

# **Taking forward a Scottish Land and Buildings Transaction Tax**

## **Consultation**

**June 2012**

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## Foreword

As part of its increasing responsibilities under the Scotland Act 2012, the Scottish Parliament will have responsibility for taxes on land transactions and disposals to landfill in Scotland from April 2015 when the current UK Stamp Duty Land Tax (SDLT) and Landfill Tax will be replaced. This consultation paper sets out our thinking on the proposed Land and Buildings Transaction Tax, our replacement for SDLT, and invites comments and suggestions. We ask whether the tax should continue the existing approach as a 'slab' tax or a more progressive approach should be taken. We acknowledge there is a choice to be made as to whether the tax should be introduced on a revenue neutral basis or should raise less or more revenue. We raise a number of choices about how that tax may better reflect the conditions in Scotland. We are holding discussion events round the country to enable people to engage with the issues raised. And the consultation website offers the opportunity for people to lodge comments too.

We believe this is a first and significant step on a journey towards much greater financial self-determination for Scotland. Getting the first step right, and so helping to set the tone for future development of Scotland's public finances, is vital. The modest new powers over a small number of devolved taxes are welcome as the first steps to establishing the principle that taxes paid in Scotland are best managed and set by those with Scotland's interests in mind. It is clear, however, that there is very much further to go. We believe that all taxes paid in Scotland should also be set and collected in Scotland, and subject to scrutiny that ensures Scotland's best interests are being served. To promote growth, jobs and wellbeing, it is important that as a country and as a Government, we are able to take the decisions over our taxes and revenues that match our ambitions and create opportunities for Scotland to flourish economically and socially. Our freedom to do just that is the core question to be decided in the referendum we will hold in autumn 2014.

In addition to the powers provided by the Scotland Act 2012 to introduce taxes on land transactions and on disposals to landfill, from April 2015 the Scottish Government will also be able to borrow to support capital projects. The sums available will be limited at first – unnecessarily so in our view. But we are confident that over time it will be possible to achieve a better balance between providing extra resources for new capital investment and ensuring that our borrowing is affordable and prudent. These are decisions that we firmly believe can and should be made in Scotland.

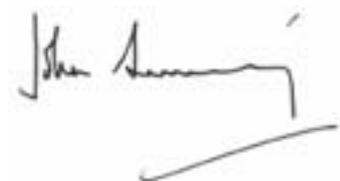
From April 2016 the Scottish Parliament will, under existing constitutional arrangements, set a Scottish rate of income tax which will apply equally to all Scottish taxpayers. Under these arrangements, the UK Government keeps control of the income tax system but will reduce by 10 pence in the pound the tax payable in Scotland. The Scottish Parliament will decide what rate to set, in place of the 10 pence reduction, to make up the reduction in the Scottish Government's budget that would otherwise happen. We also welcome the opportunity this gives us to establish a Scottish approach to the principles of taxation, and to a Scottish tax collection system. This will enable people in Scotland to judge for themselves the benefits of the Scottish Parliament having responsibility for these issues.

We will establish a distinctly Scottish-based approach to the Land and Buildings Transaction Tax and the tax on disposals to landfill and will embed the legislation in Scots Law and practices.

We will establish a tax administration function for assessing and collecting both taxes. This function, which I propose to name Revenue Scotland, will be established this year. By 2015, in line with international best practice, it will have been given a formal basis ensuring its operational independence from Scottish Ministers, with its governance and structure established through legislation. Revenue Scotland will work with two firmly established and highly respected organisations: Registers of Scotland (RoS) to administer the Land and Buildings Transaction Tax and the Scottish Environment Protection Agency (SEPA) to administer the tax on disposals to landfill. Registers of Scotland already specialises in land transactions while SEPA has been advising regulated businesses, industry and the public on environmental best practice for over a decade.

These partnerships will offer further opportunities for us to customise tax collection arrangements that are specific to the Scottish situation, drawing on the relevant knowledge and expertise within RoS and SEPA to create new synergies and efficiencies. The views of the taxpayer and expert communities will also have an integral role in ensuring that our future approach to taxation remains fit for purpose. We intend to consult later this year on the tax on disposal to landfill, and also on tax management and administration arrangements, including collection.

This consultation runs for three months, and at the end of that period we will assess thoroughly the responses received from people in Scotland who are interested in these tax proposals – actual and potential taxpayers, professional advisers and agents, and citizens interested in how the public finances of our society work and can be improved. In the light of these responses, we intend to bring forward for Parliamentary scrutiny a Bill establishing a Land and Buildings Transaction Tax to replace the existing Stamp Duty Land Tax. The people of Scotland will have a further opportunity to comment on our proposals when the Parliamentary Committee responsible for scrutinising Bills calls for evidence to help it in its task. This will provide an important opportunity for principles and approaches to be debated and to enable us to reach a consensus on important issues governing how taxation will be designed and run in Scotland.



**John Swinney MSP**

Cabinet Secretary for Finance, Employment and Sustainable Growth

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## 1. Introduction

### Chapter summary

- The Scottish Parliament will have new financial powers from 2015 over taxes on land and property transactions and on disposals to landfill.
- This consultation is the first of three dealing with these devolved tax powers. The Scottish Government will consider its proposals for a Land and Buildings Transaction Tax for Scotland in the light of responses to this consultation, and then, in the autumn, introduce a Bill for the Scottish Parliament's consideration.
- Later this year, the Scottish Government intends to consult on a tax on disposals to landfill, and also on tax management arrangements, covering issues that apply to all future devolved taxes like tax collection, the use of information, penalties for late payment or for tax evasion, and appeals.

### The Scotland Act

1.1 In April of this year, the Scotland Bill was passed by the UK Parliament. Under the Scotland Act 2012 which received Royal Assent on 1 May and amends the Scotland Act 1998, the Scottish Parliament has new powers relating to taxation and to borrowing. In summary, the changes are as follows:

- Using powers in sections 28 and 30 of the 2012 Act respectively, read with section 23, from April 2015, the Scottish Parliament will have the power to set a tax on land transactions and on disposals to landfill. These are referred to as the two devolved taxes. It will be possible to devolve further taxes in future, if the UK Government agrees;
- Two existing UK taxes - Stamp Duty Land Tax (SDLT) and Landfill Tax (LFT) - will no longer apply in Scotland (sections 29 and 31 provide for the disapplication of the UK Stamp Duty Land Tax and UK Landfill Tax in Scotland respectively);
- From April 2015, the Scottish Government will for the first time be able to borrow money for capital schemes; and
- From April 2016, the Scottish Parliament will be asked to set a Scottish rate of income tax, to replace a 10p in the pound reduction in income tax for Scottish taxpayers across all tax bands.

1.2 The UK Government will reduce the Scottish block grant (the annual grant paid to the Scottish Government) to offset the expected income from the two devolved taxes and from the Scottish rate of income tax so that the overall spending power of the Scottish Government will remain broadly as it would have been. Our agreement with the UK Government means there will be potential for growth in the Government's income if tax receipts increase faster than the block grant adjustment, and also for lower income if tax receipts grow more slowly than the adjustment.

1.3 The Scottish Government believes that these powers represent the first step on the journey towards giving Scotland the economic levers needed to promote growth, jobs and income. The Scottish Government therefore agreed the Scotland Act with the UK Government and following Royal Assent we are now consulting on the introduction of the two devolved taxes and our proposals for tax management.

**Receipts from the Devolved Taxes**

1.4 Tax on land and property transactions, through the UK SDLT, generated about £330 million of revenue in Scotland in 2010-11. The level of revenue fluctuates significantly depending on property prices and the number of transactions taking place in the property markets. Recognising this, decisions about the scale of revenues and the tax rates and thresholds to be set for the Land and Buildings Transaction Tax will be taken in due course alongside the budget process for 2015-16.

1.5 Were the Scottish Government and the Scottish Parliament to have more comprehensive economic and financial powers, it would be possible to design and implement an overall scheme of taxes that would give genuine options for using taxation as an economic lever to help boost growth and jobs. Such a tax base would be sufficiently broad to support changes to tax levels or structures. However the tax base provided by the two devolved taxes is simply too narrow to operate as an effective economic lever or to support meaningful changes to tax levels.

1.6 In the meantime, by establishing national tax collection arrangements for Scotland, these taxes will be a step on the road to devolution of further taxes and will give Scottish taxpayers an opportunity to get a better understanding of how the transition to independence will take place.

**Consultation arrangements and timetable**

1.7 This document is the first of three devolved tax consultations. It is focussed on introducing a Land and Buildings Transaction tax in Scotland to replace the existing SDLT system. We will consult later this year on the introduction of a Landfill Tax in Scotland from April 2015. There will also be a consultation on tax management arrangements, covering issues that apply to all future devolved taxes like tax collection, the use of information, penalties for late payment or for tax evasion and the process for appeals.

1.8 The outline timetable envisaged by the Scottish Government for the devolved taxes is as follows:

June to August 2012	Consultation on Land and Buildings Transaction Tax
Autumn 2012	Consultation on replacing Landfill Tax
Autumn 2012	Introduction of Land and Buildings Transaction Tax (Scotland) Bill to the Scottish Parliament
Winter 2012-13	Consultation on tax management provisions for Scotland
March 2013	Introduction of Landfill Tax (Scotland) Bill to the Scottish Parliament
Summer 2013	Enactment of the Land and Buildings Transaction Tax (Scotland) Bill, subject to Parliamentary agreement
Autumn 2013	Introduction of Tax Management (Scotland) Bill to the Scottish Parliament
Autumn 2013	Enactment of Landfill Tax (Scotland) Bill, subject to Parliamentary agreement

Autumn 2013-summer 2014	Consultation and Parliamentary scrutiny of Land and Buildings Transaction Tax regulations
Summer 2014	Enactment of Tax Management (Scotland) Bill, subject to Parliamentary agreement
April 2015	Two devolved taxes introduced in Scotland; current UK taxes withdrawn.

## Next Steps

1.9 The Scottish Government will consider its proposals for a Land and Buildings Transaction Tax for Scotland in the light of the responses to this consultation, and then, in the autumn, introduce a Bill for the Scottish Parliament's consideration.

1.10 It is important that we hear views on our proposals. Therefore, we are keen to hear views from those with an interest in land and property purchases and leases, including people who may buy or sell a home in future, businesses who may buy or lease or construct commercial property, farmers who buy or lease land, conveyancing solicitors, estate agents, surveyors, lenders, trusts, partnerships, and third sector and equalities groups. We have included a number of questions throughout this paper; a full list of the consultation questions is available in chapter 12 on page 41.

1.11 There will be a further opportunity for stakeholders to contribute their views on both the proposals for the tax and the Bill itself when the lead committee of the Scottish Parliament may issue a call for written evidence following the introduction of the Bill in autumn 2012. The lead committee may also issue invitations for oral evidence to be provided at committee sessions to discuss the details of the Bill. Further details on the Bill process can be found on the Scottish Parliament website at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills.aspx>

## 2. Overview of the Land and Buildings Transaction Tax

### Chapter summary

- The Scottish Government intends that, after April 2015, a tax should continue to be charged on land and property transactions in Scotland. The proposed tax would impose a charge on anyone buying, leasing or taking many other rights (such as an option to buy) over land or property. The tax would cover both residential and non-residential transactions.
- There is potential for a number of improvements to be made through the introduction of a Land and Buildings Transaction Tax.
- The Scottish Government is not at this stage stating its intentions with regard to tax rates and thresholds and the scale of revenues to be collected. The tax will be introduced in April 2015 and rates and thresholds will be set in accordance with the economic circumstances at that time.

2.1 The principle and purpose of a tax on land transactions is well established. First, to raise revenue to support public services in Scotland by applying a tax to individuals and firms able to afford to buy property or to take on leases of a significant value. Second, to provide some scope for positively influencing activity in the residential and non-residential property markets.

2.2 This paper sets out the Scottish Government's proposals for how a Land and Buildings Transaction tax for Scotland would operate. Many of the people responding to the consultation will be familiar with how the existing SDLT works, and in some cases we have only highlighted areas where what we are proposing is different from the current UK approach. For ease of reference, a summary of how the current SDLT works is provided at Annex A on page 43 (more detailed guidance on current rules is available on Her Majesty's Revenue and Customs (HMRC) website<sup>1</sup>).

2.3 The Scottish Government proposes to introduce a Land and Buildings Transaction Tax which would improve on SDLT in a number of areas including simplifying the payment system, better aligning the legislation with Scots law and practices, and ensuring appropriate reliefs and exemptions are applied. The Government is also consulting on the form of the tax – whether it should be applied as a 'slab' tax as with SDLT or as a progressive tax.

2.4 The Scottish Government is committed to taking forward any possible reform in a fashion that will ensure the tax can be delivered on time and provide regulatory stability following the withdrawal of SDLT.

2.5 Some of the areas in which we propose improvements would be delivered through the Land and Buildings Transaction Tax (Scotland) Bill, others through the proposed Tax Management Bill and the remainder would be through the design of the IT and administration arrangements for collection of the tax. Other changes may be proposed in future, as the Scottish Government receives more devolved tax powers.

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<sup>1</sup> See HMRC website at: <http://www.hmrc.gov.uk/sdlit/intro/basics.htm>

For example, the Scottish Government could consider broader changes in order to help support key priorities, such as promoting energy efficiency, supporting first time buyers or other purchasers or encouraging business growth in more deprived areas.

### **What will be taxable?**

2.6 SDLT is a tax on acquisitions of interests in land. It applies whenever residential, agricultural, commercial or industrial land or property is bought or leased for long periods or where certain rights over land are acquired in other ways. The tax is paid by the purchaser or the tenant. There are reliefs and exemptions, for example, for land or property bought for less than the minimum threshold (currently set at £125,000 for residential property and £150,000 for non-residential property) or for property which is given to someone as a gift. Higher rates of tax apply the higher the purchase price or rent for the property, and the applicable rate is charged on the whole taxable amount.

