
(a) those who were partners immediately before the transfer and who remain partners after the transfer, and
(b) any person becoming a partner as a result of, or in connection with, the transfer.

(3) This paragraph does not apply if the whole or part of the chargeable consideration for the land transfer is rent (see paragraph 28A (application of Parts 3 to 5 to leases)).

Sum of the lower proportions

14 The sum of the lower proportions in relation to the land transfer is determined as follows.

Step 1
Identify the relevant owner or owners.

Step 2
For each relevant owner, identify the corresponding partner or partners.

If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil.

Step 3
For each relevant owner, find the proportion of the chargeable interest to which the owner was entitled immediately before the land transfer.

Apportion that proportion between any one or more of the relevant owner’s corresponding partners.

Step 4
Find the lower of the following proportions (“the lower proportion”) for each corresponding partner—
(a) the sum of the proportions (if any) of the chargeable interest apportioned to the partner (at Step 3) in respect of each relevant owner,
(b) the partner’s partnership share immediately after the land transfer.

Step 5
Add together the lower proportions for each corresponding partner.

The result is the sum of the lower proportions.

Relevant owner

15 (1) For the purposes of paragraph 14 (see Step 1), a person is a relevant owner if—
(a) immediately before the land transfer, the person was entitled to a proportion of the chargeable interest, and
(b) immediately after the land transfer, the person is a partner or connected with a partner.
(2) For the purposes of this paragraph and paragraph 14, persons who are entitled to a chargeable interest as joint owners are to be taken to be entitled to the chargeable interest as common owners in equal shares.

**Corresponding partner**

16 (1) For the purposes of paragraph 14 (see Step 2), a person is a corresponding partner in relation to a relevant owner if, immediately after the land transfer—

(a) the person is a partner, and

(b) the person is the relevant owner or is an individual connected with the relevant owner.

(2) For the purposes of sub-paragraph (1)(b) a company is to be treated as an individual connected with the relevant owner in so far as it—

(a) holds property as trustee, and

(b) is connected with the relevant owner only because of section 1122(6) of the Corporation Tax Act 2010 (c.4).

**Transfer of partnership interest pursuant to earlier arrangements**

17 (1) This paragraph applies where—

(a) subsequent to the land transfer, there is a transfer of an interest in the partnership (“the partnership transfer”),

(b) the partnership transfer is made—

(i) if the land transfer falls within paragraph 12(1)(a) or (b), by the person who makes the land transfer,

(ii) if the land transfer falls within paragraph 12(1)(c), by the partner concerned,

(c) the partnership transfer is made pursuant to arrangements that were in place at the time of the land transfer,

(d) the partnership transfer is not (apart from this paragraph) a chargeable transaction.

(2) The partnership transfer—

(a) is to be treated as a land transaction, and

(b) is a chargeable transaction.

(3) The partners are taken to be the buyers under the transaction.

(4) The chargeable consideration for the transaction is taken to be equal to a proportion of the market value, as at the date of the transaction, of the interest transferred by the land transfer.

(5) That proportion is—

(a) if the person making the partnership transfer is not a partner immediately after the transfer, the person’s partnership share immediately before the transfer,

(b) if that person is a partner immediately after the transfer, the difference between that person’s partnership share before and after the transfer.
(6) The partnership transfer and the land transfer are taken to be linked transactions.

(7) Paragraphs 8 to 10 (responsibility of partners) have effect in relation to the partnership transfer, but the responsible partners are—

(a) those who were partners immediately before the transfer and who remain partners after the transfer, and

(b) any person becoming a partner as a result of, or in connection with, the transfer.

Withdrawal of money etc. from partnership after transfer of chargeable interest

18 (1) This paragraph applies where, during the period of 3 years beginning with the date of the land transfer, a qualifying event occurs.

(2) A qualifying event is—

(a) a withdrawal from the partnership of money or money’s worth which does not represent income profit by the relevant person—

(i) withdrawing capital from the person’s capital account,

(ii) reducing the person’s interest, or

(iii) ceasing to be a partner, or

(b) in a case where the relevant person has made a loan to the partnership—

(i) the repayment (to any extent) by the partnership of the loan, or

(ii) a withdrawal by the relevant person from the partnership of money or money’s worth which does not represent income profit.

(3) For this purpose the relevant person is—

(a) where land transfer falls within paragraph 12(1)(a) or (b), the person who makes the land transfer,

(b) where the land transfer falls within paragraph 12(1)(c), the partner concerned or a person connected with the partner.

(4) The qualifying event—

(a) is treated as a land transaction, and

(b) is a chargeable transaction.

(5) The partners are taken to be the buyers under the transaction.

(6) Paragraphs 8 to 10 (responsibility of partners) have effect in relation to the transaction.

(7) The chargeable consideration for the transaction is taken to be—

(a) in a case falling within sub-paragraph (2)(a), equal to the value of the money or money’s worth withdrawn from the partnership,

(b) in a case falling within sub-paragraph (2)(b)(i), equal to the amount repaid,

(c) in a case falling within sub-paragraph (2)(b)(ii) equal to so much of the value of the money or money’s worth withdrawn from the partnership as does not exceed the amount of the loan.
(8) But (in any case) the chargeable consideration determined under sub-paragraph (7) is not to exceed the market value, as at the effective date of the land transfer, of the chargeable interest transferred by the land transfer, reduced by any amount previously chargeable to tax.

(9) The amount of tax payable by virtue of this paragraph in respect of the qualifying event (if any) is to be reduced (but not below nil) by any amount of tax payable by virtue of paragraph 31 (transfer for consideration of interest in property investment partnership) in respect of the event.

PART 5

TRANSACTIONS INVOLVING TRANSFER FROM A PARTNERSHIP

Overview of Part

This Part of this schedule is arranged as follows—

paragraphs 20 to 26 make provision about certain land transactions involving the transfer of a chargeable interest from a partnership,

paragraph 27 makes special provision where the transaction involves a transfer from a partnership to a partnership,

paragraph 28 makes special provision where the partnership consists entirely of bodies corporate.

Circumstances in which Part applies

(1) This Part of this schedule applies where a chargeable interest is transferred—

(a) from a partnership to a person who is or has been one of the partners, or

(b) from a partnership to a person connected with a person who is or has been one of the partners.

(2) For the purposes of this paragraph property that was partnership property before the partnership was dissolved or otherwise ceased to exist is to be treated as remaining partnership property until it is distributed.

(3) In this Part of this schedule—

“the land transfer” means the transaction mentioned in sub-paragraph (1), and

“the partnership” means the partnership from which the chargeable interest is transferred.

(4) This paragraph has effect subject to any election under paragraph 34.

Calculation of chargeable consideration

(1) The chargeable consideration for the land transfer is (subject to paragraph 28) taken to be equal to—

\[ MV \times (100 - SLP)\% \]

where—

MV is the market value of the interest transferred, and
SLP is the sum of the lower proportions determined in accordance with paragraph 22.

(2) This paragraph does not apply if the whole or part of the chargeable consideration for the transaction is rent (see paragraph 28A (application of Parts 3 to 5 to leases)).

5 **Sum of the lower proportions**

22 The sum of the lower proportions in relation to the land transfer is determined as follows.

*Step 1*
Identify the relevant owner or owners.

*Step 2*
For each relevant owner, identify the corresponding partner or partners.

If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil.

*Step 3*
For each relevant owner, find the proportion of the chargeable interest to which the owner is entitled immediately after the land transfer.

Appportion that proportion between any one or more of the relevant owner’s corresponding partners.

