



The Scottish Parliament  
Pàrlamaid na h-Alba

## FINANCE COMMITTEE

### AGENDA

7th Meeting, 2013 (Session 4)

Wednesday 27 February 2013

The Committee will meet at 9.30 am in Committee Room 5.

1. **Decision on taking business in private:** The Committee will decide whether to take item 3 in private.
2. **Land and Buildings Transaction Tax (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

John Fanning, Director of Finance, John Fraser, Head of IT Development, and John King, Director of Registration, Registers of Scotland;

and then from—

John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth;

Eleanor Emberson, Head of Revenue Scotland, Revenue Scotland;

Neil Ferguson, Bill Team Leader, and John St Clair, Senior Principal Legal Officer, Scottish Government.

3. **Victims and Witnesses (Scotland) Bill:** The Committee will consider its approach to the Financial Memorandum.

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The papers for this meeting are as follows—

**Agenda item 2**

Paper by the clerk

FI/S4/13/7/1

**Agenda item 3**

PRIVATE PAPER

FI/S4/13/7/2 (P)

## Finance Committee

7th Meeting, 2013 (Session 4), Wednesday 27 February 2013

### Land and Buildings Transaction Tax (Scotland) Bill: Stage 1

#### Introduction

1. The Finance Committee has been designated by the Parliamentary Bureau as the lead committee for the consideration of the [Land and Buildings Transaction Tax \(Scotland\) Bill](#) (LBTT Bill). The Committee will hold its final Stage 1 sessions when it takes evidence from—

- Registers of Scotland (RoS)
- Cabinet Secretary for Finance, Employment and Sustainable Growth and Revenue Scotland (RS).

2. Key themes to arise from previous witnesses and written evidence are set out in Annexes A and B. In addition, submissions from [RoS](#) and [HMRC](#) are attached.

3. Copies of the Bill and accompanying documents have been circulated to members along with the [SPICe briefing on the Bill](#).

#### Background

##### *Approach*

4. The role of the Committee at Stage 1 is to consider and report on the general principles of the Bill. It issued a call for evidence on 5 December 2012 (Annex C) and the responses received have been published on the [Committee's LBTT Bill webpage](#).

##### *Bill purpose*

5. The purpose of the Bill is: 'to make provision about the taxation of land transactions.'

##### *Policy background*

6. This is the first of three Bills being brought forward by the Scottish Government (SG) as a consequence of the Scotland Act 2012. The [Landfill Tax Bill](#) (LT) is expected to come forward in spring 2013 with the [Tax Management Bill](#) (TM) in autumn 2013. The TM and LBTT Bills are to 'be viewed as a package' with the TM Bill expected to provide for issues relating to tax collection arrangements, appeals, offences and penalties. The SG has published consultation papers on both the LT (now closed) and TM Bills.

7. The SG has sought to reflect its four tax principles of certainty, convenience, efficiency and proportionality in the Bill. The tax will be collected by RS through RoS. RS has been set up as an administrative unit of the SG which by 2015 will have been established in statute at arm's length from Ministers, in line with international good practice.

*Bill provisions*

8. The Bill provides for the rules and structure of LBTT which will impose a tax on anyone buying, leasing or taking other rights (such as options to buy) over land and property in Scotland. LBTT will cover both residential and non-residential (e.g. agricultural land, commercial property) transactions.

9. The [Policy Memorandum](#) (PM) deals with the following main issues—

- how the tax will be administered, including tax returns and payment arrangements and how it will be structured by reference to tax rates and bands (although actual tax rates and bands will be set nearer April 2015);
- the SG's approach to tax avoidance;
- transactions that will be exempt from LBTT and those that will be entitled to a full or partial relief;
- calculation of tax for commercial and residential leases; and
- arrangements for transactions involving companies, trusts, and partnerships.