2.7 The Scottish Government intends that, after April 2015, a tax should continue to be charged on land and property transactions in Scotland. The proposed tax would impose a charge on anyone buying, leasing or taking certain other rights (such as an option to buy) over land or property. The tax would cover both residential and non-residential transactions. As under SDLT, non-residential transactions include:

- the purchase or lease of commercial property (e.g. shops, offices, factories, hotels, etc.),
- the purchase, lease or purchase of an option over land for development (e.g. for housing, commercial properties, wind farms, etc.),
- agricultural land,
- forestry land, and
- long leases of land for the tenant's exclusive use for sports, such as salmon fishing.

### **Structure of the proposed Land and Buildings Transaction Tax**

2.8 The Scottish Government proposes to introduce a Land and Buildings Transaction Tax, with purchases and leases of land and property below a certain value exempt, the tax payable on other land transactions being related to their value and higher rates of tax applied to higher-valued land or properties, as with SDLT. The Scottish Government is consulting on how Land and Buildings Transaction Tax should be structured. There is a choice between charging the higher rate of tax on the whole price (known as a 'slab' tax, which SDLT is at present) or only on the portion of the price that exceeds the threshold (a more progressive tax structure).

2.9 The Scottish Government is not at this stage stating its intentions with regard to tax rates and thresholds and the scale of revenues to be collected. The tax will be introduced in April 2015 and economic circumstances are expected to change between now and then. Common practice amongst many governments is to set tax rates as part of the annual budget process, depending on a range of factors including spending priorities and economic circumstances, but to retain an ability to make changes to tax rates or thresholds quickly if necessary.

2.10 Table 1 sets out revenues within Scotland from the existing SDLT over the past few years, broken down between residential and other types of property and land.

**Table 1 - Current levels of SDLT revenue from transactions involving land in Scotland (data from HMRC)**

Year	2007-08	2008-09	2009-10	2010-11
Total UK revenue (£m)	9,955	4,795	4,885	5,960
Total Scottish revenue (£m)	565	320	250	330
Total number of transactions (Scotland)	163,065	97,066	82,564	82,265
Residential revenue (£m) (Scotland)	340	185	135	165
No. of residential transactions (Scotland)	150,109	87,148	74,561	73,740
Non-residential revenue (£m) (Scotland)	225	135	115	165
No. of non-residential transactions (Scotland)	12,956	9,918	8,003	8,525

*Note* – the figures showing the number of transactions include only those transactions notified to HMRC through an SDLT return. Therefore these figures exclude transactions where no return is required, e.g. because a property is sold for less than £40,000 or given to someone as a gift.

## **Exemptions and reliefs**

2.11 The Scottish Government proposes to provide many of the UK SDLT exemptions and reliefs for the Land and Buildings Transaction Tax and proposes to amend or abolish some of them to reflect Scots law and practices. These are discussed in Chapter 4.

## **Anti-avoidance measures**

2.12 The vast majority of taxpayers pay the right tax at the right time. Some taxpayers have used contrived and artificial arrangements to avoid paying tax that would otherwise have been due. The Scottish Government believes that the tax burden borne by compliant taxpayers should not be increased to compensate for the tax not paid or collected from taxpayers who seek to avoid tax that Parliament intends they should pay. There are anti-avoidance measures already in place with respect to SDLT, and the UK Government announced further measures in March. We are seeking views on putting in place similar measures in Scotland.

## **Administering and collecting the Tax**

2.13 The Scottish Government believes that any tax should be designed so that it is as simple as possible to understand and pay - placing minimum administrative burdens on the taxpayer or their agent and on the organisation responsible for collection, speeding up processing and reducing administration costs. Most tax is now collected electronically. The Scottish Government believes that, as far as possible, all tax returns for the Land and Buildings Transaction Tax should be submitted and tax paid electronically. This paper seeks views on the best way of achieving these objectives.

2.14 The current UK Government-applied SDLT is collected in Scotland by HMRC. Registers of Scotland (RoS) also offers a means for taxpayers' agents to submit SDLT returns and pay any SDLT due at the same time as registering their clients' title to land. There are several options for collecting Land and Buildings Transaction Tax, including contracting the task to HMRC; setting up a new tax collection body in Scotland; and using an existing Scottish body. The Scottish Government has examined carefully the option of contracting the work to HMRC, and has concluded that this approach, as confirmed to the Scottish Parliament Finance Committee, will inevitably restrict the degree of flexibility to make changes to Land and Buildings Transaction Tax in comparison with SDLT. There is also a risk of competing priorities when seeking HMRC's co-operation in making changes to tax systems in future. Using HMRC would be a more expensive option than using existing Scottish agencies to collect the two devolved taxes.

2.15 The Scottish Government has announced the establishment of Revenue Scotland which will oversee tax administration of the devolved taxes in Scotland. Revenue Scotland will work with the Registers of Scotland (RoS) on the collection of the Land and Buildings Transaction Tax and the Scottish Environmental Protection Agency (SEPA) for the collection of the replacement for Landfill Tax. This approach offers advantages in terms of flexibility, and our estimates also indicate that it will be cheaper to operate and to adapt.

2.16 RoS is responsible for the registration of title to land in Scotland and already registers most of the transactions on which the tax would be payable. RoS is committed to developing further its e-registration products to enable the majority of transactions to be submitted electronically. RoS will also develop an electronic system to receive and administer tax returns for the Land and Buildings Transaction Tax.

2.17 The Scottish Government is considering the best arrangements for the overall task of administering the devolved taxes, including powers and responsibilities for ensuring compliance and for pursuing debts where tax that is due remains unpaid. These issues will be consulted on later this year as part of the tax management consultation process.

### 3. Structure of the Tax

#### Chapter summary

- The current 'slab' tax approach to UK Stamp Duty Land Tax has raised concerns over the creation of market distortions, particularly around the thresholds.
- The Scottish Government is minded to introduce a Land and Buildings Transaction Tax that is more progressive than the current 'slab' tax approach to SDLT.
- Restructuring the tax to be more progressive would mean that, in some situations, and particularly at the lower end of the market, less tax would be payable than at present (for example, where land or property was bought at just above a threshold value). In other situations (for example, property with a buying price just below a threshold) more tax would be charged than at present.

3.1 The Scottish Government proposes that, as with SDLT at present, the Land and Buildings Transaction Tax would be structured with thresholds such that no tax would be paid on transactions below a particular level, that the initial rate of tax paid in respect of lower-value properties would be modest, and that a higher rate of tax would be paid on more expensive properties. These arrangements apply at present to both homes and non-residential property and the Scottish Government proposes to continue this approach.

3.2 As under current arrangements, we propose to include a lower top rate for non-residential property than that for residential property. This would ensure the tax does not have a significant negative impact on Scottish businesses compared to those based elsewhere in the UK.

3.3 Present rates and thresholds for SDLT are as follows:

**Table 2 - Current SDLT rates for residential property**

<b>Purchase price</b>	<b>SDLT rate</b>
Up to £125,000	Zero
Over £125,000 to £250,000	1%
Over £250,000 to £500,000	3%
Over £500,000 to £1,000,000	4%
Over £1,000,000 to £2,000,000	5%
Over £2,000,000	7%
Over £2,000,000 (purchase by company or partnership with corporate partner or collective investment scheme)	15%

**Table 3 - Current SDLT rates for non-residential or mixed use properties**

<b>Purchase price</b>	<b>SDLT rate</b>
Up to £150,000 – (for leases) annual rent is under £1,000	Zero
Up to £150,000 – (for leases) annual rent is £1,000 or more	1%
Over £150,000 to £250,000	1%
Over £250,000 to £500,000	3%
Over £500,000	4%

3.4 The existing SDLT is a slab tax, meaning that where the price paid for a property lies above a particular threshold, the whole price is taxed at the relevant rate – not just the part of the price that exceeds the threshold. For example, if a property is sold for £260,000, the tax payable is 3% on the entire amount of £260,000 – in this case, £7,800. The tax payable on a house bought for £240,000 is 1% of £240,000 or £2,400. So the tax charge under SDLT is more than three times higher for the £260,000 property, although the purchase price is only 8.3% higher.

3.5 This slab structure distorts the market by making it unattractive to buy a property at a price that is immediately above a threshold, since the extra tax charged on the whole sum is significantly higher than the tax payable on a slightly lower purchase price. These effects are illustrated in Graph 1 at Annex A on page 44 which shows the distribution of house sales by value in Scotland. It might also encourage some taxpayers to try to evade tax at the higher rate when the value of a property is just above a threshold, for example, by trying to attach a higher value than the actual market value to moveable items such as carpets or curtains as these items are not liable for SDLT.

3.6 These effects are most obvious in the residential property market, but they also apply to the commercial and industrial property markets.

3.7 An alternative approach would be to introduce a progressive tax structure, similar to the structure of UK Income Tax. This would mean that no tax would be paid on any of the value of a property below the first threshold. Above the first threshold, tax would be charged at the relevant rate on the amount by which the selling price exceeded the threshold. This would be continued through the various thresholds to the top rate. So, using existing thresholds to illustrate the effect, under a truly progressive tax structure and taking the example of a house costing £300,000, no tax would be paid on the first £125,000; tax at a lower rate would be paid on the amount between the first and second threshold (currently between £125,000 and £250,000); and a higher rate would be charged on the excess of the purchase price over £250,000, that is on £50,000. This would avoid sharp changes in tax liability at the thresholds and therefore tax charges would rise more proportionately in line with the purchase price, rent or lease premium paid. It would also avoid the distortions in the market referred to above and would reduce the incentive for purchasers and sellers to agree higher than justified prices for moveable or other items included in the purchase price.

3.8 There are a number of different ways in which a progressive approach to the Land and Buildings Transaction Tax could be structured. The scenarios and the associated tables provided in Annexes B and C on pages 49 and 55 respectively illustrate the amount of tax that might be charged under different approaches to a progressive structure, compared with current SDLT for transactions involving residential

and non-residential properties. These examples are for illustrative purposes only to demonstrate how a progressive rate might work. They do not indicate the Scottish Government's proposed tax rates, which will be set in the relevant budget.

3.9 This consultation does not seek views on the tax rates to be charged. As noted in the overview section, it is too soon to set rates now, because the tax will not take effect for nearly three years. The illustrative graphs at Annexes B and C are based on 2007 and 2009 data and show that under a progressive tax structure, while the marginal rate may be higher for the majority of purchasers in the Scottish market, the tax paid will be less. The Scottish Government could consider whether to raise more or less revenue from a Land and Buildings Transaction Tax depending on the assessment of financial, economic and public expenditure priorities at the time.

3.10 Restructuring of the tax to be more progressive would mean that, in some situations, less tax than at present would be payable (for example, where property was bought at just above a threshold value). In other situations (for example, property with a buying price just below a threshold) more tax would be charged than at present.

3.11 Moving to a progressive tax rate could have a beneficial effect on first time buyers. The UK Government has recently ended an exemption for first time buyers. The most noticeable affect on the property market of the exemption was an increase in sales shortly before the exemption came to an end. Moving to a progressive rate could offer more permanent support to first time buyers who tend to be at the lower end of the property market by more closely relating tax paid to the value of the property. There is also an opportunity to raise the threshold at which tax is paid in a way which could benefit first time buyers.

**QUESTION 1 – TAX STRUCTURE:**  
**Do you agree with the Scottish Government's view that the Land and Buildings Transaction Tax should be structured progressively?**

3.12 The replacement of SDLT with a Land and Buildings Purchase Tax also offers the opportunity to support key Scottish Government priorities through incentivisation. This could include building on the relief offered for zero carbon homes by offering lower rates for more energy efficient properties, encouraging business growth in more deprived areas or considering if different residential rates are appropriate in different parts of Scotland, for different types of land use or to achieve different objectives within the planning system. We would be grateful for any views about how the design or structure of Land and Buildings Purchase Tax could be used to support priorities of this kind.

**QUESTION 2 – SUPPORTING SCOTTISH GOVERNMENT PRIORITIES:**  
**Do you think that the Land and Buildings Transaction Tax should be amended in future to support key Scottish Government priorities? If yes, what objectives should changes focus on and what would be the best way of doing this?**

## 4. Exemptions and reliefs

### Chapter summary

- The Scottish Government considers that the majority of exemptions and reliefs in place under SDLT are broadly appropriate for Scotland and should continue.
- To simplify the Land and Buildings Transaction Tax system, we plan to amend and remove certain reliefs where we believe that changes are required for the Scottish system.

4.1 It is appropriate to provide partial or complete relief from Land and Buildings Transaction Tax for certain groups of purchaser or tenant or types of transaction. This is to ensure that the tax is fair and does not unjustifiably penalise certain types of arrangement. There are situations where applying Land and Buildings Transaction Tax without reliefs would not achieve outcomes that are desirable, or would create unfair outcomes, or would breach international law. Examples include where the Scottish Government wishes to support particular types of body to help them to buy or lease property because the purpose is to provide broader benefits to society; or where a legitimate type of transaction, such as a taking out a Shari'a-compliant mortgage, could be penalised as a result of third parties becoming liable for Land and Buildings Transaction Tax without getting the benefits of property ownership. Exemptions or reliefs will also help those less able to pay the tax, such as social renters and people and businesses buying property below the minimum threshold value (currently £125,000 for homes and £150,000 for non-residential property), by removing their liability.

### Exemptions

4.2 For the Land and Buildings Transaction Tax, we propose to continue to **exempt** certain transactions from the tax. In some cases where no tax is due, the collection agent still needs information about a transaction. Consequently a Land and Buildings Transaction Tax return, referred to in this paper as an 'LBTT return', would still need to be submitted. For clarity, we use the term **exempt** to refer to transactions that are exempt from any Land and Buildings Transaction Tax *and* where no return needs to be submitted.

