

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr **Please tick as appropriate**

Surname

Forename

2. Postal Address

Email

3. Permissions - I am responding as...

Individual**/ Group/Organisation****Please tick as appropriate**

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes **No**

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Are you content for your **response** to be made available?

Please tick as appropriate
 Yes No

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

Introduction

Homes for Scotland is the representative body for the home building industry in Scotland, with a membership of some 200 companies together providing 95% of all new homes built for sale across the country as well as a significant proportion of affordable housing. Homes for Scotland makes policy submissions on National and Local Government policy issues affecting the industry, and its views are endorsed by the relevant local committees and advisory groups consisting of key representatives drawn from our members.

The response below represents our member's views in relation to land and building transactions that occur to facilitate residential development in Scotland.

Question 1 – Relief mechanism

Do you agree that the Scottish Government introduce the relief mechanism outlined in the proposed draft sub-sale development relief regulations?

Yes

If you have any comments, please provide them below:

A form of sub-sale development relief was missing from the legislation and the initial consultation covering proposals for LBTT reliefs. We are therefore pleased that the Scottish Government is now consulting on proposals, signalling that they understand how important the relief within the existing SDLT structure can be for site viability.

However, we are disappointed that the Scottish Government is considering targeting the relief to make it more restrictive than the relief currently available (and remaining available to the rest of the UK) under SDLT.

Scotland must remain competitive

With its new power to manage tax revenue from land and building transactions, the Scottish Government must ensure Scotland remains competitive. Whilst the Scottish Government will be keen to differentiate its new policy, it is important to remember that, fundamentally, the new-build housing markets in England and Scotland are similar and interlinked. The support and assistance needed in Scotland is no different, and certainly no less, than the rest of the UK.

If Scotland is to secure its fair share of investment and remain attractive it must be competitive and have at least an 'equal playing field'. Otherwise investment decisions by UK-wide PLC home builders, Lenders and institutional investors could be attracted southwards where better market conditions prevail, yields are higher and better return on shareholder funds can be achieved.

Whilst appreciating why the Cabinet Secretary for Finance, Employment and Sustainable Growth is keen not to replicate in devolved taxes provisions which have allegedly given rise to tax-avoidance activity, the Scottish Government must be very careful that in addressing the actions of a few, they are not preventing the genuine use of a relief which reflects the nature of land transaction and development businesses in Scotland.

Lead Developer Approach

Unless the Scottish Government get sub-sale development relief right, the 'lead developer' approach is at risk of diminishing in Scotland. As a starting point it is important therefore that the Scottish Government fully understands how imperative the lead developer approach can be in the delivery of much needed new housing supply in Scotland.

First of all, often a land owner will insist that he/she will only work with one party in the land transaction. It could be argued that the landowner should be forced to accept that there is not the market for one builder to buy and develop the land and therefore they should be willing to work with a number of separate buyers or a consortium. However it is the landowner's prerogative whether to sell or not, and we would not want a landowner sitting on effective land that could result in residential development. Therefore the lead developer role provides a solution, allowing the transaction and all related engagement to take place between the landowner and one developer, with this developer then taking the lead to subsequently parcel off the land to other developers as appropriate.

Secondly, the lead developer approach can be hugely successful where a large land release requires a vast amount of investment in infrastructure provision before development can take place. The lead developer would secure funding for the provision, make the investment and then make a return on that investment through the price of the land parcels. There are a number of examples across Scotland where the delivery of homes would not be possible without a developer taking the lead on large land releases. Much of the volume of new homes has been delivered this way in recently years and we should avoid making any changes that will dis-incentivise the approach going forward.

To assist the understanding of how the lead developer approach works in practice, we have arranged for some of our member companies to forward examples/case studies to the Scottish Government. These should be considered in confidence given that they include commercially sensitive data.

To be clear, the HFS position is that the relief should be offered on the same basis to SDLT. The responses below are therefore only presented to offer a view on the best possible position if the industry is forced to accept that sub-sale development relief will only be offered in Scotland with restrictions.

Question 2 - Definition of “development” and “significant development”

Do you agree with the proposed definitions of “development” and “significant development” in the draft regulations?

No

If you have any comments, please provide them below:

Under the proposals, a significant development is one which requires an application for planning permission. Whilst this definition is clear and measurable, it fails to acknowledge the differences in scale of development and the different challenges that different scales can bring. We would suggest that it would be appropriate to tie the relief to different definitions of development. These too should be clear and measurable.

HFS would be keen to be involved in further considerations on the definition of scales. Continuing from the proposal that significant development is development that requires planning permission, it may make sense, as an example, to use the existing definitions within Scottish Planning Policy. Different rules could apply to parcels of land for 'local' development of under 50 units and 'major' applications of over 50 units.

