Scotland update: a call for evidence on the economic impact of leaving the EU, LBTT focus group, LBTT forum

General Features **Indirect Tax**

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A call for evidence on the economic impact of leaving the European Union (EU).

The CIOT made a submission in response to a call for evidence issued by the Economy, Jobs and Fair Work Committee of the Scottish Parliament, in respect of their inquiry on the economic impact of leaving the EU.

The CIOT responded to a call for evidence issued by the Economy, Jobs and Fair Work Committee of the Scottish Parliament. The Committee issued the call for evidence to support their inquiry into the Economic Impact of Leaving the European Union (EU).

The CIOT's response focused on tax implications for Scotland's exporters, non-UK companies investing in Scotland and on potential labour market issues. Due to space constraints, we merely highlighted key issues. The response took as its baseline the position if no agreement is reached between the UK and the EU under Article 50 of the Treaty on European Union (TEU).

In relation to exporters and those investing in Scotland, we set the scene by considering the likely implications in the areas of VAT, excise duties and customs duties.

We looked at a number of potential issues for Scotland's exporters, while pointing out that these might also affect non-UK companies investing in Scotland. For example, once the UK leaves the EU, it would also leave the EU customs union. As a result, goods going from the UK into the EU would be classed as exports (rather than dispatches) and subject to EU customs duties and import VAT.

While there may be a reduction in some areas of compliance (no need to complete EU intrastat returns or EC sales lists), in other areas Scottish exporters are likely to face increased compliance burdens, for example with export declarations and procedures needed for trade with EU member states.

The UK will no longer be able to offer the mini one-stop shop (MOSS), which currently applies to UK businesses selling digital services to non-business customers in the EU unless they are already registered for VAT there. So, Scottish businesses will have to either register for MOSS in an EU state or register and account for VAT in every EU state to which they sell digital services.

In relation to labour market issues, among other points, we noted that currently cross-border workers within the EU and their employers benefit from the Regulation on the coordination of social security systems, which prevents double contributions being paid. This will no longer apply to UK nationals working in the EU and EU nationals working in the UK. The UK only has a limited number of bilateral social security treaties which are uneven in their scope and effect, so withdrawal from the EU will increase the exposure to double contributions of UK workers who spend time working in the EU and/or to a less favourable effective benefit record being built up in the case of mobile workers.

The CIOT response is available on the CIOT website.

Land and Buildings Transaction Tax (LBTT) focus group

Representatives of the Scottish Technical Sub-committee of the CIOT attended a Land and Buildings Transaction Tax (LBTT) focus group organised by Revenue Scotland.

The purpose of the meeting was to discuss the application of the LBTT legislation to in specie transfers of property between pension funds, and in particular whether or not these should be chargeable.

Revenue Scotland's view is that pension fund in specie transfers may be liable to LBTT. This position is different to the view taken by HMRC for Stamp Duty Land Tax (SDLT). Revenue Scotland indicate that they have come to this conclusion on the basis that:

1. such transfers are land transactions and
2. the assumption of the liabilities by the receiving pension funds is debt as consideration.

There was general acceptance among attendees that the transfers are land transactions as defined in the legislation, however attendees felt that such transactions should not be chargeable.

Revenue Scotland have requested anonymised case examples of relevant transactions, to assist them in better understanding the structure and nature of in specie transfers – their constitution, arrangements and agreements. If you are able to supply any examples, we would be grateful and will feed these back to Revenue Scotland. Please contact the Technical Officer at scottech@ciot.org.uk.

Revenue Scotland's LBTT Technical Bulletin sets out their view on pension fund in specie transfers (chapter 4).

Land and Buildings Transaction Tax (LBTT) Forum

Representatives of the Scottish Technical Sub-committee (STC) of the CIOT attended a meeting of the LBTT Forum organised by Revenue Scotland.

Members of the STC attended Revenue Scotland's LBTT Forum at the end of October. Official minutes will be published by Revenue Scotland on their website: http://tinyurl.com/hfa42sf.

Elaine Lorimer, the Chief Executive of Revenue Scotland opened the session, noting that the Finance Committee of the Scottish Parliament had been gathering evidence about the operation and implementation of LBTT in its first full year. Revenue Scotland gave evidence to the Committee.
There was an operational update, which focused on the Additional Dwelling Supplement (ADS), which was introduced on 1 April 2016. This included an update on some headline figures, including that:

- ADS raised £36m of LBTT in its first five months. Approximately £3m has been repaid, when previous main residences have been sold.
- There have been over 7,000 returns on which ADS was due, accounting for 15% of total LBTT returns and 25% of all residential returns.

Repayments of ADS are relatively quick and it should be repaid in no more than 10 working days from receipt of the amended return showing disposal of the previous main residence.

Revenue Scotland also reminded attendees of the key differences between ADS and the 3% Stamp Duty Land Tax (SDLT) surcharge, such as:

- The window in which a main residence must be replaced is 18 months (3 years for SDLT);
- Deemed ownership includes co-habitants for ADS;
- Relief from ADS is available where six or more dwellings are purchased as part of a single transaction (no comparable relief for SDLT);
- There is no equivalent to the ‘granny flat’ exemption introduced for SDLT.

A technical spotlight session considered hot topics and recent developments, including a review of the October Technical Bulletin (http://tinyurl.com/gu79r2x). This included the treatment of commercial property that has planning permission for conversion to residential use – when acquired, this should be treated as residential property, unless the permission is conditional and that condition has not been satisfied. The Technical Bulletin also discusses the issue of ‘substantial performance’. Revenue Scotland will not provide a percentage amount for taxpayer to use as a benchmark to assist in determining whether or not a transaction has been substantially performed. This continues to cause concern.