4.3 The Scottish Government proposes to provide the following exemptions, which already exist under SDLT:

- transfers of property on divorce, separation or the end of a civil partnership;
- property transactions where no money or other contribution that has a monetary value changes hands;
- land or property which is transferred under succession law when the previous owner dies;
- social tenancies granted by Registered Social Landlords;
- where the purchaser is the Scottish Government, the Scottish Parliamentary Corporate Body or another designated Crown organisation; and
- transfers of land and property where the purchase price or lease value is less than £40,000.

4.4 In line with the current SDLT approach, we propose that the Scottish Ministers should be able, through regulations, to add further exemptions to this list, subject to

Parliamentary approval. The Scottish Government would consult on any proposals to amend this list in future.

**QUESTION 3 - EXEMPTIONS:**

**Do you agree that the proposed transaction categories should be exempt from Land and Buildings Transaction Tax, and that for these specific transactions no LBTT return should need to be submitted?**

**Reliefs**

4.5 For Land and Buildings Transaction Tax, we propose that there should be a range of *reliefs* that offer up to a 100% discount on the taxpayer's Land and Buildings Transaction Tax payment. As with the current UK system, to claim a relief – even a 100% one – we propose that an LBTT return should be submitted to the collection agent, as at present. This is needed:

- to enable the tax authorities to monitor the use of reliefs;
- to query any returns where further information is required to be sure that the relief is valid; and
- to ensure that information is available about any linked transactions (for example, where a developer makes an advance payment for an option for a plot of land, but then makes a further payment(s) later, the transactions need to be linked to ensure Land and Buildings Transaction Tax is paid based on the full purchase price).

4.6 When considering what reliefs should be available in respect of the Land and Buildings Transaction Tax, we have to balance the objective of providing targeted assistance to certain groups or types of taxpayer with the need to generate revenue to fund public services in Scotland.

4.7 As set out in Annex A, the UK Government is discontinuing Disadvantaged Area Relief and First Time Buyers Relief. There is little evidence that either of these existing reliefs have led to purchases in Disadvantaged Areas and/or by first time buyers that would not otherwise have happened if there had been no relief. This is because, in both cases, decisions on whether or not to buy a house are subject to factors that weigh more heavily than transaction tax costs, such as mortgage availability, house prices and interest rates. A surge in purchases by first time buyers shortly before the end of the relief reflects the impact of the UK Government's decision to remove the relief, encouraging those planning to buy to do so within a specific timescale, rather than the relief itself. Under a progressive tax system, properties in both the first time buyers section of the market and in disadvantaged areas are likely to incur less tax than would currently be the case.

4.8 Under Land and Buildings Transaction Tax, we propose to introduce a range of reliefs broadly in line with the current SDLT reliefs listed at Table 4 in Annex A on page 46, but to simplify the Land and Buildings Transaction Tax system we plan to amend or remove reliefs where either we believe that changes are required for the Scottish system or where the relief is not used within the Scottish system. These are set out below.

4.9 Firstly, we propose to provide an amended **Compulsory Purchase Order (CPO) relief**. At present, the position is that a local authority does not pay SDLT if it purchases land or property through a CPO with the intention of transferring it directly to a third party to facilitate development. The third party remains liable for SDLT if the property exceeds the minimum threshold. The Government proposes to amend the relief so that it will be available in respect of all CPOs where the local authority transfers land to a third party, without being limited to situations where this will facilitate 'development'. This will enable local authorities to use CPOs to purchase long-term empty homes, where the home will not be structurally altered after it is resold (and so would not attract CPO relief under the current definition of 'development') without having to pay Land and Buildings Transaction Tax. In practice many empty homes are likely to be purchased for less than the minimum threshold at which SDLT currently is payable, but this will not always be the case. The proposal to widen the relief will therefore remove one potential obstacle to local authorities seeking to bring empty homes back into use. This extension of CPO relief would be available for compulsory purchases by local authorities only, and not by other bodies with CPO powers.

4.10 Secondly, we propose to further simplify the approach to Land and Buildings Transaction Tax by **not** providing the following existing reliefs, which are currently not used in Scotland - either because SDLT is not normally due on these transactions or they do not operate in Scotland:

- Right to Buy relief – this relief, which means a purchaser only pays SDLT on the discounted value of their home, rather than the full value, is not currently claimed in Scotland as only a small proportion of Right to Buy homes are valued at more than £125,000. The Scottish Government will shortly be consulting on proposals to further restrict the Right to Buy.
- Shared Ownership relief – this relief from SDLT on the lease element of shared ownership is not needed in Scotland because, like other residential leases, shared ownership leases (known as occupancy agreements) can only last for a maximum of 20 years, although a new lease can be entered into when the old one ends if the owner and housing association agree. As a result, in Scotland the occupancy payment is never high enough to require SDLT to be paid.
- Bodies established for national purposes relief – only one of the bodies which can claim this relief operates in Scotland (NESTA) and it is expected to be eligible for charities relief in future.
- Collective enfranchisement by leaseholders relief – this is only available where leasehold owners of flats jointly purchase the freehold for their building. Leasehold ownership is not used in Scotland.

4.11 The Scottish Government proposes to continue to provide a relief for the **bulk purchase** of residential housing. In order to encourage large-scale investment in the private rented sector, thus providing more homes for rent, it is fair and appropriate that landlords should be charged Land and Buildings Transaction Tax on the basis of the average purchase price of each home bought, rather than the total price of a bulk purchase.

4.12 We would welcome views on these proposals.

**QUESTION 4 – COMPULSORY PURCHASE ORDER RELIEF:**

**Do you agree with the proposal that the Compulsory Purchase Order relief should be expanded in Scotland to allow local authorities to benefit from the relief where they compulsorily purchase an empty home for onward sale?**

**QUESTION 5 – RIGHT TO BUY / SHARED OWNERSHIP RELIEFS:**

**Do you agree with the proposal not to provide a Right to Buy or Shared Ownership relief for the Land and Buildings Transaction Tax, on the basis that these reliefs are not needed in Scotland?**

4.13 The following reliefs would be carried forward from SDLT:

- **Group relief** will apply where land or property is transferred between two connected companies within a corporate group structure because there is in effect no change in the economic ownership of the land or property.
- **Acquisition relief** will apply where land is transferred between companies in the same corporate group as part of a reconstruction or acquisition.
- **Charities relief** will apply to land acquisitions by charities registered with the Office of the Scottish Charity Regulator (OSCR). This is a change to the current position under SDLT where charities must be recognised by HMRC to qualify for charities relief.
- **Registered Social Landlords relief** will apply to purchases by RSLs in certain circumstances where their purchases are part-funded with public sector funding.
- **Certain acquisitions by property traders relief** will apply where property is bought from the personal representatives of a deceased person or from an individual and the chain of transactions breaks down, or in part exchange for a new residential property.
- **Certain acquisitions by developers relief** will apply where residential property is bought by developers in part exchange for a new residential property.
- **Certain acquisitions by an employer relief** will apply where a purchase of residential property is made by an employer where an employee needs to change residence due to relocation of his/her employment.
- **Educational bodies partial relief** will apply to certain sale/long lease and leaseback arrangements involving further and higher education organisations
- **Alternative property finance relief** will apply to ensure that where e.g. mortgages are structured to comply with Islamic (Shari'a) law only one Land and Buildings Transaction Tax payment is made.
- **Alternative property investment bonds relief** will apply to ensure no additional Land and Buildings Transaction Tax charges arise on the issue of certain Shari'a-compliant property investment bonds.
- **Incorporation of limited liability partnerships (LLP) relief** will apply where an interest in land is transferred by a partner in an LLP to an LLP in connection with its incorporation.

- **Multiple dwellings relief** will apply to bulk purchases so the purchaser only pays Land and Buildings Transaction Tax based on the average purchase price of each home, not the total combined price.
- **Compulsory Purchase Order relief** will apply so that local authorities do not need to pay Land and Buildings Transaction Tax when they compulsorily purchase land or property and then sell it on.
- **Complying with Planning Obligations relief** will apply where a land transaction is entered into in order to comply with a planning obligation.
- **Demutualisation of an insurance company/building society reliefs** will apply to land transactions carried out at the time of the demutualisation.
- **Public bodies relief** will apply in cases where, as a result of Scottish legislation, there is a transfer of functions from one public body to another.
- **Reorganisation of UK Parliamentary constituencies relief** will apply where a local constituency association transfers land or property to another as a result of a reorganisation of UK Parliamentary constituencies.
- **Crofting Community Right to Buy relief** will apply to the purchase of two or more crofts under Crofting Community Right to Buy provisions in the Land Reform (Scotland) Act 2003.
- **Overlap relief** will ensure that there is no double charge of Land and Buildings Transaction Tax in the overlap period when a further lease has been granted.
- **Subsale relief** will apply where A contracts to purchase land from B, but sells it on to C before the completion of the former contract. In this case, there will only be one transaction where there is a requirement to pay Land and Buildings Transaction Tax.
- **Sale and leaseback relief** will apply to the leaseback element of a sale and leaseback arrangement.
- **Transfers under specified legislation relief:** this refers to various miscellaneous provisions - see <http://www.hmrc.gov.uk/manuals/sdlmanual/SDLTM29600.htm>
- **Zero Carbon Homes relief** will continue the temporary relief to provide full or partial relief for homes certified as meeting zero carbon standards (although the Scottish Government will consult on changes to the required standards, which will be set out in future regulations).
- **Diplomatic premises relief** will apply where premises are purchased or leased by foreign governments.
- **Sovereign bodies and international organisations relief** will apply where headquarters are purchased or leased by these bodies.

**QUESTION 6 – PROPOSED RELIEFS:**

**Do you agree with the proposed list of reliefs? Please comment on any reliefs which you think should be abolished, amended or added and give reasons.**

## 5. Commercial and Residential Leases

### Chapter summary

- SDLT revenue from residential leases in Scotland is low, and will become even lower if the Scottish Parliament approves the Long Leases (Scotland) Bill.
- To simplify the approach to the Land and Buildings Transaction Tax in relation to residential leases in Scotland, the Scottish Government proposes that only tenants of the few residential leases that would be registrable in the Land Register or the Register of Sasines would be required to submit an LBTT return. Therefore residential leases of 20 years or less in length would be exempt from Land and Buildings Transaction Tax.

### Residential Leases

5.1 The Land and Buildings Transaction Tax will be based on Scots law and practices. The Scottish Government proposes largely to replicate the existing approach in relation to the treatment of leases, including basing the calculation of Land and Buildings Transaction Tax charges on the net present value of the rent, but adjusted where necessary to suit the Scottish system.

5.2 At the moment, the great majority of residential 'leases' that are liable for SDLT relate to leasehold homes in England. In Scotland, the Land Tenure Reform (Scotland) Act 1974 means that residential leases of over 20 years cannot normally be granted (subject to certain exceptions for leases taken by bodies, such as local authorities, housing associations and rural housing bodies). The Long Leases (Scotland) Bill<sup>2</sup>, currently being considered by the Scottish Parliament, will, subject to some exceptions, convert ultra-long leases (over 175 years long and with more than 100 years left to run) to ownership. Therefore, as can be seen from Table 5 in Annex A on page 47, the SDLT revenue from residential leases in Scotland is low, and will become even lower if the Long Leases (Scotland) Bill is approved by the Scottish Parliament.

5.3 Only leases that are over 20 years long can be registered in the Land Register or recorded in the Register of Sasines. To simplify Land and Buildings Transaction Tax in relation to leases in Scotland, the Scottish Government proposes that only tenants of the few residential leases that would be registerable in the Land Register or the Sasines Register would be required to submit an LBTT return. Therefore residential leases of 20 years or less in length would be exempt from Land and Buildings Transaction Tax. Calculation of the tax due on any long residential leases would continue to be on the same basis as for UK SDLT so, in many cases, tenants may still not be required to pay Land and Buildings Transaction Tax if the net present value of their rent over the lease period and any premium paid to the landlord does not exceed the minimum threshold set. Calculation of Land and Buildings Transaction Tax due on non-residential leases would also, at least initially, be done on the same basis as for UK SDLT.

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<sup>2</sup> See Scottish Parliament website - <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/45695.aspx>

**QUESTION 7 – RESIDENTIAL LEASES:**

**Do you agree that residential leases of 20 years or less in length should be exempt from Land and Buildings Transaction Tax in Scotland and that no LBTT return should be required?**

**Commercial Leases**

5.4 From initial discussions with stakeholders, the Scottish Government is aware that the current SDLT legislation in relation to the calculation of the tax payable for commercial leases does not always work effectively in the Scottish context. Question 8 below therefore seeks views and proposals on what could be done to ensure that the legislation for commercial leases is better aligned with Scots law and practices.

**QUESTION 8 – CALCULATION OF TAX PAYMENTS FOR COMMERCIAL LEASES:**

**What proposals would you make to ensure that the calculation of tax payments due on commercial leases is better aligned with Scots law and practices?**

## 6. Anti-avoidance measures

### Chapter summary

- The use of contrived and artificial arrangements to avoid tax not only reduces the amount of tax revenue collected and so undermines public services, it also distorts the tax system and places an unfair burden on compliant taxpayers.
- The Scottish Government is determined to protect the interests of compliant taxpayers and therefore proposes to take a vigorous approach to anti-avoidance measures, including taking the same steps in relation to Land and Buildings Transaction Tax as are in place and planned for SDLT.
- The Scottish Government is also considering whether further anti-avoidance measures are necessary.

6.1 The use of contrived and artificial arrangements to avoid tax not only reduces the amount of tax revenue collected and so undermines public services, it also distorts the tax system and places an unfair burden on compliant taxpayers. The Scottish Government is determined to protect the interests of the vast majority of taxpayers who are compliant. The Land and Buildings Transaction Tax (Scotland) Bill will include anti-avoidance provisions designed to prevent elaborate arrangements from being effective if they are set up with the purpose of avoiding the payment of Land and Buildings Transaction Tax that would otherwise be due. This will include provisions along the lines of the anti-avoidance measures for SDLT set out in sections 75A-C of the Finance Act 2003, which aim to make avoidance schemes invalid if transactions are combined to try to claim a relief or exemption. These provisions are referred to as targeted anti-avoidance measures.