*Step 4*
Find the lower of the following proportions (“the lower proportion”) for each corresponding partner—

(a) the sum of the proportions (if any) of the chargeable interest apportioned to the partner (at Step 3) in respect of each relevant owner,

(b) the partnership share attributable to the partner.

*Step 5*
Add together the lower proportions of each corresponding partner. The result is the sum of the lower proportions.

**Relevant owner**

23 (1) For the purposes of paragraph 22 (see Step 1), a person is a relevant owner if—

(a) immediately after the land transfer, the person is entitled to a proportion of the chargeable interest, and

(b) immediately before the land transfer, the person was a partner or connected with a partner.

(2) For the purposes of this paragraph and paragraph 22, persons who are entitled to a chargeable interest as joint owners are taken to be entitled to the chargeable interest as common owners in equal shares.
Corresponding partner

24 (1) For the purposes of paragraph 22 (see Step 2), a person is a corresponding partner in relation to a relevant owner if, immediately before the land transfer—

(a) the person was a partner, and

(b) the person was the relevant owner or was an individual connected with the relevant owner.

(2) For the purposes of sub-paragraph (1)(b), a company is to be treated as an individual connected with the relevant owner in so far as it—

(a) holds property as trustee, and

(b) is connected with the relevant owner only because of section 1122(6) of the Corporation Tax Act 2010 (c.4).

Partnership share attributable to partner

25 (1) This paragraph provides for determining the partnership share attributable to a partner for the purposes of paragraph 22 (see Step 4).

(2) Where any tax payable in respect of the transfer of the relevant chargeable interest to the partnership has not been paid under this Act, the partnership share attributable to a partner is zero.

(3) Where the partner ceases to be a partner before the effective date of the transfer of the relevant chargeable interest to the partnership, the partnership share attributable to the partner is zero.

(4) In any other case, paragraph 26 applies for determining the partnership share attributable to a partner.

(5) In this paragraph and paragraph 26, the relevant chargeable interest is—

(a) the chargeable interest which ceases to be partnership property as a result of the land transfer, or

(b) where the land transfer is the creation of a chargeable interest, the chargeable interest out of which that interest is created.

26 (1) Where this paragraph applies, the partnership share attributable to the partner is determined as follows.

Step 1

Find the partner’s actual partnership share on the relevant date.

The relevant date—

(a) if the partner was a partner on the effective date of the transfer of the relevant chargeable interest to the partnership, is that date,

(b) if the partner became a partner after that date, is the date on which the partner became a partner.

Step 2

Add to that partnership share any increases in the partner’s partnership share which—
(c) occur in the period starting on the day after the relevant date and ending immediately before the land transfer, and

(d) count for this purpose.

The result is the increased partnership share.

An increase counts for the purpose of paragraph (b) only if any tax payable in respect of the transfer which resulted in the increase has been duly paid under this Act.

**Step 3**

Deduct from the increased partnership share any decreases in the partner’s partnership share which occur in the period starting on the day after the relevant date and ending immediately before the land transfer.

The result is the partnership share attributable to the partner.

(2) If the effect of applying Step 3 would be to reduce the partnership share attributable to the partner below zero, the partnership share attributable to the partner is zero.

**Transfer of chargeable interest from a partnership to a partnership**

27 (1) This paragraph applies where—

(a) there is a transfer of a chargeable interest from a partnership to a partnership, and

(b) the transfer is both—

(i) a transaction to which Part 4 of this schedule applies, and

(ii) a transaction to which this Part of this schedule applies.

(2) Paragraphs 13(1) and 21(1) do not apply.

(3) The chargeable consideration for the transaction is taken to be what it would have been if paragraph 13(1) had applied or, if greater, what it would have been if paragraph 21(1) had applied.

**Transfer of chargeable interest from a partnership consisting wholly of bodies corporate**

28 (1) This paragraph applies where—

(a) immediately before the land transfer all the partners are bodies corporate, and

(b) the sum of the lower proportions is 75 or more.

(2) Paragraphs 21, 27 and 28A have effect subject to the following modifications.

(3) For paragraph 21 substitute—

“21 The chargeable consideration for the land transfer is taken to be equal to the market value of the interest transferred.”.

(3A) In paragraph 27(2) and (3), for “21(1)” substitute “21”.

(3B) In paragraph 28A—

(a) in sub-paragraph (2), for “sub-paragraphs (3) to (6)” substitute “sub-paragraph (5)”,

(b) omit sub-paragraphs (3), (4), (6), (7) and (9).
(4) Paragraph 22 provides for determining the sum of the lower proportions.

**PART 5A**

**APPLICATION OF PARTS 3 TO 5 TO LEASES**

**Application of Parts 3 to 5 to leases**

28A(1) This paragraph applies in relation to a transaction to which paragraph 12 or 20 applies where the whole or part of the chargeable consideration for the transaction is rent.

(2) Schedule 18A (leases) has effect with the modifications set out in sub-paragraphs (3) to (6).

(3) In paragraph 4—

(a) in Step 1, for “the net present value (NPV) of the rent payable over the term of the lease” substitute “the relevant chargeable proportion of the net present value (NPV) of the rent payable over the term of the lease”, and

(b) in Step 2, for “the NPV” substitute “the relevant chargeable proportion”.

(4) In paragraph 5—

(a) in Step 1, for “the total of the net present values (TNPV) of the rent payable over the terms of all the leases” substitute “the total of the relevant chargeable proportions of the net present values (TNPV) of the rent payable over the terms of all the leases”,

(b) in Step 2, for “the TNPV” substitute “the total of the relevant chargeable proportions”, and

(c) in Step 4—

(i) for “the net present value” substitute “the relevant chargeable proportion”, and

(ii) for “the TNPV” substitute “the total of the relevant chargeable proportions”.

(5) In paragraph 8(1), for “paragraph 9” substitute “paragraph 13 or 21 of schedule 17 and paragraph 9 of this schedule”.

(6) In paragraph 9(6)—

(a) in paragraph (a), for “the annual rent” substitute “the relevant chargeable proportion of the annual rent”, and

(b) in paragraph (b), for “the total of the annual rents” substitute “the relevant chargeable proportion of the total of the annual rents”.

(7) For the purposes of schedule 18A as modified by this paragraph, the relevant chargeable proportion is—

\[(100-\text{SLP})\%\]

where SLP is the sum of the lower proportions.

(8) The following paragraphs apply for determining the sum of the lower proportions—

(a) in the case of a transaction to which paragraph 12 applies, paragraph 14, and

(b) in the case of a transaction to which paragraph 20 applies, paragraph 22.
(9) In the case of a transaction to which paragraph 20 applies, this paragraph is subject to paragraph 28.

**Part 6**

**Property investment partnerships**

Overview of Part

29 This Part of this schedule is arranged as follows—

- paragraphs 31 to 33 make provision about certain transactions involving the transfer of an interest in a property investment partnership,
- paragraph 34 provides that a property investment partnership may elect to disapply paragraph 12 in relation to certain land transactions.

Meaning of “property investment partnership”

30 (1) In this schedule, “property-investment partnership” means a partnership whose sole or main activity is investing or dealing in chargeable interests (whether or not that activity involves the carrying out of construction operations on the land in question).

(1A) For the purposes of sub-paragraph (1) “chargeable interests” includes any interest which would be a chargeable interest but for the fact that it relates to land outwith Scotland.

(2) In sub-paragraph (1) “construction operations” has the same meaning as in Chapter 3 of Part 3 of the Finance Act 2004 (see section 74 of that Act).

Transfer of interest in partnership treated as land transaction

31 (1) This paragraph applies where—

- (a) there is a transfer of an interest in a property-investment partnership, and
- (b) the relevant partnership property includes a chargeable interest.

