



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# FINANCE COMMITTEE

Wednesday 27 February 2013

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**FINANCE COMMITTEE**

**7<sup>th</sup> Meeting 2013, Session 4**

**CONVENER**

\*Kenneth Gibson (Cunninghame North) (SNP)

**DEPUTY CONVENER**

\*John Mason (Glasgow Shettleston) (SNP)

**COMMITTEE MEMBERS**

\*Gavin Brown (Lothian) (Con)

\*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)

\*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)

Michael McMahon (Uddingston and Bellshill) (Lab)

\*Jean Urquhart (Highlands and Islands) (Ind)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

John Fanning (Registers of Scotland)

Neil Ferguson (Scottish Government)

John Fraser (Registers of Scotland)

John King (Registers of Scotland)

John St Clair (Scottish Government)

John Swinney (Cabinet Secretary for Finance, Employment and Sustainable Growth)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

Committee Room 5



## Scottish Parliament

### Finance Committee

*Wednesday 27 February 2013*

[The Convener *opened the meeting at 09:30*]

### Decision on Taking Business in Private

**The Convener (Kenneth Gibson):** Good morning and welcome to the seventh meeting in 2013 of the Scottish Parliament's Finance Committee. I remind everyone present to ensure that they have no mobile phones, tablets, BlackBerrys or other electronic devices switched on. This morning we have received apologies from Michael McMahon.

Our first item of business is to decide whether to take agenda item 3 in private. Do members agree to do that?

**Members** *indicated agreement.*

## Land and Buildings Transaction Tax (Scotland) Bill: Stage 1

09:30

**The Convener:** Our second item of business is to take oral evidence as part of our stage 1 scrutiny of the Land and Buildings Transaction Tax (Scotland) Bill. I welcome to the meeting John Fanning, John Fraser and John King. I will not be calling anyone "John" this morning. You could change your names: one could be Sean and one could be Ian. We will have to call you by your surnames.

I ask the witnesses to make a brief opening statement, after which we will have questions. Who is going to kick off?

**John King (Registers of Scotland):** I am the senior responsible owner for the land and buildings transaction tax project in Registers of Scotland. We provided a written submission to the committee and we are delighted to be here to help with your evidence gathering, but we have no opening statement.

**The Convener:** Fair enough. We will move straight to questions.

We have some papers in front of us. The Law Society of Scotland states in its written submission that the stamp duty land tax online system is overly complex and that it

"is essential that the new online system for LBTT is ready in sufficient time for it to be adequately tested by practitioners and for guidance to be prepared well before ... 2015."

The \$64,000 question is: will it be?

**John King:** We have every confidence that it will be. The project that we have set up has a set of milestones and a set of key dates for key deliverables. We intend to have the LBTT system ready by autumn 2014. We appreciate that a degree of clarity is still required about the system's functionality—what it has to do—and how our users will interact with it. That will become more apparent as the LBTT bill and the tax management bill progress.

We are committed to involving our customers in the development and build of the system and its ultimate testing, and we will start that process with our customers over the next two months.

Regarding the overall timeframe, I refer to the most recent complex technical build that we have delivered, which is the crofting register. The technical phase of that project took approximately eight or nine months from start to completion. We see the LBTT system as being less complex than that, so we are confident that we have ample time

in which to deliver the system in advance of the go-live date.

I emphasise that we are not overconfident—we realise that there is a lot to do—but we are confident. We have a team in place and we are confident that we have the time to ensure that the system is delivered so that our stakeholders have a reasonable length of time to get used to it.

**The Convener:** That is reassuring, because concerns regarding the robustness, speed and ease of use of the automated registration of title to land were raised with us by, for example, Brodies LLP, whose written submission stated:

“It is essential that both the LBTT system and the ARTL system work smoothly separately and together and that all teething problems have been addressed before the systems go live.”

Is that level of work being done?

**John King:** We acknowledge that there are issues with the ARTL system, particularly around robustness and speed of service. The system is still used. It is primarily a remortgage system and some 68,000 transactions have gone through it. We acknowledge that there are issues with it and perhaps my colleague, Mr Fraser, could explain what we are doing to alleviate some of them.

**John Fraser (Registers of Scotland):** We will make sure that the new LBTT collection system is indeed robust and speedy. The ARTL system to which you referred, convener, has been running for five years; it was built five years ago. We now have access to better and faster equipment and better software, and we are confident that the LBTT collection system will be fit for purpose.

**The Convener:** There are concerns about strategic planning agreement. Projects worth £6.7 million have been written off. There have been difficulties with information technology development over the years, have there not?

**John King:** I emphasise that ROS is an IT-dependent organisation. Our core registers have all been IT-enabled for a number of decades, and that IT supports approximately 400,000 registrations each year. Similarly, the public's access to registers is essentially achieved electronically. That has been the case since 1999, so we are used to working with IT.

We acknowledge that there was a problem with two particular projects, which resulted in the declaration of an impairment in our 2010-11 accounts. One was an electronic case-bank project that had been running since 2006. When the current keeper took office in 2009, the project was reviewed. The review found that there were still a couple of years to go before delivery would take place and that the system would not have the functionality that either we or our customers

required and would not meet the obligations that the then Land Registration etc (Scotland) Bill set out.

We, as the senior management team in ROS, felt that it was the right decision—although a difficult one—to halt that particular project. Since then, and certainly since 2010, we have carried out a considerable review of our governance and financial reporting and the controls that we put in place for projects. We have also built up our intelligent client function, project management skills and programme office skills.

It was partly the halted project that resulted in our taking a considered look at our IT partnership with BT. We engaged in a 10-year partnership with BT in 2004, which ended amicably at the end of November last year, and we have transitioned successfully from dependency on BT to in-house control of our IT. That transition was benchmarked by a Scottish Government review team, which concluded that we had transitioned successfully and that we were already beginning to see financial and operational benefits from carrying out our IT development and service work in-house.

I should mention that we have delivered our first major IT project outwith the BT partnership: the crofting register, which went live on St Andrew's day last year. That was quite a sophisticated technical project, and it was delivered on time and within budget.

**The Convener:** Paragraphs 8 and 9 of your submission mention costs specifically. You state:

“Set-up costs are estimated to be £335,000 and annual running costs ... a maximum £325,000.”

You go on to mention

“three areas where costs may vary from that provided in the Financial Memorandum, namely ... Compliance ... LBTT helpdesk advice to taxpayers”

and

“Basis of taxation for non-residential leases”.

What level of variance might there be in those figures?

**John Fanning (Registers of Scotland):** First, let me say good morning—I am the finance director of Registers of Scotland.

We have modelled the cost base closely, based on our knowledge of residential transaction processing in the entire registration space, so we have quite a good idea of the level of business that we will have to manage.

We view compliance as a role primarily for revenue Scotland. Our role in the venture is to collect the tax and remit it to revenue Scotland. Revenue Scotland has considerable provision in its financial forecast for compliance-related

activity, and we will work with it closely in the next three months to identify precisely where the demarcation line between compliance and collection should be.

The committee has identified a number of areas in which further work will be required at stage 2 of the bill. Those areas are more complex, so we will enter into dialogue with revenue Scotland based on what the Parliament has considered in those areas too. We are quite confident that the costs are robust, on the basis of our experience of handling high volumes of land registration-related transactions.

**The Convener:** I am concerned about helpdesk advice, because people have said in formal and informal evidence to the committee that the current situation is a major concern. When the new tax is introduced, I would think that a lot of people will want to phone for clarification, perhaps before making submissions. If that advice—which one hopes will be of high quality—is to be provided along with everything else, an annual running cost of £325,000 seems to be a modest sum, given the volume of inquiries that I would expect you to have, at least initially.

**John King:** The amount is difficult to estimate. We appreciate that the collection and administration role will be looked at in the context of the tax management bill. We based the figure on our experience of running the land register and of the land register being extended throughout Scotland, which gave us a feel for the likely volume of inquiries.

In dialogue with revenue Scotland, we will need to consider the inquiries that ROS will handle. We do not know whether our role will be simply to give guidance on filling in the online form or to be more involved in advising on aspects of the tax. At the moment, we think that our role is more likely to be the former.

What we have set aside in our on-going estimates is the equivalent of four continuous members of staff to deal with inquiries. We modelled the work on the basis that pretty much each tax return with taxes submitted might mean an inquiry. The numbers stack out for modelling the average time that an inquiry takes. Our experience with the land register is that four members of staff would be needed, but we appreciate that, if our role were to expand, costs might need to be reallocated between us and revenue Scotland to accommodate additional helpdesk functions.

We are very aware of the need for helpdesk advice. From our experience of running the land register, we have found that the demand for access to the helpdesk is relatively constant—it does not tail off. For instance, after the first year or

two of an area of Scotland moving on to the land register, the volume of inquiries remains pretty constant. The volume has also remained reasonably constant despite the current dip in the property market. That might just reflect considerable churn in the conveyancing profession.

**The Convener:** I was thinking about an initial surge of inquiries as opposed to a steady decline. Thank you for responding to my questions.

I will now open the session to committee members.

**Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** Paragraph 7 of your submission says:

“there is weekly dialogue between RoS and Revenue Scotland at project team level on common issues.”

What are those issues?

**John King:** A range of issues is being discussed. I say “issues”, but the appropriate word is perhaps “matters”—they are matters of relevance to the project. When it was announced that ROS would be nominated as a collection body, we established a project in ROS. On the basis of what we know is in the bill, we are developing high-level requirements and informing our understanding of the policy and the system impact of enabling that policy.

The weekly dialogue includes general information that relates to our understanding of the bill and drivers in it. The dialogue is more detailed; for example, we need input from revenue Scotland into the workshops that we are holding to develop requirements. On a range of issues, we are saying, “Does the bill mean this? It could mean something else. What are the implications for an ROS collection role?” That is general fact finding.

Another issue is the potential scope for ROS in relation to compliance work. We appreciate that that will be considered as part of the tax management bill, but we are trying to get a feel for the range of options and potential scenarios, so that we ensure that any exercise to capture system requirements that we undertake notes all the options.

We have been discussing internal training for our staff with revenue Scotland, and we have been considering what general guidance for the profession might involve. A further issue that we have been considering is how best to involve our customers in the development of the system, from both a revenue Scotland perspective and an ROS perspective, ensuring that they dovetail in a meaningful way.

09:45

**Jamie Hepburn:** You have spoken about guidance for professionals. Later in the same paragraph of your submission, you state:

“we will, in tandem with Revenue Scotland, work to deliver clear guidance for taxpayers and their advisers on those matters”—

which essentially means on the respective jurisdictions of Registers of Scotland and HM Revenue and Customs. What will that guidance look like, and how will it be distributed?

**John King:** It is fairly early days. It is clear from our initial discussions with revenue Scotland that there is a lot more work to be done. We need to engage with revenue Scotland, as people will be using the system to ascertain what medium for distributing information will be appropriate for them and what type of information they will require.

When we launched the stamp duty land tax component of our e-registration system, we provided a range of guidance on the general law and its applicability to conveyancing. We provided a series of frequently asked questions about different aspects of the system and of the tax. We provided some helpdesk functionality, and we did some mailshots. We also did what we call registers updates, which was like a one-to-one communication to all conveyancing professionals about the system, about the delegation of powers from HMRC to ROS and about what that means for solicitors and other users in Scotland. There will be a suite of different types of material.

**Jamie Hepburn:** That is obviously building on stuff that you have done previously. Were there any issues that you identified in the process that you are learning from this time around?