6.2 In addition, the UK Government has amended existing SDLT legislation on a provisional basis, pending enactment of the Finance (No. 4) Bill 2012, to impose a 15% rate of SDLT on certain high value transactions where a residential home is purchased for over £2 million by a company, partnership with a corporate member or a collective investment scheme. This high rate is designed to deter purchasers from avoiding tax by transferring ownership of homes to companies, with a view to selling the shares in the companies (purchases of shares are not subject to SDLT and they attract a much lower rate of Stamp Duty). While there are few homes currently sold at this value in Scotland, the Scottish Government proposes that Land and Buildings Transaction Tax should provide similar disincentives for purchasing homes through companies.

6.3 The UK Government is also proposing to charge Capital Gains Tax (CGT) on the increase in value of homes sold by 'non-natural persons' such as companies or partnerships (CGT is not chargeable on a person's main residence when it is sold). In addition, the UK Government has announced that it will consult on a new annual charge on companies, partnerships and collective investment schemes holding homes worth over £2 million. The Scottish Government will have no control over CGT nor the proposed annual charge since neither of these is a devolved tax. We will therefore be liaising with the UK Government to ensure that the new anti-avoidance measures are as effective as possible in ensuring those buying high value homes in Scotland pay any tax that is due. Wider fiscal powers for Scotland in future would enable more effective anti-

avoidance measures to be developed through the combined use of different taxes appropriate to Scotland.

6.4 In addition to the targeted anti-avoidance measures described in paragraphs 6.1 and 6.2, the Scottish Government is considering putting in place a general anti-avoidance rule. The purpose of such a rule is to help ensure that transactions and arrangements of any kind whose primary purpose appears to be to enable taxpayers who participate in them to avoid paying tax that would otherwise be due, do not achieve their purpose. Rules of this kind are in place in a number of countries, including New Zealand. It is important that such rules are clear, properly understood, and operate fairly – for example, so that legitimate transactions for which there are genuine reasons are not caught, and also so that comparable transactions are dealt with consistently. The Scottish Government intends to consult further on such a general anti-avoidance rule alongside other tax management issues later this year. In the meantime, however, it would be helpful to have views on how such a rule might be designed to achieve the purpose stated, while avoiding unintended consequences.

**QUESTION 9 – TARGETED ANTI-AVOIDANCE RULES:**

**Do you agree that anti-avoidance measures as described in paragraphs 6.1 and 6.2 should be put in place for the Land and Buildings Transaction Tax, along the lines of those included in UK SDLT legislation?**

**QUESTION 10 – GENERAL ANTI-AVOIDANCE RULE:**

**Do you think that a more general anti-avoidance rule should be put in place instead of or in addition to the proposed targeted anti-avoidance rules to help ensure that Land and Buildings Transaction Tax and other Scottish taxes due are paid?**

## 7. Administering the tax

### Chapter summary

- Land and Buildings Transaction Tax will be a self-assessed tax, with tax authorities responsible for monitoring returns and undertaking enquiries to ensure compliance.
- The Scottish Government proposes to continue the principle of linking Land and Buildings Transaction Tax returns with registration of title to land or property. It is also proposed to encourage progressively greater use of online systems to allow LBTT returns, payment of Land and Buildings Transaction Tax and registration of title (where this is required) to be done simultaneously.
- To ensure prompt payment and help deliver administrative efficiencies, we propose that a correct LBTT return must be submitted and instruction to make payment of any tax due must be made before registration of title to land or document can be completed.
- The proposed consultation on tax management and the subsequent legislation will seek comments on and make provision for compliance powers, review and appeals processes, offences, penalties and other tax management arrangements.

### Collection arrangements

7.1 As noted in the overview section, the Scottish Government has decided that the collection of Land and Buildings Transaction Tax should be carried out under the auspices of a new tax authority, Revenue Scotland, with operational activity delivered by Registers of Scotland (RoS). RoS is responsible for the registration of title to land in Scotland and records many of the transactions on which the tax would be payable. We refer to RoS as the 'collection agent' in this document.

7.2 The Land and Buildings Transaction Tax system will continue to operate on the basis of **self assessment** by the taxpayer, but with tax authorities charged with monitoring returns and carrying out investigations to ensure compliance.

7.3 Revenue Scotland will also be required to ensure that clear advice and guidance, tailored to Scots law and practices, is available to help taxpayers, solicitors and tax advisers to understand the new system and any changes in processes for submitting tax returns and payments.

7.4 At present, there are issues with some requirements for SDLT collection because it is largely based on the English property law system. This means that it often does not fit comfortably with Scots law and practices. An example of differences in property law is that there is no priority period in Scotland, unlike in England. In Scotland, a purchaser or tenant cannot obtain a 'real right' over land or property until registration in the Land Register or Register of Sasines takes place. Even where registration in the Land Register is not required in order to obtain a real right, it is usual practice in Scotland to register deeds for commercial leases in the Books of Council and Session for preservation (and in some cases execution).

7.5 Any delay in obtaining the SDLT certificate, which is issued once a return is made, therefore leads to a delay in registering and a consequent delay in a party obtaining a real right. This could carry potentially serious risks for purchasers and has knock on effects on third parties such as lenders. The 'gap', and therefore the risk to purchasers (and their lenders), is presently covered by solicitors, on their clients' behalf, through their Master Insurance Policy. However, this concern for solicitors will largely be addressed through the provisions of the Land Registration etc. (Scotland) Bill<sup>3</sup>. This is because a system of 'advance notices' will be implemented, which will protect the potential purchaser from the risk due to the time gap between purchasing the property and registering title to it.

7.6 The Scottish Government proposes to encourage progressively greater use of online systems to allow returns, payment and registration of title (where this is required) to be done simultaneously. Submitting returns and payments online will allow the solicitor to register title to a property or land more quickly as well as allowing the collection process to operate more efficiently by minimising errors or omissions in LBTT returns (for example, the online system would not allow a return to be submitted if a required field had not been completed).

**QUESTION 11 – ONLINE PAYMENTS:**

**Do you agree that a new online system should be designed to allow for simultaneous submission of an LBTT return, payment of any tax due and registration of title to the land or property in the Land Register?**

**QUESTION 12 – COMPULSORY ONLINE PAYMENTS:**

**Do you agree that all LBTT returns should be submitted online or should there be an opportunity to submit paper returns?**

7.7 The Scottish Government proposes that taxpayers should continue to have **up to 30 calendar days after the effective date** (normally when the sale or lease is concluded) both to submit an LBTT return and to pay any tax due. However, in order to ensure prompt payment and help deliver administrative efficiencies, we also propose that **both a complete LBTT return must be submitted and payment of any tax due must be made before any title to land can be registered** in the Land Register or recorded in the Register of Sasines or before a lease or other deed is registered in the Books of Council and Session.

7.8 This will encourage solicitors to pay any tax due promptly online on behalf of clients at the same time as they submit an LBTT return. We understand that, in most cases under the current system, solicitors receive funds from their clients to cover any SDLT due before, for example, a house purchase is concluded or at least before an SDLT return is submitted. Therefore this should not create cashflow issues for solicitors.

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<sup>3</sup> See Scottish Parliament website - <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/44469.aspx>

7.9 Details of payment methods available will be covered separately in the consultation on proposals for a Tax Management Bill as these are expected to apply to all devolved taxes.

**QUESTION 13 – LINKING TAX PAYMENT TO REGISTRATION OF TITLE:**

**Do you agree that Land and Buildings Transaction Tax must be paid before title to the land or property can be registered in the Land Register or the Register of Sasines or before a document or deed is registered in the Books of Council and Session?**

**Compliance, Penalties and Appeals**

7.10 As noted in paragraph 7.1 above, many provisions relating to compliance measures and appeals are applicable to devolved taxes generally and it is therefore proposed to consult on these separately towards the end of 2012. The necessary legal provisions would then be included in a separate Tax Management Bill, which would reflect the outcome of this further public consultation. Provisions in such a Bill would, for example, include:

- the review and appeal process in Scotland and rights of the taxpayer;
- the rights of the tax authorities to carry out inquiries and to ask taxpayers, their agents and others for information;
- requirements on organisations to notify Revenue Scotland of any avoidance schemes they are marketing;
- provisions enabling Revenue Scotland or RoS to impose and collect penalties in certain circumstances, such as late submission of tax returns and incorrect tax declarations;
- provisions for the charging of interest on unpaid tax or for repayments with interest on overpaid tax;
- taxpayers' duties to keep records relating to information relevant to their tax return; and
- criminal offences for evasion of tax, which will apply to both taxpayers and any advisers who assist them in evading tax by deliberately providing false information.

## 8. Companies, Trusts and Partnerships

### Chapter summary

- The Scottish Government proposes that the Land and Buildings Transaction Tax provisions for Partnerships and Trusts should be revised to take account of Scots law and practices.

8.1 The Scottish Government proposes largely to replicate provisions in the existing SDLT legislation<sup>4</sup> regarding who is liable to pay SDLT where the purchaser or tenant is a company, unit trust scheme, open-ended investment company, joint purchaser or where someone is acting on behalf of the purchaser or tenant (e.g. a parent or someone authorised to represent an adult with incapacity).

8.2 However, current provisions which determine the liability of all members of a partnership and trustees in relation to SDLT are based on the law of England and Wales in relation to Partnerships and Trusts. Scots law on Partnerships and Trusts is different and we therefore propose that the Land and Buildings Transaction Tax (Scotland) Bill should make provision for the treatment of Partnerships and Trusts, having regard to Scots law and practices.

### **QUESTION 14 – PARTNERSHIPS AND TRUSTS:**

**Do you agree that the Land and Buildings Transaction Tax (Scotland) Bill should be better aligned with Scots Law and practices in respect of the treatment of Partnerships and Trusts? If so, what measures would you propose?**

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<sup>4</sup> See in particular sections 100 to 106 and Schedules 15 and 16 of the Finance Act 2003 (as amended)

## 9. How to respond

- This consultation is your opportunity to shape the legislation for the introduction of a Land and Buildings Transaction Tax in April 2015. **Responses should be submitted by Thursday 30 August 2012.**
- It would be helpful to have your response by email. You can email your response to the mailbox [lbtt@scotland.gsi.gov.uk](mailto:lbtt@scotland.gsi.gov.uk)
- We are, of course, happy to receive written submissions too.
- Please ensure that you send a copy of your respondent information form with your response.

### Consultation events

We will be holding events around the country to explain our proposals and gather your views in person. Further information is available on the Scottish Government website at <http://www.scotland.gov.uk/>

### Written comments

You can respond to this consultation either by sending your response to the Scottish Government or by attending one of the consultation events.

We are inviting written responses to this consultation paper e-mail or by post by **Thursday 30 August 2012**. Please send your response, along with the completed Respondent Information Form (see 'Handling your Response' below) by email to [lbtt@scotland.gsi.gov.uk](mailto:lbtt@scotland.gsi.gov.uk)

If need be, you can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

If you wish to send a hard copy of your response, please send it to:  
Fiscal Responsibility Division  
Scottish Government  
Area 3B South  
Victoria Quay  
Edinburgh  
EH6 6QQ

We would be grateful if you would use the consultation questionnaire provided or would clearly indicate in your response which questions or parts of the consultation paper you are responding to, as this will aid our analysis of the responses received.

### Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please ensure that you send a

copy of your respondent information form (see page 29) with any responses so that we have your details and know if you are happy for your response to be made publicly available.

If you ask for your response not to be published, we will regard it as confidential and treat it accordingly. All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps**

If you tell us we can make your response public, we will put it in the Scottish Government Library and on the Scottish Government consultation web pages. We will check all responses where agreement to publish has been given for any wording that might be harmful to others before putting them in the library or on the website. If you would like to see the responses please contact the Scottish Government Library on 0131 244 4565. Responses can be copied and sent to you, but a charge may be made for this service.

### **What happens next?**

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision about the finalised Bill. We will issue a report on this consultation process which will be published on the Scottish Government's website at:

<http://www.scotland.gov.uk/Publications/Recent>

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to:

Fiscal Responsibility Division  
Scottish Government  
Area 3B South  
Victoria Quay  
Edinburgh  
EH6 6QQ

### **Scottish Government consultations**

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at: [www.scotland.gov.uk/consultations](http://www.scotland.gov.uk/consultations)

The Scottish Government has an e-mail alert system for consultations. This system, called SEconsult, allows individuals and organisations to register and receive a weekly email with details of all new consultations (including web links). SEconsult complements, but in no way replaces, Scottish Government distribution lists. It is designed to allow people with an interest to keep up to date with all Scottish Government consultation activity. You can register at SEconsult: <http://www.scotland.gov.uk/consultations/seconsult.aspx>

# Taking forward a Scottish Land and Buildings Transaction Tax



## RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

### 1. Name/Organisation

Organisation Name

Title Mr  Ms  Mrs  Miss  Dr  *Please tick as appropriate*

Surname

Forename

### 2. Postal Address

Postcode

Phone

Email

### 3. Permissions - I am responding as...

Individual

/

Group/Organisation

*Please tick as appropriate*

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate*

Yes  No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available

*or*

Yes, make my response available, but not my name and address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate*

Yes  No

Yes, make my response  
and name available, but  
not my address

*or*

- (d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate*

**Yes**

## 10. Draft Partial Business and Regulatory Impact Assessment (BRIA)

### Title of Proposal

#### Land and Buildings Transaction Tax

### Purpose and intended effect

#### Background

The Scotland Act 2012 received Royal Assent on 1 May 2012. As a result, from April 2015, Stamp Duty Land Tax (SDLT) will cease to apply in Scotland, and the Scottish Parliament will be able to levy taxes on land transactions. The Scottish Parliament will have the power to decide on rules for the administration of the tax and to agree which organisation(s) should carry out management of the tax in Scotland in the future.