10. The remainder of the PM goes in to detail about the Bill's constituent parts and sets out the approach of the SG to consulting on the Bill—

- Part one: General provision for the tax
- Part two: Key concepts underlying the tax
- Part three: How tax is to be calculated, tax reliefs, who is liable to pay
- Part four: Tax returns, how tax is to be paid, other administrative matters
- Part five: Application of the tax to certain bodies, persons etc.
- Part six: General provisions and interpretation
- Part seven: Commencement and short title

*Delegated powers*

11. The Subordinate Legislation Committee has now completed its Stage 1 consideration of the Bill's delegated powers provisions and has [reported](#).

*Financial Memorandum*

12. The Committee would normally consider the [Financial Memorandum](#) (FM) for each Bill and report to the lead committee. As it is the lead committee for this Bill, it will consider the FM as part of its Stage 1 scrutiny and address any particular FM issues in its Stage 1 report. The FM is set out in paragraphs 238-293 of the [Explanatory Notes](#).

**Conclusion**

13. **The Committee is invited to note the above.**

**Fergus D. Cochrane**  
**Senior Assistant Clerk to the Committee**

## Annex A

**Evidence session with Registers of Scotland: Key themes***Resourcing*

1. The role of RoS in the collection of LBTT has been generally welcomed but the point has been made in evidence of the need for it to be adequately resourced and for sufficient time to be allowed to test the new collection system before it goes live. The [CIT states in its written submission](#) that: “One of our concerns from the start of this process has been the availability of resources, both financial and in manpower terms.”

*IT system*

2. The readiness and effectiveness of the IT system has been identified in evidence. The Law Society of Scotland (LSS) states in its [written submission](#) that the SDLT online system is overly complex and that it: “is essential that the new online system for LBTT is ready in sufficient time for it to be adequately tested by practitioners and for guidance to be prepared well before 2015.” The CIT believe that designing the on-line system should be a “fairly urgent matter” and that “not too many things should be hardwired into it.” [\[OR, 23 January 2013, col.2113\]](#) The SPF states in its [written submission](#) that it will “be vital for the government to ensure that IT systems and the administrative infrastructure is in place well before 1 April 2015 to ensure a smooth transitional period from HMRC to Scottish Ministers as the tax authority.”

3. Members will recall that Audit Scotland recently published a [report on managing ICT contracts](#) which included the audit of ICT projects within RoS and, in particular, a ten year Strategic Planning Agreement (SPA) which was agreed with BT in 2004. Key findings of the report include—

- “Terms of SPA meant BT was intended to act as ICT provider and to also have Intelligent Client role. This contributed to RoS having insufficient in-house ICT skills and experience with which to understand and manage the interdependencies of individual projects, and to some ICT projects being delivered late or not at all.
- Two individual projects within the programme now cancelled, with costs of £6.7 million written off in March 2011. Total spend to March 2012 on SPA is £112 million.
- RoS now considers the partnership outsourcing of all ICT was inappropriate and a more traditional client-supplier relationship would have been better. RoS has terminated the SPA meaning that the contract will end 20 months early. Level of compensation payable to BT is currently being negotiated.”

4. Audit Scotland concludes that: “While RoS is developing plans to bring in additional specialist support where necessary, any lack of in-house ICT skills and experience means that it will need to manage closely a range of risks associated with the transfer of operations from BT.”

*Automated Registration of Title to Land (ARTL)*

5. The Council of Mortgage Lenders Scotland supports continuing the role of RoS in the collection of LBTT but emphasises that lessons need to be learned from the ARTL. In particular, it suggests in its [written submission](#): “there have been issues around its robustness, speed and ease of use” and therefore, “if ARTL is to be replaced with a system which will also deal with the on line payment of LBTT then it is vital that these issues are addressed in it.” Brodies raised a similar point in its [written submission](#): “It is essential that both the LBTT system and the ARTL system work smoothly separately and together and that all teething problems have been addressed before the systems go live.” It emphasises that RoS should be given adequate resources to: “facilitate the smooth introduction and subsequent day to day operation of the LBTT system.” Given that LBTT and ARTL will be operating in tandem the Chartered Institute of Taxation (CIT) [recommended](#) that sufficient time and resources are: “made available to have a fully working, fully tested system (by external users as well as Registers of Scotland) in time for the introduction of LBTT.”

