Finance Committee

The Land and Buildings Transaction Tax (LBTT)

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. We represent around 20,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK and in almost 100 countries around the world. Nearly two thirds of our members work in business, whilst a third work in accountancy practices.

General comments

2. ICAS is grateful for the opportunity to give evidence to the Finance Committee regarding the Land and Buildings Transaction Tax (LBTT) and the performance of Revenue Scotland in administering and collecting the tax, as requested in the call for evidence issued in August 2015.

3. ICAS has contributed the experience of its members and their technical expertise in the development and implementation of the two devolved taxes, Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT), and the establishment of the new tax authority Revenue Scotland. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members in the many complex issues and decisions involved in tax and financial system design, and to point out operational practicalities.

4. As a matter of policy, ICAS does not comment on the rates of any tax.

5. Our comments below are restricted to our areas of expertise, which in this instance are the operational aspects of LBTT and Revenue Scotland administration. We have only addressed the final question in the call for evidence ‘the performance of Revenue Scotland in administering and collecting the tax’.

6. The two devolved taxes for which Revenue Scotland has a responsibility to collect and manage are two discrete taxes with only LBTT compliance relying on the agent community. The vast majority of transactions that give rise to LBTT need a lawyer as the agent. Chartered accountants are only likely to be in an advisory position if the transaction is part of a business venture, such as purchasing or leasing commercial premises, or in a business reorganisation for either a group of companies or a partnership.

7. As a professional body representing both its members and the public interest, ICAS has found its dealings with Revenue Scotland professional and helpful. ICAS representatives have regular meetings with Revenue Scotland officials to discuss the performance of the tax authority.
Scotland, have met with the Board of Revenue Scotland, and participate in
the Devolved Tax Collaborative.

8. In our meetings with staff at Revenue Scotland, they have actively
engaged with us and have responded well to our comments and feedback.
In terms of the Revenue Scotland approach to communications, they have
been good at engaging through a number of different channels and their
willingness to hold ‘town hall’ style meetings is helpful; the website is also
a good source of information and it is well laid out. We hope Revenue
Scotland will have a similar level of engagement for any future devolved
taxes if there are larger pools of taxpayers or points of contacts to deal
with, given that for both the two existing devolved taxes, there are
relatively few preparers of returns.

9. Despite canvassing for information amongst ICAS members, both through
our tax committee system and during the provision of courses on Scottish
taxes, ICAS has received very little member feedback, and no negative
feedback, regarding the operation of LBTT. The feedback we have
received is that the operational implementation has gone well and that the
LBTT returns are more straightforward than the SDLT equivalents. This
leads the ICAS Scottish taxes sub-Committee towards two tentative
conclusions:

• For Chartered Accountants, any contact at present with Revenue
Scotland is operating smoothly, and
• From anecdotal evidence, it may be some time before the working
relationships and boundaries of LBTT legislation in the more complex,
commercial transactions are tested and fully established.

10. Areas that may be tested in future could be, for example, around Revenue
Scotland opinions. Revenue Scotland gives examples on its website of
when it might not provide an opinion to the taxpayer, which include the
following:

• Revenue Scotland will not provide views on speculative transactions or
answer “what if” type queries
• you’re asking Revenue Scotland to give tax planning advice, or to
‘approve’ tax planning products or arrangements
• your application is about treatment of transactions which, in Revenue
Scotland’s view, are for the purposes of avoiding tax
• you’re asking about the possible application of the General Anti-
Avoidance Rule (GAAR)

11. However, our members believe it would be more helpful and efficient if
there were fewer restrictions around when an opinion may be sought. Nor
should the possible application of the GAAR be used as a reason not to
engage on some of the more complex issues. It would also assist
Revenue Scotland to know in advance what tax planning may be proposed
and to be able to reach a view on this. Therefore, ICAS recommends that
the opinion service should be reconsidered and there should be a taxpayer
right to request an opinion in any circumstances: it is always open to
Revenue Scotland to give the opinion that it would not agree with a particular proposition.

12. There has been some debate about the Revenue Scotland guidance: it is helpful in broad terms and assists in bringing together the primary and secondary legislation and forms.

13. There are limitations, however, in that the guidance restates the legislation and does not help taxpayers and their advisers understand how Revenue Scotland interprets the provisions in practice. This is particularly so in relation to some of the more complex aspects such as leases, and the transitional rules. We understand that Revenue Scotland is inviting practitioners to comment on areas where the guidance could be improved and we welcome this.

14. In certain areas there may be questions regarding the status and certainty of the guidance. The role of guidance and whether it is binding and, if so, upon whom, has been the subject of a discussion paper issued by the Tax Law Rewrite Committee of the Institute of Fiscal Studies (December 2014, ‘HMRC’s Discretion: The Application of the Ultra Vires Rule and the Legitimate Expectation Doctrine’). This discussion paper considers the UK position with HMRC and guidance, but this may also be relevant to Revenue Scotland guidance.