



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

FINANCE COMMITTEE

Wednesday 20 February 2013

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FINANCE COMMITTEE

6th Meeting 2013, Session 4

CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

*John Mason (Glasgow Shettleston) (SNP)

COMMITTEE MEMBERS

*Gavin Brown (Lothian) (Con)

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

*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)

*Michael McMahon (Uddingston and Bellshill) (Lab)

*Jean Urquhart (Highlands and Islands) (Ind)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Chas Booth (Existing Homes Alliance)

Alan Cook (Pinsent Masons LLP)

Elspeth Orcharton (Institute of Chartered Accountants of Scotland)

Nick Scott (Brodies LLP)

Elaine Waterson (Energy Saving Trust)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

Committee Room 5

Scottish Parliament

Finance Committee

Wednesday 20 February 2013

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

Decision on Taking Business in Private

The Convener (Kenneth Gibson): Good morning and welcome to the sixth meeting in 2013 of the Scottish Parliament's Finance Committee. I remind everyone to turn off mobile phones, tablets and other electronic devices, please.

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

Members indicated agreement.

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

09:30

The Convener: Our second item of business is to take oral evidence as part of our stage 1 scrutiny of the Land and Buildings Transaction Tax (Scotland) Bill. I welcome Alan Cook of Pinsent Masons; Elspeth Orcharton from the Institute of Chartered Accountants of Scotland; and Nick Scott of Brodies. Good morning to you all.

We usually have opening statements but, as you have given us detailed submissions, we will go straight to questions. In time-honoured fashion, I will start the questions and then open up the session to my colleagues. I will begin with the ICAS submission, paragraph 5 of which states:

"The lack of clarity on even provisional figures of tax rates or bands goes against the principle of certainty in taxes, potentially resulting in a phase of investment decision 'blight' in the run up to the introduction of the tax in 2015."

Is there any evidence that that is taking place?

Elspeth Orcharton (Institute of Chartered Accountants of Scotland): We looked at the behavioural response to rate changes across all taxes in the United Kingdom; I am sure that Her Majesty's Revenue and Customs could provide that evidence. For example, when income tax rates change, there is an acceleration of income into a lower tax-rate period and a deferral of income out of a higher tax-rate period.

The discussion about bonuses in the city and the top rate of income tax provides evidence of the behavioural impact. Although we have not undertaken a particular survey and I cannot point to a report, if I were considering moving house next year, it would be nice to know whether the tax rate that I would have to fund would be 3, 4, 5, 6, 7, 8 or 10 per cent, and I do not think that I am untypical. That might stifle a decision.

The Convener: Mr Scott, you raised similar concerns in your submission, which states:

"uncertainty may discourage investment in the Scottish market."

However, we have received evidence that says exactly the opposite: that setting the rate this early might discourage activity now. For example, if tax levels were to be reduced following April 2015, people might decide to delay investment decisions now. It has been presented to us in evidence that it is actually positive not to give the details of the tax rates before April 2015.

Nick Scott (Brodies LLP): There is a difference between residential and commercial property. With

residential property, decisions to move house are often dictated by personal drivers for the individual. For example, people move because they have had a new child, they have retired or their job has changed.

Our practice and client base spreads across the spectrum, including commercial clients. In the commercial property industry, the drivers are often the returns that can be had on the property that is invested in. One function of that is the cost of acquiring the property. If someone is buying a property and knows that the rate of LBTT or stamp duty land tax is going to change, they will know that the cost of acquiring the property will change and therefore the returns that they will get from buying it will change. In those circumstances, people need certainty about the return that they will get on their money.

I can speak for the range of clients that we talk to. They are based in the Scottish market as well as overseas and throughout the rest of the UK. The feedback that we have received from them is that they are concerned that there is uncertainty. They do not know what the cost will be to them of making an investment if they commit now to purchase or make investment decisions that will take effect when the new rules will be in place, and therefore they do not know what net return they will make on the investment. Even if they are acquiring properties now, they may well sell them post the rules coming in, and they do not know what the purchasers will have to pay as the cost to acquire them. That will affect their return.

Alan Cook (Pinsent Masons LLP): I agree with Nick Scott's comments. It is also worth bearing in mind how the transitional arrangements will work for the introduction of LBTT compared with how transitional arrangements typically work when SDLT rates change, for example. SDLT rates can potentially change at the drop of a hat on budget day, if the UK Government decides to do that, but typically there is a carve-out from the effect of the rate change that says that any contracts that were in place before the rate change was announced will be subject to the old rates. That gives certainty to people who have already entered into commitments and contracts that the rates that they expected will continue to apply to them.

LBTT is to apply to any contract that is completed or substantially performed after the tax is introduced in April 2015, whether or not that is a pre-existing contract. People will enter into commitments in the lead-up to 2015. Some commitments that will take effect after April 2015 have already been entered into, and people still do not know and will not know what tax rate will apply to transactions that they have committed to.

It would be wrong to assume or rely on a notion that people will happily just sit back and wait to

see what the rates are, because commercial investors and developers have to take investment opportunities when they arise; they cannot just sit for a year or two waiting to see whether the tax rate is acceptable for their project appraisal before they decide to commit. They need to commit then and, if tax rates are uncertain, that is an extra element of uncertainty that will not help investment decisions.

The Convener: The Scottish Government has made it clear that it expects the tax to be revenue neutral, so there will not be any massive increase in taxes. Obviously, rates might change, but there is no great leap into the unknown, is there?

Alan Cook: The aspiration is for the tax to be revenue neutral overall, but that means that there will be winners and losers. I am speculating on the precise policy that will underpin the rates that are finally hit, but if, for example, a decision is made to favour the residential property market and assist the lower ends of it, the difference will have to be made up somewhere else to achieve revenue neutrality, and it is entirely conceivable that that would be made up out of the higher end and commercial transactions. Investors and developers will be looking at that, expecting that that might happen and therefore expecting that they could end up with a higher tax rate than the current SDLT position would give them.

The Convener: I go back to the ICAS submission, with which I opened. Paragraph 10 of that submission says that there should be

"The minimum of rate differences, reliefs or exemptions—limiting the opportunity for tax avoidance."

However, paragraph 16 says:

"The removal of sub-sale relief from the provisions is not welcome".

Paragraph 5 mentions that we need to

"maintain Scotland's reputation as the most attractive part of the UK in which to do business".

Will you clarify that? If you want to reduce the number of reliefs, will that reduce Scotland's attractiveness? At the same time, you obviously wish to ensure that sub-sale relief is included.

Elsbeth Orcharton: Let us go to the comment that addressed simplicity and removing the opportunity for tax avoidance. Tax avoidance arises when there are more and more reliefs and exemptions, some of which may no longer have the policy need that they had when they were introduced. Tax legislation often emerges as layer upon layer, and it is the interaction of many of the reliefs and exemptions that gives rise to avoidance opportunities.

That is not to say that exemptions and reliefs for key areas that support policy drivers are bad

things. Our view is that there are commercial uses of sub-sale relief that should be protected. Sub-sale relief is not a bad thing in itself; it is probably one of the key areas where we want to maintain a relief, but we need to be careful about how it is structured.

Nick Scott: One of our major concerns about the bill relates to sub-sale relief. It is probably worth explaining the effect that removing the relief might be perceived to have. The property industry breaks down into those who use property and those who are willing to invest in and develop property. A developer often bridges the gap between the people with capital who wish to invest in property and those who use it. The job of developers is to identify a building or a site that they think might have an end user and to join the two dots together—to get planning, make the thing financeable and build it, ensuring that it gets built to cost and on time and so on. Developers hope that they will make a profit at the end of the process.

That activity is not only entrepreneurial but speculative, because projects often do not come to pass. Developers may often run five, 10, 15 or 20 projects, of which three or four might come off. They hope that they will make enough profit out of the three or four to bail them out or make up for the fact that many projects do not happen.

Developing is therefore a difficult job, particularly in the current economic situation. Removing sub-sale relief would tax the person who is the engine and the driver of the development that creates the built environment that we see around us. It would discourage them from doing the one thing that they are there to do, which is to try to create new property for commercial businesses and others to use.

It is also worth understanding that for many of the projects for which we see cranes around city centres or for development sites being built in Edinburgh, Glasgow, Dundee, Aberdeen or wherever, the decisions and the people financing them come from commercial organisations that are mostly not based in Scotland. If they are discouraged from or taxed further for doing their projects in Scotland rather than equivalent projects in Manchester, Durham or Newcastle, we must be careful about the message that that creates for those people, on whom our economy relies overall to act as drivers of economic regeneration.

We are gravely concerned about the perceptions that might be created. There may be legitimate concern about tax avoidance, but that can be addressed by discussion of avoidance issues. You do not want to create a perception that the job of developers will be taxed more by the Scottish Government than it would be by the English Government or other Governments.

Alan Cook: I entirely agree with all those sentiments. When the bill was published, it was a serious concern of ours as well that sub-sale relief was deliberately excluded from the tax. It has been a feature of the tax system and the stamp taxes system from time immemorial. It underpins what is regarded as genuine commercial activity; it is not there for tax avoidance reasons.

Nobody would dispute that the relief has been exploited by tax avoiders, but a lot of the tax avoidance that has surrounded sub-sale relief under SDLT is frowned on by the majority of tax professionals and people who are just trying to get on with life. It is notable that, in the Scottish Government's policy memorandum, the sole justification for excluding sub-sale relief is that it is used for tax avoidance purposes; there is no attempt to argue that the economic activity that sub-sale relief supports is inappropriate.

The bill is in severe danger of undermining such economic activity in the interests of clamping down on tax avoidance, which there are other ways to do. As we said in our submission, what is happening at Westminster with SDLT means that sub-sale relief is being recast in a manner that will—I hope—stop it being used for tax avoidance purposes. The UK Government accepts that the economic activity that sub-sale relief underpins is appropriate and ought to be supported.

09:45

The Convener: Mr Scott, paragraph 14 of your submission, which is about proposed exemptions under the bill, says:

"We note the absence of licences to occupy from the exemptions. Licences to occupy have been exempted from SDLT."

Why should those exemptions be included in the LBTT arrangements?

Nick Scott: The position depends on the type of licence that is being referred to. Some of the concern is that there is uncertainty about what class or category of licence would qualify. For example, in a shopping mall or high street that has a variety of shops or units, most of them would be occupied under a lease, but there is no reason why a person occupying a unit could not be rented a licence to occupy the premises. That is as much a conveyancing distinction as anything else. There is still an economic activity in paying a sum of money for the right to use the premises and run a business from them. There is no logical reason for treating such activity differently under SDLT and LBTT.

The concern is about broadening LBTT's remit to cover all categories of licences to occupy premises. It appears that there is an attempt to include certain circumstances in LBTT's ambit. For

example, is it really appropriate that taking on premises for a night to run them as a music venue for a gig should be subject to LBTT when it is clearly not subject to SDLT?