**John King:** The one key message that we would take is that different solicitors firms have different preferred ways of receiving communications from ROS. If we wish to be successful in ensuring that people are aware of key messages, we will have to embrace a range of different methods for delivering those messages.

**John Fanning:** I stress the regular dialogue that we have with advisory firms, which is for all sorts of reasons other than to do with LBTT. We need to understand the needs and requirements of what is our primary customer base. It is not as if we are coming in as an entirely new organisation with which the entities concerned need to interact—they are already very familiar with what we do. We have numerous contact methods that we use with those firms. We know who they are and they know who we are. There is a continuing dialogue way over and above LBTT.

We are dealing with the implementation of the Land Registration etc (Scotland) Act 2012,

which—I hesitate to say this—is arguably a much bigger project for us than LBTT. I say that while in no way diminishing the importance of LBTT. That regular dialogue will be really helpful for us in the next two and a half years, as we roll out both projects.

**Gavin Brown (Lothian) (Con):** I want to go through some of the costings that have been set out in the financial memorandum, specifically the costings allocated to Registers of Scotland at page 53. The convener asked about information technology costs and referred to previous IT projects. If I understand the financial memorandum correctly, there is £10,000 under “Non staff costs” for helping solicitors to become familiar with the new system, but the total build cost for developing and implementing the new LBTT system is £75,000. Is that your understanding?

**John Fanning:** Not quite. The vast majority of the staff cost of £250,000 that you will see in the upper part of the table is the cost of our internal IT development staff, who will deliver the project. Had we done the project via outsourced purchasing of IT services from a third party, that would have fallen into the bottom half of the table—it would have been a non-staff cost as bought-in goods and services. However, because we took a strategic decision that we could develop a far more effective system in-house, we will be using our own staff costs.

Accounting standards enable us to capitalise a certain element of those staff costs, so the intellectual property in the new system, its design costs and its build will be a capital asset that we show in our balance sheet and which will depreciate over a period of years.

The essential cost—or much more of the cost—is included in that staff cost element than in the external element. The £75,000 is for pieces of hardware and specialist kit that we need to enable John Fraser’s team to develop the IT system.

**Gavin Brown:** Are you absolutely sure, subject to the caveats that you have laid out, that the £75,000 and the majority of the £250,000 will be enough to design and build the new system?

**John Fanning:** We certainly think that that is the case. John King mentioned the crofting register. Admittedly, its scope is narrower—it affects a finite group of individuals and customers, whereas LBTT affects the whole country—but the creation of that software, which was a more complicated technical project, cost £100,000, so we are quite confident that we can do the IT development for LBTT for the combined £250,000 plus £85,000.

I stress that that covers the two years from round about now to April 2015. That is a fairly



generous provision that should enable us to deliver the project on time and to budget.

John Fraser might want to add something on the development side.

**John Fraser:** We will take advantage of improvements that we are making in our infrastructure in any case. Since the departure of BT, we have had plans to revamp completely the hardware and networks. We will be spending that money anyway and will build and deliver the LBTT collection system on the same infrastructure.

**Gavin Brown:** Mr Fanning, when you used the word “generous”, did you mean that there is a bit of headroom in the provision? Have you built some risk into the figures?

**John Fanning:** Yes, I think so. Our IT history has not been unblemished—that is probably the polite way to put it—so we are wise to err on the side of caution.

We have not padded out the numbers to an extravagant degree, but we think that there is sufficient contingency in them. They are people costs in the main, so I am confident that the sum will enable us to deliver a quality product.

**Gavin Brown:** I have a similar question on figures that are over the page in the financial memorandum, on annual running costs once the system is up and running. Perhaps you can tell me which staff costs would be included, but your non-staff IT costs appear to be only £20,000 a year. I am no expert, but that strikes me as quite low. Will you expand on that and tell me what the overall IT running costs are?

**John Fanning:** John Fraser can expand on this but, once we have up and running a system that has hardwired into it the capability to modify items such as thresholds and rates, the additional IT costs would relate only to developments to bring on board new legislative requirements.

In the same table, we have the slightly imprecisely described “Additional costs associated with new chargeable transactions”. If a significant new chargeable transaction came within the remit of the tax, that would be where we would make the IT changes. Therefore, it might be fairer to look at the £20,000 plus the £50,000 as the IT provision.

Of course, we are speculating about something that is some time down the track. It is more likely that the discussions about some of the issues that have been deferred until stage 2 will identify an additional requirement for IT design if the Parliament comes up with solutions on commercial leases, property companies or trusts and partnerships. At the moment, that part of the bill is not clear. As and when it crystallises, we will design IT systems on it.

I would like to think that we will potentially expend some money in the design phase that will save money in the running-cost phase.

**Gavin Brown:** I also want to re-examine a couple of points that have been raised by colleagues already.

You laid out caveats in relation to potential differences in costs. One concerned compliance. My reading of that caveat is that you are suggesting that, if you are involved in compliance, there will be a reallocation of money from revenue Scotland to Registers of Scotland. Is that right?

**John Fanning:** Yes.

**Gavin Brown:** So is it your view that there would be no increase in the overall cost of compliance, and that the cost would simply shift from one organisation to another?

**John Fanning:** That is what I would expect to occur if there was a significant switch. Section 53 allows an agreement between ourselves and revenue Scotland. We have designed our costing assumptions around a relatively light-touch role for us in compliance and a commensurately heavier-touch role for revenue Scotland. If there were a shift in that balance, I would expect our partners in revenue Scotland to recognise that and transfer costs in the way that you describe.

**Gavin Brown:** You said to the convener that the LBTT helpdesk, for which you have made provision in the budget, would have four members of staff. We have heard complaints from a number of witnesses that the current set-up of the helpdesk is not as helpful as it ought to be. How will having four staff members across Scotland compare with what is currently in place? Is that a huge improvement? Do you have a sense of what the situation is like at the moment?

**John Fanning:** I do not think that we have a real sense of the situation at the moment. What we have is our experience of introducing other registration services in the way that John King described earlier. You could have an extremely generously staffed-up helpdesk, which could deal with every possible call on every possible matter, but that would be an expensive way of delivering the service. There is quite a tricky balancing act to be struck in getting the right number of advisers to provide a service and not veering over to the stage at which advisers—either deliberately or inadvertently—use us as a source of revenue to cover their own costs.

We think that having four staff will be sufficient for the day-to-day administrative calls. There is also an additional provision in the numbers for more complex inquiries. That is the sort of continuum that we are going for. Clearly, if someone asks, “How do I fill out line 15 in the

form?” that is a question for us. However, if someone asked whether it is valid to apply relief X, Y or Z, that would be an area in which we would expect revenue Scotland’s input. Where the line down the middle should be drawn will emerge as the tax, the legislation and the approaches to that become clearer over the next couple of years. It is worth stressing that we have 18 months in which to address the various issues.

The concern that you express is valid, but we are aware of the issue and we are addressing it through the detailed work that we are doing at the moment. We are modelling lots of scenarios. John Fraser’s IT teams are doing a lot of business analysis-type work in relation to exactly the kind of questions that you are asking. The process that we have is reasonably robust.

**John Mason (Glasgow Shettleston) (SNP):** When Gavin Brown asked how having four members of staff would compare to the current situation, did you say that you are not clear on the position at the moment? Did I pick you up correctly?

**John Fanning:** The tax is administered by HMRC, and we have not had that dialogue so far.

**John Mason:** That is interesting, because my main question is to ask about the relationship with HMRC at the moment, and how you see it developing. At the moment, you are, technically, agents for HMRC—you are collecting tax—and that relationship will be quite important over the transition period. Can you give us a summary of the relationship with HMRC?

**John Fanning:** If you do not mind, I will ask John King to cover that. He is much more familiar with that issue.

**John King:** For a number of years, we have had a positive working relationship with HMRC. In relation to the launch of the stamp duty land tax component of ARTL, it provided us with advice in terms of the types of questions that our helpdesk might be asked, and in training.

We do not have a note of the percentage of inquiries that HMRC receives through its general helpdesk that relate to stamp duty land tax matters in Scotland. We have asked HMRC for that, but we understand that it is not particularly easy for it to obtain that information. However, it has given us informal feedback on the general volume and nature of inquiries, which has helped us with our modelling.

10:00

As we go through the transition from stamp duty land tax to LBTT, it is absolutely essential that we maintain that positive relationship with HMRC. That is essential for us and, more important, for

our customers, so that we can give them clear guidance on the transition and, when the date gets nearer, on whether a particular transaction falls under the ambit of LBTT or remains under the ambit of SDLT. We are represented on two projects that HMRC has set up on the transition, so dialogue is on-going. There is also on-going dialogue between our project manager and colleagues in HMRC.

**John Mason:** I agree that the relationship is important. However, it does not encourage me to hear that HMRC does not know how many inquiries it has about SDLT and how many of them come from Scotland. That sends a warning signal for the future that things might not be all that smooth. I have to say that I am not a great fan of HMRC. The fact that the Government proposes to use Registers of Scotland and revenue Scotland rather than HMRC suggests that it is somewhat bureaucratic and expensive. Do you feel free to comment on that? Will the new system be more lean and mean?

**John Fanning:** It is worth making the point that our role vis-à-vis the collection of stamp duty land tax is confined to Scotland and is narrow; all we do is collect the tax. An adviser, or the taxpayer, identifies the tax that they think is due; we take a payment and remit it directly to HMRC. We have very little in the way of a compliance or advisory role at present. Under the new tax, things will be totally different. The concern that John Mason expresses is valid, but I do not think that the situations are directly comparable.

We clearly need to engage in dialogue as soon as we can. When the committee’s hearings and the current phase of the legislative process are complete, that will be an appropriate point to increase the volume of dialogue although, as John King described, it is already in progress. To summarise, our role is narrow at present, but it will widen, and discussions are required.

**John King:** On the point about bureaucracy, without being in any way disparaging of HMRC—I emphasise that we have a good working relationship with it—the fact that ROS will act as a collection agent should reduce bureaucracy for the customer because we will, in effect, act as a one-stop shop. At present, for the overwhelming majority of transactions—all of them, apart from the ones that go through our online system—our customers have first to interact with HMRC before they can present their land transaction for registration. As we all know, that adds risk, administrative cost and delay to the process.

We have in place an administrative framework, based on our relationship with the solicitor community in Scotland, which we can use to ensure that solicitors’ experience with the land and buildings transaction tax is better than their current

experience with stamp duty land tax. I emphasise that I am in no way having a go at HMRC, because it has been helpful to us.

On the point about the helpdesk, HMRC has told us the overall number of inquiries. However, we do not have a detailed understanding of how many of those inquiries relate to Scottish transactions. That is more just because of the practicalities and the nature of the helpdesk and of inquiries. For instance, a Scottish solicitor could phone up, but might give no indication that they are Scottish. Alternatively, a Scottish solicitor might be dealing with an English transaction or an English solicitor might be dealing with a cross-border commercial transaction. Such examples are where the challenge is for HMRC in providing information.

**John Mason:** That is fair enough. I am not totally reassured, but there you go.

Obviously, the relationship will change; you currently just collect money for HMRC, whereas in the future ROS and revenue Scotland will be an equivalent of HMRC in some ways, albeit smaller. I hope that HMRC will take that on board. Specifics, such as the timings during the switch to the new tax, will depend a lot on the relationship with HMRC. Do you anticipate—based on the bill—that it will be clear who pays SDLT and who pays LBTT? Is there room for uncertainty?

**John King:** In principle, who pays which tax should be clear; we think that it should be very clear for residential transactions. There will be a clear cut-off date for when the new tax applies to a land transaction in Scotland. We hope that it will be clear, too, for non-residential transactions, and I imagine that our customers will hope that it is clear as well.

