

# Consultation Response

## Scottish Building Safety Levy: consultation on proposals

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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.

Our Tax Law, and Property and Land Law Reform, Sub-committees welcome the opportunity to consider and respond to the Scottish Government consultation: *Scottish Building Safety Levy: consultation on proposals*.<sup>1</sup> They have the following comments to put forward for consideration.

## General comments

We welcome the opportunity to provide comments on the proposals for the Scottish Building Safety Levy (**SBSL**). Our comments concern the legal policy considerations and prospective legislative changes, in line with the remit and expertise of our committee membership. We do not look to comment on political or wider policy considerations.

We previously provided evidence and prepared legal briefings during the passage of the Housing (Cladding Remediation) (Scotland) Act 2024 (the **Cladding Remediation Act**).<sup>2</sup> During the Bill stages we welcomed measures to improve the safety of residents and owners of buildings with an external wall cladding system in Scotland, and recognised the importance of rapid progress being made as a priority, given the urgent need to remediate the safety issues posed by cladding. We are pleased to continue our engagement in this area of work, noting the proposals also form part of the delivery of the Cladding Remediation Programme, and the SBSL is intended to provide one of its funding streams.

It is important that there is clarity and certainty in the law in order that individuals and businesses can guide their conduct appropriately. It is understood that the scope of the Cladding Remediation Programme is linked to that of the Single Building Assessment, established by the Cladding Remediation Act. It is important there is clarity regarding who will be liable to pay the SBSL and how those funds are used to remediate buildings within the scope of Cladding Remediation Programme.

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<sup>1</sup> [Scottish Building Safety Levy: consultation on proposals](#)

<sup>2</sup> [Housing \(Cladding Remediation\) \(Scotland\) Bill | Law Society of Scotland](#)

We noted in our engagement during the Bill stages of the Cladding Remediation Act that there is substantial detail to be set out in regulations, in particular in relation to the Responsible Developers Scheme. We highlighted the need for flexibility to be appropriately balanced against ensuring there is clarity in the law, appropriate levels of parliamentary scrutiny underpinning legislative and policy developments, and meaningful stakeholder consultation. We similarly reiterate these points in the context of any prospective Bill to establish the SBSL.

We note that there is limited information in relation to many aspects of the Cladding Remediation Programme and also the design of the SBSL. We would welcome greater detail to better understand, and comment on, the proposals. For example, the anticipated levels of funding required and whether the SBSL will be used to recoup funds spent on remediation under the Cladding Remediation Programme, or whether the funds intended to be raised by the SBSL will need to be raised first before they are outlaid. Other elements, including the number and treatment of “orphan buildings”, remain uncertain.

There will also be many practical and industry-based considerations to be borne in mind concerning the proposals, which other stakeholders will be better placed to comment on. These include, for example, impacts on the viability of projects and any cumulative effects of other tax and policy interventions in this area. We highlight the importance of ensuring that the proposals are based on robust evidence, and consideration is given to unintended consequences.

It is important that the SBSL is accompanied by an appropriate awareness-raising campaign and clear guidance to assist taxpayers and their professional advisers. We consider it essential that guidance is published in advance of the introduction of the SBSL, to allow a sufficient lead-in time for taxpayers and their professional advisers to familiarise themselves with the requirements.

We stress the importance and value of ongoing stakeholder engagement on the proposals and any legislative changes, including formal consultation where appropriate. We would be pleased to input further as the proposals develop, for example during the legislative process for primary legislation and providing comments on further guidance or secondary legislation.

## Questions

### Part A - Principles

1. Do you think a new tax on housebuilding, paid by developers, is a fair way to generate revenue to fund the Scottish Government’s cladding remediation programme?

We do not wish to comment on the policy principle of the introduction of the SBSL.

It is important, however, that the proposals are informed and supported by a robust evidence base, policy analysis, and be a proportionate response to the intended aims.

We note that the Scottish Government's overall approach to taxation is embedded in Adam's Smith's four principles: certainty, convenience, efficiency and proportionality to the ability to pay; and based on a firm approach to tax avoidance and a commitment to stakeholder engagement. We consider that is important therefore that the proposed SBSL respects these principles.

2. Do you agree that homes delivered through the Scottish Government's Affordable Housing Supply Programme should be removed from the Scottish Building Safety levy?

Please refer to our comments at question 7.