Another example that is very relevant to this city comes from how hotels are operated and managed. Historically, they might have been leased, in which case SDLT would have been paid on them. They might now operate under management contracts, which are in effect licences to occupy and run hotels. We are concerned that operating and managing hotels in other parts of the UK would not be taxed but, in the Scottish economy, running a hotel would be taxed under LBTT. A decision needs to be made about whether that is appropriate. It is certainly a concern if that puts another block on economic development opportunities for hotels in the Scottish market.

The Convener: The Pinsent Masons submission says:

"The Committee should make sure it has fully appraised itself of the potential implications for this expansion of the scope of LBTT over SDLT."

You then mention a number of exemptions, Mr Cook.

Alan Cook: We are in grave danger of falling foul of the law of unintended consequences by having a blanket inclusion of licences in LBTT's scope. In our submission, we gave a couple of examples. For instance, group company occupation is a typical feature of a commercial lease that is granted to a company; it means that companies that are in the same group as the tenant company are allowed to occupy the premises.

Companies that have a series of subsidiary companies for elements of their business might reorganise the business so that the business that is being done from premises needs to be undertaken by a different company in the group. The lease will say that that is permitted, provided that the arrangement is a licence and not a lease. Suddenly, every time that that happens, the group company will be subject to LBTT. It might be said that the company could obtain group relief, and that would be fine, but businesses would have a whole new compliance burden as a result.

I am trying to think of other examples in which the tax could bite. The committee might or might not think that some of them are things that we want to tax, but members should be aware that they could become subject to the tax. An example is telecommunications masts. Typically, a telecoms operator installs a mast somewhere; there may be a lease, which is fine, but it is common for different telecoms operators to have site-sharing arrangements that allow other

operators to put equipment on the mast. That is a licence-type arrangement, and such arrangements could be subject to LBTT, depending on values.

Could a train operating company's entitlement to use Network Rail-owned railway infrastructure become subject to LBTT? In the case of building contracts under which a contractor is engaged to build a building on premises that someone else owns, what is the basis on which the contractor occupies the land to do the development work? Is a licence granted to the contractor? Forward funding arrangements have been discussed in previous committee meetings. Part of the forward funding arrangements is that a licence is granted to a developer to build a building on land that an investor has purchased.

Those are all examples in which LBTT could kick in. In commercial arrangements that are not currently subject to SDLT, the tax burden will be increased in a variety of cases and the compliance burden on businesses will be increased. The intention may or may not be for such arrangements—and 101 others—to be subject to LBTT, and it is probably impossible for us to guess what they all might be. However, the committee must be aware that the proposal will have unintended consequences.

The Convener: Does anyone else wish to comment?

Elsbeth Orcharton: I do not think that there is anything to add.

The Convener: That is fine. Not everyone has to comment on every question; if they did, we would probably be here all morning.

All the submissions are excellent and detailed. Mr Scott, paragraph 21 of your submission states:

"We would suggest that Scottish Limited Partnerships ... should be treated as bodies corporate for the purposes of LBTT group relief, so that assets can be transferred between sister companies owned by an SLP without an LBTT charge. This is not the case for SDLT".

What would be the impact of that change on revenue to the Scottish Government?

Nick Scott: I cannot comment on the tax that would or would not be raised by that. From our perspective, an arbitrary distinction has been drawn that does not appear to have any policy driver behind it. The decision to structure a company as a Scottish limited partnership, rather than a normal corporate vehicle or anything else, will be driven by particular reasons of a business, family or anyone else for organising their affairs. It seems to us that there is no policy reason why, if an umbrella entity owns various subsidiary companies, transfers of property between them should be treated differently according to whether

the parent is a company or an SLP. That was the driver for our submission.

The Convener: Mr Cook, you comment on section 47 of the bill in your submission, which states:

"If transfers in the shares of companies which hold or invest in residential property in Scotland attract LBTT rather than 0.5% stamp duty ... this is surely going to inhibit companies from investing in residential property within Scotland."

Why would that be the case?

Alan Cook: Over the past few years, both pre and post-crash, much policy thought has been given UK-wide to ensuring that there is enough housing stock in the UK. Housing stock has taken a good knock over the past five years and it is therefore important that we allow every opportunity for residential development and the development of housing stock to take place.

One direction that has been identified to promote such development—it dates right back to studies from before the crash—is to encourage professional and institutional investment in residential property. That has slowly developed over the past few years, with significant institutional investors building up their involvement in residential property. The idea is that they will help to create housing stock that is available for let rather than for people who are buying their own home.

Those investors are large companies that own a lot of residential property. When shares in those companies are traded, they are subject to stamp duty at 0.5 per cent in respect of any transaction in the UK. If a higher rate of LBTT is charged on such share transfers, that will discourage such investors from investing in property in Scotland. That is the concern.

It is worth looking at what is happening with SDLT at the UK level. I do not want the committee to think that I am simply saying that we should copy SDLT every time, but it is always instructive to see what is going on in other jurisdictions and tax regimes. Over the past year or two, there has been quite a lot of focus on—and a lot of heat has been generated about—people in Chelsea and Westminster avoiding SDLT by buying mansions using corporate vehicles. The UK finance bill 2013 will introduce measures to combat that, so stakeholders have been consulted a lot over the past few months on how to make those work.

The draft finance bill 2013 provisions produced by the Treasury include a raft of exemptions from the charge for residential property that is held in corporate wrappers, such as businesses investing in or developing residential property, farmhouses and other types of business-related activity. If there is to be such a charge under LBTT, serious

consideration should be given to applying similar exemptions in order not to discourage the important development of a professional and institutional residential investment market in Scotland.

The Convener: Each of you has said that you want to ensure that the taxation rates are kept quite low so that there is no disincentive to invest relative to the rest of the UK. However, at the same time, each of you has called for exemptions and reliefs, which clearly, if implemented, would reduce the revenue. If the revenue that the Scottish Government is to receive from the tax is to be broadly neutral, surely that means that the overall rate needs to go up to cover all those exemptions. Incidentally, no one has quantified in any of the submissions what the impact of an exemption would be.

Surely that position is a contradiction in terms. The more exemptions there are, the more the people who do not get the exemptions will need to pay if we are to have a revenue-neutral tax.

Alan Cook: A lot of the things that we have talked about are not about looking for exemptions over and above what people are used to, although there may be examples of that. The things that we have talked about are cases in which it is proposed to expand the scope of LBTT beyond that of SDLT, such as by taxing licences, taxing sub-sales and taxing corporate-wrapper arrangements. We are talking about mitigating the effect of expanding the envelope of the tax rather than trying to improve the taxpayer's lot as against the current situation under SDLT.

10:00

The Convener: I understand that, but surely the overall rate will have to go up if the exemptions are implemented.

Elsbeth Orcharton: The provisions that we have commented on are in existing legislation, so they are included in the revenue figure. It is the revenue-neutral position to carry them forward, almost by definition. If the exemptions or reliefs are withdrawn, that will increase the revenue take—

The Convener: Unless the rate is reduced overall.

Elsbeth Orcharton: The opportunity to do that might be provided. We are trying to inform the decision on the policy choices. The revenue will increase only if the activity follows. It is the activity consequences that we are getting to.

The Convener: Indeed.

Nick Scott: I repeat the point that the rate applies only if there is a transaction that triggers

an LBTT charge. The concern is that, if the rules are set so as to discourage people from doing the transaction in the first place, there will be less revenue overall.

That should not be viewed in a narrow context. I appreciate that the discussion is about LBTT, but I go back to sub-sales, developers and so on. If a developer is discouraged from building a new building, that building will not be created, rates will not be paid, people will not be employed in it, construction work will not be generated and all the other taxes that flow from the economic activity of investment in residential or commercial property and so on will be affected. The issue must be viewed not just in the context of LBTT, but more widely.

The Convener: Indeed—it is a question of where the balance is to be struck.

I open up the questioning to colleagues.

John Mason (Glasgow Shettleston) (SNP): Some of my points build on issues that the convener has raised already. I will start on what Mr Scott has just said, on the theme of not wanting to discourage development and on the idea that putting tax up will discourage development. First, how do Scottish land and building prices compare to those in England? I assume that they are lower than prices in London, but are they comparable to other places?

Nick Scott: It differs. It depends on demand and supply. Some parts of some Scottish cities will be more expensive or valuable than those in an equivalent English city. Development is less about the absolute cost than about the return on the capital that is invested. In a sense, it does not matter whether or not an investment is made developing a property in central London, where residential values are far higher than they are in Edinburgh; it is a question of how much money is put in, how long the money is tied up in the project before a profit is crystallised and what profit will be generated by carrying out the development.

John Mason: The tax part of that is very small, relatively speaking.

Nick Scott: It depends on who is involved and on which part of the process they are in. As I said earlier, the groups or people who use the property generally do not want to invest their capital in it. They might simply be trading businesses—they just want to run a business from a shed or office or whatever it might be. The categories of investors that will have money to invest in the property include those such as pension funds. The developers are the engine in the middle. Their job is to try to marry those two sides and to drive the project. Being taxed through LBTT on the land value for that transaction is quite a material part of the profit that they might generate.

John Mason: Is the result of that not just that they pay it? If someone has £1 million to spend and the tax is £50,000, and we make the tax £60,000 instead, does that not just mean spending £10,000 less on the actual building, to compensate?

Nick Scott: It might, but it depends on whether or not it is possible to have that negotiation with the landowner, the building contractor and so on. We employ a lot of lawyers and we have a broad range of clients. We talk to them and we note their attitude and the perceptions that are created.

I will give you an example. Ten days ago, I had a meeting with a potential client from the English regions who has been trading for 60 or 70 years and whose main focus is student accommodation, hotels and the education sector in general. The company has done quite well in the English market for the past 50 or 60 years, has identified Edinburgh as a place that might have many similar users of property and came to Scotland to meet potential lawyers, advisers and so on and to look at sites for discussion. I was introduced to the people in question and, in the following discussion, was asked, “How will the Scottish market work for us relative to our experience of the English one?” After we had gone through the legal background and all the rest of it, we came on to the subject of tax, how the SDLT works at the moment and the impact of tax reform. How am I to describe what we are discussing this morning and what effect this legislation will have on decisions about whether the client bothers to enter the Scottish market or simply continues to plough the furrow that it has been ploughing quite successfully in the English regions?

John Mason: But your potential client cannot build something in Newcastle for students in Edinburgh.

Nick Scott: These projects can take years of time, effort and speculation before they bear profit. Moreover, I point out that there are students in Newcastle, Manchester, Birmingham and everywhere else. If there are two ostensibly identical propositions but one is in a jurisdiction where the client in question will be taxed more than it would be in the other, you will inherently encourage it to spend its time where the net return from the exercise, which might well serve many beneficial purposes, will be greater. I am not here to defend developers making lots of money as some absolute thing, but such developments create accommodation that students can go into, construction activity and all the rest of it.

John Mason: I agree with all that, but if I were that person's accountant I would be saying, “Right—the tax is higher in Scotland, so just offer a certain percentage less than what you would pay

in Newcastle.” I still do not understand how it will affect commercial decisions.

Nick Scott: Some of this is about negotiation—ultimately, there needs to be a vendor who is willing to sell you a site for you to develop it—but feedback from clients suggests that a genuine issue is their perception of the Government’s attitude to what they do.

