

# **The Land and Buildings Transaction Tax: Proposed Relief for Green Freeports**

## **The Scottish Government's Response and Summary of Responses**

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## **1. Introduction**

1.1 This report sets out an overview of findings and a summary of responses to the Scottish Government's consultation entitled 'The Land and Buildings Transaction Tax: Proposed Relief for Green Freeports' (hereafter referred to as 'the consultation'). In addition, it sets out the Scottish Government's response to the consultation and a summary of next steps.

1.2 The Scottish Government would like to thank all respondents for their contributions.

1.3 Stakeholder views were invited as part of an 8-week consultation period between 17 March 2023 and 12 May 2023. The consultation invited comments on draft legislative clauses to facilitate a new relief from Land and Buildings Transaction Tax (LBTT) for Green Freeports.

1.4 Respondents were invited to respond by post, via CitizenSpace, or by email to the Scottish Government's Devolved Taxes Unit.

1.5 The Scottish Government held several virtual stakeholder engagement events during the consultation period.

1.6 In total, the consultation received 10 responses from various stakeholder groups. In keeping with standard practice, responses which did not engage with the questions asked are not included in this analysis.

1.7 Respondents provided a range of views on several elements of the draft clauses, and while there is evidence of consensus in some areas, a number of unique concerns and proposed amendments were highlighted.

1.8 A list of respondents is available in Annex A and, where permission has been given, responses have been published in full on the Scottish Government's consultations webpage at [www.consult.scot](http://www.consult.scot).

## **2. Summary Of Responses**

### **A. Overview and Eligibility for the Relief**

2.1 This section of the consultation set out a general overview of the proposed legislative clauses and the conditions for general eligibility for the relief.

#### **A1 - Qualifying Green Freeport land**

2.2 This section set out how 'qualifying Green Freeport land' is determined for relief purposes.

2.3 The consultation posed the following questions:

1. Do you agree that the provisions as drafted in respect of qualifying Green Freeport land work as intended?
2. If not, what amendments would you propose to the draft legislation and on what basis?

2.4 Respondents noted the need to align, as far as possible, the timings for LBTT relief availability and tax site designation in order to maximise the timeframe in which relief can be claimed.

2.5 Respondents noted that the wording of draft clause 6(1) could be clearer, specifically the use of the phrase 'to the extent that...' in considering land that is partially outwith the tax site.

2.6 Proposed changes to section 113 Finance Act 2021 were highlighted, noting the interaction of this section with the draft LBTT legislation. The proposed amendments are intended to bring potential tax sites within Investment Zones into scope of this section, in addition to Freeports. Amendments were proposed to draft clause 6(2) to account for this.

2.7 One respondent noted the importance of compliance activity in respect of relief claims, highlighting that relief clawback mechanisms (see discussion at C1) should be "rigorously scrutinised" before the legislation takes effect.

2.8 Some respondents suggested that the legislation does not provide for a definition of 'connected person'. For clarity, this was provided for in draft paragraph 2(4) of the Order.

2.9 Conversely, it was also noted that the legislation was 'clear and unambivalent' and that the legislation appeared to be consistent with Stamp Duty Land Tax (SDLT) relief for Freeports.

### **Scottish Government Response**

The draft legislation has been amended to reflect a relief start date of 1 October 2023. This will enable the Scottish Government to align, as far as is possible, the

relief availability period with the tax site designation dates which will be set by UK Government statutory instruments.

In respect of requests for clarity around the application of clause 6(1), the Scottish Government will maintain the current wording to reflect those scenarios where transaction land may be only partially within a tax site and/or where land may only partially be used in a qualifying manner. Guidance will be provided by Revenue Scotland in respect of the relief overall, including this section

In respect of the proposed amendments to s113 Finance Act 2021, the draft legislation has been amended to clarify the interaction between that section and the draft legislation. Changes to the draft LBTT legislation ensure that Schedule 16D will apply to Green Freeport tax sites only.

In respect of compliance activity more broadly, this will be the responsibility of Revenue Scotland following the legislation taking effect.

