

A consultation on the Proposed Land and Buildings Transaction Tax First-Time Buyers Relief

February 2018



Scottish Government
Riaghaltas na h-Alba
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CONTENT

INTRODUCTION (page 3)

CHAPTER 1: OVERVIEW OF THE PROPOSED RELIEF (page 4)

CHAPTER 2: ELIGIBILITY FOR THE RELIEF – MORE DETAILED COMMENTARY (page 5)

CHAPTER 3: INTRODUCTION OF THE RELIEF (page 7)

CHAPTER 4: EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC. (page 7)

CHAPTER 5: HOW TO RESPOND (page 8)

LIST OF CONSULTATION QUESTIONS (page 13)

ANNEX A: DRAFT LAND AND BUILDINGS TRANSACTION TAX (FIRST-TIME BUYER RELIEF) (SCOTLAND) ORDER 2018 (page 14)

INTRODUCTION

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

2. Since introduction of the tax, the Scottish Government's policy priority in setting the rates and bands for residential LBTT has been to help first-time buyers enter the property market and assist people as they progress through the market.

3. In line with that, the Cabinet Secretary for Finance and the Constitution announced plans in the Scottish Government draft Scottish Budget for 2018/19 for a new LBTT relief for first-time buyers in Scotland up to £175,000.

4. Whilst no changes are being made to the rates and bands directly, the relief will have the effect of raising the zero tax LBTT threshold for first-time buyers, of any age, from £145,000 to £175,000. First-time buyers buying a property above £175,000 will also benefit on the portion of the price below the threshold. The Scottish Fiscal Commission forecast that this will result in 80 per cent of first-time buyers in Scotland paying no LBTT at all, whilst all other first time buyers will see their tax reduced by £600. Overall this policy is estimated to help 12,000 first-time buyers each year.

5. In order to introduce the relief, the Land and Buildings Transaction Tax (Scotland) Act 2013 ('LBTTSA 2013') must be amended. To achieve this, secondary legislation, in the form of a new Schedule, must be introduced to and agreed by the Scottish Parliament. A draft Statutory Instrument is included as part of this consultation at Annex A. This will be refined and revised in the light of responses to this consultation and prior to its introduction to Parliament.

6. The first-time buyer relief will complement a range of measures already put in place by the Scottish Government to support homebuyers and the provision of new homes in Scotland. This includes our LIFT schemes, which support first time buyers on lower incomes (as well as a limited range of other specified priority groups) to buy new and existing homes. In addition, first time buyers may access support through the Help to Buy (Scotland) Affordable New Build scheme to buy new properties only.

7. As the Scottish Government has already signaled its intent to introduce the relief, the consultation does not seek views on whether or not the relief should be introduced or on the £175,000 threshold which will be set.

CHAPTER 1: OVERVIEW OF THE PROPOSED RELIEF

8. In general terms, the Scottish Government's intention is that the relief will be available where:

- The buyer is a natural person,
- A single dwelling is purchased for more than £145,000.
- The buyer is a first time buyer, who has never had a 'major interest' in a dwelling in Scotland or an equivalent interest in a dwelling situated anywhere else in the world.
- The buyer intends to occupy the dwelling as their main residence.
- The effective date of the transaction is on or after the date that the relevant legislation comes into force, and consistent with any final transitional provisions.

9. In addition, to minimise complexity and address the risk of avoidance, where there is more than one buyer the relief will be available only if each and every buyer meets all the relevant criteria. If any of the buyers does not meet all the conditions then the relief will not be available.

10. In keeping with all other reliefs, the first time buyer relief will need to be claimed in the first tax return or an amendment of that return.

11. Further commentary and questions regarding these criteria is set out in this consultation document.

12. The relief will be available to all eligible first time buyers who purchase a single dwelling for more than £145,000. As such, first-time buyers buying a dwelling above £175,000 would also benefit from the relief on the portion of the price below the threshold.

13. The benefit to first-time buyers in terms of reduced tax will depend on the value of the property purchased, but will be up to a maximum of £600. The table below sets out illustrative examples of the amount of tax which would be due for various transactions, with and without the relief.