3. What are your views on the principle of removing smaller developers from charge of the Scottish Building Safety Levy?

Please refer to our comments at question 7.

4. If you are agree that small developers should be removed from charge under a Scottish Building Safety Levy, what are your views on the method of determining who is a smaller developer?

Please refer to our comments at question 7.

5. Are there any other exemptions from a Scottish Building Safety levy that you think should be considered by the Scottish Government?

Please refer to our comments at question 7.

6. Are there any types of development listed in the exemptions above that you think should not be exempted from a Scottish Building Safety Levy?

Please refer to our comments at question 7.

7. Do you have any comments on exemptions not covered by the previous questions that you wish to raise?

Many of these points concern policy considerations.

We note generally, however, the importance of the SBSL's scope being clear so that individuals and businesses can guide their conduct accordingly. It is important that those who are subject to an exemption can be easily identified. Consideration requires to be given as to the need for evidence to be produced and the practical arrangements for this.

Clarity would be welcomed on whether, if types of developments are excluded from the SBSL, the funds raised by the SBSL would still be able to be used to remediate those types of developments under the Cladding Remediation Programme.

We highlight that there are other areas of tax legislation which exclude types of property which have a particular social utility, for example in the context of relevant residential properties for the purposes of VAT zero ratings (as set out in Note 4 to Group 5, Part II, Schedule 8 of the VAT Act 1994). We consider that consistency, where appropriate, would be welcomed.

It is important that the rationale for a type of property being excluded from the scope of the SBSL is clear and consistent. We note in this context that hotels are proposed in the discussion paper as potentially being excluded. We would welcome greater information on the underlying principle for this proposal, to ensure that there is consistency for those subject to the SBSL.

We highlight the importance of there being a robust Business Impact Assessment to inform the scope of any exemptions. We anticipate that relevant considerations would include any potential market impacts, e.g. if certain developers would have a competitive advantage if they were excluded from the SBSL, or the incentivisation of parcelling sites into smaller areas (in the context of smaller developers or developments).

Further detail would be welcomed on whether there will be any transitional provisions in relation to the properties within the scope of the SBSL. We observe that there is no information in the consultation paper about whether any transitional provisions are proposed, for example in relation to ongoing developments or those under construction prior to the introduction of the SBSL. We note that, for example, transitional provisions may be linked to developments whereby planning permission was granted before a certain date. We observe more generally that the lead-in times in this sector can be a number of years before the properties are built, and flag the possibility that in some circumstances the SBSL may be a material change to the viability of an existing project.

We also note the interaction here with other policy proposals regarding increasing the simplicity and speed of the planning process, and highlight the importance of considering the interplay and overlap between such proposals to ensure a consistent and aligned approach across changes affecting the sector.

#### 8. Do you agree that the rate of the Scottish Building Safety Levy should be calculated as a proportion of the market value of the property?

This is broadly a policy question.

It is important there is clarity for those affected in being able to understand how the SBSL is calculated. As above, it is also important that the calculation method is consistent with the Scottish Government's overall approach to taxation, including the principles of certainty, convenience, efficiency and proportionality to the ability to pay.

We can see that there are benefits to setting the calculation method as a proportion of the market value of the property, for example in the interests of fairness and taking into account the varying house prices across Scotland, and in urban and rural areas.

We highlight that there should be clarity around the treatment of extras and incentives, or part-exchange transactions, in the context of any valuation exercise. We note, for example, that there are specific rules concerning what and when something is valued for the purposes of various taxes, e.g. the Land and Buildings Transaction Tax (**LBTT**) and the Annual Tax on Enveloped Dwellings.

In this context, specific guidance would be welcomed on what is going to be accepted as market value and related requirements, such as the process for valuation and evidential requirements. We note the approach taken by Revenue Scotland in relation to valuations for LBTT, and consider that a consistent approach would be welcomed for the SBSL.

[9. In cases where a property is not sold on the open market, what alternative valuation could be used to calculate the Scottish Building Safety Levy, to ensure proportionality with the market value of the property?](#)

We generally do not consider that the fact a property is not sold on the open market causes substantive issues. We highlight that there are other areas of tax legislation and practice in Scotland that deal with analogous issues, for example LBTT.