**Appendix to Annex A****Written submission from Registers of Scotland**

The written submission from Registers of Scotland can be accessed via the link below:

[www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/57510.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/57510.aspx)

## Annex B

## Evidence session with the Cabinet Secretary for Finance, Employment and Sustainable Growth and Revenue Scotland: Key themes

### Reliefs

#### *Sub-sale relief*

1. One of the main issues to emerge in evidence is the absence of sub-sale relief in the Bill. The SG states in the [PM](#) that “there is strong evidence to suggest that the sub-sale rules act as a gateway to a significant amount of avoidance activity” and that it does it not intend to include sub-sale relief in the Bill.

2. The Committee will recall that this has been challenged by a number of witnesses. For example, the LSS states in its [submission](#)—

“there is a case for a targeted sub-sale relief which could be available in genuine commercial developments, as otherwise the LBTT payable in relation to developments in Scotland would be twice as much as the SDLT which would be payable on a similar transaction in the rest of the UK.”

3. While the Scottish Property Federation (SPF) said—

“For us, the concern is to do with forward funding, when we try to attract institutions into supporting development. Again, that relates to the well-known comments about the lack of debt finance for property development and investment right now. The institutions are seen as an alternative source of finance, but our concern is that the measures that are proposed in the bill could constrain that activity severely. We will certainly be looking to take up that issue.”  
([30 January 2013, OR, col. 2159](#))

4. It also highlighted this issue in its [submission](#)—

“The Bill does propose to abolish sub-sale relief however and while we have some sympathy with the concerns of officials about the extent of use of this relief we would make the point that it will be important to ensure abolition does not inadvertently damage other government policy initiatives. For example we have been asked by our members how such abolition would impact on the residential development market in particular and we would encourage officials and the Committee to make enquiries with the house-building sector on this point.”

5. ICAS in its [submission](#) states—

“The removal of sub-sale relief from the provisions is not welcome, as it is frequently used in commercial situations where, for example, a house builder or developer buys a large parcel of land but has neither the finance or risk appetite

to develop it all, and will sell on smaller pieces to other developers to undertake different aspects of a project.”

6. Brodies states in its [submission](#)—

“The absence of sub-sale relief will result in party B paying LBTT in situations where they didn't have to pay SDLT before – again leading to a perception, or indeed reality that developers in Scotland face higher costs/double taxation when compared with the rest of the UK. Given the state of the construction industry, such proposals for higher taxation cannot be justified or supported. We are aware that sub-sale relief has been used in schemes devised to avoid paying SDLT, but would point out that in many cases, it is used to facilitate the progress of development deals.”

7. It asks that the SG “reconsider the blanket removal of sub-sale relief.” It does recognise that while sub-sale relief has been used in schemes devised to avoid paying SDLT it is also used to facilitate the progress of development deals. This could leave developers in Scotland facing higher costs than in the rest of the UK and “such proposals for higher taxation cannot be justified or supported.”

8. Pinsent Masons states in its [submission](#)—

“Our first observation is a very significant one and a matter of great concern to us. We are very concerned at the decision by the Scottish Government not to incorporate “sub-sale relief” within the LBTT regime.”

9. It went on to state—

“We do not suggest that the Scottish Parliament should slavishly follow the approach taken by the UK Government for SDLT. However, the fact is that HM Treasury and HM Revenue & Customs do not lightly concede such matters to taxpayers without good reason, and it therefore seems to us to be significant to the debate in the context of LBTT that they have accepted the strength of the case in favour of the retention of some form of sub-sale relief.”

10. It suggests there: “are numerous circumstances where an organisation might legitimately seek to acquire land and move it on quickly” and in “those circumstances where an entity has never actually held the land, sub-sale relief operates such as that tax is only applied to the ultimate purchaser.” It believes: “it should be entirely possible to develop sub-sale relief provisions which protect tax revenues from unacceptable avoidance while retaining the economic benefits which the relief facilitates.”