The Scottish Government will bring forward legislative proposals for the Scottish Parliament to consider and prepare for the implementation of new tax arrangements in time for a launch in April 2015.

#### Objective

We aim to implement a tax on land transactions in April 2015. In the consultation document we call this a Land and Buildings Transaction Tax. We will ensure the necessary legislative framework is in place to enable the Scottish Government to administer a Land and Buildings Transaction Tax in Scotland and appoint an organisation(s) to manage the new system. The overarching objectives are:

- To design the policy and rules for a Land and Buildings Transaction Tax.
- To put in place the necessary legislative framework to enable the Scottish Government to administer a Land and Buildings Transaction Tax in Scotland.
- To ensure an organisation(s) is in place to manage the tax by April 2015.
- To tailor the Land and Buildings Transaction Tax system to better align it with Scots law and practices.

#### Rationale for Government intervention

These proposals are being implemented through UK Government legislation in the form of the Scotland Act 2012. As the consultation sets out, certain changes are being proposed within a framework that is broadly similar to the current arrangements for SDLT. Broader changes could be proposed if further taxes are devolved to Scotland or the Scottish Government introduces new taxes in future.

The aim will be to ensure that we can administer a Land and Buildings Transaction Tax competently and reliably. However, we have proposed certain changes in the consultation document and we recognise there are longer-term opportunities to ensure the tax is more aligned with Scottish Government objectives for policy on economic growth, housing, regeneration and climate change. The current main options for change and the rationale for them are:

- **considering progressive, rather than slab, rates.**

As a result of stakeholder calls to make the current SDLT system fairer and reduce market distortions at the tax thresholds, we are inviting views as part of the consultation on whether progressive rates for the Land and Buildings Transaction Tax should be considered. SDLT's slab nature (whereby the applicable tax rate is charged on the whole price paid, not just the amount above the relevant threshold) is seen by many as unfair. For example, a home purchaser paying £250,500 pays more than 3 times as much SDLT as someone paying £249,500. It also encourages market distortion as purchasers seek to keep their purchase below a threshold, even if a property is worth more. This can lead to tax evasion as some purchasers seek to keep their purchase price below a threshold by making separate payments to the seller for fixtures and fittings for more than their true value. Under a progressive rate, tax could be charged at a higher rate only on the amount paid above each relevant threshold. In order to ensure similar levels of revenue are raised under a progressive system compared to the current system, marginal rates would need to be increased. This would require some purchasers to pay more than they would under the UK system, while others would pay less (see further information and scenarios in Annexes B and C of the consultation document). Therefore, it would not be universally popular, but it could be justified as tax increases more gradually and proportionately in line with the price paid.

Whether or not a progressive rate is adopted, there are expected to be high tax charges for very expensive residential property. However, applying this high top rate to non-residential property would disproportionately affect businesses in Scotland so a lower top rate of tax for non-residential property would be proposed to minimise the impact. This proposal is in line with the existing approach in the UK SDLT system, where a top rate of 7% applies to residential property over £2 million (with a new top rate of 15% for purchases of residential property over £2 million by companies and other non-natural persons), but the top rate for non-residential transactions is 4%.

- **Requiring payment of the Land and Buildings Transaction Tax before a property can be registered and incentivising solicitors to complete LBTT returns online.**

Currently, an SDLT certificate is issued once a valid return has been submitted (which then allows a property to be registered), but any tax due does not have to be paid until 30 days after the relevant transaction. Given that some HMRC staff time is spent matching up payments to returns and chasing late payments, requiring payment at the same time as a return or before a certificate can be issued or title or deed registered means that there is unlikely to be a situation where the tax is never paid. It would also encourage quicker payment as solicitors want to register the title quickly with Registers of Scotland (RoS) to ensure legal rights to the property are secured.

#### **Link with Wider Policy Initiatives**

The work will contribute to the achievement of the Scottish Government National Outcome "Our public services are high quality, continually improving, efficient and responsive to local needs".

It will also contribute towards the achievement of the Scottish Government Objective to create a Wealthier and Fairer Scotland – including creating a competitive tax regime which incentivises business growth.

## Consultation

### Within Government

We have consulted widely within the Scottish Government, Registers of Scotland and with HMRC.

### Public Consultation

Public consultation is taking place between June and August 2012.

### Business

We have spoken informally to members of the Scottish Property Federation, the Law Society of Scotland, the Chartered Institute of Taxation, the Institute of Chartered Accountants of Scotland, two law firms and a number of other stakeholders, and plan to contact others who may be affected by the changes during the formal three-month consultation period.

## Options

- **Do nothing – i.e. do not replace Stamp Duty Land Tax once it is withdrawn from Scotland in April 2015**

### Sectors and groups affected

- From April 2015 taxpayers would no longer need to pay tax on land transactions in Scotland.

### Benefits

- Land transaction costs to taxpayers would be reduced if no tax was payable.
- No additional costs to Scottish Government from the implementation of tax collection and administration systems.

### Costs

Scottish Government would lose essential revenue that has ranged between £250m and £565m in recent years. This revenue is essential for funding public services in Scotland.

- **Implement a Land and Buildings Transaction Tax which mirrors the current UK SDLT system**

### Sectors and groups affected

- The Scottish tax authorities that manage collection and compliance activities.
- This option would be unlikely to have any significant effect on any other groups (i.e. anyone with an interest in land and property).

### Benefits

This option would be lower risk than the other options. This option allows the Land and Buildings Transaction tax to become established before the Scottish Government considers any major changes.

### Costs

No additional costs to businesses as the same system would operate following devolution of the tax, although some businesses feel that the current slab system is unfair.

## ■ **Land and Buildings Transaction Tax with progressive, rather than slab, rates**

### Sectors and groups affected

Anyone with an interest in land and property purchases and leases, including

- people who may buy or sell a home at some point in the future
- businesses who may buy or lease commercial premises
- farmers who may buy or lease agricultural land
- conveyancing solicitors
- other tax advisors
- the tax authorities.

### Benefits

A progressive tax could be argued to be fairer because the level of tax paid would increase more gradually and proportionately to the price paid. We have asked for views on this option and its impact in the consultation document so further information will be gathered to inform the final BRIA.

### Costs

While no rates or thresholds have yet been proposed, generally for a progressive tax, purchasers just above each threshold would pay less, while those just below a threshold would pay more (see scenarios in Annexes B and C of the consultation paper) compared to the slab structure of the existing SDLT system.

A progressive rate would be easier to collect and more consistent if it applied to both non-residential and residential transactions, rather than only residential. However, this could penalise bigger businesses as non-residential (primarily commercial and industrial land and property) accounts for 42-50% of current SDLT paid in Scotland, but only 10% of transactions. Therefore, a lower top rate for non-residential transactions would ensure that most companies would not pay significantly more.

We will use the consultation responses to further inform our views on the sectors and groups affected, the benefits associated with the options and on whether there are disproportionate costs to any stakeholders.

- **requiring payment of the Land and Buildings Transaction Tax before a property can be registered and incentivising solicitors to complete LBTT returns online**

Sectors and groups affected

- Solicitors - as they would be completing most LBTT returns. However, more than 90% of current SDLT returns are completed online so we do not think the impact of this proposal will be significant for the majority of solicitors. We have asked about the likely impact of this proposal in the consultation document so further information will be gathered to inform the final BRIA.
- The tax authorities.

Benefits

This approach should ensure that tax is always paid so no tax would be lost. Time and resources are currently spent within HMRC trying to match returns with payments. Ensuring payment of any tax due is made at the same time as a return is submitted or at least before a certificate is issued, via an online system would be less resource intensive for the Scottish collection agent. It would also encourage quicker payment as solicitors want to register title quickly (in the case of most transactions) to ensure legal rights to the land or property are secured.

Costs

There would be minimal additional cost to solicitors or their clients using the online system to make LBTT returns.

**Scottish Firms Impact Test**

Information will be gained from face-to-face interviews with a range of businesses affected by these proposals.

**Competition Assessment**

As above.

**Test run of business forms**

Forms (for example, the LBTT return form) needed for the collection of the tax by the tax authorities will be prepared in consultation with solicitors. Solicitors are the main users of current SDLT return forms and will continue to have this role in the Land and Buildings Transaction Tax system.

We will keep open the possibility of merging the LBTT form with the form for registering a change of title.

**Legal Aid Impact Test**

We have consulted the Legal Aid Board and do not believe there are any legal aid implications associated with these proposals.

**Enforcement, sanctions and monitoring**

Management of the Land and Buildings Transaction Tax will be undertaken by the tax authorities appointed by the Scottish Government. Further information will be provided in the final BRIA.

**QUESTION 15 – BUSINESS AND REGULATORY IMPACT ASSESSMENT:**  
**Do you have any comments on the draft Business and Regulatory Impact Assessment?**

## 11. Draft Partial Equalities Impact Assessment

While the main purpose of this Equalities Impact Assessment (EQIA) on the proposed implementation of a Land and Buildings Transaction Tax for Scotland to replace the existing Stamp Duty Land Tax (SDLT) is to identify any potential adverse impact, it also offers the opportunity to consider how this work can better promote equality of opportunity and good relations.

The public sector equality duty requires the Scottish Government to pay “due regard” to the need to:

- eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010;
- Advance equality of opportunity between people who share a protected characteristic and those who do not; and
- Foster good relations between people who share a relevant protected characteristic.

These three requirements apply across the “protected characteristics” of age; disability; gender reassignment; pregnancy and maternity; race; religion and belief; sex and sexual orientation.

In effect, this means that equality considerations are integrated into all the functions and policies of Scottish Government Directorates and Agencies.

The Equalities Impact Assessment (EQIA) enables us to consider how our policies (by policy we mean activities, functions, strategies, programmes and services or processes) may impact, either positively or negatively, on different sectors of the population in different ways.

We are now requesting comments on this partial EQIA. The comments received will be used to complete the full assessment and to determine if any further work in this area is needed.

### Step 1: Define the aims of your policy

Title of Policy	Introduction of a Land and Buildings Transaction Tax
Name of Branch or Division	Fiscal Responsibility Division
Department or Agency	Finance

*What is the purpose of the proposed policy (or changes to be made to the policy)?*

Currently, SDLT operates throughout the United Kingdom, with policy responsibility for it reserved to the UK Government. Following agreement between the UK and Scottish Governments, the Scotland Act 2012 includes powers for the Scottish Parliament to legislate on a tax on land transactions in Scotland.

The UK Government plans to “switch off” the UK SDLT system in Scotland from April 2015. This means the Scottish Government will need to bring forward legislative proposals for the Scottish Parliament to consider and prepare for the implementation of the new tax arrangements for an April 2015 commencement date. The consultation on ***Taking Forward a Land and Buildings Transaction Tax*** is a key stage in this process.

*Who is affected by the policy or who is intended to benefit from the proposed policy and how?*

There are a range of people who could be affected by the implementation of a Land and Buildings Transaction Tax. This includes everybody with an interest in land and property purchases and leases, including: people who may buy or sell a home at some point in the future, businesses who may buy or lease commercial or industrial premises or land, farmers who may buy or lease agricultural land, conveyancing solicitors, estate agents, lenders and tax advisors.

Given that the tax is expected to be similar to the existing SDLT, it is unlikely that the tax would have a significant impact on most of these stakeholders, although some might see some changes in the level of tax paid (which could be less or more than under the UK system, depending on the purchase price or lease rent/premium paid) if the consultation shows support for moving to a progressive means of charging the tax.

*How have you, or will you, put the policy into practice, and who is or will be responsible for delivering it?*

Legislation will be required to set out the structure of this Land and Buildings Transaction Tax for Scotland. As a stepping stone towards this, the consultation paper sets out proposals for key aspects of the Scottish tax. The consultation touches on provisions for tax collection, enforcement and appeals. However, a number of these provisions are likely to be set out in separate legislation on Taxes Management, which will be consulted on separately (with an associated Equalities Impact Assessment).

*How does the policy fit into our wider or related policy initiatives?*

Initially, the Scottish Government wishes to ensure that the transition to the Land and Buildings Transaction Tax is administered in an efficient and effective manner. This is part of the preparations to enable the Scottish Government to take on further tax powers in the event of support from the people of Scotland in the planned referendum on independence. Looking to the future, there may be opportunities to align the tax more closely with Scottish Government objectives for policy on economic growth, housing, regeneration and climate change.

*Do you have a set budget?*

A provisional budget for implementation of the tax will be agreed with the tax authorities and further details will be provided in time for introduction of the Land and Buildings Transaction Tax (Scotland) Bill.

Do you have information on:

<b>Age</b>	Yes		No	x
<b>Disability</b>	Yes		No	x
<b>Gender</b>	Yes		No	x
<b>Sexual Orientation</b>	Yes		No	x
<b>Race</b>	Yes		No	x
<b>Religion and Belief</b>	Yes		No	x
<b>Gender reassignment</b>	Yes		No	x
<b>Pregnancy and maternity</b>	Yes		No	x

### **Age**

Evidence – We currently have no information to suggest that the proposed implementation of a Land and Buildings Transaction Tax will have any significant impact on this criterion. Under the proposed tax, purchasers will be required to do certain things, for example complete a form (a land transaction return). We intend to replicate rules that exist under the current Stamp Duty Land Tax legislation to ensure provision is made for any children or older people who may experience difficulties in complying with any such requirement.

Consultation – to be added following this consultation

### **Disability**

Evidence - We currently have no information to suggest that the proposed implementation of a Land and Buildings Transaction Tax will have any significant impact on this criterion. Under the proposed tax, purchasers will be required to do certain things for example complete a form. We intend to replicate rules that exist under the current Stamp Duty Land Tax legislation to ensure provision is made for any disabled people who may experience difficulties in complying with any such requirement.

Consultation – to be added following this consultation

### **Gender**

Evidence - We currently have no information to suggest that the proposed implementation of a Land and Buildings Transaction Tax will have any significant impact on this criterion.