Purchase Price	Tax Due - With Relief	Tax Due - Without Relief
£150,000	£0	£100
£175,000	£0	£600
£200,000	£500	£1,100
£250,000	£1,500	£2,100

CHAPTER 2: ELIGIBILITY FOR THE RELIEF – MORE DETAILED COMMENTARY

Buyer Must Be A Natural Person or Persons

14. The Scottish Government's intention is that the relief will only be available where the buyer(s) is or are a natural person.

Purchase must be of a single dwelling for an amount greater than £145,000

15. The Scottish Government's progressive approach to taxation means that no tax is due on the purchase of a property for £145,000 or less. As such, the relief will not be a relevant consideration in any such transactions.

16. The intention is that the relief will only be available in relation to the purchase of a single dwelling. In this regard, the intention is to rely on the definition of "dwelling" set out in Part 6 of Schedule 5 of the LBTTSA 2013.

17. This will be combined with the main residence requirement to determine the properties which are eligible for the relief.

Property to be used as a Main Residence

18. In order to be eligible, buyers must intend to use the purchased dwelling as their main residence.

19. Revenue Scotland has published guidance on this issue, which will apply with regard to the relief. LBTT10020 (<https://www.revenue.scot/land-buildings-transaction-tax/guidance/lbtt-legislation-guidance/lbtt10001-lbtt-additional-dwell-16>) states that they will use the same factual test here as is applied to decide where a person lives for the purposes of Scottish Income Tax.

No Prior Ownership of a Dwelling

20. Where an individual has or has previously held a 'major interest' in a dwelling, whether individually or jointly with others, they will not be eligible for the relief. Prior ownership of property which is not a dwelling will not be relevant in this regard.

21. In relation to this, a buyer must not have or have held a 'major interest' in a dwelling or an equivalent interest in a dwelling situated anywhere else in the world. This is to ensure that property holdings throughout the world are taken into account when considering eligibility for the relief.

22. The draft Order at Annex A sets out a proposed definition of 'major interest' as comprising either ownership, or an interest other than ownership with a market value that is or would be above the nil band rate for LBTT. Views on this definition are welcome in response to Question 7 in this consultation to support the Scottish Government's final proposals.

23. With regard to this issue, account will be taken of the fact that property can be inherited, gifted or held in trust.

24. The Scottish Government's intention is that the relief will not be available where an individual has previously acquired a 'major' interest in a property as a consequence of either an inheritance or a gift.

25. In addition an individual will not be a first time buyer, and therefore ineligible to claim the relief where they are, or have been, either the beneficiary in relation to a dwelling which is held under a bare trust, or a settlement trust under the terms of which they have a relevant interest in any dwelling that is or forms part of the trust property.

26. Consistent with the above, assuming all other relevant tests are met, the relief **will** however be available in relation to the purchase of a dwelling by a bare trust or settlement trust (in which there is a beneficiary with a relevant interest) if the beneficiary does not hold, or has never previously held, a relevant interest in a dwelling.

27. This approach is consistent with the arrangements in place for LBTT in terms of determining whether or not a person is to be treated as the owner of a dwelling.

QUESTIONS

Question 1: Do you agree with the Scottish Government's proposed four key criteria for the relief, as described above?

Question 2: Do you agree that, where there is more than one buyer, all buyers must meet the relevant criteria in order for the relief to be claimed?

Question 3: Do you agree with the Scottish Government's proposed approach with regard to gifts, inheritance and trusts?

Question 4: Are there any other issues which need to be considered with regard to assessing prior ownership of a dwelling?

Other Considerations

Linked Transactions

28. For reasons of simplicity and the relative infrequency with which such transactions occur for first time buyers, the Scottish Government proposes that the relief will not be available where there is a linked transaction.

Alternative Finance Schemes

29. It is intended that individuals participating in alternative finance schemes will also benefit from the relief, assuming that all relevant criteria are met.

Relief must be claimed in the first return or amendment

30. This position will also be consistent with Section 27(2) of the LBTT(S)A 2013, which states that any relief must be claimed in the first return or in an amendment of that return. Any amendment must be made within twelve months of the filing date of the return.

QUESTIONS

Question 5: Do you agree with the Scottish Government's position on linked transactions? If not, in what scenarios should relief be available where there is a linked transaction.

Question 6: Are there other issues, not covered in this consultation, that should be addressed in the legislation or guidance?

CHAPTER 3: INTRODUCTION OF THE RELIEF

31. The LBTTSA 2013 must be amended before the relief can be introduced.

32. To achieve this, the Scottish Government intends to bring forward secondary legislation to deliver the relief as soon as possible, following consideration of the responses to this consultation.

