

Supplementary Costings: Non-
Residential Land and Buildings
Transaction Tax Group Relief
May 2018

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Introduction

- 1 The Scottish Fiscal Commission is responsible for producing independent forecasts of on-shore Scottish GDP, devolved tax receipts and devolved social security expenditure. The Commission publishes its forecasts twice a year in Scotland's Economic and Fiscal Forecasts. The forecasts are published simultaneously alongside the Scottish Government's Budget and Medium Term Financial Outlook.
- 2 The Commission may also produce forecasts on "other fiscal factors". Fiscal factors are defined in the Scottish Fiscal Commission Act as: "anything which the Scottish Ministers use to ascertain the amount of resources likely to be available for the purposes of sections 1 to 3 of the Public Finance and Accountability (Scotland) Act 2000".
- 3 The Scottish Government has introduced secondary legislation for a residential LBTT relief for first time buyers. This policy was announced at the Draft Budget 2018-19 and we produced an accompanying costing for the policy in December 2017.¹
- 4 The Scottish Government has also announced a change to Group Relief for Land and Buildings Transaction Tax (LBTT), which was not previously announced at the time we produced our last forecasts in December. The Scottish Government has introduced secondary legislation in the Scottish Parliament. In accordance with the Protocol with the Scottish Government, the Commission has produced this costing to support Parliamentary scrutiny of the secondary legislation.²
- 5 We estimate that the change to allow companies with a share pledge arrangement to benefit from Group Relief for LBTT will cost on average £0.6 million per year. This equates to a 0.3 per cent reduction in non-residential LBTT receipts. Whilst many transactions have been delayed until the relief comes into effect, there may also have been some transactions which could not be restructured, or delayed, and therefore have occurred and have paid tax. Our costing is based on estimating the tax paid by these transactions, tax which will no longer be paid on equivalent transactions in the future.
- 6 We attach a high degree of uncertainty to the point estimate for this costing. With no direct data on group transactions involving share pledges, the estimate is constructed using proxy data and judgement.

¹ Annex A Scottish Fiscal Commission (2017) Scottish Economic and Fiscal Forecasts December 2017 ([link](#))

² Protocol for engagement between the Scottish Fiscal Commission and the Scottish Government Version 2.0 – March 2018 ([link](#))

- 7 This costing is based on our published forecasts of non-residential LBTT receipts from December 2017. We will be publishing our next forecasts on 31 May; we do not expect these to affect our costing.

Measure description

- 8 The Scottish Government is bringing forward secondary legislation to allow for Group Relief to be available where there is a transfer of properties within a corporate group structure and there is an existing 'Share Pledge' relating to the buyer.³ This will make the arrangements under Land and Buildings Transaction Tax (LBTT) consistent with those under Stamp Duty Land Tax (SDLT). The change will apply only to future transactions. We expect this to come into effect at the end of June, subject to parliamentary approval.
- 9 The focus of this costing note is on the change to Group Relief set out in the secondary legislation.

Background

- 10 Subject to certain rules, Group Relief provides relief from LBTT where, at the effective date, the seller and buyer are both companies in the same group. This allows companies to move property within a corporate group structure for commercial reasons without a liability to LBTT being incurred. Were such transfers to be subject to LBTT, this might act as a disincentive for the transactions to take place. Non-residential LBTT declared in 2017-18 was £203 million.⁴ Group Relief claimed in the same year was £49.1 million.

Table 1: Transactions claiming Group Relief

	2015-16	2016-17	2017-18
Estimated number of transactions claiming Group Relief	330	310	370
Estimated Group Relief claimed by group transactions (£ million)	79.6	66.0	49.1

Source: Scottish Fiscal Commission, Revenue Scotland

- 11 Currently, Group Relief from LBTT is not available where there is a relevant share pledge on or over the 'buyer' in a group transaction. This is because of the targeted anti-avoidance rules within the relief, which do not allow a claim to Group Relief where a third party outwith the corporate/business group

³ A share pledge refers to the use of a company's shares as part of a package of collateral against a loan. For the purposes of Group Relief, that loan need not be the one used to buy the property.

⁴ See Revenue Scotland statistics on a date of return basis ([link](#)). Note these statistics are published on a slightly different basis to our forecasts which reflect the date of transaction rather than the date the tax return is submitted. The difference is not expected to be significant.

structure could obtain control of the 'buyer' company. There is no requirement that control is actually obtained. The relief is not available if control could potentially be obtained.

The cost base

- 12 Overall we expect the policy to have a small impact on non-residential LBTT receipts. Responses to the Scottish Government's consultation on Group Relief highlighted that forestalling has occurred. Many transactions which would not be eligible for Group Relief because of a share pledge arrangement have been placed on hold until this change is introduced. Similarly the structure of transactions may have been altered, or overall security arrangements changed to allow transactions to occur and claim Group Relief. There may also have been some transactions which could not be restructured, or delayed, and therefore have occurred and have paid tax. Our costing is based on estimating the tax paid by these transactions, tax which will no longer be paid on equivalent transactions in the future.
- 13 The cost base is the number of non-residential group transactions in Scotland that involve a share pledge structure and declare tax is due. Direct data on these transactions do not exist. Our proxy estimate is based on non-residential transactions between two parties which have stated on the tax return that they are connected. This definition will include group transactions, but two parties may be connected and not part of a group, for example if one party owns shares in another, but retains a lower than 75 per cent holding.⁵ This definition also includes some parties which are not incorporated bodies and therefore are not eligible for Group Relief.
- 14 Our proxy is an estimate of the maximum number and amount of tax declared by transactions which could be affected. We estimate that only a proportion of these transactions are group transactions affected by the share pledge rules and are therefore currently paying tax but will no longer pay tax after the change. These judgements are based on informal consultations with some of the stakeholders that responded to the Group Relief consultation.⁶

