

Briefing Note

The New Scottish Property Tax

From April 2015 Stamp Duty Land Tax ("SDLT") will no longer apply in Scotland and, as provided for in The Scotland Act 2012, the Scottish Parliament has the power to set a tax on land transactions from that time. The Scottish Government has already consulted on "Taking Forward a Scottish Land and Buildings Transaction Tax" and has just published the draft legislation (the Land and Buildings Transaction Tax (Scotland) Bill) which is scheduled to be enacted in the summer of 2013.

It is important to note that this new tax is not dependent on the outcome of the referendum on independence. This new property tax is coming our way regardless.

The new Annual Charge and CGT proposals in connection with high value residential properties owned through certain structures announced in the last Budget (in March) and consulted on over the summer are not SDLT provisions and the Scottish Parliament cannot legislate in this regard (please see our separate Briefing Note ["High Value Residential Properties – The New Taxes"](#) regarding these provisions).. The Scottish Government has however said that it will liaise with the UK Government about these issues. Appropriate interaction here will be important.

So, what are the key proposals in connection with the new Scottish property tax and the implications to be aware of?

The most important point is that it is proposed that the new Land and Buildings Transaction Tax ("LBTT") will be a "progressive" tax rather than a "slab" tax. SDLT is a slab tax i.e. where the value lies above a particular threshold the whole value is taxed at the highest rate. The proposal for a progressive tax would mean that tax would be payable on each portion of the value with reference to the rate(s) applying to each portion.

The Scottish Government has stated that the tax rates and thresholds will not be announced until the relevant Budget, presumably the Budget at introduction of LBTT. It is therefore impossible at this stage to say definitively whether LBTT will lead to higher or lower effective tax rates in particular circumstances. What the Scottish Government says in their consultation paper is that with a progressive rate of tax, in some situations the tax payable will be less, and in some cases it will be more than under the slab system.

Broadly speaking the proposal is for the current SDLT reliefs and exemptions to remain. By exemptions, it is meant that no LBTT will be payable and no tax return will be required. Reliefs on the other hand, while they may give relief at up to 100%, still require the completions of a return.

From the draft legislation, the opportunity has not yet been taken to simplify some of the complex provisions, for example in relation to partnerships, which have broadly been carried over from the SDLT legislation. However, in the Policy Memorandum attached to the Bill it is stated that the Scottish Government will engage with stakeholders to develop proposals in relation to partnerships, and also trusts and companies.

As with any new tax, the operation of the transitional provisions will be key. For example, will entering into an option agreement now, which is completed post April 2015, be subject to SDLT, LBTT or both? The detail of the legislation will need to be reviewed to be absolutely clear about the transitional arrangements – in this case the answer would appear to be both, and therefore the implications of LBTT further down the line need to be taken into consideration now.

In the consultation process, questions were asked about linking the actual payment of LBTT and registration of title to land in the Register of Scotland. As one respondent put it, why should the fundamentals of ownership of Scottish property be tied to the administrative and payment requirements of property tax? However, the draft legislation still envisages registration being dependent on first paying the tax.

It is important to be aware of the introduction of LBTT as a replacement for SDLT from April 2015 which is only just over 2 years away and the fact that LBTT may be relevant in relation to transactions being entered into at this time. Also, contrary to what many people assume, the new Scottish property tax is not dependent on the outcome of the independence referendum.

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