

Finance & Public Administration Committee – Proposed amendments for Stage 2

Aggregates Tax & Devolved Taxes Administration (Scotland) Bill

June 2024



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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Aggregates Tax and Devolved Taxes Administration (Scotland) Bill¹ (the **Bill**) was introduced by the then Deputy First Minister and Cabinet Secretary for Finance on 14 November 2023.

We previously submitted written evidence,² and then provided oral evidence in March 2024,³ to the Finance and Public Administration Committee as part of its Stage 1 consideration of the Bill. The Finance and Public Administration Committee's Stage 1 Report on the Bill was published on 29 April 2024.⁴

The Stage 1 debate on the Bill took place on 16 May 2024, and Parliament agreed to the general principles of the Bill on the same date. We issued a briefing to all MSPs ahead of the Stage 1 debate (the **Stage 1 Briefing**).

We welcome the opportunity to propose amendments to the Bill, ahead of the Finance and Public Administration Committee's consideration of the Bill at Stage 2 on 11 June 2024. We have detailed our suggested amendments to the Bill at appendices A and B below.

General Remarks

Our comments and evidence on the Bill to date primarily concern Part 2 of the Bill, regarding the administration of devolved taxes by Revenue Scotland.

Our proposed amendments relate to: (1) sections 52 and 56 of the Bill; and (2) additional technical legislative changes to areas of the devolved taxes legislation to support the effective administration of devolved taxes in Scotland.

All these amendments reflect issues we raised, both in our response to the Finance and Public Administration Committee's call for evidence on the Bill, and through the

¹ [Aggregates Tax and Devolved Taxes Administration \(Scotland\) Bill](#)

² Our response to the call for views on the Bill and Stage 1 Briefing can be accessed [here](#).

³ [Meeting of the Parliament: FPA/12/03/2024](#)

⁴ [Stage 1 Report](#)



Stage 1 briefing we provided to all MSPs. We have included effects and reasons in relation to each amendment (Appendix B) to explain the impacts of the changes and why we consider these are necessary.

Sections 52 and 56

Whilst we welcome changes made to improve the efficiency of the devolved tax system, we have concerns about some aspects of these provisions.

Both sections relate to Revenue Scotland's proposed "set off" powers. In summary, Section 52 seeks to deny taxpayers the right to make a repayment claim (an overpayment relief claim) where the taxpayer has failed to pay an amount of a different tax. Section 56 is intended to allow Revenue Scotland to set off a taxpayer's credit against the same taxpayer's debit.

The Bill does not contain any safeguards for taxpayers to address the situation where there is a dispute between a taxpayer and Revenue Scotland about whether an amount of tax is outstanding. We consider that the Bill should make clear that the set off powers would not apply where there is a dispute over the relevant tax amount(s).

Additional Technical Legislative Changes

There are several further technical legislative changes that we would welcome to support the effective administration of devolved taxes in Scotland.

We have proposed three new sections to be inserted at Part 2, covering the points we raised during Stage 1. These relate to: (1) LBTT Group Relief and Scottish Share Pledges; (2) LBTT Sub-sale Development Relief; and (3) LBTT Group Relief and Demergers.

We consider that these changes would bring welcome legal clarity and rectify known issues with the application of the relevant statutory provisions.

We refer to the effects and reasons detailed at Appendix B in relation to these and to our comments in our Stage 1 Briefing under the "Part 2 – Prospective Stage 2 Amendments" heading.

We highlight that there are other changes to the devolved taxes legislation that we would welcome. However, we consider that these would be wider in scope than the proposed technical amendments. We have therefore not proposed these for inclusion in the Bill, although would support future reform in these areas and remain committed to engaging with Revenue Scotland and the Scottish Government on these points.



