



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Finance Committee

**Wednesday 14 September 2016**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**Wednesday 14 September 2016**

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**FINANCE COMMITTEE**  
**4<sup>th</sup> Meeting 2016, Session 5**

**CONVENER**

\*Bruce Crawford (Stirling) (SNP)

**DEPUTY CONVENER**

\*Alex Johnstone (North East Scotland) (Con)

**COMMITTEE MEMBERS**

\*Neil Bibby (West Scotland) (Lab)  
\*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)  
\*Ash Denham (Edinburgh Eastern) (SNP)  
\*Murdo Fraser (Mid Scotland and Fife) (Con)  
\*Patrick Harvie (Glasgow) (Green)  
\*James Kelly (Glasgow) (Lab)  
\*Ivan McKee (Glasgow Provan) (SNP)  
\*Maree Todd (Highlands and Islands) (SNP)  
\*Adam Tomkins (Glasgow) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Charlotte Barbour (Institute of Chartered Accountants of Scotland)  
Isobel d'Inverno (Law Society of Scotland)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

The David Livingstone Room (CR6)



# Scottish Parliament

## Finance Committee

Wednesday 14 September 2016

*[The Convener opened the meeting at 10:00]*

### Land and Buildings Transaction Tax

**The Convener (Bruce Crawford):** Good morning and a warm welcome to the fourth meeting in 2016 of the Finance Committee. I would be grateful if everyone could check whether they have switched their mobile phones off or, at least, have put them into a mode in which they cannot be heard.

Agenda item 1, which is the only item of business in today's meeting, is the beginning of our evidence taking on the first year of operation of the land and buildings transaction tax. We have two witnesses: Charlotte Barbour, director of taxation at the Institute of Chartered Accountants of Scotland; and Isobel d'Inverno, convener of the tax law sub-committee of the Law Society of Scotland. Does either of our witnesses wish to make a quick opening statement?

**Charlotte Barbour (Institute of Chartered Accountants of Scotland):** Thank you for inviting us to give evidence. I will just make one or two points as an overall opening statement. The fact that I have not had a great deal of feedback from canvassing ICAS members for reviews of LBTT leads me to think that, in broad terms, everything is working the way that it should. We tend to think of LBTT as a lawyerly tax, so I will hand over to Isobel d'Inverno.

**Isobel d'Inverno (Law Society of Scotland):** Thanks very much for inviting us to give evidence. The impression of all Law Society members of the first year of LBTT is that it has worked well. We are impressed by the huge efforts that have been made by Revenue Scotland and the Scottish Government bill teams to make it all work. So far, things have gone well but we need to ensure that they continue to go well in future, and the committee's evidence taking is a good part of that.

**The Convener:** The Law Society's submission states:

"LBTT has undoubtedly been beneficial for first time buyers".

Overall, LBTT revenues surpassed the forecast made in the draft budget for 2015-16. Your Move noted in December:

"property sales in Scotland for first-time buyers and home movers are increasing three times faster than the rest of the UK."

Therefore, is it fair to say that LBTT has been successful in delivering its policy aims of supporting first-time buyers while remaining revenue neutral, despite the impact of forestalling and other external economic factors?

**Isobel d'Inverno:** 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. Whether the rates at the higher end of the residential scale are advantageous in the long term is perhaps a different question.

**Charlotte Barbour:** We do not have a lot of feedback on that kind of point because our members are not key to buying and selling residential property. Like the Law Society, though, we have some anecdotal evidence of the upper end of the market being a bit sticky.

**Adam Tomkins (Glasgow) (Con):** Are there any generalities arising from the non-residential operation of LBTT so far?

**Isobel d'Inverno:** In general, the non-residential side of LBTT has worked well. Some things, such as the lack of general sub-sale relief, still cause a bit of difficulty in some transactions, but people are getting to grips with it. There did not seem to be any huge impact from the top rate of LBTT being slightly higher than stamp duty land tax. People happily took that on board and, of course, that position has been reversed and SDLT is now higher.

As we mention in our submission, though, taxpayers need to be able to get opinions from Revenue Scotland on more complex matters. There have been some initial issues with the opinions service.

**Charlotte Barbour:** We have had similar feedback.

**The Convener:** You also mention in your submissions potential changes in the legislation. That is a more technical aspect, but that is why we are taking evidence from you. This is your opportunity to give us examples, and I would be grateful if you would take it.

**Isobel d'Inverno:** In relation to LBTT on commercial property, there is a bit of the legislation that seems to have a very odd effect when it comes to sub-sales. A sub-sale is when A sells to B and B sells to C and both transactions complete at the same time. With SDLT, the person in the middle does not have to pay, because there is a general sub-sale relief, but with LBTT there is not. We respect the policy aim, which is to avoid

avoidance—I did not put that very elegantly. No general sub-sale relief was provided because of the avoidance concern.

However, the legislation seems to say that, in a sub-sale in Scotland, B has to pay LBTT when he enters into the onward sale contract, not when the two contracts complete. We think that that just does not make any sense and needs to be amended. It does not seem to be appropriate that someone should have to pay LBTT at that early stage, and that then feeds into the issue of sub-sale development relief—it makes it difficult to see how that works.