We appreciate that the details have still to be brought before Parliament, and we understand that that will happen at stage 2. We must be honest and say that because we do not know what the detail of the provisions may be, we do not know what the impact may be in terms of customer guidance to aid the transition.

**John Mason:** Okay. I take it that there are already examples of single sales that involve land or buildings on both sides of the border.

**John King:** Yes.

**John Mason:** Will the practice for that need to change much?

**John King:** Our clear understanding is that any property in Scotland will be subject to LBTT and that any property south of the border will be subject to SDLT. You are right that there are transactions on property that straddle the border, although they are very rare. The same principle applies to land registration: title for property north

of the border is registered with ROS and property south of the border must be registered with the Land Registry in England and Wales.

**John Mason:** Does the value need to be split at the moment, or will that be a new provision for the future?

**John King:** The value must be split for registration. I have to be honest and say that I do not know how that will apply for LBTT. I imagine that that is one of the details that will have to be explored.

**John Mason:** Okay.

Apparently, one of the agreements in all this is that all the costs, or the extra costs, of LBTT will be taken from the Scottish side, even though decisions are made at the United Kingdom end. Obviously, we hope to minimise costs. How do you see ROS's role in that? I perceive an inclination on the part of HMRC to push all the costs in our direction, even though we are not necessarily totally in control of them. Are you able to try to minimise extra costs?

**John Fanning:** To which extra costs are you referring? Is it the transitional costs?

**John Mason:** HMRC is talking about switch-off costs in that just to stop having SDLT will involve extra costs. I do not know whether you have been involved in that or have had discussions about it. It is just that—again—I am nervous that we will have costs landed on us as a result of HMRC saying that it needs a new computer system because Scotland is not involved any more, and so on.

**John Fanning:** We have not discussed that. I am not sure that we regard it as falling within our remit. I think that it is an issue for the Scottish Government and/or revenue Scotland.

**John Mason:** Okay. I think that there is provision that HMRC or the UK Government will be able to get information from you and/or revenue Scotland on an on-going basis. I understand that that is because they need to do statistics and all that sort of stuff. Do you anticipate any extra costs in, for example, IT so that you can provide them with information, or will that all be covered by what we need to do anyway?

**John Fanning:** No; I think that we would build that requirement into the IT design. We have actually included a figure in the financial memorandum, to which Mr Brown referred. I think that the figure is £15,000 for the on-going requirement to remit information to HMRC.

**John Mason:** Will HMRC refund us for that?

**John Fanning:** No, I do not think that it will. I think that that is a requirement on HMRC because, at least until November 2014, the majority of the tax affairs of taxpayers in Scotland will be

managed by HMRC. In fact, that will be the case even beyond 2014 or beyond the introduction of LBTT, if Scotland remains a part of the UK. In that case, a large number of the tax affairs of taxpayers who are resident in Scotland will still be managed by HMRC, so it will still need that information both for the data purposes to which John King referred and for overall management of commercial entity or individual taxpayers' affairs.

**John Mason:** It appears, therefore, that we will pay for our own costs and for part of HMRC's costs as well. You do not need to answer that. *[Laughter.]*

**John Fanning:** I will pass on that one.

**John Mason:** Okay. Thank you.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** There has been quite a lot of discussion about the timing of the payment in relation to registration. I am interested in how that works at present and how it will work under the new arrangements.

My understanding is that, at the moment, it is required that a land transaction return be made in respect of the transaction before land registration can take place, but it is not required that the tax has been paid. If that is correct, could you amplify that and explain the relationship between registration and payment of the tax? I will ask about the new system afterwards.

**John King:** Your summation is spot on. My understanding is that, once the return has been submitted, people have 30 days from the effective date—which, in Scotland, is generally the date on which the transaction is settled; in other words, when the money and the keys pass over—to complete payment. Our understanding is that, with the exception of those transactions that go through our online system—with those transactions, the tax return and the payment happen simultaneously—people submit the return to HMRC, after which they have a set period in which to make payment. There is a range of ways in which payment can be made.

**Malcolm Chisholm:** I will probably get this wrong now. Is the land transaction return made to you or to HMRC? How does that work?

**John King:** At present, we collect a very small proportion of stamp duty land tax through our online system. With those transactions, people submit their land transaction return to us, along with any taxes that are due, at the same time as they submit their registration application. However, that is the case with only a very small proportion of the overall number of transactions.

**Malcolm Chisholm:** That prefigures the new system.

**John King:** For the other transactions, people would contact HMRC before contacting ROS.

**Malcolm Chisholm:** I think that that has been the source of some confusion. You are saying that, at present, there are two ways of doing it. That explains some of the contradictions.

As far as the new world that is coming in 2014 is concerned, I suppose that some people are concerned about the fact that both aspects will have to happen at the same time. That is the basic point. I think that the assumption is that that has to be done within 30 days.

We had a useful submission from Pinsent Masons LLP. I will read out part of it, because I think that it is relevant to my subsequent question, too. It said:

"The conveyancing system in Scotland currently relies on a seller's solicitors issuing a letter of obligation to the purchaser's solicitors which effectively guarantees that no new entries will appear in the Land Register ... which would prevent the purchaser from obtaining good title, provided the purchaser registers their title document within 14 days of settlement of the transaction."

Therefore, it was saying that, although the bill talks about a 30-day period, in practice people will have to pay within 14 days. Is that correct?

**John King:** It is not so much the case that they will have to pay within that period; they will certainly have to submit their return to HMRC—

**Malcolm Chisholm:** Is it not the case that payment has to happen at the same time?

**John King:** Payment need not be made to HMRC. I understand that it has a set period, which I think is 30 days, so a person can submit their return on day 1 then submit payment at any point between day 1 and day 30.

**Malcolm Chisholm:** I thought that ROS was going to receive the payment.

**John King:** I guess that that comes back to the fact that there are two types of transaction.

**Malcolm Chisholm:** I am talking about the arrangements in the new world.

**John King:** I apologise. In the new world, payment will come to us.

We are aware that the Law Society of Scotland is concerned that payment in cleared funds will not be required before an LBTT return can be made to us. The language that is used in the bill mirrors the language that is used in the Land Registration etc (Scotland) Act 2012. Arrangements that are satisfactory for payment to be made must be in place. We understand that that will allow the return to be submitted along with, for instance, a direct debit instruction that says that money should be taken 10 days hence. In other words, there is no requirement to pay on the day on which the return

is submitted, but there is a requirement to have in place arrangements that will ensure that payment follows in due course.

**John Fanning:** I am sorry to jump in, but it might be worth mentioning that that is the methodology that we use at the moment for collecting fees in respect of our day-to-day activities; the vast majority of our business is transacted through such direct debit arrangements. We are quite familiar with that process and have managed it for quite a long time. In 95 per cent of situations, it works extremely effectively. It is also a very cheap way of managing payments. In a small number of situations it might not work perfectly, but we know how to deal with those situations.

I hope that the committee will be reassured to know that if we can replicate those arrangements—I am very confident that we will be able to—the mechanics of collection should work effectively and should give certainty to us and to revenue Scotland that we will get the money. They should also give a degree of certainty to the payers of the tax or their agents that funds will be taken according to prearranged agreements.

10:15

**Malcolm Chisholm:** The advance notice system that is being introduced under the Land Registration etc (Scotland) Act 2012 will, I am told, afford a 35-day period for registration. Will that change the situation significantly? Will it make things easier for people by giving them longer to register?

**John King:** As far as land registration is concerned, that system will remove the period of risk that—as Malcolm Chisholm has suggested—currently arises with the letter of obligation because priority of registration will be preserved as long as advance notice is registered then followed up with registration within 35 days.

**Malcolm Chisholm:** Most of the issues that you have raised in your written evidence have been dealt with. However, as you will know, we have had a lot of discussion about sub-sale relief, which you refer to in the last section of your submission. If the bill is not amended and sub-sale relief is not available, what mechanism would be put in place for registration and taxation in that regard?

**John King:** I hope that I am answering this correctly, but I think that any relief will be built into the system. We are also aware that reliefs might change; after all, new ones might be introduced and existing ones removed and one of the basic requirements of any system would be flexibility to add or remove reliefs.

From a collection point of view, it does not really matter whether sub-sale relief is available. If it is not available, I guess that there will be two options: the transaction will either be exempt from—which we will manage—or be liable to the LBTT regime, which we will also manage.

I do not know whether that answers your question. We know that there has been a fair bit of discussion about various reliefs. Our line is quite simple: if we are asked to accommodate a relief in the system, we will build in that functionality and manage it.

**Malcolm Chisholm:** You have already answered a number of questions about the ARTL system. I would like to ask a final question about it, even though I will probably not understand the answer. What components of the system need to be improved? I realise that you have covered the financial aspects, but I note from your submission that the costs that you cite are estimates based on developments with regard to the SDLT component of ARTL. Are you confident that those cost estimates are reliable?

**John Fanning:** As I mentioned in response to earlier questions, we are quite confident that the time and resource allocation for our IT staff is adequate for delivery of the required solution. John King might have said as much earlier, but the ARTL system was not designed primarily as a tax-collection system; that capability was tagged on to it and is a subsidiary purpose. The system that John Fraser and his colleagues will design will explicitly address LBTT and its various reliefs, exemptions, complications and so on. We are confident that we will have much more fit-for-purpose software than was the case for ARTL.

**The Convener:** That seems to have exhausted committee members' questions, although I want to explore one or two more issues with you.

Paragraph 7 of your submission says that

"there is weekly dialogue between RoS and Revenue Scotland at project team level on common issues."

How clear are you about the eventual roles that your organisation and revenue Scotland will play in delivering LBTT?

**John King:** Although there is a degree of uncertainty about our roles in compliance and in advice and guidance—which is only to be expected, given the timing of the various pieces of legislation—we are clear that our core role will be collection, so we are focusing very much on that. We also recognise that over the course of the year our compliance role and our advice and guidance role will be clarified.

**The Convener:** If you are not sure about your level of responsibility with regard to advice, guidance and compliance, how can you be so sure

about the various costings in the financial memorandum?

**John King:** We have made various assumptions and, as we have emphasised, if they need to be altered, the balance of funding between ROS and revenue Scotland might also have to alter. Our assumption that we will play a relative minor role in compliance has been factored into the costs and we have assumed that our advice and guidance role, for example, will relate more to administration of form filling than it will to providing guidance on detailed taxation matters.

**The Convener:** Indeed—and you touch on that in paragraph 9(i) of your submission.

Coming back to the helpdesk issue that I and other members have raised, I wonder how the public will know whom to contact and what to contact them about. It is one thing to say that there will be a helpdesk, but what help will it deliver?

**John King:** That is a very good question; that is one of the issues that we have identified as requiring further and considerable dialogue between us and revenue Scotland. As a result, I cannot answer your question except to say that we are aware that it is a key issue and that we will explore it over the course of this year and into the next with our key customer groups and with revenue Scotland and HMRC.

**The Convener:** We have seen a budget and know what the staff complement will be, but we do not really know what questions are going to be answered or who is going to be asking them. Is the whole thing not a bit woolly at this stage?

**John King:** Its being so is just a natural consequence of the fact that the collection and administration issues will be dealt with in the tax management bill that will follow this bill. That bill will provide more of a catalyst for identifying, focusing in on and resolving these matters.

On a positive note, we still have two years before the tax goes live. We are aware of the issue and have plenty of time to manage it and ensure that a solution is put in place, that a helpdesk is available and that customers are very clear about its purpose and whether their inquiry should be dealt with by our helpdesk or another one.

