TURCAN CONNELL

Briefing Note

Land and Buildings Transaction Tax - Relief Issues for Cross Border Charities

In April 2015, Stamp Duty Land Tax (SDLT) was abolished for Scottish purposes and will be replaced by a new property tax. The new property tax is known as Land and Buildings Transaction Tax (LBTT), the provisions for which are contained in the Land and Buildings Transaction Tax (Scotland) Act 2013 (the 2013 Act).

Key features of LBTT

The key features of LBTT as set out in the 2013 Act are:-

- LBTT is a "progressive" tax, with different rates applicable to different bands of property value. A single property therefore has different portions of its value charged at different rates;
- LBTT is not a "slab" tax, which is where a property, the value of which exceeds a fixed threshold, is charged at a flat percentage over the entire value. This is a marked difference from SDLT, which is a "slab" tax;
- The amount of tax payable under LBTT is higher than the charge would have been under SDLT in some cases, and is lower in other cases;
- Reliefs are available in some cases, potentially up to 100% of the LBTT which would have been payable, but such reliefs require to be claimed in an LBTT return;
- A number of exemptions from LBTT are also be provided for;
- The rates of LBTT for non-residential properties are as follows:-

Value of property	Tax rates 2015/16	Tax rate 2016/17
Up to £150,000	Nil	Nil
£150,001 to £350,000	3.0%	3.0%
Over £350,000	4.5%	4.5%

- There are also rates applicable to non-residential leases.

Charities relief from LBTT

Section 27 of the 2013 Act provides for a number of reliefs and, in particular, section 27(1) and Schedule 13 to the 2013 Act make provision for charities relief from LBTT.

- A property is exempt from LBTT if (1) the buyer is a charity; and (2) the qualifying conditions are met;

- The qualifying conditions are that the charity intends to hold the property concerned (or the greater part of it) for qualifying charitable purposes, and the transaction has not been entered into for the purpose of avoiding tax;

- Qualifying charitable purposes include holding the property for the charitable purposes of the buying charity or of another charity, or as an investment from which profits will be applied for the buying charity's charitable purposes;

- A number of disqualifying events are provided for including the buyer ceasing to be established for charitable purposes within three years of the transaction, or the property ceasing to be held for qualifying charitable purposes. There are also provisions relating to leases which may result in a disqualifying event.

Previous problem area with charities relief

When the legislation was at Bill stage in the Scottish Parliament, there was a concern about the charities relief provisions contained in the Bill. The Bill, as introduced in the Scottish Parliament, stated that, in order to qualify for charities relief, the terms "charity" and "charitable purposes" would be defined in accordance with the meanings given to them in the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). On the face of it, this would have brought LBTT into line with Scottish charity law rather than linking it to the UK tax law (English Law) definition of "charity". This would have presented a difficulty for cross-border charities in the UK which own property in Scotland.

The 2005 Act provides that a "charity" is a body entered onto the Scottish charity register maintained by the Office of the Scottish Charity Regulator (OSCR). While cross-border properties which occupy land or premises in Scotland, or which carry out activities from an office, shop or similar premises must register with OSCR, there is no requirement for the registration of cross-border charities who merely own (but do not "occupy" or "carry out activities" from) premises in Scotland. That will include cross-border charities not on the Scottish charity register but which own property in Scotland for investment purposes. As a result, it was likely that many English, Welsh and Northern Irish charities which purchased property in Scotland for investment purposes would not have qualified for charities relief from LBTT without registering with OSCR.

The Explanatory Notes to the Bill stated that a cross-border charity could register with OSCR at no cost, but that is not entirely accurate. Given that entry onto the Scottish charity register generally involves some change to cross-border charities' constitutions and additional reporting obligations, it could not be said that such registration is "free". As the Bill originally stood, cross-border charities were therefore at risk of a charge to LBTT on purchasing property for investment purposes in Scotland. Alternatively, cross-border charities would have to go through a registration process with OSCR, with all of the cost and effort that entails. OSCR and the Charity Law Association both made representations to the Scottish Parliament that this was an unnecessary and disproportionate requirement to impose on cross-border charities for the purpose of securing what might be a one-off tax relief on a single property purchase.

Problem partly resolved

Following representations made to the Scottish Parliament, an amendment was made and which made its way into the final 2013 Act. The amendment states that charity relief will be available to any charity entered on the Scottish Charity Register maintained by OSCR, or registered in a corresponding charity register in the rest of the UK, the rest of the EU or in any other state specified by the Scottish Ministers in regulations. Such charities must also exist only for purposes which are considered charitable in Scotland unless they appear on a corresponding register.

The impact of the revised wording is that a cross-border charity will not be forced to register with OSCR in order to secure tax relief from LBTT, but such a charity may still have to exist only for charitable purposes as defined in the 2005 Act. That may still mean that a cross-border charity will have to adjust its constitution in order to meet the LBTT test – but it will at least be spared the necessity of registering with OSCR, and complying with the requirements both of OSCR and its own home regulator.

Summary

LBTT replaced SDLT in Scotland for property transactions in tax year 2015/2016 onwards. The new tax is a marked change from the current SDLT provisions. While most charities will qualify for relief from LBTT, the provisions of the 2013 Act will mean that cross-border charities purchasing Scottish property for investment purposes may require to adjust their constitutions in order to meet the charitable purposes test, but they will not require to register with OSCR in order to secure relief from LBTT.

Further advice

For further information or advice on the impact of Land and Buildings Transaction Tax, or on charity tax or cross-border charity issues more generally, contact a member of our Charities Legal Team by emailing us at charities@turcanconnell.com.

This note is intended as a brief commentary on Land and Buildings Transaction Tax: charity relief issues. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.
© Turcan Connell January 2016