FI/S4/13/5/A

The Scottish Parliament
Pàrlamaid na h-Alba

FINANCE COMMITTEE

AGENDA

5th Meeting, 2013 (Session 4)

Wednesday 6 February 2013

The Committee will meet at 9.30 am in Committee Room 6.

1. **Decision on taking business in private:** The Committee will decide whether to take item 3 in private and further consideration of its draft report in private at future meetings.

2. **Land and Buildings Transaction Tax (Scotland) Bill :** The Committee will take evidence on the Bill at Stage 1 from—

    David Marshall, Business Analyst, ESPC;

    Kennedy Foster, Policy Consultant, Council of Mortgage Lenders;

    Richard Blake, Legal Adviser, Scottish Land & Estates;

    and then from—

    David Robb, Chief Executive, Office of the Scottish Charity Regulator;

    Gavin McEwan, Member, Charity Law Association.

3. **Demographic change and ageing population:** The Committee will consider a draft report.

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The papers for this meeting are as follows—

<u>Agenda item 2</u>

Paper by the clerk	FI/S4/13/5/1

<u>Agenda Item 3</u>

PRIVATE PAPER	FI/S4/13/5/2 (P)

Finance Committee

5th Meeting, 2013 (Session 4), Wednesday 6 February 2013

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

Introduction

1. The Finance Committee has been designated lead committee for the consideration of the Land and Buildings Transaction Tax (Scotland) Bill (LBTT Bill). The Committee will hold its fourth and fifth Stage 1 evidence sessions when it hears from—

- the Council of Mortgage Lenders Scotland; Scottish Land & Estates; and the Edinburgh Solicitors Property Centre
- the Charity Law Association and the Office of the Scottish Charity Regulator.

2. Copies of the Bill and accompanying documents have been circulated to members along with the SPICe briefing on the Bill. Written submissions from the witnesses are attached. In addition, a submission from the OSCR is also attached. Official Reports for the previous evidence sessions are available on the Committee's webpage.

Background

Approach

3. 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 (Annexed) and the responses received have been published on the Committee's LBTT Bill webpage. The Subordinate Legislation Committee has begun its consideration of the delegated powers provisions within the Bill.

Bill purpose

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

Policy background

5. 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.

6. 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 Revenue Scotland through Registers of Scotland. Revenue Scotland 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. The Committee will take evidence from both organisations (and the Cabinet Secretary) on 27 February 2013.

Bill provisions

7. 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.

8. 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.

9. The remainder of the PM goes in to more precise detail about each of the Bill's seven constituent parts—

- 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

10. The PM also sets out the approach of the SG to consulting on the Bill.

Financial Memorandum

11. 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

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

Fergus D. Cochrane
Senior Assistant Clerk to the Committee

Annex

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.

Annex

Land and Buildings Transaction Tax (Scotland) Bill: Written submissions

Copies of the written submissions from—

- Council of Mortgage Lenders Scotland
- Scottish Land & Estates
- Edinburgh Solicitors Property Centre
- Charity Law Association

are available via the link below—
www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/58600.aspx

Land and Buildings Transaction Tax (Scotland) Bill
Scottish Parliament Finance Committee Briefing from OSCR

1. Introduction

The Office of the Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (2005 Act) as a Non-Ministerial Department forming part of the Scottish Administration. OSCR is the registrar and regulator of charities in Scotland. There are currently over 23,500 charities registered in Scotland.

OSCR has been asked to give evidence to the Scottish Parliament Finance Committee on 6 February 2013 on the Land and Buildings Transaction Tax (Scotland) Bill. This Bill, that will replace the current UK Stamp Duty Tax regime, will allow any charity no matter where it is established to obtain tax relief provided the charity is registered by OSCR. This relief is provided for in section 27 and Schedule 13 of the Bill (the charity relief).

This note is intended to clarify OSCR's position. In forming our view we have considered our overall vision, which is for *charities you can trust and that provide public benefit*, underpinned by the effective delivery of our regulatory role.

2. The current position - general

Generally, where an organisation wishes to represent itself as a charity in Scotland, the 2005 Act requires that it must be entered in the Scottish Charity Register. Where an organisation not entered on the Register represents itself as a charity, OSCR has powers to make it stop doing so.

To be registered as a charity in Scotland, an organisation must pass the charity test. This means the organisation must have charitable purposes and provide public benefit in Scotland or elsewhere. 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 (in particular, charities established in other jurisdictions such as England and Wales often have to change their constitutions to meet the Scottish charity test). Once a charity is on the Scottish Charity Register it continues to be subject to ongoing regulatory requirements until it is removed or until it winds-up (and even then OSCR must monitor the use of any remaining charitable assets).

3. The current exception

However, the 2005 Act does provide for an exception to this for some charities established outwith Scotland. Section 14 of the 2005 Act states that:

> A body which is not entered in the Register may, despite section 13, refer to itself as a 'charity' without being treated as representing itself as a charity if, and only if,
>
> (a) it is-
>
> I. established under the law of a county or territory other than Scotland
>
> II. entitled to refer to itself as a 'charity' (by any means or in any language) in that country or territory, and
>
> III. managed or controlled wholly or mainly outwith Scotland
>
> (b) it does not-
>
> I. occupy land or premises in Scotland, or
>
> II. carry out activity in any office, shop or similar premises in Scotland, and
>
> (c) in making that reference, it also refers to being established under the law of a county or territory other than Scotland

The intention of section 14 was to ensure that only charities with 'significant operations' in Scotland are required to register with OSCR. It therefore allows charities established and registered elsewhere and who own, <u>but do not occupy</u> heritable property in Scotland (usually for investment purposes) to refer to themselves as charities here without being on the Scottish Charity Register.

One misapprehension in some of the written responses to the committee is that charities falling under the section 14 exception <u>cannot</u> register in Scotland. This is not the case. They may apply to OSCR for charitable status, but the section 14 exception means they are not <u>obliged</u> to do so. So a charity looking to claim the reliefs provided by this Bill on a property transaction here would, on a voluntary basis, be able to apply for charitable status in Scotland.

However, the mechanism set out in Schedule 13 of the Bill would have the effect of obliging charities to register with OSCR in order to be eligible for the charity relief where they would not otherwise be required to do so for Scottish charity regulation purposes.

The question is whether the added regulatory burden for the organisation and OSCR is justified and reasonable when the organisation is not carrying out any significant charitable activity in Scotland, nor occupying the property which it is purchasing and in relation to which it is claiming reliefs.

4. The impact of the proposals

We have considered the possible number of organisations this may affect. In terms of charities outwith the UK the numbers are likely to be very low, but there may be a number of charities, for instance in England Wales, which are solely investing in Scotland currently that don't currently have to register with OSCR and are claiming the current relief legitimately. The drafting of the current Bill would not allow this: they would have to register with OSCR.

5. Conclusion

We understand that the intention of the condition to be registered with OSCR is to provide assurance that organisations seeking this potentially valuable charity relief are genuinely charitable. There is a question as to whether bringing such organisations permanently under the full scope of the Scottish charity regulatory regime is a proportionate way of providing assurance that they qualify for what may only be a one-off relief on one transaction.

The current Scottish charity law provides for a distinction between charities **representing themselves as charities** in Scotland and those **registered** (and therefore regulated by OSCR). This might form the basis of an alternative approach to delivering the policy intention of the Bill, in providing assurance that organisations seeking charity relief are genuinely charitable, whilst avoiding additional registration and regulation workload.

We would be happy to engage in further discussion with a view to finding a solution to this relatively minor, but important, issue.

OSCR
1 February 2013