

# Finance and Public Administration Committee

2<sup>nd</sup> Meeting, 2023 (Session 6), Tuesday 17

January 2023

## The Land and Buildings Transaction Tax (additional amount: transactions relating to second homes etc.) (Scotland) Amendment Order 2022

### Overview

1. This paper invites the Committee to take evidence from the Minister for Public Finance, Planning and Community Wealth, Tom Arthur MSP, in relation to the [Land and Buildings Transaction Tax \(additional amount: transactions relating to second homes etc.\) \(Scotland\) Amendment Order 2022](#) (SSI 2022/375) – ‘the Order’.

### Purpose of the Regulations and the scrutiny procedure

2. The Order, which was laid before Parliament on 15 December 2022 and came into force on 16 December 2022, amends schedule 2A of the Land and Buildings Transaction Tax (Scotland) Act 2013. It provides for an increase in the rate of the Land and Buildings Transaction Tax (LBTT) Additional Dwelling Supplement (ADS) from 4% to 6% on or after 16 December, as announced in the Scottish Budget 2023-24 on 15 December.

3. The [policy note](#) in relation to the instrument states that “this increase in the ADS is intended to support the Scottish Government’s drive to protect opportunities for first-time buyers in Scotland, reinforcing the progressive approach in place for LBTT rates and bands.”

4. The Additional Dwelling Supplement is only payable on residential transactions above £40,000 where the acquiring party owns more than one residence once the transaction is complete.

5. The amendment does not apply to transactions with an effective date on or after 16 December 2022 where the contract for the transaction was entered into prior to 16 December 2022.

6. The Scottish Fiscal Commission (SFC) has set out its assessment of the impact of the increase on overall LBTT revenues in [Scotland’s Economic and Fiscal Forecasts December 2022](#), published on 15 December 2022. According to the SFC, the policy is expected to raise £188 million over the forecast period (to 2027-28) with £34 million forecast for 2023-24.

7. The SFC expects that the increase in ADS will produce a behavioural effect whereby some individuals may decide not to purchase a property that would qualify for ADS. It notes a further impact in that ADS-liable transactions also pay residential LBTT (see Figure 4.25 below), but that, “home movers and first-time buyers are in a position to absorb most of the lost ADS transactions so we expect some of the lost residential LBTT to be recouped by them”.

8. Figure 4.25 from the SFC forecast, reproduced below, displays the impact of changes to ADS rate on Residential LBTT (including ADS):

£ million	2022-23	2023-24	2023-25	2025-26	2026-27	2027-28
Additional net ADS revenue	13	40	31	37	43	43
Change in residential LBTT	-1	-6	-3	-3	-3	-4
Total policy costing	12	34	28	34	39	40

Source: Scottish Fiscal Commission.

Note: Figures may not sum because of rounding.

9. The Order is subject to the provisional affirmative procedure, which requires Parliament to approve it within a 28-day period<sup>1</sup> in order for it to remain in effect. The Minister wrote to the Presiding Officer of 15 December stating that the use of the provisional affirmative procedure is “intended to prevent forestalling of transactions, which would be expected to arise should the date of introduction be later”.

10. The Delegated Powers and Law Reform (DPLR) Committee, which considers the technical aspects of the instrument, considered the Regulations on [10 January 2023](#) and had no issues to report.

11. The Committee [invited views](#) on the Order on 21 December 2022 and received 6 responses, which are attached as an annexe.

12. As lead committee, this Committee will be invited to consider motion [\\_\\_\\_\\_\\_ S6M-07288](#) lodged in the name of the Minister for Public Finance, Planning and Community Wealth—

That the Finance and Public Administration Committee recommends that the Land and Buildings Transaction Tax (additional amount: transactions relating to second homes etc.) (Scotland) Amendment Order 2022 (SSI 2022/375) be approved.

<sup>1</sup> Under Standing Order Rule 10.11.1 ‘no account shall be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days’.

13. To inform the Committee's consideration of the motion, there is an opportunity to take evidence on the Regulations from the Minister and his officials before moving to formal consideration of the motion. During formal consideration of this motion, *Standing Orders* provide that only the Minister and Members may participate in the debate.

## Next steps

14. The Committee will report to the Parliament setting out its recommendation on the instrument, by the reporting deadline of 23 January 2023.

Committee Clerking Team  
January 2023



**Response to the Scottish Parliament's Finance and Public  
Administration Committee**

**Call for Views on the**

**Land and Buildings Transaction Tax (additional amount:  
transactions relating to second homes etc.) (Scotland)  
Amendment Order 2022**

10 January 2023

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The Scottish Association of Landlords (SAL) is the largest and only dedicated national organisation that represents landlords and letting agents throughout Scotland. We support and represent our members' interests through providing resources and assistance as well as delivering lobbying and campaigning work.