We also think that some changes need to be made in other areas to do with the additional dwelling supplement. For example, when someone buys a mixture of residential and non-residential property, the way in which the calculations work means that they end up paying a bit of additional dwelling supplement on the commercial property. That makes no sense at all, given that the additional dwelling supplement is supposed to relate to residential property and should not be paid on the commercial part of a mixed purchase.

We also think that other aspects of the additional dwelling supplement need to be tidied up. 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? There are quite a few such areas. In addition, there is the dreaded partnership legislation, which is appalling and needs to be fixed at some stage.

For all those reasons, we think that it would be a good idea if there was a biennial tax bill process in the Scottish Parliament, because it would provide an opportunity to make such changes without having to fight for legislative time. As we are only at the beginning of the tax-making process in Scotland, we think that it is important to get such an arrangement into the parliamentary process, and we ask the Finance Committee to consider that. I know that a review group is being set up to look at the whole budgetary process. To some extent, making good tax legislation depends on having enough time to consider it. The timescale for the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill—the bill that brought in the additional dwelling supplement—was very short, and that is not the right way to get good legislation. There simply was not enough time to address some of the points that needed to be addressed.

**Charlotte Barbour:** I echo those sentiments about a desire to get a process through which we can get things fixed. In our submission, we mention a couple of smaller, technical points, although they are obviously not small to the

people concerned. We would like to discuss the relevant provisions and establish whether they could be amended. We would like to find out—because it is not crystal clear—whether they are part of the we-do-not-want-avoidance agenda from the outset or whether, from the point of view of a commercial proposition, there is a desire for the legislation to enable corporate demergers to work in the way that they work south of the border, for example.

We raised the issue with Revenue Scotland and discussed it with Scottish Government officials, but there is no clear-cut, obvious process that would allow such matters to be regularly reconsidered. I completely support Isobel d'Inverno's suggestion. It would be helpful if there was a regular mechanism or process by which such provisions could be discussed fully so that people could decide their purpose and then fix them if they needed to be fixed or enunciate the policy positions behind them.

**The Convener:** But if you were getting the guidance that you might have expected from Revenue Scotland in the same way that HMRC provides guidance, some of that fix could go on intermediately rather than your having to wait two years.

**Charlotte Barbour:** That could happen if what we were talking about was not specifically in the legislation. If the legislation does not allow it, Revenue Scotland cannot allow it.

**Isobel d'Inverno:** That is obviously the problem with relying on guidance. We do not want to be taxed by statute and untaxed by concession or by guidance.

**The Convener:** I like that description.

**Isobel d'Inverno:** It is much better if the legislation can say what the Government wants it to say. Inevitably with complex legislation such as this, unforeseen consequences will emerge that will require changes to be made. That often happens with tax legislation in the United Kingdom—it is of no surprise that such areas need to be looked at. As Charlotte Barbour has said, it would be helpful to have a more concrete process of getting such issues into the mix.

**Murdo Fraser (Mid Scotland and Fife) (Con):** Good morning. I remind members of my entry in the members' register of interests and declare that I am a member of the Law Society of Scotland.

I want to pursue a bit further the issue that Isobel d'Inverno briefly touched on about the impacts, including behavioural impacts, on the property market as a result of the introduction of LBTT, particularly at the higher end. The issue was recently brought home to me when we moved house in the summer. Not only did I have to pay a

large sum of LBTT to the Scottish Government but, as part of the process, I came into contact with a large number of lawyers and estate agents who—certainly in Perthshire—had a very similar story to tell about how sticky the market was for larger properties worth more than half a million pounds in that part of the world and how they felt that some of that was down to the very high rates of LBTT that were introduced last April.

The submissions from Homes for Scotland, Reid Estates and the Scottish Property Federation seem to confirm that view. Moreover, the Scottish Fiscal Commission says in its letter of Monday to the convener that its

“analysis suggests that the volume of transactions remains subdued for properties costing between £325k and £750k”.

I am also aware that Rettie & Co has looked at the question of market impacts.

I want to get your take on the matter. What has been the impact, particularly at the upper end of the market? We accept the point that, for first-time buyers at the lower end of the market, the reduction of LBTT has been positive.

**Isobel d’Inverno:** The Law Society does not have accurate figures for the number of properties that are being bought at different market levels, but anecdotal evidence seems to bear out the suggestion that properties at the top end of the market are not moving as easily as they were and that the higher rates of LBTT probably could have something to do with that.

It is quite interesting that the 10 per cent rate for LBTT kicks in much earlier than it does for SDLT, what with property values in Scotland probably being lower than they are London generally. It has been put to us that the stickiness at the upper end of the market is significant. Although you might say that at that level buying houses is discretionary—people can simply decide not to buy and can stay in their existing house and extend it or whatever—it has a knock-on effect further down the line on the people at the lower end who perhaps need to buy a bigger house because they have had children and have expanded out of their existing accommodation. Any stickiness at the top end flows down all the way, so there could be an inadvertent effect on people at the lower end of the market. It is difficult to tell, but there might also be a bit of a Brexit impact on houses at the top end of the market. Perhaps there is merit in looking carefully at the higher rates of LBTT to counteract that.

