

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

Policy memorandum

Introduction

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy 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 Financial Memorandum (SP Bill 22-FM);
 - statements on legislative competence by the Presiding Officer and the Scottish Government (SP 22-LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

Policy objectives of the Bill

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

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respect of certain transactions relating to second homes¹. 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 Order being made to claim a repayment. The Bill seeks to provide this relief

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.

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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. The dates of 28 January 2016 and 1 April 2016, as referred to in the Bill, reflect the dates in the transitional provision in the 2016 Amendment Act. The Bill for that Act was published on 28 January 2016 and the section which introduced the additional amount of LBTT came into force on 1 April 2016.

Alternative approaches

11. An alternative approach of taking no action beyond that of the 2017 Order was considered. However, during the discussion of the 2017 Order at the Finance and Constitution Committee, the Cabinet Secretary was explicitly asked whether the Scottish Government would take action to give the relevant change retrospective effect.²

12. Whilst the Scottish Government aims to take a considered – rather than ad hoc - approach to legislative amendments for all the devolved taxes, the Scottish Government's view is that it would be prudent to take this legislative action to address this specific issue.

Consultation

13. Scottish Government officials have discussed the issue being addressed by the Bill (in the context of the 2017 Order) with the Law Society of Scotland, Scottish Property Federation, ICAS and the Chartered Institute of Taxation in particular. These discussions suggest that there is widespread support among stakeholders for the provisions of the Bill.

14. The Scottish Government will continue to meet regularly with stakeholders, as listed in paragraph 13, to discuss the position regarding devolved tax legislation, including with regard to the Bill.

² The Official Report can be found [here](#).

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Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

Equal opportunities

15. An Equality Impact Assessment building upon that prepared for the 2013 Act will be published by the Scottish Government during the Bill's parliamentary passage.

16. The Scottish Government considers that the Bill's provisions do not discriminate on the basis of age, sex, race, gender reassignment, pregnancy and maternity, disability, marital or civil partnership status, religion or belief or sexual orientation. The provisions of the 2013 Act relating to the additional amount of LBTT ensure equality of treatment between married couples, civil partners and cohabitants. The Bill does not change this provision and has been designed to ensure equal treatment for individuals who were captured by the provisions of the 2013 Act.

17. Any impacts arising from revised tax returns, guidance or other documentation, IT or other systems relating to the additional amount will be a matter for Revenue Scotland in terms of its duties under the Equality Act 2010.

Human rights

18. The Bill gives retrospective effect to the amendments made by the 2017 Order. It does not give rise to any human rights issues beyond the 2017 Order. It does not give rise to any human rights concerns because the retrospective effect gives relief from additional tax to those affected and causes no detriment to any other person.

Island communities

19. As the number and location of couples to which this Bill applies is unknown (Revenue Scotland does not collect data on this) it is not possible at this stage to anticipate any specific impact on island communities.

Local government

20. There will not be any additional administrative or compliance burdens specifically affecting local government beyond those duties local authorities are already subject to, regarding tax returns and records.

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Sustainable development

21. The effect of the Bill on the environmental, social and economic aspects of sustainable development are described below:

- **Environmental Effects:** The Bill only looks to address issues regarding repayment claims on properties already purchased and therefore it can reasonably be assumed that there will not be significant environmental impacts from the Bill.
- **Social Effects:** The Bill addresses an unintended consequence of the provisions relating to the additional amount of LBTT and aims to ensure that first-time buyer (and those replacing their main residence) are not being disadvantaged by the legislation or buyers of second homes/buy to let investors. This rationale supports the belief that a strong and sustainable home ownership sector supports stable communities and reduces pressure on affordable housing.
- **Economic Effects:** The Bill will have no significant impact on tax revenues or property markets. Purchases of second homes will remain subject to higher taxes.

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