Re Call For Evidence: Land and Building Transaction Tax –
Response from South Lanarkshire Council

I refer to the Scottish Parliament Finance Committee’s request for evidence on the operation of Land and Building Transaction Tax as set out in your email dated 30th June 2016.

The response below provides brief commentary and evidence on the impact of LBTT on land and property acquisitions related to acquisition of residential property to add to our council house stock and land and property sales, purchasing and leasing relating to commercial and non housing assets.

Impact of LBTT on Council House Property Acquisitions

Since the introduction of Land and Building Transaction Tax (LBTT) in April 2015, the Council’s purchase of property “off the shelf” and through Mortgage to Rent have been largely unaffected by the changes from the previous Stamp Duty Land Tax (SDLT) as, being predominantly ex Right to Buy stock, nearly all purchases remain below the SDLT lower threshold of £125,000 and below the LBTT threshold of £145,000.

In the financial year ending March 2016 the Council settled transactions for the purchase of 23 properties with the aid of Scottish Government Affordable Housing Supply Programme grant funding. The total price was £1,606,750 at an average price of £69,858. No LBTT was due as all properties were below the £145,000 threshold.

One property was purchased at a value of £130,000 to meet an urgent medical housing need. While this property exceeded the previous SDLT minimum threshold of £125,000, the new threshold of £145,000 meant that no LBTT was payable.

LBTT Additional Dwelling Supplement

As the majority of purchases are anticipated to remain below the minimum LBTT threshold of £145,000 the change from SDLT to LBTT was expected to have a minimal impact. However, the introduction of Additional Dwelling Supplement (ADS) from the 1st April 2016 adversely affects all property acquisitions after this date. While purchases are anticipated to remain below the LBTT threshold, the purchase of individual properties from this date is subject to an ADS charge at 3% of the purchase price.
Based on the average purchase price of £69,858, we anticipate that the purchase of our target of 20 properties per year will cost the Council an additional £41,915 per annum, amounting to £209,574 over the period of our 5 year Strategic Housing Investment Plan.

While, at 3%, the additional cost for individual properties may be minimal, the cumulative impact of the 3% ADS charge seems inappropriate and inequitable, given the relief provided to corporate buyers of 6 properties or more and the relief offered to Registered Social Landlords for grant funded purchases which is not extended to Local Authority social landlords for single purchases including Mortgage to rent.

While the broad impact of LBTT is expected to balance out as the market responds to the new thresholds, the way in which ADS is applied under the current LBTT Guidance has a direct and negative impact on Council resources to maximise supply through open market purchase of individual properties.

The failure of the LBTT Guidance to reflect the role of Local Authorities in the delivery of affordable social rented housing is an omission that should be addressed. The application of LBTT and ADS to grant funded purchases of social rented housing by Local Authorities waters down the effectiveness of investment directed towards achieving the Scottish Governments increased target for affordable housing supply.

Commercial and Non Housing Asset Sales, Acquisition and Leases

Leases
As for SDLT, LBTT is payable at 1% of the net present value of the total rental payments (including VAT) over the term of the lease, less £150,000. However tenants are required to submit LBTT returns every three years (as opposed to five yearly under SDLT). Where there are rent reviews the LBTT payable will be adjusted as applicable.

There is no cut off on assessment at the end of year five (as there was with SDLT) where the net present value is calculated on the basis that the rent for any years after the end of year five will be at the highest annual rate payable over the first five years) therefore it may be likely that more tax will be payable under LBTT than SDLT. This is because increases in rents due to rent reviews or other variations after the first five years of a lease will be taken into account for LBTT where as they are ignored for SDLT.

The LBTT chargeable on NPV of lease rents is as follows:-
Up to £150,000  nil
Above £150,000  1%

LBTT is payable on the rent plus VAT (if VAT is payable on the rent).
As with SDLT, where a premium is paid by the tenant, LBTT is also payable on the premium plus VAT.

If there is a rent deposit which exceeds twice the annual rent, this will be regarded as part of the consideration on which LBTT will be chargeable. This will also apply where an assignee is taking an assignation of an existing lease. This may affect the commercial terms of a lease deal as deposits are used where tenants’ covenants cannot demonstrate a satisfactory trading or business history.

Notwithstanding the changes noted above, information from the Council's commercial letting surveyors suggests that since its introduction and to date, LBTT has had no adverse impact on the Council’s commercial lets.

The Council's property tenants are liable for the tax liability under the terms of their lease; this
was the case for SDLT and continues for LBTT.

**Sale of Council Land and Property**
The Council has observed no noticeable effect on purchaser’s offers for Council land or properties. Bidders have factored in LBTT when bidding for Council properties as they would have done under SDLT. It is difficult if not impossible to say if LBTT has had a direct impact on purchaser’s bidding levels given the market conditions that we have experienced in recent times and the continuing uncertainty.

**Council Purchase of land and Property**
The LBTT banding on Non-residential (including commercial, agricultural and mixed) is as follows:

- 0% until £150,000
- 3% between £150,001 and £350,000
- 4.5% on remainder of price over £350,000

As with all purchase transactions the tax implications are taken account of in the project. The majority of Council land purchases do not exceed the threshold of £150,000. Indeed it would take a purchase of over £2 million pre 2016 for the tax liability to be greater under LBTT when compared to SDLT.

**Conclusion**
From looking at the market commentary from private sector surveying companies it would appear that they are not overly concerned about the new tax. In the Ryden Report in April 2015 they stated “The introduction of the new Land and Building Transaction Tax on 1st April 2015 did not spur too many transactions to be rushed through to take advantage of the previous rates.” From the evidence the Council’s Estates Service has it would suggest that from a transactional point of view there has been little to suggest the new tax has had a significant effect on the commercial property market in its decision whether to proceed to buy or sell or lease.

I trust that this explains the Council’s position and news with regards to Land and Building Transaction Tax. Should you require any further information or clarification please do not hesitate to contact me.

Yours sincerely

Daniel Lowe
Executive Director