**John Fanning:** I do not really want to speak on its behalf, but I note that revenue Scotland will have a £500,000 provision for on-going year-on-year compliance advice. If the balance between our respective roles were to change, there might, as John King said, be a reallocation of costs between us and revenue Scotland. It might be more comforting to think of the money as a pot of about £650,000 for various compliance activities

that can be allocated between the two bodies depending on how their respective roles pan out over the next year to 18 months of discussions.

A taxpayer who wants to deal with the revenue authority will go to its web page for a number to call. Those calls can then be routed to us behind the scenes with a call-management system, but it would make taxpayers quite nervous if they felt that responsibility for the tax management of their affairs was being distributed among various bodies. For the comfort and security of individual taxpayers, I think that such activity must be badged or branded as revenue Scotland activity.

**The Convener:** Indeed. People need to be confident that there is a one-stop shop and that they need to phone only one number, regardless of to whom, as you suggested, the call eventually goes.

I thank the witnesses for their evidence. Jim Johnston tells me that there was a 1970s punk band called The Three Johns, but you all look far too young to have been in it.

I suspend the meeting until 10.30, when we will take evidence from the Cabinet Secretary for Finance, Employment and Sustainable Growth.

10:23

*Meeting suspended.*

10:32

*On resuming—*

**The Convener:** I welcome to the meeting John Swinney, the Cabinet Secretary for Finance, Employment and Sustainable Growth; Eleanor Emberson from revenue Scotland; and Neil Ferguson and John St Clair from the Scottish Government bill team. I invite the cabinet secretary to make a brief opening statement.

**John Swinney (Cabinet Secretary for Finance, Employment and Sustainable Growth):** Thank you for the opportunity to come and speak to the committee. As the committee knows, the Land and Buildings Transaction Tax (Scotland) Bill is the first of three bills dealing with the Parliament's new financial powers over taxes on land and property and disposal to landfill. The bills are the first important step towards establishing the principle that taxes that are paid in Scotland are best set, managed and collected by those with Scotland's best interests at heart.

In my statement to the Parliament last June, I said that taxpayers and expert communities will have an integral role to play in ensuring that our approach to taxation is and remains effective and appropriate. I record my thanks to the numerous stakeholders who continue to give of their time

and ideas to work with the Scottish Government to ensure that the LBTT will be better aligned with Scots law and practices. I am also pleased to note the degree of interest that the committee has been able to stimulate in the wide and informed response to its call for evidence.

At a practical level, progress has been made on preparing for implementation of the land and buildings transaction tax. Earlier this morning, the committee heard from Registers of Scotland, and Eleanor Emberson from revenue Scotland is with me to deal with some of the practical approaches. The preparatory work gives us confidence that we will have the legal and administrative systems in place in good time to collect a fair and robust land and buildings transaction tax in Scotland from April 2015. The Government will pursue that approach and ensure that the required legislative provisions are taken forward in the light of the evidence that the committee hears and the conclusions that it arrives at.

**The Convener:** Thank you. We move straight to questions. I will begin, and I will then open up the session to colleagues.

No doubt, you will be well aware that much of the evidence that the committee has received is on sub-sale relief. I am sure that both I and my colleagues will touch on that in our questions. We have received a lot of evidence from people who say that there is a strong case for targeted sub-sale relief. For example, the Scottish Property Federation stated:

“it will be important to ensure abolition does not inadvertently damage other government policy initiatives”,

particularly in relation to the

“impact on the residential development market”.

I do not want to quote lots of people, but I have similar quotes from Brodies, Pinsent Masons, the Chartered Institute of Taxation, the Institute of Chartered Accountants of Scotland and so on.

Is the Scottish Government considering changes to the bill in relation to sub-sale relief given the evidence that the committee has received? If not, how will the Scottish Government ensure that aspects of what it is trying to do will not cause damage and undermine Scotland’s reputation for competitiveness?

**John Swinney:** I say at the outset that one of my objectives in the bill is to ensure that Scotland’s reputation for competitiveness in this area of activity is protected. Equally, however, I also want to ensure that I fulfil the commitment that I gave to the Parliament that we will take forward in this legislation—and all the other tax legislation—a robust approach to tackling any tax avoidance. Those are essentially the principles with which we will wrestle. The Parliament has

been clear with me that it expects there to be a heavy emphasis on minimising tax avoidance. Indeed, there is a strong emphasis on the need to minimise avoidance in the general commentary and wider debate on the whole issue of taxation. There is a balance to be struck here.

I have not come to a final decision on sub-sale relief. Obviously, I will be interested in what the committee makes of the evidence that it has heard and I will consider that carefully. There is the possibility that we could bring forward proposals at stage 2, and I look to the committee’s report to help inform our view.

I would make one distinction at this stage in the debate. Before I do that, I say—to help the committee—that I am not minded to bring forward targeted relief, but my mind is not fixed on that and I will wait until the committee reports in that respect.

I want to consider forward funding, which is different from sub-sale relief, as a separate issue. Forward funding is about how we enable sites to be developed, and it is a discrete model of site management and site development. I do not want that to get caught up in the discussion about sub-sale relief as I think that it is part of a different discussion.

**The Convener:** Some witnesses have suggested that the removal of sub-sale relief would have a detrimental impact on forward funding because sub-sales are used to unlock and develop key commercial sites. The bill team said:

“sub-sale relief has become an avenue for avoidance of quite substantial amounts”.

I appreciate that. However, the Chartered Institute of Taxation said:

“avoidance has come around because sub-sale relief has been combined with another relief or exemption.”— [Official Report, Finance Committee, 23 January 2013; c 2089, 2109.]

What the CIT and others are trying to say is that it is that combination—not necessarily sub-sale relief or aspects of it—that allows avoidance to take place.

**John Swinney:** What I was trying to say about separating off forward funding was designed to try to help us get to the nub of an issue that we have to be careful to avoid. I suppose that the best way to express that is to say that I am anxious to avoid anything happening under the legislation that makes it more difficult or challenging to develop sites where multiple uses may well emerge. That is where the distinction between sub-sale relief and forward funding is quite helpful. The forward funding model enables a more robust picture to be established.

On the convener's question about the Chartered Institute of Taxation's advice and how avoidance arises perhaps only because of a combination of a couple of factors coming together, I take from that that we had better be careful to take steps to close down all possible avoidance routes. It is not that some avoidance routes arise because of one set of circumstances or another that are more or less acceptable; in my book, none of them is acceptable. I want to ensure that we make a very careful judgment to avoid getting into the situation in which we do not take the opportunity in the bill to close down opportunities for avoidance, particularly as I have been clear to Parliament that that is one of my objectives with the bill. I want to remain true to the commitment that I have already given to Parliament.

**The Convener:** Okay. Thank you. I know that committee colleagues will delve into that issue much more deeply, so I want to touch on other issues before I open out the discussion to them.

Charities and charitable trusts are another issue of contention. We have received evidence from the Office of the Scottish Charity Regulator and the Charity Law Association. There is an issue, in that the bill team has stated that, if any charity wanted to register with OSCR to qualify for relief, the work

"would not be onerous and no fee would have to be paid."—[*Official Report, Finance Committee, 23 January 2013; c 2090.*]

However, OSCR said in evidence:

"Registration can be complex depending on the nature of the organisation and there is no guarantee that this will result in the award of charitable status."

It therefore questioned

"whether bringing such organisations permanently under the full scope of the Scottish charity regulatory regime is a proportionate way of providing assurance that they qualify for what may only be a one-off relief on one transaction."

There is a feeling from the evidence that we have received that that aspect of the bill is perhaps a wee bit like taking a sledgehammer to crack a nut.

**John Swinney:** We are creating an entirely new framework. We do not have the framework for dealing with the abolition of stamp duty land tax, so we must put one in place to consider all the relevant questions. In the absence of that provision, we would not have sufficient legislative clarity on how we were going to deal with the question of any relief from LBTT for charities. Without the provisions, charities would be exposed to LBTT: we would not have created an exemption measure in the legislation because the whole regime was being abolished. In that respect, I would not describe that aspect of the bill as like taking a sledgehammer to crack a nut. Rather, I

suppose that I would describe the requirement as a passport.

The bill will require that, to qualify for LBTT relief, any charity will require to be registered with OSCR. I am sure that registration with OSCR varies charity by charity, and that it is pretty straightforward for some and that a bit more of an examination and exploration of the issues is involved for others, but I think that there is a rather simple connection between whether an organisation passes the test of being a charity and subsequently is or is not eligible for relief. There has to be a rather simple test for that. The test is the same requirement that is placed on charitable and other organisations that wish to claim a reduction or remission of non-domestic rates payable under the Local Government Financial Provisions etc (Scotland) Act 1962. That is why I would describe the requirement as more of a passport than a sledgehammer.

10:45

**The Convener:** I do not think that OSCR agrees with that, to be honest. Brodies and ICAS suggested that relief should be available to those whose charitable status is granted by HMRC and not just OSCR. That would resolve the issue.

**John Swinney:** Obviously I will listen to what view the committee comes to on that question. We have already a mechanism in place for reduction or remission of non-domestic rates, and charitable relief accounts for a sizeable part of the relief regime that is in place for non-domestic rates. That is triggered, in essence, by registration with OSCR. I do not really see what the issue would be but if there are practical issues that need to be wrestled with, I will of course consider them.

**The Convener:** I hope that the purpose of LBTT is also to achieve neutrality in revenue. Although the witnesses all agreed with that objective, many of them wanted as many exemptions and as much relief as possible, which would impact adversely on that target. At the same time, they want to keep the general level of taxation low. I have some sympathy with your trying to square that circle.

**John Swinney:** The bill takes the Parliament into new territory, because—with the exception of non-domestic rates, which is an issue that we chew over frequently—for the first time the Parliament is required to consider what type of revenue exemptions it wants to give people. Ultimately, a block grant adjustment will be made when stamp duty land tax comes to an end. A sum of money will leave the block grant, leaving a gap that will have to be filled by the same amount of money. If we fill it with less money, we will have to think about how we will fill the gap that is left by whatever decisions we take through legislation on



tax relief. It will put Parliament through a different process that it has not been accustomed to, which will be a fascinating experience.

**The Convener:** The committee is certainly aware of that. Many witnesses have said that certain measures, if enacted, would discourage wealth creation and ultimately have a deleterious effect on taxation. You obviously have to strike a balance.

I want to touch on licences, which I raised last week. ICAS suggested that

“An exemption should be included for licences to occupy”

and said that

“it should be recognised that most may be below the threshold.”

For example, shops within shops are currently exempt from SDLT. ICAS argued:

“These may become less attractive business locations if additional tax charges arise.”

Examples would include shops in airports, malls or wherever. Pinsent Masons LLP said that that has the

“potential for rendering Scotland a less competitive place to do business”.

Has the Scottish Government analysed the potential impact, both direct and on the perception of Scotland as a place in which to do business, post LBTT?

**John Swinney:** As I said at the outset, I am forever mindful of the issues of Scotland’s competitiveness and the perception of Scotland’s competitiveness. However, we must also look at some of the questions of equity across comparable circumstances. If a particular type of shop is in an airport and that type of shop is also on the high street, the one on the high street will be paying stamp duty land tax on the lease. Issues of equity come out of that, because given the challenges faced by town centres, one might say that airports are more captive markets than town centres are. Those issues of equity have to be wrestled with.

