PINSENT MASONS LLP RESPONSE TO THE FINANCE COMMITTEE CALL FOR EVIDENCE: LAND AND BUILDING TRANSACTION TAX

PinSENT MASONS LLP is a multi-national law firm with three offices in Scotland advising national and international clients with property interests in Scotland. We have extensive experience of acting for landowners, developers, investors and funders. We advise both the public and private sectors. Our comments about the first full year’s operation of LBTT are as undernoted.

GENERAL COMMENTS

We are pleased with the way in which Revenue Scotland engaged with stakeholders in developing/testing the LBTT online filing system and in general we consider that the system works well.

We understand that it will not always be appropriate for LBTT legislation to reflect SDLT legislation. However, we would encourage the Scottish Government to consider the impact which any new SDLT legislation (particularly exemptions/reliefs) may have upon Scotland and to react swiftly where appropriate (for example, Co Ownership Authorised Contractual Schemes/Property Authorised Investment Funds seeding relief is in the current UK Finance Bill but is not currently reflected in LBTT legislation). It is accepted that the Scottish Government should not automatically copy into LBTT changes which are made to the SDLT regime, but equally it has to be recognised that LBTT has to be kept up to date on a regular basis. Failure to do so could mean that institutional investors who wish to invest in Scottish property will face higher costs than on investing in comparable property elsewhere in the UK. The potential consequence of this is that institutional investors will opt to invest their funds in a more favourable tax environment elsewhere in the UK. This could have a negative impact on commercial development of new offices, retail and industrial properties in Scotland which rely on institutional investment for funding to make the developments viable in the first place. This could in turn have a negative effect on the construction industry and the wider economy and make Scotland a less attractive place for inward investment.

In our view there are a number of glitches in the LBTT legislation which could not have been the policy intention at the time (for example, the claw back period for development sub-sale relief and the issues surrounding substantial performance on sub-sales). We are aware that careful explanations of these glitches have been given to both Revenue Scotland and the Scottish Government via a number of routes but there is a distinct reticence on the part of the Scottish Government to accept, in a spirit of constructive co-operation with the tax-paying community, that these issues are indeed drafting glitches which should be remedied, and we would welcome a commitment from the Scottish Government to correct these.

SPECIFIC COMMENTS

We have restricted our specific comments to the undernoted items in the Finance Committee’s call for evidence.

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

In the Aberdeen residential market, LBTT rates have potentially had a negative effect on affordability and the ability to move house. To what degree is difficult to assess given the generally higher prices in that market.

The extent to which the rates and bands are consistent with the principles of "fairness, equity and the ability to pay"

It is difficult to comment on this since fairness and equity are subjective matters. However, see the above comments regarding ability to pay: some people cannot afford to move house in certain local areas as a result of higher than average prices.
Whether there should be any changes to the rates and bands in the draft budget for 2017-2018

We think that LBTT rates and bands should be aligned with SDLT rates to avoid competitive disadvantage. We also think that the Scottish Government should consider exempting certain identified areas, where second homes are an essential element of a local economy (e.g. a touristic economy), from the Additional Dwelling Supplement.

The performance of Revenue Scotland in administering and collecting LBTT

See above comments regarding the online filing system.

Pinsent Masons LLP

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