This document relates to the Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill (SP Bill 22) as introduced in the Scottish Parliament on 13 November 2017

Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill

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Financial memorandum

Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill, introduced in the Scottish Parliament on 13 November 2017.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 22-EN);
- a Policy Memorandum (SP Bill 22-PM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 22-LC).

3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

Background

4. The Bill gives retrospective effect to the amendments made to the Land and Buildings Transaction Tax (Scotland) Act 2013 ("the 2013 Act") by the Land and Buildings Transaction Tax (Additional Amount-Second Homes Main Residence Relief) (Scotland) Order 2017 ("the 2017 Order"). Under the 2013 Act, as amended through the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016 ("the 2016 Amendment Act"), an additional amount of Land and Buildings Transaction Tax ("LBTT") is chargeable in

respect of certain transactions relating to second homes[1].This came into effect on 1 April 2016. It applies to transactions where the contract for the transaction was entered into on or after 28 January 2016 (the date when the Bill for the 2016 Act was introduced in the Parliament) and for which the effective date (usually the date of settlement) was on or after 1 April 2016.

5. In determining whether the additional amount is chargeable, married couples, civil partners and cohabitants (those living as a married couple), along with their dependent children, are treated as one economic unit. They are treated as one economic unit to reduce the risk of properties being moved between individuals for the purposes of avoiding tax.

6. The additional amount of LBTT is chargeable in, for example, a scenario where one spouse owns the existing marital home and then the other spouse purchases an additional residential property. In this scenario the married couple has the same LBTT liability as a married couple who jointly own the home they currently live in and then jointly buy an additional residential property together.

7. The additional amount of LBTT is not chargeable if the buyer is replacing the buyer's only or main residence. However, before the 2017 Order came into force, the additional amount was chargeable if spouses, civil partners or co-habitants were jointly buying a home to replace a home that was owned by only one of them. They were liable to pay the additional amount due to the fact that only one name was listed on the title deeds.

8. The 2017 Order amended the 2013 Act to provide relief from the additional amount in this scenario for all qualifying future transactions and if buyers entered into the contract to purchase a new main residence on or after 20 May 2017 and the effective date of the transaction was on or after 30 June 2017.

9. This Bill aims to give retrospective effect to the 2017 Order, enabling qualifying buyers who have paid the additional amount of LBTT prior to the

[1] The Additional Amount applies to transactions where at the end of the day that is the effective date of the transaction (usually the date of settlement), the buyer owns more than one dwelling and is not replacing their only or main residence. Replacing in this context means selling a current main residence and buying a new main residence.

Order being made to claim a repayment. The Bill seeks to provide this relief regardless of the date when joint buyers entered into the contract and regardless of the effective date of the transaction, therefore covering the period and transitional arrangements as provided for by the 2016 Amendment Act and the 2017 Order.

10. This Memorandum covers only the costs associated with the additional persons who would become eligible to claim a repayment as a result of the Bill's enactment. It does not consider any costs associated with transactions where persons would be eligible to claim relief from, or a repayment of, the additional amount as a result of the 2017 Order coming into force. For example, joint buyers who sold their previous main residence (of which only one individual was named on the title deeds) in September 2017 after purchasing a new main residence in August 2017 were enabled through the 2017 Order to amend their tax return for an exemption of the Additional Amount or submit a reclaim on tax and are therefore not considered in this Memorandum.

11. The relevant criteria for enabling the repayment of the additional amount as a result of the Bill are where:

(i) Spouses, civil partners or cohabitants bought a dwelling in circumstances in which—

- the contract for the purchase transaction was entered into between 28 January 2016 and 19 May 2017 inclusive, or
- the effective date of the purchase transaction was a date between 1 April 2016 and 29 June 2017 inclusive;

(ii) The dwelling sold was both individuals' main residence at any time during the 18 months prior to the effective date, and;

(iii) Spouses, civil partners or cohabitants had only one owner on the title deeds of their previous residence and under the 2016 Act—

- had to pay the additional amount despite disposing of their previous main residence in the 18 months prior to the effective date, or
- have not been able to reclaim the additional amount after disposing of their previous main residence in the 18 months after the effective date.

Overview

12. The Bill comprises of four sections of which section 1 is the principal measure. It gives retrospective effect to amendments made to the 2013 Act by the 2017 Order.

General

13. The financial implications of this Bill have been considered under the following headings:

- The financial implications for the Scottish Administration (paragraphs 14 - 24),
- The costs on local authorities (paragraph 25),
- The costs on other bodies, individuals and businesses (paragraph 26).

