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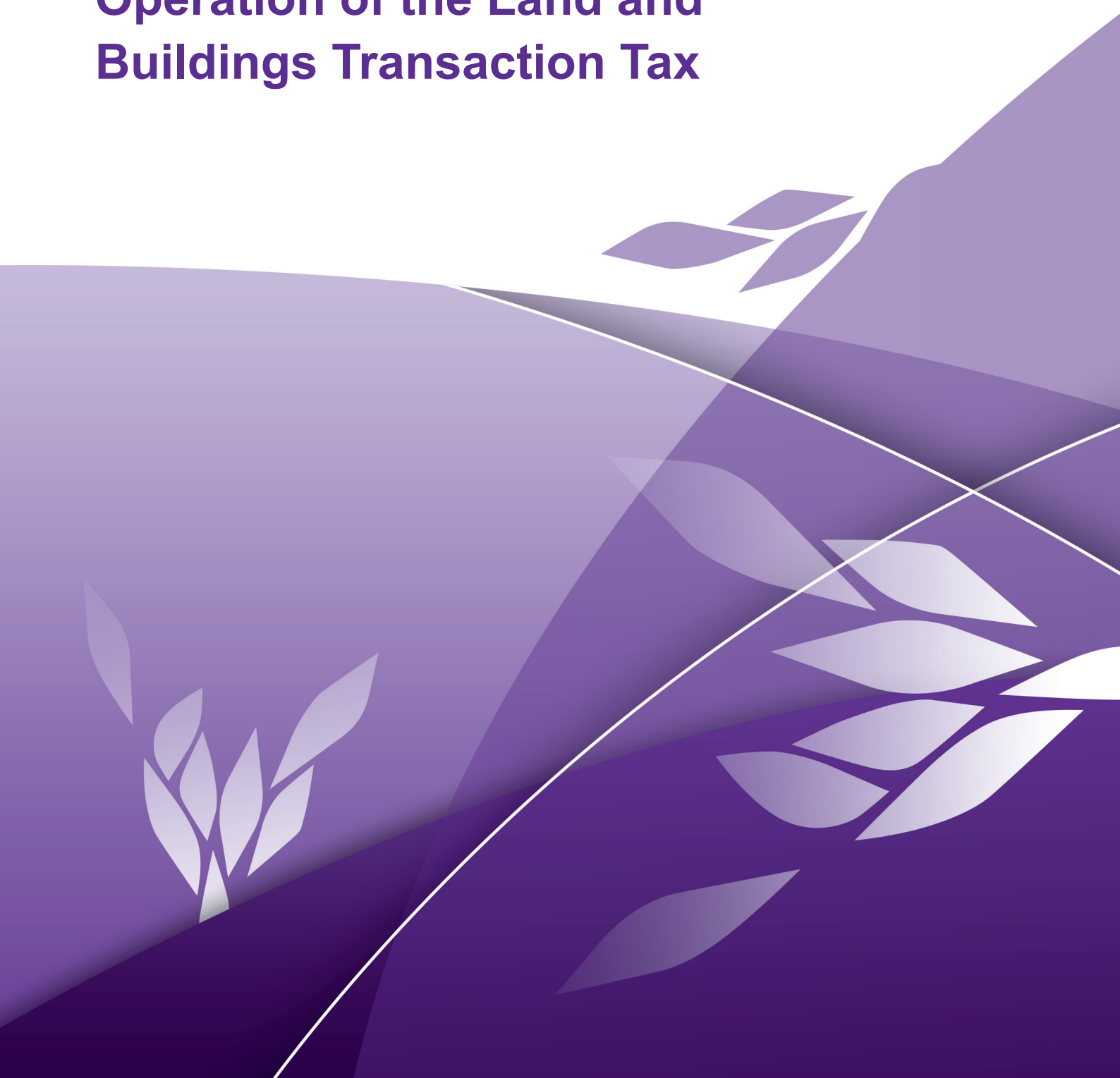
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Finance and Constitution Committee

Report on the First Year's Operation of the Land and Buildings Transaction Tax



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Finance and Constitution Committee

1. The remit of the Finance Committee is to consider and report on-
 - a. any report or other document laid before the Parliament by members of the Scottish Government containing proposals for, or budgets of, public revenue or expenditure or proposals for the making of a Scottish rate resolution, taking into account any report or recommendations concerning such documents made to them by any other committee with power to consider such documents or any part of them;
 - b. any report made by a committee setting out proposals concerning public revenue or expenditure;
 - c. Budget Bills; and
 - d. any other matter relating to or affecting the revenue or expenditure of the Scottish Administration or other monies payable into or expenditure payable out of the Scottish Consolidated Fund.
 - e. Constitutional matters falling within the responsibility of the Cabinet Secretary for Finance and Constitution.
2. The Committee may also consider and, where it sees fit, report to the Parliament on the timetable for the Stages of Budget Bills and on the handling of financial business.
3. In these Rules, “public expenditure” means expenditure of the Scottish Administration, other expenditure payable out of the Scottish Consolidated Fund and any other expenditure met out of taxes, charges and other public revenue.



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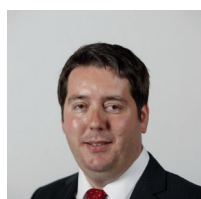
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Note: The membership of the Committee changed during the period covered by this report, as follows:

Dean Lockhart replaced Alex Johnstone from 3 November 2016

Executive Summary

1. The Land and Buildings Transaction Tax (LBTT) took effect in Scotland from April 2015. The Committee considered its first year of operation and some of its key findings are listed below—
 - The Committee considers that the transition to LBTT went well and that its first year has been operationally successful.
 - The Committee considers that it is too early to draw any definitive conclusions on the impact of the rates and bands from the available outturn data but recommends that the Scottish Fiscal Commission should continue to monitor the data on an ongoing basis.
 - A key challenge faced by the Committee has been the lack of consistency in the presentation of data relating to LBTT. This has made it difficult to compare forecast and outturn data and to fully assess the impact of LBTT on the property market in Scotland.
 - The Committee has also faced challenges in identifying causality in respect of changes to the housing market, i.e. how to assess the impact of LBTT rates and bands in comparison to the impact of extraneous factors such as the general economic situation.
 - The Committee recommends that the Scottish Government's review of the first year of LBTT includes an analysis of the behavioural response to LBTT, particularly in relation to homes costing between £325k and £750k. This should include an assessment of the likelihood of an on-going response and an analysis of the impact of extraneous factors.
 - The Committee invites the Scottish Government to provide information in relation to the impact that LBTT has had on the first time buyer market, including whether it has contributed to increased house prices.

Introduction

2. The Scotland Act 2012 devolved Stamp Duty Land Tax (SDLT) and Landfill Tax to the Scottish Parliament. Stamp Duty was substantially changed to become the LBTT and the Landfill tax regime remained largely unchanged with a Scottish Landfill Tax. The new devolved taxes have been collected by Revenue Scotland since April 2015.
3. The Session 4 Finance Committee took a keen interest in the devolved taxes and recommended in its Legacy Report that its successor “may wish to carry out a review of the first year of LBTT and any proposed changes to the bands and rates as part of its scrutiny of draft budget 2017-18.”ⁱ
4. The Finance and Constitution Committee (“the Committee”) agreed with this recommendation and issued a call for evidence seeking views on the first full year’s operation of LBTT in July. Twenty one responses were received from stakeholders as were a submission from Revenue Scotland and a letter from the Cabinet Secretary for Finance and the Constitutionⁱⁱ (“the Cabinet Secretary”) providing the Scottish Government’s assessment of some of the themes covered in the call for evidence. All submissions are available on the Committee’s website.ⁱⁱⁱ
5. The Committee also invited the Scottish Fiscal Commission (SFC) to prepare a report on the outturn figures for LBTT for 2015-16. The report^{iv} which was published in September 2016 has been very useful in informing the findings of this report.
6. The Scottish Government committed to undertaking a review of LBTT after its first year of operation in its response to the previous Committee’s Report on Draft Budget 2016-17. It intends to update the Parliament on the review when Draft Budget 2017-18 is published.

7. The Committee invites the Scottish Government to consider this report as part of its review of the first year’s operation of LBTT.

ⁱ <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/97975.aspx#g>

ⁱⁱ http://www.parliament.scot/S5_Finance/Finance_Committee_-_LBTT_inquiry_-_Letter_from_Cabinet_Secretary_-_August_2016.pdf

ⁱⁱⁱ <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/100249.aspx>

^{iv} http://www.parliament.scot/S5_Finance/Scottish_Fiscal_Commission_Outturn_Report.pdf

Background

8. The Scottish Government set out its proposed rates and bands for LBTT in Draft Budget 2015-16 (published in October 2014). The proposed rates and bands were intended to be revenue neutral (i.e. the Scottish budget would neither lose nor gain revenue as a result of the tax's devolution) and are set out in the following table—

Table 1: LBTT Rates and Bands proposed in Draft Budget 2015-16

Residential Transactions		Non-Residential Transactions	
Band	Rate	Band	Rate
Up to £135,000	Nil	Up to £150,000	Nil
£135,001 to £250,000	2%	£150,001 to £350,000	3%
£250,001 to £1m	10%	Over £350,000	4.5%
Over £1m	12%		

9. However, following changes to UK SDLT announced in December 2014, the Deputy First Minister (DFM) revised the proposed residential rates and bands in January 2015 in order to “prioritise support for first time buyers and...to assist people moving through the property market”^v and to meet his commitment to revenue neutrality. The revised rates and bands are set out in the table below—

Table 2: Revised Residential LBTT Rates and Bands for 2015-16

Band	Rate
Up to £145,000	Nil
£145,001 to £250,000	2%
£250,001 to £325,000	5%
£325,001 to £750,000	10%
£750,001 and over	12%