Consultation – to be added following this consultation

### **Sexual Orientation**

Evidence - We currently have no information to suggest that the proposed implementation of a Land and Buildings Transaction Tax will have any significant impact on this criterion.

Consultation – to be added following this consultation

## **Race**

Evidence - We currently have no information to suggest that the proposed implementation of a Land and Buildings Transaction Tax will have any significant impact on this criterion.

Consultation – to be added following this consultation

## **Religion and Belief**

Evidence - We currently have no information to suggest that the proposed implementation of a Land and Buildings Transaction Tax will have any significant impact on this criterion. As under current SDLT legislation, the proposed Land and Buildings Transaction Tax will take account of Islamic financial transactions which are structured using contracts, or combinations of contracts that satisfy the requirements of Shari'a law. The most pronounced difference between Islamic financing and existing equivalent products is the prohibition on interest.

Under the proposed tax system, relief from multiple tax charges in respect of qualifying transactions will ensure that a purchaser who chooses to finance their property transaction through a Shari'a compliant alternative finance product will not be placed at a disadvantage by paying more tax compared to a purchaser who uses a more conventional banking product in an equivalent transaction.

Consultation – to be added following this consultation

## **Gender reassignment**

Evidence - We currently have no information to suggest that the proposed implementation of a Land and Buildings Transaction Tax will have any significant impact on this criterion.

Consultation – to be added following this consultation

## **Pregnancy and maternity**

Evidence - We currently have no information to suggest that the proposed implementation of a Land and Buildings Transaction Tax will have any significant impact on this criterion.

Consultation – to be added following this consultation

<p><b><u>QUESTION 16 – EQUALITIES IMPACT ASSESSMENT:</u></b> <b>Do you have any comments on the draft Equalities Impact Assessment?</b></p>
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## **12. List of consultation questions**

### **QUESTION 1 – TAX STRUCTURE:**

Do you agree with the Scottish Government's view that the Land and Buildings Transaction Tax should be structured progressively?

### **QUESTION 2 – SUPPORTING SCOTTISH GOVERNMENT PRIORITIES:**

Do you think that the Land and Buildings Transaction Tax should be amended in future to support key Scottish Government priorities? If yes, what objectives should changes focus on and what would be the best way of doing this?

### **QUESTION 3 – EXEMPTIONS:**

Do you agree that the proposed transaction categories should be exempt from Land and Buildings Transaction Tax, and that for these specific transactions no LBTT return should need to be submitted?

### **QUESTION 4 – COMPULSORY PURCHASE ORDER RELIEF:**

Do you agree with the proposal that the Compulsory Purchase Order relief should be expanded in Scotland to allow local authorities to benefit from the relief where they compulsorily purchase an empty home for onward sale?

### **QUESTION 5 – RIGHT TO BUY / SHARED OWNERSHIP RELIEFS:**

Do you agree with the proposal not to provide a Right to Buy or Shared Ownership relief for the Land and Buildings Transaction Tax, on the basis that these reliefs are not needed in Scotland?

### **QUESTION 6 – PROPOSED RELIEFS:**

Do you agree with the proposed list of reliefs? Please comment on any reliefs which you think should be abolished, amended or added and give reasons.

### **QUESTION 7 – RESIDENTIAL LEASES:**

Do you agree that residential leases of 20 years or less in length should be exempt from Land and Buildings Transaction Tax in Scotland and that no LBTT return should be required?

### **QUESTION 8 – CALCULATION OF TAX PAYMENTS FOR COMMERCIAL LEASES:**

What proposals would you make to ensure that the calculation of tax payments due on commercial leases is better aligned with Scots law and practices?

### **QUESTION 9 – TARGETED ANTI-AVOIDANCE RULES:**

Do you agree that anti-avoidance measures as described in paragraphs 6.1 and 6.2 should be put in place for the Land and Buildings Transaction Tax, along the lines of those included in UK SDLT legislation?

**QUESTION 10 – GENERAL ANTI-AVOIDANCE RULES:**

Do you think that a more general anti-avoidance rule should be put in place instead of or in addition to the proposed targeted anti-avoidance rules to help ensure that Land and Buildings Transaction Tax and other Scottish taxes due are paid?

**QUESTION 11 – ONLINE PAYMENTS:**

Do you agree that a new online system should be designed to allow for simultaneous submission of an LBTT return, payment of any tax due and registration of title to the land or property in the Land Register?

**QUESTION 12 – COMPULSORY ONLINE PAYMENTS:**

Do you agree that all LBTT returns should be submitted online or should there be an opportunity to submit paper returns?

**QUESTION 13 – LINKING TAX PAYMENT TO REGISTRATION OF TITLE:**

Do you agree that Land and Buildings Transaction Tax must be paid before title to the land or property can be registered in the Land Register or the Register of Sasines or before a document or deed is registered in the Books of Council and Session?

**QUESTION 14 – PARTNERSHIPS AND TRUSTS:**

Do you agree that the Land and Buildings Transaction Tax (Scotland) Bill should be aligned to Scots Law and practices in respect of the treatment of Partnerships and Trusts? If so, what measures would you propose?

**QUESTION 15 – BUSINESS AND REGULATORY IMPACT ASSESSMENT:**

Do you have any comments on the draft Business and Regulatory Impact Assessment?

**QUESTION 16 – EQUALITIES IMPACT ASSESSMENT:**

Do you have any comments on the draft Equalities Impact Assessment?

**QUESTION 17 – OTHER COMMENTS:**

Do you have any other comments in relation to legislation for the Land and Buildings Transaction Tax, which are not covered by your responses to any of the other questions listed above?

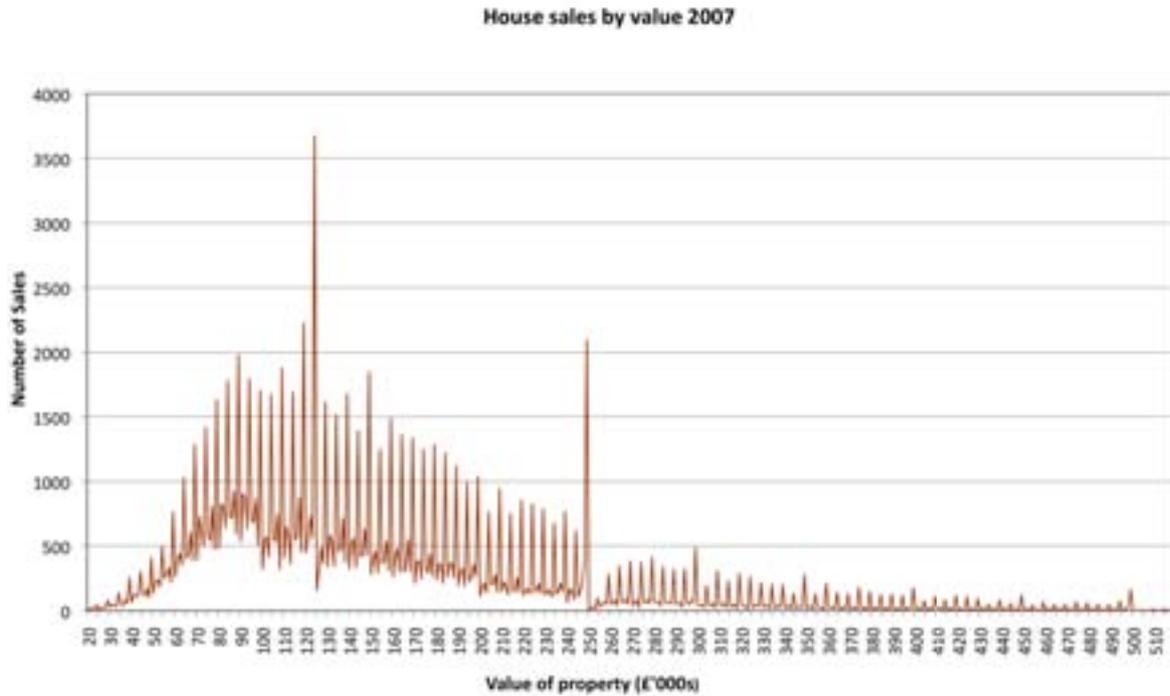
**Background: How Stamp Duty Land Tax (SDLT) currently operates in the UK**

The current UK-wide SDLT has been in place since December 2003. It is a tax on land and property transactions which brought in revised compliance powers and rights of appeal, which are in line with those for other taxes. It represented a change from the previous system of stamp duty, which was called stamp duty because originally a purchaser needed their documents to be physically stamped to confirm they had paid the duty.

SDLT is generally charged on the purchase, transfer or lease of property or land in the UK where the amount paid exceeds a certain level (known as a threshold). Various rules apply for working out exactly how much SDLT is payable. The calculation - which is based on a value called the 'chargeable consideration' - can vary depending on whether the land is residential or non-residential, whether the land or property is bought or leased, or on other factors such as whether several transactions are linked. SDLT is charged as a 'slab tax' so the purchaser must pay the applicable rate on the whole purchase price, rather than just the proportion over the relevant threshold(s). Tables 2 and 3 on pages 11 and 12 set out the current rates and thresholds.

Non-residential land and property includes all types of commercial land and property, agricultural and forestry land and buildings and long-term leases of rivers for fishing or other activities. Some properties that provide accommodation are classed as non-residential if they are not for the private use of a family (such as prisons, hospitals, student halls of residence, etc.). Mixed-use property is also charged at non-residential rates. A mixed-use property is one that includes both residential and non-residential elements (e.g. a shop with a flat above). Six or more residential properties bought in one transaction are classed 'non-residential' for SDLT purposes.

**Graph 1 – Number of homes purchased in Scotland by sale price (2007) (Data from Registers of Scotland)**



Graph 1 above shows the impact that SDLT currently has on the housing market as it indicates that there are peaks in numbers of sales just below SDLT price thresholds (currently £125,000, £250,000, £500,000, £1m and £2m), with very few sales just above those thresholds. Similar patterns would be seen for commercial property sales (although there are fewer sales in that sector so it is less visible).

## Exemptions and Reliefs

Some transactions qualify for exemptions or reliefs that can reduce the amount of tax payable or mean that no SDLT is due. An **exemption** under the current system is where no SDLT is ever due and the purchaser does not even have to fill in a tax return to HMRC in relation to it – for example where a property is transferred to someone for no charge through a will or where a property is transferred to someone as part of a divorce settlement.

A **relief** is provided in certain circumstances to allow certain types of purchaser or purchasers of certain types of property not to pay any SDLT or only to pay it above a higher purchase price than would normally be the case. However, where a purchaser wants to claim a relief they (or normally their solicitor on their behalf) must complete a 'return form' (referred to elsewhere in this paper as an 'SDLT return') even if no SDLT is due. This allows HMRC to monitor the use of reliefs and check they are being claimed legitimately.

According to the Office of Tax Simplification (OTS)<sup>5</sup>, at November 2010, there were over 40 SDLT reliefs or exemptions in existence. Following an OTS review, and a further UK Government consultation, legislation has been introduced (in Finance Bill 2012) to the UK Parliament to repeal Disadvantaged Area Relief from April 2013. Following a review of the two-year time-limited SDLT First Time Buyers Relief<sup>6</sup> in November 2011, the UK Government decided not to extend the relief beyond March 2012.

**Table 4** (below) gives information on the cost to government of certain reliefs in Scotland. It shows that the total cost of residential and non-residential reliefs **in Scotland in 2010-2011 was £57.5 million**. This represents around **17.5% of the £330 million** in SDLT revenue collected from Scottish transactions that year.

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<sup>5</sup> Created by the UK Government in 2010 to provide independent advice on simplifying the UK tax system.

<sup>6</sup> "Evaluating the Impact of Stamp Duty Land Tax First Time Buyers Relief". Anne Bolster, November 2011, HMRC.

**Table 4 – costs of current reliefs provided in Scotland for 2010-11 (data from HMRC<sup>7</sup>)**

<b>Relief</b>	<b>Non-residential £m</b>	<b>Residential £m</b>
Group	24.2	1.7
Other	10.8	3.4
Charities	3.5	1.7
First Time Buyers ( <i>UK Government ended effective 25 March 2012</i> )	n/a	4.8
Certain acquisitions by Registered Social Landlords	0.3	1.1
Acquisition	1.2	<0.1
Certain acquisitions - part exchange (house building company)	n/a	1.2
Alternative property finance	1.1	nil
Disadvantaged Area ( <i>UK Government will end effective April 2013</i> )	<0.1	0.8
Certain acquisitions – relocation of employment	n/a	0.6
Compulsory Purchase Facilitating Development	0.5	nil
Transfers involving public bodies	0.3	<0.1
Acquisition by bodies established for national purposes	0.2	<0.1
Reconstruction	0.1	<0.1
Incorporation of limited liability partnerships	<0.1	<0.1
Complying with Planning Obligations	<0.1	<0.1
Zero Carbon Homes ( <i>time limited 1 Oct 2007 to 1 Oct 2012</i> )	n/a	<0.1
Combination of reliefs	n/a	<0.1
Unknown reliefs	n/a	<0.1
<b>Total cost (excludes &lt;0.1 entries)</b>	<b>42.2</b>	<b>15.3</b>

There are a number of other existing UK SDLT reliefs not listed above (for example, demutualisation of an insurance company relief;crofting community right to buy relief) which had zero cost in 2010-11.

<sup>7</sup> The data in Table 7 is taken from HMRC's SDLT database and should be viewed as indicative rather than actual as they may be liable to change as a result of for example of compliance activity.

## Leases

Under the current UK system, no SDLT needs to be paid in respect of certain lease transactions, nor do they need to be notified to HMRC. These are:

- assignments of leases of less than £40,000;
- grants of leases of seven years or more where the premium is less than £40,000 and the annual rent is less than £1,000; and
- grants of leases of less than seven years - or assignments of leases which were originally granted for less than seven years - where the total value of the transaction isn't more than the residential or non-residential SDLT threshold.