John Mason: You mentioned the slightly related issue of hotels, which, as I understand it, are international concerns. Most of the submissions that we have received make comparisons with England, but what about Holland, Denmark or elsewhere? Presumably companies such as Hilton are used to dealing with umpteen tax regimes around the world. We are talking about the differences between Scotland and England, but I suggest that every European country is different.

Nick Scott: Indeed, and we all compete in attractiveness for that international capital. All that we are saying is that you are potentially creating a situation in which setting up these businesses and investing in these premises will cost more in Scotland than it will in other parts of the UK.

John Mason: How does the situation compare with other European countries? Do we know?

Nick Scott: I cannot comment specifically on that, but each of those countries will have different regimes.

John Mason: Does anyone know whether the UK is losing out or winning because of tax regimes around Europe?

Elsbeth Orcharton: Tables have been produced, mostly by the Organisation for Economic Co-operation and Development, showing the UK’s relative competitiveness compared with the rest of Europe. The difficulty is that they are at a very high level and distinguish between taxes on, say, profits, employment and capital and wealth. There are so many different tax systems and structures across Europe—and indeed beyond—that it is very difficult to have one measure of competitiveness. However, there are ways of looking at the issue and I am sure that, for a particular tax, something might be available. I will see what I can find.

John Mason: It would be interesting to see the wider picture.

Elsbeth Orcharton: There are differential property rates or equivalents of stamp taxes across Europe but I am afraid that I cannot recount them off the top of my head.

Nick Scott: It is worth making a positive point; I do not want to sit here and just complain about particular proposals in the bill. With LBTT, we

have an opportunity to encourage particular types of development that the Government might wish to see. For example, a UK-wide income tax relief called the property renovation allowance encourages the regeneration of tired secondary buildings in areas that have been identified as disadvantaged. In the city centres of Scotland that qualify, we have seen that the creation of that relief and its targeting at specific economic activities has encouraged people who would not otherwise have spent their time pursuing those activities to do so. Hotels are one example of the kind of project that it encourages the financing and construction of.

John Mason: You have taken me on to an issue that I was going to ask the next panel about. I will ask you folk about it now. Energy efficiency is given as an example of what relief is intended to help with, but the examples that you give are relevant, too. Is it better to give tax relief, or just to charge everyone the same tax, which keeps it simple, and then give separate grants for such purposes?

Nick Scott: Our experience shows that tax reliefs encourage people to spend their time analysing and trying to make such projects work.

John Mason: But are tax reliefs more effective in doing that than giving people a grant?

Nick Scott: That is not something that I can comment on, but if it would help, I can give you clear examples of where projects have worked because—

John Mason: I believe that relief helps. My question—which I will put to the next panel, as well—is whether a grant is better and more targeted than a relief.

I turn to Mr Cook. Your main observation is about sub-sale relief. On page 1 of your submission, you give the example of someone who buys a bit of land, divvies it up, sells it on and makes a profit. In evidence, we have been given the example of three landowners who, for convenience, want to buy a bit of land jointly, which they split up between them, with no profit or loss being made. I can see the argument for that being one transaction, although legally it is two—or rather, four—transactions.

In your example, one developer buys a big bit of land, sells it on and makes a profit on the whole process. Are those not two separate transactions?

Alan Cook: As a starter, just for the avoidance of doubt, there is nothing wrong with people making a profit on activity. It is essential that people can do so.

John Mason: That is absolutely right. The question is how we tax it.

Alan Cook: The tax is a tax on the acquisition of land interests. That is what a land transaction is—it is the acquisition of an interest in the land.

In the case of such development structures, the interest in land is not being acquired; it is slipping right through to the end purchaser. A typical example would involve land that is in a number of separate ownerships. When someone spots the opportunity to bring those ownerships together to create a larger development site on which something can be built, they need to be in a position to do all the work that is needed to bring the individual owners together, to get planning permission, to make the site viable and to identify someone who will occupy it and purchase it. The sort of people who will do that—investors—are not interested in doing all those things and undertaking all that risky activity. They want to buy something that is nice and clean, which will give them a rental income at the end of the process.

The developer is therefore a facilitator of the development process. They enter into contracts for the purchase of the land because that is what it is necessary to do to pull the interests together, but they will not own the land at any point; they will pass it directly on to the person who will buy it—the investor who will ultimately hold the land and receive the rental income. That is a typical example of where sub-sale relief kicks in. If sub-sale relief were not there, that person would be required to pay tax at anything up to 4 per cent or whatever the tax was.

John Mason: Your argument is that if someone does that almost immediately in one go, only one lot of tax should have to be paid. If someone buys all the land, sits on it for 10 years and then sells it, they will be taxed twice.

Alan Cook: That is right. No one would expect to be relieved of the tax in those circumstances whether they sat on it for a day or for 10 years because, as you said, they acquired the property in its own right. Under the current regime, they would not expect to benefit from sub-sale relief.

John Mason: That was helpful.

10:15

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I have a couple of questions arising out of the evidence thus far. First, I am intrigued by the tables of comparative international competitiveness to which Ms Orchardon referred. I think that she suggested that she would provide them to us. We look forward to receiving them. Before we get them, will she tell us what they are? Are they just measures of the tax levels or do they also set out the rates of activity in each country?

Elsbeth Orchardon: Gosh, you are asking me to summarise what is set out in about 20 pages of OECD analysis. However, the tables set out the rates country by country on an attempt at an adjusted and comparable tax base.

There are two issues in tax competitiveness. One is the tax base—what is actually taxed—and the second is the rate that is applied to it. An overall tax take might be a small rate on a large base or a large rate on a small base. The tables try to assess that but they also give a graphical illustration of, for example, the costs of employment or property occupation—as I think about it, that is one of them; I am not sure whether it is transactions, occupation or a combined piece. They also cover the mainstream corporate tax rates.

Jamie Hepburn: Will the tables tell us whether the tax rates in Denmark or Holland affect the decisions taken by Hilton, for example? Is Hilton not building in Denmark or Holland? Is it choosing to build somewhere else?

Elsbeth Orchardon: That is Hilton's European strategy. I would be making a bit of a guess.

Jamie Hepburn: It is perhaps an unfair question, but the point that I am trying to get at is that, if we get a list of the taxation levels alone, it does not tell us much other than what the taxation levels are. Surely the measure of competitiveness is the effect of those taxation levels. After all, you are all here to give us evidence on how LBTT will affect decisions made by investors.

Elsbeth Orchardon: The short answer to that is yes, the tables contain data that is helpful, but they do not explain the full rationale of the decisions that are made.

There are probably others who are better qualified than I am to comment on what is or is not attractive and what creates or does not create activity in the property market. I expect that financing—or the lack of it—rather than just the tax rates will provide much of the answer.

Jamie Hepburn: The information will be useful, but I suspect that we might need to look at some other data to really dig into the matter.

The Convener: I am sorry to interrupt you, Jamie.

Ms Orchardon, you talk about tax competitiveness, but a society surely must consider its overall economic competitiveness, which concerns the productivity of the workforce, the amount of capital invested, the educational attainment levels within the society and its infrastructure. Those things all have to be paid for by taxes, so a country can have the most competitive tax structure in the world but, if it does not help to fund some of those other things, it does

not necessarily improve economic competitiveness, because the country might not have an educated, skilled and trained workforce and good infrastructure.

Elsbeth Orcharton: That is one of the other challenges of the tables—the context in which they are seen. As we have said before, if we are examining a tax system, we have to examine how it integrates with the political, social and economic aspects of the country. We offer evidence on a particular aspect but, no doubt, you will apply wider considerations and consider the wider factors.

Alan Cook: I am no expert on the relative tax rates of different European countries, but I know that the investment decisions that a company such as Hilton makes in different parts of Europe are based on an overall equilibrium that the company discovers in each individual country. Tax rates might be higher or lower in one place, but that might be countered by any number of other factors that result in the company being prepared to make an investment in that country. If we change one element of that overall equilibrium, we risk having an adverse effect on the investment decisions that such companies make.

The Convener: Back to you, Jamie.

Jamie Hepburn: Thank you, convener.

I want to discuss sub-sale relief, which has been explored by the convener and the deputy convener. I may be paraphrasing you here, Mr Cook, so you can correct me if I have picked you up wrong. In response to the convener, I think that you said that no attempt was made in the Scottish Government memorandum to say that economic activity underpinned with sub-sale relief is legitimate. Is that, broadly speaking, what you were saying?

Alan Cook: I was saying that all that the policy memorandum says to explain why sub-sale relief has been excluded from the bill is that it underpins avoidance activity. That is the only justification that is given for excluding sub-sale relief. There is no attempt to suggest that the sort of economic activity that we have talked about and that benefits from sub-sale relief is inappropriate.

My point therefore is that the Scottish Government does not appear to have had a policy imperative. We are saying that some important things need to be thought about here. On the basis that it was not part of the policy decision-making process in the first place, surely those points should be taken into account.

Jamie Hepburn: I think that yes is a fair synopsis of what you said.

I was going to ask which activities that are underpinned by sub-sale relief you consider to be

legitimate, but I think that you have done that fairly reasonably in response to John Mason.

You said that there are avoidance activities that would be frowned upon by tax professionals. What type of activity is not so legitimate? What type of activity is just tax avoidance?

Alan Cook: I suppose that the starting point here, without getting too jurisprudential about it, is the question of what we mean by tax avoidance. There is a whole spectrum there. On the one hand, there is the right of every taxpayer to order their affairs in a tax-efficient manner, which I do not think anyone would dispute as a matter of broad principle.

At the other end of the spectrum there is what you might call egregious manipulation of the tax rules and the technicalities within the tax rules to exploit loopholes and avoid tax in a manner that many reasonably minded people would think was an inappropriate use of the tax rules.

Jamie Hepburn: I do not know whether the tax professionals that you are talking about are reasonably minded people, but I presume that that is what you were talking about when you said that some activity would be frowned upon. Let us focus on that. What is the activity that would be frowned upon?

Alan Cook: With the SDLT, and with stamp duty before it, there was a bit of a tradition of people wanting to try to avoid it. When the SDLT was introduced, its *raison d'être* was to do everything possible to clamp down on the avoidance that was occurring under stamp duty. However, because that inheritance is there, there have been continued efforts in certain quarters to find ways to avoid having to pay the SDLT.

There has been an equal effort on the part of the UK Government to stop that activity. A game has been played over a number of years, as the SDLT legislation has developed, to close down the loopholes.

In latter years, we have particularly seen the activity in certain elements of the residential property market where sub-sale relief has been combined with other mechanisms within the legislation in what some would say is quite an aggressive way. Aggressive is tax professionals' code for, "It might not work but you're prepared to give it a try." Some of that aggressive planning has been sold to people as a way to avoid having to pay stamp duty on the purchase of their house.

Jamie Hepburn: I am not really getting a sense of what that might involve. Will you tell us, without naming names—I am not asking you to whistleblow—the type of initiative that might be frowned upon, as you put it, by a tax professional?