Source: Letter from DFM to Convener, 22 January, 2015

10. The Scottish Government initially stated in Draft Budget 2015-16 that in relation to residential LBTT:

^vhttp://www.parliament.scot/S4_FinanceCommittee/General%20Documents/Cabinet_Secretary_for_Finance_Constitution_and_Economy_to_the_Convener_dated_22_January_2015.pdf

- the proposed rates and bands will take 5,000 additional house purchases out of tax compared to SDLT so that no tax will be payable;
 - reduce the tax charge relative to SDLT for a further 44,000 house purchases up to £325,000; and
 - ensure that 90 per cent of tax payers are no worse off than under SDLT.
11. Following the changes to bands and rates the DFM wrote to the Committee explaining that by increasing the nil rate threshold to £145,000 a further 5,000 house purchases would be taken out of the scope of LBTT. The Scottish Government, therefore, anticipated that 10,000 fewer transactions would be taxable than under SDLT.
12. The Cabinet Secretary has informed the Committee that nearly 9,700 house-buyers did not pay LBTT in 2015-16 who would have paid SDLT. A further 41,700 paid less tax on their house purchases between £145,000 and £330,000 than they would have under SDLT. The Cabinet Secretary stated that “broadly 9 out of 10 transactions in 2015-16 paid either less tax than UK SDLT or no tax at all.”^{vi}

13. **The Committee asks the Scottish Government to confirm what percentage of LBTT tax payers in 2015-16 paid either less tax than UK SDLT or no tax at all.**

Outturn Figures versus Forecasts

14. The outturn figures for LBTT in comparison to the Scottish Government's forecasts are provided in Table 2 below.

Table 3: Comparison of LBTT outturns and Scottish Government forecasts for 2015-16

	Forecast	Outturn	Variance against forecast
	£m	£m	£m
Residential	235	208	(27)
Non-Residential	146	217	71
Total	381	425	44

Source: Forecasts – Scottish Government, Outturns (accruals basis) – Revenue Scotland (pre-audit basis).

15. The Cabinet Secretary stated that “total LBTT revenues in 2015-16 exceeded our original forecast by around £44m, driven in the main by higher than expected non-

^{vi} http://www.scottish.parliament.uk/S5_Finance/Finance_Committee_-_LBTT_inquiry_-_Letter_from_Cabinet_Secretary_-_August_2016.pdf

residential revenues.”^{vii} He also pointed out that the forecast £235m in residential receipts was a gross forecast which did not factor in the impact of forestalling (estimated to result in loss of revenue in the range of £12m to £37m due to purchases being brought forward from 2015-16 to 2014-15).

Residential LBTT

16. In relation to residential LBTT the Cabinet Secretary stated that “the residential market in Scotland exhibited strong growth in activity levels, while house price increases remained moderate, supporting housing affordability” during 2015-16. He noted that the number of residential transactions in Scotland grew by 10.6% during the year compared to 10.5% over the UK as a whole whilst the number of mortgages extended to first-time buyers rose by 10.9%.
17. The Cabinet Secretary stated that “all segments of the market have been resilient over this period with the strongest growth in the £250,000 to £325,000 band.” In his letter to the Committee he further stated that “transactions in all the price bands corresponding to the LBTT thresholds have shown increases in the two years to Q2” including in the two bands in which the amount of LBTT payable exceeds that payable under SDLT. The number of transactions in the £325k to £750k band increased by 1% over this period whilst those in the £750k-plus band rose by 33%. The letter concludes that the data “does not provide any evidence of a significant fall in transactions at the higher end of the market due to the introduction of LBTT.”
18. However, the SFC outturn report states that “the evidence seems to suggest that there was a reduction in revenues relative to expectations in the early part of the fiscal year, and that, for the year as a whole, revenues were significantly lower, particularly for transactions in the price band £325k-£750k.”^{viii} Revenues below the £325k threshold were found to be in line with forecasts whilst those for properties at the very top end of the market (over £750k) were “underpredicted and actually £4m more than expected.”^{ix}
19. The SFC also pointed out that there had been “substantial growth in many of the price bands, except for the £325,000 to £750,000 band, in which there was growth of only 1 per cent.” It went on to explain that the Government’s forecasts had assumed a large fiscal drag effect because “as house prices rise, more properties are pulled into the £325,000 to £750,000 price band” and, therefore, they would have expected “transactions in that zone to increase over time rather than growing by just 1 per cent.” The SFC’s view is that “the volume of transactions in this section of the housing market remained subdued throughout the entire fiscal year, excluding March 2016.”^x

^{vii} http://www.scottish.parliament.uk/S5_Finance/Finance_Committee_-_LBTT_inquiry_-_Letter_from_Cabinet_Secretary_-_August_2016.pdf

^{viii} http://www.fiscal.scot/media/media_485479_en.pdf, paragraph 3.18

^{ix} http://www.fiscal.scot/media/media_485479_en.pdf, paragraph 3.16

^x http://www.fiscal.scot/media/media_485479_en.pdf, paragraph 2.1

20. The SFC Outturn Report states that “a major part of the forecast error for residential LBTT arose from the underprediction of average house prices relative to median house prices which in turn implies that the distribution of transactions tilted away from the upper end of the market. This could be consistent with a forestalling effect.”
21. The SFC was asked in oral evidence whether it was possible that the number of transactions in the £325 to £750k band had remained constant but greater numbers of transactions were towards the lower end of the band than the higher end. The SFC responded that this was possible but could not be confirmed as it only had Revenue Scotland data on the full band rather than on sub-bands within it. Access to such information it stated, “would be useful to do that analysis.”^{xi}
22. The Cabinet Secretary explained that in his view the “main reason why the outturn was towards the lower end of the forecast range was that average residential property prices in Scotland were relatively flat over 2015-16.”^{xii} Average house prices rose by 2.1% in Scotland compared with a forecast of around 5% and 8.3% for the UK.

23. **The Committee recommends that the Scottish Government publishes a response to the findings of the SFC’s outturn report alongside the 2017-18 Budget Bill. This should include an assessment of the SFC’s conclusion that the housing market in the £325k to £750k band remained subdued throughout the entire fiscal year excluding March 2016.**
24. **The Committee notes that the Cabinet Secretary has explained the lower than expected outturn figures for residential LBTT as being due to relatively flat property prices. The Committee asks that the Scottish Government provides details of the annual average rise in house prices over the past five years and an explanation of why the forecast assumption was 5% for 2015-16.**
25. **The Committee recommends that beginning with Draft Budget 2017/18 the forecast of the number of transactions used to inform the residential LBTT receipts forecast should be broken down by band.**
26. **The Committee notes that the Scottish Government forecast 6.9% growth in transactions for 2015-16 over the previous year. The Committee asks the Scottish Government to provide a breakdown by band of the percentage growth and overall growth in transactions between 2014-15 and 2015-16.**

^{xi} Finance Committee, 5 October 2016, OR Col. 8

^{xii} http://www.parliament.scot/S5_Finance/Finance_Committee_-_LBTT_inquiry_-_Letter_from_Cabinet_Secretary_-_August_2016.pdf

Causality

27. One of the main issues which the Committee considered in examining the outturn figures is the complex question of causality. In particular, to what extent is it possible to assess the impact of the new tax on the housing market separately from other factors such as the impact of economic growth.
28. In keeping with the written evidence submitted by several stakeholders such as Aberdeen City Council and Pinsent Masons, the Cabinet Secretary's letter highlighted the challenges in assessing causality, pointing out that factors other than taxation including economic, financial and demographic trends, in addition to other external developments "can be equally or often more important" in influencing the property market.
29. When asked whether LBTT had contributed to reduced activity in the £325k to £750k band and therefore, a reduced tax take, the SFC stated that it could not draw "that definitive conclusion based on the limited data that we have at the moment."^{xiii} Explaining that factors including a behavioural response, a localised downturn in the property market in the Aberdeen area or other shifts in the market could account for this, the SFC stated "we cannot rule out the possibility...and we cannot definitively conclude that that is the case." It would therefore "continue to monitor the data as it emerges."^{xiv}
30. With regard to the top tax band which appeared to be the best performing one, the SFC confirmed that there appeared "to be a forestalling effect in the early part of the year, but it is more than compensated for by the performance for that price band throughout the rest of the year."^{xv}
31. The Cabinet Secretary confirmed that he had specifically looked into trends in respect of higher-value properties and was reassured that "there is not a distortion of the market and people are not forever putting off sales and transactions. On the data that we have, it appears that the broad composition is the same in terms of the share of the transactions."^{xvi}
32. The Cabinet Secretary reiterated that the Government's focus had been on "tax relief at the lower end of the market to stimulate the economy—to stimulate purchases and to support first-time buyers—and we are doing that". However, he was "also very mindful of the impact at the top end and was keeping a close eye on that."^{xvii}
33. The Cabinet Secretary went on to emphasise that the SFC's analysis was of revenues, not transactions, and that—

^{xiii} Finance Committee, 5 October 2016, OR Col. 8

^{xiv} Finance Committee, 5 October 2016, OR Col. 8

^{xv} Finance Committee, 5 October 2016, OR Col. 10

^{xvi} Finance Committee, 28 October 2016, OR Col. 4

^{xvii} Finance Committee, 28 October 2016, OR Col. 10

” “the number of transactions has largely been sustained as a share of total transactions in Scotland, but values—the revenue—have been more subdued. I would relate that back to the general issue of house prices and values in Scotland and, within that, the geographic issue in the north-east and in Aberdeen city and shire. We know what is happening with the economy there, and I think that that has impacted on some of the values and therefore some of the outturn figures.”^{xviii}

34. The Committee considers that it is too early to draw any definitive conclusions from the available outturn data but recommends that the SFC should continue to monitor the data on an ongoing basis.