I am considering the issue, and I am here to assist the committee with its deliberations because I am interested in the committee’s observations on our proposals. In this area of activity, there is some distinction between what I would call temporary or short-term occupation and longer-term, almost permanent, occupation. For example, there might be an argument that large-scale conference events that take place at a venue operate under a licence and should be eligible for LBTT. I cannot be persuaded of that because that occupation lasts for a limited period of time and it does not strike me as a transaction that should give rise to such a tax charge. Some distinctions

have to be made about whether there should be any liability for LBTT.

**The Convener:** Thank you. At the beginning of the bill process, we talked about the timing of and approach to stage 2 amendments and the option of the Scottish Government lodging all its stage 2 amendments at the outset of the stage 2 process. Where are we with that?

**John Swinney:** I aim to lodge as many as I can at the outset of the process. The nature of some of the territory that we have to cover is very complex and various questions will require further discussions with stakeholders. I certainly intend to have further discussion of some questions with the non-residential leases working group that I have established, and looking at material that might emerge from those discussions might mean that we are not quite ready to lodge certain stage 2 amendments at the outset. I, along with the bill team, will do my level best to lodge amendments as close to the outset of the process as possible.

**The Convener:** Thank you for that clarification.

On another point of clarification, witnesses from the Scottish Building Federation and the SPF asked for

“clarity on even provisional figures of tax rates or bands”.

They are concerned that not having that

“goes against the principle of certainty in taxes”.

I and others argued against that but I wonder whether the Scottish Government is persuaded of the SBF’s view that there should be a minimum of 12 months between publication and impact. Indeed, it said that 18 months would be preferable. Has the Scottish Government given further thought to that?

**John Swinney:** In looking at the evidence that the committee has taken on that point, I think that it would be fair to say that the consensus was that the tax rates and bands should be set out anywhere between a week before the start of the financial year and 18 months or two years before the start of the financial year. The committee has managed to create a helpful consensus in that respect.

We need to weigh up the arguments. Giving lots of notice would give clarity and certainty and enable planning, but it might also give rise to behaviour that distorts the marketplace and, consequently, the tax take. That would be an argument for giving notice closer to several weeks before the start of the tax year. Indeed, as Mr Marshall from the Edinburgh Solicitors Property Centre, said:

“once the decision has been communicated to the public we will want to move as swiftly as possible to

implementation.”—[*Official Report, Finance Committee*, 6 February 2013; c 2212.]

His concern is that steps should be taken to avoid short-term disruption.

Those exchanges force me to think about the best pace. I had assumed that we would most likely set out the tax rates and bands when I set out the draft budget in September 2014. Some of the evidence is making me think that even that may be a bit early. However, I have not come to a fixed view on that, and the committee’s reflections in that respect would be helpful.

**The Convener:** I should say that anything from a week to 18 months is not our view. It is just that people from whom we have taken evidence have talked about the issue. We have still to deliberate on that.

**John Swinney:** I was being slightly impertinent.

**The Convener:** I have a question on an issue about which we have not questioned any of the witnesses, although it has been mentioned in the evidence. In its report on the bill’s delegated powers, the Subordinate Legislation Committee sought clarification from the Scottish Government on the use of the negative resolution procedure. It said:

“the Scottish Government has not provided a compelling argument for a reduction in the level of scrutiny on the second and subsequent exercise of the power. The Committee therefore recommends that the power should always be subject to a form of affirmative procedure.”

**John Swinney:** The nature of the responsibility is an integral part of how the bill is constructed, so it does not strike me that such exercise of the power would confer significantly greater powers or responsibility than are envisaged in the core of the bill. For that reason, the negative procedure is appropriate. Obviously, I will consider the Subordinate Legislation Committee’s views on why that is insufficient. It clearly provides for parliamentary decision making, but we can consider whether a change of direction is merited.

**The Convener:** Paragraph 245 of the financial memorandum says that the costs in the financial memorandum do not

“include the anticipated one-off costs associated with the ‘switch-off’ of the UK taxes in Scotland which will be incurred by HMRC and charged to the Scottish Government.”

Why is that the case and do you have any updates on the estimates for those costs?

**John Swinney:** The reason why those costs are not included is that we do not have a definitive figure from HMRC. It has indicated to us that the costs will exceed £500,000, but we still do not have further definitive information from it.

**The Convener:** Has HMRC given you any breakdown or any indication as to why it would be that fairly rounded figure?

**John Swinney:** To be fair to HMRC, it gave us an indicative figure.

We must have a rigorous process in place to test and assess any financial costs that we have to meet from HMRC arising out of the memorandum of understanding on tax management that the committee has previously considered. That memorandum of understanding has now been agreed—I think that I confirmed this to the committee—in the aftermath of the Joint Exchequer Committee meeting that took place during the parliamentary recess. It gives us a clear framework within which we can scrutinise any cost requirements that HMRC places on us. I will pay particular attention to the one to which you refer.

11:00

**Jamie Hepburn:** Thank you for your evidence thus far, cabinet secretary, which has been very helpful.

One of the exemptions in the bill refers to “Acquisitions by the Crown”. Mr St Clair told us previously that that was to do with acquisitions by the Scottish Government and that there was no point in the Scottish Bordersttish Government taxing itself, which made perfect sense. However, when we explored the issue a little further, we came to understand that the exemption also covers UK Government ministers. I seek clarification about who we are talking about with regard to the Crown in this case. Is it the Scottish Government, the UK Government and—presumably theoretically in this case—the Northern Ireland Assembly Government and the Welsh Assembly Government?

**John Swinney:** I will need to take some guidance from my officials as to whether the reference to “Acquisitions by the Crown” involves bodies other than the Scottish Government and the United Kingdom Government.

**John St Clair (Scottish Government):** The Scotland Act 2012 lists the bodies that are not to be covered by SDLT, which includes the Crown and a minister of the Crown, which includes the whole UK Parliament. I think that that is all that is included at the moment; it would not include the Welsh Assembly or the Northern Ireland Assembly.

**Jamie Hepburn:** The provision covers just the Scottish Government and the UK Government.

**John St Clair:** Yes, but I think that we will have to check on the situation in respect of the Welsh Assembly and the Northern Ireland Assembly and come back to you on that.

**Jamie Hepburn:** Presumably any other application of the provision is fairly theoretical, because I imagine that it is mainly the Scottish and UK Governments that acquire property in Scotland.

It is interesting that Mr St Clair referred to the Scotland Act 2012 covering exemptions for SDLT. Does that mean that the Scottish Government has no choice in the matter? Or could it in theory replace the current exemption with reference to acquisitions by the Scottish Government?

**John Swinney:** We have no powers to amend the Scotland Act 2012. If the 2012 act prescribes something, we have no legislative discretion to do anything other than follow that provision.

**Jamie Hepburn:** Is it that prescriptive?

**John St Clair:** It is wider than I suggested.

**John Swinney:** The Land and Buildings Transaction Tax (Scotland) Bill lists the following exemptions:

- “(a) the Scottish Ministers,
- (b) the Scottish Parliamentary Corporate Body,
- (c) a Minister of the Crown,
- (d) the Corporate Officer of the House of Lords,
- (e) the Corporate Officer of the House of Commons,
- (f) a Northern Ireland department,
- (g) the Northern Ireland Assembly Commission,
- (h) the Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government,
- (i) the National Assembly for Wales Commission,
- (j) the National Assembly for Wales.”

Those exemptions are driven by those listed in the Scotland Act 2012.

**Jamie Hepburn:** In other words, the exemptions in the bill are not the result of a policy decision.

**John Swinney:** No. The 2012 act specifically provided for certain statutory bodies not to be subject to the two devolved taxes. The list that I gave is in paragraph 2 of schedule 1 to the bill and reflects the requirements of the 2012 act.

**Jamie Hepburn:** I presume that that is reciprocated across the UK if the Scottish Government seeks to acquire property furth of Scotland.

**John Swinney:** Yes.

**Jamie Hepburn:** Clearly, the bill is about a new tax, but it might be useful to estimate what the value of such transactions might have been under SDLT in previous years.

**John Swinney:** We will endeavour to give that information to the committee.

**Jamie Hepburn:** It is helpful to know that the exemptions are a legal requirement rather than a policy decision.

I turn to the issue of charities relief, to which the convener referred earlier. I am aware that what I am about to explore will arise in only a few circumstances, but it has nonetheless been the focus of some discussion. There is a requirement for overseas charities to register with OSCR to benefit from charities relief. Some witnesses have suggested that that requirement is incompatible with charity law. However, OSCR has set out to us the fact that there is provision under section 14 of the Charities and Trustee Investment (Scotland) Act 2005, whereby charities can represent themselves as charities in Scotland, rather than being registered in Scotland—if that is clear. Is section 14 of the 2005 act the provision by which you suggest overseas charities should register with OSCR?

**John Swinney:** I think that would be the case.

**John St Clair:** Our understanding is that anybody can register as a charity and we are particularly concerned about there being some way of checking on foreign charities. The point was raised earlier that that could be onerous, but the situation in which it would be onerous would be onerous for whoever was doing the supervising. It could be a matter of deciding, for instance, whether a charity with a large involvement by a particular family actually was a charity. Such matters will always take time to sort out.

**Jamie Hepburn:** Presumably, that is no more onerous than if a charity wanted to make use of the same provision now. Anyone who is suggesting that it is incompatible with the law for charities to represent themselves in that way is incorrect. It is helpful to have that clarified.

**John Swinney:** I will make an additional point that goes back to the character of the legislation. We are trying to create new legislation that, essentially, specifies the conditions for the whole ambit of land and buildings transaction tax. We have to envisage circumstances in which a variety of steps will be taken to undertake transactions and in which, once SDLT is abolished, we will have no legislative provisions in place to enable that to happen. We have to put a comprehensive approach in place.

The test that is being applied in relation to the charities provision and to registration with OSCR is simply to determine who is who—who should be liable for tax and who should be getting access to charities relief. We have to be able to satisfy the Parliament that we have gone through a proper

process of testing who is who. Nobody wants to make that any more onerous, but we must be able to assure the Parliament that the tax legislation has been applied most effectively.

**Jamie Hepburn:** I agree. In essence, the Scottish taxpayer will be agreeing to subsidise charitable work, which is sensible, but we want to know that the organisations are bona fide charities. If the provision exists, it cannot be hard to prevent it from becoming any more onerous than it is now.

Brodies and ICAS made a suggestion—the convener also raised this—that charities relief

“should be available to those whose charitable status is granted by HMRC”.

I have concerns about that, and I would be interested to hear your perspective. It is of concern that this Parliament has no legislative authority over HMRC and that the Scottish Government has no executive authority over HMRC. We might hope that HMRC was willing to provide the necessary details and back-up for any inquiry in that regard, but we could not guarantee that. Would that be a fair summation?

**John Swinney:** I have no beef against HMRC, whose officials have been very co-operative and helpful, and my dialogue with the leadership of HMRC is very co-operative. We have signed a memorandum of understanding. I do not want to put in place any obstacles to good working with HMRC.

However, we already have a charity regulator in Scotland. To pass the charities test in Scotland, organisations must go to OSCR. That is a relatively straightforward, routine part of Scotland’s legislative architecture from the Parliament. As we have legislated for that, it seems to me a perfectly reasonable way in which to proceed in asking charities to relate to the bill. Again, it is about ensuring that we make the legislative infrastructure cohesive and compatible in a variety of ways. Our objective is to create an administratively straightforward process.

**Jamie Hepburn:** Thank you.

We have also heard evidence from some organisations that are trying to ensure increased energy efficiency in Scotland’s housing stock that LBTT should be utilised to incentivise that. We are aware that, as things stand, no particular relief is likely to be focused on that area. Is that decision final? The existing homes alliance says that it hopes that there can be dialogue on the issue. Will you keep the issue under review? Are you happy to continue to speak to the bodies calling for such tax relief?