Alan Cook: I will give you an example of a loophole that has been closing in the past year or so: sub-sale relief was combined with the grant of an option to purchase the house from the person who ostensibly bought it. I do not want to get too far into the technicalities of it because I will probably get stuck in the mud and I do not think that you need to be terribly interested in the precise detail—

Jamie Hepburn: I am not sure about that. Surely we need to get stuck into the detail. If you are saying to us that what the Scottish Government is proposing, which is that there should be no form of sub-sale relief, is not correct and that elements of it should be allowed, the detail will be important, whether we like it or not. I might not understand it, but as long as it is on the record, that is fine.

Alan Cook: If someone wants to buy your house, they find somebody who is prepared to co-operate with them to put together an overall scheme. The first person agrees to buy the house from you. As far as you are concerned, you are selling the house to someone and you are getting paid the price that you want, so everything is fine. However, the person who has contracted with you is agreeing to grant an option to buy the house, on certain terms, to a friendly party. The grant of the option, under the rules as they were before the loophole was closed, arguably constituted a sub-sale. Because it was a sub-sale, the purchase of the property in the first place did not attract SDLT. The option was granted on the terms that no SDLT was triggered by doing so, and there were mechanisms within the option documentation that would allow the onward sale of the property, if it were decided to sell it, in a tax-free manner.

That was aggressive, in the sense that not everybody agreed that the grant of the option brought the transaction within the sub-sale rules. However, there were those who were prepared to make the case for sub-sale relief kicking in in those circumstances and to sell that as a proposition to people who wanted to avoid having to pay SDLT on the purchase of their house.

Jamie Hepburn: Were people avoiding paying the tax in those circumstances?

Alan Cook: I believe so. It was probably more common in England, particularly in the higher-value areas, where more is at stake. If you engage in aggressive tax planning, there is a risk that it will not work and that the tax authority will investigate your affairs, decide that you should have paid the tax and charge you the tax plus interest and, potentially, impose penalties for having done what it thinks was the wrong thing in the first place. Therefore, it has to be worth while engaging in it in the first place, which is why the schemes really only apply to higher-value properties. They were

marketed primarily at property over £500,000, where the 4 per cent SDLT—

Jamie Hepburn: My home would not count then.

Alan Cook: Neither would mine.

Jamie Hepburn: That was a helpful explanation.

Charities relief is an area that demanded more of our attention than we might have expected, and ICAS and Brodies refer to it in their submissions. It would be worth exploring the issue a little further.

ICAS says:

“Charity tax relief should, in our view, remain available to charities whose charitable status is granted by HMRC and not just the Office of the Scottish Charity Regulator”.

That was suggested to us in a previous meeting but, when I explored the issue with the witness, I suggested that there might be difficulties with that. Clearly, the Scottish Parliament has no legislative competence over HMRC. Might difficulties arise as a result of the fact that we would essentially be using an organisation over which we had no powers of direction with regard to the criteria for bodies that might come under the legislation?

Elsbeth Orcharton: You might argue that, but the reality is that there is no expectation around Scotland or the rest of the UK—that I am aware of—that there will be any change in the approach of HMRC, the Charity Commission or the UK Government to the definition of a charity. The law has stayed pretty stable since 16-something, if my tax history serves me right. I am therefore not sure that a worry about any change that HMRC might come up with is a cause for much practical concern.

10:30

As far as I am aware, there are few bodies that have charitable status approved by HMRC that would not be able to register with the Office of the Scottish Charity Regulator—the paper gives the example of Scottish Natural Heritage. When it comes down to it, there are few differences in the legislative provisions of those bodies. That is not to say that there is not an administrative process that HMRC-approved bodies would have to go through to register with OSCR, but that is different from the case of those who could not register with OSCR because they do not meet the OSCR conditions.

Jamie Hepburn: I will come to that in a minute, but the point that I was making was not to do with the specific charitable test. In essence that is different, to a degree. Do not ask me what the difference is, but I understand that we have a different standard in Scotland.

Elsbeth Orcharton: There are very few differences, but yes.

Jamie Hepburn: The issue that I was concerned about was the fact that we cannot compel HMRC to say which bodies it currently understands to be charities. It might well say, "Here's a list," if we asked it, but the point that I am making is that we could not compel it to do so, as we have no jurisdiction over it. Is there not a danger in that?

Elsbeth Orcharton: I am not sure that you would be seeking that. Would you not be seeking evidence from the body itself about its individual status? I think that your engagement would be with the body that would be seeking a charitable exemption, and that you would not need anything from HMRC directly.

Jamie Hepburn: That is helpful.

You talk about bodies not being required to register with OSCR. Paragraph 15 of your submission says:

"It is our understanding that it would be incorrect to say that any English or overseas (i.e. non Scottish charity) can register with OSCR".

Why do you think that that is the case?

Elsbeth Orcharton: If it does not meet the charitable conditions, as set out in the Scottish charities legislation, it cannot register with OSCR as a Scottish charity.

Jamie Hepburn: You do not say that it cannot register as a Scottish charity; you say that it cannot register with OSCR.

Elsbeth Orcharton: My understanding is that it cannot go on OSCR's register, which is the register of Scottish charities.

Jamie Hepburn: OSCR told us that those bodies could voluntarily register with it under—I think—section 14 of the Charities and Trustee Investment (Scotland) Act 2005. Is that news to you?

Elsbeth Orcharton: It would be, because my understanding is that any body could apply to register with OSCR, but it would have to clear a further hurdle in terms of the constitutional powers, purposes and aims before it could be admitted to the register.

Jamie Hepburn: But this involves a separate register. It is a register that is only voluntarily engaged in. Our understanding, from OSCR, is that those charities could register with OSCR.

Elsbeth Orcharton: That is not my understanding of the position, but I do not claim to be an expert on every aspect of section 14.

Jamie Hepburn: The submission from Brodies says:

"We do not believe that LBTT charities relief should only be available to charities which are registered with OSCR. We believe LBTT charities relief should also be available to charities registered with the Charity Commission or recognised as charities by HM Revenue and Customs, and also to overseas charities operating in Scotland, whether or not they are required to register with OSCR."

However, we obviously want to ensure that any body that is claiming to be a charity has a genuinely charitable purpose. How do we do that?

Nick Scott: The answer is much the same as the points that have been touched on already. You can see why, at a practical level, we would go to OSCR, because that is the body that we know and it will have done the testing for us. The point is that it would be for the charity to claim an exemption or relief and to justify why it meets the criteria. It strikes us that that is a better and more legitimate approach than to have a criterion that says that the charity must be registered with X, Y or Z.

Jamie Hepburn: To be fair, you have given two examples—HMRC and the Charity Commission—and I freely accept that we are talking about a minute number of instances, if any, but the circumstances could arise, so we had better get it right at the start. If organisations say that they are charities but perhaps do not fulfil the criteria, how will we check them? You said that they will have to prove it, but how will they do that?

Nick Scott: That is a fair concern. I do not think that it is the biggest concern in the overall scope of the bill.

Jamie Hepburn: I accept that.

Nick Scott: However, I take your point.

Elsbeth Orcharton: I understand that similar issues have arisen in the tax system at a UK level and HMRC maintains a list of bodies that are the equivalents to OSCR in different parts of the world, although not every part of the world has the equivalent of charity tax exemptions and reliefs for charities as countries have different structures. It may be that that approach could be followed. Under it, there is an exercise to be undertaken, however. It is an administrative burden for a Government or tax authority to do that work.

Jamie Hepburn: Okay.

Jean Urquhart (Highlands and Islands) (Ind): I am afraid that I want to go back to sub-sale relief and tax avoidance. The bill has been generally welcomed by everybody who has come in to give evidence on the ground that it is much clearer and it simplifies things, yet when we come to the detail, there seems to be nervousness in each area that we might change things too dramatically and that business might be asked to pay too much, which

would be off-putting. That nervousness about the bill has been a large element in your evidence today.

We can assume that the bill is welcome and it represents a real opportunity for clarification and simplification. Last week or the week before that, somebody said in the House of Commons that people can drive a coach and horses through SDLT. That means that there has been a huge loss of revenue to the Government, which has to be balanced up somewhere, causing people to have to pay more.

You seem to be suggesting that closing some of the loopholes that we are proposing to close is a bridge too far. However, if everybody paid their tax, maybe we could all pay a little bit less, so it is important to close the loopholes. Would it be better to begin by stating that everybody should pay and that there may then be exemptions, rather than trying to anticipate what all the areas should be and include them in the bill?

Elsbeth Orcharton: My observation would be that this is a great opportunity to simplify, to clarify and to sort out the distinctions between English property law and Scots law. If the drafting, as the bill proceeds, can preserve reliefs and exemptions in commercial circumstances where they support economic activity for a good policy reason, that is fine.

What should not be encouraged or enabled is the drafting of legislation on the reliefs without our having the legislation on the anti-avoidance provisions, many of which we have not seen yet because they will sit in the proposed tax management bill, which is still to come. We should not adopt that approach. That does not in itself mean that we should not be able to proceed with the likes of sub-sale relief in commercial development transactions, which may be important from an economic perspective. There will not be a revenue cost if the relief is already there.

Alan Cook: I agree. It is correct to say that the principles and aspirations behind the bill are supported fairly universally. Simplification is also supported—that is why, for example, the intention is to simplify the partnership arrangements, which are one of the most complex bits of the SDLT legislation. We are not talking about that today because we do not know what the legislation will look like for LBTT, but that is an example of an area in which simplifying the legislation is supported across the board. However, there is a distinction between simplifying the legislation and cutting out bits that taxpayers feel are important in underpinning economic activity.

Jean Urquhart: Nobody wants to discourage business, but thinking about entrepreneurialism

and so on, is the tax really a priority in terms of what makes companies develop business opportunities with pieces of land or properties? It is not the first thing on their minds, is it?

Alan Cook: It is pretty high up in the minds of people in the property industry. SDLT is quite a straightforward tax in the sense that it is pretty easy to see at a simple level what percentage of the price that you are paying for land will be creamed off in tax through SDLT—it is 4 per cent at the top level. To give a comparison, when stamp duty was replaced by SDLT, it generated a vast amount of heat in the property industry, and a vast amount of interest. That is indicative of the high profile that stamp taxes—including LBTT—have within the property industry. Anything that is seen as a significant change to the rules will be quite high profile in the minds of people in the property industry.

Nick Scott: It also depends on which participants in the property industry we are talking about. For someone who is thinking about buying a house, the LBTT rate might not be the biggest determining factor in whether they do that. The rate will not necessarily have a bearing on where they choose to live or which property they go after. The LBTT rate might also not be the most important determining factor for an investor who is buying a £50 million office block. However, uncertainty about what the rate will be can be a discouraging factor.

For other people—I mentioned developers earlier—the cost of LBTT relative to the development profit that they will make by creating the investment is material. It is not 4 per cent on the top of the gross. The 4 per cent may well be half or a quarter of the entire profit that they make from the project, so it will surely be a material factor for them in determining whether they spend years pursuing a particular project or pursue another one elsewhere.

Jean Urquhart: There was a bit of a stushie when stamp duty changed to SDLT. What was the outcome? Were many of the concerns realised? Did business stop? Was there a dramatic change in how people bought property or developed commercial ventures?