Scotland Reserve

35. The Cabinet Secretary went on to confirm that he accepted the principle that setting tax rates too high could result in reduced revenues through reduced activity, but that this was not what the Government had done. Instead it had “delivered an optimal tax system that has supported the economy and raised revenue above the figure that we anticipated” meaning that it had been able to place £74m in the cash reserve “for a rainy day.”^{xix}
36. The Scotland Act 2012 provided the Scottish Government with a cash reserve capped at £125m and the Scotland Act 2016 replaced this with a Scotland Reserve capped at £700m. The previous Committee supported the Scottish Government’s view that it should have the flexibility to spend surplus tax receipts in addition to having the option of placing them in the reserve. The DFM stated that the terms of the Scotland Reserve are “less restrictive than the terms of the cash reserve in the Scotland Act 2012.”^{xx}

37. The Committee invites the Government to explain why it chose to place the £74m surplus in the Scotland Reserve rather than spending it on public services or infrastructure.

Non-Residential LBTT

38. In respect of the non-residential sector, the Cabinet Secretary’s letter states that whilst available data (published by HMRC for the period prior to 1 April 2015 and by Revenue Scotland thereafter) is not fully comparable, it is likely that there was an increase in non-residential transactions in Scotland in 2015-16 with 11,500 taking place in 2014-15 compared to 9,800 in the preceding year.

^{xviii} Finance Committee, 28 October 2016, OR Col. 9

^{xix} Finance Committee, 28 October 2016, OR Col. 11

^{xx} Finance Committee, 2 March 2016, OR Col. 33

39. The SFC's Outturn Report states that the data shows that returns received generated revenues of £214m in comparison to a forecast of £146m. This figure is on a cash basis while the total outturn figure on an accruals basis is £217m. It goes on to state that the commercial property market "has been more buoyant than was anticipated" with unexpectedly high revenues at the end of both the calendar and fiscal years "suggesting transactions (especially high value ones) in this sector may be concentrated prior to the end of a firm's financial year."^{xxi}
40. The SFC report states that a "major element in the underprediction of non-residential LBTT revenues lies in the fact that the baseline from which the forecast was extrapolated was too low." The report further notes that in March 2016, the OBR "revised up its forecasts for commercial property price growth for 2015-16 from 2% to 7.4%, and for transactions from 3.1% to 3.5%." Combining these factors along with an SFC recommendation relating to the indexation of outturns to growth in commercial property prices, "would have implied a forecast outcome of £208m, relative to an outturn of £217m and in contrast to the original forecast of £146m."^{xxii}
41. The previous Finance Committee noted in its report on Draft Budget 2016-17 that the forecast for non-residential LBTT for 2015-16 had been revised from £146m to £210m.^{xxiii} The SFC explained in its report on Draft Budget 2016-17 that "there is a revised forecast for 2015-16 of £210m, up from £146m in the 2015-16 Draft Budget."^{xxiv}
42. The Scottish Government explained the difference between this intermediate forecast for 2015-16 of £210m compared to the initial forecast of £146m as follows in February 2016 as follows—
 - Outturn data for all of 2014-15 now being available;
 - Revisions to OBR assumptions about annual growth in UK commercial property prices and volumes;
 - A methodological improvement in the calculation of the three year base, following challenge by the SFC.^{xxv}
43. The Cabinet Secretary's letter notes that volatility is common in respect of the non-residential tax base and receipts can "be significantly affected by a relatively small number of high value transactions" such as those involving shopping centres, large office blocks or factories. By way of illustration, it goes on to state that in 2015-16, conveyances with a taxable consideration in excess of £1m "accounted for 80% of the revenue, but less than 10% of all non-residential

^{xxi} http://www.fiscal.scot/media/media_485479_en.pdf, paragraph 2.2

^{xxii} http://www.fiscal.scot/media/media_485479_en.pdf, paragraph 3.29

^{xxiii} <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/96135.aspx>

^{xxiv} http://fiscal.scot/media/media_461136_en.pdf

^{xxv} http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/Response_to_Finance_Committee_draft_Budget.pdf

transactions (including leases).” Whilst this volatility “impacts on the ability to forecast revenues from this tax with precision, the Government is continuing to develop its approach to forecasting in this area.”

44. In oral evidence, the Cabinet Secretary stated that the Government’s non-residential rates had “generally been well received” and the pattern showed “a satisfactory number of transactions” whilst revenues had surpassed forecasts.^{xxvi} When asked by the Committee whether he expected outturn and forecast figures to be more closely aligned as the tax bedded in, he stated that this was not necessarily the case, largely as a result of the nature of commercial transactions and the volatility inherent in them.

45. **The Committee notes that the actual revenue of £217m is £7m higher than the intermediate forecast of £210m which was published at the time of Draft Budget 2016-17. This compares to a difference of £71m between the initial forecast of £146m in Draft Budget 2015-16 and the outturn figure.**
46. **The Committee asks the Scottish Government to provide details of how much of the £71m forecast error was due to the methodology. The Committee also asks how much was due to the commercial property market being more buoyant than anticipated.**
47. **Given the volatility associated with non-residential transactions, and the impact of a relatively small proportion of high value transactions upon revenues, the Committee recommends that the Scottish Government publishes the actual number of transactions in excess of £1m that took place in 2015-16 and does so annually thereafter in order to aid transparency with regard to future forecasts of non-residential LBTT.**
48. **The Committee also recommends that the Budget Process Review Group considers whether any significant differences between forecasts could be addressed in in-year revisions to the Budget.**

^{xxvi} Finance Committee, 28 October 2016, OR Col. 15

Impact on the First-Time Buyer Housing Market

49. The Cabinet Secretary's letter states that LBTT was intended to "support the majority of first time-buyers, improving the affordability of new starter homes, and this is borne out by the data from the first year of operation of the tax." Around 9,700 prospective owner occupiers benefitted from the policy of setting the nil-rate LBTT threshold £20,000 higher than that for UK SDLT according to the letter.
50. Draft Budget 2015-16 also states that the Government would "continue to support first-time buyers through our existing shared equity programmes."^{xxvii}
51. In oral evidence the Law Society stated that "the anecdotal evidence that we are getting from our members is that LBTT has helped first-time buyers. The lower rates at the bottom end have definitely been beneficial, but it is important to look at the whole picture."^{xxviii}
52. When asked by the Committee whether external factors could be expected to have a greater impact on first time buyers than relatively small savings in tax, the Law Society acknowledged that "that a combination of other factors may have led to the increased activity" but it was "the fact that the rates are lower has been welcomed, and it has made things easier for the sort of individuals who are buying property."^{xxix}
53. RICS however, took a different position, stating in oral evidence that "the lower tax rate or the zero tax rate at the lower end might have increased the number of transactions, but that has also increased the demand... That situation is not helping those people; it is putting them into more debt." It went on to explain that any slowdown in movement in the middle part of the market would feed through to the lower end meaning "there will be less supply at the lower end, there will be continued pressures on demand and supply and prices will be pushed up."^{xxx}
54. RICS further stated that "The tax has been designed to be progressive, but it has created a situation in which first-time buyers have to get further into debt and pay more for their houses even though they are paying less tax."^{xxxi}
55. Homes for Scotland (HfS), however, stated that "we must not forget how good a thing the level of LBTT has been for first-time buyers. Some of the stats on that, and on the reduced tax take from the majority of people in Scotland, are to be welcomed and celebrated." However, it also pointed out that "people are often unaware of the tax until they buy a home. We should do all that we can to support

^{xxvii} <http://www.gov.scot/Resource/0046/00462296.pdf>

^{xxviii} Finance Committee, 14 September 2016, OR Col. 2

^{xxix} Finance Committee, 14 September 2016, OR Col. 20

^{xxx} Finance Committee, 28 September 2016, OR Col. 12

^{xxxi} Finance Committee, 28 September 2016, OR Col. 14

first-time buyers, because they are the lifeblood of the housing market, but the tax does not influence their decision. There are more powerful factors, such as the supply of the right kind of property and mortgage availability.”^{xxxii}

56. RICS agreed with this position, stating that in its view, “the level of LBTT has been a good thing, but more research needs to be done on the level of debt among first-time buyers and the price that they are paying for properties.” RICS also expressed uncertainty regarding “what benefit the level of LBTT is for a first-time buyer if they are saving £1,000 in tax and spending £10,000, £20,000 or £30,000 extra on the property because of the increase in demand and the price of properties. The market has been changing a lot as we recover from 2008-09, so it is hard to attribute to the tax an effect on anything in the market.”^{xxxiii}
57. When asked for his view on whether the relatively small benefits in savings on tax for first time buyers might be overstated in comparison to longer-term increases in property values, the Cabinet Secretary confirmed his view that LBTT had been good for people wishing to purchase lower value properties. He went on to emphasise the difficulties in determining “how the policy had shaped or influenced house values “because so many other factors impact on house values and prices, such as income, general economic performance and geographic issues.” Whilst accepting that some may try to make the case, he stated “personally I do not think that the new tax has shaped house values. There are many factors at play in that.”^{xxxiv}
58. When asked what analysis the Government had undertaken of the likely impact of the rates on property values, the Scottish Government official stated “I am not aware of any effect that was counted in that process. In part, that was because we did not have previous analysis of such changes to allow us to model. However, that would certainly be the sort of thing that would be looked at closely, alongside all the various other factors, in any future forecasts of changes.”^{xxxv}
59. When specifically asked whether the Government would undertake and publish an analysis of whether LBTT had ultimately “been of global benefit to people who are buying and selling or to those who are unable to enter the housing market at all,” the Cabinet Secretary confirmed that he had convened two round-table events to take place on 10 November and would be “happy to engage further with the committee and stakeholders at the round-table event and to hear from those who are working in the sector in order to get their intelligence of what further impacts the tax may be having on property values.”^{xxxvi}