A new lease is sometimes granted on terms that require the payment of both a premium and rent. A premium is a lump sum paid for the grant of a lease with rent being a regular payment made throughout the life of the lease. SDLT is calculated separately on the premium and rent elements and then added together to give the total SDLT payment which the tenant is required to pay. **Table 5** below provides data on new and assigned leases revenue for 2009-2010.

**Table 5 – SDLT revenue from leases in 2010-11 (data provided by HMRC)**

	<i>New Leases</i>		<i>Assigned leases</i>		<i>Total from leases</i>	
	Residential	Non-residential	Residential	Non-residential	Residential	Non-residential
UK (£m)	188.2	354.8	376.6	655.8	564.8	919.6
Scotland (£m)	<0.1	24.9	0.7	41.6	0.7-0.8	66.5
Scotland as a % of the UK total	0.05%	7.0%	0.19%	6.3%	0.1%	7.2%

The amount of SDLT payable on the rental element of the lease is calculated on the “net present value” (NPV) of the rent payable over the length of the lease. NPV simply applies a discount to allow for inflation. The NPV of the rent due for each year of the lease is worked out and then added all together. This calculation can be done by using a formula set out in the legislation for SDLT - an SDLT calculator tool is available on HMRC’s website to make this easier. SDLT is charged at a flat rate one percent of the NPV over £125,000 (for residential property) or £150,000 (for non-residential property).

Where a premium is paid for a lease, then the SDLT liability is calculated using the same rates as apply to land or property purchases (see Tables 2 and 3 on pages 11 and 12). Where an existing lease is assigned (transferred to someone else) then any SDLT due on the premium paid is calculated based on the purchase rules. No SDLT is payable by the new tenant unless the original lease benefitted from a relief such as a group relief or charities relief when it was granted.

## **Current rules on collection and compliance**

At present, SDLT is collected across the UK by HMRC (or on behalf of HMRC, for example by Registers of Scotland). When someone purchases, leases or transfers land or property, they need to complete an SDLT return and pay any tax due within 30 days of the 'effective date' of the transaction (unless the transaction is exempt from SDLT). The effective date of the transaction is usually the completion date or under a lease, the date the tenant takes entry. Most people use a solicitor to act for them, but it is legally the purchaser's or tenant's responsibility to notify HMRC and pay any SDLT due.

Currently, most SDLT returns in the UK are submitted using HMRC's online system - Stamp Taxes Online, with only about 10% submitted using the paper form. In Scotland, some 700 solicitor firms have the facility to use the Registers of Scotland (RoS) online system (Automated Registration of Title to Land (ARTL)), to file SDLT returns. ARTL allows them simultaneously to submit an online SDLT return, pay the tax and register title on the Land Register.

In 2010-11, only around 4% of the total number of SDLT returns in Scotland were submitted through ARTL. This is because, at present, ARTL is focused on standard transactions of properties that are already on the Land Register. First registrations of a new property cannot be handled by ARTL and around 45% of Scottish properties remain on the older Register of Sasines.

HMRC is currently responsible for all compliance activity in relation to SDLT returns and payments and has a range of powers to ensure payment, for example, by imposing penalties on taxpayers, and to tackle avoidance and evasion. There is a review and appeal process for taxpayers who do not agree with an HMRC decision related to SDLT. The first step in the process is for the decision to be reviewed within HMRC. Then, if the taxpayer still does not agree with HMRC's decision, they have a right to appeal to the Tax Tribunal. The Tribunal is currently a reserved tribunal and is administered by the Tribunal Service, which is part of the Ministry of Justice. (Matters in relation to compliance, penalties and appeals for the proposed Land and Buildings Transaction Tax will be covered separately in the future consultation and legislation on Tax Management.)

**Progressive Rates for Residential Property:  
Examples of indicative progressive rate scenarios for residential property transactions**

These graphs and tables, based on averaging data on residential property transactions in Scotland from 2007 and 2009, demonstrate how a progressive Land and Buildings Transaction Tax might operate in Scotland, compared to the current slab rates for SDLT. For the purposes of a like for like comparison of rates and thresholds, the two scenarios are provided on the basis of overall revenue neutrality i.e. the total revenue generated is the same in each example. The scenarios illustrate the tax payable on the purchase price or premium component of the tax (rather than rent).

**Scenario 1 – Residential property: progressive rate starting at £180,000, revenue neutral, with a higher tax rate for properties above £1.5m**

This scenario, which is estimated to be broadly revenue neutral, represents a major simplification of the tax structure. There is an added focus on relieving the burden of tax at the lower end of the market with purchases of properties under £180,000 incurring no tax. Based on historical data, no tax would be payable for around 75% of all house purchases in 2007 and 2009.

The single rate of 7.5% for purchases between £180,000 and £1.5 million has the effect of smoothing out the current system and removing distortions in the market. However, exempting a large proportion of the market does mean that the purchase of properties above £300,000 (less than 7% of the market) incurs more tax than under the current SDLT system. Additionally, the smoothing of the rates means that properties between £200,000 and £250,000 incur additional tax compared to the current slab system of SDLT.

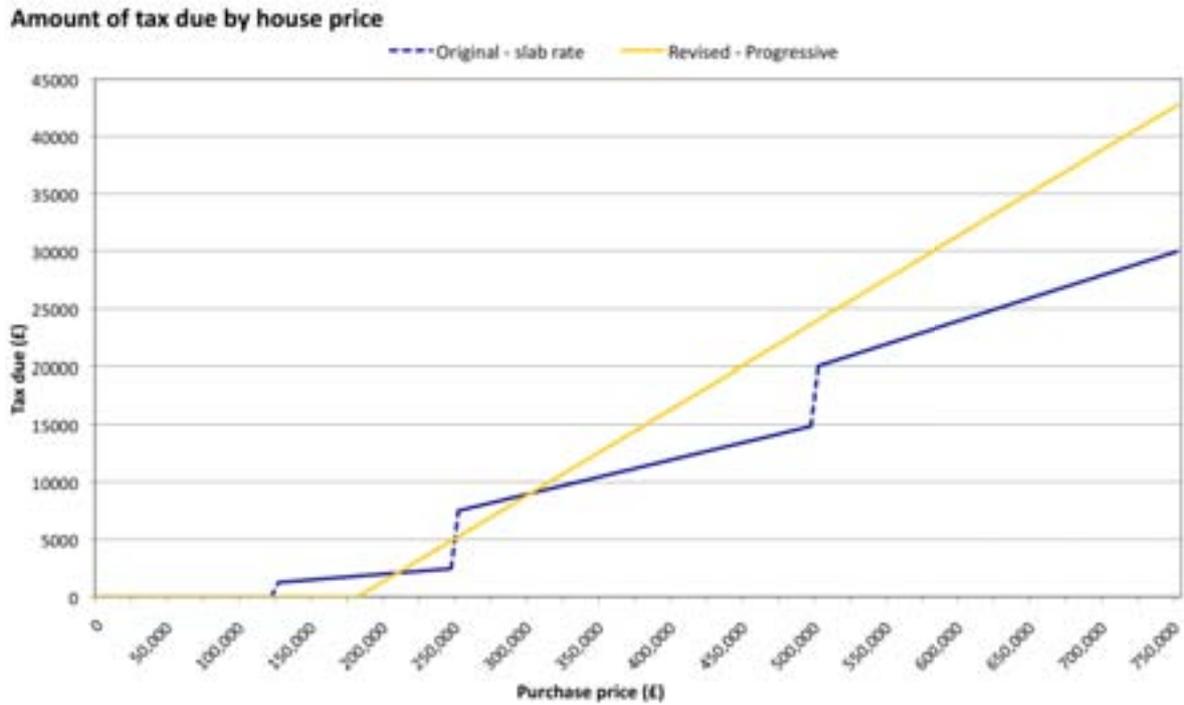
<b>Current</b> -----		<b>Scenario 1</b> _____	
Slab rate (%)		Progressive rate (%)	
Below £125,000	0	Below £180,001	0
Over £125,000 to £250,000	1	Over £180,000 to £1.5m	7.5
Over £250,000 to £500,000	3	Over £1.5m	10
Over £500,000 to £1m	4		
Over £1m to £2m	5		
Above £2m	7		

	<b>% of market (Average of 2007 and 2009)</b>
Below £180K	70
Above £180K	30
Above £1.5m	0.1

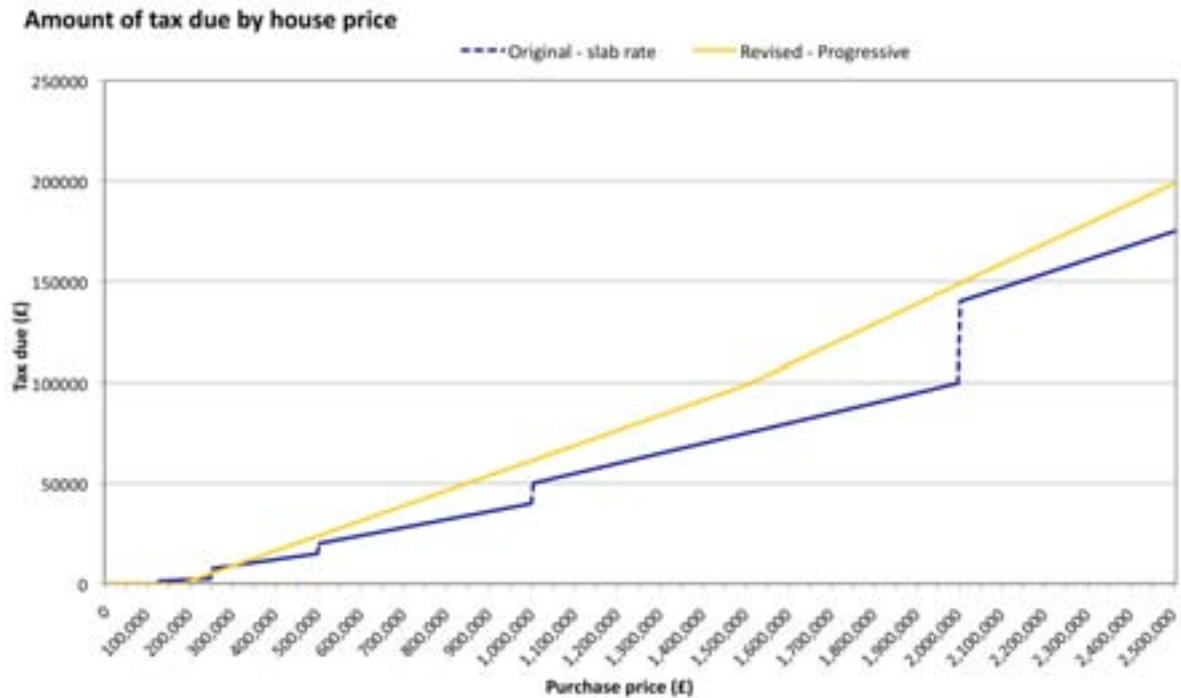
Based on 2007 and 2009 data, 70% of the Scottish housing market purchases were under £180,000. Under scenario 1, such purchases would not incur any Land and Buildings Transaction Tax.

**Amount of tax payable by House Price:**

i. Graph showing tax payable on house purchases up to £750,000



ii. Graph showing tax payable on house purchases up to £2,500,000



Tax payable under Scenario 1 compared with current SDLT system:

House Price	Tax under current system	Tax under Scenario 1
£125,001	£1,250	£0
£150,000	£1,500	£0
£180,000	£1,800	£0
£190,000	£1,900	£750
£200,000	£2,000	£1,500
£250,001	£7,500	£5,250
£300,000	£9,000	£9,000
£350,000	£10,500	£12,750
£400,000	£12,000	£16,500
£450,000	£13,500	£20,250
£500,001	£20,000	£24,000
£550,000	£22,000	£27,750
£600,000	£24,000	£31,500
£650,000	£26,000	£35,250
£700,000	£28,000	£39,000
£800,000	£32,000	£46,500
£ 900,000	£36,000	£54,000
£1,000,001	£50,000	£61,500
£1,250,000	£62,500	£80,250
£1,500,000	£75,000	£99,000
£1,750,000	£87,500	£124,000
£2,000,001	£140,000	£149,000
£2,500,000	£175,000	£199,000

**Scenario 2 – Residential property: progressive rates starting at £125,000, revenue neutral, with no one buying a house under £250,000 paying more tax than under the current SDLT system**

This scenario, also revenue neutral based on historical data, has 2 progressive rates starting at the current £125,000 level. The key feature of this scenario is that all purchases under £325,000 would be charged less tax than is currently the case under the slab system to SDLT - this represents about 95% of the market. The smoothing out of the current system means that properties just above £250,000 incur around £5,000 less tax but this is paid for by higher rates for the top 5% of the market.