(2) The transfer—

- (a) is treated as a land transaction, and
- (b) is a chargeable transaction.

(3) The buyer in the transaction is the person who acquires an increased partnership share or, as the case may be, becomes a partner in consequence of the transfer.

(4) The chargeable consideration for the transaction is taken to be equal to a proportion of the market value of the relevant partnership property.

(5) That proportion is—

- (a) if the person acquiring the interest in the partnership was not a partner before the transfer, the person’s partnership share immediately after the transfer,
- (b) if the person was a partner before the transfer, the difference between the person’s partnership share before and after the transfer.

(6) The relevant partnership property, in relation to a Type A transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than—
(a) any chargeable interest that was transferred to the partnership in connection with the transfer,
(b) a lease to which paragraph 32 (exclusion of market rent leases) applies, and
(c) any chargeable interest that is not attributable economically to the interest in the partnership that is transferred.

(7) The relevant partnership property, in relation to a Type B transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than—
(a) any chargeable interest that was transferred to the partnership in connection with the transfer,
(b) a lease to which paragraph 32 (exclusion of market rent leases) applies,
(c) any chargeable interest that is not attributable economically to the interest in the partnership that is transferred,
(d) any chargeable interest in respect of whose transfer to the partnership an election has been made under paragraph 34,
(e) any other chargeable interest whose transfer to the partnership did not fall within paragraph 12(1)(a), (b) or (c).

(8) A Type A transfer is—
(a) a transfer that takes the form of arrangements entered into under which—
(i) the whole or part of a partner’s interest as partner is acquired by another person (who may be an existing partner), and
(ii) consideration in money or money’s worth is given by or on behalf on the person acquiring the interest, or
(b) a transfer that takes the form of arrangements entered into under which—
(i) a person becomes a partner,
(ii) the interest of an existing partner in the partnership is reduced or an existing partner ceases to be a partner, and
(iii) there is a withdrawal of money or money’s worth from the partnership by the existing partner mentioned in sub-paragraph (ii) (other than money or money’s worth paid from the resources available to the partnership prior to the transfer).

(9) Any other transfer to which this paragraph applies is a Type B transfer.

(10) An interest in respect of the transfer of which this paragraph applies is to be treated as a chargeable interest for the purposes of paragraph 15 of schedule 10 to the extent that the relevant partnership property consists of a chargeable interest.

Exclusion of market rent leases

32 (1) A lease held as partnership property immediately after a transfer of an interest in the partnership is not relevant partnership property for the purposes of paragraph 31(6) or (7) if the following four conditions are met.

(2) The first condition is that—
(a) no chargeable consideration other than rent has been given in respect of the grant of the lease, and

(b) no arrangements are in place at the time of the transfer for any chargeable consideration other than rent to be given in respect of the grant of the lease.

5 (3) The second condition is that the rent payable under the lease as granted was a market rent at the time of the grant.

(4) The third condition is that—

(a) the term of the lease is 5 years or less, or

(b) if the term of the lease is more than 5 years—

(i) the lease provides for the rent payable under it to be reviewed at least once in every 5 years of the term, and

(ii) the rent payable under the lease as a result of a review is required to be a market rent at the review date.

(5) The fourth condition is that there has been no change to the lease since it was granted which is such that, immediately after the change has effect, the rent payable under the lease is less that a market rent.

(6) The market rent of a lease at any time is the rent which the lease might reasonably be expected to fetch at that time in the open market.

(7) A review date is a date from which the rent determined as a result of a rent review is payable.

Partnership interests: application of provisions about exchanges etc.

33 (1) Where paragraph 5 of schedule 2 (exchanges) applies to the acquisition of an interest in a partnership in consideration of entering into a land transaction with an existing partner, the interest in the partnership is to be treated as a major interest in land for the purposes of that paragraph if the relevant partnership property includes a major interest in land.

25 (2) In sub-paragraph (1) “relevant partnership property” has the meaning given by paragraph 31(6) or (7) (as appropriate).

(3) The provisions of paragraph 6 of schedule 2 (partition etc.: disregard of existing interest) do not apply where this paragraph applies.

Election by property-investment partnership to disapply Part 4

34 (1) Part 4 of this schedule does not apply to a transfer of a chargeable interest to a property-investment partnership if the buyer in relation to the transaction elects for that paragraph not to apply.

(2) Where an election under this paragraph is made in respect of a transaction—

(a) Part 5 of this schedule (if relevant) is also disapplied,

(b) the chargeable consideration for the transaction is taken to be the market value of the chargeable interest transferred, and

(c) the transaction falls within Part 3 of this schedule.
(3) An election under this paragraph must be included in the land transaction return made in respect of the transaction or in an amendment of that return.

(4) Such an election is irrevocable and a land transaction return may not be amended so as to withdraw the election.

(5) Where an election under this paragraph in respect of a transaction (the “main transaction”) is made in an amendment of the land transaction return—

(a) the election has effect as if it had been made on the date on which the land transaction return was made, and

(b) any land transaction return in respect of an affected transaction may be amended (within the period allowed for amendment of that return) to take account of that election.

(6) In sub-paragraph (5) “affected transaction”, in relation to the main transaction, means a transaction—

(a) to which paragraph 31 applied, and

(b) with an effective date on or after the effective date of the main transaction.

**PART 7**

**APPLICATION OF PROVISIONS ON EXEMPTIONS, RELIEFS AND NOTIFICATION**

**Overview of Part**

This Part of this schedule is arranged as follows—

paragraph 36 makes general provision about the application of exemptions and reliefs to transactions mentioned in Parts 4 to 6 of this schedule,

paragraphs 37 and 38 makes provision about the application of group relief to certain transactions mentioned in Part 4 of this schedule,

paragraph 39 makes provision about the application of charities relief to certain transfers of interest in a partnership,

paragraph 40 makes provision about the notification of certain transfers of interest in a partnership.

**Application of exemptions and reliefs: general**

(1) Paragraph 1 of schedule 1 (exemption of transactions for which there is no chargeable consideration) does not apply to—

(a) a transaction to which Part 4 applies,

(b) a transaction to which Part 5 applies, or

(c) a transfer of interest in a partnership which is treated as a land transaction by virtue of paragraph 17 or 31.

(2) But subject to paragraphs 37 and 39 this schedule has effect subject to any other provision affording exemption or relief from the tax.
Application of group relief

37 (1) Schedule 10 (group relief) applies with the following modifications to—

(a) a transaction to which Part 4 applies, and
(b) a transfer of interest in a partnership which is treated as a land transaction by virtue of paragraph 17.

(2) For paragraphs 14 and 15 substitute—

“14 This paragraph applies where a partner who was a partner at the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant partner” and “the relevant transaction” respectively) ceases to be a member of the same group as the seller—

(a) before the end of the period of 3 years beginning with the effective date of the transaction, or
(b) in pursuance of, or in connection with, arrangements made before the end of that period.

15 This paragraph applies where, at the time the relevant partner ceases to be a member of the same group as the seller (“the relevant time”), a chargeable interest is held by or on behalf of the members of the partnership and that chargeable interest—

(a) was acquired by or on behalf of the partnership under the relevant transaction, or
(b) is derived from a chargeable interest so acquired, and has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed.”.

(3) For paragraph 19(b), substitute—

“(b) what is held at the relevant time by or on behalf of the partnership and to the proportion in which the relevant partner is entitled at the relevant time to share in the income profits of the partnership.”.

(4) In paragraphs 20 to 42, for “the buyer” (wherever appearing) substitute “the relevant partner”.