^{xxxii} Finance Committee, 28 September 2016, OR Col. 23

^{xxxiii} Finance Committee, 28 September 2016, OR Col. 24

^{xxxiv} Finance Committee, 26 October 2016, OR Col. 6

^{xxxv} Finance Committee, 26 October 2016, OR Col. 6

^{xxxvi} Finance Committee, 26 October 2016, OR Col. 7

60. **The Committee notes that the majority of stakeholders agree that the rates have been of benefit to the first-time buyer housing market. It would be helpful if the Scottish Government could provide a comparison of the growth in the number of transactions between 2014-15 and 2015-16 for house purchases up to £145k.**
61. **The Committee invites the Scottish Government to provide this information and other evidence which it has in relation to the impact that the new nil band has had on the first time buyer market, including increased house prices.**

Behavioural Responses

62. The SFC has consistently raised concerns in relation to the lack of analysis of the behavioural response to LBTT. One of the key issues which the previous Committee considered is the extent to which behavioural factors in response to the introduction of LBTT are temporary or longer term. The temporary response is known as forestalling whereby homeowners shifted the timing of property transactions when the tax was introduced. The longer term behavioural response might include homeowners opting to upgrade existing properties rather than moving home.
63. The SFC outturn report states that the tax applied to purchases over £333k “could potentially lead to behavioural responses in the upper section of the market.” Its analysis suggests that “there appears to be an immediate period where the effects of forestalling can be seen” starting in April 2015 and ending “sometime between July and October 2015.”^{xxxvii}

Forestalling

64. The Scottish Government estimated the loss of revenues for 2015-16 due to forestalling to be in the range of £12m to £37m “with the expectation that they would lie towards the bottom of this range.”^{xxxviii} Professor Leith explained to the previous Committee on 25 November 2015 that the range of £12m to £37m “capture[s] the range of estimates as to the magnitude of the behavioural effect and how long it lasts.”^{xxxix} These estimates do not include any permanent behavioural effects but relate only to the temporary impact of forestalling.

^{xxxvii} http://www.fiscal.scot/media/media_437935_en.pdf

^{xxxviii} http://www.fiscal.scot/media/media_437935_en.pdf

^{xxxix} Finance Committee, 25 November 2015, OR Col. 37

65. Professor Leith told the previous Committee in November 2015 that the—

“outturn data is significantly below what one would expect, given the normal seasonality. That may be because of a temporary forestalling effect, or it may be that the change in the tax regime has permanently subdued parts of the market, so the trend will continue indefinitely.”^{xi}

66. The SFC outturn report states that the very top end of the market “appears to have been subject to a sharp, but temporary, forestalling effect with no obvious ongoing behavioural response apparent to permanent price and tax effects.”^{xli}

67. The Scottish Government analysis of the data as set out in the Cabinet Secretary’s letter is as follows—

“The data suggest a clear impact from forestalling behaviour around the transition from SDLT to LBTT, with the share of transactions between £325,000 and £750,000 and over £750,000 rising noticeably in Q1 2015 before falling back in Q2 2015. There is also some evidence of lower-valued transactions being delayed, with the share of transactions in the £145,000-£250,000 band falling in Q1 2015 and then rising in Q2 2015.”

68. The National Association of Estate Agents (NAEA) stated in its written submission that, as expected, it had seen a rise in both the number and value of purchases around March in both 2015 and 2016, largely as a result of forestalling.^{xlii} RICS agreed that the introduction of LBTT and the ADS had resulted in house sale surges in March 2015 and March 2016. However, its view was that these surges were not unexpected and that the impact of forestalling “is most likely a short term issue, assuming LBTT rates and thresholds remain the same going forward.”^{xliii}

69. The DFM told the previous Committee that he accepted that there had been forestalling and that the “shortfall in residential transactions is broadly comparable at this stage with the level of forestalling that was identified or suggested by the OBR.”^{xliv} The OBR’s November 2015 forecast^{xlv} for the devolved taxes increased its forecast for residential forestalling from £20m to £30m.

70. The agreement between the Scottish Government and the UK Government on the Scottish Government’s fiscal framework (published 25 February 2016)^{xlvi} stated that—

^{xi} Finance Committee, 25 November 2015, OR Col. 31

^{xli} http://www.fiscal.scot/media/media_485479_en.pdf, paragraph 3.22

^{xlii} http://www.parliament.scot/S5_Finance/National_Association_of_Estate_Agents_Submission.pdf

^{xliii} http://www.parliament.scot/S5_Finance/RICS_Response.pdf

^{xliv} Finance Committee, 13 January 2016, OR Col. 37

^{xlv} http://budgetresponsibility.org.uk/docs/dlm_uploads/Devolved-taxes-forecast.pdf

^{xlvi} <https://www.gov.uk/government/publications/the-agreement-between-the-scottish-government-and-the-united-kingdom-government-on-the-scottish-governments-fiscal-framework>

” “The baseline adjustment for Stamp Duty Land Tax will take into account the forestalling that is estimated to have occurred, which will reduce the baseline adjustment by £20m. No further forestalling effects in relation to the implementation of new powers will be taken into account.”

71. In its submission to the Devolution (Further Powers) Committee on the Fiscal Framework^{xlvii}, the previous Committee asked why £20m had been deducted from the baseline adjustment for LBTT to take into account forestalling when the latest OBR forecast for forestalling which was published in November 2015 is £40m. (£30m for residential and £10m for non-residential)”
72. The Scottish Government responded that the £20m represents the gain to the UK Government from increased SDLT receipts in 2014-15 rather than the loss to the Scottish Government from fewer LBTT receipts in 2015-16.^{xlviii}

73. The Committee asks the Scottish Government why, given the principle of ‘no detriment’, the fiscal framework did not appear to use the £40m OBR forecast for forestalling in calculating the baseline adjustment to the block grant for LBTT. The Committee also asks for an explanation of the difference between the gain to the UK Government and the loss to the Scottish Government as a result of forestalling.

Longer term impact

74. The SFC stated in November 2015 that “there may be longer-term behavioural responses to the new tax which the current forecasting approach does not allow for.”^{xlix} The SFC’s view was that this could mean the forecast was overly optimistic. Professor Leith told the Committee that in “our initial report, there are several instances in which we suggest that it would be best if the behavioural effects of policy could somehow be incorporated into the method of producing the forecast.”^l
75. The SFC recommended in its report on Draft Budget 2015-16 that behavioural factors should be included in the forecasting methodology as soon as practicable. It pointed out that there may be other environmental or behavioural factors which could have a bigger impact on outcomes than forestalling, particularly in the medium term and these need to be considered as well.^{li}
76. In its report on Draft Budget 2016-17, the Committee recommended that the Government “needs to carry out an analysis of the initial behavioural response to

^{xlvii} http://www.parliament.scot/S4_FinanceCommittee/General%20Documents/20160307_Letter_to_Devolution_Committee.pdf

^{xlviii} http://www.scottish.parliament.uk/S5_Finance/Cabinet_Secretary_to_Finance_Committee_-_Fiscal_Framework.pdf

^{xlix} http://www.fiscal.scot/media/media_437935_en.pdf

^l Finance Committee, 25 November 2015, OR Col. 67

^{li} http://www.fiscal.scot/media/media_397838_en.pdf

LBTT once a full year of outturn data is available. In particular, there is a need to assess whether there is a longer-term behavioural response to the new tax at the higher end of the market” and that that this work should help to inform whether there is a need to review the rates and bands for residential LBTT and should also inform future revenue forecasts.^{lii} The Government’s response stated that it was “committed to further development work on behavioural responses” and had already incorporated behavioural responses into its revenue forecast for the ADS.^{liii}

77. The SFC states in its outturn report that the fact that transactions in the highest price band “recovered relatively quickly...raises the possibility that there are ongoing behavioural responses beyond those associated with the temporary effects of forestalling activity.”^{liv}
78. When asked by the Committee to provide an overview of the Government’s assessment of whether forestalling could be expected to be only a short-term phenomenon or whether it might result in longer-term behavioural changes, the Cabinet Secretary stated—

” “There was inevitably going to be cultural behaviour, with people bringing forward sales to avoid a higher level of tax. There was certainly evidence of that happening, and that has impacted over the year. We cannot say what the long-term trajectory will be, because we are just beyond the one year, with data for a further couple of quarters. However, from the statistics that I have seen around the share and the composition of the value of properties, there seems to be more consistency.”^{lv}

79. He went on to explain that “on the share of the transactions, the cultural behaviour that we saw in the early days seems to have levelled off, but that is based only on the data that we have so far. On your question about the longer term, we will know the answer only when we have more data.”^{lvi}

80. The Committee notes that the SFC suggests the possibility of an ongoing behavioural response within the £325k to £750K band. The Committee recommends that the Scottish Government’s review of the first year of LBTT includes an analysis of the behavioural response within this band and an assessment of the likelihood of an on-going response including the impact of extraneous factors.