## **A2 - Qualifying transaction land**

2.10 This section set out what was meant by ‘qualifying transaction land’ for the purposes of this relief.

2.11 The consultation posed the following questions:

3. Do you agree that the provisions as drafted in respect of qualifying Green Freeport land work as intended?

4. If not, what amendments would you propose to the draft legislation and on what basis?

2.12 A limited number of responses was received in respect of these questions.

2.13 Respondents noted that the proposed clause should be amended for clarity and should specify ‘buildings’ in addition to ‘land’ for clarity.

## **Scottish Government Response**

We have not amended the relevant clause to include ‘buildings’ as Schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 already provides that ‘land’ includes buildings and other structures.

The overall wording has also been retained on the basis that it correctly refers to the underlying land as the transaction land, rather than the chargeable interest in that land.

## **A3 – Qualifying manner**

2.14 This section set out that land must be used in a ‘qualifying manner’ in order for relief to be claimed. The section set out examples of what would, or would not be, considered use in a ‘qualifying manner’.

2.15 The consultation posed the following questions:

5. Do you agree that the provisions as drafted in respect of qualifying Green Freeport land work as intended?

6. If not, what amendments would you propose to the draft legislation and on what basis?

2.16 One respondent suggested that land should only be deemed “used in a qualifying manner” where the land is “*solely used for Freeport activities*”, the effect being that partial relief is not available where land is only partly used in a qualifying manner.

2.17 Several respondents highlighted the application of the relief conditions to developers who intend to enter into a ‘forward funding’ structure. Concerns were raised that such a developer would either not qualify for relief or that relief would be withdrawn under the provisions discussed at C1 on the basis that the developer does not meet the relief conditions during their period of land ownership. It was suggested that this treatment could present a barrier to investment in tax site land.

2.18 Some respondents suggested that the legislation does not provide for a definition of ‘connected person’. For clarity, this was provided for in draft paragraph 2(4) of the Order.

2.19 Respondents noted that, in referring to use as ‘garden or grounds of a dwelling’, clarity is needed where the garden or grounds includes a building.

2.20 It was suggested that the draft Schedule should list in full the “excluded rents” referred to in draft clause 7(1)(c) rather than including a cross reference to the provisions of the Corporation Taxes Act 2010 at draft clause 7(5).

### **Scottish Government Response**

In respect of restricting relief to land solely used in a qualifying manner, this is addressed by the proposed partial relief clauses.

In respect of developers who intend to enter into a forward funding structure, the Scottish Government does not intend to amend the draft clauses to allow for relief in these circumstances. Relief will only be available where the buyer can demonstrate that they meet the relevant conditions for relief. This approach provides clarity in respect of the application of the conditions for relief and certainty for taxpayers in line with our Framework for Tax principles.

Clause 7(2)(a) has been amended to clarify the position where the ‘garden or grounds of a dwelling’ includes a building.

The legislation will continue to refer to the CTA 2010 definitions of excluded rents, with the full list being set out in guidance. The Scottish Government will keep cross-referred legislation under review in the event of any amendments.

## **A4 - Ancillary land**

2.21 This section of the consultation outlined the Scottish Government's intention to provide a relief which may be claimed in respect of land which is ancillary to land within a designated tax site and for which relief has been claimed.

2.22 The consultation posed the following questions:

7. Do you agree that the provisions as drafted in respect of qualifying Green Freeport land work as intended?

8. If not, what amendments would you propose to the draft legislation and on what basis?

2.23 A limited number of responses was received in respect of these questions.

2.24 Responses were broadly supportive of the proposals around ancillary land. One response recommended a minor change to the proposed wording for clarity. Another response requested specific guidance from Revenue Scotland to reduce the risk of misunderstanding.

2.25 However, one respondent suggested that any ancillary land "*should only be able to claim relief if its purpose is solely to support Freeport activities*". Car parks which service both qualifying and non-qualifying Green Freeport activities within the designated zones were used as an example where relief should not be granted.

## **Scottish Government Response**

The drafted provisions reflect the Scottish Government's position in respect of the availability of relief for ancillary land. No amendments have been made to the legislation.

## **A5 - Full Relief**

2.26 This section of the consultation outlined those scenarios where 100% LBTT relief will apply.

2.27 The consultation posed the following questions:

9. Do you agree that the provisions as drafted achieve the policy intent of allowing full relief for qualifying transactions where at least 90% of chargeable consideration is attributable to qualifying transaction land?