38 (1) This paragraph applies where in calculating the sum of the lower proportions in relation to a transaction (in accordance with paragraph 14)—

(a) a company (“the connected company”) would have been a corresponding partner of a relevant owner (“the original owner”) but for the fact that paragraph 16 includes connected persons only if they are individuals, and
(b) the connected company and the original owner are members of the same group.

(2) The charge in respect of the transaction is to be reduced to the amount that would have been payable had the connected company been a corresponding partner of the original owner for the purposes of calculating the sum of the lower proportions.

(3) The provisions of schedule 10 apply to the relief under sub-paragraph (2) as to group relief under paragraph 2 of that schedule, but—

(a) with the omission of paragraph 5(a),
(b) with the substitution for paragraphs 14 and 15 of—

14 This paragraph applies where a partner ("the relevant partner") who was, at the effective date of the transaction which is exempt from charge by virtue of this schedule ("the relevant transaction"), a partner and a member of the same group as the transferor, ceases to be a member of the same group as the seller—

(a) before the end of the period of 3 years beginning with the effective date of the transaction, or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

15 This paragraph applies where, at the time the relevant partner ceases to be a member of the same group as the seller ("the relevant time"), a chargeable interest is held by or on behalf of the members of the partnership and that chargeable interest—

(a) was acquired by or on behalf of the partnership under the relevant transaction, or

(b) is derived from a chargeable interest so acquired,

and has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed.”,

(c) with the other modifications specified in paragraph 37(3) and (4).

Application of charities relief

39 (1) Schedule 13 (charities relief) applies to the transfer of interest in a partnership that is a chargeable transaction by virtue of paragraph 17 or 31 with these modifications.

(2) In paragraph 1, for “A land transaction is exempt from charge if the buyer is a charity” substitute “A transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17 or 31 of schedule 17 is exempt from charge if the transferee is a charity”.

(3) For paragraph 2(a), substitute—

“(a) that every chargeable interest held as partnership property immediately after the transfer must be held for qualifying charitable purposes,”.

(4) In paragraph 2(b), for “the buyer” substitute “the transferee”.

(4A) In paragraph 3, for “A buyer holds the subject-matter of a transaction for qualifying charitable purposes if the buyer holds it” substitute “A chargeable interest is held for qualifying charitable purposes if it is held”.

(5) In paragraph 3(a), for “the buyer” substitute “the transferee”.

(5A) In paragraph 3(b), for “the buyer” substitute “the partners”.

(6) For paragraph 4(b) substitute—

“(b) at the time of the disqualifying event the partnership property includes a chargeable interest—

(i) that was held as partnership property immediately after the relevant transaction, or
(ii) that is derived from an interest held as partnership property at that time.”.

(7) In paragraph 5(a), for “the buyer” substitute “the transferee”.

(8) For paragraph 5(b) substitute—

“(b) any chargeable interest held as partnership property immediately after the relevant transaction, or any interest or right derived from it, being used or held otherwise than for qualifying charitable purposes.”.

(9) For paragraph 10 substitute—

“10 An “appropriate proportion” means an appropriate proportion having regard to—

(a) the chargeable interests held as partnership property immediately after the relevant transaction and the chargeable interests held as partnership property at the time of the disqualifying event, and

(b) the extent to which any chargeable interest held as partnership property at that time becomes used or held for purposes other than qualifying charitable purposes.”.

(10) After paragraph 16 insert—

“17 There is a transfer of an interest in a partnership for the purposes of this schedule if there is such a transfer for the purposes of Part 3 of schedule 17 (see paragraph 47 of that schedule).

18 Paragraph 42 of schedule 17 (meaning of references to partnership property) applies for the purposes of this schedule as it applies for the purposes of that schedule.”.

Notification of transfers of partnership interests

40 (1) A transaction which is a chargeable transaction by virtue of paragraph 17 or 31 (transfer of partnership interest) is a notifiable transaction if (but only if) the consideration for the transaction exceeds the nil rate tax band.

(2) The consideration for a transaction exceeds the nil rate tax band if—

(a) the chargeable consideration, or

(b) where the transaction is one of a number of linked transactions, the total of the chargeable consideration for all the linked transactions, exceeds the nil rate tax band applicable to the transaction.

PART 8
INTERPRETATION

Introduction

41 This Part of this schedule defines expressions used in this schedule.
Partnership property

42 Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business.

Partnership share

43 Any reference to a person’s partnership share at any time is to the proportion in which the person is entitled at that time to share in the income profits of the partnership.

Transfer of chargeable interest

44 References to the transfer of a chargeable interest include—

(a) the creation of a chargeable interest,

(b) the renunciation or release of a chargeable interest, and

(c) the variation of a chargeable interest.

Transfer of chargeable interest to a partnership

45 For the purposes of this schedule, there is a transfer of a chargeable interest to a partnership in any case where a chargeable interest becomes partnership property.

Transfer of chargeable interest from a partnership

46 For the purposes of this schedule, there is a transfer of a chargeable interest from a partnership in any case where—

(a) a chargeable interest that was partnership property ceases to be partnership property, or

(b) a chargeable interest is created out of partnership property and the interest is not partnership property.

Transfer of interest in a partnership

47 For the purposes of this schedule, where a person acquires a partnership share or a person’s partnership share increases there is a transfer of an interest in the partnership (to that partner and from the other partners).

Connected persons

48 In the application of section 1122 of the Corporation Tax Act 2010 (connected persons) for the purposes of this schedule—

(a) that section has effect with the omission of subsection (7) (partners connected with each other), and

(b) for the purposes of paragraph 12 or 22, that section has effect with the omission of subsection (6)(c) to (e) (trustee connected with settlement).
Arrangements

49 “Arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

SCHEDULE 18
(introduced by section 50)

TRUSTS

PART 1

OVERVIEW

Overview

10 (1) This schedule makes provision about the application of this Act in relation to trusts.

(2) It is arranged as follows—

Part 2 makes provision for the application of this Act to trusts generally,

Part 3 makes provision for the treatment of certain transactions involving bare trusts,

Part 4 makes provision for the treatment of certain transactions involving settlements,

Part 5 makes provision for the liability of trustees of a settlement to pay the tax and make returns and declarations,

Part 6 defines expressions used in this schedule.

PART 2

TREATMENT OF TRUSTS AND BENEFICIARIES GENERALLY

Interests of beneficiaries under certain trusts

2 Paragraphs 3 and 4 apply where property is held in trust—

(a) under the law of Scotland, or

(b) under the law of a country or territory outwith the United Kingdom,

on terms such that, if the trust had effect under the law of England and Wales, a beneficiary would be regarded as having an equitable interest in the trust property.

3 The beneficiary is to be treated for the purpose of this Act as having a beneficial interest in the trust property despite the fact that no such interest is recognised by the law of Scotland or of the country or territory outwith the United Kingdom.

4 An acquisition of the interest of a beneficiary under the trust is to be treated as involving the acquisition of an interest in the trust property.
PART 3

TRANSACTIONS INVOLVING BARE TRUSTS

Acquisition of chargeable interest by bare trustee

5 Where a person (T) acquires a chargeable interest or an interest in a partnership as bare trustee, this Act applies as if the interest were vested in, and the acts of T in relation to it were the acts of the person or persons for whom T is trustee.

5A However, any tax due by the person or persons may, without prejudice to any other method of recovery, be recovered from T.

6 Paragraphs 5 and 5A do not apply in relation to the grant of a lease.

Grant of lease to bare trustee

7 Where a lease is granted to a person as bare trustee, the person is to be treated for the purposes of this Act, as it applies in relation to the grant of a lease, as buyer of the whole of the interest acquired.