11. The CIT suggests that—



“the problem is not with sub-sale relief. The avoidance has come around because sub-sale relief has been combined with another relief or exemption.” [[23 January 2013, OR, col. 2102](#)]

12. The Committee will recall that some witnesses suggested that the removal would have a detrimental impact on “forward funding” arrangements where there are three parties involved in selling a property. For example, where an institutional investor buys land from a property developer and then lends the finance to the developer to construct the building. The LSS argues that if sub-sale relief is not provided in the Bill “the developer will have to pay tax on the acquisition from the landowner and the fund will have to pay tax on the acquisition from the developer.” It argues that this would double the tax and have a detrimental impact on this type of funding at a time when bank funding is limited. This is a view shared by Miller Developments which argues that—

“From a developer’s standpoint, sub-sales are frequently used to unlock and develop key commercial sites. They are an increasingly relevant mechanism in the current economic climate, where alternative funding strategies are required in the absence of available bank finance.”

13. A similar point was made by Scottish Land & Estates in its [submission](#) which is concerned that—

“unless section 10(4) of the Bill assists, there may be double taxation of the same land in 2 separate land transactions completing on the same day but with the LBTT becoming payable long before the actual purchase is completed by delivery of a conveyance and the lodging of 3 LBTT returns.”

14. The Bill Team set out two reasons for not including sub-sale relief in the Bill. First, “although we accept that a piece of land can be bought and sold twice on the same day for perfectly legitimate commercial reasons...we were not persuaded that there is an obvious case for relieving one of the set of transactions from tax.” Second, “that sub-sale relief has become an avenue for avoidance of quite substantial amounts of stamp duty land tax across the UK. We were anxious to limit opportunities for tax avoidance.” [[23 January 2013, OR, cols. 2088-9](#)]

15. The SG has said it is “reading carefully the submissions that the committee receives” and “will listen to the evidence and, in particular, to the views of the committee” on this issue. [[23 January 2013, OR, col. 2102](#)]

#### *Charities and charitable trusts*

16. The Committee will recall it discussed this issue with a number of witnesses including the Office of the Scottish Charity Regulator (OSCR) and the Charity Law Association (CLA). [[OR, 6 February 2013](#)] In particular, it discussed the requirement for any charity to be registered with OSCR in order to qualify for this relief. The Bill team stated in evidence that while this would involve some work “it would not be onerous and no fee would have to be paid.” [[23 January 2013, OR, col. 2090](#)]

17. OSCR stated in its [submission](#) that: “Registration can be complex depending on the nature of the organisation and there is no guarantee that this will result in the award of charitable status.” and has questioned whether this: “is a proportionate way of providing assurance that they qualify for what may only be a one-off relief on one transaction.”

18. OSCR points out that existing Scottish charity law makes a distinction between charities *representing themselves as charities in Scotland* and those *registered* in Scotland. Section 14 of the Charities and Trustee Investment (Scotland) Act 2005 provides for an exception for some charities outside Scotland to refer to themselves as charities without being on the Register. It suggests that this “might form the basis of an alternative approach to delivering the policy intention of the Bill.” The CLA said in oral evidence that: “We would in principle be willing to go along with something along the lines of OSCR’s proposal.” [\[OR, 6 February 2013, col. 2222\]](#)

19. A number of other witnesses also disagreed with the proposed approach to charities relief in the Bill. Both [Brodies](#) and [ICAS](#) suggest that this relief should be available to those whose charitable status is granted by HMRC and not just OSCR.

#### *Co-investment by charities*

20. Some witnesses raised the issue of co-investment by charities in relation to charities relief. Both the [Wellcome Trust](#) (WT) and the [CLA](#) refer in their written submissions to the decision of [The Pollen Estate Trustee Company Ltd and another v Revenue and Customs Commissioners, \[2012\] UKUT 277 \(TCC\)](#). The WT states that: “the tribunal held that the SDLT charities exemption could not be claimed in respect of the acquisition of property by a charity jointly with a non-charitable purchaser, even in respect of the charity’s share of purchase.” However, the CLA states that the effect of that decision has been criticised and suggests that the Bill is an opportunity: “to address the lack of relief for charities that co-invest in Scottish property.”

