Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill
Finance and Constitution Committee – Call for Evidence
Response by the Chartered Institute of Taxation

1 Introduction

1.1 This is a response by the Chartered Institute of Taxation (CIOT) to the Finance and
Constitution Committee of the Scottish Parliament’s call for evidence on the Land
and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill (the
Bill).1 We welcome the opportunity to offer our comments and would be pleased to
amplify our points orally or in writing.

1.2 Land and Buildings Transaction Tax (LBTT) is a tax fully devolved to the Scottish
Parliament, having been introduced under the Land and Buildings Transaction Tax
(Scotland) Act 2013 (the 2013 Act)2 with effect from 1 April 2015 to replace Stamp
Duty Land Tax (SDLT) on transactions in land situated in Scotland. The LBTT
Additional Amount took effect on 1 April 2016, and is an additional amount of LBTT
chargeable on the purchase of a dwelling where, at the end of the day that is the
effective date of the transaction, the buyer owns more than one dwelling and is not
replacing their only or main residence.3

1.3 The LBTT Additional Amount does not apply if the buyer is replacing the buyer’s only
or main residence. In determining whether the LBTT Additional Amount is
chargeable, the policy intention was to treat married couples, civil partners and co-
habitants (those living as a married couple), along with their dependent children, as
one economic unit. However, prior to the amendments made by the Land and
Buildings Transaction Tax (Additional Amount-Second Homes Main Residence
Relief) (Scotland) Order 2017 (the 2017 Order),4 the LBTT Additional Amount was
chargeable if spouses, civil partners or co-habitants were jointly buying a home to
replace a home that was owned by only one of them.

1.4 The 2017 Order came into force on 30 June 2017 and ensured that relief from the
LBTT Additional Amount was available in this scenario for all qualifying future

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3 Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016 (the 2016 Act):
transactions and if buyers entered into the contract to purchase a new main residence on or after 20 May 2017 and the effective date of the transaction was on or after 30 June 2017. The Bill aims to give retrospective effect to the 2017 Order, such that qualifying buyers who paid the LBTT Additional Amount prior to the Order being made, may claim a repayment.

1.5 The Scottish Government has committed itself to a tax system that has regard to Adam Smith’s four principles: the burden proportionate to the ability to pay (equality); certainty; convenience; efficiency of collection (economy). The CIOT agrees that these are important principles for a sound tax system.

1.6 As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the CIOT is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

1.7 Our stated objectives for the tax system include:
   - A legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences.
   - Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
   - Greater certainty, so businesses and individuals can plan ahead with confidence.
   - A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
   - Responsive and competent tax administration, with a minimum of bureaucracy.

2 Executive summary

2.1 We welcome the Bill and its aim to make relief from the LBTT Additional Amount available to all spouses, civil partners and co-habitants, where they have jointly purchased a home to replace their only or main residence, even where the home being replaced was only owned by one of the couple.

2.2 This fulfils the original intentions of the 2016 Act, which intended to treat married couples, those in a civil partnership and those living as if a married couple as one economic unit for the purposes of the LBTT Additional Amount.

2.3 Although the 2017 Order was able to achieve this for transactions with an effective date on or after 30 June 2017, it was unable to alter the position for transactions that took place between the introduction of the LBTT Additional Amount and the making of the 2017 Order.

2.4 The Bill is short and simple. It appears that it will be effective in ensuring that the amendments to the 2013 Act introduced by the 2017 Order apply to transactions

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where the contract was entered into on or after 28 January 2016 and for which the
effective date was on or after 1 April 2016.

2.5 As a result of the Bill, certain taxpayers will become eligible to claim a repayment of
tax from Revenue Scotland. They will have approximately five years from the
effective date of their transaction to do so. Unfortunately, Revenue Scotland has no
means of identifying affected taxpayers. It is essential that thought is given as to how
to communicate eligibility for a repayment claim to taxpayers effectively.

2.6 In order to deal with an unintended consequence of the 2016 Act, there has been a
two-stage process, using secondary legislation and then primary legislation in order
to effect the change. This demonstrates that there could be a place for an annual
Finance Bill / Finance Act in the Scottish Budget Process. Such a Bill / Act would
provide a means of making amendments to existing tax legislation to deal with
unintended consequences, errors in drafting and annual tax changes (such as to
rates and bands).