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Appendix A

Aggregates Tax and Devolved Taxes
Administration (Scotland) Bill

Proposed Stage 2 Amendments

AMENDMENTS TO BE MOVED AT STAGE 2

In section 52, page 33, line 26

at end insert:

<(12A) For the purposes of subsection (12), an amount of tax other than the amount which is the subject of the claim under section 107 is not to be treated as payable if the amount can be varied or set aside on review or appeal.>

In section 56, page 35, line 16

at end insert:

<(3A) For the purposes of the definition of “credit” and “debit” in subsection (2), a sum is not to be treated as payable if the amount can be varied or set aside on review or appeal.>

After section 57, page 35, line 36

before section 58 insert the following new section:

<[] Retrospective effect of amendments made by the 2018 Order

(1) The following are to be treated as having had effect since 1 April 2015 —

(a) the amendments made by article 2 of the 2018 Order,

(b) article 3 of the 2018 Order, as modified by subsection (2).

(2) In article 3 of the 2018 Order, the reference to 30th June 2018 is to be read as a reference to 1 April 2015.

(3) In this section, “the 2018 Order” means the Land and Buildings Transaction Tax (Group Relief Modification) (Scotland) Order 2018 (S.S.I 2018/222).>

AMENDMENTS TO BE MOVED AT STAGE 2

After section 57, page 35, line 36

before section 58 insert the following new section:

<[] Amendment of schedule 10 of The Land and Buildings Transaction Tax (Scotland) Act 2013

(1) The Land and Buildings Transaction Tax (Scotland) Act 2013 is modified as follows.

(2) In Schedule 10 (group relief), Part 2 (the relief), paragraph 7 for “paragraph 10 applies” substitute “paragraphs 9 and/or 10 apply”.>

After section 57, page 35, line 36

before section 58 insert the following new section:

<[] Amendment of schedule 10A of The Land and Buildings Transaction Tax (Scotland) Act 2013

(1) The Land and Buildings Transaction Tax (Scotland) Act 2013 is modified as follows.

(2) In Schedule 10A (sub-sale development relief), Part 2 (the relief), sub-paragraph 4(3) for “on which the first buyer entered into the qualifying sub-sale” substitute “of completion of the qualifying sub-sale”.>



Appendix B

Aggregates Tax and Devolved Taxes
Administration (Scotland) Bill

Proposed Stage 2 Amendments with Effects
and Reason

AMENDMENTS TO BE MOVED AT STAGE 2

In section 52, page 33, line 26

at end insert:

<(12A) For the purposes of subsection (12), an amount of tax other than the amount which is the subject of the claim under section 107 is not to be treated as payable if the amount can be varied or set aside on review or appeal.>

Effect

This amendment inserts a new subsection (12A) after the proposed subsection (12) of section 113 of the Revenue Scotland and Tax Powers Act 2014 (“**2014 Act**”), as inserted by section 52(2) of the Bill.

Reason

Section 52 amends section 113 of the 2014 Act - which provides a list of situations in which Revenue Scotland does not need to make a repayment to a taxpayer or discharge an assessment or determination - to include a situation where a repayment claim has been made but the claimant has failed to pay to Revenue Scotland an amount of a different tax.

The amendment provides that the new Case H applies when the relevant amount of tax other than the amount which is the subject of the claim under section 107 cannot be varied or set aside on review or appeal, i.e. Revenue Scotland and the claimant do not dispute the amount.

We consider that this is a necessary taxpayer safeguard to be included in the Bill.

AMENDMENTS TO BE MOVED AT STAGE 2

In section 56, page 35, line 16

at end insert:

<(3A) For the purposes of the definition of “credit” and “debit” in subsection (2), a sum is not to be treated as payable if the amount can be varied or set aside on review or appeal.>

Effect

This amendment inserts a new subsection (3A) after subsection (3) of the proposed section 251C of the 2014 Act, as inserted by section 56(2) of the Bill.

Reason

Section 56 inserts section 251C into the 2014 Act, which will allow Revenue Scotland to set off a taxpayer’s credit against the same taxpayer’s debit.

The proposed subsection 251C(2) defines the terms “credit” and “debit” for the purposes of section 251C. The amendment inserts a new subsection which provides that a sum referred to under either definition is not to be treated as payable if it can be varied or set aside on review or appeal, i.e. if Revenue Scotland and the claimant dispute the amount.

We consider that this is a necessary taxpayer safeguard to be included in the Bill.