^{lii} <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/96135.aspx>

^{liii} http://www.parliament.scot/S4_FinanceCommittee/General%20Documents/Response_to_Finance_Committee_draft_Budget.pdf

^{liv} http://www.fiscal.scot/media/media_485479_en.pdf, paragraph 3.24

^{lv} Finance Committee, 26 October 2016, OR Col. 4

^{lvi} Finance Committee, 26 October 2016, OR Col. 4

Proposed Changes to the Rates and Bands

81. The Chartered Institute of Taxation (CIOT) noted that it does not generally comment on the setting of tax rates but observed that the Government “should uprate the bands periodically to ensure that they remain appropriate and are in line with policy objectives.” With regard to any changes to rates, the CIOT stated that “it would assist certainty if changes to rates in particular could be minimised” whilst acknowledging that “adherence to the principles needs to be balanced with the pragmatic need for tax revenues.”^{lvii} ICAS made a similar point, stating that minimal changes would “enable taxpayers, both individuals and businesses, to plan ahead with confidence”.^{lviii}

Residential

82. The CIOT did suggest however, that there should not be a significant leap in rates from one band to the next. In this context, the 5% leap from 5% to 10% on residential properties over £325k was “not ideal.” The CIOT further noted the necessity of considering how LBTT rates and bands compare to those in the rest of the UK to ensure Scotland continues to attract investment and business.^{lix}
83. In light of what it considered to be a “disproportionate burden on middle to higher value purchases” HfS reiterated its call for a review of rates and bands over £325k “to provide a more stepped approach.” This, it suggested, could involve a 5% rate for purchases between £250k and £925k which would mirror arrangements for SDLT. In its view, higher levels of activity in this section of the market “would result in a higher tax take than what is being achieved at present.” The impact of uncertainty relating to Brexit provided “an opportunity to boost the housing market and make now a great time to buy” according to HfS, which “strongly believed that house sales could generate more income through higher sales activity if the rates and bands were apportioned more effectively.”^{lx}
84. However, RICS recommended that the Scottish Government “does not amend the bands and thresholds of residential LBTT until research report is returned, discussed with stakeholders and, if necessary, scrutinised by the Finance Committee.”^{lxi}
85. Conversely, Savills recommended “immediate changes to the rates and bands in the draft budget for 2017-18. In particular, the Scottish Government should review

^{lvii} http://www.parliament.scot/S5_Finance/Chartered_Institute_of_Taxation_Submission.pdf

^{lviii} http://www.parliament.scot/S5_Finance/ICAS_Submission.pdf

^{lix} http://www.parliament.scot/S5_Finance/Chartered_Institute_of_Taxation_Submission.pdf

^{lx} http://www.parliament.scot/S5_Finance/Homes_For_Scotland_submission.pdf

^{lxi} http://www.parliament.scot/S5_Finance/RICS_Response.pdf

the 10% tax band which has heavily impacted the market between £325,000 and £750,000.”^{lxii}

86. Similarly, the SPF suggested that residential rates should be reformed by increasing the 5% band up to £500k to mitigate the “significant impact” of the 10% rate on transactions above £325k. This, it noted, effectively added “£500 for every £5,000 of property value above this level” significantly increasing “up-front” cash-flow issues and contributing to reduced market activity. This was of particular concern in areas such as Edinburgh, Aberdeen or East Renfrewshire.”^{lxiii}
87. When asked by the Committee whether it agreed with RICS’ suggestion that the rates and bands for residential LBTT should remain unchanged until research had been undertaken and analysed, The Law Society responded “Yes, absolutely. It is very difficult to unravel all the different factors that have been at play in this first year; as has been mentioned, there is the forestalling effect....There is an interplay between a lot of those things.”^{lxiv}
88. ICAS agreed with this position stating “we want certainty and a feel for what is coming. There do not need to be changes in the tax rates every year.”^{lxv}
89. Professor Stephens also agreed and encouraged the Committee “to step back from the relatively short period that we have been examining in great detail and to think about the way in which the housing market operates and the way in which LBTT and its predecessor taxes have operated.” He highlighted the volatility of the housing market but noted that changes to transaction taxes “can have an effect on behaviour, and that anticipated changes in taxes can also influence behaviour...another reason why it would be sensible to dampen speculation about changing bands in the short term.” In his view “it would be sensible to examine the longer-term impact of the new regime” before making any changes to the rates and bands.”^{lxvi}
90. HfS, however, advocated urgent action, stating that “the current situation is adding to the uncertainty. I was intrigued by the comments that suggested that we hold on and wait. The markets are suffering to a great extent—particularly in the north-east, although that might be for other reasons—yet we have a lever that we could use to stimulate the market now.”^{lxvii}
91. The SPF stated “You cannot disengage the causality of it from what has happened in the economy in the area. Figures that came out yesterday showed that 100,000 jobs have gone in the north-east, and that is obviously going to impact on people’s ability to pay market prices.”^{lxviii}

^{lxii} http://www.parliament.scot/S5_Finance/Savills_Response.pdf

^{lxiii} http://www.parliament.scot/S5_Finance/Scottish_Property_Federation_Submission.pdf

^{lxiv} Finance Committee, 14 September 2016, OR Col. 7

^{lxv} Finance Committee, 14 September 2016, OR Col. 18

^{lxvi} Finance Committee, 28 September 2016, OR Col. 10

^{lxvii} Finance Committee, 28 September 2016, OR Col. 11

^{lxviii} Finance Committee, 28 September 2016, OR Col. 18

92. When invited to respond to suggestions from some organisations that certain bands should be revised without delay, the Cabinet Secretary stated that preliminary modelling had suggested that the SPF proposals would lead to an estimated reduction in revenues of £32m whilst HfS' proposals would result in estimated losses of £44m leading to cuts in the Scottish budget.^{lxi}

Non-Residential

93. The SPF advocated no changes to the non-residential rates and bands which, in its view, were "supporting both competitiveness and the public revenue."^{lxx}
94. With regard to non-residential rates and bands, HfS considered the existing 4.5% rate which applied to most land purchases to be "acceptable" meaning that no changes to the existing rates and bands were currently required.^{lxxi} KPMG agreed with this view, stating that "the bands and rates are similar to those in the rest of the UK which should ensure that investment decisions made by businesses are not unduly, influenced by lower or higher rates in Scotland."^{lxxii}
95. However, North Lanarkshire Council suggested that residential buyers "bear a greater burden" than non-domestic buyers in most cases and recommended that the number of nondomestic bands and the rates levied on them should be revised to be more in keeping with domestic rates to address what it considered to be an "imbalance."^{lxxiii}
96. In oral evidence, the Cabinet Secretary stated that he would "discuss and challenge the evidence of any impact of LBTT on residential and non-residential property markets with a range of stakeholders [at the round-table events planned for 10 November] and gather evidence on other factors that may be having an impact on the performance of those markets. Not least of the factors is likely to be the local, oil-related economic difficulties in Aberdeen city and shire."^{lxxiv}

97. The Committee recognises the need for further analysis of the behavioural response to LBTT especially in the £325k to £750k band. It is also essential that sufficient forecast and outturn data is published and that this is readily comparable so that the impact of the tax on the housing market can be openly monitored.

^{lxi} Finance Committee, 26 October 2016, OR Col. 14

^{lxx} http://www.parliament.scot/S5_Finance/Scottish_Property_Federation_Submission.pdf

^{lxxi} http://www.parliament.scot/S5_Finance/Homes_For_Scotland_submission.pdf

^{lxxii} http://www.parliament.scot/S5_Finance/KPMG.pdf

^{lxxiii} http://www.parliament.scot/S5_Finance/North_Lanarkshire_Council_Submission.pdf

^{lxxiv} Finance Committee, 26 October 2016, OR Col. 3

Additional Dwelling Supplement

98. A 3% supplement on purchases of additional residential properties in Scotland (such as buy-to-let properties and second homes) over £40,000 was announced on 16 December 2015 and came into force on 1 April 2016. The policy objectives underlying the ADS were “to ensure that the opportunities for first time buyers to enter the housing market in Scotland remain as strong as they possibly can” and “to ameliorate the likely distortions”⁸ from the introduction on 1 April 2016 of a similar supplement at UK level.
99. This is also likely to have led to a degree of forestalling. The Scottish Government estimated that between £5m and £7m^{lxxv} of LBTT revenue would be brought forward from 2016-17 to 2015-16 as a result of people bringing forward purchases of second homes to complete them before the supplement came into force.
100. The previous Committee recommended in its Legacy Report that its successor “may wish to monitor and review the impact of the LBTT supplement.”^{lxxvi} Whilst the ADS did not come into force in 2015-16, it did have implications for that financial year via forestalling and was raised in both written and oral evidence. This report therefore contains a short section discussing the ADS.
101. Concerns have been raised about the impact of the ADS on “accidental” owners of more than one residence with the Law Society for example, stating that “There are quite a number of cases in which we think that people who are paying the additional dwelling supplement should not actually have to pay it”—
- ” “We think that there is a case for widening out the various exemptions so that people who only reluctantly or inadvertently own two houses for a short period should not have to pay the tax. We asked for a grace period of three months, which would probably sort out a lot of things. There should perhaps be a discretionary grace period in some circumstances, too.”^{lxxvii}
102. HfS agreed with this position, stating that “the cashflow issue for those who end up as unintended second-home owners needs to be examined, because the supplement could have a strong impact on that...Downsizers who want to buy a retirement home before committing to sell will not want the disruption of having to sell and then quickly find something new. They might find themselves with two homes. We want to encourage mobility in that area, so perhaps that is an exception to look at.”^{lxxviii}

^{lxxv} [http://www.parliament.scot/S4_Bills/Land%20and%20Buildings%20Transaction%20Tax%20\(Amendment\)%20\(Scotland\)%20Bill/SPBill85ENS042016.pdf](http://www.parliament.scot/S4_Bills/Land%20and%20Buildings%20Transaction%20Tax%20(Amendment)%20(Scotland)%20Bill/SPBill85ENS042016.pdf) (page 21)

^{lxxvi} <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/97975.aspx#g>

^{lxxvii} Finance Committee, 14 September 2016, OR Col. 12

^{lxxviii} Finance Committee, 28 September 2016, OR Col. 22

103. In its response to the previous Committee's Stage 1 Report on the LBTT (Amendment) Bill the Government asked Revenue Scotland to monitor the position between 1 April and 30 October 2016 to enable the Government to "take an informed view as to the need or otherwise of a grace period and what that grace period should be."^{lxxix}

104. The Committee invites the Government to provide an update on what its "informed view" is in relation to grace periods.