**John Swinney:** My general approach today is to listen to the committee’s suggestions as to how

the bill can be strengthened at the outset of the proceedings, so I do not particularly want to close subjects down. I have looked carefully at the question of having some form of zero-carbon homes relief, but at this stage I am not persuaded by the arguments for including it in the bill.

I will explore some of the detail of the issue. A property holder would invest in their property by undertaking environmental measures. The benefit of that would crystallise under LBTT only when the property was sold, at which point the buyer would benefit from relief on LBTT. I suppose that you could say that that would help the market for greener homes—it would be an incentive for people to buy such homes—but it would not incentivise people to make their homes greener. It would incentivise people to acquire homes that other people had made greener, but that still means that somebody has to put their hand in their pocket to make the investment, which strikes me as unlikely.

**Jamie Hepburn:** Someone who wants to sell their home wants to make it as attractive as possible. What about the perspective that says that making it greener makes it a more attractive prospect for someone to buy and makes it easier to sell? I am not saying that that is my perspective; I am just positing it.

**John Swinney:** I think that a couple of big leaps would have to be made in that process. The individual selling the house would have to spend more money on the improvements than a buyer would save on an LBTT reduction. For a large number of properties, if we assume—obviously, I am not confirming the tax rates and tax bands today; I could feel my officials shaking a little bit when I started that sentence. The suggestions in the consultation paper envisage quite a lot of properties being out of the scope of LBTT, which puts a big part of the market off-limits to being encouraged and incentivised.

The Parliament has taken other legislative measures on the issue. When the Climate Change (Scotland) Bill went through, provisions were included in the bill to encourage reductions in council tax for people who made improvements to the energy efficiency of their houses. Subsequently, we have been round the houses a bit on whether local authorities have seized the opportunity of that legislation to provide discount measures. It would be safe to say that more needs to be done in that respect. However, that is a much more tangible way of reducing the costs of a property for the person occupying the property if they invest in some green energy measures.

For those reasons, I am not persuaded at this stage by the arguments for LBTT relief in relation to green measures, but I am happy to consider whatever the committee comes up with.

11:15

**Jamie Hepburn:** That is helpful. Thank you very much.

**Malcolm Chisholm:** Jamie Hepburn has taken all my questions. That is what happens in this committee, I am afraid.

**Jamie Hepburn:** Sorry.

**Malcolm Chisholm:** I was going to ask about charities and energy efficiency, but I will ask a general question about reliefs.

The impression that we get is that—as you state—you want LBTT to be revenue neutral. As far as I can see, and I may have missed something, you are not proposing to extend any reliefs but you are proposing to withdraw certain reliefs. Will that not result in a financial gain for the Scottish Government? Have you got any notional savings for that?

**John Swinney:** I do not have any. That would be conditional on our setting the tax rates and the tax bands.

**Malcolm Chisholm:** If we assumed that the tax bands were the same as at present—which will not be the case—presumably you would make some savings?

**John Swinney:** We are moving to a fundamentally different basis of collecting the tax. We are going from a slab tax to a progressive tax. The committee and the Parliament will have the opportunity to scrutinise my decisions on tax rates and tax bands, which I will make in the light of the legislative decisions that we make on reliefs. I appreciate that those decision-making processes are not taking place at the same time but, ultimately, my decisions will be subject to scrutiny by the Parliament and the committee.

There will be an interaction. For example, if we follow the direction that we have set out in the consultation document and we set quite a high threshold as a starting level for the tax, many properties will be out of the scope of LBTT, so the issue of reliefs will not arise. It is therefore difficult for me to give Mr Chisholm a definitive answer at this stage in the process.

We are trying to take a dispassionate look at the justifications for each particular type of relief. We are looking at this legislation openly and objectively and testing whether we can justify the existing provision, whether the right reliefs are in place and which reliefs make sense in the wider policy and legislative agenda in which we have an interest. Once we have that in place and we are further down the track with the decisions that I make on tax rates and tax bands, we will be able to scrutinise what that does to the tax take. At that stage, the Parliament will be able to scrutinise

whether we have delivered a revenue-neutral proposition.

My objective is to deliver a revenue-neutral proposition. When I move to set tax rates and tax bands, I will have to reflect on what we have done on reliefs.

**Malcolm Chisholm:** I accept that there are good reasons for reducing and simplifying reliefs, including in some cases to stop tax avoidance. It sounds as though you are trying to save money—or make some money—through changing the reliefs in order to have a more generous banding system to keep LBTT revenue neutral. That is what it sounds as though you are saying.

**John Swinney:** I do not think that that would be an unfair conclusion to arrive at. However, I stress that the approach that I am taking on reliefs is twofold, as Mr Chisholm said. It is about simplicity, but it is also about tackling avoidance. I am clear on that point and I want there to be no doubt that part of my policy intention is to tackle avoidance. We are dependent on HMRC information on avoidance, and it has been quite open with us about where it sees stamp duty land tax being avoided. I am using that information to ensure that we avoid some of those circumstances.

The way that Mr Chisholm has summed the situation up is fair. I want to close loopholes, tackle avoidance and deliver simplicity, and to reflect that in the tax rates and tax bands.

**Malcolm Chisholm:** Am I right in saying that final decisions on the reliefs do not need to be made in the primary legislation? Is there a regulatory provision to change those? I think that ICAS criticised that, which I took to mean that the bill does have a regulatory provision to change the arrangements around reliefs. I cannot say that I have read the bill in sufficient detail to know that, except at second hand.

**Neil Ferguson (Scottish Government):** Yes, there is such a provision.

**Malcolm Chisholm:** That would be a kind of safety valve if you wanted to change your mind further down the line.

I want to touch on the two issues that Jamie Hepburn dealt with. I was struck by the evidence from David Robb, the chief executive of OSCR, which was that there would be better ways of testing the bona fides of charities from outwith Scotland. He said that

“there are easier ways for charities, particularly those south of the border, which account for the large majority of those involved from outwith Scotland, to be identified as bona fide without their entering themselves on the register for what might be a single transaction.”—[*Official Report, Finance Committee*, 6 February 2013; c 2221.]

Would you be willing to enter into discussions with OSCR to see whether you could arrive at some other arrangement?

**John Swinney:** Again, I am very happy to go into such a discussion. My officials will speak to OSCR and David Robb in light of his evidence to see whether there is a more effective way of doing that. The committee's observations and deliberations will help us with that.

**Malcolm Chisholm:** I have one more question on charities. The issue is intrinsically interesting, although I accept that it is not a massive issue in terms of the money that is involved.

I presume that HMRC must have a method of designating a body as a charity, although I am not quite sure what that is. I suppose that it is relevant that HMRC has taken the view that European legislation requires the equal treatment of charities throughout the European Union. The Scottish Government clearly does not take that view. Would you want to pursue that issue a bit further? I am pretty sure that we heard in evidence that HMRC is required by European law to treat all charities throughout the EU in the same way.

**John Swinney:** In relation to any tax liability?

**Malcolm Chisholm:** In relation to tax relief.

**John Swinney:** I think that we would accept that implicitly, because we would have one regime for charities. There would not be a regime for Scottish charities, UK charities and European charities.

**Malcolm Chisholm:** Yes, but registration would be required.

**John Swinney:** That is a regulatory issue rather than a taxation issue and it means that we know who is a charity and who is not. We are now straying into the territory of charity regulation and I am probably on dangerous ground. We will have a land and buildings transaction tax that is without discrimination across charities. That means that we will treat all European charities in the same way. However, we must have a mechanism for designating who we consider to be a charity. I do not think that that puts us in any different position from HMRC when it defines who is a charity from its perspective.

The territory that we are in highlights some of the factors that arise out of devolution. Charity law is devolved to the Scottish Parliament, so we established OSCR, which is how we regulate our charities. HMRC must also have an idea of who is a charity for it to execute its legitimate functions around taxation. There is an element of duplication in what OSCR and HMRC are doing.

In the bill, we have to decide who will decide who is a charity, and I have opted for OSCR. That

is a sensible judgment, given the fact that 23,500 charities are registered with OSCR in Scotland. Mr Chisholm and Mr Hepburn are talking about overseas charities, and I imagine that they form a relatively small proportion of the 23,500.

**Malcolm Chisholm:** We had better not spend too much more time on charities, but I think that David Robb suggested that OSCR could do that without the need for registration. However, perhaps you can pursue that point with OSCR.

**John Swinney:** There may well be some way in which some kind of imprimatur might be applied by OSCR through some kind of bilateral agreement with HMRC. OSCR might agree that it will accept as a charity any organisation that is registered as a charity with HMRC for tax purposes and headquartered in another part of the United Kingdom.

**John St Clair:** That is done at the moment to speed up the registration process.

**Malcolm Chisholm:** I will not press you on that, interesting though it is.

The only other charity-related issue is the suggestion from the Wellcome Trust and others that there be a relief for co-investment, such as where 80 per cent of an investment comes from a charity and 20 per cent comes from non-charitable sources. However, I imagine that you are not really interested in providing what would be an extension of a relief. In principle, would you consider any extensions of charity relief?

**John Swinney:** My mind is open to particular issues, but my position in principle is that I am not particularly keen on creating lots and lots of reliefs.

**Malcolm Chisholm:** However, you are keen on meeting your climate change objectives, which I now want to move on to.

I accept that there are some complexities in this area, but the biggest problems in meeting our climate change objectives are to do with transport and existing homes. I know that you have expressed doubts about providing a relief for existing homes, but should such a relief perhaps be investigated further, given how seriously the Scottish Government takes the issue of climate change? The relief would need to be heavily targeted to incentivise action on those homes in which action is required. Different mechanisms for the relief have been proposed. Either the relief could be made available after the work was done, or the relief could be provided on the basis of an undertaking to do the work upon the purchase of the property—those two different models have been presented to us. I accept that such a relief would have financial implications, but might it be looked at further, given the imperative of doing something about existing homes?

**John Swinney:** I am completely supportive of fiscal incentives for behavioural change on carbon reduction issues but, to be blunt, I think that we would get more effect if we had more people taking part in a more comprehensive, more effective council tax discount scheme in more parts of the country. I do not think that the numbers are particularly compelling. The council tax discount scheme is already legislated for in the climate change legislation that was passed in the previous parliamentary session.

In his review of taxation, Sir James Mirrlees said:

“Not every tax needs to be ‘greened’ to tackle climate change as long as the system as a whole does so.”

From that remark, I take the important point that we have put in place legislative provision through the council tax reduction scheme, and we just need to get people involved in that. Receiving a reduced council tax not just once but every year as a consequence of making improvements to your property is a much bigger fiscal incentive than getting a one-off reduction that will be paid to a third party who acquires your property.

**Malcolm Chisholm:** Well, I certainly do not object to that as a proposal.

Let me come to my last question. I am very sympathetic to your objective of protecting the revenue from the tax, especially given the public expenditure climate. Reliefs are one side of that, but I am even more worried about ensuring that the UK Government makes a proper assumption about how much money LBTT will raise and therefore how much money will be withheld from us in our budget allocation. The evidence that we received suggested that there are big quarterly variations in the amount of income from stamp duty land tax on commercial property, but the income even from residential properties has also been very variable over the past decade. People have said that the Office for Budget Responsibility tends to overestimate the amount of money that will be raised from SDLT. How will you ensure that Scotland does not lose out in those negotiations?