#### *Zero carbon homes relief*

21. Following its consultation and taking account of comments from stakeholders, the SG does not intend to include zero-carbon homes relief within the LBTT. It states in the [PM](#) that it has not included the zero-carbon homes relief in the Bill on the basis that there is little evidence that this relief has achieved its stated objectives. However, it also states that it would welcome views on “whether alternative arrangements could be devised which would help support Scotland’s climate change targets.” The Bill team said in evidence—

“The difficulty with stamp duty land tax relief for zero-carbon homes was that it was defined narrowly and the eligibility criteria were onerous. As a result, over a year, three transactions in the entire UK applied for the relief, of which only two were successful and none was in Scotland. We felt that we could not replicate the relief—it would become a nonsense relief in that nobody would be eligible for it.” [\(23 January 2013, OR, col. 2085\)](#)

22. It did indicate it had—

“considered whether it would be possible to introduce an alternative—perhaps a low-carbon relief along similar lines, but with less onerous criteria for eligibility. However, we are finding that to be quite tricky.” ([23 January 2013, OR, col. 2086](#))

23. The Committee will recall it discussed this matter with the SPF, Scottish Building Federation (SBF) and Homes for Scotland (HfS). The SPF said—

“We had an attempt at the zero-carbon homes initiative, but I might as well just summarise that by saying that it failed. We are not against it, but we would like to see exactly how the Government wants to attack the issue.” [[30 January 2013, OR, col. 2149](#)]

24. The SBF states in its [written submission](#) that: “homes with a poorer energy efficiency rating would incur a higher rate of LBTT whereas homes with a high energy efficiency rating would incur partial or total relief from the tax.” This should take account of the relative cost-effectiveness of improving the energy efficiency of a property.

25. While HfS said—

“The fact that no zero-carbon homes were built under the zero-carbon homes relief gives an indication of how difficult and expensive it is to build such homes, but withdrawing the incentive is not the right thing to do.” [[30 January 2013, OR, col. 2153](#)]

26. And that—

“As much as all, or most, people seem to think that ensuring energy efficiency is the right thing to do and that we should be going in that direction, we have to face up to the reality that it is very low down the list of new home buyers’ priorities.” [[30 January 2013, OR, col. 2154](#)]

27. The Energy Saving Trust (EST) in its [submission](#) refers to research from 2005 which suggested that incentives linked to SDLT “were likely to be the most promising measures in terms of encouraging householders to install energy saving measures” and that “the incorporation of relevant reliefs (or exemptions) within the LBTT.....could be a sensible and effective means of encouraging householders to improve the energy performance of their homes.” It therefore recommends that “provisions to allow the introduction of specific reliefs (or exemptions) for homes that meet certain energy performance standards” be included in the Bill.

28. The Existing Homes Alliance in its [submission](#) states that: “there is a strong case to include a relief related to energy efficiency” and that they “do not believe it is necessarily complex to devise a system of reliefs related to the energy efficiency of the

housing stock. For example, a percentage relief could be applied according to the energy rating band of the property.”

29. It further stated that: “there is a clear indication that energy efficiency is the most widely supported proposal for addition” [in the Bill] and that, given the Scottish Government’s 2020 climate change and energy reduction targets, “there is a clear need to progress such a relief at the earliest opportunity so it can more fully play its part in changing behaviour and investment decisions in the run up to 2020.” It believes it “makes much sense therefore to introduce a relief at this stage within the principles of the Bill, and allow the proposed tax to start to shape investment decisions before the Bill is enacted.”

#### *Licences*

30. ICAS suggests in its [submission](#) that: “An exemption should be included for licences to occupy, although it should be recognised that most may be below the threshold.” For example, “shops within shops” such as franchisees within retail outlets and at airports are currently exempt from SDLT and ICAS argue that these “may become less attractive business locations if additional charges arise.” Brodies in its [submission](#) does not support the blanket removal of the exemption for licences but recommend that the SG reviews “the position on licences when consulting on the treatment of non-residential leases and introduces categories of licences which will be exempt from LBTT.” Pinsent Masons in its [submission](#) suggests that removing this exemption has: “the potential for rendering Scotland a less competitive place to do business.”