Grant of lease by bare trustee

8 Where a person, as bare trustee, grants a lease, the person is to be treated for the purposes of this Act, as it applies in relation to the grant of a lease, as seller of the whole of the interest disposed of.

PART 4

TRANSACTIONS INVOLVING SETTLEMENTS

Acquisition by trustees of settlements

9 Where persons, as trustees of a settlement, acquire a chargeable interest or an interest in a partnership, they are to be treated for the purposes of this Act, as it applies to that acquisition, as buyers of the whole of the interest acquired (including the beneficial interest).

Consideration for exercise of power of appointment or discretion

10 Paragraph 11 applies where a chargeable interest is acquired by virtue of—

(a) the exercise of a power of appointment, or

(b) the exercise of a discretion vested in trustees of a settlement.

11 Any consideration given for the person in whose favour the appointment was made or the discretion was exercised becoming an object of the power or discretion is to be treated for the purpose of this Act as the consideration for the acquisition of the interest.

Reallocation of trust property as between beneficiaries

12 Paragraph 13 applies where—
(a) the trustees of a settlement reallocate trust property in such a way that a
beneficiary acquires an interest in certain trust property and ceases to have an
interest in other trust property, and
(b) the beneficiary consents to ceasing to have an interest in that other property.

The fact that the beneficiary gives consent does not mean that there is chargeable
consideration for the acquisition.

**PART 5**

**SETTLEMENTS: PAYMENT OF TAX AND RETURNS**

**Liability to pay the tax**

Where the trustees of a settlement are liable to pay the tax, the payment may be
recovered (but only once) from any one or more of the responsible trustees.

**Liability to make returns**

A return in relation to a land transaction may be made by any one or more of the
responsible trustees in relation to the transaction (the “relevant trustees”).

**Duty to make declaration**

The declaration required by section 36(1) or (2)(a) must be made by all the relevant
trustees.

**Responsible trustees**

The responsible trustees, in relation to a land transaction, are—

(a) the persons who are trustees at the effective date of the transaction, and
(b) any person who subsequently becomes a trustee.

**PART 6**

**INTERPRETATION**

**Meaning of “bare trust”**

In this schedule, a “bare trust”—

(a) is a trust under which the property is held by a person as trustee—
   (i) for a person who is absolutely entitled as against the trustee, or who would
   be so entitled but for being under a legal disability by reason of non-age or
   under another disability, or
   (ii) for two or more persons who are or would be jointly so entitled, and
(b) includes a case in which a person holds property as a nominee for another.
Meaning of “absolutely entitled”

19 The references in paragraph 18 to a person being absolutely entitled to property as against the trustee are references to a case where the person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustee—

(a) to resort to the property for payment of duty, taxes, costs or other outgoings, or

(b) to direct how the property is to be dealt with.

Meaning of “settlement”

20 In this schedule, “settlement” means a trust that is not a bare trust.

SCHEDULE 18A

(introduced by section 55)

LEASES

PART 1

INTRODUCTORY

Overview

1 (1) This schedule makes provision about the application of this Act in relation to leases.

(2) It is arranged as follows—

Part 2 makes provision for the calculation of the tax chargeable in relation to chargeable consideration which consists of rent,

Part 3 makes provision about the calculation of the tax chargeable in relation to other chargeable consideration,

Part 4 makes provision for the review of tax chargeable at periodic intervals and on certain events,

Part 5 makes provision about chargeable consideration in relation to leases, including consideration which consists of rent, consideration other than rent and consideration that is not treated as chargeable consideration,

Part 6 makes provision about duration of leases and about the application of this Act to transactions involving leases generally.

Calculation of tax chargeable where chargeable consideration includes rent

2 Where the chargeable consideration for a chargeable transaction to which this schedule applies consists of rent (or includes rent and chargeable consideration other than rent), the tax chargeable is the sum of—

(a) any tax chargeable on so much of the chargeable consideration as consists of rent, and

(b) any tax chargeable on so much of the chargeable consideration other than rent.
PART 2

AMOUNT OF TAX CHARGEABLE: RENT

Tax rates and tax bands

3 (1) The Scottish Ministers must, by order, specify the tax bands and the percentage tax rates for each band applicable to chargeable consideration which consists of rent.

(2) An order under sub-paragraph (1) must specify—
   (a) a nil rate tax band and at least one other tax band,
   (b) the tax rate for the nil rate tax band, which must be 0%, and
   (c) the tax rate for each tax band above the nil rate tax band so that the rate for each band is higher than the rate for the band below it.

Amount of tax chargeable in respect of rent

4 The amount of tax chargeable on so much of the chargeable consideration as consists of rent is to be determined as follows.

   Step 1
   Calculate the net present value (NPV) of the rent payable over the term of the lease (see paragraph 6).

   Step 2
   For each tax band, multiply so much of the NPV as falls within the band by the tax rate for that band.

   Step 3
   Calculate the sum of the amounts reached under Step 2.
   The result is the amount of tax chargeable in respect of rent.

Amount of tax chargeable in respect of rent: linked transactions

5 Where a chargeable transaction to which this schedule applies is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the amount of tax chargeable in respect of the rent is to be determined as follows.

   Step 1
   Calculate the total of the net present values (TNPV) of the rent payable over the terms of all the leases (see paragraph 6).

   Step 2
   For each tax band, multiply so much of the TNPV as falls within the band by the tax rate for that band.

   Step 3
   Calculate the sum of the amounts reached under Step 2.
   The result is the total tax chargeable in respect of rent.
Step 4
Divide the net present value of the rent payable over the term of the lease in question by the TNPV.

Step 5
Multiply the total tax chargeable in respect of rent by the fraction reached under Step 4.
The result is the amount of tax chargeable in respect of rent for the lease in question.

Net present value
The net present value (NPV) of the rent payable over the term of a lease is calculated by applying the following formula—

\[ NPV = \sum_{i=1}^{n} \frac{r_i}{(1 + T)^i} \]

where—
- \( r_i \) is the rent payable in respect of year \( i \),
- \( i \) is the first, second, third etc. year of the term of the lease,
- \( n \) is the term of the lease, and
- \( T \) is the temporal discount rate (see paragraph 7).

Temporal discount rate
(1) For the purposes of this schedule the “temporal discount rate” is 3.5% or such other rate as may be specified by the Scottish Ministers by order.

(2) An order under this paragraph may—
(a) specify a rate or make provision for any such rate to be determined by reference to such rate or the average of such rates as may be referred to in the order,
(b) provide for rates to be reduced below, or increased above, what they otherwise would be by specified amounts or by reference to specified formulae,
(c) provide for rates arrived at by reference to averages to be rounded up or down, and
(d) provide for circumstances in which alteration of a rate is or is not to take place.

PART 3
AMOUNT OF TAX CHARGEABLE: CONSIDERATION OTHER THAN RENT

Amount of tax chargeable in respect of consideration other than rent: general

(1) Where in the case of a transaction to which this schedule applies there is chargeable consideration other than rent, the provisions of this Act apply in relation to that consideration as in relation to other chargeable consideration (but see paragraph 9).

(2) Where a transaction to which this schedule applies falls to be taken into account as a linked transaction for the purposes of section 26, no account is to be taken of rent in determining the relevant consideration.
Amount of tax chargeable in respect of consideration other than rent: nil rate tax band

9 (1) This paragraph applies in the case of a transaction to which this schedule applies where—
   (a) there is chargeable consideration other than rent, and
   (b) section 25 or 26 applies to the transaction.