Question 3 – “Reasonable time”

Do you agree with the proposal that the “significant development” must be completed within 5 years of the effective date of the pre-completion transaction?

No

If you have any comments, please provide them below:

The effective date and flow of a sub-sale

When a home builder takes an option on land which they plan to deliver with other builders, they will often line up all necessary consents for the full site (such as planning, building warrants and Road Construction Consents) and line up the other builders (agree price, contracts etc) before exercising the option. The option will be exercised at the same time as the sub-sales take place. A number of transactions therefore take place on the same day. We understand that, for LBTT purposes, the effective date will be the point in time when the option is exercised.

It should also be noted that land deals where sub-sales occur are not always of a strategic nature where an option has existed for some time. Some short term land deals are also reliant on sub-sales, particularly where the land value and infrastructure investment requirements are high.

Under the Scottish Government proposals, on the effective date, the lead developer will pay the full LBTT cost and notify Revenue Scotland that they will apply for the relief. At the same time, any other developers that are buying the land through the sub-sale would also pay the LBTT due for the parcel that they are buying. Double taxation will therefore occur under the current proposals at that point.

Risk

The lead developer will only be able to claim a refund through the relief if the development that the other builders plan to deliver is completed within 5 years. This introduces a new risk to the lead developer who has little control over what another builder will complete within 5 years. This is likely to provide a significant disincentive to the lead developer.

It could be argued that this risk could be mitigated by clauses within the contracts of a sub-sale. However whilst a contractual arrangement may assist in transferring the risk from the lead developer onto the other builders, and this in turn could result in a disincentive for builders from getting involved in building out developments of this nature. Legal representatives will be advising developers accordingly, if the risks are too high deals may break down.

A high volume of new homes have been delivered in Scotland with successful partnerships operating through the lead developer approach. We should be encouraging more of this and would not want to see this approach eroded in any way going forward in Scotland. Under existing proposals we have major concerns about what the added contractual bureaucracy would do to existing effective working relationships.

The risk created by the uncertainty attached to the sub-sale development relief as proposed will also be accounted for by lenders in their assessment for development finance. There is a strong risk that lenders will take a negative view on the likely receipt of sub-sale development relief when it is reliant on a third party completing homes within a separate land parcel. This will clearly have impact for home builders that are bank funded.

Scale

The scale of development will inevitably impact on the ability to complete within 5 years. This emphasises the usefulness of having different definitions of development based on scale. The ability to build out a parcel of land of say 300 units will clearly be different to the ability to deliver a parcel of land of 30 units.

Whilst the starting point (or effective date) is likely to be at a point when all permissions are in place for the development to commence, large scale developments are likely to be planned over a long time horizon. The Scottish Government only needs to look to successful examples such as the delivery of Wester Inch Village in Bathgate to see how long it can take to deliver volume following a large scale land transaction.

Market forces

An important point to understand is how the residential development industry differs from other sectors due to its reliance on exit through sale to, in the main, individual households. The recent recession has demonstrated clearly what impact the availability of mortgage finance and the confidence of the housing market can have on the timescales of building out sites. Home Builders will not build homes unless they have a market available to buy the homes.

If the market is poor and the home builder has been unable to build and sell homes within the defined 5 year period then the home builder is very likely to be suffering financially already, the risk of having to pay LBTT as a result of the slow market would be hugely detrimental to development and business viability.

Drawing on a recent example of where the Scottish Government and Local Authorities allowed flexibility on legislative timescales acknowledging the impact of market forces, extensions to building warrants were facilitated through a Memorandum of Understanding with Scottish Government, Local Authority Building Standards (LABS) and Homes for Scotland. This allowed sites to be completed under existing warrants acknowledging that the increased costs of delivering to different standards would impact on the viability of sites. This was extremely helpful and a provision within the relief to allow for this approach to flexibility would be welcomed by the industry. The preferred approach would be to have certainty on how Revenue Scotland would account for changes in the market as opposed to individual negotiations on a site by site basis.

Question 4 – Mechanism for claiming the relief and refund of LBTT

Do you agree that the relief should be claimed at the point that the initial transaction takes place and a refund claimed once the development is complete?

No

If you have any comments, please provide them below:

Impact on cash flow

The value of the sub-sale relief to the industry is largely cash flow related, in the sense of reducing the current exposure at the point of the liability arising. Land Sales to third party developers commonly utilise the benefits of sub-sale relief in transactions. To introduce a deferral of sub-sale relief imposes additional cost burden on the selling party and impacts negatively on cash flow and capital lock up requirements commonplace throughout the sector.