SAL welcomes the opportunity to provide written views on the Land & Buildings Transaction Tax Amendment Order 2022.

### **Views on the impact of an increase in the additional dwelling supplement**

Our concerns around the increase in the ADS are two-fold: -

1. It will lead to a decrease in investment and fewer high quality homes being available for rent
2. It will place unsustainable demand on providers of social housing

#### 1. Decrease in investment

Most landlords hold a small number of properties and operate their businesses on very tight margins. A CaCHE report on [The Pandemic Rent Arrears Crisis](#) found that landlords are a very heterogeneous group and over one fifth (23%) of landlords overall report that their private rented sector (PRS) income is 'critical' as it is their 'primary income'. In a SAL member survey conducted in December 2022 25% of respondents reported that they are in financial difficulty due to issues related to their PRS properties. This means that any increase in cost is likely to lead to a decrease in investment.

We know there is a housing crisis in Scotland, as well as public concern about the number of homes available for private purchase. However, in many parts of Scotland, the only people buying and modernising properties are private landlords who then make them available for rent which is often the most in-demand type of housing in these areas.

The increase in ADS is likely to mean fewer landlords buying and modernising homes across the country. We are particularly concerned that the increase in ADS acts as a deterrent to landlords purchasing empty homes to bring them back into use. A lot of good work is being done by the Scottish Empty Homes Partnership in bringing disused properties back into occupation and we know that much of the investment to date has come from private landlords. Any increase in the ADS is likely to reduce the level of such investment and lead to a fall in the number of empty homes being brought back into use. This jeopardises the Scottish Government's stated aim of increasing the supply of properties in the PRS.

Any reduction in investment puts further pressure on the PRS to house people who have nowhere else to go and invariably results in rent increases as demand outstrips supply.

#### 2. Unsustainable demand on social housing

The stated aim of the ADS policy is to encourage opportunities for first time buyers to enter the housing market. SAL was and remains of the opinion that no evidence has been provided on how many first time buyers this will help and has helped since its inception.

There is evidence of landlords choosing to exit the sector due to the plethora of regulation which has been introduced in the last decade (most notably the Cost of Living (Tenant Protection) (Scotland) Act 2022)) and perceived government hostility towards landlords. SAL member surveys conducted in December 2022 revealed that 44% of landlords are planning to reduce their portfolio size in the next 5 years. Our surveys indicate that around 10% of tenants in Scotland will be evicted in the next 5 years so that landlords can exit the sector by selling their properties with vacant possession.

As discussed above any increase in purchase price resulting from ADS will reduce the likelihood of these properties being replaced leading to a fall in the availability of homes in the PRS. In our experience the majority of tenants are not in a position to purchase their own home and therefore do not benefit from the ADS. Any fall in the availability of homes in the PRS will lead to increasing pressure on the social housing sector as tenants seek alternative rented accommodation. It is well documented that there is already a shortage of such homes leading to people being housed in temporary and unsuitable accommodation and even homelessness.

We therefore urge policy makers to reconsider increasing the ADS in order to protect the supply of properties in the PRS and reduce the risk of unintended consequences including empty homes, rent increases and homelessness.

We also urge policy makers to consider exempting two categories of properties:

- (i) investment in empty and new build properties - as those investors are helping to supply much needed new housing stock. This also incentivises housebuilders to build more units in order to satisfy a range of customer demand
- (ii) properties which are being purchased with a sitting tenant - this will reduce the number of tenants being evicted by those landlords wishing to sell their properties in order to exit the PRS.

### **Views on how else the revenues of £34 million in 2023-24 might be raised, if not through this increase**

Our view is that removing or reducing the ADS will save and generate money in other areas.

Alleviating the shortage of properties in the PRS described in our response to the previous question will lead to a saving in the cost of housing households presenting as homeless to the local authority. The cost of emergency housing for those presenting as homeless in temporary accommodation has previously been stated as being up to £1370/week (<https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/coronavirus-recovery-and-reform-scotland-bill/introduced/financial-memorandum-accessible.pdf>), compared to an average rent of £160/week (<https://www.gov.scot/publications/private-sector-rent-statistics-scotland-2010-2021/pages/9/>) for a two bedroom property in the PRS.

Reducing difficulties faced by tenants in finding a suitable private rented home in a suitable location will also have a financial benefit on the wider economy – reducing commutes, increasing workforce mobility and increasing employment.

