Call for Evidence: Land and Buildings Transaction Tax  
Response by the Chartered Institute of Taxation

1 Introduction

1.1 This is a response by the Chartered Institute of Taxation (CIOT) to the Finance Committee of the Scottish Parliament’s call for evidence: Land and Buildings Transaction Tax. We welcome the opportunity to offer our comments on the operation of Land and Buildings Transaction Tax (LBTT) during its first full year, from 1 April 2015 to 31 March 2016. We would be pleased to amplify our points orally or in writing.

1.2 Stamp Duty Land Tax (SDLT) was devolved to the Scottish Parliament by the Scotland Act 2012. The resultant devolved tax is LBTT, which came into effect on 1 April 2015. LBTT applies to residential and commercial land and buildings transactions where a chargeable interest is acquired and where the land is situated in Scotland. It also applies to commercial leases. Taxpayers must self assess their tax liability. Revenue Scotland\(^1\) administer and collect the tax.

1.3 The CIOT is an educational charity concerned with promoting the education and study of the administration and practice of taxation. For more details see the statement about us at section 10 below.

1.4 The CIOT would like to assist in ensuring that the tax system in Scotland is effective and efficient for taxpayers, agents and the tax authorities.

2 Executive summary

2.1 The CIOT does not generally comment on the setting of rates of tax, as these are decisions for politicians. In our view, the setting and changing of the rates and bands for LBTT should flow from policy decisions as to the aims of the Scottish Government.

---

\(^1\) Revenue Scotland is the tax authority responsible for the administration and collection of Scotland’s devolved taxes, LBTT and Scottish Landfill Tax, which both came into effect on 1 April 2015. It was established on 1 January 2015. See [https://www.revenue.scot/](https://www.revenue.scot/).
2.2 We think that the rates and bands during the first year of operation of LBTT were fairly consistent with the principles of fairness, equity and ability to pay.

2.3 The final question asks about the performance of Revenue Scotland in administering and collecting the tax. We note that as it is necessary for taxpayers to self assess the LBTT, one of the key issues is how easy it is for taxpayers (and their agents) to make returns, calculate the LBTT liability and make payment. Bearing that in mind, the general view is that the LBTT system is working well for day-to-day conveyancing.

2.4 Revenue Scotland offer many communication channels and also invite engagement and feedback with stakeholders, which is welcome. We think there are areas for improvement, and it is important that Revenue Scotland have the resources to, for example, allow them to operate facilities such as their opinion service efficiently and ensure that their guidance is dynamic and responsive to taxpayer queries.

3 The impact on both the residential and commercial property market of the various rates and bands.

3.1 We are not economists nor experts on the property market and offer no comment in respect of this question.

4 The extent to which the rates and bands are consistent with the principles of ‘fairness, equity and the ability to pay’.

4.1 The Scottish Government has committed itself to a tax system that has regard to Adam Smith’s four principles: certainty; the burden proportionate to the ability to pay; convenience; efficiency of collection. The CIOT agrees that these are important principles for a sound tax system. In view of this, we think it is key that due regard is given to all of these principles.

4.2 The CIOT objectives for a good tax system include:
- A legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences;
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why;
- Greater certainty, so businesses and individuals can plan ahead with confidence;
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented);
- Responsive and competent tax administration, with a minimum of bureaucracy.

We think that these principles should be kept in mind too when developing LBTT policy (including rates and bands) and operating the tax.

4.3 In assessing the extent to which the current rates and bands are consistent with the principles of fairness, equity and the ability to pay, we note that in comparison to the

---

old SDLT regime, the LBTT rates and bands adopted a more progressive system. This is because only the amount of consideration that falls within a particular band is chargeable to LBTT at that rate. This move away from a slab system means that the LBTT bands and rates are fairly consistent with the principles of fairness, equity and the ability to pay.  

4.4 The move away from a slab system means that there are no ‘cliff edge’ effects when the consideration for a transaction moves into a higher band. For example, the LBTT due on a residential property transaction of £249,000 is £2,080, whereas the LBTT due on a transaction of £251,000 is £2,150. In percentage terms, the LBTT liability is 0.83% and 0.85% in each case respectively. In this respect, the rates and bands are consistent with the principles of equity, fairness and ability to pay.  

4.5 The corollary to the move away from a slab approach is the need for high nominal rates for the top bands, to secure tax revenues. This in turn means high effective average rates of tax for higher value transactions, for example, the total LBTT due approaches 8% of the consideration when a residential transaction is worth £1,000,000. High marginal and effective average rates of tax lead to the possibility of greater deterrence of transactions, which to the extent it occurs, would affect tax revenues.  

4.6 It is noticeable that, for the most part, the residential rates for LBTT result in a higher tax liability than the equivalent SDLT rates, whereas the non-residential rates for LBTT result in a lower tax liability. The exception to this is for lower value transactions, where the opposite is true. This may place more reliance on revenues from higher-value residential property transactions of which there are a relatively low number in Scotland, or require a higher frequency of lower-value transactions to be maintained.  