105. The Law Society also highlighted the slab nature of the ADS in oral evidence, stating that it was not convinced of the sense of having a flat 3% rate. "If there is going to be an additional dwelling supplement, it ought to be as progressive as SDLT."^{lxxx}
106. The Committee invited HfS to expand on its assertion in its written submission that "the purchase of new build properties for buy to let purposes or as second homes represents additional activity, which does not 'crowd out' the purchase of homes by first time buyers" in the context of rural parts of Scotland. HfS explained that anecdotal intelligence based on feedback from its members "suggests that the products that they are delivering in some of the rural locations...are not targeted at the first-time buyer market. They are very much luxurious holiday homes for people who can afford it."^{lxxxi} However, Professor Stephens attempted to put this in context, stating "there is a special problem in housing markets in which a significant number of purchasers are coming from another area where incomes might be much higher. I suppose that you get that in London with international investors, and clearly the same thing happens in the Highlands and Islands. I do not know how significant a three per cent surcharge is, but I would guess that it is only significant at the margin."^{lxxxii}
107. The Association of Local Authority Chief Housing Officers (ALACHO)^{lxxxiii} and the Chartered Institute of Housing (CiH)^{lxxxiv} raised specific concerns in their written submissions about the impact of LBTT on the Affordable Housing Supply programme given the absence of an exemption for local authorities when acquiring existing homes (unlike Registered Social Landlords (RSLs) who are exempt). Previously, this wasn't a significant problem as typical acquisitions tended to be below the LBTT threshold of £145k. However, the introduction of the ADS on purchases of any additional home over £40k along with changes to the statutory guidance relating to planning agreements has "much wider implications

^{lxxix} http://www.parliament.scot/S4_FinanceCommittee/General%20Documents/DFM_response_22.02.2016.pdf

^{lxxx} Finance Committee, 14 September 2016, OR Col. 11

^{lxxxi} Finance Committee, 28 September 2016, OR Col. 20

^{lxxxii} Finance Committee, 28 September 2016, OR Col. 28

^{lxxxiii} http://www.parliament.scot/S5_Finance/ALACHO_Submission.pdf

^{lxxxiv} http://www.parliament.scot/S5_Finance/CiH_Scotland_Submission.pdf

for local authorities". ALACHO estimated costs in excess of £2.5m to local government over the next five years" as a result.

108. On that basis, ALACHO and the Chartered Institute of Housing called for the relevant legislation to be amended to extend the relief provided to RSLs to local authority landlords. However, KPMG stated that "the recent cuts to grant funding for RSLs, means that the majority of acquisitions made by RSLs are not assisted by public subsidy and so no longer meet the conditions for relief from LBTT, as provided for at Schedule 6 LBTT(S)A 2013"^{lxxxv} and asked whether consideration had been given to expanding the relief to ensure RSLs can continue to claim it in future. North Lanarkshire Council also requested that the exemption criteria be extended to include local authorities and other social landlords.^{lxxxvi}
109. When invited to comment on these points, the Law Society stated "yes, we agree that there is some merit in an exemption for those types of transactions....Looking at the reasons why councils are acquiring residential properties, we do not think that that is an area where they ought to pay the ADS. We support the councils' suggestions."^{lxxxvii}
110. When invited to comment on suggestions that the challenging timescales for the introduction of the ADS had contributed to certain exemptions not being quite right, meaning that refinements were required, Revenue Scotland stated that it was not its role to comment on policy. However, noting that the tax had been introduced successfully in such timescales after "a huge amount of work"^{lxxxviii} had been undertaken by it and stakeholders such as the Law Society, Revenue Scotland had learned lessons about the need for sufficient time to ensure it and stakeholders were fully prepared for the new tax and was feeding back to the Scottish Government its conclusions on the amount of time needed to introduce properly a new tax. It was also ready to provide necessary data to the Government to assist in its assessment of whether the policy was working correctly, as it was aware of the Government's commitment to review the tax in and update Parliament in Draft Budget 2018-19.
111. Whilst the tax had been introduced successfully, Revenue Scotland acknowledged that the work required to deliver this might have come at the cost of other pieces of work such as developing more detailed guidance. It accepted that taxation was a dynamic area in which changes may need to be made rapidly, but "it was not a timeframe under which Revenue Scotland would like to have to operate too often."^{lxxxix}
112. When invited to respond to suggestions that elements of the ADS needed to be refined, the Cabinet Secretary confirmed his view that it had been the right decision to introduce the ADS but acknowledged that legislation can have

^{lxxxv} http://www.parliament.scot/S5_Finance/KPMG.pdf

^{lxxxvi} http://www.parliament.scot/S5_Finance/North_Lanarkshire_Council_Submission.pdf

^{lxxxvii} Finance Committee, 14 September 2016, OR Col. 11

^{lxxxviii} Finance Committee, 5 October 2016, OR Col. 21

^{lxxxix} Finance Committee, 5 October 2016, OR Col. 21

unintended consequences. He went on to confirm that he was “in listening mode” and was prepared “to look again at the matter to make sure that, if any refinements are required, we would do that methodically.”^{xc}

113. The Committee invites the Government to confirm the expected timescales for its methodical review of the ADS and of any required refinements identified as a result.

Availability of Data

114. One challenge which faced the Committee during its inquiry related to the availability of data and the way in which it was collated and published. In oral evidence, the SFC set out some of the reasons for disparities between the different sets of data as follows—

“For any property transaction, we have the date of the transaction, which leads to the requirement that some tax be paid, but the payment of the tax is generally subsequent to the date of the transaction. If the property transaction is towards the end of the month, the tax might well be recorded by Revenue Scotland in the following month. Therefore, there is a bit of a disparity if we look at the month figures. Registers of Scotland then registers the transaction, but it waits until the tax return has been filed and the tax is in. There is a sequence.”^{xci}

115. Similarly, HfS stated “there is a difference in the ROS data with regard to date of entry and date of registration and that that might cause a lag. The stats that we looked at earlier were based on registration, but some of the transactions actually took place as part of the forestalling in March and might not show until the next financial year.”^{xcii}

116. The SFC further highlighted the fact that Registers of Scotland publishes data relating to all transactions, including those below £145k for which LBTT is not payable. For these reasons, the SFC confirmed that it was not troubled by any disparities between data sets in the published reports and it was confident that the figures could be reconciled.

117. Confirming that its outturn report was based on outturn data from Revenue Scotland, the SFC suggested that the Committee should not use Registers of Scotland data to assess the impact of forestalling “because the way in which it

^{xc} Finance Committee, 26 October 2016, OR Col. 5

^{xci} Finance Committee, 5 October 2016, OR Col. 3

^{xcii} Finance Committee, 28 September 2016, OR Col. 9

smooths the activity does not give as clear a picture and it does not collect data to reflect forestalling.”^{xciii}

118. The Law Society stated in oral evidence that “although Revenue Scotland publishes monthly figures for the LBTT that has been collected, it would be great if it went even further and published information that breaks the figures down into the bands from which the LBTT take has come.”^{xciv}
119. As previously noted the SFC also stated that access to a breakdown of outturn data from the £325 to £750k band, “would be useful” to assist in analysis.
120. The SFC then confirmed that it had asked the Government “to ask for the next round of data broken down as much as possible, not only by month and price band but ideally by region as well” to enable it to explore whether regional variations could account for forecasting errors.^{xcv}
121. When invited to respond to these comments, Revenue Scotland stated that “everything is possible.” However, it confirmed that to date it had published “the basic, factually correct and accurate data that we need for our purposes as a tax authority.” Whilst mindful of the fact that the production of additional data would have resource implications, Revenue Scotland was working with its partners “to come to a consistent view about what the additional calls on its data would be, so that we can look into how achievable it is to provide the data.” However, “additional validation work would be required” to ensure the robustness of the data meaning it may not be straightforward.^{xcvi}
122. When asked whether the Government would take steps to make it easier for the Committee and other stakeholders to analyse the data published by Revenue Scotland and Registers of Scotland, the Cabinet Secretary undertook to reflect on the issue to see what could be done to harmonise it.^{xcvii}

123. The Committee welcomes the Cabinet Secretary’s commitment to consider ways of harmonising the published data and looks forward to receiving an update of progress in this regard.

124. The Committee recommends in particular, that Revenue Scotland explores the options for breaking down further the data in the £325 to £750k band and for providing a regional breakdown of its data. In so doing, the Committee remains mindful that any additional breakdown should be proportionate in terms of the efficient use of resources.

^{xciii} Finance Committee, 5 October 2016, OR Col. 3

^{xciv} Finance Committee, 14 September 2016, OR Col. 5

^{xcv} Finance Committee, 5 October 2016, OR Col. 9

^{xcvi} Finance Committee, 5 October 2016, OR Col. 20

^{xcvii} Finance Committee, 28 October 2016, OR Col. 20

Non-Residential LBTT

125. In respect of non-residential LBTT, the Law Society stated that “even breaking the figures down for the LBTT take on purchases and leases, for example, would be quite significant. That was one of the areas on which it was quite difficult to get information before the introduction of LBTT, and we think that such information would be terribly valuable to all manner of people who are looking at the impact of tax in Scotland.”^{xcviii}

126. The Committee recommends that Revenue Scotland explores the possibility of breaking down non-residential LBTT data between tax paid on purchases and tax paid on leases. In so doing, the Committee remains mindful that any additional breakdown should be proportionate in terms of the efficient use of resources.