10. If not, what amendments would you propose to the draft legislation and on what basis?

2.28 A limited number of responses were received in respect of these questions.

2.29 One respondent suggested that, rather than allow for tax relief, a tax premium should be applied to reflect tax savings arising from reserved incentives.

### **Scottish Government Response**

The Scottish Government does not intend to apply a tax premium to business' operating within Green Freeport tax sites. No amendments have been made to the legislation.

### **A6 – Partial Relief**

2.30 This section of the consultation discussed the application of partial LBTT relief where between 10% and 90% of chargeable consideration is attributable to Green Freeport land.

2.31 The consultation posed the following questions:

11. Do you agree that the provisions as drafted achieve the policy intent for partial relief where between 10% and 90% of chargeable consideration is attributable to qualifying Green Freeport land?

12. If not, what amendments would you propose to the draft legislation and on what basis?

13. Are there any specific scenarios to which the Scottish Government should give careful consideration to the arrangements for partial relief?

2.32 Responses to this section were limited.

2.33 One respondent suggested that partial relief should not be available, and only those transactions which are wholly comprised of qualifying land should be in scope.

2.34 The application of the rules to developers in forward funding scenarios (see discussion at A3) was also raised, as was the need to ensure relief availability in order to “*secure wider sustainable economy benefits*”.

### **Scottish Government Response**

The Scottish Government intends for partial relief to be available where conditions for relief are met. No amendments have been made to the legislation.

### **A7 - Attributing chargeable consideration to land**

2.35 This section discussed the requirement for a just and reasonable apportionment of consideration to be made, where the consideration that relates to qualifying land is less than 100%.

2.36 The consultation posed the following questions:



14. Do you agree that the provisions as drafted achieve the policy intent of requiring just and reasonable apportionment of consideration to land?

15. If not, what amendments would you propose to the draft legislation and on what basis?

2.37 Respondents were broadly in favour of the rules as drafted. One respondent suggested that no partial relief should be available.

### **Scottish Government Response**

The Scottish Government intends for partial relief to be available where conditions for relief are met, with the relevant consideration being determined on a just and reasonable basis. No changes have been made to the legislation.

### **A8 - Alternative property finance arrangements**

2.38 This section of the consultation covered transactions which feature alternative property finance arrangements, in which contracts are structured to comply with the requirements of Shari'a law, and the potential withdrawal of relief under these arrangements.

2.39 The consultation posed the following questions:

16. Do you agree that the provisions as drafted work as intended in terms of the provision or withdrawal of relief under alternative finance arrangements?

17. If not, what amendments would you propose to the draft legislation and on what basis?

2.40 A majority of respondents who answered these questions agreed that the provisions as drafted provide for the intended effect.

2.41 One respondent highlighted the importance of avoiding scenarios where parties involved in the transaction could either be discriminated against or benefit from a transaction founded on alternative property finance arrangements.

### **Scottish Government Response**

The Scottish Government intends to proceed with the legislation on alternative property finance arrangements as originally drafted. No amendments have been made to the draft legislation in this regard.

### **B. Claiming the Relief**

2.42 This Chapter of the consultation discussed the process for claiming relief, the requirement to make a return where relief is withdrawn and the interest potentially payable where relief is withdrawn.

## **B - Claims giving effect to relief**

2.43 This section set out that, as with all reliefs, Green Freeport LBTT relief must be claimed via the first LBTT return made in relation to a transaction.

2.44 The consultation posed the following questions:

18. Do you agree that the provisions as drafted achieve the policy intent?

19. If not, what amendments would you propose to the draft legislation and on what basis?

2.45 A limited number of responses were received. One respondent reiterated the need to align the relief commencement date with the tax site designation date as far as possible.

### **Scottish Government Response**

As discussed at A1, the draft legislation has been amended to reflect a relief start date of 1 October 2023. This will enable the Scottish Government to align, as far as is possible, the relief availability period with the tax site designation dates which will be set by UK Government statutory instruments.