Alan Cook: Life always goes on, and commercial activity always goes on. When SDLT was coming in, just to pick one relevant example, sub-sale relief was not initially a feature of the SDLT legislation, but there was such concern about the whole thing that it was accepted that sub-sale relief would be a feature of SDLT. I am not suggesting that history will repeat itself—although I rather hope that it will—but that is an example of a level of concern being generated and of the tax authorities or the Government of the day accepting that an issue is genuine and accepting

the argument that an impact would be felt in relevant cases.

10:45

Jean Urquhart: The authorities listened, but they made so many exemptions that their tax collection regime has been faulty for quite a long time, which has involved millions, if not billions—quote, unquote.

Alan Cook: The SDLT legislation is not exactly the finest example of parliamentary drafting—it is unclear and technical. Tax legislation that is unclear and technical lends itself easily to tax avoidance, because people can pick many potential loopholes in it. That happened with SDLT.

A feature that was subsequently introduced into SDLT and which will be a feature of LBTT is a general anti-avoidance rule. SDLT initially had section 75A of the Finance Act 2003, which is not proposed to be a feature of LBTT. That will be superseded by a general anti-avoidance rule, which will be a feature of LBTT, by virtue of the tax management legislation. Such a provision will probably have the biggest impact on closing loopholes because it is an overarching blanket that stops avoidance.

Gavin Brown (Lothian) (Con): The tax rates and bands are due to be published in September 2014 and the tax is to go live in April 2015. In the view of your organisations and the people whom you speak for, when should the tax rates and bands be published?

Nick Scott: My perspective and that of our client base is that the sooner that happens, the better. If specific rates cannot be published, guidance about the intentions and an indication of the top rate would be welcome. As I have said, the issue is uncertainty in buying a property today and not knowing what the value will be once the rates are announced, because the rates will affect the value when the property is sold on. That discourages people from investing and affects their ability to make sane and rational decisions about investing in property.

Elsbeth Orcharton: I echo that. I understand that it is proposed that the bill be enacted this summer. ICAS has always taken the view that it is for the Parliament to enact what it intends should happen, but I must admit that we have an intellectual problem with a tax being introduced without the details of its structure being set out as the bill is considered. I completely understand that rates might need to be flexed according to the perception of the revenue that would be raised, but key decisions of principle will be in the act.

I understand that, under the follow-up timetable, there will be further consultation on the regulations that will contain details of the rates. That is due to be concluded by summer 2014. If that is the last time that the Parliament considers the issue, that should finalise matters, but to leave it another few months before anything is announced would be a poor outcome. More control and decision making would be expected of the Parliament in relation to the direction that the bill is to take.

Alan Cook: I agree. As I said, by virtue of the way in which the transitional arrangements will work for the introduction of LBTT, contracts are being entered into and deals are being negotiated now that will be subject to LBTT because they will complete post April 2015. The people who are entering into those arrangements do not know what tax they will pay on the transactions. One might argue that, as LBTT is intended to be revenue neutral overall, the amount of tax might be expected to be roughly in the same ballpark as would be expected under SDLT. However, it may be that the tax on higher-value transactions and commercial transactions needs to go up to compensate for a favouring of the residential market. That might end up being the case to a greater or lesser extent, but the point is that we do not really know. Investors and developers do not know to what extent they might be expected to shoulder a greater tax burden, and that produces some uncertainty. Therefore, any guidance or indications that can be given now as to the broad direction that the balance will take would be very helpful for people.

Gavin Brown: We have had a lot of discussion on sub-sale relief, so my questions on the issue will be brief, but I want to follow up one point.

You have all indicated that you favour retaining sub-sale relief, and you have given examples of why you believe that such a relief is important. You have all also accepted that, as things stand at the UK level, at least over the past couple of years, sub-sale relief has been subject to avoidance that is not seen as legitimate within the industry. In considering whether and how to amend the Land and Buildings Transaction Tax (Scotland) Bill, how easy would it be for the Scottish Government to include provision for a targeted sub-sale relief that would allow genuine transactions—if I can phrase the issue as such—while preventing some of the more aggressive avoidance measures? How easy would it be to include a provision in the bill that would satisfy both policy objectives?

Alan Cook: The reason why sub-sale relief under SDLT has provided such rich pickings for the tax avoidance industry is that it does not work in the same way as other reliefs. People do not really have to claim sub-sale relief. It just

disappears under the radar because it involves a disregard of the first stage in the sub-sale process. Other reliefs need to be claimed by submitting a return form and ticking a box that says that a particular relief is being claimed, so the transaction is firmly on the radar and it is open to the tax authority to investigate whether people are really entitled to claim the relief.

I envisage that sub-sale relief under LBTT would involve a similar type of process whereby the transaction is firmly on the radar. Of course, that will be combined with the general anti-avoidance rules that will be in the tax management bill. The whole purpose of those rules will be to stop avoidance activity, whether through sub-sale relief or anything else.

Gavin Brown: Do other panellists have similar thoughts?

Elspeth Orcharton: I agree. It is perfectly within the capability of the draftsman to do a far better job than the combination of reliefs that currently sits in the legislation. Other pieces of legislation use, for example, targeted anti-avoidance provisions and bona fide commercial reasons tests.

It should also be possible to look at the compliance management process that revenue Scotland or Registers of Scotland will use when claims are made. Actually, an effective compliance and challenge process has been missing from the practical operation of SDLT, and I suggest that that might be one reason why there was so much proliferation of avoidance activity in that area. That is about how the tax is managed by revenue Scotland.

It is perfectly possible to include such a provision. It will take a little time and thought, but it is possible.

Nick Scott: Often, it was not so much sub-sale relief itself as the combination of sub-sale relief with other reliefs that gave rise to many of the concerns that were raised. I do not think that there is a fundamental problem with including a sub-sale relief that will have the effect that we all want it to have and encourage the economic activity that we have all been talking about.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I have one final question on sub-sale relief—unless Michael McMahon has lots of questions on the same issue. Would the amendment that the UK Government is about to introduce be a good model to follow, or might there be some flaws in that approach as well?

Alan Cook: The UK Government's proposal involves people claiming sub-sale relief in the way that I described, which would mean their claiming it just like any other relief, where a return has to be

submitted, so the transaction is on the radar. The UK Government has combined that with several pages of legislative drafting to define in intricate detail all the possible circumstances that it can see in which the relief might be used, not used, abused and so on. In the interest of trying a simplified approach, I suggest that what is missing in that approach is the impact that a general anti-avoidance rule has on attempts to manipulate the rules inappropriately.

Malcolm Chisholm: Thanks for that. That leads me on to the comment that was made a moment ago about SDLT not being the finest example of parliamentary drafting. The Pinsent Masons submission suggests that, to some extent, the bill copies some of those problems. An example is given—which I will not even attempt to describe—about the relationship between section 10(5) and section 37, but the submission also makes the more general comment that that and several other points in the bill will need to be clarified by guidance. That is one concern.

In the interests of time, let me combine that with another concern. Two of the submissions point out that the fact that some things are not in the bill because they will be in regulations is a matter for concern. In particular, reference is made to section 67, which I think deals with our favourite topic of exemptions. Are there large issues in the bill that need to be sorted in primary legislation rather than in guidance? Is it only section 67 that needs to be looked at from the point of view of requiring primary legislation rather than regulations, or is there a general problem that too much of the detail is left to regulations?

Alan Cook: Section 67 allows for reliefs and the like to be adjusted through subordinate legislation, which will be subject to parliamentary process. I will not comment on whether the affirmative or the negative process is appropriate for individual cases, other than to say that it is a common feature of tax legislation to provide a facility for making fine adjustments without having to wait for primary legislation. I suppose that we take the view that, whether the affirmative or the negative process is used, the checks and balances in the parliamentary process should ensure that there is no abuse.

The problem with copying over large parts of the SDLT legislation into the LBTT bill is that we have spent the past nine years or so, since SDLT came in, trying to work out how it should work in practice. To be honest, it is not really possible to look at the SDLT legislation cold and understand how it ought to work. The only way in which to understand it is to understand the background to the sticking plasters that apply to particular provisions. One needs to know the guidance that the revenue—that is, HMRC—has issued about

hundreds of instances to know how the legislation needs to be interpreted to make a particular scenario work, because there are so many inconsistencies or uncertainties in the legislation.

Where the LBTT bill copies over the SDLT legislation, we are going back to year zero, if you like, as we will not have the benefit of the years of guidance that the revenue has built up, which is hidden away in manuals or guidance notes on its website and so on. We would need to feel our way through the whole thing again with revenue Scotland. In an ideal world, we would take the time to ensure that the LBTT legislation deals properly with all those points. I suspect that the reality is that, unfortunately, we do not have the luxury of the time that is needed to achieve that.

11:00

Malcolm Chisholm: ICAS is more worried about the secondary legislation point.

Elsbeth Orcharton: Yes. Perhaps I am worrying but, as I read the bill, the powers that are being taken relate to the structures of the tax in terms of rates and bands—I completely accept that an adjustment to make the rate 3.5, 3.6 or 3.7 per cent would be within the normal budgetary process that we might expect—but they also extend to all the reliefs and exemptions. We have spent a considerable amount of time this morning discussing reliefs and exemptions and whether we should or should not have them. The ability to make changes by regulations to what has been perhaps the biggest area of discussion seems slightly generous.

Malcolm Chisholm: That is useful, although I can think of the counterarguments.

You are also concerned about the number of definitions that refer to UK legislation. You give the example of the definitions relating to corporation tax, but are there lots of examples that you are concerned about?

Elsbeth Orcharton: I found a few examples as I read through the bill, but my point is more on the principle. If the bill is to be Scottish legislation by the Scottish Parliament, I wonder why it has definitions that we do not control. The Corporation Tax Act 2010 is not controlled by the Scottish Parliament. If a change in the definitions in that act was enacted by the UK Parliament, that would change the impact of the LBTT legislation without the Scottish Parliament doing anything. It seems perfectly acceptable for some of the definitions that are not controversial simply to be copied in their current form. That would make them part of an act that the Scottish Parliament controls rather than part of something that it does not control.

Malcolm Chisholm: I am sure that you will do this, but it would be useful if you suggested amendments for stage 2 on a lot of the points in your submission. That is certainly true of the Pinsent Masons submission, which has a lot of detail that is appropriate for stage 2.

One general point that has come up relates to Registers of Scotland. We have the keeper of the registers of Scotland coming to the committee next week. Pinsent Masons seems to favour the current system. This might be unfair, Mr Cook, but it seems that, in many of your comments, you have urged us not to change the existing SDLT provisions. Your submission mentions the land transaction return that is currently submitted to Registers of Scotland and your worry about the new arrangement under which payment will go at the same time as registration. You make the interesting point, which nobody else has made, that in practice people have only 14 days, rather than 30 days. You go on to say that the Land Registration etc (Scotland) Act 2012 will perhaps solve all the problems.

My simple question is: do we just have to ensure that we follow your proposal about implementation of that act? Would the 35-day priority period cancel all your other concerns, or will they still stand even after the 2012 act comes into force?

