POLICY NOTE

THE LAND AND BUILDINGS TRANSACTION TAX (OPEN-ENDED INVESTMENT COMPANIES) (SCOTLAND) REGULATIONS 2015

SSI No: 322

The instrument above was made in exercise of the powers conferred by section 46 of the Land and Buildings Transaction Tax (Scotland) Act 2013 (LBTT Act). The making of this order is subject to negative procedure.

Policy Objectives

Authorised Unit Trusts (AUT) have been the traditional mechanism for collective investment in the UK property market for a considerable period of time. Over the last few years however many AUTs have converted to Open Ended Investment Companies (OEIC). The main purpose of converting an AUT to an OEIC is usually to obtain Property Authorised Investment Fund (PAIF) status. This is an investment structure introduced by the UK Government in 2008 to provide a tax efficient vehicle for collective investment in rental property. A number of fund managers are in the process of converting existing AUT to PAIFs.

PAIFs were designed to ensure that investors are taxed on rental income from the PAIF in the same way as if they had invested directly in the property. This benefits investors with certain tax exemptions, such as charities, pension funds, life companies and ISA investors, who would otherwise receive property rental income from AUTs net of income tax, which they would be unable to reclaim. Tax-exempt investors in a PAIF do not bear any tax charge on the rental income which they receive from the fund.

Section 46 of the LBTT Act provides for a regulation-making power which enables Scottish Ministers to exempt from tax properties held by an AUT when it converts to, or amalgamates with, an OEIC.

The Scottish Government is committed to ensuring that Scotland remains an attractive location for investment. The objective of this instrument is to provide an exemption (by way of a claimable relief) from LBTT for Authorised Unit Trusts converting to an Open Ended Investment Comapany.

Consultation

A Consultation on Land and Buildings Transaction Tax Rules for Property Authorised Investment Funds [1], was published in July 2015 and sought views on providing an exemption (by way of a claimable relief) for AUT transferring their property assets to an OEIC. The consultation closed on 28 August 2015.

[1] https://consult.scotland.gov.uk/fiscal-responsibility/land-and-building-transaction-tax/consult_view

We received 13 responses, mainly from fund management and property sector organisations. All 13 respondents wanted to see an exemption put in place whilst none could identify potential opportunities for evasion or avoidance of the tax. The exemption has been operational in the UK for a number of years with no systematic issues of evasion or avoidance being identified. The drafting of the regulations provides that ownership (including proportional ownership) of the two investment vehicles remain the same before and after conversion or amalgamation of the AUT.

Respondents all echoed the same concerns, that the lack of an exemption would lead to dis-investment in the Scottish (mainly commercial) property sectors by investment institutions wishing to convert their AUTs.

Impact Assessments

As the Scottish Government's approach to this instrument largely mirror the already existing UK approach under Stamp Duty Land Tax, which also applied in Scotland up to 31 March 2015, no significant financial effect or impact on the private, voluntary or public sector is anticipated. All respondents to the consultation highlighted that not introducing these regulations would have an adverse impact on the Scottish commercial property sector with investment fund managers seeking to convert their AUT's to OEIC potentially divesting their Scottish assets. Respondents also suggested that not introducing this instrument would affect the business of the investment sector domiciled in Scotland.

The Scottish Government has considered potential impacts on the equality agenda. The regulations do 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. The lack of an exemption could affect the income of charities that champion equality issues.

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