Performance of Revenue Scotland

127. The majority of respondents to the call for evidence considered Revenue Scotland to be performing well with the ClOT for example, stating that the “general view is that the LBTT system is working well for day-to-day conveyancing.”^{xcix} Revenue Scotland’s willingness to offer different communication channels and to invite engagement and feedback with stakeholders was also widely welcomed.

128. However, the ClOT went on to suggest that there was some room for improvement and that Revenue Scotland must be sufficiently resourced, for example to allow it to operate facilities such as its opinion service efficiently and ensure that its guidance is dynamic and responsive to taxpayer queries.

129. The ClOT expressed disappointment that the LBTT forum, which was intended to provide a platform for stakeholders to discuss the operation of LBTT with Revenue Scotland, had not met since September 2015 despite having been intended to meet on a six-monthly basis. KPMG also expressed concerns with regard to sub-groups of the forum which Revenue Scotland had agreed to set up to allow “more technical matters to be worked through in detail.”^c However, KPMG was not aware of any such sub-groups having been established.

130. The ClOT also noted continued “uncertainty surrounding interpretation of substantial performance due to a lack of guidance” which compared unfavourably

^{xcviii} Finance Committee, 14 September 2016, OR Col. 6

^{xcix} http://www.parliament.scot/S5_Finance/Chartered_Institute_of_Taxation_Submission.pdf

^c http://www.parliament.scot/S5_Finance/KPMG.pdf

with the 90% rule that applied to SDLT. This, it stated, was disappointing as the issue had previously been raised with Revenue Scotland which had agreed to consider creating a similar percentage rule, “but there does not appear to have been progress towards this.”^{ci} Similarly, KPMG stated that the guidance in relation to substantial performance was “still lacking” and recommended that this be “reviewed and the matter clarified as soon as possible.”^{cii}

131. ICAS had found its dealings with Revenue Scotland to be “professional and helpful” and stated that it had been “good at engaging through a number of channels.” In its view, Revenue Scotland’s website was also “a good source of information and well laid out.” Despite canvassing its members, “no major areas of concern had been raised” leading ICAS to conclude that the administration of LBTT was “working as expected.”^{ciii}
132. ICAS did, however, note comments from some members that “there are occasions when Revenue Scotland could be more helpful in providing an opinion that provides certainty and that in the same scenario HMRC would have given a clearance (for instance, with an incorporation of a ‘husband and wife’ partnership).” ICAS further noted that the technical guidance did not always give Revenue Scotland’s interpretation of the legislation in contrast to that of HMRC in respect of SDLT. As it was “unclear whether LBTT, and Revenue Scotland, follow the existing interpretation in the UK, it would be helpful from the practitioner’s perspective to receive some sort of acknowledgement from Revenue Scotland of whether the interpretation and guidance for SDLT, at least in certain areas, is to be followed when interpreting LBTT provisions.”^{civ}
133. The Law Society also stated that it believed that “Revenue Scotland had been successful in administering and collecting the tax,” highlighting its “dedicated staff”, relatively simple online system and willingness to engage. However, it also noted negative feedback from its members in relation to the opinions service before suggesting that it would be helpful for Revenue Scotland to publish opinions where they relate to common, general areas. It further suggested that it would be helpful for Revenue Scotland to confirm whether it would take the same approach as HMRC to areas of the legislation that were identical to SDLT such as substantial performance.^{cv}
134. In oral evidence, the SPF agreed that Revenue Scotland had “bedded the tax in well” but drew attention to one area of anecdotal concern raised by its members, stating “It sometimes takes a lot longer to get an answer from Revenue Scotland on technical questions—or to get an answer at all—than it does from HMRC, which to be fair has a lot more experience of SDLT.”^{cvi}

^{ci} http://www.parliament.scot/S5_Finance/Chartered_Institute_of_Taxation_Submission.pdf

^{cii} http://www.parliament.scot/S5_Finance/KPMG.pdf

^{ciii} http://www.parliament.scot/S5_Finance/ICAS_Submission.pdf

^{civ} http://www.parliament.scot/S5_Finance/ICAS_Submission.pdf

^{cv} http://www.parliament.scot/S5_Finance/Law_Society_Of_Scotland_Submission.pdf

^{cvi} Finance Committee, 28 September 2016, OR Col. 25

135. When invited to comment on these points in oral evidence, Revenue Scotland explained that it had been “working hard to produce guidance” in its first year of operation but that “it would be impossible for us to provide definitive guidance on every aspect of our tax.” In respect of comments suggesting that it should be more definitive in areas where the legislation appeared similar to SDLT and where HMRC had taken a view, Revenue Scotland highlighted the difficulties in this “because although, on the face of it, our legislation looks similar, it operates in an entirely different context. Our view is that we need the opportunity to consider the transactions—we are talking here about very technical and facts-specific transactions. It is only once we have had the experience of working through a number of them that we might feel that we are able to update our guidance.”^{cvii}
136. However, Revenue Scotland confirmed that it had been working closely with stakeholders and intended to publish a technical note providing “a bit more guidance on the technical issues that the Law Society has raised.” This technical note was published on 14 October.^{cviii}
137. When invited to comment on suggestions that it might not have adequate resources to undertake its functions, particularly with regard to its opinions service, Revenue Scotland confirmed that “the resources that we have had in our first year of operation have been demonstrated to be sufficient for us to do what Parliament asked us to do.” However, it went on to note that expectations on it could be expected to grow as it took responsibility for additional taxes such as Air Passenger Duty, and it would seek to ensure that it was provided with “sufficient additional resource to invest in our systems and in a small number of additional staff so that we can take on new taxes.”^{cix}

138. The Committee invites Revenue Scotland to respond to the suggestions from witnesses above for improving its administration and collection of LBTT, including in relation to the provision of opinions.

^{cvii} Finance Committee, 5 October 2016, OR Col. 15-16

^{cviii} <https://www.revenue.scot/sites/default/files/LBTT%20Technical%20Update%20-%20Oct%2016.pdf>

^{cix} Finance Committee, 5 October 2016, OR Col. 3

Inter-Institutional Relationships

139. When asked whether the relationship between the Government and Revenue Scotland was based on the right model, the Law Society noted that there was more of a policy partnership between the Treasury and HMRC and suggested that there may be “a case for Revenue Scotland being more involved in the development of policy” as “There is no point in introducing a tax that has been thought of only in the abstract and does not take into account the reality on the ground—how things work and whether it will be possible to operate it.”^{CX}
140. The SPF also stated that it had heard from its members that “when they put questions to Revenue Scotland, there is sometimes uncertainty at the RS level about whether the questions are for them or, in policy terms, for the Scottish Government. In England, the same problem does not really arise because it is HMRC.”^{CXI}
141. When asked for its opinion on the efficacy of the institutional framework under which it interacted with Scottish Ministers and bodies such as HMRC and the SFC, Revenue Scotland confirmed that a clearly defined framework was in place. However, in recognition of what was “a complicated landscape,” Revenue Scotland pointed out that “what really matters is the relationships—we can have the underpinning framework in place, but we need the relationships to work.” As far as it was concerned, there was nothing that gave cause for concern in terms of these relationships as all parties recognised the needs of each other and wanted “to make the system work.”^{CXii}
142. The SFC also stated that it had developed effective if informal relationships with the various bodies with which it interacted. However, it went on to state that “The relationships among all the different agencies matter, and it matters that those relationships are formalised and the interactions done in a disciplined way, typically through memoranda of understanding. It is important that there is good co-operation where it is needed.”^{CXiii}
143. The Cabinet Secretary confirmed that in his view, “LBTT is a good example of devolved taxation being delivered in an efficient and effective way” partly as a result of Revenue Scotland’s digital first approach and because it has good working arrangements with HMRC.^{CXiv}

^{CX} Finance Committee, 14 September 2016, OR Col. 16

^{CXi} Finance Committee, 28 September 2016, OR Col. 26

^{CXii} Finance Committee, 5 October 2016, OR Col. 19

^{CXiii} Finance Committee, 5 October 2016, OR Col. 12

^{CXiv} Finance Committee, 26 October 2016, OR Col. 8

144. The Committee asks the Scottish Government to respond to the view of the Law Society that there may be a case for Revenue Scotland having a greater role in the development of tax policy.

Legislation

145. A number of suggested legislative changes were put forward by stakeholders, with the Law Society highlighting the lack of a general sub-sale relief which, it stated, “just does not make any sense and needs to be amended.”^{CXV}
146. It further suggested that aspects of the ADS “need to be tidied up” highlighting that “when people inherit property, for example, it is not entirely clear at what stage that starts to count. Does that happen when the person dies, when confirmation happens or at some other time?”^{CXVI}
147. The Law Society also stated that whilst the ADS guidance was “quite good”, it “needs to be expanded, with more examples and so on. Sometimes, though, there is no substitute for speaking to someone on the phone. Revenue Scotland does not have a helpline, as such; it has a support line...but it is not really geared up to offering advice on the phone. I wonder whether this is the kind of area in which advice would be quite helpful.”^{CXVII}
148. The Law Society further noted that “inevitably with complex legislation such as this, unforeseen consequences will emerge that will require changes to be made.” However it went on to state that “We do not want to be taxed by statute and untaxed by concession or by guidance.” Noting that there will be areas where the legislation is not 100% clear, the Law Society suggested that in “such circumstances it is appropriate for the tax authority to take a view and to publish its view. “We are not keen on having a lot of extra-statutory concessions, but there are areas where it is helpful for the tax authority to express a view.”^{CXVIII}
149. ICAS supported this position in oral evidence, stating “As a broad principle, we think that legislation should speak for itself; it should not be such that it has to be explained in guidance. However, I support Isobel d’Inverno’s point that there are times when we want to know how Revenue Scotland or HMRC will interpret the legislation on a difficult and technical tax such as LBTT, so that we know where we are.”^{CXIX}

