Briefing Note

Land and Buildings Transaction Tax: charity relief issues

From April 2015, as a result of provisions contained in the Scotland Act 2012, Stamp Duty Land Tax (SDLT) will be abolished for Scottish purposes and will be replaced by a new property tax. The new property tax will be known as Land and Buildings Transaction Tax (LBTT) and the provisions for the new tax are contained in the Land and Buildings Transaction Tax (Scotland) Bill, which is presently making its way through the Scottish Parliament and is expected to receive Royal Assent in summer 2013.

Key features of LBTT

The key features of LBTT as set out in the Bill show that:

- LBTT will be a “progressive” tax (with different rates applicable to different bands of property value. A single property may therefore have different portions of its value charged at different rates);

- LBTT will not be a “slab” tax (where a property, the value of which exceeds a fixed threshold, is charged at a flat percentage over the entire value);

- Tax rates and thresholds will not be announced until the relevant budget, which is understood to mean the budget prior to the formal introduction of LBTT;

- The amount of tax payable under LBTT is likely to be higher than the charge under SDLT in some cases, and is likely to be lower in other cases;

- Reliefs will be available in some cases, potentially up to 100% of the LBTT which would have been payable, but such reliefs will require to be claimed in an LBTT return;

- A number of exemptions will also be provided for.

- Transitional arrangements between SDLT and LBTT are at present still unclear.
Charities relief from LBTT

Clause 27 of the Bill as currently drafted provides for a number of reliefs and in particular clause 27(1) makes provision for charities relief from LBTT. The detailed provisions for charities relief are set out in Schedule 13 to the Bill.

Schedule 13 gives the following information on the intended charities relief from LBTT:-

- A property will be 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.

Problem area with charities relief

The primary concern arising from the charities relief provisions contained in the Bill relates to the definition of “charity” and “charitable purposes”. The Bill states that, in order to qualify for charities relief, the terms “charity” and “charitable purposes” will 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 brings the new Scottish property tax into line with Scottish charity law rather than linking it to the UK tax law (English law) definition of “charity”. But this presents a key 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 of the definition used in the Bill, and given the lack of a registration requirement for cross-border charities, it is likely that many English, Welsh and Northern Irish charities which own property in Scotland for investment purposes will not qualify for charities relief from LBTT without registering with OSCR. This exposes such cross-border charities to a tax charge under the new LBTT regime.

The Explanatory Notes to the Bill state that a cross-border charity may register with OSCR at no cost, but that is not accurate. Cross-border charities may only register with OSCR if they meet the relevant test. OSCR has no discretion to admit other charities to the Scottish charity register. 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 presently stands, cross-border charities are at risk of a charge to LBTT on purchasing property for investment purposes in Scotland.

Summary

LBTT will replace SDLT in Scotland for property transactions in tax year 2015/2016 onwards. The new tax will be a marked change from the current SDLT provisions. While most charities will qualify for relief from LBTT, the provisions of the Bill as currently drafted present the risk of a charge to tax for cross-border charities owning Scottish property for investment purposes. Charities in that position would be well advised to watch the progress of the Bill in order to assess what their exposure to tax might be.

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 2013