Alan Cook: That would certainly be helpful. The detail on the point is in our written submission. It is probably fair to say that there has been a general pushback from the property industry on the notion that someone will not be able to register their title until they have not only submitted their return but paid the tax, whereas at present people have to submit the return, but they do not have to pay the tax.

I guess that the system under SDLT is justified on the basis that, by submitting a return, someone has submitted themselves to the tax system. In the unlikely event that they do not follow up quickly with payment of the tax, they are in the system and it is easy for the tax authority to enforce payment, because it knows that they should have paid it. It seems to me that it is fairly straightforward for HMRC's computer systems to link the two using the codes that are adopted for individual returns. I do not think that a manual process is involved, although I think I saw somewhere in the policy evidence that revenue Scotland might be concerned about that. To me, there does not seem to be a particular compliance issue with tax collection under the current system.

Malcolm Chisholm: Okay. I will not go into licensing and charities except to ask two brief questions. Nick Scott gave the example of licensing a music gig for a night, which rather

surprised me. Are you suggesting that that will somehow be caught by the bill?

Nick Scott: That is our reading of the legislation. There is a concern that removing the exemption of licences from LBTT will accidentally sweep into LBTT all sorts of things that to date have not been covered by SDLT. I gave my example to ask whether that is what is intended. There are more meaningful and legitimate examples to concern ourselves with, but we need to be clear about what the intention is.

Malcolm Chisholm: Thanks. Finally, on the issue of charities, into which I will not go in great detail, I was intrigued by the reference to Scottish Natural Heritage in the ICAS submission. I did not quite understand the reference.

Elsbeth Orcharton: Scottish Natural Heritage has charitable status granted by HMRC, but it does not meet the conditions of the Charities and Trustee Investment (Scotland) Act 2005 in order to be recognised as a charity in Scotland by OSCR. If the LBTT bill applies only to properties acquired by bodies that are approved by OSCR as Scottish charities, SNH's situation will change. If it acquires land in a transaction under SDLT, it is within the charitable exemption, but that will not be the case under LBTT.

Malcolm Chisholm: I find that really interesting, because I did not realise that that was the case. It opens up the question whether lots of bodies that are registered with HMRC are in the same position as SNH in that regard. I do not know whether SNH has tried to register with OSCR or on what grounds it cannot register.

Elsbeth Orcharton: My understanding is that there is a particular provision in OSCR that has something to do with ministerial control.

Malcolm Chisholm: That is true.

Elsbeth Orcharton: My understanding is that that is likely to be the test that is being failed.

Malcolm Chisholm: I did not think that Scottish Natural Heritage was covered by that.

Elsbeth Orcharton: I am not aware that a huge number of charities are involved in that way, which could lead me to conclude that you will not cause a big problem if you do not include them. However, it is sometimes useful to think of examples and, if there are not a big number, ask whether we should just include them. Nevertheless, the current policy decision is as I have stated.

Malcolm Chisholm: Okay. That is interesting—thank you.

Michael McMahon (Uddingston and Bellshill) (Lab): I apologise for not being in my place when you kicked off the meeting, convener.

I waited until the end because I was hoping that someone else would ask this question, which might open up a can of worms that we have not gone into before, although I hope that that is not the case. I will not make any “Carry On” film references to the “bare trustees” that are mentioned in the Pinsent Masons submission, but it raises the issue and I have not seen any evidence that anyone else has gone into the area. I am not sure how significant the issue is, though—that is the essence of my question.

The Pinsent Masons submission identifies an inconsistency, stating:

“Schedule 18 Part 3 paragraph 5 states that, where a person acquires an interest as bare trustee, the interest will be treated as vested in the person for whom the bare trustee is trustee.”

The submission then points out that that position is contradicted by a statement elsewhere that says that it is not the case.

Alan Cook: That was pointed out initially as an inconsistency between the policy memorandum and the bill. I was not sure whether the inconsistency arose from the SDLT wording being cut and pasted into the bill as something that would be revisited along with, for example, the partnership rules. I forget whether the trust rules are being looked at as well. I was not sure whether that inconsistency would be picked up as the bill went through the parliamentary process.

Michael McMahon: Okay. I think that we will need to get clarification of that, convener. The issue has not been raised before, so I thought that it would be interesting to see whether it needs to be addressed.

The Convener: Okay. Thanks very much for that.

I thank the witnesses for their oral evidence and their detailed written submissions, which are much appreciated.

Given that we have been going for 100 minutes, we will have a break to allow a changeover of witnesses and to give colleagues a chance to clear their minds for the next evidence session. We will come back at 11.16.

11:10

Meeting suspended.

11:16

On resuming—

The Convener: We continue our oral evidence session on the bill. I welcome to the meeting Elaine Waterson, from the Energy Saving Trust, and Chas Booth, from the existing homes alliance.

We will not have opening statements and will go straight to questions. I may as well kick off—I usually do. I will not ask a lot—[*Interruption.*] Of course, I would get on a bit quicker if the deputy convener did not heckle me. [*Laughter.*]

Obviously, the ground that we will cover will not be as extensive as that covered in the previous session. My first question is for Chas Booth, but Elaine Waterson can answer subsequently.

Your submission states:

“It makes much sense therefore to introduce a relief at this stage within the principles of the bill, and allow the proposed tax to start to shape investment decisions before the bill is enacted.”

You go on to say that

“most energy efficient homes become cheaper to buy as the transaction costs decline. Therefore, demand for energy efficient homes might increase and thus incentivise sellers to invest to improve ratings.”

As you may be aware, we have taken a lot of evidence from organisations such as Homes for Scotland and the Scottish Building Federation; we have also taken evidence from the Government’s bill team. Some of us were surprised by their evidence, because they completely refute the view that energy efficiency has any impact whatsoever on someone’s decision to buy a home, although they will look at the cost of the house, stamp duty and a number of other factors.

I asked the bill team about zero-carbon homes relief and they said that there have been only five applications—of which three were awarded the relief—in the United Kingdom since the legislation came in in 2006. Would your proposal have any impact? Where is the evidence that it would? The people who sell homes day to day tell us that it would not have an impact.

Chas Booth (Existing Homes Alliance):

Thank you very much for the opportunity to give evidence. I want to clarify that I am giving evidence on behalf of the existing homes alliance, which is an alliance of lots of different organisations. I work for the Association for the Conservation of Energy—ACE—which is a trade association. Our members are companies with an interest in energy efficiency and are major manufacturers and installers of energy saving equipment. We are members of the Scottish fuel poverty forum, the existing homes alliance—under whose remit I am giving evidence to you—and Stop Climate Chaos Scotland.

The alliance supports the principle of the introduction of an energy efficiency relief. We accept that there may need to be more discussion on the practicalities of how that is introduced. I will make it clear if I deviate from speaking from the existing homes alliance’s perspective to an ACE perspective.

To answer your question, it is absolutely clear that, at the moment, energy efficiency is not a significant factor when people come to buy and sell homes. Part of the reason for introducing the relief is to make energy efficiency a more significant factor.

The context is that energy performance certificates, which were introduced in 2009, are required at the point of sale. The intention behind those was to raise awareness of the energy efficiency of homes. There is very little evidence that they have been effective in the UK, although there is some evidence that they have been more effective across the European Union. We suggest that although an energy efficiency relief on a transaction tax will not be a magic bullet, it will significantly improve the chances of people taking seriously the energy efficiency of properties.

I will hand over to Elaine Waterson, as I know that the Energy Saving Trust has done quite a bit of research on that.

Elaine Waterson (Energy Saving Trust): Yes. Chas Booth is absolutely right. We know from the research that we have done that people say that energy efficiency and fuel bills are really important to them when they make decisions about purchasing properties, but when it comes down to it, that is not the case. Other things are much more important to them, such as the location of the property, the size of its garden and the number of bedrooms that it has. Energy efficiency makes very little difference when people purchase properties.

A key barrier to people installing energy efficiency measures is that they think that there is a risk that their investment will not be recouped through fuel bill savings over the period in which they live in the property. That prevents them from investing in and taking up energy efficiency measures. It is important to introduce other incentives that would encourage them to invest. Offering reliefs could make a big difference.

The Convener: I am interested in pursuing the detail of that. You have both said that there should be reliefs. The Energy Saving Trust’s submission says that the bill should include

“provisions to allow the introduction of specific reliefs”,

which has just been mentioned. How would those provisions be implemented? How much would they cost? What form would they take? How would we fund them?

The previous witnesses also talked about reliefs and exemptions. I raised with them the issue that the Scottish Government is looking for the bill to be revenue neutral, so that we do not have to cut services because the tax take is low or impose taxes elsewhere to make up any shortfall. What

would the financial impact be if we brought in reliefs? How would the money be recouped from elsewhere? Previous witnesses have said that increasing rates would disincentivise people from investing in property in Scotland. I am looking for more detail on how your proposal would work in practice.

Chas Booth: As I said, we accept that perhaps there needs to be more discussion about how it could work. The existing homes alliance has made the specific proposal that the rebate would be based on the energy performance certificate band. For example, a property rated A or B might receive a 50 per cent reduction in the levy or tax that would be due. That would reduce to, for example, 30 per cent for a C-rated property and 20 per cent for a D-rated property, and there would be no reduction at all for the least energy efficient properties. We have done research that estimates that the impact could be between £80 million and £170 million if reliefs alone were introduced.

An alternative approach would be to introduce a relief for the most energy efficient properties and a levy for the least energy efficient properties such that the overall impact would be revenue neutral. For example, a significant rebate could be provided for A-rated properties, there could be a small levy for G-rated properties, and the banding in-between could be varied to ensure that those who sold the least energy efficient properties paid a little bit more, and those who had the most energy efficient properties paid less. That would have the impact of being revenue neutral.

The Convener: Say an MSP decides to buy a house in Edinburgh. They might have decided to buy it because they might have a good salary and all the rest of it, and it is likely to be energy efficient. A young person who is starting out may be on a low income. A couple of weeks ago, my assistant bought a house that was built in 1898. Surely what you propose would have an adverse impact on people at the lower end of the income scale rather than people who have money. The proposal would be regressive in some ways in respect of people's incomes.

Chas Booth: I agree that it would have that effect if it was introduced in isolation. However, we have the benefit of the Scottish Government's excellent energy assistance programme, which provides grants to people in fuel poverty. The Scottish Government will soon introduce the national retrofit strategy, which will provide grants to improve energy efficiency and for other measures. There is also finance from the UK Government's green deal, which people can use to install energy saving measures in their homes at no up-front cost. In the context of all those measures, including the Scottish Government's boiler scrappage scheme and the many other

initiatives to promote energy efficiency, the overall impact would not be regressive—it would be quite progressive.

Part of the crucial gap with regard to the promotion of energy efficiency is the fact that there is very little incentive to home owners or building owners to invest in energy saving because, in most cases, they will not get their investment back.