#### *Number of reliefs*

31. The Committee will recall it raised with the Bill team the number of reliefs provided for under the Bill compared with those under SDLT. The Bill team said in response—

“The SDLT system contains about 30 reliefs, which creates layers of complexity. Given the receipts that will come in from the land and buildings transaction tax, we think it important to introduce and stabilise the tax before we consider extending existing reliefs, adding new reliefs or adding exemptions. ([23 January 2013, OR, col. 2085](#))

#### *Stage 2 amendments*

32. The Committee will recall it raised with the Bill team the timing and approach to bringing forward Stage 2 amendments and the option of the SG lodging all its Stage 2 amendments at the outset of the Stage 2 process, or at least as early as possible, rather than in strict accordance with when amendments could be lodged. This would allow the Committee more time to consider the detail and impact of the amendments.

33. The SG confirmed it would seek to lodge its amendments at Stage 2 “as soon as we possibly can” and that if it was not possible to lodge all amendments at the

beginning of Stage 2 it “should be able to lodge at least some at that time.” [[OR, 23 January 2013, col.2084](#)]

34. The Subordinate Legislation Committee (SLC), in its [report on the Bill's delegated powers](#), has also requested early sight of Stage 2 amendments in order to give further consideration to the exercise of the proposed powers.

### **Tax avoidance**

35. The SG sets out its position on tax avoidance in the [PM](#) which states: “all transactions involving land or buildings in Scotland should be liable for LBTT, except in certain limited and specific circumstances set out in legislation.” In evidence the Bill team stated that in relation to SDLT tax avoidance mainly takes place through sub-sale relief.

36. The [PM](#) states that the SG “intends to make use of two different types of anti-avoidance rule.” The Committee will recall that witnesses are broadly supportive of this approach and, in particular, the introduction of an effective General Anti-Avoidance Rule (GAAR) in the Tax Management Bill rather than seek to replicate some of the Targeted Anti-Avoidance Rules (TAARs) within SDLT. In particular, witnesses generally welcomed leaving out section 75A-C in the UK Finance Act 2003. For example, the LSS in its [submission](#) believes it has not “acted as an effective deterrent as its scope is too wide and its application too uncertain.” However, it also states that: “there will be challenges in achieving a workable GAAR in the time available.”

### *Compliance activity*

37. The [FM](#) states that RS will be primarily responsible for compliance but that further work is planned in deciding upon the respective roles of RS and RoS including in relation to compliance activity. The [FM](#) includes £350,000 in staff costs for compliance activity within the estimated running costs for RS. These costs relate to the collection of both LBTT and Landfill Tax.

38. In response to questioning from the Committee on providing sufficient resources to enforce anti-avoidance measures the Bill team said: “The resource plans for Revenue Scotland are still at a fairly early stage, but we believe that we have made adequate allowance in those plans for what we have called compliance activity.” [[OR, 23 January 2013, col.2097](#)]

### **LBTT rates and bands**

39. The [PM](#) states that the SG will: “set the rates and bands for the tax by subordinate legislation nearer the time that the tax will take effect.” The FM states that the SG: “will propose LBTT rates and bands when bringing forward the draft budget for 2015-16 in autumn 2014.”

40. The Committee will recall that some witnesses raised concerns regarding uncertainty in relation to setting the LBTT rates especially in relation to commercial property as this may discourage investment in the Scottish market. ICAS argues in its

[submission](#) that: “the lack of clarity on even provisional figures of tax rates or bands goes against the principle of certainty in taxes.” The SBF said in relation to commercial rates: “We would prefer there to be a minimum of 12 months between the publication and the impact, and if we could get towards 18 months, that would be preferable.” Both Homes for Scotland and the SPF were supportive of this view. [[30 January 2013, OR, col. 2158](#)]

