Scottish consultation on Land and Buildings Transaction Tax for property investment funds

General Features **Personal tax**

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The CIOT responded to a Scottish Government consultation on the potential introduction of reliefs from Land and Buildings Transaction Tax for the seeding of property assets into certain types of property investment fund and for when units in a Co-Ownership Authorised Contractual Scheme are traded.

Land and Buildings Transaction Tax (LBTT) replaced UK Stamp Duty Land Tax (SDLT) from 1 April 2015 in respect of transactions in land situated in Scotland and is legislated for by the Land and Buildings Transaction Tax (Scotland) Act 2013. The Land and Buildings Transaction Tax (Open-ended Investment Companies) (Scotland) Regulations 2015 provide for a tax relief for land transactions transferring property on the conversion of an authorised unit trust (AUT) to, or its amalgamation with, an Open Ended Investment Company (OEIC).

The early-stage consultation sought views on the potential introduction of further LBTT reliefs, in particular, a relief for the seeding of property assets into an OEIC or a Co-Ownership Authorised Contractual Scheme (CoACS), and a relief for when units in a CoACS are traded. The introduction of such reliefs would bring parity with the position for SDLT as the UK government introduced such reliefs for SDLT in Finance Act 2016.

The consultation also requested views with the aim of ensuring that the introduction of any LBTT relief would be consistent with the Scottish approach to taxation, which is that tax should:

- be proportionate to the ability to pay;
- provide certainty to the taxpayer;
- provide convenience/ease of payment and;
- be efficient.

In our submission, we recommended that the Scottish Government should introduce both a seeding relief for property authorised investment funds (PAIFs) and CoACS and a relief for the exchange of CoACS units. This would offer a number of advantages. Reliefs along the lines of those available under the SDLT legislation would represent a welcome streamlining of tax administration, and would therefore aid the efficiency of LBTT. Alignment of SDLT and LBTT reliefs would also provide simplicity and certainty for the taxpayer, and make enforcement easier (for both HMRC and Revenue Scotland). The introduction of these reliefs would also make it more likely that investors would consider including Scottish properties in their property portfolios.

In terms of tackling artificial tax avoidance, we thought that if the Scottish Government introduces the reliefs, it should introduce genuine diversity of ownership rules for CoACS, and that from the point of view of simplicity it would make sense to mirror the SDLT position. This would assist not only the property funds, but also Revenue Scotland and HMRC, in terms of enforcement.

If the Scottish Government thought it necessary to introduce general portfolio tests, we thought that these should have the same thresholds as those for UK SDLT and that they should be based on pan-UK property. This would not only reflect the fact that many funds will hold properties in different parts of the UK but would also simplify compliance.

Although in general we would favour alignment of the LBTT reliefs with the equivalent UK SDLT reliefs, we noted in our response that the UK SDLT clawback provisions are viewed as commercially detrimental by the property fund industry. Moreover, there are ongoing discussions between the industry, HMRC and HM Treasury in relation to the possible introduction of partial exemptions to the SDLT clawback provisions. In this instance therefore, we did not recommend that these are replicated, but suggested a couple of alternative measures for protecting the tax base, such as having a targeted anti-abuse rule to restrict seeding relief to commercially-run investment funds.

The full CIOT submission can be found on the CIOT website.