## **BE - Additional return required when relief is withdrawn**

2.46 This section noted that, where relief is withdrawn (see C1), an additional LBTT return will be required to be made.

2.47 The consultation posed the following questions:

20. Do you agree that the provisions as drafted achieve the policy intent of requiring an additional return where relief is withdrawn?

21. If not, what amendments would you propose to the draft legislation and on what basis?

2.48 Responses agreed that the proposed clauses meet the policy intent.

### **Scottish Government Response**

No amendments will be made to the draft legislation.

## **B3 - Interest payable where relief is withdrawn**

2.49 This section of the consultation outlines the proposed provisions for interest to become payable against any resulting tax liability in cases where relief is withdrawn.

2.50 The consultation posed the following questions:

22. Do you agree that the provisions as drafted achieve the policy intent of requiring interest to be paid where relief is withdrawn?

23. If not, what amendments would you propose to the draft legislation and on what basis?

2.51 As with the previous section, responses agreed that the proposed clauses meet the policy intent.

### **Scottish Government Response**

The Scottish Government intends to proceed with the legislation on alternative property finance arrangements as originally drafted. No amendments have been made to the draft legislation in this regard.

### **C. Withdrawal of Relief, part disposals and lease assignments**

2.52 This Chapter set out those circumstances where relief may be withdrawn, the 'control period' for relief, part disposals of qualifying land within the control period, and the treatment of lease assignments.

#### **C1 – Withdrawal of Relief**

2.53 This section discussed the circumstances where relief may be withdrawn and also sets out those circumstances where the Scottish Government does not intend to withdraw relief.

2.54 The consultation posed the following questions:

24. Do you agree that the provisions as drafted achieve the policy intent of providing for withdrawal of relief where land ceases to be used in a qualifying manner?

25. If not, what amendments would you propose to the draft legislation and on what basis?

2.55 Respondents were broadly in agreement that the clauses worked as intended. It was noted that sufficient guidance would be required to clarify those circumstances where relief is not withdrawn due, for example, to circumstances beyond the buyer's control.

### **Scottish Government Response**

No amendments will be made to the draft legislation. Guidance will be provided by Revenue Scotland in respect of the relief overall, including this section.

#### **C2 - Control period**

2.56 This section discussed the control period which will apply for the purposes of considering whether relief should be withdrawn. Relief claimants must demonstrate that they continue to meet relief conditions during the control period. Exceptions to

the withdrawal provisions were also discussed, in addition to the length of the control period which was proposed to be the shorter of:

- Three years beginning with the effective date of the transaction; or
- The period beginning with the effective date of the transaction and ending with the date the buyer, or person connected to the buyer, ceases to hold a chargeable interest in the qualifying green Freeport land.

2.57 The consultation posed the following questions:

26. Do you agree that the provisions as drafted reflect the intended definition of a 'control period'?

27. If not, what amendments would you propose to the draft legislation and on what basis?

2.58 One respondent noted that, in considering whether conditions continue to be met, consideration should be given to artificial transactions attempting to avoid a clawback of relief.

2.59 Two respondents queried whether draft clauses 9(1)(b) and 9(2) apply to disposals of 10% or less of a site which has benefitted from partial relief.

### **Scottish Government Response**

No amendments have been made to the proposed legislation.

In respect of transactions seeking a tax advantage which is not otherwise due, the Scottish General Anti-Avoidance Rule, set out in Part 5 of the Revenue Scotland and Tax Powers Act (RSTPA) 2014 will apply.

Draft clauses 9(1)(b) and 9(2) apply to 'final transactions', immediately after which the buyer holds no chargeable interest in the qualifying Green Freeport land disposed of (i.e. the chargeable interest in land against which relief has been claimed). This extends to part disposals by virtue of draft clause 10(2).

Guidance will be provided in respect of the relief overall, including this section.

### **C3 - Part-disposal of an interest in qualifying Green Freeport land within the control period**

2.60 This section of the consultation outlined the Scottish Government's intent that relief attributable to the tax liability on the proportion of land that has not been disposed of should not be withdrawn provided the remaining land continues to meet all relevant conditions.