It could be argued that this could be addressed through 'abnormals' in the land price agreed with the land owner, whereby the land owner absorbing the cost of the LBTT to be paid upfront by the lead developer. However the view of our members is that this will not be acceptable to landowners and would result in land deals breaking down.

The projected cash flow of a development will also have a knock-on effect on the ability of the home builder to raise development finance. Lenders may take a negative view on commercial viability due to the timing and uncertainty of the sub-sale relief.

Added bureaucracy

In the event that the Scottish Government proposal progresses the administration burden to be added to the sector is a major issue. Home building businesses with core strategic land assets and land sale/trade strategies in their business plans will require additional administration and monitoring processes to minimise the risk of non-recovery. Over 5 years this cost would substantially erode the sub-sale relief value further penalising project profitability.

Supporting the industry

In home building, as with many other businesses, 'cash is king' and the importance of cash flow on development and business viability must not be underestimated by the Scottish Government. Whilst retaining a revenue neutral position, the Scottish Government should be considering ways that they can support the home building. It has already been made clear that Scottish Government is keen to increase the supply of new homes in Scotland; to meet housing demand and ensure the country benefits from the associated economic outputs. This has been demonstrated through funding for affordable housing delivery, the exploration of new and innovative funding mechanisms, as well as significant budgets for schemes such as Help to Buy (Scotland) which have been designed to support increased housing production. The Scottish Government should not seek to introduce financial policies that will counter these efforts, at any point of the development process.

Within a transaction that includes sub-sales, when the land option is exercised, the Scottish Government will receive 100% of the LBTT receipts as a total from the combined land parcels, they will not be worse off financially. There is a chance that the Scottish Government would collect further LBTT where development was not completed within the defined timeframe. The risk of loss of that additional LBTT is one we think the Scottish Government should be willing to accept.

We would actually ask the Scottish Government to go further and consider ways in which they can structure payment of LBTT to support the industry and encourage development. In our response to the initial consultation on other reliefs submitted in July 2014, we proposed that the Scottish Government utilised a deferred or phased payment of LBTT even when the chargeable consideration was known to better support the industry in Scotland.

The deferment of the tax aligned to the actual contracted land payments, rather than the current front loaded requirement, would be most helpful to those schemes with marginal viability, as well as the general business cash flow benefit to the industry. With the upfront costs involved in delivering a residential development making it difficult for some home builders to access development finance, this is one way that the Scottish Government could look to support the industry without any cost to the public purse. The arrangement would remain cost neutral for the Scottish Government with the same amount of tax being paid, just on a slightly different timescale.

In contrast to the current proposal based on a home builder claw-back we would therefore urge the Scottish Government to consider what it can do to support the development industry and introduce a mechanism to defer payment for all transactions including those where sub-sales occurs.

Question 5 – Evidence of completion of the development

Do you agree that a Completion Certificate provides appropriate and sufficient evidence that a “significant development” has taken place and has been completed within 5 years?

Yes

If you have any comments, please provide them below:

Bearing in mind the comments made above regarding scale and timescale for delivery, the attainment of a completion certificate offers a clear form of evidence to demonstrate the qualification for the relief. It will be important that Local Authority Building Control departments are adequately resourced to ensure there is no further risk due to delays in carrying out inspections and issuing completion certificates.

Question 6 – Partial refund of LBTT

Do you agree that a partial refund should be given where a proportion of a “significant development” can be evidenced by a Completion Certificate (or Certificates)?

Yes

If you have any comments, please provide them below:

Again, bearing in mind the comments made above regarding scale and timescale for delivery, the ability to apply for partial relief is welcome to reflect the amount of development that has been completed within the appropriately defined period. We are not however supportive of this being a partial refund through the proposed clawback approach and instead would view it as a partial bill issued for payment when it is evidenced that not all the intended development was completed within the agreed timescale.

Question 7 – Partial Business and Regulatory Impact Assessment

Do you have any comments on the draft Business and Regulatory Impact Assessment?

Yes

If you have any comments, please outline them below:

As outlined above, if the sub-sale development relief is implemented as proposed there will be an enormous administration burden added to the sector. For businesses with core strategic land assets and land sale/trade strategies in their Business Plans, additional layers of administrative and monitoring processes will have to be implemented to minimise the risk of non-recovery. Over 5 years this cost would substantially erode the sub-sale relief value further penalising project profitability. This does not appear to have been accounted for within the impact assessment.

The potential loss of development activity through the lead develop approach should also be considered.

Question 8 – Equalities Impact Assessment

Do you have any comments on the draft Equalities Impact Assessment?

We have nothing more to add in relation to the Equalities Impact Assessment.