41. Brodies suggests that the SG could provide an indication of the maximum rate of LBTT by April 2015. The LSS recommends that to avoid any uncertainty and perception that Scotland is non-competitive that the SG provides “some indication about the top rate of LBTT on commercial property as soon as possible.” The CIT states that: “Wherever there is uncertainty, investors will keep their hands in pockets” [[OR, 23 January 2013, col.2113](#)] and suggests that the SG indicates the LBTT rates 12 months in advance of the new tax being implemented. The LSS states that: “The residential rates are not quite so important, but the forward timescale is important for commercial property.” [[OR, 23 January 2013, col.2120](#)]

42. It is understood that the setting of the tax rates/bands would not have to be done annually, only when these are being changed. The Committee may wish to clarify this with the CSFESG.

43. The SLC, in its [report on the Bill's delegated powers](#), has sought clarification from the SG on the use of the negative resolution procedure in respect of the second and subsequent exercise of the power in the Bill (s24) to specify tax bands and rates—

“For these reasons the Committee considers that the Scottish Government has not provided a compelling argument for a reduction in the level of scrutiny on the second and subsequent exercise of the power. The Committee therefore recommends that the power should always be subject to a form of affirmative procedure. The Committee would not be resistant to a suitable form of emergency affirmative procedure being available to ministers in the event that the need to exercise the power was to arise during a period when the Parliament was not sitting.”

44. The SG will provide a response to the SLC's report by 23 April 2013.

### **Block Grant Adjustment**

45. The Office for Budget Responsibility (OBR) has responsibility for forecasting Scottish tax receipts for the Scottish rate of income tax, SDLT and landfill tax and does so on a six monthly basis alongside its [economic and fiscal outlook](#) (EFO). The Bill's [FM](#) includes the OBR forecasts for SDLT receipts from March 2012 as follows:

Year	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
£ million	330	319	328	369	426	480	536



46. The [FM](#) states that: “it is reasonable to assume that receipts from LBTT will be equivalent to those from SDLT at present, and that the block grant adjustment will be broadly equal to the level of SDLT receipts.”

47. The OBR has since published its latest [forecast for Scottish taxes](#) (December 2012) which includes forecast SDLT receipts as follows:

Year	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
£ million	275	296	328	368	416	464	516

48. The OBR states that the Scottish forecast: “is down by £32 million in 2012-13 relative to March and the shortfall rises to £75 million by the end of the forecast period.” However, the OBR also states: “we still expect robust growth in receipts over the period to 2017-18. The main driver of this rise is the recovery in property transactions from historically low levels since the downturn to a level which is consistent with the average historical duration of home ownership (with owner-occupiers moving every 19 years).” The Committee will recall that HfS flagged up continuing concerns regarding the strength of the housing market in Scotland and that: “significant change is unlikely in the coming years.” [\[OR, 30 January 2013, col. 2162\]](#)

49. The SPF said in oral evidence that while the [FM](#) states that the financial impact of the new tax should be broadly neutral: “the volatility of this tax makes that a difficult target to achieve with any form of certainty.” [\[OR, 30 January 2013, col. 2146\]](#) It is also of the view that the OBR forecasts are: “wildly optimistic” and suggest that the SG “digs in its heels” when negotiating with the UK Treasury on the block grant adjustment for SDLT. [\[OR, 30 January 2013, col. 2161\]](#) The SBF added: “There is concern about the overnight reduction to the block grant from the UK Government to the Scottish Government when the new system comes into place. We should consider whether there is a need for some transitional arrangements.” [\[OR, 30 January 2013, col. 2146\]](#)

### **Operation of LBTT**

50. The Committee will recall that, in its call for evidence, it asked for views on the SG’s overall policy objectives and, in particular, whether the Bill—

“makes provision for a tax which should be as simple as possible to understand and pay and which will place the minimum administrative burden on the taxpayer or their agent and on the tax authority.”

51. Brodies states in its [submission](#) that: “A fundamental problem with SDLT has been the complexity of the provisions and the administrative arrangements.” It recommends that: “LBTT guidance is readily available and easily understood, and that the guidance is finished and available before LBTT is introduced.”

