



Law Society  
of Scotland

# Response to the Finance and Public Administration Committee

Land and Buildings Transaction Tax (Miscellaneous  
Amendments) (Scotland) Order 2024

31 January 2024



## Introduction

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The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Tax Law sub-committee welcomes the opportunity to write to the Finance and Public Administration Committee in relation to its consideration of the Land and Buildings Transaction Tax (Miscellaneous Amendments) (Scotland) Order 2024 (the “**Order**”).<sup>1</sup> The Order makes amendments to the Land and Buildings Transaction Tax (Scotland) Act 2013 (the “**2013 Act**”). The sub-committee has the following comments to put forward for consideration.

## General Comments

We generally welcome the Scottish Government’s proposed legislative amendments to the Land and Buildings Transaction Tax (“**LBTT**”) Additional Dwelling Supplement (“**ADS**”). We have previously highlighted – in our responses to the Scottish Government’s consultations on this area in March 2022<sup>2</sup> and April 2023<sup>3</sup> – a number of issues which have arisen with the application and implementation of the ADS, which would benefit from resolution or clarification. We therefore welcome progress being made to address such issues.

The law relating to the ADS is complex and nuanced. We do not consider that the amendments in and of themselves will simplify the law in this area – and in some cases may complicate the position for certain taxpayers depending on their circumstances.

Whilst we recognise the complexities and welcome the preceding stakeholder consultation on the proposed changes, we note that the initial consultation was launched in December 2021, and regret that intended changes could not have been achieved within a shorter timeframe. We also regret that the proposals do not go further in some areas.<sup>4</sup>

<sup>1</sup> [The Land and Buildings Transaction Tax \(Miscellaneous Amendments\) \(Scotland\) Order 2024](#)

<sup>2</sup> [The Land and Buildings Transaction Tax – Additional Dwelling Supplement: A call for evidence and views](#). Our response is accessible [here](#).

<sup>3</sup> [Additional Dwelling Supplement: Proposals for Change](#). Our response is accessible [here](#).

<sup>4</sup> For further commentary on areas that we consider would also merit amendment, please see our response to the first consultation dated March 2022.

It is important that the law is clear so that individuals and businesses can guide their conduct accordingly. We highlight the importance of any changes to the policy and legislative position in this area being accompanied by an appropriate awareness-raising campaign and clear guidance to assist taxpayers and their professional advisers. We consider it essential that guidance is published in advance of the proposed changes taking effect, to allow a sufficient lead-in time for taxpayers and their professional advisers to familiarise themselves with the updated provisions. In particular, given that the changes will not be retrospective and will therefore apply in relation to purchase transactions settling (on current plans) on or after 1 April 2024, this should be highlighted, including on the Revenue Scotland website – as such transactions will be in progress but not settled well in advance of that date, and clients and their advisers require to be aware of forthcoming changes at a time when they might have an influence on the details to be agreed in such forthcoming transactions. We comment further on this below with particular reference to the extension(s) to 36 months of periods affecting the relief for replacement of a main residence.

We also consider that there may be some unintended consequences arising from the amendments, or further clarification required in due course. Particularly in this context, we highlight that there would be merit in there being a process that allows for regular maintenance of and amendment to the devolved taxes, including LBTT. We suggest that this would form part of the budget process, including formalising a regular timetable and mechanism for stakeholders to give input on any operational and policy concerns with the tax legislation – including so-called “care and maintenance” matters as well as substantive changes to tax policy and to rates and bands. With particular reference to the Order, we consider that further amendments to the amended legislation will be required at the very least to improve clarity on certain issues. While this is not a reason to delay the very welcome main amendments, we urge strongly that sight should not be lost of the need for further work in this case, both specifically and generally. Please see our further comments in this context below.

We remain committed to working with the Scottish Government and Revenue Scotland on these points, and would be pleased to provide further information or examples if helpful to the Committee.