In the context of bulk deals, e.g. in the Private Rental Sector, industry standard valuation methods may be appropriate, e.g. the RICS “Red Book”. Related considerations also arise here, for example whether a discount would be applied, reflecting the nature of a bulk transaction. For land and construction transactions, e.g. forwarding funding transactions, a combination of land price and construction value may be an equivalent to market value. In relation to forward funding transactions, we note that the amount realised by the developer isn’t linked to a return based on the market value of a property, and is generally defined by reference to the maximum commitment that the developer will bear on the project.

We note that the valuation approach chosen may depend on when the tax point is decided as being (e.g. the issue of a completion certificate). We highlight, as also mentioned below, there will be circumstances where there may not always be a clear market value at the point of the issuance of acceptance of a completion certificate.

[10. In relation to Question 9, Do you have any information on valuations undertaken during the building standards process that would be useful for the Scottish Government to consider?](#)

We have no further comments to make.

[11. What are your views on using one of the following alternative methods of calculation for the Scottish Building Safety Levy:](#)

- Flat rate per unit
- Rate based on the size (per square metre) of the property
- Rate based on the number of bedrooms of the property
- Rate based on the cost of building works of the property

These are primarily policy questions.

As above, we note the Scottish Government's overall approach to taxation. We would welcome the SBSL being as simple and efficient to administer as possible.

In this context, we observe that the first approach may have benefits of certainty and simplicity for taxpayers.

A potential issue with the first three calculation methods are the regional variations in values between property types, which could have different impacts (e.g. on profitability) depending on the underlying property values. For example, differences between property types (flats compared to family homes), and between sites (rural/urban and variations within urban locations).

There also may be practical challenges having the necessary information for the second and fourth options.

We also consider it is important that the tax treatment of the SBSL doesn't dictate the design of a property. We observe that such issues have arisen in the context of student accommodation and VAT.

## 12. Do you think there should be a different rate applied on brownfield developments?

This is primarily a policy question. We observe, however, that if this is the approach to be taken, then there could also be consideration given to any other types or locations of development where the policy is to provide an incentive to certain types of development (e.g. rural developments).

## Part B – Operational Considerations

### 13. Do you agree that liability for the Scottish Building Safety Levy should arise in relation to the issuance of acceptance of a completion certificate?

We note the proposal for the liability for the SBSL to arise in relation to the issuance of acceptance of a completion certificate, which is largely a policy point.

Depending on the timing of the tax point, this could result in the liability arising before the developer has received the income from the sale of the property. We highlight that there are some circumstances where the completion certificate may be issued, but there is not a purchaser in place, e.g. for show homes or "stock plots", i.e. plots which are passed as fit for habitation but which are not yet sold.



Clarity would be welcomed on whether the taxpayers would be expected to drawdown funds in such circumstances to fund the amount due, noting that there may also be related impacts on project financing. Consideration could be given to whether there will be any options for deferral of payment until the sale of the property in such circumstances.

We also note our comments at question 9 regarding circumstances where individual properties may not be sold on the open market, for example built to rent and mid-market rental properties.

Consideration should also be given to any circumstances whereby a property could be occupied in the absence of a completion certificate having been issued, following permission for temporary occupation or use being granted – and any impact on the payment of the SBSL if the title to the property is in the purchaser's name at the point the completion certificate is finalised.

#### 14. Do you agree that Revenue Scotland should act as the revenue authority for the Scottish Building Safety Levy?

It is important that whoever acts as the revenue authority for the SBSL has the appropriate resourcing in place to fulfil the responsibilities assigned to it. We note, for example, the additional responsibilities being placed on Revenue Scotland in the context of administering the Scottish Aggregates Tax and the other devolved taxes.

#### 15. Which of the following schedules do you think is the most appropriate for the frequency of returns:

a) Per unit

b) Monthly

c) Quarterly

We consider that quarterly returns would be most appropriate.

There will be practical benefits depending on the timeframe chosen. For example, if returns are made on a quarterly basis, this may increase the number of units for which the SBSL could be paid for by developers after receipt of the sales proceeds, rather than developers having to fund the SBSL out of their own resources. There is also a practical interaction here depending on the calculation method chosen and the relevant tax point. If a shorter period is chosen, there may be more instances of a completion certificate having been issued, but there not being a purchaser in place.

We highlight that other taxes, for example Capital Gains Tax and LBTT, allow for taxpayers to submit a reasonable estimate of a liability, with an ability to revise it. There would be merit in a consistent approach being taken (depending on whether this would be necessary based the policy design of the SBSL), particularly if this would aid accurate reporting.

