

## **The Scottish Government**

### **A consultation on Land and Buildings Transaction Tax – Property Investment Funds**

*Question 1: Does this chapter provide an accurate picture of the Scottish property fund and investment landscape?*

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*Question 2: In terms of the size of managed property fund assets in Scotland, how many funds do you estimate hold Scottish property assets, what is the total value of these funds and how large (%) is their exposure to Scottish property?*

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*Question 3: Do you consider that the Scottish Government should introduce a seeding relief for PAIF's and CoACS?*

Yes, for funds investing in UK property, the lack of an LBTT seeding relief in Scotland is proving problematic resulting in lack of investment and in some cases, divestment, in Scottish properties. It is therefore important to have seeding relief in Scotland similar to that available for SDLT in England.

It should be noted that CoACS are treated as opaque for the purposes of SDLT in England and Northern Ireland and for Welsh land transaction tax (LTT).

Recently, where existing portfolios have been contributed to new CoACS any holdings in Scottish property have been left out or otherwise given special treatment; the same will happen on future CoACS and PAIF launches unless LBTT seeding relief is introduced (as well as, in the case of CoACS, opaque treatment for them).

The lack of opaque treatment for LBTT for CoACS would result in liabilities to LBTT arising whenever a CoACS holds Scottish property on every subscription or redemption of units. This would give rise not only to repeated liabilities to LBTT on essentially the same property but it would also give rise to a heavy administrative burden with either the incoming or continuing investors having to submit online LBTT forms on each of the CoACS's dealing days. Such administrative burden would likely push such a fund to consider properties outside Scotland as part of its UK property investment portfolio.

AREF are also lobbying to the UK Government to relax the SDLT seeding relief claw back provisions to facilitate creation of new funds out of unit linked pension arrangements to attract a wider investment base and to allow these funds to grow in size.

It is vital that property situated in Scotland is considered on an equal basis with property in England and Northern Ireland. AREF believe therefore that it is important that the Scottish Government continues to follow any UK changes and developments and considers how it addresses any future

changes. Lack of quick response to any future changes in rest of the UK could further adversely impact investment in Scottish properties.

*Question 4: Please briefly describe any positive or negative impacts that would accompany LBTT parity with SDLT for a seeding relief.*

Please see answer to Q3 above.

*Question 5: With regards to a seeding relief - how would a 'do nothing' approach on the part of the Scottish Government affect your business and future business decisions?*

Please see answer to Q3 above.

*Question 6: If the Scottish Government were to proceed with a LBTT seeding relief, are there any aspects of the SDLT arrangements which you believe should be changed if replicated for LBTT purposes?*

Please see answer to Q3 above.

*Question 7: Do you agree that the Scottish Government should introduce parity with SDLT by providing a relief for the exchange of CoACS units?*

Please see answer to Q3 above.

*Question 8: Please briefly describe any positive and negative impacts that would accompany such a relief.*

Please see answer to Q3 above.

*Question 9: With regards to a CoACS relief - how would a 'do nothing' approach on the part of the Scottish Government affect your business and future business decisions?*

Please see answer to Q3 above.

*Question 10: Do you have any other comments not covered by the previous questions around providing a relief for the exchange of CoACS Units?*

Please see answer to Q3 above.

*Question 11: Please identify and describe any impacts on UK taxes (non-SDLT) that could occur following the proposed amendment to LBTT.*

We do not foresee the proposed amendment affecting UK taxes (non-SDLT).

*Question 12: Can you identify any potential unintended impacts or effects on the current LBTT regime through providing parity with SDLT on the treatment of CoACS or through providing a seeding relief for PAIFs and CoACS?*

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*Question 13: If the Scottish Government introduced a relief, do you believe it should introduce GDO rules for CoACS or do you believe another test could be equally as effective in combating artificial tax avoidance?*

We believe that the Scottish Government should introduce the same GDO test for CoACS as applies for SDLT and LTT. To introduce a different test would prejudice the Scottish property market because

Scotland would be adding additional compliance burdens to those already applying to any UK property fund wishing to use the SDLT seeding relief.

Furthermore, we have previously made representations to the UK Government that the GDO test alone (i.e. without the claw back provisions) would be sufficient to protect against avoidance as it would ensure that the relief is not artificially used to facilitate the sale of properties without SDLT/LBTT.

We would suggest that the rules need to be consistent with those already in place for SDLT and LTT to ensure consistent relief and enforcement across the UK. However, if any of the rules can be simplified/removed then that would be a potential benefit.

*Question 14: If the Scottish Government introduced the proposed reliefs, should it introduce general portfolio tests with the same thresholds as the UK (based on the value of pan UK property) or should a more Scottish orientated threshold/measure be used?*

*The portfolio tests should be based on the total value on pan UK property. Our expectation is that Scottish properties in these funds will form a small part of a much larger portfolio.*

*Applying the test based just on Scottish properties would make it more likely that some schemes need to divest of Scottish property to ensure there is no LBTT charge.*

*Question 15: If the Scottish Government introduced the proposed reliefs, should it legislate for a percentage of ownership test in the same manner as the rest of the UK?*

*As with other tests, consistency with the rest of the UK should be the aim.* *Question 16: Should the Scottish Government, if introducing the proposed reliefs, implement the same claw back provisions as introduced under the UK's SDLT regime? If not, what conditions should be applied and how would you suggest recovery of the tax should operate?*

Please see our answer to Questions 3 and 13.

*Question 17: Do you believe that the fund managers and scheme operators should be liable for the recovery of any tax liability resulting from these potential reliefs?*

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*Question 18: Please identify and describe any other areas of potential tax avoidance that you think could arise by amending LBTT legislation to provide a seeding relief and change LBTT treatment of CoACS?*

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*Question 19: If seeding relief was introduced in Scotland, should it just apply to nonresidential property?*

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*Question 20: Would LBTT parity with SDLT regarding PAIFs and CoACS, in any way, impact upon equal opportunities, human rights, island communities, privacy and/or sustainable development in Scotland?*

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