33. A draft Scottish Statutory Instrument introducing a new Schedule 4A to the LBTTSA 2013 is accordingly set out for consideration at Annex A. This will need to be refined prior to introduction of the legislation to Parliament to detail the level of relief available and in light of consultation responses.

34. Introduction of the relief will be subject to the usual process of Parliamentary scrutiny and consideration. However, the Scottish Government's intention is for the relief to be in place for June 2018.

35. Only transactions with an effective date after the implementation of the relevant legislation will be eligible for the relief.

36. Further guidance on the procedures and process which will be put in place for claiming the relief will be produced by Revenue Scotland in due course.

QUESTION

Question 7: Do you have any views on the draft Land and Buildings Transaction Tax (First-Time Buyer Relief) (Scotland) Order 2018?

CHAPTER 4: EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC

Equal opportunities

37. The Scottish Government assessed the potential impacts of the Land and Buildings Transaction Tax Act 2013 on equal opportunities. The proposed relief, which stems from the powers in the Act, would 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.

38. Any impacts arising from revised tax returns, guidance or other documentation, IT or other systems relating to the first time buyer relief will be a matter for Revenue Scotland in terms of its duties under the Equality Act 2010

Human rights

39. The proposed relief would not infringe on or affect any subject areas of the European Convention on Human Rights (ECHR). These regulations have no identified differential impact on human rights nor any impact on any individual's civil liberties.

Business Impacts

40. The proposed relief will only be available to individuals and will have no impact on Scottish businesses.

Island communities

41. The proposed relief has no identified differential impact on island and rural communities.

Privacy Impacts

42. Taxpayers will need to declare that they are eligible to reclaim the relief, consistent with all other LBTT reliefs in place. However, any information which may be sought by or provided to Revenue Scotland in relation to this relief will be governed and handled using the existing framework established by The Revenue Scotland and Tax Powers Act 2014 ('RSTPA 2014').

43. Part 3 of the RSTPA 2014 sets out the statutory obligation Revenue Scotland has to protect and handle taxpayer information which relevant officials must comply with. This is additional and complementary to the protections in the Data Protection Act 1998.

Local government

44. There are no additional responsibilities or costs for local authorities as a result of the proposed relief.

Sustainable development

45. The proposed relief will have no impact on sustainable development.

QUESTION

Question 8: Do you think that the planned first time buyer relief will in any way impact upon equal opportunities, human rights, businesses, island communities, privacy and/or sustainable development in Scotland?

CHAPTER 5: HOW TO RESPOND TO THIS CONSULTATION

We are inviting responses to this consultation by 23 March 2018.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.gov.scot/fiscal-responsibility/first-time-buyers-relief> . You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 23 March 2018.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

LBTT First Time Buyers Relief Consultation
Fiscal Responsibility Division
3D North
Victoria Quay
Edinburgh
EH6 6QQ

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to lbtt.ftb@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



**SCOTTISH GOVERNMENT CONSULTATION
LAND AND BUILDINGS TRANSACTION TAX - FIRST TIME BUYER RELIEF**

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No

LIST OF CONSULTATION QUESTIONS

Question 1: Do you agree with the Scottish Government's proposed four key criteria for the relief, as described above?

Question 2: Do you agree that, where there is more than one buyer, all buyers must meet the relevant criteria in order for the relief to be claimed?

Question 3: Do you agree with the Scottish Government's proposed approach with regard to gifts, inheritance and trusts?

Question 4: Are there any other issues which need to be considered with regard to assessing prior ownership of a dwelling?

Question 5: Do you agree with the Scottish Government's position on linked transactions? If not, in what scenarios should relief be available where there is a linked transaction.

Question 6: Are there other issues, not covered in this consultation, that should be addressed in the legislation or guidance?

Question 7: Do you have any views on the draft Land and Buildings Transaction Tax (First-Time Buyer Relief) (Scotland) Order 2018?

Question 8: Do you think that the planned first time buyer relief will in any way impact upon equal opportunities, human rights, businesses, island communities, privacy and/or sustainable development in Scotland?

Draft Order laid before the Scottish Parliament under section 68(2)(c) of the Land and Buildings Transaction Tax (Scotland) Act 2013, for approval by resolution of the Scottish Parliament.

