ALACHO Response to Finance Committee call for evidence on the first year of the operation of Land and Building Transaction Tax

26 August 2016

Introduction

As the representative body for Scotland's Local Authority chief housing officers ALACHO welcomes the opportunity to respond to the Finance Committee's call for evidence on the operation of Land and Building Transaction Tax.

Scotland's councils have a significant interest in the impact of this measure arising from:

- our role as strategic housing authorities with an interest in the functioning of the local housing market and its impact on housing needs and demands;
- the operation of local second hand house purchase programmes to support policy delivery in relation to both private and public sector housing;
- the use of "off the shelf" purchases of completed homes within the affordable housing supply programme;
- our participation in the Scottish Government's Home Owners' Support Fund (Mortgage to Rent) programme aimed at avoiding repossessions in the owner occupied sector; and
- the need to support mid-market rent providers through the NHT and Council variant NHT.

In preparing this response to the Committee's call for evidence on the operation of LBTT during its first year we have opted not to comment in detail on the market impacts or the practicalities of the operation of the tax for private buyers and sellers. These issues will be covered by others better placed to comment.

ALACHO's concern is around the structure of exemptions and relief within the act, the way these operate in relation to the Affordable Housing Supply Programme and in particular the way in which subsequent changes in legislation and planning guidance have increased costs to Local Authorities seeking to deliver new social housing or address other housing needs in their area through the purchase of new or second-hand homes.

Current exemptions and reliefs

The Act as approved provides for a limited number of exemptions from LBTT including acquisitions by the Scottish Government and the Parliament but not those by local government. In addition, a
number of “reliefs” are provided for including certain acquisitions by Registered Social landlords and those by charities. These are described in the policy memorandum1 published with the bill as follows:

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.

And

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.

Principle amongst the conditions set out in the act are that the charity should be registered with OSCAR and that the property should be used to further charitable objectives.

These two reliefs are important because the effect is to ensure that RSLs do not pay LBTT on any housing land or home that they purchase.

So far as local authorities are concerned the only relief provided for in the legislation is in relation to acquisitions that are the result of a planning requirement. This is described in the policy memorandum as follows:

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.

The practical effect of this provision is that where a local authority acquires homes under the terms of a S.75 agreement with a developer no LBTT will be payable.

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Developments since the introduction of LBTT

There have been three important changes since the introduction of LBTT that have a significant bearing on the way the tax impacts on Local Authority housing services. These are

- The publication of Circular 3/2012 “Planning Obligations and Good Neighbour Agreements” by the Scottish Government. The circular effectively changed the statutory guidance on the use of S.75 agreements for the provision of affordable housing requiring that Planning Conditions should be used instead. The practical impact of this change has been that the relief from LBTT that was available where S.75 agreements are used has been lost. Local Authorities purchasing new build affordable homes from developers as

part of their Affordable Housing Policy are now clearly directed to use Planning
Conditions and where they follow this guidance, do not receive relief from LBTT.

- The abolition of the Right to Buy and the adoption by many councils of a targeted second
  hand home purchase scheme. A number of Councils have been actively buying homes
  on the second hand market before the abolition of the Right To Buy, the removal of this
  risk to long term investment has encouraged most to look strategically as how the
  purchase of second hand homes can support wider action to improve access to
  affordable housing, address property condition issues and remove constraints on the
  Councils investment in its own stock. A recent survey of ALACHO members suggested
  that as many as 246 second hand homes will be purchased by local authorities during
  2016/17. Most (though not all) of these purchase will be below the threshold for paying
  LBTT (£145,000). However, the third key change set out below means that all are now
  subject to some LBTT.

