



PROPOSED AMENDMENTS TO THE ADDITIONAL DWELLING SUPPLEMENT

Issued 4 April 2023

ICAEW welcomes the opportunity to comment on the Proposed Amendments to the Additional Dwelling Supplement published by Scottish Government on 8 February 2023, a copy of which is available from this [link](#).

For questions on this representation please contact our Tax Faculty at taxfac@icaew.com quoting REP 29/23.

ICAEW is disappointed that the Scottish Government has chosen not to align its rules on inherited interests with those in operation in England, Wales, and Northern Ireland. ICAEW has also responded to selected specific questions where it considers the draft legislation could be improved.

This response of 4 April 2023 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of sustainable economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 165,000 chartered accountant members in over 147 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

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ICAEW

Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK
icaew.com

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Registered office: Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK

KEY POINTS

1. ICAEW notes that land and buildings transaction tax (LBTT) is a devolved tax and that the Scottish government is free to set the rules in line with the policy intent. ICAEW acknowledges that the Scottish government has considered and rejected the case for aligning the additional dwelling supplement (ADS) rules for inherited property with the stamp duty land tax (SDLT) and land transaction tax (LTT) rules on the basis that the current position is in line with the policy intent of the ADS and there is limited evidence and data to support the need for amendment.
2. However, divergence between the LBTT and the SDLT and LTT rules creates complexity for taxpayers and increases the risk of taxpayer error. This is particularly acute for those relocating within the UK or who have properties in more than one country. There is a risk that taxpayers assume that the rules apply in the same way in all countries.
3. Where taxpayers are aware of the differences between the taxes, it may influence their decision about whether to purchase a property in Scotland or elsewhere in the UK.
4. ICAEW is therefore disappointed that the Scottish government has decided against introducing a three-year grace period for inherited interests of 50% or less that would align with the SDLT and LTT rules.

ANSWERS TO SPECIFIC QUESTIONS

Timelines

Question 1: Do you think that the proposed amendments provide for the Scottish Government's intended change?

5. Yes.

Question 2: If not, what amendments would you propose to the draft legislation and on what basis?

6. N/A.

Inherited property

Question 3: Do you think that the proposed amendments provide for the Scottish Government's intended change?

7. No.

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

8. To provide clarity in respect of the precise point at which inherited property is treated as owned, consideration should be given to covering the situation where property is inherited under the law of another territory. There are some territories where the inheritance will be the date of death as the property devolves directly on heirs.

Question 5: Over and above existing legislative arrangements, are there any targeted anti-avoidance measures that the Scottish Government should consider in respect of this proposed amendment?

9. N/A.

Small shares

Question 6: Do you think that the proposed amendments provide for the Scottish Government's intended change?

10. Yes.

Question 7: If not, what amendments would you propose to the draft legislation and on what basis?

11. N/A.

Question 8: Over and above existing legislative arrangements, are there any targeted anti-avoidance measures that the Scottish Government should consider in respect of this proposed amendment?

12. N/A.

Divorce or separation

Question 9: Do you think that the proposed amendments provide for the Scottish Government's intended change?

13. No.

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

14. As currently drafted, the proposed legislation only covers court orders or agreements in connection with the dissolution of a civil partnership. The cross reference in new para 9C head (e) should be to paras 4 and 5, Sch 1. Paragraph 4 concerns transactions in connection with divorce and para 5 concerns transactions in connection with dissolution of a civil partnership.

Joint buyers / economic unit provisions

Question 11: Do you think that the proposed amendments provide for the Scottish Government's intended changes?

15. No.

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

16. Existing sub-paragraph 6(4), that defines cohabitants, should also be amended to reflect the insertion of new sub-para (1A).

Local authorities

Question 13: Do you think that the proposed amendments provide for the Scottish Government's intended change?

17. Yes.

Question 14: If not, what amendments would you propose to the draft legislation and on what basis?

18. N/A.

Equality impacts

Question 15: Do you think that the proposed amendments will in any way impact upon equal opportunities, human rights, businesses, island communities, privacy and/or sustainable development in Scotland?

19. No.

Question 16: If so, please give us your views.

20. N/A.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).