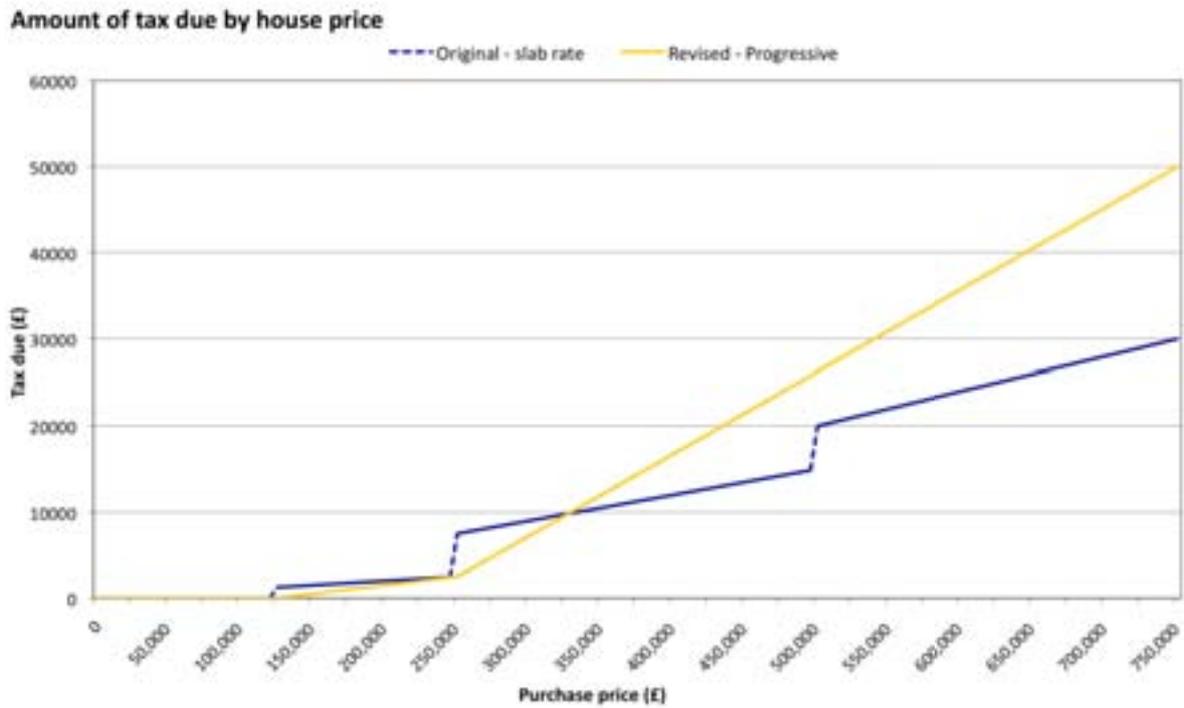
<b>Current</b> -----		<b>Scenario 2</b> _____	
Slab rate (%)		Progressive rate (%)	
Below £125,000	0	Below £125,000	0
Over £125,000 to £250,000	1	Over £125,000 to £250,000	2
Over £250,000 to £500,000	3	Above £250,000	9.5
Over £500,000 to £1m	4		
Over £1m to £2m	5		
Above £2m	7		

	<b>% of market (Average of 2007 and 2009)</b>
Below £125K	45
Above £125 and below £250K	43
Above £250K	12

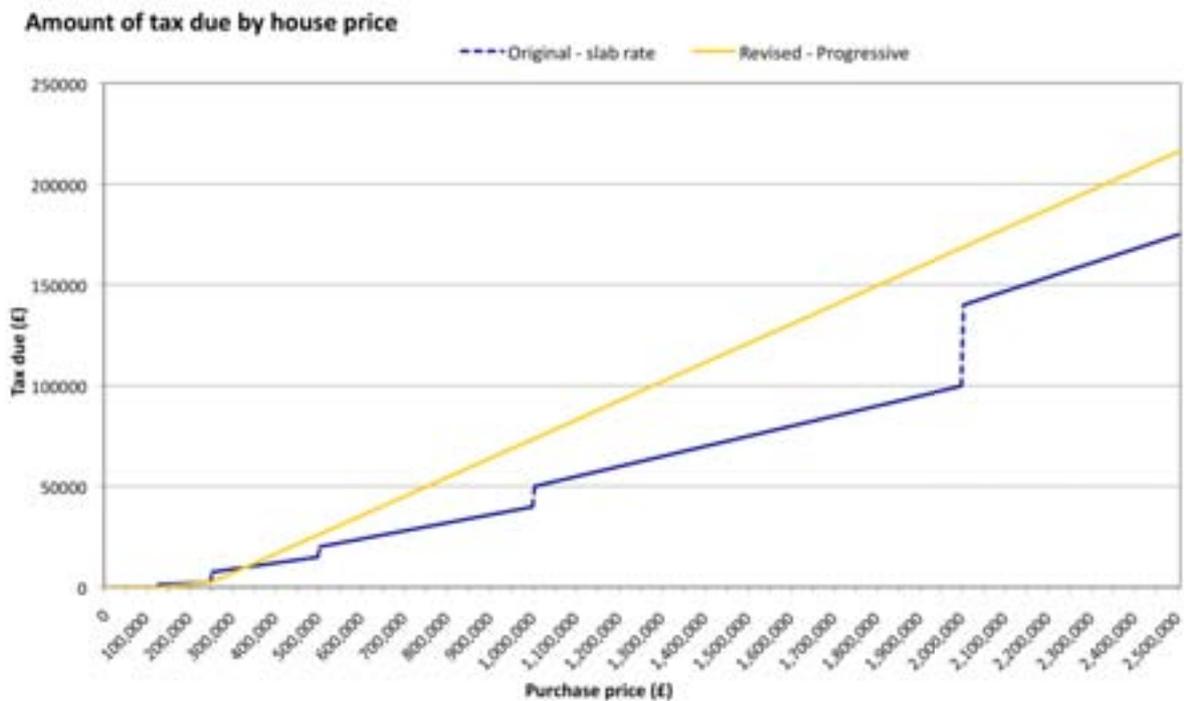
Based on 2007 and 2009 data, 45% of the Scottish housing market purchases were under £125,000. Under scenario 2, such purchases would not incur any Land and Buildings Transaction Tax.

**Amount of tax payable by House Price:**

i. Graph showing tax payable on house purchases up to £750,000



ii. Chart showing tax payable on house purchases up to £2,500,000



Tax payable under Scenario 2 compared with current SDLT system:

<b>House Price</b>	<b>Tax under current system (£)</b>	<b>Tax under Scenario 2 (£)*</b>
£125,001	£1,250	£0
£150,000	£1,500	£500
£180,000	£1,800	£1,100
£190,000	£1,900	£1,300
£200,000	£2,000	£1,500
£250,001	£7,500	£2,500
£300,000	£9,000	£7,250
£350,000	£10,500	£12,000
£400,000	£12,000	£16,750
£450,000	£13,500	£21,500
£500,001	£20,000	£26,250
£550,000	£22,000	£31,000
£600,000	£24,000	£35,750
£650,000	£26,000	£40,500
£700,000	£28,000	£42,250
£800,000	£32,000	£54,750
£900,000	£36,000	£64,250
£1,000,001	£50,000	£73,750
£1,250,000	£62,500	£97,500
£1,500,000	£75,000	£121,250
£1,750,000	£87,500	£145,000
£2,000,001	£140,000	£168,750
£2,500,000	£175,000	£216,250

\*Amounts rounded to nearest £1.

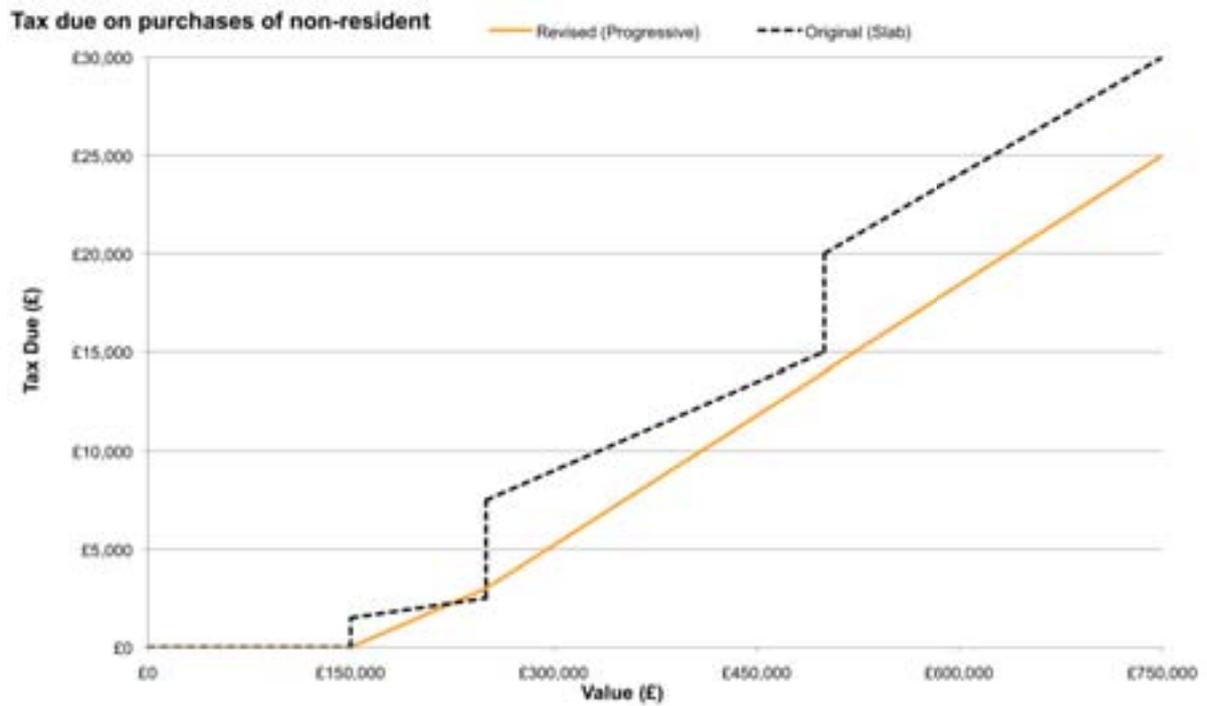
**Progressive rates for Commercial and other Non-Residential Property:  
Example of an indicative progressive rate scenario non-residential property transactions**

These graphs and tables, based on averaging data on non-residential property transactions in Scotland from 2007 and 2009, demonstrate how a progressive Land and Buildings Transaction Tax might operate in Scotland, compared to the current slab rates for SDLT. The scenario illustrates the tax payable on the purchase price or premiums for commercial and other non-residential leases (rather than rent).

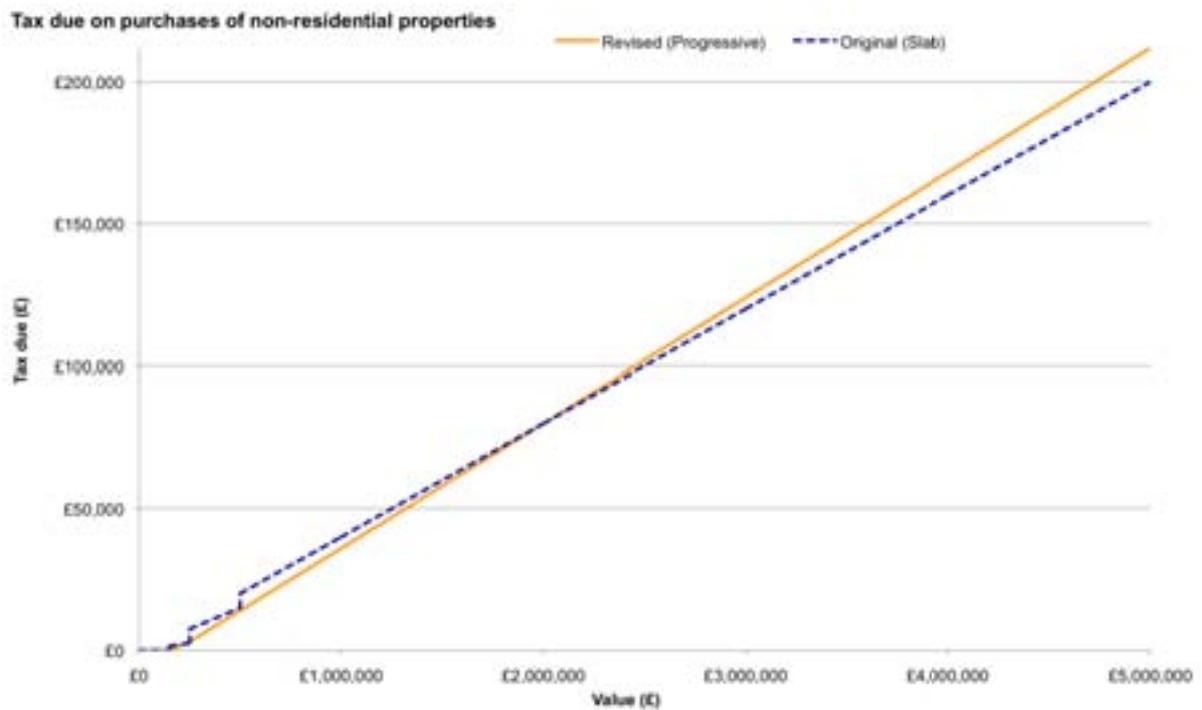
This scenario initially mirrors the SDLT approach with purchases of properties up to £150,000 incurring no tax. A progressive rate of 3% then follows for properties between £250,001 and £1,000,000, with no purchases below £225,000 incurring more tax than under the current slab system which would be helpful for small businesses. To achieve overall revenue neutrality, a progressive rate of 4.4% is applied for property purchases above £250,000.

<b>Current SDLT slab rates</b>	<b>Tax rate (%)</b>	<b>Scenario – progressive rates</b>	<b>Tax rate (%)</b>
Up to £150,000	0	Up to £150,000	0
£150,001 - £250,000	1	£150,001 - £250,000	3
£250,001 - £500,000	3	Above £250,000	4.4
Above £500,000	4		

i. Chart showing tax payable on purchases up to £750,000



ii. Chart showing tax payable on purchases up to £5,000,000



Tax payable under progressive rate scenario compared with current SDLT system:

<b>Purchase Price</b>	<b>Tax payable under SDLT</b>	<b>Tax payable under Scenario</b>
£150,000	£1,500	£0
£175,000	£1,750	£750
£200,000	£2,000	£1,500
£225,000	£2,300	£2,250
£250,000	£2,500	£3,000
£275,000	£8,250	£4,100
£300,000	£9,000	£5,200
£400,000	£12,000	£9,600
£500,000	£15,000	£14,000
£600,000	£24,000	£18,400
£800,000	£32,000	£27,200
£1,000,000	£40,000	£36,000
£1,500,000	£60,000	£58,000
£2,000,000	£80,000	£80,000
£2,500,000	£100,000	£102,000
£4,000,000	£160,000	£168,000
£10,000,000	£400,000	£432,000



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