# Finance and Public Administration Committee

## The Land and Buildings Transaction Tax (additional amount: transactions relating to second homes etc.) (Scotland) Amendment Order 2022

### Submission from South Lanarkshire Council

We note the effect of the Scottish Statutory Instrument (2022/375) is to increase the rate of Additional Dwelling Supplement (“ADS”) from 4% to 6% from 16 December 2022.

We would refer you to our response to the consultation last year entitled The Land and Buildings Transaction Tax – Additional Dwelling Supplement: a call for evidence and views (which consultation closed on 11 March 2022) where we stated:

“It would be important to ensure relief from the Additional Dwelling Supplement is provided to local authorities in all cases where properties are being acquired for the provision of affordable housing. Within its significant new build programme, the Council regularly utilises both ‘off the shelf’ and ‘open market purchase’ options to increase the supply and availability of affordable housing. These options enable the Council to continue to meet the specific needs of existing and future tenants across varied housing market areas in addition to the new properties it builds. Imposing additional taxes and costs on these options will negatively impact the aim of the Council to increase the provision of affordable housing in South Lanarkshire within the funds available”.

We would also highlight the potential impact of this increase in the rate of ADS (upon which ADS already impacts) in relation to housing investments namely a reduction in the scale of the programme overall; or higher levels of borrowing by local authorities on their Housing Revenue Accounts with the consequential additional pressure on rents that these costs would give rise to; or to require higher levels of grant support from the Scottish Government for any given number of acquisitions.

In relation to the specific question on how else the revenue could be raised by the Scottish Government were this increase in ADS not implemented, we do not regard this as a question for local government to make a response. There are financial challenges across local government and this tax increase will add to local authorities having to pay more to address local housing needs, impacting on the delivery of that outcome. We repeat our call for tax relief to be introduced for local authorities in respect of ADS.

# Finance and Public Administration Committee

## The Land and Buildings Transaction Tax (additional amount: transactions relating to second homes etc.) (Scotland) Amendment Order 2022

### Submission from the Chartered Institute of Taxation

Dear Sirs

We are emailing in response to your letter of 21 December 2022 concerning the Amendment Order for the Land & Building Transaction Tax Additional Dwelling Supplement (ADS).

As to this consultation and the impact of the increase in the ADS from 4% to 6%, we are not in a position to feedback on the merits or otherwise of a change in the rate itself, that is a purely policy matter and one on which, as an impartial charity, the CIOT cannot comment. However, we must express some disappointment at the timing of the increase in relation to the anticipated reforms to ADS, the consultation on which was released in March 2022. The resulting draft legislation, along with a further consultation, was due to be released in the summer of that year and there is still no sign of either. In that initial consultation we outlined several perceived flaws in the current rules and were hoping that at least some of these might have been addressed within published draft legislation before any increase in the rate took effect, which, in many instances, will only exacerbate the existing issues. We would hope that the draft legislation had been made public before any ADS increase came into force, or the ADS change be delayed until Scottish taxpayers and stakeholders had at least been able to comment on the proposed changes.

Yours faithfully

CIOT Technical Team



12 January 2023

Kenneth Gibson MSP  
Convener, Finance & Public Administration Committee  
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By email

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## **Additional Dwelling Supplement Changes – 16 December 2022**

### **Call for Comments on Secondary Legislation**

Dear Convener

1. The Scottish Property Federation is pleased to respond to your call for comments on the Additional Dwelling Supplement change to a 6% rate announcement on 15 December by the Scottish Government.
2. The Scottish Property Federation (SPF) is the voice for the real estate industry in Scotland. We include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers. Our members build Scotland's workplaces, homes, shops, schools and other facilities and the infrastructure that serves them. Our industry is therefore a core component of the Scottish economy.
3. The increase of the LBTT Additional Dwelling Supplement to 6% on 16 December is a significant and unexpected increase in taxation for those taxpayers affected. The significance of the change in rate is enhanced because unlike the introduction of LBTT itself, ADS was established as an old style SDLT 'slab' tax that is based on the full consideration for all transactions above £40,000. The budget decision now means that the Scottish rate is double that of the equivalent rate in England and is considerably above the Welsh LTT rate. Professional experts at Brodies note that even for relatively lower value purchases eligible to pay ADS the change in rate means that an averagely priced house transaction of £188,000 eligible for ADS (it does need to be a second home as explained below) on 16 December would cost £12,140 as opposed to £8,380 if transacted just a day before. The same transaction in England on 16 December would cost £5,640 if required to pay the second homes tax.