(2) If the relevant rent is at least £1,000, the nil rate tax band does not apply in relation to the consideration other than rent and any such consideration that would have fallen within that band is treated as falling within the next tax band.

(3) Sub-paragraphs (4) and (5) apply if—
   (a) the transaction to which this schedule applies is one of a number of linked transactions,
   (b) the relevant land is partly residential property and partly non-residential property, and
   (c) the relevant rent attributable, on a just and reasonable apportionment, to the land that is non-residential property is at least £1,000.

(4) For the purposes of determining the amount of tax chargeable under section 26 in relation to the consideration other than rent, the transactions are treated as if they were two sets of transactions, namely—
   (a) one whose subject-matter consists of all of the interests in land that is residential property, and
   (b) one whose subject-matter consists of all of the interests in land that is non-residential property.

(5) For that purpose, the chargeable consideration attributable to each of those separate sets of linked transactions is the chargeable consideration so attributable on a just and reasonable apportionment.

(6) In this paragraph “the relevant rent” means—
   (a) the annual rent in relation to the transaction in question, or
   (b) if that transaction is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the total of the annual rents in relation to all of those transactions.

(7) In sub-paragraph (6) the “annual rent” means—
   (a) the average annual rent over the term of the lease, or
   (b) if—
      (i) different amounts of rent are payable for different parts of the term, and
      (ii) those amounts (or any of them) are ascertainable at the effective date of the transaction,
      the average annual rent over the term for which the highest ascertainable rent is payable.

(8) In this paragraph “relevant land” means—
   (a) the land an interest in which is the main subject-matter of the transaction,
(b) if the transaction in question is one of a number of linked transactions, any land an interest in which is the main subject-matter of any of those transactions.

**PART 4**

**REVIEW OF TAX CHARGEABLE**

5

*Regular review of tax chargeable*

10 (1) This paragraph applies where, in relation to a chargeable transaction to which this schedule applies—

(a) the buyer made a land transaction return, or

(b) where such a return was not made, the buyer made—

10

(i) a return under section 31 (return where contingency ceases or consideration ascertained),

(ii) a return under paragraph 21 (return where lease for fixed term continues after end of term),

(iii) a return under paragraph 23 (return in relation to lease for indefinite term),

15

or

(iv) a return under paragraph 32 (return where transaction becomes notifiable on variation of rent or term).

(2) The buyer must make a further return to the Tax Authority if, on a review date, the lease—

20

(a) has not been assigned, or

(b) has not terminated (whether on the term of the lease coming to an end or otherwise).

(3) The return must be made before the end of the period of 30 days beginning with the day after the review date.

25

(4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction at that review date.

(5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

30

(5A) Where less tax is payable in respect of the transaction than has already been paid, the overpayment is to be repaid by the Tax Authority.

(6) In this paragraph, the “review date” is—

35

(a) in the case of a transaction to which sub-paragraph (1)(a) applies, the day falling on the third anniversary of the effective date of the transaction and on each subsequent third anniversary of that date,

(b) where the return mentioned in sub-paragraph (1)(b)(i) is the first return made in relation to the transaction, the day falling on the third anniversary of the date on which the event mentioned in section 31(2) occurred,
(c) where the return mentioned in sub-paragraph (1)(b)(ii) is the first return made in relation to the transaction, the day falling on the third anniversary of the date on which the 1 year period mentioned in paragraph 21(3) ended and on each subsequent third anniversary of that date,

(d) where the return mentioned in sub-paragraph (1)(b)(iii) is the first return made in relation to the transaction, the day falling on the third anniversary of the date on which the deemed fixed term mentioned in paragraph 23(2) ended and on each subsequent third anniversary of that date,

(e) where the return mentioned in sub-paragraph (1)(b)(iv) is the first return made in relation to the transaction, the day falling on the third anniversary of the date the variation mentioned in paragraph 32 takes effect and on each subsequent third anniversary of that date.

**Review of tax chargeable on certain events**

11 (1) This paragraph applies where, in relation to a chargeable transaction to which this schedule applies—

(a) paragraph 10 applies, and

(b) the lease—

(i) is assigned, or

(ii) terminates (whether on the term of the lease coming to an end or otherwise).

(2) The buyer must make a further return to the Tax Authority.

(3) The return must be made before the end of the period of 30 days beginning with the day after the day (the “relevant day”) on which the lease is assigned or terminated.

(4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction at the relevant day.

(5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

(6) Where less tax is payable in respect of the transaction than has already been paid, the overpayment is to be repaid by the Tax Authority.

**PART 5**

**CHARGEABLE CONSIDERATION: RENT AND CONSIDERATION OTHER THAN RENT**

**Rent**

12 (1) For the purposes of this Act, a single sum expressed to be payable in respect of rent, or expressed to be payable in respect of rent and other matters but not apportioned, is to be treated as entirely rent.

(2) Sub-paragraph (1) is without prejudice to the application of paragraph 4 of schedule 2 (chargeable consideration: just and reasonable apportionment) where separate sums are expressed to be payable in respect of rent and other matters.
Variable or uncertain rent

14 (1) This paragraph applies to determine the amount of rent payable under a lease where that amount—
   (a) varies in accordance with provision in the lease, or
   (b) is contingent, uncertain or unascertained.

(2) The provisions of this Act apply as in relation to other chargeable consideration and accordingly the provisions of sections 18 and 19 apply if the amount is contingent, uncertain or unascertained.

(3) But section 20(b) does not apply.

(4) For the purposes of this paragraph, the cases where the amount of rent payable under a lease is uncertain or unascertained include cases where there is a possibility of that amount being varied under—
   (a) section 13, 14, 15 or 31 of the Agricultural Holdings (Scotland) Act 1991 (c.55),
   or
   (b) section 9, 10 or 11 of the Agricultural Holdings (Scotland) Act 2003 (asp 11).

(5) No account is to be taken for the purposes of this paragraph of any provision for rent to be adjusted in line with the retail prices index, consumer prices index or any other similar index.

Reverse premium

15 (1) In the case of the grant, assignation or renunciation of a lease a reverse premium does not count as chargeable consideration.

(2) A “reverse premium” means—
   (a) in relation to the grant of a lease, a premium moving from the landlord to the tenant,
   (b) in relation to the assignation of a lease, a premium moving from the assignor to the assignee,
   (c) in relation to the renunciation of a lease, a premium moving from the tenant to the landlord.

Tenant’s obligations etc. that do not count as chargeable consideration

16 (1) In the case of the grant of a lease none of the following counts as chargeable consideration—
   (a) any undertaking by the tenant to repair, maintain or insure the leased premises,
   (b) any undertaking by the tenant to pay any amount in respect of services, repairs, maintenance or insurance or the landlord’s costs of management,
   (c) any other obligation undertaken by the tenant that is not such as to affect the rent that a tenant would be prepared to pay in the open market,
   (d) any guarantee of the payment of rent or the performance of any other obligation of the tenant under the lease,
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(c) any penal rent, or increased rent in the nature of a penal rent, payable in respect of the
breach of any obligation of the tenant under the lease,

(f) any other obligation of the tenant to bear the landlord’s reasonable costs or expenses of or incidental to the grant of a lease,

(g) any obligation under the lease to transfer to the landlord, on the termination of the
lease, payment entitlements granted to the tenant under the single payment scheme (that is, the scheme of income support for farmers in pursuance of Title III of Council Regulation (EC) No. 73/2009) in respect of the land subject to the lease).

(2) Where sub-paragraph (1) applies in relation to an obligation, a payment made in
discharge of the obligation does not count as chargeable consideration.

(3) The release of any such obligations as in mentioned in sub-paragraph (1) does not count as chargeable consideration in relation to the renunciation of the lease.