With regard to all of those discussions, we would make the point that, although that 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. That would mean that, when we got a question such as the one that you have just asked, we could say, “Well, we know from the Revenue Scotland information that this number of houses in this band changed hands.”

10:15

That information is obviously available, because there is a database. Given that we are starting off on the tax trail here in Scotland, we could probably do a lot better than is the case in the rest of the UK, where one almost needs a freedom of information request to get any meaningful information about tax takes and how the figures are broken down.

It does not need to be like that here, and what I have described could probably be done quite easily. 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.

**Charlotte Barbour:** ICAS does not collect any statistics—our feel for the situation is based purely on anecdotal evidence from some of our members. It probably reflects what Isobel d’Inverno says, but beyond that I do not have anything concrete to contribute.

As for policy making on a broader pitch, it would be good to have more evidence, and we will presumably build that up as the years go by. I agree that it would be very helpful if we could see the different rates that come in.

**Murdo Fraser:** That is an interesting suggestion from the witnesses, and the committee could perhaps follow up on it.

I have a subsequent question for Isobel d’Inverno. We know from the data that we have seen that, for the first year, the tax take from residential LBTT was £33 million below what was originally predicted. Some of that might be down to forestalling, although there might also be a forestalling effect at the end of 2015-16 as a result of people trying to avoid the additional dwelling supplement. Has the slowdown in the market at the upper end that you spoke about contributed to that reduction in the tax take beyond what was anticipated?

**Isobel d’Inverno:** It probably contributed to that reduction. We do not have any specific evidence to that effect, but when we crunch the numbers, the suggestion is that that must have been the case.

It is very difficult to forecast tax takes in the property market because it is affected by so many different things; indeed, that is particularly true for the commercial property market—it is just very difficult to forecast what will affect it. It seems that around Scotland it is being said that the higher rates are not necessarily helping the tax take. The aim should really be to increase the tax take, not the tax rates; we feel that that should be the general approach to tax. There are all sorts of effects. The higher the rates, the more likely people are—dare I say it—to try to avoid paying them. That is the danger of having rates that are perceived to be too high.

Back in the olden days when stamp duty was only 1 per cent, nobody bothered to avoid it because it was not really worth it. It was only when it started to creep up to 3 and 4 per cent that people began to avoid it. I am not suggesting that anybody is trying to avoid LBTT, but there is such a risk with rates that people perceive as being high.

**Murdo Fraser:** Is it your view that a reduction in the rates of LBTT at the top end might actually raise more revenue by stimulating the market?

**Isobel d'Inverno:** I am not an economist; I do not have particular expertise in that area, and nor does the Law Society. However, people have suggested that it would help to unlock more transactions.

**The Convener:** It is probably fair to point out that the Royal Institution of Chartered Surveyors said that, before any changes are made, we need to get the research done and understand the dynamics around the bands and the thresholds.

**Isobel d'Inverno:** Absolutely.

**The Convener:** Do you agree with that position?

**Isobel d'Inverno:** 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. People were running around, madly buying up properties before the ADS came in. There is an interplay between a lot of those things. It would be terribly helpful—indeed, it would be the best way forward—if people not just within Government but outside it had more information so that they could look more carefully at these things.

**The Convener:** Going back to Murdo Fraser and the way he responded—quite rightly—to Isobel d'Inverno's point about the breakdown of the residential elements in particular and where they come from, I should highlight the email that was sent to Ivan McKee and copied to us all. When the issue was being discussed with Isobel, I asked the clerks whether we had a breakdown of

the numbers for the residential elements for the first four months of this year. It appears that we do not have that information yet, and I think that we should ask for it.

**Alex Johnstone (North East Scotland) (Con):**

To go back to a point that was mentioned a moment ago, we have heard that there is more activity at the lower end of the market—the first-time buyer element—and that there is a slowdown at the top end. We traditionally talk about the housing ladder and how people move up it over time. Could that traditional movement in property ownership be distorted if there is activity at the bottom end of the ladder but a lack of flexibility in the market at the top end?

**Isobel d'Inverno:** It has been suggested to us that it may be more difficult for people to move up the housing ladder and that the middle ground is the difficult area, as not so many of those properties are becoming available because the upper-end ones are not moving.

**Alex Johnstone:** Is that likely to become apparent in figures year-on-year over time, rather than being clearly visible at the moment?

**Isobel d'Inverno:** I guess that if things stayed the same, and the outturn was the same, that would give greater credence to the fact that that was happening. However, it is always complicated by other factors such as the ADS.

**Charlotte Barbour:** And wider economics.

**Isobel d'Inverno:** Yes, wider economics and the Brexit impact and so on.

**The Convener:** Do you want to say a bit more about that, Charlotte?

**Charlotte Barbour:** No, not really. I just think that the wider economic circumstances will influence the overall property market as well—how much people want to move and so on.

