

Scottish Land and Buildings Transaction Tax (LBTT): availability of group relief

General Features

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The CIOT has asked the Scottish Government to confirm whether or not LBTT group relief is available where shares are pledged as security for a loan.

The CIOT has written to the Scottish Government to ask for clarification on the availability of LBTT group relief in circumstances where the shares of the buyer group company are pledged as security for a loan. Our request followed an adverse ruling that we understand to have been given by Revenue Scotland in this area.

The Scottish Government's consultation on the introduction of LBTT, 'Taking forward a Scottish Land and Buildings Transaction Tax,' published in June 2012, proposed that a number of reliefs including group relief would be carried forward from SDLT.

The Land and Buildings Transaction Tax (Scotland) Act 2013 received Royal Assent on 31 July 2013 but with the omission of an equivalent provision to that for SDLT group relief in Finance Act 2003 Schedule 7 paragraph 2B (Certain mortgage arrangements not within paragraph 2) (inserted by the Enactment of Extra-Statutory Concessions Order SI 2013/324 article 7 with effect for transactions with an effective date on or after 1 March 2013). The enacting legislation in FA 2003 was intended to replicate the effect of Extra Statutory Concession C10 withdrawn post-Wilkinson.

The broad effect of the SDLT provision is that if shares or securities in a company are used as security under a mortgage (or legal or equitable charge) the mortgage will not in itself fall foul of the anti-avoidance provisions that deny group relief where arrangements are in existence under which a company in the group may come under the control of a third unrelated company.

The CIOT has asked for confirmation (by way of public guidance or other published statement) of the Scottish Government's policy intent; was the intention to replicate the substantive terms of the SDLT group relief legislation including Schedule 7 paragraph 2B?

If so, we consider that the Land and Buildings Transaction Tax (Scotland) Act 2013 should be amended (with retrospective effect) to include an equivalent provision at the earliest opportunity. Consideration should be given to using the powers under section 27(3) to modify Schedule 10 with immediate effect.

Certainty is needed not only for future transactions but in respect of transactions that have already completed claiming group relief so taxpayers need to know as soon as possible where they stand. Most corporate groups provide security to their lenders, so the number of transactions potentially affected, and level of harm to Scottish business, could be perceived to be significant.

At the time of writing we await the Scottish Government's response.