Assignation of lease: assumption of obligations by assignee

In the case of an assignation of a lease the assumption by the assignee of the obligation—

(a) to pay rent, or

(b) to perform or observe any other undertaking of the tenant under the lease,
does not count as chargeable consideration for the assignation.

Loan or deposit in connection with grant or assignation of lease

Where, under arrangements made in connection with the grant of a lease—

(a) a tenant, or any person connected with or acting on behalf of the tenant, pays a
deposit, or makes a loan, to any person, and

(b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the tenant or on the death of the tenant,

the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Act to be consideration other than rent given for the grant of the lease.

Where, under arrangements made in connection with the assignation of a lease—

(a) the assignee, or any person connected with or acting on behalf of the assignee, pays a deposit, or makes a loan, to any person, and

(b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the assignee or on the death of the assignee,

the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Act to be consideration other than rent given for the assignation of the lease.

Sub-paragraph (1) or (2) does not apply in relation to a deposit if the amount that would otherwise fall within the sub-paragraph in question in relation to the grant or (as the case requires) assignation of the lease is not more than twice the relevant maximum rent.

The relevant maximum rent is—
(a) in relation to the grant of a lease, the highest amount of rent payable in respect of any consecutive 12 month period during the term of the lease,

(b) in relation to the assignation of a lease, the highest amount of rent payable in respect of any consecutive 12 month period during the term of the lease remaining outstanding as at the date of the assignation.

(5) In determining the highest amount of rent for the purposes of sub-paragraph (4), take into account (if necessary) any amounts determined by virtue of paragraph 14(2) but disregard paragraph 25(2) (deemed reduction of rent, where further lease granted, for periods during which rents overlap).

(6) Tax is not chargeable by virtue of this paragraph merely because of paragraph 9 (which excludes the nil rate tax band in cases where the relevant rent attributable to non-residential property is not less than £1,000 a year).

Renunciation of existing lease in return for new lease

19 (1) Where a lease is granted in consideration of the renunciation of an existing lease between the same parties—

(a) the grant of the new lease does not count as chargeable consideration for the renunciation, and

(b) the renunciation does not count as chargeable consideration for the grant of the new lease.

(2) Paragraph 5 (exchanges) of schedule 2 (chargeable consideration) does not apply in such a case.

PART 6
OTHER PROVISION ABOUT LEASES

Meaning of lease for a fixed term

20 In the application of this schedule to a lease for a fixed term, no account is to be taken of—

(a) any contingency as a result of which the lease may terminate before the end of the fixed term, or

(b) any right of either party to terminate the lease or renew it.

Leases that continue after a fixed term

21 (1) This paragraph applies to—

(a) a lease for a fixed term and thereafter until terminated, or

(b) a lease for a fixed term that may continue beyond the fixed term by operation of law.

(2) For the purposes of this Act (except section 30 (notifiable transactions)), a lease to which this paragraph applies is treated—

(a) in the first instance as if it were a lease for the original fixed term and no longer,
(b) if the lease continues after the end of that term, as if it were a lease for a fixed term of 1 year longer than the original fixed term,

(c) if the lease continues after the end of the term resulting from the application of paragraph (b), as if it were a lease for a fixed term 2 years longer than the original fixed term,

and so on.

(3) In a case where no land transaction return or any other return has been made in relation to the transaction, where the effect of sub-paragraph (2) in relation to the continuation of the lease for a period (or further period) of 1 year after the end of a fixed term is that the transaction becomes notifiable—

(a) the buyer must make a return in respect of that transaction before the end of the period of 30 days beginning with the day after the end of that 1 year period,

(b) the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and

(c) the tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

(4) Sub-paragraph (3) is subject to paragraph 22.

(5) For the purposes of section 30 (notifiable transactions), a lease to which this paragraph applies is a lease for its original fixed term.

(6) Where—

(a) a lease would be treated as continuing for a period (or further period) of 1 year under sub-paragraph (2), but

(b) (ignoring that sub-paragraph) the lease actually terminates at a time during that period,

the lease is to be treated as continuing under sub-paragraph (2) only until that time; and the references in sub-paragraph (3) to that 1 year period are accordingly to be read as references to so much of that year as ends with that time.

Leases that continue after a fixed term: grant of new lease

22 (1) This paragraph applies where—

(a) (ignoring this paragraph) paragraph 21 would apply to treat a lease (“the original lease”) as if it were a lease for a fixed term 1 year longer than the original term,

(b) during that 1 year period the tenant under that lease is granted a new lease of the same or substantially the same premises, and

(c) the term of the new lease begins during that 1 year period.

(2) Paragraph 21 does not apply to treat the lease as continuing after the original fixed term.

(3) The term of the new lease is treated for the purposes of this Act as beginning immediately after the original fixed term.

(4) Any rent which, in the absence of this paragraph, would be payable under the original lease in respect of that 1 year period is to be treated as payable under the new lease.
(5) Where the fixed term of a lease has previously been extended (on one or more occasions) under paragraph 21, this paragraph applies as if references to the original term were references to the fixed term as previously so extended.

_Treatment of leases for indefinite term_

23 (1) For the purposes of this Act (except section 30 (notifiable transactions))—

(a) a lease for an indefinite term is treated in the first instance as if it were a lease for a fixed term of 1 year,

(b) if the lease continues after the end of the term resulting from the application of paragraph (a), it is treated as if it were a lease for a fixed term of 2 years,

(c) if the lease continues after the end of the term resulting from the application of paragraph (b), it is treated as if it were a lease for a fixed term of 3 years,

and so on.

(2) In a case where no land transaction return or any other return has been made in relation to the transaction, where the effect of sub-paragraph (1) in relation to the continuation of the lease after the end of a deemed fixed term is that the transaction becomes notifiable—

(a) the buyer must make a return in respect of that transaction before the end of the period of 30 days after the end of that term,

(b) the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and

(c) the tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

(3) For the purposes of section 30 (notifiable transactions) a lease for an indefinite term is a lease for a term of less than 7 years.

(4) References in this paragraph to a lease for an indefinite term include an interest or right terminable by a period of notice or by notice at any time.

_Treatment of successive linked leases_

24 (1) This paragraph applies where—

(a) successive leases are granted or treated as granted (whether at the same time or at different times) of the same or substantially the same premises, and

(b) those grants are linked transactions.

(2) This Act applies as if the series of leases were a single lease—

(a) granted at the time of the grant of the first lease in the series,

(b) for a term equal to the aggregate of the terms of all the leases, and

(c) in consideration of the rent payable under all of the leases.

(3) The grant of later leases in the series is accordingly disregarded for the purposes of this Act except section 34 (return or further return in consequence of later linked transaction).
Rent for overlap period in case of grant of further lease

25 (1) This paragraph applies where—

(a) A renounces an existing lease to B (“the old lease”) and in consideration of that renunciation B grants a lease to A of the same or substantially the same premises (“the new lease”),

(b) on termination of a lease (“the head lease”) a sub-tenant is granted a lease (“the new lease”) of the same or substantially the same premises as those comprised in the tenant’s original lease (“the old lease”) in pursuance of a contractual entitlement arising in the event of the head lease being terminated, or

(c) a person who has guaranteed the obligations of a tenant under a lease that has been terminated (“the old lease”) is granted a lease of the same or substantially the same premises (“the new lease”) in pursuance of the guarantee.

(2) For the purposes of this Act the rent payable under the new lease in respect of any period falling within the overlap period is treated as reduced by the amount of the rent that would have been payable in respect of that period under the old lease.

(3) The overlap period is the period between the date of grant of the new lease and what would have been the end of the term of the old lease had it not been terminated.