To take my own example, I live with my wife and two young children in a two-bedroom Edinburgh colony flat that was built in 1863. Over the past few years we have invested around £20,000 to improve the energy efficiency of the property through draught proofing, solid wall insulation, solar panels, an upgraded boiler and so on. If we come to sell the flat in the near future, we will not make that back. There will be no energy efficiency benefit to us for all the things that we have done. We made that investment partly to improve comfort in the home—it was quite cold, especially at night—and partly to see what the practical difficulties and challenges were in going through the process. Most ordinary people would not do that. Introducing a relief as part of the Scottish Government's package of measures to improve energy efficiency would have a significant impact.

Elaine Waterson: I agree with Chas Booth. The Scottish Government has indicated that it is seriously considering regulating energy efficiency, possibly from 2018. Getting people used to upgrading their home's energy efficiency at the point of sale is an important precursor to introducing such regulation in future.

The Convener: Is there not an issue about whether the cost of bringing a property up to those standards is higher than the amount that people would make on the relief?

Chas Booth: Yes, I think that that is true. Any relief will be an incentive, but it will not necessarily offset the entire cost of the measure. That is the purpose of the green deal finance and the national retrofit strategy. Someone who is in fuel poverty and who is eligible for various reliefs will get lots of measures for free under the Scottish Government's national retrofit strategy. Those who are not eligible to get those measures for free can still get green deal finance, which will allow them to install energy efficiency measures at no up-front cost. The up-front cost of energy efficiency measures has been a significant barrier in the past, and that is part of the problem that the green deal seeks to address. The benefit of an energy efficiency relief on the land and buildings transaction tax would be an added encouragement.

The Convener: I do not want to hog the session, so I invite colleagues to ask questions.

Jamie Hepburn: You might not want to hog the session, but you have already asked some of the questions that I wanted to ask.

The Convener: You always say that.

Jamie Hepburn: The answers that have been given allow us to ask for a bit of further explanation, however. I refer to the existing homes alliance's specific suggestion about properties that are sold, which is that

"a percentage relief could be applied according to the energy rating band of the property."

My first observation is that it is useful to have a specific proposal, and for it to have been costed, which we do not always get.

The proposed percentage reduction for each band seems quite high with—if I have picked you up correctly—50 per cent for properties rated A and B, 30 per cent for C-rated properties and 20 per cent for D-rated properties. Does the existing homes alliance believe that the reductions need to be that high for the measure to be effective?

11:30

Chas Booth: I go back to my previous response. We accept that there might need to be some discussion about the detail of our initial proposal and are happy to discuss with Scottish Government officials whether such levels are appropriate. Of course, the greater the rebate or relief you give, the more impact it will have.

We note that the zero-carbon homes relief, which under current proposals will be removed from the land and buildings transaction tax, was set at 100 per cent, and we think that it would be a major missed opportunity if there were no alternative that greatly incentivised energy efficiency improvements. If you are removing a 100 per cent rebate—albeit a rebate that I accept has not benefited a large number of properties—you could, as an alternative, say, "Okay, the zero-carbon homes relief has not been effective but instead of ditching it altogether let's see if we can come up with a more effective strategy."

The advantage of our approach is that it will tackle existing homes, which are by far the biggest problem with regard to fuel poverty and climate change emissions. The zero-carbon homes relief was wholly for new homes and therefore benefited only a small number in absolute terms and had only a small impact on fuel poverty and climate change.

Jamie Hepburn: That tallies with previous evidence that we have heard. I suppose that the advantage of your proposal is that every home put up for sale will have to be rated.

You have indicated the scheme's likely impact on revenue accruing to the Government through the tax system, but have you assessed its likely impact on market activity?

Elaine Waterson: In terms of people wanting to take up the offer?

Jamie Hepburn: In terms of whether it would be an incentive for people to buy and sell homes.

Elaine Waterson: The only research of which I am aware is UK-wide work that we did about eight years ago and which is therefore quite dated. We spoke to householders about possible reliefs linked to stamp duty land tax and found that they were fairly enthusiastic about the idea. I think that something like 26 per cent of householders with unfilled cavity walls said that they would take up such an incentive. However, as I said, that is quite old research, which was based on specific rebate levels.

Jamie Hepburn: Which were what—if you can remember?

Elaine Waterson: I can, but I should caveat my response by pointing out that we were encouraging people to install cavity wall and loft insulation. Now we would be looking more at solid wall insulation, which is much more expensive and disruptive to install. We had suggested something like £300 to encourage the installation of loft insulation and something like £500 for cavity wall insulation, but that included discounts that people would already get from their energy suppliers for installation.

Chas Booth: The Scottish Government's consultation found that two thirds of respondents wanted an energy efficiency rebate. That suggests that consumer demand exists for such a measure.

Jamie Hepburn: I am not necessarily saying that this is my perspective on the matter. I have to say that I was surprised by what we were told. However, the cynic in me would say that it is easy for people to say that but, when push comes to shove, how much of a priority will it be? That said, you seem to accept the point and are looking at how we can make it a priority.

Elaine Waterson: If people know that regulation is coming, they might see this as a really good opportunity to look for support from an incentive to get something done instead of waiting until the regulation kicks in and finding that the big incentives are not available any more.

Jamie Hepburn: I note what appears to be a slight contradiction in paragraph 11 of the existing homes alliance's submission—although to be fair I think that you have posited it as a contradiction with your use of "Alternatively". You say that the introduction of your proposed relief scheme

"could mean that the most energy efficient homes become cheaper to buy as the transaction costs decline",

but then go on to say that

"Alternatively, sellers might increase the asking price in the knowledge that savings in transaction costs would be realised by the buyer."

Those two points are quite different and seem to contradict each other. I realise that you might be hedging your bets a bit but which of those scenarios is more likely and—more important, perhaps—more desirable?

Chas Booth: It is important that we develop an energy efficiency premium for housing to ensure that energy efficiency itself rises up the list of factors that people take into account when they buy properties. We have suggested two possible ways of doing that. If there is a tax relief, that property becomes cheaper than it would otherwise have been; it is, however, possible that the seller will want to reclaim some of that, especially if they have invested significantly in the property's energy efficiency. I do not see that as a problem as long as energy efficiency rises up the list of factors that people take into account. If a seller is more likely to invest in energy efficiency because they think that they can get a marginally higher sale price, that is a good thing. It is an incentive for them to invest in energy efficiency.

Jamie Hepburn: Does that not wipe out any incentive for the buyer through the reduction in stamp duty—or what will be LBTT?

Chas Booth: The buyer will have a number of incentives for purchasing that property, not least of which is the fact that their fuel bills will be much lower.

Jamie Hepburn: But that comes back to the point that I think we have all accepted, which is that that does not seem to be a priority at the moment. I have to be honest with you—I did not consider energy efficiency when I bought my home and the evidence that we have received is that other people feel the same.

Chas Booth: Indeed. Anyone who says that they can predict where fuel bills are going to go is on to a loser, but there is no doubt that they will be volatile in future. In order to protect themselves from that volatility, sensible home owners will become more and more aware of the energy efficiency of their properties. You might not have looked at your house's energy performance certificate when you moved in, but I would hazard a guess that you will start to look at these things when you get your next fuel bill and find it significantly higher than you expected. People who are buying properties will become increasingly aware of these issues as fuel bills increase. If our proposed relief scheme were to be introduced, it

might prove to be a significant factor in people's calculations.

Jamie Hepburn: Thank you.

Malcolm Chisholm: In general and in principle, I am sympathetic to the idea, simply because I realise that our existing homes are a massive problem for our climate change objectives, and I think that the proposal is worth taking seriously. However, we need to accept that it will have revenue consequences and that, if we are going to take that route, we will need to be absolutely sure that it is targeted on the right actions. I suppose that that is what I am interested in exploring.

I do not really object to Chas Booth getting a premium when he sells his house, given all the work that he has done on it, so if the change was made to help him that would be good.

Chas Booth: Thanks. *[Laughter.]*

Malcolm Chisholm: However, I might have a problem if the person who bought it from you also got a premium; after all, they did not take the action. If we put the proposed relief scheme in place, should it be focused on recent actions—or indeed the kind of prospective actions that the Energy Saving Trust focused on in its research—rather than something that might have been done 20 years ago? Why should those sellers get the premium? In other words, should the relief be focused on the property's rating or on the actions that have been taken to deal with the problem?

Chas Booth: I see where you are coming from, but I do not have an immediate answer to your question. I can consider it and discuss it with colleagues and then come back to you with a response.

I can say, however, that the financial cost of energy efficiency improvements carried out through the green deal stays with the property. In a sense, my situation is unusual in that we paid for our improvements with our own money and an Energy Saving Trust Scotland home loan, which is no longer available. That loan leaves the property with us, whereas green deal finance stays with the property.

When we come to sell, if there is relief, we might get some benefit from that. If the property was a green deal property, the buyer would take on the liability for the green deal finance. There is a reason why the property itself should benefit from the relief rather than the seller who introduced energy efficiency improvements, particularly if they are done through the green deal.

Malcolm Chisholm: But the Energy Saving Trust research really focused on the buyer doing some work. Is that idea still attractive?

Elaine Waterson: It is, in principle, because we would not want to pay people who have not done the work. We want to use the tax system to encourage people to do something; that makes sense. However, since we did the original work, the wider policy environment has changed. As Chas Booth said, we now have the green deal, and the liability for that will stay with the property. The people moving into that property will have to carry on making the repayments on that loan through their fuel bills. That changes the situation slightly and so it needs more thought.

Some have suggested that if a property has a green deal loan attached to it, that could act as a barrier to someone who might want to purchase it. Having some relief linked to LBTT could help people to get over that barrier.

The policy environment has changed since we did our original research. In an ideal world, we would encourage people to take action and only give relief to people who had done so. However, in reality, we need to think about that a wee bit more in the context of the green deal loan staying with the property.

Malcolm Chisholm: I am not sure whether your original proposal would have meant that there would be a rebate after the work was done or that a person who said that they were going to do the work would therefore not have to pay all the tax in the first place. I am not sure which it was. Either way, it leads to my next question. How does your proposal differ from just giving someone a grant to do the work?

Elaine Waterson: When we spoke to householders, we found that they felt differently about taxes and grants. People got quite excited when they were talking about tax and liked the idea of avoiding it. They were more keen to do something if they believed that, rather than getting a grant, it would mean that they could avoid paying tax.

Malcolm Chisholm: Was that the original proposal? Were you basically saying that people who did the work would not have to pay all the stamp duty?

Elaine Waterson: Yes. The buyer would undertake the work and they would get a stamp duty rebate at some point in the future when they had proved that the work had been done.

Gavin Brown: I just want to check the figures from the existing homes alliance. I do not see them in the paper but you gave them verbally. What did you think would be the cost of your proposed relief? You gave a range of figures, but can you remind me what the cost was?

Chas Booth: I apologise. The figures are not in our evidence to the committee; they are in our

response to the Scottish Government's consultation.

One proposal was for a specific 50 per cent rebate for properties rated A and B, reducing to a 20 per cent rebate for D-rated homes. We estimated that the impact of that would be between £80 million and £170 million. I did not do the research so I will have to ask my colleagues whether that is an annual figure or a one-off; I can check on that and get back to you.