**Ivan McKee (Glasgow Provan) (SNP):** I remind the committee of my entry in the register of members' interests. I have a property in the Stirlingshire area that I rent out for £15,000 a year and I have a 50 per cent share in a company that lets residential property in Edinburgh.

I would like to follow up on Murdo Fraser's points. The committee is in the fortunate position of having been sent some data, which the witnesses may or may not have seen. I will just go through a couple of points to see whether they chime with what you are experiencing in the market.

First, on the sale of top-end properties—the £1 million-plus properties—the data show that in total in 2013, 115 of those properties were sold and in 2014, 139 were sold. We would expect to see the forestalling effect when we move into 2015. In the



first three months of 2015, there were sales of 8, 14 and then 90 properties, so a total of 112 properties were sold in those first three months—almost as many as in the whole of 2013. Then the sales died off to practically zero through the summer.

Interestingly, if we look at the last three months of 2015, the number of sales picks back up to 34 properties in that quarter, which is 136 at an annualised rate. It looks as though it is exactly what you would have expected—there was a surge for the forestalling, then sales dived to zero and then within nine months recovered back to where they were prior to the forestalling effect. Does that chime with what you are seeing in the market?

**Isobel d’Inverno:** I would say that it does, yes.

**Ivan McKee:** If we look at the overall tax take—which, as you rightly said, is the most important aspect of this—we see a similar pattern. In 2012-13, the stamp duty land tax on property was £283 million. The amount increased substantially to £389 million in 2013-14. There was a large jump to £478 million in 2014-15, from which we would see a forestalling effect sucking deals into the latter part of that year. There was then a dip in 2015-16, down to £416 million.

We have recently got the data that take us right up to July 2016. If we look at the figures by quarter, we see that in the last quarter—April, May and June 2016—the run rate is back to what it was in 2014-15. If we look at July 2016, we see that it is a bit of a bumper month.

Again, it seems that we have seen a dip in the tax take, but if we look across the whole piece, we see that the total tax take in the latter half of 2015-16, and certainly moving into 2016-17, is back to at least where it was before the tax changes. Does that chime with what you are seeing in the market?

**Isobel d’Inverno:** That is probably the case. As I said, we do not collect those figures, unfortunately.

**Ivan McKee:** Okay. I always think that it is better to go back to the data, rather than just talking about anecdotes. You are absolutely right to say that more data on that would be valuable.

**The Convener:** Sorry, before we go any further, I just want to check something. The data to which Ivan McKee refers are published. Have you folks had a chance to analyse them?

**Isobel d’Inverno:** No, not really.

**The Convener:** Okay. Ivan McKee is asking the question—

**Ivan McKee:** Sure, that is fine. That is the only point that I wanted to make. As I said, it is early,

because we are only 15 or 16 months into the tax and the forestalling effects take several months to play out, so we are not seeing the full effect unwind yet.

Given what I have seen, I just wanted to ask how that chimed with your view. It looks like what has happened has been exactly what we would have expected and there does not seem to be any tail-off at all in the total tax revenue.

**The Convener:** We will send you a copy of the data that we have. If you want to reflect on that and come back to us, that would be helpful.

**Maree Todd (Highlands and Islands) (SNP):** I thank you both for explaining that you think that the new tax legislation is working reasonably well. I understand that, generally, when tax legislation is introduced, a process of refinement happens afterwards. I am interested to hear your ideas about taking a more concrete and systematic approach to refining the laws. That would be a reasonable thing to do, particularly with the new legislative powers that we have. Which particular technical issues would the two of you suggest need to be refined with regard to the law?

**Isobel d’Inverno:** We have mentioned issues such as the sub-sale. The timing point in section 14(1)(c) of the Land and Buildings Transaction Tax (Scotland) Act 2013 seems to be something that needs to be changed. There are a number of other issues with the additional dwelling supplement that need to be looked at.

**Maree Todd:** I represent a rural area where there are a lot of second-home purchases. Can you tell me a little bit more about what you believe needs to be refined in that respect?

**Isobel d’Inverno:** 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. Before the ADS was introduced, we tried quite hard to get a grace period in which the supplement would not be payable if someone was replacing their home but they decided to buy the new home before they sold the old one.

The additional dwelling supplement, as you may know, applies where someone owns two houses. It is quite often the case in Scotland that people will buy the new house on a Friday and sell the old one on the Monday so that they can move in over the weekend, or perhaps with a week-long gap.

In those circumstances, we did not think that it was fair for people to have to pay the additional dwelling supplement, although they could reclaim it once the other house was sold. We argued for a grace period. There is a grace period to some degree, because people do not have to pay the additional dwelling supplement if they have sold

the old house by the time the LBTT return goes in for the new house, if that makes sense. However, we think that the period should be longer than it is. It should be a question of months, because it is sometimes very difficult to align such things.

10:30

That area is being kept under review by the Scottish Government to see whether there are situations where problems arise. The trouble is that it is very difficult to prove a negative. People are not going to say that they were unable to do their transaction because of the ADS.