AMENDMENTS TO BE MOVED AT STAGE 2

After section 57, page 35, line 36

before section 58 insert the following new section:

<[] **Retrospective effect of amendments made by the 2018 Order**

(1) The following are to be treated as having had effect since 1 April 2015 —

(a) the amendments made by article 2 of the 2018 Order,

(b) article 3 of the 2018 Order, as modified by subsection (2).

(2) In article 3 of the 2018 Order, the reference to 30th June 2018 is to be read as a reference to 1 April 2015.

(3) In this section, “the 2018 Order” means the Land and Buildings Transaction Tax (Group Relief Modification) (Scotland) Order 2018 (S.S.I 2018/222).>

Effect

This inserts a new section in Part 2 of the Bill, before section 58.

Reason

This amendment means that the provisions inserted by The Land and Buildings Transaction Tax (Group Relief Modification) (Scotland) Order 2018, SSI 2018/222 (“**2018 Order**”) apply to a chargeable transaction in respect of which the effective date is on or after 1 April 2015.

Amendments were made to Schedule 10 of The Land and Buildings Transaction Tax (Scotland) Act 2013 (“**LBTT(S) Act 2013**”) by the 2018 Order, intended to make it clear that Land and Buildings Transaction Tax (“**LBTT**”) group relief would be available where Scottish share pledges were in place. The amended provisions applied to chargeable transactions where the effective date was on or after 30 June 2018. Whilst it was not possible for the 2018 Order to make the change retrospective, the Scottish Government agreed that it would introduce primary legislation to do so at an appropriate future date.¹

¹ For more information, please see “Group relief and ‘share pledges’” at [LBTT3025 - Group relief | Revenue Scotland](#) and “Part 2 – Prospective Stage 2 Amendments” in our [Stage 1 Briefing](#) on the Bill.

AGGREGATES TAX AND DEVOLVED TAXES ADMINISTRATION (SCOTLAND) BILL

AMENDMENTS TO BE MOVED AT STAGE 2

The date of 1 April 2015 is the commencement date of schedule 10 of the LBTT(S) Act 2013.

This change would be of great assistance to taxpayers who entered into chargeable transactions before 30 June 2018 and looked to claim group relief, but where share pledges were in place so that in fact group relief was not available. This point arises in practice, for example in due diligence reviews carried out in advance of purchase transactions, and would provide welcome legal clarity.

AMENDMENTS TO BE MOVED AT STAGE 2

After section 57, page 35, line 36

before section 58 insert the following new section:

<[] **Amendment of schedule 10 of The Land and Buildings Transaction Tax (Scotland) Act 2013**

(1) The Land and Buildings Transaction Tax (Scotland) Act 2013 is modified as follows.

(2) In Schedule 10 (group relief), Part 2 (the relief), paragraph 7 for “paragraph 10 applies” substitute “paragraphs 9 and/or 10 apply”.>

Effect

This amendment inserts a new section in Part 2 of the Bill, before section 58.

Reason

The aim of this amendment is to make it clear that LBTT group relief is available on the transfer of a property to a company as part of a non-partition demerger where stamp duty relief under section 75 of the Finance Act 1986 (“**FA 1986**”) is available on the subsequent transfer of the demerged company.

LBTT group relief is currently not available in these types of “non-partition demergers” (i.e. demergers where the same parties own both parts of the demerged business following the demerger).

This is because paragraph 5(b) of Schedule 10 of the LBTT(S)A 2013 provides that group relief is not available in a transaction where the seller and the buyer are to cease to be members of the same group by reason of the buyer ceasing to be a subsidiary of the seller or a third company:-

“5 *Relief under this schedule is not available if the transaction is effected in pursuance of, or in connection with, arrangements under which—*

(a) the consideration, or any part of the consideration, for the transaction is to be provided or received (directly or indirectly) by a person other than a group company, or

(b) the seller and the buyer are to cease to be members of the same group by reason of the buyer ceasing to be a 75% subsidiary of the seller or a third company.”

AMENDMENTS TO BE MOVED AT STAGE 2

Paragraph 3 of Schedule 10 provides that LBTT group relief is not available if at the effective date of the transaction there are arrangements in existence by virtue of which, at that or some later time, a person has or could obtain, or any persons together have or could obtain, control of the buyer but not of the seller.