3 Purpose of the Bill

3.1 The Bill aims to ensure that all spouses, civil partners or co-habitants jointly buying a
home to replace their only or main residence are eligible for relief from the Additional
Amount. This is necessary, because when the Additional Amount was introduced,
the relief did not apply where only one spouse etc. owned the home being replaced.
Although the 2017 Order rectified this for qualifying future transactions, it was unable
to make the relief available to those affected, who had had to pay the Additional
Amount on transactions that took place between 1 April 2016 and 30 June 2017.7

3.2 The Bill ensures that qualifying spouses, civil partners or co-habitants will be able to
claim a refund of tax where the effective date of their transaction was between 1 April
2016 and 30 June 2017. Moreover, a repayment may also be claimed if, within 18
months of the transaction under which they acquired a dwelling house as joint
owners to be used as a main residence (and paid the Additional Amount), one or
other of the joint buyers disposes of a dwelling house that has been used by both of
them as their main residence.

3.3 The aim is to put such couples, where only one partner owned the home being
replaced, in the same position as couples where the property being replaced was
jointly owned.

4 Effectiveness of the Bill

4.1 The Bill is short and simple. It appears that it will be effective in ensuring that the
amendments to the 2013 Act introduced by the 2017 Order apply to transactions
where the contract was entered into on or after 28 January 2016 and for which the
effective date was on or after 1 April 2016.

7 Note that the Additional Amount applies in relevant cases to transactions where the contract was entered into on
or after 28 January 2016 and the effective date was on or after 1 April 2016. The 2017 Order provides relief for
transactions where the contract was entered into on or after 20 May 2017 and the effective date was on or after
30 June 2017.
4.2 It should be noted that qualifying taxpayers who have already paid the LBTT Additional Amount will be able to claim a repayment of tax from Revenue Scotland as a result of this Bill. It is essential that qualifying taxpayers are made aware of this. As noted in paragraph 16 of the Financial Memorandum to the Bill, the nature of the LBTT return means that Revenue Scotland will be unable to identify affected taxpayers, who are eligible to claim a repayment of tax. It is therefore unlikely that Revenue Scotland will have sufficient data to enable them to contact those affected directly. So, it is essential that Revenue Scotland carry out a campaign to raise awareness of this change and that agents and solicitors are provided with a clear message that they can direct to clients and former clients, to enable them to check easily whether or not they may claim a repayment.

4.3 Under the Revenue Scotland and tax Powers Act 2014 (RSTPA 2014), taxpayers have five years from the date by which their tax return should have been made to make a claim for repayment of tax. Under the 2013 Act, a taxpayer must make a tax return before the end of the period of 30 days starting with the day after the effective date of the transaction. As a result, the outer limit for the timeframe for claiming a tax repayment for those affected runs from 1 May 2021 to 30 July 2022. This also needs to be highlighted to taxpayers to ensure that they do not miss out on account of missing the deadline.

5 Other Comments

5.1 Paragraph 21 of the Policy Memorandum to the Bill indicates that it, ‘addresses an unintended consequence of the provisions relating to the additional amount of LBTT and aims to ensure that first-time buyer (and those replacing their main residence) are not being disadvantaged by the legislation’. Unfortunately, it is almost inevitable that primary and secondary legislation will, from time to time, either include errors or create unintended consequences, despite the best efforts of those drafting and scrutinising it. In order to reach the desired position, it has been necessary to amend the 2013 Act in two stages:

1. Firstly, using the 2017 Order, which, as a piece of secondary legislation, could only take effect from the date it was passed; and

2. Secondly, using the Bill, which, as a piece of primary legislation, can make the amendment take retrospective effect, to ensure the relief is available from the date LBTT Additional Amount took effect.

5.2 This is arguably a rather cumbersome process for what is a relatively minor amendment. It demonstrates that there could be a place for an annual Finance Bill / Finance Act in the Scottish Budget Process. Such a Bill / Act would provide a means of making amendments to existing tax legislation to deal with unintended consequences, errors in drafting and annual tax changes (such as to rates and bands). We would refer you to our submission to the Budget Process Review Group, and also to the Final Report issued by the Budget Process Review Group.

In particular, we think that paragraphs 169ff. and 182ff. together with Recommendations 50 and 51 are of relevance.

6 Acknowledgement of submission

6.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

7 The Chartered Institute of Taxation

7.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT’s 18,000 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

The Chartered Institute of Taxation
18 January 2018