52. While Pinsent Masons states in its [submission](#)—

“We should add that there will certainly be other instances where the effect of the SDLT legislation has required to be clarified by HMRC issuing informal guidance. This is not a satisfactory approach to the management of tax legislation and we would suggest that, where further instances can be identified, the opportunity be taken to clarify the terms of the LBTT Bill rather than simply replicating the imperfections of the SDLT legislation.”

53. The use of guidance was raised by the Committee with the Bill team when it highlighted that: “The point has been made that there should be clear guidance about all taxes.” The Bill team suggested this issue be raised with RS. [[OR, 23 January 2013, col.2101](#)] The [FM](#) indicates £50,000 for the “production and updating of on-line guidance”. It is unclear whether additional funding will be made available for the production of any other guidance.

### **Transitional arrangements**

#### *‘Switch-off costs’*

54. Members will note from the FM ([para.245](#)) that the costs in the FM do not “include the anticipated one-off costs associated with the “switch-off” of the UK taxes in Scotland which will be incurred by HMRC and charged to the Scottish Government. There may be offsetting savings to HMRC as a result of no longer needing to operate SDLT in Scotland after April 2015. HMRC has been asked to provide an estimate of these likely costs and offsetting savings as soon as possible and these estimates will be provided to the Parliament. However, further planning work needs to be undertaken before estimates are available.”

55. No indicative costs are available at this time. Members will note from the [HMRC submission \(paras. 18&19\)](#) that work is underway to provide costings and that “an initial estimate will be produced during summer 2013”.

56. The Committee will recall it raised with the Bill team the role and resourcing of RS. The SG stated that its intention would be “to adequately resource the activities” of RS. It also recognised the importance of the quality of the IT system which will be used to calculate and submit tax returns. [[OR, 23 January 2013, col.2092](#)]

### **The role of RS**

57. The LSS in its [submission](#) welcomes the establishment of RS and suggests that it will have an important role in devising “an effective audit and enquiry system” which “would increase compliance with LBTT and result in more tax being collected.” It argues that the current HMRC helpline for SDLT is of little use and that: “Consideration should be given to adequately staffed LBTT helplines or drop-in centres in addition to comprehensive and easily accessible guidance.”

58. ICAS states in its [submission](#) that—

“One area of potential difficulty is in relation to information assistance to taxpayers. Whilst the practical experience of the reporting system will be with



Registers of Scotland, who might be expected to offer a helpline or information service to assist tax filings, questions of principle, or tax dispute, the clearance of complex transactions and policy decisions needed to determine those answers may be expected to retained at Revenue Scotland.”

**Appendix to Annex B**

**Written submission from HM Revenue and Customs**

The written submission from HM Revenue and Customs can be accessed via the link below:

[www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/57510.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/57510.aspx)

## Annex C

**CALL FOR EVIDENCE**

The Land and Buildings Transaction Tax (Scotland) Bill was introduced in the Parliament on 29 November 2012. The Finance Committee will be the lead committee in scrutinising this Bill. The lead committee's role at Stage 1 is to consider and report on the Bill's general principles. The Committee expects to consider written submissions and take oral evidence during January and February 2013 and report on the general principles around the end of March 2013.

The Committee is seeking views on the general principles of the Bill and in particular—

- the Scottish Government's overall policy objectives in introducing the Bill and, in particular, whether the Bill—

“makes provision for a tax which should be as simple as possible to understand and pay and which will place the minimum administrative burden on the taxpayer or their agent and on the tax authority.”

- the replacement of a “slab” structure with a “proportional progressive structure” and how this is reflected in the Bill;
- the Scottish Government's approach to tax avoidance in the Bill;
- the proposed exemptions within the Bill;
- the proposed reliefs within the Bill;
- how non-residential leases should be treated under LBTT;
- how companies, trusts and partnerships should be treated under LBTT;
- the role of Revenue Scotland in the administration of LBTT;
- the role of Registers of Scotland in the administration of LBTT;
- the formula for calculating the adjustment to the block grant;
- the financial implications of the Bill as estimated in the Financial Memorandum.