We are not convinced that the ADS ought to kick in so violently at the bottom end, because LBTT was—when it was introduced—much more progressive than SDLT and charged higher rates at the higher end. The ADS is a slab tax—it is 3 per cent regardless of the consideration—which means that the ADS is being paid on very low value properties and we are not convinced that that makes sense. If there is going to be an additional dwelling supplement, it ought to be as progressive as SDLT.

Those are some examples of the issues that need to be addressed but we could send you a list of them all. Some are quite technical but, if that would be helpful, we would be happy to do that.

**The Convener:** It would do no harm.

**Maree Todd:** I thought that there was an 18-month period.

**Isobel d'Inverno:** It depends in which order you do things.

**Neil Bibby (West Scotland) (Lab):** We have received evidence from the Association of Local Authority Chief Housing Officers raising concerns about registered social landlords being exempt from paying the additional dwelling supplement, but local authorities not being exempt. We have also received evidence from North Lanarkshire Council, South Lanarkshire Council and Aberdeenshire Council with similar concerns and on the need for consideration to be given to extending that exemption to local authorities. It is estimated that it costs councils about £2.5 million a year. One of the principles is having a fair and equitable tax, so should consideration be given to local authorities being exempt from the ADS?

**Isobel d'Inverno:** Yes, we agree that there is some merit in an exemption for those types of transactions. Obviously, there is an exemption from the ADS for the purchase of six or more properties in a single transaction, so some activity by councils would be relieved by that. 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.

**Charlotte Barbour:** We have nothing to add to that.

**Neil Bibby:** Also on the ADS, we have received concerns about reluctant owners of second properties being penalised. You both touched on that in your evidence, as did others, such as KPMG. You have talked about changes to grace periods, but can anything be done for people who have not been able to sell their second property and find themselves in a difficult situation? Are there any changes that can be made to the system?

**Isobel d'Inverno:** Our view on the ADS has always been that it should not apply if people are just replacing their main residence. In fact, a better way of approaching it would be for it not to apply to main residences at all. However, we can see that there would be difficulties with policing that. People might just say, "This is going to be my main residence" and, in an intentions test, it would be difficult to be sure that that was not the case.

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.

Many people perceive ADS as unfair. It can be quite difficult to come up with the money, apart from anything else. It is a big extra chunk of money for purchasers to have to find. We think that there are areas where there ought to be more relief and we wonder whether some of those areas might have been hammered out if the ADS bill—the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016—had been introduced over a longer period. There was a very short timescale for its introduction—there was simply not enough time.

**The Convener:** I think that Ash Denham had some questions about the ADS.

**Ash Denham (Edinburgh Eastern) (SNP):** My questions are similar, but I suppose that they are more about the clarity of the guidance. A constituent asked me about this at my surgery on Saturday. He was going to be a first-time buyer but his partner had a very small share of an inherited property with a number of siblings. Obviously, that was not her main residence—she did not live in the property. I think that my constituent said that he had approached a number of lawyers to get some clarity on the issue. They had been unable to advise him because the legislation is quite new and they were not quite

sure how it applied to him. If we sidestep whether that is in the spirit of the legislation—you mentioned the idea that it really should apply to main residences—I wonder whether there is a problem here about guidance and clarity for taxpayers.

The ICAS submission mentions that there are areas where the technical guidance does not give Revenue Scotland's views on the interpretation of the legislation. Is there clarity there, both for the practitioners and the taxpayers?

**Charlotte Barbour:** ICAS had feedback from some of our members about an example that was exactly the same as that of your constituent. It is an area in which it is quite difficult to set boundaries about exactly what you do and how you police it. It may deserve wider discussion. As Isobel d'Inverno mentioned, one of the difficulties of having introduced the ADS at speed is that tricky points such as that have not been fully ironed out. It would be nice to go back and look at some of them again.

The guidance is possibly relatively clear on some of those areas and says: "You know what we can't do," or "I know you can't do it." Where the guidance is missing more is in relation to larger, detailed, technical transactions, such as commercial property.

**Isobel d'Inverno:** The ADS guidance is quite long—it is quite good—but it is perhaps not wholly accessible. People find it difficult to be satisfied by the guidance in relation to some of their questions. There is something missing there. The guidance 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. It has, to some extent, been answering questions on the ADS, 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.

The other thing about the ADS is that, here and in the rest of the UK, individuals are trying to figure it out for themselves and are completely mystified by the complexities of it.

In the more complex transactions that Charlotte Barbour mentioned, there are probably advisers—lawyers or accountants—who are being paid a reasonable amount for advising on the complexities of the tax. When it is somebody just buying a house, there is no scope for them to spend two and a half hours trying to figure out whether the ADS applies. If a tax such as this is going to be imposed, it behoves the tax authority and indeed the Government to provide sufficient guidance to individuals so that they know whether it is payable.

**The Convener:** Adam Tomkins has questions on a slightly different area.

**Adam Tomkins:** I do, but can I ask a follow-up question first?

**The Convener:** Sure.

**Adam Tomkins:** It is on being taxed by statute and untaxed by extra-statutory concession, as Isobel d'Inverno put it. That model has been used in the UK for quite a long time and, as you know, it raises significant rule-of-law concerns. Should we really replicate that model in Scotland as we embark on a new model under fiscal devolution? Is it inevitable that we have at least a degree of tax by statute and tax concession by administrative discretion? Is that becoming a problem in Scotland?