11:30

**John Swinney:** That will be a material test, Mr Chisholm—I think that that is the best way to describe it. There are a number of points here that are fundamental to the issue. Mr Chisholm is absolutely correct in that, historically, there has been quite significant volatility. For example, in 2007-08, total Scottish receipts from SDLT were £565 million. These figures are not estimates; they are HMRC data on tax collected. I will give the series of numbers for the record: the tax collected was £565 million in 2007-08; it went down to £320 million in 2008-09 and £250 million in 2009-10; it

went up to £330 million in 2010-11; and it went down to £275 million in 2011-12. The highest figure was £565 million and the lowest was £250 million, which shows a significant amount of volatility.

The fair and reliable way of considering the issue is to take an average of those five years and make an adjustment on that basis. The command paper for the Scotland Act 2012 assumed that a one-off change to the block grant adjustment would be made, and the Scotland Bill Committee in the previous Parliament stated that it should be a one-off, non-index-linked adjustment to the block grant. I think that we must take into account the average for that five-year period.

The point that you make about the OBR is a material issue for the committee to consider. The OBR has undertaken two forecasts—one in March 2012 and the other in December 2012—and I expect that we will get another one in the March budget on 20 March. Between the March and December forecasts in 2012 that looked forward from 2012-13 onwards, the OBR reduced the estimated tax-take by 9.75 per cent, 11.1 per cent, 13.6 per cent, 13.3 per cent and 13.4 per cent. I put those numbers on the record to make the point that, given that pattern, the forward estimating of SDLT is very difficult. I therefore think that a retrospective average assessment is a much more reliable way of making the block grant adjustment. Obviously, that is a subject of discussion with the UK Government.

**Malcolm Chisholm:** So there has been no agreement on that.

**John Swinney:** There is no agreement on it. I have made the point to the UK Government that I expect to receive the budget numbers for our 2015-16 budget sometime in the next six months and, because this matter will be material to our 2015-16 budget, I presume that those will be net of stamp duty land tax, so we have to reach an agreement about this in relatively short order.

**Malcolm Chisholm:** Thank you.

**The Convener:** I have to say that Malcolm Chisholm has done really well for someone who did not have any questions.

I was going to finish on the last point that Malcolm Chisholm asked about, but I will ask a supplementary question now instead. The Scottish Property Federation assessed the OBR's forecasts as “wildly optimistic” in that the OBR's prediction, even at December last year, was for an increase of 75 per cent on the figures for 2011-12. I have a point for clarification. If the five-year average that you talk about started from 2007-08, when receipts from SDLT were £565 million, that would make a big difference compared with a five-year average that started from 2008-09. When will

the five-year average start? Whatever the start date, SDLT will be significantly higher than it has been in the past year or two.

**John Swinney:** The five-year average must take into account the period before the commencement of the block grant adjustment in April 2015, so I would think that it will start five years back from April 2015.

**The Convener:** That is fine. Is there any possibility of, as the Scottish Building Federation has suggested, transitional arrangements?

**John Swinney:** No. As the command paper states, there will be a one-off block grant adjustment. We obviously have certain borrowing capacity to manage some of the issues. I will check that with Neil Ferguson. Neil, does that apply only to the Scottish rate of income tax?

**Neil Ferguson:** I beg your pardon?

**John Swinney:** Does any borrowing facility for short-term purposes apply only to the Scottish rate of income tax?

**Neil Ferguson:** Yes.

**John Swinney:** Convener, we have no borrowing facility to make up for loss of income in that respect.

**The Convener:** Will the Parliament be consulted on the issue through the Finance Committee?

**John Swinney:** On the block grant adjustment mechanism?

**The Convener:** Yes.

**John Swinney:** That question raises a very good point. The agreement between the United Kingdom and Scottish Governments envisages that the issue will be resolved by the Joint Exchequer Committee, on which the Chief Secretary to the Treasury, the Exchequer Secretary to the Treasury, the Secretary of State for Scotland, the Deputy First Minister and I sit. In essence, a bilateral agreement must be reached. I am getting into the territory of what would happen if Parliament did not like the block grant adjustment mechanism that we negotiated. Obviously—to return to Malcolm Chisholm's point—my aim is to protect the public finances of Scotland, so I assume that I would be operating in the interests of Parliament.

I would welcome the committee's input and observations on the approach to the block grant adjustment mechanism and what it would consider to be a realistic and fair basis for coming to that conclusion. It would be difficult for me—I am happy to provide the committee with an explanation of some of the factors that go into this—to get to a point of agreement with the UK

Government in which I had to say to them, "Oh, and I'll have to take this to Parliament to see if Parliament agrees to it." I am sure that the UK Government would say—

**The Convener:** "Aye, right." [*Laughter.*]

**John Swinney:** It would say, "This is a negotiation." I cannot give the committee that commitment today. However, as I said, I would welcome the committee's observations on the approach to the block grant adjustment mechanism.

**The Convener:** We have taken that hint. The OBR is coming to the committee in April, incidentally.

**Jean Urquhart (Highlands and Islands) (Ind):** Cabinet secretary, I am pleased that you appear to be excited about the bill and the collection of tax.

**John Swinney:** It is amazing how finance ministers can be persuaded of the attractiveness of generating tax.

**Jean Urquhart:** I also make the observation that a number of our witnesses—certainly to my mind—welcomed the change. They recognised the imperfections of stamp duty land tax and the opportunity to change it, but they were hesitant about the changes that might be made. There was some anxiety about when the rate would be set; indeed, it was argued that business in Scotland would be put at a disadvantage with regard to commercial transactions. What is your opinion on that? This might not be relevant to the discussion, but I believe that, for about 50 or 60 years before the Scottish Parliament existed, Scotland paid much higher business rates than the rest of the land. Did that not have the same effect on Scotland?

Secondly, on the general anti-avoidance rule, there is genuine concern about tax avoidance, which I, too, find completely unacceptable. How would it work if you moved from a position in which there is no avoidance and there are no allowances on transactions to one in which a few allowances are made? Do you think that the system can be simplified, particularly with regard to some of its more controversial aspects? Do you consider the concern that there will be

"challenges in achieving a workable GAAR in the time available"

to be reasonable?

**John Swinney:** Jean Urquhart has asked two separate questions. First, as we have already discussed, there is clearly a difference of opinion about whether the tax rates and tax bands should be set close to or way back from implementation. My view, which I made clear in my statement and in the arguments around the bill, is that—and I



think that this is the wording that we have used—the rates would be specified as part of the budget process for the appropriate financial year, which I envisage would be in September when I set out the draft budget. Having looked at the evidence and the difference in views, I am thinking about whether I have got that right. Just to give the committee an indication of my thinking at the moment, I think that I am unlikely to set the tax rates and tax bands earlier than I envisaged and, indeed, might set them later.

I am struck by the comment that David Melhuish made to the committee on 30 January in arguing for longer-term preparations. He said:

“I recognise that SDLT rates can change overnight on a budget day”—[*Official Report, Finance Committee, 30 January 2013; c 2158.*]

We live in a world where tax changes are announced at 12 o'clock in the afternoon and are implemented at midnight. I am not saying that such an approach is desirable, but I am giving some thought to the right balance in that respect and, again, the committee's view on the matter will be helpful. I have to say, though, that I am not persuaded by the argument that, in order to give absolute clarity, there has to be a couple of years' notice because that will simply open up the space and opportunity for certain practices to be developed that avoid the implications of tax rates.

That brings me on to Jean Urquhart's second question, which was on the general anti-avoidance rule. In the bill, we decided to construct a set of stand-alone propositions that we thought would be robust in minimising avoidance of land and buildings transaction tax. However, we did not replicate in the bill the GAAR in the UK finance bill, which is commonly viewed as complex and not particularly effective. We are going through a consultation on the forthcoming tax management bill which, if my memory serves me right, will come to Parliament towards the end of this year. In that process, we are consulting on the contents of a GAAR.

11:45

We have had a lot of good engagement as part of the tax management bill consultation. I have inaugurated a tax consultation forum in the Government, which has a broad membership. It is supported by my officials, but it brings together a variety of people, including the Chartered Institute of Taxation and the Poverty Alliance, Age Scotland, Young Scot and various other voices, including business voices, to provide diverse perspectives on what the Government should do about tax. I hope that we can reach agreement on having a representative of the religious denominations involved in the process.

I am trying to create a debate about what our correct values and approaches to taxation should be. Part of that will relate to issues such as a GAAR and avoidance, and our obligations as citizens and corporate citizens. The tax consultation forum has had one meeting. Jean Urquhart thinks that I am excited about the bill, but I was hugely excited about the tax consultation forum, because it achieved my objective, which was to bring together people from utterly varying perspectives to have a collegiate discussion about what our values on tax should be. It was an excellent and helpful discussion. I have asked the forum to meet again to consider the response to the consultation on tax management so that, before we start putting a jot of legislation down on paper, the forum has considered our stakeholders' thoughts on the Government's approach to taxation.

**Jean Urquhart:** Is there a disincentive to business if Scotland does not declare its rates far in advance, or is that point a kind of smokescreen? I know that you have already explained that to an extent.

**John Swinney:** We must be reasonable on the issue. I had thought that the position that I articulated earlier—of setting the rates in September, in advance of the beginning of the next financial year the following April—was pretty reasonable, but the evidence from the gentleman from the ESPC made me think that I might not have that right. However, I will have to consider the matter carefully before I make any change of direction on that.

**Gavin Brown:** The financial memorandum sets out two scenarios to do with rates and banding for residential property: scenario 1 and scenario 2. Which is your personal preference?

**John Swinney:** As I have said, I have not set rates. Obviously, I will reflect on those issues as we get closer to the time in considering the way in which to proceed in that respect.

**Gavin Brown:** You do not want to tell us which one you personally prefer.

**John Swinney:** I will come to a view when I set the tax rates.

**Gavin Brown:** Okay. I will return briefly to licences to occupy, which the convener asked about. You helpfully drew a distinction between short and long-term occupation. I think that you referred to a conference of a few days being short-term occupation. As the bill is drafted, would all licences to occupy be caught by the bill?

**John Swinney:** Yes.

**Gavin Brown:** I listened carefully and picked up that your personal view is that short-term occupation should not be part of the bill.

**John Swinney:** That is one of the issues that need to be addressed before the bill proceeds to its final stages.

**Gavin Brown:** Has the Government given much thought to how it will define “short-term” in law? Obviously, a lease for five years—

**John Swinney:** I think that I had better remove the definition of “short-term” from the discussion. We have identified a number of different categories in the area, and I would not want my consideration of licences to be characterised as consideration of just short-term things that might get a relief. I am pretty sure that there will be others, and I do not want to create the wrong impression for the committee that that is where our view is settled. There are a number of different categories of licence, and we are going through a process of exhausting the list of what I think might be the range of possibilities so that I can come to a view. What will determine our approach is not consideration of what is short term and what is long term but consideration of the nature of the activity and perhaps the business sector, which will be a product of that. Perhaps that is the best way to describe it.

**Gavin Brown:** That is helpful. Thank you.

Pretty much every witness accepted that sub-sale relief has been a vehicle for avoidance over a range of areas. There was also a strong view that there ought to be targeted sub-sale relief. You helpfully outlined your views on that in response to the convener. Has the Government done an economic impact analysis of what will happen if sub-sale relief is abolished completely, as is clearly currently planned?

**John Swinney:** No.

**Gavin Brown:** Is the Government minded to do that?

**John Swinney:** That raises an interesting point. I cannot tell the committee what avoidance has taken place because of sub-sale relief. I could not give the committee a number, and HMRC could not give us a number. HMRC has been perfectly helpful to us, and is trying to help us as much as possible on that question, but it cannot give us that information. Because of that, it would be impossible to construct the economic case that Mr Brown is asking about.

