POLICY NOTE

THE LAND AND BUILDINGS TRANSACTION TAX (QUALIFYING PUBLIC OR EDUCATIONAL BODIES) (SCOTLAND) ORDER 2014

SSI 2014/351

The instrument above was made in exercise of the powers conferred by paragraph 17(3)(c) of schedule 2 to the Land and Buildings Transaction Tax (Scotland) Act 2013 ("LBTT(S)A 2013"). It is subject to the negative procedure.

Policy Objectives

The purpose of this instrument is to amend the list of qualifying bodies mentioned in sub-paragraph 17(2) of schedule 2 to LBTT(S)A 2013 to ensure that publicly funded colleges and universities should continue to be included for the purposes of paragraph 17.

Policy background

Paragraph 17 of schedule 2 to LBTT(S)A 2013 sets out what counts as chargeable consideration where a public or educational body enters into a sale and leaseback arrangement with another party (a 'non-qualifying body'). Sub-paragraph 17(2) sets out which public or educational bodies are qualifying bodies for the purposes of paragraph 17.

Sub-paragraph 2(c) provides for 'any body listed in schedule 2 to the Further and Higher Education (Scotland) Act 2005. Sub-paragraph 3(c) provides a power to vary the list of qualifying bodies mentioned in paragraph 2.

The Post-16 Education (Scotland) Act 2013 removes institutions from schedule 2 of the Further and Higher Education (Scotland) Act 2005 who should still have the exemption at schedule 2 paragraph 17(2)(c) applied to them.

The Scottish Government intends that publicly funded colleges and universities should continue to be included in sub-paragraph 17(2) of schedule 2 to LBTT(S)A 2013. To achieve that objective following the changes made by the Post-16 Education (Scotland) Act 2013, the provisions of sub-paragraph 2(c) must be amended using the power in sub-paragraph 3(c) of schedule 2.

Colleges

In three (of thirteen) college regions the Scottish Funding Council (SFC) will fund new regional strategic bodies. These regional strategic bodies will in turn for colleges in their region. Therefore, there will be some colleges that will not receive funding directly from the SFC. After a transitional period, it is intended that these colleges will be removed from schedule 2 to the 2005 Act.

In order to continue to capture all publicly funded colleges and universities, the Order refers to bodies listed in schedule 2 and to bodies generally eligible for funding from a

regional strategic body. The term that captures both these types of educational body is "post-16 education body". It is defined in section 35(1) of the 2005 Act, as amended by paragraph 8(23)(iv) of the schedule to the Post-16 Education (Scotland) Act 2013.

Regional strategic bodies

Regional strategic bodies are either:

- a regional board, a body established under the 2005 Act. As such a regional board would fall within the definition of public body within the meaning of paragraph 4 of schedule 16 to LBTT(S)A 2013 ; or
- a fundable post-16 education body (a term for a body listed in schedule 2 to the 2005 Act) designated as such. While this type of regional strategic body would not appear to fall within the definition of public body, they would still fall within the scope of paragraph 17(2) of schedule 2 to LBTT(S)A 2013 by virtue of necessarily being listed in schedule 2 to the 2005 Act.

Using the power in sub-paragraph 17(3), the Order amends the list of qualifying bodies in sub-paragraph 17(2) of schedule 2 to LBTT(S)A 2013.

The Scottish Government has concluded that regional strategic bodies would be covered by paragraph 17(2) of schedule 2 to LBTT(S)A 2013 without any further express provision.

However the Order amends the reference to "any body listed in schedule 2 to the Further and Higher Education (Scotland) Act 2005" in paragraph 17(2) of schedule 2 to LBTT(S)A 2013 to a reference to any post-16 education body within the meaning of the Further and Higher Education (Scotland) Act 2005.

Consultation

As these are technical changes which have no substantive impact there was no external consultation on this Order.

Impact Assessments

A Business and Regulatory Impact Assessment[1] ("BRIA") has been published for the regulations and orders associated with LBTT(S)A 2013. No significant financial effect or impact on the private, voluntary or public sector is anticipated as a consequence of this Order.

[1] 'Land and Buildings Transaction Tax - Business and Regulatory Impact Assessment', published December 2014, available at: www.scotland.gov.uk/lbtt-bria2014

An Equality Impact Assessment ("EQIA") has been published[2]. The regulations will have no impact on environmental issues.

Scottish Government
Finance Directorate
Fiscal Responsibility Division

[2] 'Land and Buildings Transaction Tax - Equalities Impact Assessment', published December 2014, available at: http://www.scotland.gov.uk/Publications/2014/12/5671