**Isobel d'Inverno:** If we wanted the legislation to cover every conceivable type of transaction, it would be extremely long. There will be areas where what the legislation says is not 100 per cent clear. We think that in such circumstances it is appropriate for the tax authority to take a view and to publish its view. An example is the meaning of the term "substantial performance" in LBTT and, indeed, in SDLT. People pay the tax if they purchase an interest in property or lease it, or if they have a contract that has been substantially performed. HMRC issued guidance very early on to say that "substantially performed" means paying 90 per cent of the price or occupying 90 per cent of the property, which would trigger the tax.

Revenue Scotland has said that it does not necessarily agree with the 90 per cent test, but it has not proposed a test of its own. The legislation could say what "substantial performance" means, but it does not. We cannot look up the term in the dictionary and say that everyone agrees what it means, so it is a matter on which the tax authority really has to express a view—it is appropriate for it to do so.

That is not the same as the tax authority saying that it is completely obvious that the law says something but it is going to interpret it another way. That is a stage further, although there is a place for that. If the Government sees that the legislation works in a capricious way, it might decide to do something about the legislation, but in the meantime take the view that it will not use the ridiculous interpretation and will assume that it means something else. That would be temporary, until the legislation was fixed.

You are absolutely right that we do not want to have lots of extra-statutory concessions and that we need to try to ensure that the law is right, but there are definitely areas where a view needs to be expressed.

Another issue that we have asked about relates to property being transferred as part of a pensions merger. HMRC has long held the view that is expressed in the guidance that the requirement to make payments of pensions is not a consideration, so no SDLT is payable. We recently asked Revenue Scotland whether it takes the same view, but it is not clear whether it does. There is a degree of pragmatism in HMRC's approach, so it might be helpful if it could be taken on board.

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.

**Adam Tomkins:** Okay.

**The Convener:** Do you want to move on to your other questions, Adam?

**Adam Tomkins:** I wonder whether the other witnesses want to add to that.

**Charlotte Barbour:** In broader terms, LBTT is quite a difficult tax, because it covers some really complicated areas such as partnerships and trusts, as well as commercial property. It is therefore difficult to pin everything down in the legislation, so there probably is a need for guidance. "Guidance" is an interesting word, because it depends on whom it is directed at. Accountants and lawyers who know their way round it will know that it is really a Revenue Scotland opinion whereas, if your constituents look at guidance, they will maybe think that it is gospel or the law, when it is not. It can be tricky knowing the status of guidance, and there are lots of issues around legitimate expectations.

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.

10:45

**Adam Tomkins:** Thank you very much.

I will broaden the perspective a little bit and consider fiscal devolution as it moves forward. Obviously, LBTT was in the vanguard of fiscal devolution in Scotland. What are the key lessons to be learned about relationships between institutions in Scotland and those in the UK and about relationships within Scotland, such as the relationship between the Scottish Government and Revenue Scotland, as we develop fiscal devolution further in the months and years ahead?

**Charlotte Barbour:** That is an interesting question. I suppose that we would tend to look to

the UK and to mirror Her Majesty's Treasury and HMRC in the way that one does policy and the other does the operational stuff.

**Adam Tomkins:** Do you think that that is the right model?

**Charlotte Barbour:** I am not completely convinced that it is. I must admit that I did not utterly put my brains in gear on that question before we came here. We might look at that as part of the committee's inquiry on the Scottish approach to taxation. It is quite difficult to separate policy from operations, because how you collect the tax and how it works operationally influence the policy, which we are now looking at. It is quite difficult to separate the two, and to make a formal separation is a bit artificial.

**Isobel d'Inverno:** In UK taxation there is, in fact, a policy partnership between HMT and HMRC. HMRC does quite a lot of policy where it derives from operational issues. HMRC is probably more involved in policy than Revenue Scotland is—in Scotland there seems to be more of a separation. I wonder, as Charlotte Barbour does, whether that is necessarily a good thing, because often policy has to be informed by the operation of a tax. 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. There is, perhaps, a case for Revenue Scotland being more involved in the development of policy.

**The Convener:** On the relationship between the UK Government and the Scottish Government, there were obviously issues around ADS. When the UK Government brought it in, the Scottish Government responded quickly because it did not want a disturbance in the market in Scotland. Can you talk about how important the relationship between HM Treasury and the Scottish Government will be in the future, and about what needs to be done to strengthen the flow of information and the understanding of the impact of what one Government might do on the other?

**Charlotte Barbour:** We will see that really strongly when we get to the Scottish income tax. We currently have the Scottish rate of income tax, which is one set rate and is the same as the UK rate that it replaces, so although it is not quite academic it does not have a big influence. As of next year, when there is the ability to set rates and bands, we will see really clearly the need to be able to pull together, because Scotland will have the levers over half of income tax and Westminster will have the levers over the other half—personal allowance, reliefs and all those kinds of things. I imagine that, as devolution progresses and there is perhaps more devolution in northern powerhouses and in Wales and Northern Ireland,

that will help to bring back to the centre the point that this is a process that is layered and needs to be managed.