2.61 The consultation posed the following questions:

28. Do you agree that the provisions as drafted achieve reflect the policy intent of how part disposals are treated?

29. If not, what amendments would you propose to the draft legislation and on what basis?

2.62 Responses to these questions were mixed. Some respondents agreed that the clauses meet the policy intent as drafted. One response stated that any withdrawal of relief should also apply if any part of the land changes use “*in a manner that would take it outwith Freeport activities*”.

2.63 Another response requested clarity on the draft clause with specific reference to forward sales, leases and assignments during the period in which the effective dates apply.

2.64 Finally, one response considered the specific scenario in which a lease is granted out of the original interest on which the relief was claimed, and the conditions necessary for the relief are not met. The response proposed that the relief would not be clawed back so long as section 7(1)(c) is met and the tenant is not using the property as a dwelling, as set out in section 7(2)(d).

### **Scottish Government Response**

The Scottish Government notes the range of views expressed in relation to this section of the consultation.

No amendments have been made to this section. Guidance will be provided in respect of the relief overall, including this section.

### **C4 - Lease assignments outwith the relief period**

2.65 This section discussed the treatment of lease assignments, in that an assignment of a lease against which relief has been claimed is to be treated as the grant of a new lease.

2.66 The consultation posed the following questions:

30. Do you agree that the provisions as drafted work as intended to treat the assignment of a lease, against which relief has been claimed, as the grant of a lease?

31. If not, what amendments would you propose to the draft legislation and on what basis?

32. Are there other aspects of lease transactions which the Scottish Government should give further consideration to in providing for this relief?

2.67 In the consultation document, the commentary noted that the assignment of a lease would be treated as the grant of a new lease after the relief ceased to be available (i.e. after the relief ‘end date’ of 30 September 2028). Conversely, the draft

clause set out that the assignation of a lease will be treated as the grant of a new lease where the assignee does not qualify for relief.

2.68 Responses to Question 31 in particular have highlighted this point with respondents requesting clarity on the intent of the draft clause.

2.69 Separately, it was suggested that the application of relief to leases is carefully monitored given the potential complexity and it was proposed that the '3-year lease review' requirements set out in Paragraph 10 of Schedule 19 of the 2013 Act be disapplied for partially relieved leases.

### **Scottish Government Response**

No amendments have been made to the legislation in respect of this section. For clarity, the Scottish Government intends for assignations to be treated as the grant of a new lease where relief is not available on assignation, even where the assignation takes place during the period in which relief is available more generally. The clause as drafted reflects the correct position.

The broader provisions of the Act continue to apply to leases where relevant, including 3-yearly review requirements.

### **3. Summary Of Proposed Amendments**

#### **3.1 Draft clause 2(1)(b) of Schedule 16D – Full relief**

This clause has been amended to reflect the relief availability period, that being 1 October 2023 to 30 September 2028.

#### **3.2 Draft clause 3(1)(b) of Schedule 16D – Partial relief**

This clause has been amended to reflect the relief availability period, that being 1 October 2023 to 30 September 2028.

#### **3.3 Draft clause 6(2) of Schedule 16D – Qualifying green freeport land**

This clause has been amended to reflect the proposed amendments to section 113 Finance Act 2021, confirming that relief under Schedule 16D applies only to freeport tax sites designated by regulations made under that section.

#### **3.4 Draft clause 7(2)(a) of Schedule 16D – Use of land in a qualifying manner**

This clause has been amended to clarify that the garden or grounds of a dwelling includes any building or other structure on such land.

### **4. Next Steps**

The Scottish Government has laid in Parliament draft legislation intending to give effect to LBTT relief for qualifying transactions within Green Freeports. As noted

above, the legislation has been amended where appropriate on the basis of responses to this consultation and in consideration of all available evidence.

## 5. Annex A

List of respondents:

	<b>Respondent</b>	<b>Category</b>
1	Common Weal	Organisation
2	Forth Green Freeport	Organisation
3	Institute of Chartered Accountants in England and Wales	Organisation
4	Edinburgh Chamber of Commerce	Organisation
5	Scottish Property Federation	Organisation
6	Ernst & Young LLP	Organisation
7	Scottish Trades Union Congress	Organisation
8	The Law Society of Scotland	Organisation
9	Stamp Taxes Practitioners Group	Organisation
10	Unite the Union	Organisation





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