(4) The rent that would have been payable under the old lease is to be taken to be the amount taken into account in determining the tax chargeable in respect of the acquisition of the old lease.

(5) This paragraph does not have effect so as to require the rent payable under the new lease to be treated as a negative amount.

Agreement for lease substantially performed etc.

27 (1) Where—

(a) there is an agreement (including missives not constituting a lease) under which a lease is to be executed, and

(b) the agreement is substantially performed without a lease having been executed, the agreement is treated as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of the substantial performance.

(2) The effective date of the transaction is when the agreement is substantially performed.

(3) Where sub-paragraph (1) applies and at some later time a lease (“the actual lease”) is executed, this Act applies as if the notional lease were a lease granted—

(a) on the date the agreement was substantially performed,

(b) for a term which begins with that date and ends at the end of the term of the actual lease, and

(c) in consideration of the total rent payable over that term and any other consideration given for the agreement or the actual lease.

(4) Where sub-paragraph (3) applies the grant of the actual lease is disregarded for the purposes of this Act except section 34 (return or further return in consequence of later linked transaction).

(5) For the purposes of section 34—
(a) the grant of the notional lease and the grant of the actual lease are linked (whether or not they would be linked by virtue of section 56),

(b) the tenant under the actual lease (rather than the tenant under the notional lease) is liable for any tax or additional tax payable in respect of the notional lease as a result of sub-paragraph (3), and

(c) the reference in section 34(2) to the “buyer in the earlier transaction” is to be read, in relation to the notional lease, as a reference to the tenant under the actual lease.

(6) Where sub-paragraph (1) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph is to be (to that extent) repaid by the Tax Authority.

(7) That repayment must be claimed by amendment of the return made in respect of the agreement.

(8) In this paragraph, references to the execution of a lease are to the execution of a lease that either is in conformity with, or relates to substantially the same premises and term as, the agreement.

Missives of let followed by execution of formal lease

28 (1) Where a lease is constituted by concluded missives of let (“the first lease”) and at some later time a lease is executed (“the second lease”), the first lease is treated as if it were a lease granted—

(a) on the date the missives of let were concluded,

(b) for a term which begins with that date and ends at the end of the term of the second lease, and

(c) in consideration of the total rent payable over that term and any other consideration given for the first lease or the second lease.

(2) Where sub-paragraph (1) applies the grant of the second lease is disregarded for the purposes of this Act except section 34 (return or further return in consequence of later linked transaction).

(3) Section 62 (read with section 63) makes provision for the effective dates in relation to the first lease and the second lease.

(4) For the purposes of section 34—

(a) the grant of the first lease and the grant of the second lease are linked (whether or not they would be linked by virtue of section 56),

(b) the tenant under the second lease (rather than the tenant under the first lease) is liable for any tax or additional tax payable in respect of the first lease as a result of sub-paragraph (1), and

(c) the reference in section 34(2) to the “buyer in the earlier transaction” is to be read, in relation to the first lease, as a reference to the tenant under the second lease.

(5) In this paragraph, references to the execution of a lease are to the execution of a lease that either is in conformity with, or relates to substantially the same premises and term as, the missives of let.
Cases where assignation of lease treated as grant of lease

29 (1) This paragraph applies where the grant of a lease is exempt from charge by virtue of any of the provisions specified in sub-paragraph (3).

(2) The first assignation of the lease that is not exempt from charge by virtue of any of the provisions specified in sub-paragraph (3), and in relation to which the assignee does not acquire the lease as a bare trustee of the assignor, is treated for the purposes of this Act as if it were the grant of a lease by the assignor—

(a) for a term equal to the unexpired term of the lease referred to in sub-paragraph (1), and

(b) on the same terms as those on which the assignee holds that lease after the assignation.

(3) The provisions are—

(a) schedule 3 (sale and leaseback relief),

(b) schedule 8 (relief for alternative finance investment bonds),

(c) schedule 10 (group relief),

(d) schedule 11 (reconstruction relief and acquisition relief),

(e) schedule 13 (charities relief),

(f) schedule 16 (public bodies relief).

(4) This paragraph does not apply where the relief in question is group relief, reconstruction relief, acquisition relief or charities relief and is withdrawn as a result of a disqualifying event occurring before the effective date of the assignation.

(5) For the purposes of sub-paragraph (4), “disqualifying event” means—

(a) in relation to the withdrawal of group relief, the event falling within paragraphs 14 and 15 of schedule 10 (purchaser ceasing to be a member of the same group as the seller), as read with paragraphs 32 to 40 of that schedule,

(b) in relation to the withdrawal of reconstruction relief or acquisition relief, the change in control of the acquiring company mentioned in paragraphs 13 and 14 of schedule 11 or, as the case may be, the event mentioned in paragraphs 22 to 24 or 25 to 28 of that schedule,

(c) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraph 5 or 6 of schedule 13.

Assignation of lease: responsibility of assignee for returns etc.

30 (1) Where a lease is assigned, anything that but for the assignation would be required or authorised to be done by or in relation to the assignor under or by virtue of any provision mentioned in sub-paragraph (2) must, if the event giving rise to the adjustment or return occurs after the effective date of the assignation, be done instead by or in relation to the assignee.

(2) The provisions are—

(a) section 31 (return where contingency ceases or consideration ascertained),

(b) section 34 (return or further return in consequence of later linked transaction),
(c) paragraph 10 of this schedule (return on 3-yearly review),

(d) paragraph 11 of this schedule (return on assignation or termination of lease),

(e) paragraph 21 of this schedule (return or further return where lease for fixed term continues after end of term),

(f) paragraph 23 of this schedule (return or further return in relation to lease for indefinite term),

(g) paragraph 32 of this schedule (return where transaction becomes notifiable on variation of rent or term).

(3) So far as necessary for giving effect to sub-paragraph (1) anything previously done by or in relation to the assignor is to be treated as if it had been done by or in relation to the assignee.

(4) This paragraph does not apply if the assignation falls to be treated as the grant of a lease by the assignor (see paragraph 29).

**Reduction of rent or term or other variation of lease**

31 (1) Where a lease is varied so as to reduce the amount of the rent, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the tenant.

(2) Where any consideration in money or money’s worth (other than an increase in rent) is given by the tenant for any variation of a lease, other than a variation of the amount of the rent or of the term of the lease, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the tenant.

(3) Where a lease is varied so as to reduce the term, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the landlord.

**Increase of rent or term: notification**

32 (1) This paragraph applies where, in relation to a land transaction in respect of a lease which was not notifiable under section 30 (notifiable transactions)—

(a) the lease is varied so as to—

(i) extend its term, or

(ii) increase the amount of rent, and

(b) the effect of the variation is that the transaction would have been notifiable under section 30 had it been a lease for that term as so extended or for that rent as so increased (whether or not the effect of the variation is also that tax is payable in respect of the transaction where none was payable before).

(2) Where this paragraph applies—

(a) the buyer must make a return in respect of the transaction before the end of the period of 30 days beginning with the day after the relevant date,

(b) the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and

(c) any tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

(3) The “relevant date” is the date from which the variation takes effect.
(4) For the purposes of section 30—

(a) a lease to which sub-paragraph (1)(a)(i) applies is a lease for whatever is its term as so extended, and

(b) a lease to which sub-paragraph (1)(a)(ii) applies is a lease for whatever is its rent as so increased.

SCHEDULE 19
(introduced by section 65)

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Land and Buildings Transaction Tax (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision about the taxation of land transactions.

Introduced by: John Swinney
On: 29 November 2012
Bill type: Government Bill