Costs on the Scottish administration

14. The financial implications for the Scottish Administration are considered under two sub-headings:

(i) The potential impact on the Scottish budget which will occur as a result of certain taxpayers becoming eligible to claim a repayment of the supplement,

(ii) The administrative and compliance costs that Revenue Scotland are likely to incur as the Tax Authority responsible for dealing with any repayment of tax.

(i) Tax revenues

15. The Bill will allow relevant taxpayers to claim a refund of tax paid following the sale of a previous main residence where they meet the relevant criteria.

16. The nature of the LBTT tax return, which is submitted by individuals or by agents on behalf of individuals, is such that it is not possible to definitively indicate the number of spouses, partners or cohabitants who would become able to claim a repayment of tax as a result of the Bill. The LBTT return requires taxpayers to provide information about the buyers of the new residence, the sellers, whether the additional amount is payable and if any reliefs apply. The Additional Dwelling Supplement section of the LBTT return, completed by taxpayers where the additional amount is payable, asks whether the taxpayer

still owns their previous main residence and intends to sell this within 18 months. Therefore, whilst taxpayers are able to indicate their intent to claim repayment, the tax returns do not provide information regarding the ownership structure which the taxpayer intends to sell.

17. In light of the resulting limitations over the data available, the Scottish Government has worked with Revenue Scotland to arrive at an informed estimate of the number of taxpayers who, as a result of the Bill, will be eligible to reclaim the additional amount paid. This estimate has been used to inform an estimate of the potential value of repayments which could be claimed as a result of the Bill.

18. Revenue Scotland has noted a 1.8% increase in buyers intending to reclaim the additional amount since the 2017 Order came into force. This has been used to arrive at an estimated overall cost of the Bill.

19. For the purposes of this Memorandum, the Scottish Government has rounded the figure to 2% to provide a lower range limit and scaled this up to an upper range limit of 5%. The use of the 2-5% range reflects the fact that the original 1.8% increase has been observed over a relatively short time period. The range also takes into account for possible claims of repayment by purchasers who had already disposed of their main residence on or during the 18 months prior to the effective date of the purchase transaction but still had to pay the additional amount because the main residence was owned by just one member of the couple. Therefore, they would not have completed the LBTT return to note an intention to reclaim.

20. The table below sets out the estimates resulting from a possible 2-5% increase in repayment claims. The building blocks of this estimate are set out below, drawing on estimates and analysis undertaken by Revenue Scotland:

- Estimated number of transactions involving joint buyers over the period from 1 April 2016 to the introduction of the 2017 Order: 12,869,
- Estimated percentage of joint buyers who have indicated intent to claim a repayment (29%): 3,783,
- Average repayment value of the Additional Amount for joint buyer purchases: £8,231.

% increase in Joint Buyers indicating an intention to reclaim	Estimated number of cases	Total possible tax reclaim
2%	76	£625 000 (rounded)
5%	189	£1 555 000 (rounded)

21. It is important to note that these figures assume that all those who could reclaim tax are able to do so. That is, that they are able to dispose of a previous main residence within the 18 month period provided for in the legislation. Given that less than 18 months have passed since laying of the Order, there is no available data to support the extent to which this might occur.

22. It is likely that the majority of repayment claims arising from the Bill will fall into financial years 17/18 and 18/19. This is based upon current observations which show the highest proportion of repayment claims are made to Revenue Scotland between two and four months after the date the LBTT return was originally submitted. However, as set out in the Revenue Scotland and Tax Powers Act 2014 taxpayers have a further five years after the date by which their tax return should have been made to make a claim for repayment to Revenue Scotland. There may therefore be residual claims as late as the financial year 2022/23.

(ii) Revenue Scotland

23. Revenue Scotland already has in place a team of tax and compliance specialists recruited and trained to ensure the smooth collection and management of LBTT. The Bill will require Revenue Scotland to draw upon existing staff resources for processing any additional repayments.

24. On the basis of an estimated 2-5% increase in repayment claims, any associated costs will be absorbed using Revenue Scotland's existing budget, noting the number of relevant transactions is expected to be very low relative to overall activity[2].

[2] Revenue Scotland's second annual report highlights that for the 2016-17 devolved tax accounts there were 20,800 returns regarding the Additional Dwelling Supplement and nearly 2,000 repayments claims.

Costs on local authorities

25. The Bill will not result in any additional costs for local authorities.

Costs on other bodies, individuals and businesses

26. The Bill may result in additional costs for any individual who appoints an agent to complete a modified tax return. However, these costs will be the same as they would be under any other repayment scenario.

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