Briefing for the Public Petitions Committee

**Petition Number:** PE01798

**Main Petitioner:** Marcus Tait

**Subject:** Review Additional Dwelling Supplement eligibility and relief criteria

Calls on the Parliament to urge the Scottish Government to review the Additional Dwelling Supplement eligibility and relief criteria.

**Background**

The petitioner has purchased a plot of land on which there is a derelict house that they plan to demolish and replace with two residential properties. The petitioner is concerned that the 4% Additional Dwellings Supplement (ADS) will equate to 70% of the budget that he has allocated for drainage and earthworks, which is a significant cost.

**What is ADS?**

Under the terms of the [Land and Buildings Transaction Tax (Scotland) Act 2013](https://www.legislation.gov.uk/ukpga/2013/35/contents), Land and Buildings Transaction Tax (LBTT) replaced UK Stamp Duty Land Tax (SDLT) from 1 April 2015. LBTT is a tax applied to residential and commercial land and buildings transactions (including commercial purchases and commercial leases) where a chargeable interest is acquired. Revenue Scotland administers LBTT. The percentage rate for each band in LBTT is applied only to the part of the price over the relevant threshold and up to the next threshold.

Under the 2013 Act, as amended by the [Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016](https://www.legislation.gov.uk/ukpga/2016/11/contents), an additional amount of LBTT is chargeable on certain purchases of second homes. This is known as the **Additional Dwelling Supplement (ADS)**. As a result of this legislation, from 1 April 2016 for all relevant transactions over £40,000, an additional amount representing three per cent of the total price of the property was introduced.

The existing exemptions which apply to LBTT transactions also apply to transactions involving the purchase of additional dwellings. Consequently, where a transaction is exempt from LBTT, it will not be subject to the ADS.
Full relief is available for any transaction which covers 6 or more dwellings, whether in a single transaction or linked transactions in Scotland.

On 1 April 2016, the UK Government introduced a new Stamp Duty Land Tax (SDLT) supplement on purchases of additional residential properties in the rest of the UK. Absence of a similar supplement in Scotland meant that Scotland might be seen as a more attractive opportunity for people to invest in additional residential properties, making it difficult for the first-time buyers in Scotland to buy their first home. The Deputy First Minister said, when setting out the Scottish Government proposals in the 2016-2017 Draft Budget, that the Scottish Government wished to ensure, as far as practical, that opportunities for the first time buyers to enter the housing market in Scotland were as strong as they possibly could be.

As of 25 January 2019, ADS is 4% of the ‘relevant consideration’, usually the purchase price of the property or dwelling.

A building or part of a building counts as a dwelling if it is:

(a) used or is suitable for use as a single dwelling or
(b) in the process of being constructed or adapted for such use.

A cleared site with no buildings would not be counted as a dwelling, even if it had planning permission for the construction of residential property. However, a dwelling on a site is counted as a dwelling even if that dwelling was to be refurbished or demolished.

Any existing dwelling or dwellings owned by the buyer which has, or have, a market value of less than £40,000 can be discounted. If a buyer owns more than one existing dwelling, the £40,000 limit applies to each separate dwelling rather than to the aggregate value of all of the dwellings owned by that buyer.

**Legal Cases relating to this enquiry**

In a recent case in Scotland, *P N Bewley v HMRC*, the First-Tier Tax Tribunal considered the definition of a “dwelling” for the purposes of stamp duty land tax (SDLT) and how this applies to derelict properties. Although SDLT only applies in England and Wales, the definition of a dwelling is mirrored in the legislation for LBTT in Scotland.

This case concerned the purchase of a derelict bungalow by a company set up by Mr and Mrs Bewley. The couple intended to demolish the bungalow after the purchase and build a new residential property on the site. On receipt of the SDLT return, HMRC imposed the higher residential rates and surcharge to the purchase and this was appealed by Mr and Mrs Bewley.

Although the property had been used as a private residence in the past, it had been vacant for several years before the purchase and was in a significant
state of disrepair. Asbestos was present throughout the property and the heating system, pipes and floorboards had all been removed. Mr and Mrs Bewley argued that it could not be considered suitable for use as a dwelling, so did not meet the definition of residential property.

HMRC argued that the property could be brought back into use as a dwelling through renovation and should not be classified as non-residential simply because Mr and Mrs Bewley did not wish to do this. HMRC noted the building was in a residential area and was always intended to be a residential property.

The tribunal emphasised that the test is whether the building is suitable for use as a dwelling at the point at which SDLT became payable. This means that, whether or not the building could be restored is irrelevant, as are the intentions of the particular purchasers. Based on the evidence provided, the tribunal found that the bungalow was clearly not suitable for occupation as a dwelling at the time of purchase and HMRC had incorrectly applied residential rates of tax.

This ruling could suggest that properties which are derelict may be termed as non-residential properties and so be liable for non-residential rates of ADS.

Scottish Parliament Action

There have not been recent debates or questions raised in Parliament regarding this issue. The most recent parliamentary question regarding ADS is:

**Question S5W-21083: Lewis Macdonald, North East Scotland, Scottish Labour, Date Lodged: 17/01/2019**

To ask the Scottish Government what assessment it has carried out on the impact of increasing the Additional Dwelling Supplement from 3% to 4% on the (a) property and (b) private rental market.

**Answered by Derek Mackay (29/01/2019):**
The Scottish Government’s assessment of the effects of increasing the Additional Dwelling Supplement (ADS) from 3 per cent to 4 per cent was informed by independent analysis by the Scottish Fiscal Commission (SFC). The SFC assessed the impact on housing market prices and transactions which, given the nature of ADS, includes a substantial element of private rental market transactions. SFC’s analysis on prices and transactions is set out in their publication Scotland’s Economic and Fiscal Forecasts December 2018 (Annex A: Policy Costings, page 222-227) which is available here: http://www.fiscalcommission.scot/media/1435/scotlands-economic-and-fiscal-forecasts-december-2018-full-report.pdf.

Alex Marks
Senior Researcher
[02/03/2020]
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