POLICY NOTE

THE REVENUE SCOTLAND AND TAX POWERS ACT 2014 AMENDMENT REGULATIONS 2020

SSI 2020/

This instrument was made in exercise of the powers conferred by section 181(1) and 254(5)(b) of the Revenue Scotland and Tax Powers Act 2014(**a**) and all other powers enabling them to do so. This instrument is subject to affirmative procedure.

Purpose of the instrument.
This instrument amends section 161 of the Revenue Scotland and Tax Powers Act 2014 to provide that a daily penalty related to LBTT returns can be charged by Revenue Scotland through a single Penalty Assessment Notice. It responds to a decision by the Upper Tribunal for Scotland published on 4 July 2019.

Policy Objectives

The Land and Buildings Transaction Tax (LBTT), which replaced Stamp Duty Land Tax (SDLT) in Scotland from 1 April 2015, is a tax applied to residential and non-residential land transactions (including non-residential leases).

In accordance with the Land and Buildings Transaction Tax (Scotland) Act 2013, where required a tax return must be made by the end of the period of 30 days beginning with the day after the effective date of the transaction. This is known as the "filing date".

The Revenue Scotland and Tax Powers Act 2014 (RSTPA) sets out a series of provisions related to the application of penalties where there is a failure to make a tax return by the filing date. With regard to this, the day after the filing date is referred to as the "penalty date".

Section 161 of the RSTPA provides that a taxpayer is liable to a daily penalty if (and only if) there is a failure to make a LBTT return and this failure continues after the end of the period of three months beginning with the penalty date. The penalty under this section is £10 for each day that the failure continues for up to 90 days, beginning with the day after the end of the period referred to above.

The decision to introduce the regulations follows a decision by the Upper Tribunal for Scotland (UTS), published on 4 July 2019, regarding the application of daily penalties in circumstances where Revenue Scotland is not aware that a LBTT tax return is due until it is submitted. The UTS concluded that a single Penalty Assessment Notice, as used by Revenue Scotland, was not sufficient as both a notice of liability (under section 161(1)(c)) and an assessment notice (under section 179) and that two separate notices are accordingly required. The UTS noted that requiring Revenue Scotland to issue two separate notices would however serve no useful function in the case of many LBTT penalties for late returns and that, where unnecessary, it would be potentially confusing for the taxpayer and could involve them making a redundant, additional appeal.

The Scottish Government's view is that it would be appropriate to introduce legislation to provide that daily penalties related to LBTT returns can be charged through a single Penalty

Assessment Notice. This would bring legislative clarity in line with the suggestion made by the UTS.

These Regulations amend section 161 of the RSTPA to provide that a daily penalty related to LBTT returns can be charged by Revenue Scotland through a single Penalty Assessment Notice. This brings section 161 into line with other penalty provisions in sections 162 and 163, which deal with LBTT returns filed 6 and 12 months late respectively, so that there is no need for a notification to be made under section 161, before an assessment can be made under section 179 of the RSTPA.

The Regulations will apply to transactions where the filing date for a transaction is on or after the day that the instrument comes into force. When the filing date occurs prior to the coming into force date of the Regulations, the provisions of section 161 of the Act un-amended by this instrument will apply.

There is no statutory requirement to consult on this instrument. The Scottish Government has however liaised with Revenue Scotland in the development of this legislation and had exchanges with key stakeholders in advance of this instrument being laid.

Impact Assessment

Equal opportunities **–** These Regulations does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) either directly or indirectly.

Human rights **–** These Regulations does not infringe on or affect any subject areas of the European Convention of Human Rights (ECHR). We have not identified differential impact on human rights nor any impact on any individual's civil liberties.

Privacy impacts **–** No privacy impacts resulting from this legislation have been identified.

Island communities **–** These Regulations will have no identified differential impact on island and rural communities.

Local government **–** There are no additional responsibilities or costs for local authorities as a result of this legislation.

Sustainable development **–** These Regulations will have no impact on sustainable development.

Financial Implications

The Minister for Public Finance and Digital Economy has confirmed that no BRIA is necessary, as the instrument has no financial effects on the Scottish Government, local government or on business.

The Scottish Fiscal Commission (SFC) has a statutory duty to provide independent and official forecasts of Scottish GDP, devolved tax receipts, non-domestic rates, Scottish income tax and

devolved social security expenditure. Under the Scottish Fiscal Commission Act 2016,[1] the SFC may also produce forecasts on other "fiscal factors", defined as "anything which the Scottish Ministers use to ascertain the amount of resources likely to be available for the purposes of sections 1 to 3 of the Public Finance and Accountability (Scotland) Act 2000." *The Protocol for engagement between the Scottish Fiscal Commission and the Scottish Government*[2] notes that the SFC may produce forecasts where it considers the policy, or policies, to have a "non-negligible impact on receipts or expenditure."

Having considered the measures in this instrument, the SFC chose not to produce forecasts on the basis that it believes there will be no financial implications as a result of this instrument.

Scottish Government Tax Division
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[1] http://www.legislation.gov.uk/asp/2016/17/pdfs/asp_20160017_en.pdf
[2] http://www.fiscalcommission.scot/media/1563/scottish-fiscal-commission-protocol-version-30-september-2019-final.pdf