Gavin Brown: That would be helpful. I thought that those were the figures that you gave. I ask because, according to the financial memorandum, the receipts in 2010-11—the most recent set of figures—for residential properties in Scotland were £165 million. Even if the cost is £80 million, which is at the lower end, the proposal would effectively chop in half the amount that is collected. It would be helpful if you could revert to the committee and say whether that is an overall figure or an annual figure.

Chas Booth: I will check that and get back to you. However, I stress that that is one proposal that we have made as the basis for a conversation; it is not necessarily our recommendation. An alternative would be a revenue-neutral approach that included a reduction for the most energy efficient properties and an increase for the most energy inefficient properties. We recognise that perhaps that might be more attractive to the Scottish Government, particularly given its desire for a reliable income from the tax.

11:45

Jean Urquhart: Following on from Malcolm Chisholm's questions and his observations about who benefits, do you agree that a tax allowance would be the least attractive way of realising our ambition for houses?

I agree that people do not want to pay tax—that is a given—but they have to, and when they are being sensible, they see that. Surely what we need to do with the grant system, particularly with new build, is to install energy efficient devices—whether insulation or heating sources—at the time of building. At the moment we are building houses that will be subject to retrofit because that is not happening, which does not seem to make any sense.

If there is money available, should the incentive be given to the developer, rather than an allowance being made at the tax end?

Elaine Waterson: Given that new build represents such a small chunk of the overall housing stock and the majority of carbon emissions are from existing homes, if we are

looking at how the tax system could improve energy efficiency, it makes sense to focus on existing homes. That is not to say that a system could not be developed that would encourage improvements across the board, from G-rated homes through to A-rated or zero-rated new-build homes.

As to whether going through taxes is the right way, as opposed to offering grants, there are already quite a lot of grants available. We know from experience of supplier obligations through the energy efficiency commitment and the carbon emissions reduction target that it has become harder and harder over the years to encourage people to take up energy efficiency measures. During the last part of CERT, some suppliers struggled to give insulation measures away for free. There is a need to look at all policy mechanisms that can be employed to encourage people to take up energy efficiency measures.

Chas Booth: I will expand on Elaine Waterson's point. Over the past six months to a year, energy companies offered a lot of cavity wall insulation for free and a number of people did not take that up. There will have been a number of reasons for that. They may have been unsure about what they were being offered; they may have thought that the deal was too good to be true; and they may have had concerns about the technical aspects of installing cavity wall insulation, despite the fact that those concerns have been comprehensively addressed and cavity wall insulation is no longer considered to be a risk to the property, as long as it is properly surveyed beforehand.

There are lots of reasons why people turn down offers of free insulation whereas they might take up a tax incentive. We have seen the example of council tax discounts, whereby people are offered a small discount off their council tax bill on the basis that they will install loft and cavity wall insulation. In most Scottish local authorities, that offer is more expensive than it would cost to go out to the general market to install cavity wall insulation, and yet the take-up has been quite substantial because certain people are particularly attracted to seeing that line on their council tax bill: "Reduction due to energy efficiency measures: £50".

There is a very broad demographic out there. Some people will not accept free loft and cavity wall insulation, but they will accept a discount on their council tax in order to install it. Our proposed energy efficiency rebate would tackle the demographic that is not reached through other measures.

John Mason: I will risk going over the same ground a little bit more, but this is the area that interests me. I asked the previous panel of

witnesses about it, but they could not answer me, so I thought that I would ask you.

If we were sitting here offering you a cheque for £20 million to improve the energy efficiency of homes in Scotland, would you put all or some of that into LBTT relief, council tax relief or grants? I still lean towards the idea that grants, or something immediate, would be more effective.

Elaine Waterson: As I said before, we need a range of policies. There are grants available at the moment, but recent work by WWF Scotland suggests that we need increased investment in energy efficiency. That should probably be in the form of increased grants for a wider national retrofit programme, for example.

Absolutely—more grants are required. However, it is important to employ other policies as well if we are to achieve our climate change targets. Those targets are massively challenging. They can be achieved most cost effectively by improving the energy efficiency of homes. Housing energy efficiency is the cheapest sector in which to deliver carbon savings, but the right policies need to be in place for that to happen.

John Mason: We have limited money, so we have to choose priorities—not us personally, but the Government. It would be nice to provide relief on council tax, this, that and the next thing, but where will we get most bang for our buck? Are you totally convinced that an energy efficiency rebate is one of the best places to put it?

Elaine Waterson: I am convinced that it is an important place to put it. We must bear in mind the fact that moving home is the point at which people do not care about energy efficiency; it is really low down on the priority list. An energy efficiency rebate could help people who would not otherwise do work to improve the energy efficiency of their home to undertake it. It would reach people who are not being reached at the moment.

John Mason: It would surely also miss a lot of people. I have lived in my flat for 23 years and have no plans to move, so it would be no incentive to me at all.

Elaine Waterson: Absolutely. I do not know the figures—you probably have a better handle on them than I do—but a relatively small proportion of people stay in their homes for more than 20 years. The majority move before that.

John Mason: Nevertheless, we are talking about quite a long time before some people would get any kind of feedback. The other thing is that I live in an estate with 270 flats, none of which is worth £100,000. The measure is of no incentive at all if the house is worth less than £180,000, is it?

Elaine Waterson: That is why we need a range of policies. It is why we need the national retrofit

programme and still need the supplier obligations. Those measures catch the people who would not be caught at the point of home sale.

Chas Booth: Your question was where we would put your £200 million—

John Mason: It was £20 million.

Chas Booth: Oh well, perhaps I was being a bit more optimistic.

Obviously, we would not put all our eggs in one basket. We would spread the money around to ensure that we had the maximum impact and developed incentives for the widest possible demographic.

As Elaine Waterson said, we have the context of some good Scottish Government programmes. We would like them to be better funded, but we recognise that it is better to have the energy assistance package and the national retrofit programme, which at least receive some taxpayer funding. In England, there is none at all, which is deeply regressive and deeply regrettable.

It should not be an either/or question. We should not be asking whether we tackle fuel poverty through the energy assistance package or offer a rebate for energy efficiency at the point of sale. Ideally, we should do both, because they tackle different demographics.

On how much an energy efficiency rebate would cost, I reiterate that it could be revenue neutral if we introduced a rebate for the most energy efficient and a levy for the most energy inefficient properties.

John Mason: I take that point.

I wonder about the practicalities of such a rebate. Building standards are changing all the time. I was down at the Commonwealth games athletes village recently and saw fabulous houses that Mactaggart & Mickel are building. They have a tiny little radiator that will heat a huge room. Mactaggart & Mickel says that it cannot do that commercially at the moment but that it would be the standard in the future. Would we need to change the regulations every year to raise the standard to prevent more and more houses getting an exemption?

Chas Booth: I will take off my existing homes alliance hat and put on my Association for the Conservation of Energy hat. Obviously, the existing homes alliance is concerned with existing homes. New build represents a small percentage of the market, but it is the easiest part to get right.

The Scottish Government has a road map. The Sullivan report, which was published in 2007, set out a road map to deliver very low-carbon homes in 2013 and zero-carbon homes in 2016. If we

stick to the road map, we will be fine. We will not need a zero-carbon homes rebate.

However, the consultation that the Scottish Government issued last month suggests that it is deviating from its road map by watering down the level of ambition and proposing to delay the introduction of the 2013 standard and, potentially, the 2016 standard. That concerns us greatly, partly because it punches a big hole in the Scottish Government's carbon reduction targets. In addition, it signals a lack of ambition. It says that the Scottish Government is quite happy for new buildings to be built to what, in a European context, are pretty poor standards. The energy standards that we have in Scotland were only recently brought up to the standards that Sweden set in 1978. We are around 30 years behind the best in Europe. We urge that the level of ambition be raised.

John Mason: Can I confirm that we are talking only about residential properties and not about any relief for commercial properties?

Chas Booth: Yes.

The Convener: You said that your scheme would be progressive but, looking at the figures, I have to disagree. Under SDLT, someone who buys a house for £100,000 does not pay any stamp duty. Under your incentive scheme—your A, B, C, D scheme—they would gain nothing, but someone who bought an A-rated house for £200,000 would save 50 per cent; in other words, they would save £1,000. Someone who bought a house for £2 million would save £87,500, which is a big tax relief, given that such a person is not likely to burn much more carbon than someone who buys a house for £100,000 and who gets nothing. Your proposed system appears to be highly regressive. Although the figures for LBTT will not be the same as those for SDLT, the wealthiest people who buy the biggest houses must be the ones who will gain, however you design the system.

You talked about grants. You said that your proposal could be revenue neutral through bands A to G, but if you propose to have grants as well, surely your system would not be revenue neutral. There would be a cost on the Scottish Government. You are not guaranteeing that the people who are on the lowest incomes would gain. To me, your proposed scheme just looks like a subsidy for the better-off.

Chas Booth: The Scottish Government's grant scheme—the energy assistance programme—already exists. From memory, the Scottish Government has committed around £65 million to it in the current financial year. Going forward, that will become the national retrofit strategy. Money has been committed to that in the budget.

Eligibility for that existing scheme is specifically related to the benefits that a person is on, so the poorest people will be eligible for 100 per cent grants for a lot of this.

I go back to my previous point. What we are proposing is not an either/or; it is in addition to the existing programmes. To tackle fuel poverty, the Scottish Government has the energy assistance package, which will become the national retrofit programme. We warmly welcome that and encourage the Government to continue to invest in it.

As far as your claim that our proposal would be regressive is concerned, I return to the point that I made earlier. We completely agree that there needs to be discussion about the level at which the relief would be set. Perhaps there should be a cut-off point, whereby properties above a certain value would not benefit. However, I think that there is a genuine need to create an incentive for energy efficiency in the housing market. Such an incentive does not exist at the moment. The energy performance certificates do not seem to have achieved that. We believe that a relief on LBTT would be a sensible way to proceed, although we recognise that we need to look closely at the impact that that would have on those people on modest incomes.

12:00

Elaine Waterson: For homes that were valued at a level at which LBTT did not have to be paid, there might be ways of including them in the scheme and giving them a rebate anyway. You are frowning.

The Convener: Yes, but that would cost money. The issue is that the bill is to be revenue neutral, but you are saying that we could have rebates and grants in addition to what is already being done. It is clear that that would cost more, which would have to come from other areas of the Scottish budget.

Elaine Waterson: Absolutely. It would cost more.

Chas Booth: Of course, there is also green deal finance. Those people who have an income can apply for green deal finance, which allows them to install such measures at no up-front cost. Those who are in most need will be able to apply for the existing programmes—the energy assistance programme and the national retrofit programme—while people who are not eligible for those will be able to apply for green deal finance, which will give them access to such measures at no up-front cost.

I agree that we need to proceed with caution and to look carefully at what the impacts of our

proposal would be, but I believe that, in the context of all the existing programmes, a system that is based on energy performance can be implemented in a way that is progressive rather than regressive.

The Convener: Okay.

Thank you very much. I thank colleagues for their questions. At the start of the meeting, the committee agreed to take the next item in private, so I close the public part of the meeting.

12:01

Meeting continued in private until 12:14.

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