**Isobel d'Inverno:** Our submission mentions that we are quite concerned about the timetabling of tax changes. The UK has two big tax events in the year—the autumn statement and the budget. We are quite concerned by how things worked out with LBTT the first time round. Rates were set up here, but then big changes that we understand the Scottish Government was not forewarned of took place at Westminster. At that point, the LBTT rates were changed. We question whether giving the devolved Governments no notice of any kind is the appropriate way to treat them.

Such to-ing and fro-ing is not great for taxpayers, who want certainty above all other things. Before LBTT came in, people told us that they would not mind too much if the rate for commercial property was more than 4 per cent; they just wanted to know what it would be. We are quite concerned that we will have the UK autumn statement on 23 November and that the Scottish budget will, it has been said, be published three weeks after that. That is a timetabling difficulty. Charlotte Barbour referred to the setting of income tax rates up here. One difficulty is how that will fit in with the UK budget.

**Charlotte Barbour:** People do not want the UK rates to be set well after the autumn statement in a time that is heading towards April and the new financial year, because employers must be able to work with the taxes and systems must be in place. People want that to be brought forward. There is quite a bit of conflict.

**Isobel d'Inverno:** Yes there is.

**The Convener:** That will play into the on-going budget review group process. I have read about the Law Society of Scotland's concerns about intergovernmental relations, which is why I wanted to tease that out. Willie Coffey has questions on forecasting, which plays into the issues.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** Before I ask about forecasting, I will pick up on a comment from Isobel d'Inverno. You have said a couple of times that there is a Brexit impact. Is it fair to say that that applies across the bands, or is it mostly at the higher end of the market? Will you tell us a wee bit more?

**Isobel d'Inverno:** It is difficult to be certain about what is going on, but it is being suggested to us that there is a bit of a Brexit impact on the higher end of the residential property market. Whether or not that is true is difficult to say. We certainly do not want to try to cause a Brexit impact by mentioning it.

**Ash Denham:** I think that the cat is out of the bag.

**Isobel d'Inverno:** Yes. It is worth bearing it in mind that it would be particularly helpful at this time to do things to counteract any such impact.

**Willie Coffey:** The data that we have show that sales of £1 million-plus properties have levelled out again—certainly at the tail end of 2015, although I have no data for beyond then. If Brexit had an impact, would that take us back down into a trough of sales in that higher band or across the bands? Do any data tell us what is happening?

**Isobel d'Inverno:** There are no such data that we are aware of. Others, including the SPF and Rettie, have better insight into such matters than we have, as has been mentioned.

**Willie Coffey:** That leads me to the questions that I had planned to ask, which are to Charlotte Barbour. Your submission says that you have no evidence on trends and that you would welcome or encourage an independent study of the impact of the changes. Will you tell us a wee bit more about the scope of such a study? I presume that it would take into account a Brexit impact.

**Charlotte Barbour:** It would probably be difficult to measure purely a Brexit impact; it is all-pervasive, so it is difficult to pick up.

**Willie Coffey:** You could ask people why they are not buying.

**Charlotte Barbour:** There is a mixture of things. We are one year in on LBTT, so folk are still finding their feet. In the fullness of time, there will be work for somebody to do to inform LBTT policy and other policies—for example, will council tax rates going up have a knock-on effect at the upper ends? It is difficult to make policy without having a feel for such things. However, I have no immediate feedback; I have just comments from our members.

**Willie Coffey:** I think that one of you said earlier that probably the worst thing to do would be to keep changing things at the moment because there are no benchmarking data for us to compare this with. The message that I heard was that we have to let things settle in for a while to enable us to review or analyse how well it has worked over the first five years or so.

**Charlotte Barbour:** As part of the broader picture, what would a Scottish approach to taxation be like? We would like as much certainty as possible because—as you said—people want to know what the rate is. If it is different next year and different the following year and you have to jiggle when you buy your house or do your transaction, that lends itself to a level of uncertainty that might put folk off. We want certainty and a feel for what is coming. There do

not need to be changes in the tax rates every year.

**Isobel d'Inverno:** If there are to be changes in tax rates, however, it would be good to know when they will happen. That goes back to the timetabling point—when we advise clients on the UK system, we are always careful to say that the autumn statement is coming up or the budget is coming up because there could be change. We do not have that particular knowledge in the current situation here.

We expect that changes in LBTT rates, if there are to be any, would probably be announced at the time of the Scottish budget. It would be good, however, to have a bit more certainty about when things will be announced—although the difficulty of interacting with Westminster has already been mentioned.

**James Kelly (Glasgow) (Lab):** The Law Society's submission expresses concern about penalties for late returns or non-returns. How much of an issue do you think that is and what would you suggest as an alternative?