SCOTTISH STATUTORY INSTRUMENTS

2018 No.

LAND AND BUILDINGS TRANSACTION TAX

**The Land and Buildings Transaction Tax (First-Time Buyer Relief)
(Scotland) Order 2018**

<i>Made</i>	- - - -	2018
<i>Coming into force</i>	- -	2018

The Scottish Ministers make the following Order in exercise of the powers conferred by section 27(3)(a) of the Land and Buildings Transaction Tax (Scotland) Act 2013⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 68(2)(c) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

PART 1

General

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Land and Buildings Transaction Tax (First-Time Buyer Relief) (Scotland) Order 2018 and comes into force on 1st April 2018.

(2) In this Order “the Act” means the Land and Buildings Transaction Tax (Scotland) Act 2013.

PART 2

First-time buyer relief

Amendment of section 25 of the Act

2. In section 25(3) of the Act (amount of tax chargeable), after “This section is subject to—” insert—
“(aa) schedule 4A (first-time buyer relief),”.

⁽¹⁾ 2013 asp 11.

Amendment of section 27(1) of the Act

3. In section 27(1) of the Act (reliefs) after “schedule 4 (relief for certain acquisitions of residential property),” insert—

“schedule 4A (first-time buyer relief).”

Amendment of section 65 of and schedule 20 OF the Act

4.—(1) In section 65 of the Act (general interpretation), after the definition of “employee” insert—

“first-time buyer relief” means relief under schedule 4A.”

(2) In schedule 20 to the Act (index of defined expressions), after the entry for “exempt transaction” insert—

“first-time buyer relief section 65.”

Insertion of schedule 4A (first-time buyer relief) into the Act

5. After schedule 4 of the Act, insert schedule 4A contained in the schedule to this Order.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

SCHEDULE

Article 5

“SCHEDULE 4A (introduced by section 27)

First-time buyer relief

Eligibility for relief

1. Relief may be claimed for a chargeable transaction, if—
 - (a) it is an acquisition of a major interest in land;
 - (b) the land consists entirely of residential property and is a dwelling;
 - (c) the buyer, or (if more than one) each of the buyers, is a first-time buyer who intends to occupy the dwelling as the buyer’s only or main residence; and
 - (d) the transaction is not one of a number of linked transactions.

Meaning of first-time buyer

2. In this schedule “first-time buyer” means a person who—
 - (a) has not previously been a buyer in relation to an acquisition of a major interest in land which consisted of a dwelling;
 - (b) has not previously acquired an equivalent interest in a dwelling under the law of a territory outside Scotland;
 - (c) has not previously been, or been one of the persons who was, “the person” for the purposes of paragraph 2, or 13, of schedule 7 in a case where the first transaction within the meaning of the paragraph concerned was an acquisition of a major interest in land which consisted of a dwelling; and
 - (d) would not have been such a person for those purposes in such a case if the provisions mentioned in paragraph (c) had been in force, and had had effect in the territory concerned, at all material times (subject, where required, to appropriate modifications).

Meaning of “major interest in land”

3. In this schedule “major interest in land” means—
 - (a) ownership of land; or
 - (b) interest in land other than ownership, the market value of which at the date the relief is claimed is or would be above the [nil band rate].

Eligibility for relief: alternative finance arrangements

4.—(1) This paragraph applies in relation to a land transaction which is the first transaction under an alternative finance arrangement entered into between a person and a financial institution.

(2) The person (rather than the institution) is to be treated as the buyer in relation to the transaction for the purposes of paragraph 1(c).

(3) In this paragraph—

“alternative finance arrangement” means an arrangement of a kind mentioned in paragraph 2 or 13 of schedule 7;

“financial institution” has the meaning it has in those paragraphs (see paragraph 25 of schedule 7); and

“first transaction”, in relation to an alternative finance arrangement, has the meaning given in paragraph 2(a) or (as the case may be) paragraph 13(a)(i) of schedule 7.

Meaning of “dwelling”

5. In this schedule “dwelling” has the same meaning as what counts as a dwelling in Part 6 of schedule 5 of the Act.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Land and Buildings Transaction Tax (Scotland) Act 2013 to insert a new schedule 4A which provides for a targeted relief. The targeted relief is to provide a degree of relief from land and buildings transaction tax for first-time buyers.



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