However, paragraph 3 of Schedule 10 is modified by paragraph 4 which provides that it does not apply to arrangements to which paragraph 9, 10 or 10A applies. The effect of this is that in a capital reduction demerger (or indeed an indirect statutory demerger or a liquidation demerger) where property is transferred into a company which is then demerged, group relief on that transfer is not blocked by paragraph 3 provided that stamp duty section 75 relief is available on the subsequent demerger of the company to which the property is transferred.

There is no similar modification to paragraph 5(b), so as currently drafted LBTT group relief is not available in a non-partition demerger even though stamp duty section 75 relief is available on the transfer of the demerged company.

There is a similar issue in relation to the drafting of the provisions for Stamp Duty Land Tax (“**SDLT**”) group relief in Schedule 7 of the Finance Act 2003. Paragraph 2(1) is the equivalent to paragraph 3 of Schedule 10 for LBTT, i.e. it denies group relief if there is a change in control. Paragraph 2(1)(a), (b) and (c) contains an exception where the arrangements are entered into with a view to a reconstruction where stamp duty reconstruction relief under FA 1986 section 75 is available.

Paragraph 2(2)(b) of Schedule 7 is the SDLT equivalent to paragraph 5(b) of Schedule 10 for LBTT. As with LBTT, there is no similar carve out for FA 1986 section 75 relief transactions. However, the accepted view is that it is implicit in the SDLT legislation that the exception to the change of control provisions for FA 1986 section 75 transactions also applies to the degrouping provision in paragraph 2(2)(b). Otherwise there would be no point in the exception to sub-paragraph 1 of paragraph 2, as it would always be

AMENDMENTS TO BE MOVED AT STAGE 2

overridden by paragraph 2(2)(b). This is covered in HMRC's SDLT Manual (at SDLTM23035).²

Revenue Scotland has indicated that it would not be possible for it to issue guidance equivalent to the guidance issued by HMRC in their SDLT Manual at SDLTM23035.

The effect of the proposed amendment is to amend the LBTT group relief legislation to make it clear that paragraph 5(b) of Schedule 10 of LBTT(S)A 2013 does not deny LBTT group relief on the transfer of property to a company which is subsequently demerged in arrangements where FA 1986 section 75 relief is available on the transfer of the demerged company.

² Accessible here: [SDLTM23035 - Reliefs: Group Arrangements - HMRC internal manual](#)

AMENDMENTS TO BE MOVED AT STAGE 2

After section 57, page 35, line 36

before section 58 insert the following new section:

<[] Amendment of schedule 10A of The Land and Buildings Transaction Tax (Scotland) Act 2013

(1) The Land and Buildings Transaction Tax (Scotland) Act 2013 is modified as follows.

(2) In Schedule 10A (sub-sale development relief), Part 2 (the relief), sub-paragraph 4(3) for “on which the first buyer entered into the qualifying sub-sale” substitute “of completion of the qualifying sub-sale”.>

Effect

This inserts a new section in Part 2 of the Bill, before section 58.

Reason

Where A contracts to sell land to B, and before that contract has completed, B contracts to sell that land to C, B can claim Land and Buildings Transaction Tax Sub-sale Development Relief under Schedule 10A of the LBTT(S) Act 2013, provided various conditions are met.³

One condition is that "significant development for commercial purposes of the subject-matter of the qualifying sub-sale will be completed within the relevant period". The "relevant period" is defined in Schedule 10A paragraph 4(3) as "the period of 5 years from the date on which the first buyer entered into the qualifying sub-sale".

The current drafting of paragraph 4(3) means that the end purchaser, C, has to complete significant development within 5 years of entering into a contract to purchase the land, not within 5 years of that purchase being completed.

In practice, development cannot start until C owns the land, as C could not start development on land which it did not yet own. The amendment therefore changes the definition of the “relevant period” so that the period of 5 years commences when C acquires the land, rather than from the date B contracts to sell the land to C.

³ For more information, please see [LBTT3044 - Sub-sale development relief | Revenue Scotland](#) and “Part 2 – Prospective Stage 2 Amendments” in our [Stage 1 Briefing](#) on the Bill.