5 The level of receipts for residential and non-residential transactions in relation to the forecasts.  

5.1 We are not economists nor experts on the property market and offer no detailed comment in respect of this question.  


The inquiry specifically concerns itself with the period 1 April 2015 to 31 March 2016. It should be noted that from 1 April 2016 there is an Additional Dwelling Supplement. This applies an additional charge of LBTT at a flat rate of 3% on the purchase of additional dwellings in Scotland. The 3% charge applies to the whole of the consideration (where the consideration is £40,000 or more). For such transactions therefore, the rates and bands are arguably less consistent with the principles of fairness, equity and ability to pay.  

Table prepared using the LBTT calculator (https://www.revenue.scot/land-buildings-transaction-tax/tax-calculator/lbtt-property-transactions-calculator) and the SDLT calculator (https://www.tax.service.gov.uk/calculate-stamp-duty-land-tax)
5.2 We draw attention to a couple of publications, however. Firstly, the Draft Budget 2016-17, published by the Scottish Government in December 2015.6 This predicts that revenues from residential transactions will almost double from 2016-17 to 2020-21, while in that same period, revenues from commercial transactions will barely increase. Secondly, a report published by a leading independent property partnership.7 This highlights the Scottish Government’s figures, showing that residential receipts were less than expected, while commercial receipts were better than expected for the first full year of LBTT. It also notes that the residential figures may have been distorted due to the introduction of the LBTT Additional Dwelling Supplement on 1 April 2016, as some investors may have rushed to buy prior to its introduction. These reports raise the question of how realistic the forecasts are. Due to the introduction of the Additional Dwelling Supplement it may not be possible to obtain a clear long-term view until the end of the second full year of LBTT. To the extent the tax take falls short of expectation, the options will include accepting the lower revenues, increasing the rates or reducing the progressivity of the rates.

6 The impact of forestalling and whether it is likely to have a short-term impact only or lead to longer-term changes in the market.

6.1 We are not economists nor experts on the property market and offer no comment in respect of this question, other than to refer to the comments at paragraph 5.2 of this submission in respect of the LBTT Additional Dwelling Supplement.

7 Whether there should be any changes to the rates and bands in the draft budget for 2017-18.

7.1 The CIOT does not generally comment on the setting of rates of tax as we view this as a matter of policy. In our view, the setting of tax rates and bands for LBTT (and whether there should be any changes) should flow from policy decisions as to the aims of the Scottish Government and Parliament for LBTT. There must also be an awareness of the likely direct and indirect impact of any changes – in terms of the effect on taxpayer behaviour and the impact on tax revenues. We reiterate our view that the Scottish Government should uprate the bands periodically,8 to ensure that they remain appropriate and are in line with policy objectives.9 This will help to prevent or minimise fiscal drag and help to ensure the LBTT is aligned as far as possible with the principle of the burden being proportionate to the ability to pay.

7.2 The Scottish Government should bear in mind various factors when setting the bands, including the policy aims. For example, unless the average house price has risen significantly during the past year, an increase in the nil rate band for residential

---


8 For example, if the average house price in Scotland increases, it would be appropriate to consider whether the 0% band upper limit should be increased from £145,000 to say £160,000, and so on.

transactions would reduce the tax base. Generally a larger tax base provides more stability of revenues.

7.3 When considering the various principles, it would assist certainty if changes to rates in particular could be minimised. This allows taxpayers to plan ahead. Given that property purchases, whether commercial or residential involve large investments, this is important. Nevertheless, adherence to the principles needs to be balanced with the pragmatic need for tax revenues.

7.4 In respect of non-residential property acquisitions, we think it would be possible to start with a low, almost nominal rate, such as 1%, in addition to having a nil rate band – this would ensure that a small business would not be significantly affected by having to pay it. Thus, there may be room for considering the alteration of the bands and rates for non-residential transactions, where currently, there is a nil rate band and then bands with rates of 3% and 4.5%.

7.5 There should not be a significant leap in the rate of tax from band to band, and in particular from the nil rate band to the lowest rate of LBTT. In this respect, for residential transactions the 5% leap from 5% to 10% on the value above £325,000 is not ideal, given the differential on the value above £750,000 is only 2%. We acknowledge, however, that the nature of LBTT softens the impact of any steeper changes in rate, since it is only the amount of consideration that falls within a particular band that stands to be charged at the applicable rate. Moreover, the insertion of additional bands (there are currently five, including the nil rate band) would add a slight degree of complexity for property purchasers trying to estimate the liability on a particular property.

7.6 In addition to taking account of Scottish Government policy, it is also important to take account of the broader context. The rest of the UK is Scotland’s biggest trading partner, but also a competitor. It is therefore necessary to consider how LBTT rates and bands compare to those in the rest of the UK, to ensure that Scotland continues to attract investment and business.