- The introduction of the Additional Dwelling Supplement (ADS) on house purchases by
  organisation and individuals that already own at least one home. The supplement is
  calculated at 3% of the total cost of any house where the purchase price is over £40,000.
  ALACHO provided evidence to the Finance Committee on this measure in January of this
  year and argued that Local Authorities should be exempt from the tax. In its response
  the Committee recommended that "....the Bill is amended at Stage 2 to provide for a relief
  from the supplement for RSLs and Local Authorities on the same basis as the current
  relief from LBTT." 2. Unfortunately, this recommendation had no practical impact
  because, as we have seen, the exemptions and reliefs set out in the legislation provide
  little or no relief from LBTT for Local Authorities.

As the following section will demonstrate the combination of the way reliefs and exemptions have
been structured and the changes that have occurred since is having a growing impact on the delivery
of the Scottish Government’s Affordable Housing Supply Programme.

The impact of LBTT on the delivery of the Affordable Housing Supply programme

The practical impact of LBTT as it is now operating arises in two areas;

The viability of specific property purchases; and

Additional cost to the overall programme.

**Purchase viability** - typically a local authority will set a number of conditions that any
particular purchase should meet. These are likely to include a maximum purchase price and
a viability test that between them will ensure that any purchase provides value for money to
tenants. Maximum purchase prices are usually, but not always below the £145,000 threshold
for LBTT. However, because the ADS is payable on the full value of any purchase over
£40,000 all acquisitions are likely to attract some LBTT payment.

In evidence to ALACHO one authority demonstrated that the impact of ADS has been to
reduce the range of one bed properties that it could consider purchasing by 15%, and two
beds by 11%. This reduction in the number of potentially viable purchases will limit the ability
of the Council to target the right properties to address management and maintenance and
demand issues and focus purchase programmes on lower value or poorer condition
properties.

It is also likely that some purchases under the Scottish Government’s “mortgage to rent”
programme will fail viability tests because of the additional cost from LBTT and the ADS.

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2 Recommendation 84, Page 17.

http://www.parliament.scot/S4_FinanceCommittee/Reports/FIS042016R03.pdf
**Overall cost to the Affordable Housing Supply Programme:** A number of Councils have provided us with specific figures on the amount of LBTT they have paid on the purchase of new affordable homes over the last year. These vary widely but around £20,000 to £100,000 in the case of two authorities with relatively modest acquisition programmes (all related to ADS) to one authority that reported paying £388,000 in 2015/16 as a result of the absence of a general relief and the changes in the planning guidance.

Based on what we know about local authority second hand purchasing intentions and assuming an average purchase price of around £70,000 (from information provided to ALCHO) our estimate of the cost of LBTT to Councils in the current year will be around £500,000. The purchase of “of the shelf units” through planning conditions could add significantly to this total. Over the five years of the current affordable housing programme target the total could be in excess of £2,500,000.

At a time when the Scottish Government is working hard with Councils and RSLs to deliver the 50,000 affordable homes target these additional costs represent an unnecessary cost to the programme and will reduce the capacity of local authorities to play their full part in meeting the Scottish Government’s target for new affordable homes.

**Conclusions**

As it currently operates LBTT represents a significant and growing cost to Local Authorities’ affordable housing supply programmes both in relation to the operation of strategic second hand purchase programmes and the acquisition of new affordable homes delivered by developers through the planning process. Over the next five years it is likely that this additional cost will be in excess of £2.5m though it could be considerably higher with one authority already reporting additional costs of close to £400,000 in 2015/16 alone.

In addition, this is a burden on the affordable housing supply programme that is specific to local authorities. The policy memorandum for the original bill clearly recognised “the important role played by RSLs in the housing market” and they have in effect full relief from the tax. However, this has not been extended to the important and growing role that Local Authorities are now playing in delivering new affordable homes.

We would argue that in order to avoid the unintended consequence of a reduction in the output from the affordable housing supply programme the legislation should be amended to extend the relief provided to RSLs to the Local Authority landlords.

We hope these comments are of help to the committee in its review of the operation of LBTT. Should the Committee decide to hold an oral evidence session on this subject we will be happy to attend if that is considered helpful.