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4. The Budget statement and the SSI Policy Note both argue that this measure is intended to support first time buyers. There is little further explanation and certainly no evidence provided to support this assertion. The implication is that by deterring second home purchasers out of the market then this must support those new buyers seeking to enter the market. It appears to us that the market for second homes and in particular buy to let investors is very much changed from the inception of ADS. The loss of mortgage rate relief support by the Westminster Parliament, the change in mortgage interest tax relief for BTL investors and the introduction of rent controls on existing tenancies make this a very different market from 2016. We believe the reality is that this is a straightforward revenue raising measure and therefore the real question is whether the additional money raised (£34m) will be achieved and perhaps more significantly, what the wider consequences of this tax increase may be.

### **Wider Policy Context and Market Consequences**

5. The increase in ADS has clearly been viewed by the market as a further assault upon the PRS sector and in particular on buy-to-let landlords. The tax increase follows closely upon the recently announced rent cap for existing tenancies. Again, the evidence for that measure was extremely limited and at best anecdotal – the evidence cited during the passage of the legislation largely referred to published data on *new tenancies* rent increases which are not impacted by the Cost of Living (Tenant Protection) Act measures. The rent control legislation is not alone however and wider changes to mortgage interest tax relief, landlord and tenant legislation and the financial markets since autumn are all significant policy changes that have negatively impacted the attractiveness of the sector for individual sectors.
6. The outcome of this accumulation of measures is a reduction of the supply of rented private accommodation in Scotland. This reduction is estimated to have led to 29% fewer properties listed for rent in 2022 compared to 2016 (Savills: budget response, 15 December 2022) at a time when the demand for rented accommodation in locations such as Edinburgh and Glasgow, and indeed outside the big two cities in locations such as such as Linlithgow, is at extremely high levels. The combination of increasing demand and loss of supply of rented accommodation will inevitably result in further upwards pressure on rents in the private rented sector for the foreseeable future which will support the government objectives of reducing the cost of living. The Scottish Association of Landlords also suggest this will reduce choice for people seeking to rent accommodation.

7. Looking further ahead the potential loss of private investor interest in the PRS also raises the question of how the sector with its 365,000 homes, will raise the investment required to meet forthcoming retrofit regulations required to meet the built environment contribution towards meeting the net zero obligations that the Scottish parliament has approved.

### **Outstanding technical issues with ADS – Scottish Government consultation closed January 2022**

8. The SPF believes this sudden and unexpected increase in taxation underlines the need for the government to progress with its widely welcomed proposals to correct and improve the existing ADS legislation, which covers more than BTL situations meaning that the charge is wider ranging than simply being applied to 'second homes'. The government consultation included proposals to address situations of divorce and separation, the length of time allowed to sell a former main residence, inadvertent second home ownership through low value inherited holdings of shares in a property, and indeed removing tax penalties on local authorities acquiring houses. These government proposals were widely supported, uncontroversial and we urge the Committee to ask the Scottish Ministers why this consultation which was intended to improve fairness in the ADS system has not been progressed. This major increase in the taxation costs of ADS will add to unfairness on the taxpayers affected and must make this an urgent question for Ministers to answer.

### **Views on the forecast £34 net increase in revenue**

9. The Scottish Fiscal Commission have modelled behavioural changes expected from the increases in ADS. They expect a change in behaviour of £6m (increase) in the 2023-24 year. This estimate is based on previous methodology and our only comment would be to question whether the wider policy context outlined above might be expected to have a greater influence on behaviour than was perhaps the case with previous forecasts.
10. The Committee has specifically asked for views on where the forecast £34m would be removed from other sections of budget should we call for it not to be applied. This is a question that goes beyond the scope of the SPF to comment on, or indeed a question that our membership would wish us to answer. However, we do think the increase in taxation may make it more challenging to sustain the contribution of ADS, estimated now to be close to a quarter of all LBTT revenue, to the revenue pool because we believe that in a tighter



financial market it will deter potential private investors from entering or increasing their PRS portfolio.

11. We understand that the Committee may wish to make this response public and may share the views expressed with other public authorities.

12. The SPF would be pleased to respond to any further questions on our comments and our contact details are provided below.

David Melhuish  
Director, Scottish Property Federation

## **COSLA Response to the Scottish Parliament's Public Finance and Administration Committee on SSI 2022/375: LBTT (Scotland) Amendment Order 2022**

COSLA welcomes the opportunity to provide views to the Scottish Parliament's Public Finance and Administration Committee on SSI 2022/375: Land and Building Transaction Tax (LBTT) Amendment Order 2022. Our response is based on our previous submission to the Scottish Govt's consultation on LBTT and ADS in March 2022 that we await the report on.