I understand exactly the point that has been made but, because I cannot give a picture of what the provision of sub-sale relief generates in Scotland, I could not begin to assemble a case on what would be lost. It is not claimed as a relief from HMRC; essentially, it is an implicit part of how people present transactions to be taxed. Therefore, if they do not present them to be taxed, we cannot assess what that was all about and

what economic activity has been created as a consequence.

**Gavin Brown:** I accept the point that getting an accurate picture will not be easy, but I was comforted by your comments in relation to forward funding, to which you seemed to take a businesslike approach. However, I have a slight fear. In between the tax avoidance under sub-sale relief, which everyone may frown on—even professionals within the sphere—and forward funding, are there other elements of sub-sale relief that are currently being used that are genuinely valuable to the economy and which we might stamp out by abolishing the relief?

**John Swinney:** I think that that gets to the nub of the issue. The question about what one considers to be a good or an undesirable form of tax management activity is subjective. I might think that something is a wholly unacceptable activity that should be classed as avoidance, but someone else might think that it is a reasonable way of managing one’s affairs to generate economic impact. There is no absolute truth on the point. A judgment must be arrived at. My thinking on the matter is guided by a desire to tackle tax avoidance—I have been clear about that this morning—but not to stifle economic growth. In order to tackle tax avoidance, sub-sale relief will not be offered. In order to encourage economic activity, we will be more sympathetic to forward funding.

Another issue involves the fact that it can be possible to reconstruct transactions to get sub-sale relief. I suppose that you could say that that is utterly legitimate. However, even though we are trying to minimise avoidance, we have almost created the conditions in which avoidance is allowed to happen. That is not the place that I am in with regard to this bill.

**Gavin Brown:** Are you proactively examining sub-sale relief in the way that you seem to be doing with licences to occupy, or are you literally waiting for the committee report to see our view? Are you doing your own work as well, at the moment?

**John Swinney:** We are in active dialogue with people on a variety of issues relating to the bill, including sub-sale relief.

This has been a good exercise in open dialogue with stakeholders. A range of stakeholders have spent a lot of time assisting us with the bill. We are continuing to talk to them. On the issue of non-residential leases, we have established a working group that has given us a good amount of assistance already. I want to meet that group before I come to a conclusion on one issue that I am wrestling with, because it has done a lot of

good work in this area and I want to do justice to its consideration of the issues.

**Gavin Brown:** Pages 50 to 52 of the financial memorandum outline the set-up and running costs of revenue Scotland. Do you feel that those figures are robust?

**John Swinney:** I do, yes.

**Gavin Brown:** Is there contingency room in there? Are the figures on the margins, or have you built in safe assumptions, so that the odds of going over the assumptions are low?

**John Swinney:** There is a line for contingency throughout the figures—in the non-staff costs, for example, and the other set-up and running costs. I think that the position is reasonable.

**John Mason:** I want to clarify what we mean by avoidance, as I think that the term has perhaps changed its meaning over the years. My accountant colleagues used to argue that, because all avoidance was legal, it was all okay. I would perhaps take the line that there is good avoidance and bad avoidance.

If I am filling in my tax return and I claim my personal allowance, that is avoidance, but it is good avoidance. Are we saying that there is bad avoidance that we want to tackle but that we are happy that people arrange their affairs properly?

12:00

**John Swinney:** I do not take the same view as Mr Mason about his claiming his personal allowance. That is an entirely legitimate element of the tax system. The UK Government says that people will pay no tax on a certain amount of income. As a state, we agree to that. That is the rule, and we are all perfectly entitled to have access to the allowance. That answer is in a similar category to my answer to Mr Chisholm's question about the balance between the rules, the reliefs and the rates and bands, and what that throws up as a tax take.

The key question is about whether we construct a tax regime that is sufficiently clear and well articulated that it gives rise to tax charges that people respect and have no alternative but to follow or whether we construct a regime that creates myriad opportunities for people to avoid what Parliament has clearly envisaged will be a tax charge. That is the territory that we are in.

I made a point about the tax consultation forum and the breadth of its membership. I did not want to have round the table only the country's tax experts. I say that with no disrespect to them, because I have a number of them round the table. However, I wanted the forum to include a cross-section of people from our society who could

provide a perspective on what matters. What does our approach to tax mean to an older person in Scotland? If we do not get the right approach, that older person will not have the support in society that we all, morally and politically, want them to have.

There is an ethical dimension to tax. There are choices for all of us, when we fill in our tax returns, as to what approach we take. There is an ethical dimension to that, and there will be ethical dimensions to the approaches that accountants take in supporting people when they fill in their tax returns.

What I am trying to do with the bill is to set a standard in Scotland whereby, the first time that we embark on tax legislation, we have some very clear principles ringing out from it about simplicity, convenience to collect and administer, the minimisation of avoidance and the maximisation of clarity.

**John Mason:** I very much agree with what you say. It seems to me that there is a difference between the spirit of the law and the letter of the law, and you are trying to get society moved along to accept the spirit of the law. I feel that the UK generally—not just in tax law—has relied far too much on the letter of the law. I just wonder whether we can persuade the courts and the professionals to look at the spirit of the law more than the letter of the law.

**John Swinney:** I have seen some interesting and thoughtful material from tax specialists about how legislation should be designed with a view to capturing the spirit of what is expected in the area—I suppose that it is best to express it as Mr Mason did—rather than defining everything down to the nth degree, which just gets everybody concentrating on what they can do on the periphery by mucking about with their tax return. I am interested in that thinking, and we are chewing it over in relation to the tax management bill.

What we have in the land and buildings transaction tax is an attempt to do two things. The first is to use the opportunity to establish our own system so that we have a land and buildings transaction tax that is, at the terminology level, consistent with Scots law. That is not the case with the SDLT, and some mismatch arises because of that. The second thing is to ensure that we have an approach that is abundantly clear and simple to follow and which involves creating the smallest possible amount of ground for misinterpretation, manipulation or avoidance.

**John Mason:** You said that you have older people in your tax consultation group who benefit from tax and that tax means that we can pay better pensions and all the other things that we want to do. On that basis, why do you want the bill

to be revenue neutral? Some people might feel that, because we are tight for money, the bill could be an opportunity to raise some extra money.

**John Swinney:** It is necessary to consider the issues of competitiveness. When we promoted the consultation on the subject, there was quite a bit of media commentary that said that we were using the tax to demonstrate the Government's interest in a progressive system of taxation, which was an interesting observation. The second observation that was made was that, through the way in which we were constructing the tax, we were using it to create opportunities to activate the housing market in Scotland and, in particular, to incentivise and motivate first-time buyers.

Those observations are relevant to the issue of tax neutrality. In an atmosphere of tax neutrality, I have tried to reflect an economic incentive and to send a signal of a move towards progressive taxation, which is a value that the Government believes in. I thought that it was most appropriate to do that in the context of tax neutrality.

**John Mason:** You mentioned competitiveness, which has come up a few times. I return to the issue of when the rates and bands for the new tax are announced. Although you have made the point that the UK Chancellor of the Exchequer can change the SDLT rates overnight, witnesses led us to understand that, if a transaction was decided today, today's SDLT rate would apply even if the tax were not paid for three or four years.

That means that, in England, if someone buys a property now, they know exactly what rate will apply, even if the chancellor changes the rate in the meantime. In Scotland, someone who did the same thing would not know what tax rate they would have to pay, and might not know that for quite some time. It was argued—I am not saying that I totally agree with this—that there is therefore a certainty down south that will not be available here.

**John Swinney:** I do not see how the situation would be different in Scotland. If a transaction happens on a given day, it is charged at the rate at that time. I cannot see how anything could be different in that scenario. The comparison between Scotland and England is irrelevant in that context. The circumstances will be judged according to the tax rates that are in place at the time of the transaction.

**John St Clair:** Both the SDLT and the LBTT regimes involve the concept of the effective date, which is the date on which the transaction is completed. That is when the tax is assessed and payable. It does not matter when the chancellor sets the rate; the tax that is payable is dependent on the effective date.

**John Swinney:** For the avoidance of doubt, I should say that I am not arguing for an approach whereby we announce the rates at 2.30 in a budget statement and effect them that evening. I reassure the wider world that that is not what I have in mind.

**John Mason:** I might have misunderstood previous witnesses. They seemed to suggest that there is more certainty in England than it appears that there would be under the new regime in Scotland, but maybe we can clarify that elsewhere.

**John Swinney:** I do not think that that is the case.

**John Mason:** That is fair enough.

We have touched on the Crown exemptions, but the other exemptions include exemption on death—in future, no LBTT will be payable in such circumstances, as is the case with SDLT—and exemption for a gift. Will that have the result of ensuring that the wealth of very wealthy families in the country will stay in those families and there will be no taxation? What is your thinking behind continuing those exemptions?

**John Swinney:** One issue that arises is to do with some of the practical issues around gifts of property. Colleagues will be familiar with the circumstances in which parents give their property to a son or a daughter. There are quite clear rules on that. If it is done seven years before the death of the person who is making the gift, no inheritance tax or LBTT will be due. My view is that that is an appropriate provision to have in place because it enables families to manage the process. The issue is not exclusive to wealthy families but is quite broadly shared across society, so it is a reasonable provision to have in place.

**John Mason:** Okay. Some witnesses have put to us a point on the relationship between LBTT and VAT. Some of them argued that LBTT should be imposed on the net amount without VAT. As I understand it, the proposal is that LBTT should be on top of VAT, which they claim is double taxation. I asked whether they would rather have 6 per cent on the net or 5 per cent on the gross. Their argument was that, because some land transactions have VAT and some do not, the amount of LBTT that would be charged would be uneven.

**John Swinney:** Our view has been informed by Lord Hope's judgment in the Court of Session in—this is a blast from the past—Glenrothes Development Corporation v Inland Revenue Commissioners 1994. Lord Hope said:

“The amount of the stamp duty is charged by reference to the amount or value of the consideration for sale, not by reference to the value of the property.”

Our view is that LBTT is essentially a transaction tax, not a tax based on the value of land, which therefore points us in the direction of Lord Hope's judgment on the question that LBTT should be charged on the total purchase price as the value of the transaction. That would include VAT. That is the foundation of our view on the question, simply because it is driven by the value of the consideration for sale and the size of the total transaction.

**John Mason:** We took evidence from Registers of Scotland representatives earlier. Registers of Scotland has had some IT problems in the past. Are you comfortable that it will be able to cope, especially with regard to IT?

**John Swinney:** Yes. Registers of Scotland has had IT problems in the past, which arose out of a contracting-out regime that was not well prepared for within Registers of Scotland. Essentially, control and operation of the IT was put outside the organisation in 2004. The organisation has now taken some pretty difficult steps to bring it back and to rebuild the critical capability in-house to undertake IT activity.

I have seen a number of different enhancements and developments of the system that Registers of Scotland uses, and an increasing number of elements of what will become the LBTT transaction are already taking place with the support of IT through the stamp duty environments. There is a sense of that approach developing to deliver an IT system that is effective and efficient in relation to the needs of the land and buildings transaction tax.

**John Mason:** Thank you very much.

**The Convener:** That brings the evidence session to an end. I thank the cabinet secretary and his officials for responding to our questions and deliberations.

At the start of the meeting, the committee agreed to take the next item in private. I therefore close the public part of the meeting.

12:15

*Meeting continued in private until 12:18.*



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