⁵ Companies claiming Group Relief must be members of the same group, this is defined as one being the 75 per cent subsidiary of the other or both are 75 per cent subsidiaries of a third company. Connected companies are those whereby one company has control of another or another company has control of both as per section 1122 of the Corporation Tax Act (2010). In this case control is defined by sufficient voting power to allow for direction of a company's affairs, rather than the 75 per cent threshold.

⁶ We are grateful to Revenue Scotland and the various organisations we have spoken to for their time and expertise. The Commission takes full responsibility for the judgements that underpin our costing and for the conclusions we have reached.

Table 2: Connected transactions declaring non-residential LBTT

	2015-16	2016-17	2017-18
Estimated number of transactions where the buyer and seller are connected declaring tax	410	400	410
Tax declared by transactions where the buyer and seller are connected (£ million)	3.7	6.2	6.2

Source: Scottish Fiscal Commission, Revenue Scotland

- 15 In 2017-18 there were 1,340 non-residential transactions where the buyer and seller were connected, of which 410 declared LBTT. A total of £6.2 million of LBTT was declared in transactions where the buyer and seller were connected. The remaining 930 transactions either did not declare tax or went through under a relief.

The costing

- 16 We do not have any data on the number or value of share pledge transactions that have taken place over the past three years. Our judgements have been made in light of our informal consultations.
- 17 Of the £6.2 million of LBTT declared in 2017-18 on transactions where the buyer and seller were connected, we estimate that 10 per cent of the tax declared may have been from transactions in which a share pledge arrangement was in place and therefore the transaction was not eligible for Group Relief.
- 18 In order to project this revenue forward, we assume that revenue raised from group transactions in which a share pledge is involved is a constant proportion of total revenue raised. We set that share at 0.3 per cent of total revenue raised, based on our estimated share from 2017-18. This reduces revenues by an average of £0.6 million per year.

Impact on non-residential transactions and prices

- 19 The change to Group Relief is likely to lead to an increase in the number of non-residential property transactions, as there are a number of transactions with a share pledge structure that have been postponed. We understand that a significant number of the transactions currently not being undertaken are at the higher end of the price distribution, so we would expect the amendment to raise the market average price, before controlling for transactions subject to a relief. We would expect this to be a one-off change, with a temporary impact on the rate of growth in prices. Since these purchases would only occur in the event that the buyer would claim Group Relief, the impact on our costing of revenue raised or forgone is zero.

Impact on LBTT revenue raised

- 20 Our latest non-residential LBTT forecasts were published in December 2017. Our next forecasts will be published on 31 May 2018. These are still being finalised and therefore our revenue forecasts below are based on the latest published numbers. We do not anticipate that the updated forecasts at the end of May will affect the costing. We estimate that the amendment to LBTT will lead to a reduction in revenue of around £0.6 million in each year of the forecast.
- 21 We attach a high degree of uncertainty to the point estimate for this costing. The costing includes revenue from both conveyances and lease transactions. It also includes the impact on Additional Dwelling Supplement (ADS) revenue raised, although given that ADS revenue is 1 per cent of non-residential revenue, the impact of the policy change is very small.

Table 3: Non-Residential LBTT amendment to Group Relief costing

£ million	2018-19	2019-20	2020-21	2021-22	2022-23
December 2017 Non-residential LBTT pre-measures	190	194	200	206	212
Change due to amendment to Group Relief	-0.6	-0.6	-0.6	-0.6	-0.6
Non-residential LBTT post-measures	190	194	200	206	212

Source: Scottish Fiscal Commission, Scottish Fiscal Commission (2017) Scottish Economic and Fiscal Forecasts December 2017 ([link](#)). Unrounded figures are provided in the spreadsheet accompanying this publication ([link](#)).

Uncertainties around the costing

- 22 There is uncertainty about the size of the cost base. With no direct data on group transactions involving share pledges, we have had to use available data to create an estimate. Our proxy estimate is defined as a share of tax paid on non-residential transactions between two entities which have stated on the tax return that they are connected. However, it is important to note that two parties may be connected and not part of a group, for example if one party owns shares in another, but retains a lower than 75 per cent holding. Similarly not all transactions in our data are between companies, for example some could be within partnerships and would not qualify for Group Relief. While we believe that our proxy for group transactions affected is reasonable, actual tax revenue raised may be different from our estimates.
- 23 We will continue to monitor receipts from LBTT once this policy comes into effect. It is, however, highly unlikely that we will be able to accurately evaluate

our costing in the future. Non-residential LBTT is a highly volatile tax; a costing which projects a reduction in revenue of less than £1 million per year is not significant enough for us to be able to identify this as a specific cause of any forecast error.



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