We note that the other return options, e.g. on a monthly rather than quarterly basis, may result in an increased resource burden on the revenue authority given that more returns would be made.

16. Do you agree that, in relation to the Scottish Building Safety Levy, the tax authority should have the investigatory and enforcement powers set out in Annex B?

If you answered no, please give reasons for your answer.

We note that the consultation paper states that “these powers mirror the investigatory powers for existing taxes (LBTT and Scottish Landfill Tax)”. We do not have any specific comments other than to highlight that if there are any variations between the investigatory and enforcement powers under the SBSL and the other existing taxes, this should be made clear to stakeholders and consulted on.

More generally in relation to prospective penalties under the SBSL, we suggest it would be appropriate for there not to be penalties imposed for any nil-returns which are returned late, provided no tax is payable.

We also recommend that the revenue authority for SBSL provides clarity on its approach to issuing penalties under the proposals, and considers whether a “light-touch” approach should be adopted in the initial period.

17. Do you agree that there should be no active conditionality between the issuance of each completion certificate and payment of the Scottish Building Safety Levy?

If you answered no, please give reasons for your answer.

Yes. We highlight in particular that the timescales between the issuance of a completion certificate and the sale of a unit could be short, potentially a number of days. If such a conditionality was introduced, this could have a disruptive practical effect on the sales process.

18. What are your views on introducing additional sanctions for taxpayers where Revenue Scotland deem there to be persistent or major non-compliance in paying the Scottish Building Safety Levy?

We note our comments in response to question 16 regarding the investigatory and enforcement powers mirroring those for LBTT and Scottish Landfill Tax. We similarly note that any further provisions in this respect should be made clear and supported by a robust evidence basis to demonstrate why they are necessary in the context of the SBSL.

19. Are there specific aspects of the housebuilding industry that may require a different approach to compliance than set out above?

Relevant aspects of the industry where consideration should be given to whether a different approach is needed include: special purpose vehicles (SPVs); land sale and construction contracts; and insolvencies.

## 20. Do you agree with our proposals for dispute resolution in relation to the Scottish Building Safety Levy?

If you answered no, please give reasons for your answer.

We have no specific comments to make.

## 21. What are your views on having a sunset clause or end date for the Scottish Building Safety Levy?

We note that the rationale for the introduction of the SBSL is to support the funding of cladding remediation in Scotland. It would therefore be appropriate for the SBSL to cease to operate once this objective has been fulfilled.

We note that the detail of the Cladding Remediation Programme, including the funding required, is uncertain. It may therefore be difficult to set an appropriate end date for the operation of the SBSL at this stage. It may therefore be appropriate for any sunset clause or end date to be linked to the progress of the Cladding Remediation Programme, or the requirement of the SBSL as a source of funding.

Consideration should be given to any economic impacts and unintended consequences of the inclusion of a sunset clause, such as whether this may result in behavioural changes or market distortions in the preceding months or years to the sunset/end date for the SBSL. For example, through sales being delayed or discouraging land owners from bringing land to market.

## 22. Do you think there should be a regular review for a Scottish Building Safety Levy?

We welcome the suggestion of a regular review of the operation of the SBSL.

Members working in this area have highlighted that the residential development sector tends to need stability and predictability. Given the length of the development transactions, from planning stage to completing construction (particularly if the SBSL is to be limited to larger developers, who will tend to work on larger sites), members have observed that it helps developers the more certainty they have for periods of years. Having a regular review of the SBSL, including aspects which could be streamlined or made clearer, could complement this.

We note in this context the importance of there being a suitable legislative vehicle for changes to be made, should these become apparent following the passage of any legislation establishing the SBSL. The use of appropriate delegated powers within the legislation could allow for a degree of flexibility where necessary.

We have previously expressed our support for the introduction of a process that allows for regular maintenance of, and amendment to, the devolved taxes. We suggest that this would form part of the budget process, including formalising a regular timetable and mechanism for stakeholders to give input on any operational and policy concerns with the tax legislation – including so-called “care and maintenance” matters as well as substantive changes to tax policy and to rates and bands. We believe that an annual process, perhaps including an annual “fiscal

event", would allow for greater transparency and increased opportunity for proposed draft legislation to be considered by stakeholders.

If the SBSL is introduced, such a process may also provide an appropriate legislative vehicle for changes to be made to the SBSL from time-to-time if required.

## Part C - Impacts

### Questions 23 - 28

We have no specific comments to make.

For further information, please contact:

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