- Currently there are no general exemptions from LBTT or ADS for local authorities seeking to buy homes or land to meet housing need. As a result, local authorities pay these taxes on the same basis as private sector developers and land speculators. Therefore, local authority housing programmes incur additional costs to purchase houses and land that have the effect of either reducing the number of social rented homes delivered or increasing the cost of the programme to the Scottish Government (through grant aid) or to tenants through higher rents.
- Over the ten years of the Scottish Government's current commitment to additional social rented homes the impact has been significant, as both local authorities and RSLs are equally important to delivering new social rented homes.
- Increasing the rate of ADS to 6% merely compounds the challenges that local authorities have in delivering properties to meet demand for social rented homes. At a time when construction inflation to build new properties is at levels not seen for decades is resulting in a failure for new sites to meet affordability tests for housing revenue accounts, the purchase of properties is a real and effective means of achieving additional capacity. These properties may need upgrading to Scottish Housing Quality Standards or to achieve carbon reduction and net zero ambitions, adding cost in respect of additional taxes puts the delivery of these and affordability to the test.
- In respect of the Housing (Scotland) Act 2010, local authorities along with RSLs are regulated by the Scottish Housing Regulator (SHR). As a result, local authorities appear on the SHR Directory of Social Landlords along with other RSLs. However, local authorities are not listed for the purpose of Schedule 6 relief. This matter would be helpfully clarified in updated guidance for local authorities.
- There is no obvious policy objective to be achieved by the current arrangements for the payment of LBTT and ADS by local authorities that would justify the different treatment of them and their tenants to RSLs and their respective tenants or the additional costs involved. Additionally, as a proportion of the costs of delivering affordable housing that is government funded and for the public good, the imposition of penalties by way of this tax serves no useful purpose for local authorities. It also reduces the spending power of the Government's Affordable Housing Supply Programme funding.

- COSLA is of the view that local authorities should be given a general exemption from LBTT and ADS when purchasing land or homes, as part of their affordable housing investment programmes.

We trust our brief response will be useful to the committee's considerations on the operation of LBTT and ADS.

**COSLA**  
**January 2023**

Kenneth Gibson MSP  
Convener  
Public Finance and Administration Committee  
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Dear Mr Gibson

### **Call for views on the increase in LBTT ADS**

Clackmannanshire Council welcomes the opportunity to contribute to the Public Finance and Administration Committee's consideration of the changes to the rate of LBTT ADS announced as part of the Scottish Government's budget for 2023-24. We have an active interest in this measure both as the strategic housing authority for Clackmannanshire and as a social landlord that regularly buys homes on the open market both to increase the supply of social housing locally.

Local Authorities pay LBTT and ADS on the same basis as private sector developers and land speculators. Whilst most of the individual house purchases that we complete are supported through the Scottish Government's Affordable Housing Supply Programme no additional grant is available to meet the cost of this tax. As a result the additional costs fall directly on to council tenants through their rents.

This is in contrast to the full exemption from both LBTT and ADS that is available to Registered Social Landlords. This disparity has been raised with both the Scottish Government and various parliamentary committees since ADS was introduced. We are aware that COSLA and the Association of Local Authority Housing Managers made further representations on this subject in March 2022.

The Policy intention behind imposing this tax on new social rented homes provided by councils but not RSLs is unclear. The practical impact for Clackmannanshire Council has been that between April 2017 and the announcement of the most recent increase we have paid £187,956 in ADS in relation to 58 property purchases on the open market. The increase in ADS from 4% to 6% will add a further £50,000 to the cost of our house purchase programme this year and an estimated £204,000 in 2023/24<sup>1</sup>.

We fully understand the need to raise additional revenue to support the Scottish Government's efforts to sustain public services. In general terms we do not think the increase in ADS will have a detrimental impact on the housing market overall, though it is likely to discourage investment from existing Buy to Let Landlords and short term

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<sup>1</sup> Based on a target of 40 purchases at an average price of £85,000.

let providers. Applying the tax to Councils but not RSLs is clearly unfair, has no obvious policy purpose and serves only to increase the cost of the new supply programme; reduce our capacity to meet housing needs locally and puts additional pressure on rents. All this at a time when we, in common with other Council landlords, are working hard to keep rents affordable and meet local housing needs.

In the light of this we would support COSLA's view as set out in their March 2022 submission to the Scottish Government, that local authorities should be given a general exemption from LBTT and ADS when purchasing land or homes, as part of their affordable housing investment programmes.

Yours

Tony Cain  
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