POLICY NOTE

THE LAND AND BUILDINGS TRANSACTION TAX (ADDITIONAL AMOUNT – SECOND HOMES MAIN RESIDENCE RELIEF) (SCOTLAND) ORDER 2017

SSI 2017/

The above instrument was made in exercise of the powers conferred by paragraph 19(3)(a) of Schedule 2A and section 68(2)(ja) of the Land and Buildings Transaction Tax (Scotland) Act 2013 ("the 2013 Act"). This instrument is subject to affirmative resolution procedure.

Policy Objectives

For the purposes of the land and buildings transaction tax (LBTT) additional dwelling supplement (ADS) legislation – which commenced on 1 April 2016 - the policy objective is that married couples, those in a civil partnership and cohabitants (those living as if a married couple) are treated for the purposes of the ADS as one economic unit. This is to address the risk of properties being moved between individuals for the purposes of tax avoidance.

Additionally, the policy intention is that ADS can be reclaimed when a main residence is being replaced and the sale of the former main residence happens within 18 months of the purchase of what becomes the current main residence. "Replacing" in the context of the ADS legislation means selling the previous main residence and buying a new main residence.

It is necessary to bring forward an amending instrument as the legislation as currently drafted does not give full effect to this policy intention. It has emerged that the ADS legislation has been too tightly drawn in certain specific circumstances - - i.e. where:

- the title to the former main residence is in the sole name of one of the married couple, civil partnership, cohabitants who both live in the property; and
- the couple then jointly buy a new main residence prior to selling their current main residence.

An ADS liability arises as two dwellings are owned at the end of the effective date (usually the point when the funds are transferred and the keys are handed over). If the couple then sell their former main residence within 18 months of the joint purchase of their current main residence, the legislation – as currently drafted - does not allow Revenue Scotland to repay the ADS paid. This is because the couple cannot meet the requirement that both must have replaced their main residence. As one member of the couple is not on the title deeds to the former main residence, they cannot be said to have "sold" and then bought a main residence. The couple is being treated as one economic unit when determining if the ADS applies, but not when it comes to determining whether ADS should be repaid. This position does not support the Scottish Government's policy intention.

Consultation

There is no statutory requirement to consult on this instrument. The Scottish Government does however acknowledge the importance of the consultation process in providing stakeholders and other interested parties with an opportunity to input into the policy making

process. The Scottish Government has liaised with Revenue Scotland. Exceptionally, on this occasion, the Scottish Government has not publicly consulted on a draft instrument. The rationale for this is: (i) the amending instrument is dealing with the sole issue of delivering the Scottish Government's policy intention at the time the primary legislation – The Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016 commenced on 1 April 2016; and (ii) as the Scottish Ministers have no powers to apply this instrument retrospectively the Scottish Government wishes to bring forward an amending instrument as soon as practical to resolve this situation for taxpayers who find themselves in this position going forward.

Impact Assessments

This amending instrument's purpose is to ensure the legislative framework reflects the Scottish Government's intended policy position. The Scottish Government does not consider this instrument adversely impacts on the equality agenda.

Financial Effects

This amending instrument has no financial effect on the Scottish Government, local government or on business. The instrument will add to the administrative work undertaken by Revenue Scotland in relation to the operation of the Land and Buildings Transaction Tax

Scottish Government
Finance Directorate

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