^{CXV} Finance Committee, 14 September 2016, OR Col. 3

^{CXVI} Finance Committee, 14 September 2016, OR Col. 3

^{CXVII} Finance Committee, 14 September 2016, OR Col. 13

^{CXVIII} Finance Committee, 14 September 2016, OR Col. 14

^{CXIX} Finance Committee, 14 September 2016, OR Col. 15

150. The SPF agreed that LBTT was “a complicated transactional system” and that “the complexity is not wholly represented on the face of the 2013 Act as we have it now.”^{cxx}
151. When invited to comment on whether Scots were “taxed by statute and untaxed by extra-statutory concession,” Revenue Scotland stated that this was “not at all the model that we have in Scotland” and it was not sure that this was a model it would wish to follow. Whilst it had had a successful first year of operation, Revenue Scotland noted that, as with all taxes, the more complex technical questions could be expected to be tested by the Tax Tribunals in due course and only then would it be possible to get a definitive answer on interpretation of all areas of the legislation. For Revenue Scotland, the purpose of the guidance was “to explain... how legislation applies, not to define how legislation applies.” However, as things stood, Revenue Scotland confirmed that it was “able to work with the legislation as we find it.”^{cxxi}
152. When invited to respond to these points, the Cabinet Secretary stated that—

” “the tax has been deployed in an effective and efficient way, and in fairness, I make it clear that the UK and Scottish Governments have reflected on each other’s decisions to get what from the UK Government’s point of view is optimal for the UK and what for the Scottish Government is optimal for Scotland.”^{cxxii}

153. The Committee asks the Scottish Government to provide clarification regarding the role of Revenue Scotland in interpreting and communicating the application of LBTT legislation including publication of its views.

Principles Based Approach

154. The DFM stated in a letter to the previous Committee that “the Scottish Government has placed fairness, equity and the ability to pay at the very heart of the decisions we have taken on national taxes” and that “these revised rates and bands prioritise support for first time buyers and are intended to assist people moving through the property market.”^{cxxiii}
155. The majority of respondents felt that LBTT was consistent with the four principles. For example, the Clot stated that LBTT adopted a more progressive system than

^{cxx} Finance Committee, 28 September 2016, OR Col. 15

^{cxxi} Finance Committee, 5 October 2016, OR Cols 17-18

^{cxxii} Finance Committee, 28 October 2016, OR Col. 8

^{cxxiii} http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/Cabinet_Secretary_for_Finance_Constitution_and_Economy_to_the_Convener_dated_22_January_2015.pdf

SDLT. This move away from a slab system removed the “cliff edge” effects when a transaction moved into a higher band meaning that in the CloT’s view the rates and bands “are fairly consistent with the principles.”^{CXXIV}

156. ICAS agreed that the structure of LBTT was more progressive than the slab SDLT system it replaced and stated that “LBTT is generally considered to be fairer to taxpayers.”^{CXXV}
157. KPMG also agreed that “the progressive system introduced for both residential and non-residential property appears to be in keeping with these principles” although it considered that “the introduction of the ADS as a flat rate of 3% runs counter to this progressive approach with those purchasing high value residential properties paying the same rate of ADS as those purchasing lower value properties.”^{CXXVI} ICAS supported this view that the ADS “is not progressive in the same way as the main LBTT charge in that it does not levy higher rates on more expensive properties.”^{CXXVII}
158. The NAEA noted that purchasers of properties valued at less than £325k were paying less tax than under SDLT, “making Scotland a more affordable place to invest for first-time buyers and middle-income earners.”^{CXXVIII}
159. The Law Society took the view that LBTT was generally consistent with the principles because of its progressive structure. However, it agreed with others that the “slab” nature of the ADS structure was “directly in conflict with these principles” and provided “an underlying level of complexity which is undesirable.”^{CXXIX}
160. The Cabinet Secretary’s letter states that residential rates and bands were set “to redistribute the tax burden from lower to higher value transactions in accordance with the principle that Scottish taxes should be proportionate to the taxpayer’s ability to pay.” It further states that the Government intended to “support the majority of first time-buyers, improving the affordability of new starter homes, and this is borne out by the data from the first year of operation of the tax.” Around 9,700 prospective owner occupiers benefitted from the policy of setting the nil-rate LBTT threshold £20,000 higher than that for UK SDLT according to the letter.
161. The letter further states that nearly 41,700 purchasers of properties falling within the £145k to £330k price range “paid up to £400 less under LBTT than they would have paid in terms of UK SDLT.” This means that “people buying the average priced house in each of Scotland’s 32 local authority areas will have paid up to £400 less tax under LBTT than under UK SDLT or paid no tax at all.”

^{CXXIV} http://www.parliament.scot/S5_Finance/Chartered_Institute_of_Taxation_Submission.pdf

^{CXXV} http://www.parliament.scot/S5_Finance/ICAS_Submission.pdf

^{CXXVI} http://www.parliament.scot/S5_Finance/KPMG.pdf

^{CXXVII} http://www.parliament.scot/S5_Finance/ICAS_Submission.pdf

^{CXXVIII} http://www.parliament.scot/S5_Finance/National_Association_of_Estate_Agents_Submission.pdf

^{CXXIX} http://www.parliament.scot/S5_Finance/Law_Society_Of_Scotland_Submission.pdf

162. With regard to the ADS, the letter states that the supplement supports the Government's commitment to the principles by maintaining parity across the UK and avoiding a situation where investors from other parts of the UK could earn a tax advantage by buying additional properties in Scotland. The £40k threshold from which the ADS applies also targets "the lower end of the market where demand for properties for investment purposes or second homes could push up prices and absorb supply" with implications for first time buyers.

163. The Committee welcomes the Scottish Government's principles based approach to tax policy and recognises that it provides a useful framework for monitoring the effectiveness of tax policy including LBTT.

Conclusion

164. The Committee considers that the transition to LBTT went well and that its first year has been operationally successful. The Committee considers that it is too early to draw any definitive conclusions on the impact of the rates and bands from the available outturn data but recommends that the SFC should continue to monitor the data on an ongoing basis.

165. A key challenge faced by the Committee has been the lack of consistency in the presentation of data relating to LBTT. This has made it difficult to compare forecast and outturn data and to fully assess the impact of LBTT on the property market in Scotland. The Committee intends to consider this issue further during its scrutiny of Draft Budget 2017-18.

ANNEXES

ANNEXE A: INDEX OF ORAL EVIDENCE SESSIONS

Please note that all oral evidence and associated written evidence is published electronically only and can be accessed via the Finance and Constitution webpages at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/100249.aspx>

4th Meeting, Wednesday 14th September 2016

Charlotte Barbour, Director of Taxation, ICAS and Isobel D’Inverno, Convener of Tax Law Subcommittee, the Law Society of Scotland.

6th Meeting, Wednesday 28th September 2016

David Melhuish, Director, Scottish Property Federation; Karen Campbell, Director of Policy & Operations, Homes for Scotland ; Jonathon Gordon, Member of the RICS Scotland Board, Royal Institute of Chartered Surveyors; Professor Mark Stephens, Institute of Social Policy, Housing, Equalities Research, Heriot Watt University.

7th Meeting, Wednesday 5th October 2016

Lady Susan Rice, Professor Campbell Leith and Professor Charles Nolan, Scottish Fiscal Commission; Elaine Lorimer, Chief Executive and Chris Myerscough, Head of Tax, Revenue Scotland.

8th Meeting, Wednesday 26th October 2016

Derek Mackay, Cabinet Secretary for Finance and the Constitution and Aidan Grisewood, Head of Fiscal Responsibility Division, Scottish Government.

ANNEXE B: INDEX OF WRITTEN EVIDENCE

Written submissions—

- [Aberdeen City Council \(208KB pdf\)](#)
- [Association of Local Authority Chief Housing Officers \(1,814 KB pdf\)](#)
- [Alan Mickel \(52Kb pdf\)](#)
- [Bill Reid \(108Kb pdf\)](#)
- [Chartered Institute of Taxation \(240KB pdf\)](#)
- [CIH Scotland \(199Kb pdf\)](#)
- [Homes for Scotland \(803Kb pdf\)](#)
- [Homes for Scotland 2 \(141KB pdf\)](#)
- [ICAS \(292Kb pdf\)](#)

Finance and Constitution Committee

Report on the First Year's Operation of the Land and Buildings Transaction Tax, 2nd Report, 2016
(Session 5)

- [KPMG \(1.11KB pdf\)](#)
- [Law Society of Scotland \(455KB pdf\)](#)
- [Lynn Powell \(64KB pdf\)](#)
- [National Association of Estate Agents \(272KB pdf\)](#)
- [North Lanarkshire Council \(143Kb pdf\)](#)
- [Pinsent Masons \(12KB pdf\)](#)
- [Revenue Scotland \(311KB pdf\)](#)
- [RICS \(473Kb pdf\)](#)
- [Savills \(1,552Kb pdf\)](#)
- [Scottish Association of Landlords \(226KB pdf\)](#)
- [Scottish Property Federation \(2,733KB pdf\)](#)
- [South Lanarkshire Council \(1599KB pdf\)](#)
- [Taxpayer Scotland \(718KB pdf\)](#)

Correspondence—

- [Letter from the Cabinet Secretary for Finance and the Constitution dated 26 August 2016](#)
- [Scottish Government Note, November 2016: Revenue Consequences of Changing the Lower 10% Residential LBTT Threshold](#)
- [Letter from Chair of Scottish Fiscal Commission to the Convener dated 3 October 2016](#)
- [The Scottish Fiscal Commission 2015-16 Outturn Report](#)
- [Letter from Scottish Federation of Housing Associations dated 3 October 2016](#)