**Isobel d'Inverno:** The LBTT penalties are more stringent than the SDLT ones were, so the penalties can mount up quite quickly. One concern is about lease returns because, for LBTT, people have to make a return on the lease every three years. People may not make the returns because they are not familiar with the system and they may suffer a penalty when there is no LBTT to be paid. Generally, we think that there should not be a penalty if there is no tax to be paid on the return—a penalty seems to be disproportionate. We are aware of a number of cases in which, even though the person has not been hugely late with their return, the penalties when they are added up have really been quite crunchy. That adding together of late payment and late return penalties seems to make them quite crunchy and it should probably be looked at.

That said, we are very keen to ensure that LBTT is properly policed. One of the problems with SDLT was that everyone was abusing the system and avoiding SDLT because it was not being properly policed. We do not want that to happen with LBTT. Perhaps the better way to ensure that, rather than imposing penalties when people get things wrong, is to do inquiries to make sure that people are doing things correctly. We wonder whether the number of inquiries that Revenue Scotland has done so far is enough; we think that the inquiry regime needs to be ramped up and I believe that Revenue Scotland has plans to do that.

It is terribly important that there is a robust inquiry regime to make sure that LBTT is being paid. I fear that it is human nature that if people

think that they can get away with blue murder, they will try, but if they know that the tax authority is likely to check, they will pay. With SDLT, it got to a stage where the promoters of schemes could say that HMRC had never inquired into any of them and there had never been a problem with it. We do not want that; we want inquiries so that the regime is monitored.

**Patrick Harvie (Glasgow) (Green):** There were a few comments earlier about transactions at the lower end of the property market. I want to pick up on that and on the situation for first-time buyers. The case for LBTT having a profound effect on the situation for first-time buyers has always struck me as difficult to see, given that far bigger factors—such as whether people can get a mortgage, and the level of supply of the kind of homes that they would want to buy as a first property—are more likely to play a role. Another factor is the wider state of the economy, in which we have seen house-price inflation leading to a much greater lack of affordability than has been the case in some other European countries.

11:00

The Law Society's submission states:

"LBTT has undoubtedly been beneficial for first time buyers".

It seems that, in order to reach that conclusion, we might need not only to take a bit more time than one year, but to be definitive in separating three different elements: the question of how much better off first-time buyers are because they are not paying a tax; the indirect effect that the new tax regime has had on prices; and the wider context in which that sits, including low and precarious wages and property prices more generally, which are not necessarily affected by the tax.

How has the Law Society reached the conclusion that LBTT has

"undoubtedly been beneficial for first time buyers"?

Is that based simply on the fact that those first-time buyers are not paying a tax, or is there an assessment of the wider factors?

**Isobel d'Inverno:** There has not been an assessment by the Law Society of those wider factors. We are merely reporting the kinds of things that our members are saying about their experience with their clients. 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.

You are absolutely right that a combination of other factors may have led to the increased activity, but sometimes it is a question of

perception; people perceive LBTT to be a good thing.

**Patrick Harvie:** Absolutely. I will reflect on two points that might cast some doubt on the claim that the tax has “undoubtedly been beneficial”.

First, a higher number of transactions does not necessarily mean that there is a benefit to the people who have participated in those transactions. Secondly, a person might feel that they get a benefit because the supermarket says that there is 20 per cent off this week, but if it jacked up the prices by 20 per cent last week, that person is not actually better off. The economic benefit is a matter of perception rather than a reality.

**Isobel d’Inverno:** Yes—it is difficult to tease these things apart. In some of the transactions that were taking place in buy-to-let properties before the additional dwelling supplement was introduced, properties were changing hands at very high prices, indeed. In fact, people would have been better off waiting until the ADS had come in and in some cases paying a lower price under that, rather than trying to rush to forestall.

The human factor of people following others and so on is difficult. Nevertheless, it makes things easier for some people, not necessarily because they are finding it easier to get the money together to buy a house, but because the fact that the tax is not payable or is lower is an advantage. That is why we question whether the ADS of 3 per cent should kick in at those low levels.

**Patrick Harvie:** I think that you said earlier that you are not in a position to make any kind of assessment about the indirect impact that the new tax framework may have had on prices. Perhaps we could pursue that with a future panel.

**The Convener:** There are no other questions. We have asked a range of questions of Isobel d’Inverno and Charlotte Barbour, and I thank them for helping us.

Is there anything that you feel has been left unsaid that you would like to say to us, or have we covered the ground that you would have expected to cover?

**Charlotte Barbour:** We have covered the ground on LBTT, as far as I am concerned. However, I had a brief discussion with Isobel d’Inverno before we came in to the meeting—our institutions will both be responding to the committee’s inquiry into the Scottish approach to taxation, and we wonder whether you have any particular pointers on what you are looking for in that respect.

**The Convener:** We will ensure that clerks come to speak to you immediately after the meeting to flesh that out.

**Charlotte Barbour:** Thank you. That will be helpful.

**The Convener:** I thank you both for coming along and giving evidence. That is all that we have on the agenda for today. Next week, we will meet to consider the research that was published recently by the Fraser of Allander institute on the Scottish budget and public finances. I read it yesterday—it is a fascinating document that will certainly give us quite a few pointers for the future.

I thank everyone for their attendance today and look forward to seeing you next week.

*Meeting closed at 11:04.*





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