8 The performance of Revenue Scotland in administering and collecting the tax.

8.1 We previously responded to the Finance Committee’s call for evidence on the first few months of operation of LBTT. Many of the comments made in section 4 of that submission are still in point. We note that as it is necessary for taxpayers to self-assess the LBTT, one of the key issues is how easy it is for taxpayers (and their agents) to make returns, calculate the LBTT liability and make payment.

8.2 The general view (from CIOT members) is that for day-to-day conveyancing, the system is working well. The LBTT forms are generally simpler and quicker to complete than their SDLT equivalents. In respect of leases, however, there are

---

11 Stability and simplicity in tax structure can also assist certainty. The complexity of the Additional Dwelling Supplement introduces some uncertainty into its application for some taxpayers (from 1 April 2016 onwards).
14 Most LBTT transactions and returns are dealt with by agents on behalf of taxpayers.
requirements for additional tax returns by comparison with SDLT. This is likely to prove burdensome for those occupying a large number of properties in particular.

Communications

8.3 Revenue Scotland offer a number of communications channels to taxpayers and agents, which is welcome. They also actively seek feedback and engagement with stakeholders. For example, Revenue Scotland ran LBTT roadshow events in March 2016, plus a free webinar for those unable to attend in person. These were aimed at providing updates to agents on operations and providing remedies for any issues that emerged during the first 11 months of operation.

8.4 The LBTT forum is intended to provide a platform for discussion between Revenue Scotland and those working with LBTT, to enable discussion around the operation of LBTT, in relation to guidance, policy and practical matters. The CIOT has representatives who attend this forum. The first meeting was held in September 2015 and the intention was to hold meetings of the forum every six months or twice a year. However, there have been no further meetings of the LBTT forum, which is disappointing.\(^\text{15}\) The brevity of the first meeting meant that many of the technical issues raised by stakeholders could not be discussed.

8.5 We previously suggested that the opinion service\(^\text{16}\) in relation to specific transactions should have a shorter, more commercial turnaround.\(^\text{17}\) Revenue Scotland continue to aim to provide opinions within 25 working days – this is not going to be swift enough for some prospective transactions. We reiterate our suggestion that Revenue Scotland should devote more resource to this facility.

Online systems

8.6 We understand the need for strong online security. Nevertheless, we understand that some of our members are experiencing some problems with Revenue Scotland’s online system for accessing and making returns, since the passwords seem to expire very rapidly (perhaps monthly). This means agents need to reset the password and comply with various rules about password creation, such as it must not be too similar to a previous one, on a fairly frequent basis. We understand that Revenue Scotland are looking into a practical solution.

Guidance

8.7 Following feedback from attendees suggesting that it would be helpful for the Revenue Scotland website to house an area where people can check for updates to guidance, they created an LBTT updates page.\(^\text{18}\) This was an improvement suggested in our previous submission to the Finance Committee.\(^\text{19}\)

8.8 In a previous submission we noted that Revenue Scotland needed to review

\(^{15}\) We note that there were a number of meetings in the first few months of 2016 – these were arranged by the Scottish Government to enable stakeholders, including Revenue Scotland and the CIOT, to discuss the LBTT Additional Dwelling Supplement. While we do not consider that these meetings were substitutes for the LBTT forum (being organised by the Scottish Government and aimed at an entirely different purpose), we acknowledge that the work involved on the LBTT Additional Dwelling Supplement may have hindered Revenue Scotland in following the intended schedule of meetings for the LBTT forum.

\(^{16}\) https://www.revenue.scot/contact-us/revenue-scotland-opinions


\(^{18}\) https://www.revenue.scot/land-buildings-transaction-tax/lbtt-updates

guidance in areas where they were receiving significant amounts of queries, including transitional provisions and leases. We note that they added six further worked examples to their guidance on transitional leases in January 2016. This is welcome, but we think the dynamism of the guidance could be further improved and perhaps more resource could be dedicated to ensuring that the guidance is as helpful and responsive to user needs as possible.

8.9 There continues to be uncertainty surrounding interpretation of substantial performance due to a lack of guidance. Revenue Scotland simply indicate that each case must be looked at according to its own facts. This is an area that compares unfavourably with SDLT, where there is a 90% rule. This is disappointing as this point was raised both in our previous submission to the Finance Committee and at the LBTT forum in September 2015. At that forum, stakeholders indicated that a clear ‘rule of thumb’ was needed, and Revenue Scotland agreed to consider creating a percentage rule, but there does not appear to have been progress towards this.

8.10 In addition, agents are anxious to receive guidance as to the procedure for three-year updated lease returns and lease variations.

8.11 In general, although the guidance is helpful, we have received comments that it could be laid out more logically. We understand that agents tend to locate the relevant guidance using the search function, rather than using the contents pages.

9 Acknowledgement of Submission

9.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

10 The Chartered Institute of Taxation

10.1 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 17,600 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

The Chartered Institute of Taxation
5 September 2016