## **Specific Comments**

### **Articles 2 and 3 – Relief for certain acquisitions by local authorities**

We particularly welcome the changes provided for at articles 2 and 3 of the Order, which introduce a targeted relief from LBTT where the buyer is a local authority and the acquisition of land is funded by the Scottish Ministers under section 2 of the Housing (Scotland) Act 1987 or section 2 of the Housing (Scotland) Act 1988. We anticipate that this targeted relief will be greatly welcomed by those working in this area.

## Extension of relevant timescales from 18 to 36 months – Transitional arrangements

We have concerns over potential taxpayer and legislative uncertainty arising from the absence of a transitional arrangement in relation to the extension of the relevant timescales from 18 to 36 months as provided for in the Order, including at article 5.

Firstly, we consider that that the Order as drafted could cause taxpayer uncertainty and confusion over the effect of the changes. For example, we consider that there may be a risk that taxpayers misinterpret this as meaning that from 1 April 2024 (subject to parliamentary approval) the relevant timescales will be extended with retrospective effect. It is important that there is clear messaging and awareness-raising to avoid taxpayer and other stakeholder misunderstanding – in advance of the changes taking effect, to allow taxpayers to make informed decisions.

Secondly, we consider that the drafting of the Order does not provide clarity in respect of the transitional arrangements for property purchases and disposals before 1 April 2024. For example, on the relevant timescales for ADS purposes in relation to a property purchase on 31 March 2024. We consider that it would be helpful for the policy position and intended effect of such changes to be made clear.

### Article 7 – Changes to paragraph 8, schedule 2A, 2013 Act

We note that article 7 modifies paragraph 8 of schedule 2A of the 2013 Act. We have concerns that the insertion of sub-paragraph 8(1)(d) – as provided for at article 7(5) – is unclear in its effect and policy basis. We consider that it would be helpful for greater detail to be provided on these points.

An example (perhaps the prime example) of this is in relation to the interaction between the revised sub-paragraph 8(1)(b) and the inserted sub-paragraph 8(1)(d). We observe that sub-paragraph 8(1)(b) appears to provide that it is sufficient if the residence disposed of had been the residence of only one of the joint buyers. However, sub-paragraph 8(1)(d) provides that all of the joint buyers must meet the conditions in the paragraph – which would seem to imply that both must have disposed of previous main residences and that these residences must have been the residences of both of them. We would add that if the position described above in respect of sub-paragraph 8(1)(d) governs, this may in fact be a restriction on the present position.

We also consider that it is very difficult – or perhaps impossible – to reconcile the unchanged provisions of paragraph 8A of schedule 2A with the revised paragraph 8. We think that paragraph 8A may now simply be superfluous; and if so, or if revision is required, this is a good example of the legislative “tidying-up” which will in any event remain to be done, as mentioned in our General Comments above.

### Article 8 – Insertion of paragraphs 9B and 9C, schedule 2A, 2013 Act

We welcome the insertion of paragraph 9B, and particularly the inclusion of inheritance by survivorship – especially on the death of a proper liferenter, which is outwith the control of a purchaser. We would highlight that there are situations other than a death on which a purchaser may receive ownership of a dwelling, and although they are rare, they may too be a subject for further revision.

We note the insertion of paragraph 9C. We would have welcomed the proposals to address the position of cohabitants who split up, noting that the proposed relief only applies to separated spouses and civil partners retaining an interest in their former main residence. We consider that further consideration of this area would be welcomed, as there is no corresponding provision for situations where cohabitants who own property together separate. This could give rise to perceived unfairness in the treatment between affected taxpayers.<sup>5</sup>

### **Article 9 – Amendments to the deemed ownership provisions**

We welcome the broadening of the existing position in relation to the disregard of shares of a dwelling (paragraph 17, schedule 2A), to provide that the disregard applies where the share in the ownership of a dwelling – rather than the whole of the dwelling – is valued at less than £40,000.

<sup>5</sup> We discussed this concern in further detail at question 9 of our April 2023 response.

**For further information, please contact:**

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