**Consultation Summary Report**

A Consultation on the Scottish Fiscal Commission

1. The purpose of this consultation was to gather views from the investment management industry and other interested stakeholders on the potential introduction of an exemption from Land and Buildings Transaction Tax (LBTT) for the transfer of properties from Authorised Unit Trusts (AUTs) to Open Ended Investment Companies (OEICs) in certain specified circumstances.

**Background**

1. Since LBTT became operational, the investment management sector has raised concerns about the impact of the LBTT charge on the planned conversion of AUTs to Property Authorised Investment Funds (PAIFs), a form of OEIC, where these AUTs hold property in Scotland. The Scottish Government is committed to ensuring that Scotland remains an attractive location for investment and so Scottish Ministers are now considering proposals to introduce such an LBTT exemption.

**Overview/summary**

What did the consultation cover?

1. Views were sought in relation to the following areas:

* potential impacts on the property sector of not introducing an exemption;
* potential impacts of the investment and fund management sector of not introducing an exemption;
* views on the draft legislation; and
* would an exemption as drafted provide opportunities for tax avoidance or evasion.

**Responses**

1. The consultation paper was published online and was also available on Citizen Space.
2. A total of 14 responses were received by the closing date, all where supportive of an exemption and no concerns around tax avoidance or evasion were raised. A summary of responses can be found below.

**Summary of Responses**

| **Organisation** | **Do you think that the Scottish Government should introduce an exemption from**  **LBTT for properties held by Authorised Unit Trusts converting or amalgamating with**  **an Open Ended Investment Companies?** | **Do you think that an exemption as drafted in Annex A could create to opportunities for tax avoidance? If so, how?** | **Comments** |
| --- | --- | --- | --- |
| Eversheds LLP | Yes | No | If property situated in Scotland becomes less attractive as an asset for property investment funds so that it is no longer part of such funds then it becomes more difficult over time to see why a fund manager would choose to locate fund management activities for a property fund (not holding Scottish property) in Scotland.  There are also risks and impacts on the fund management and investment sector generally (including in Scotland) where funds hold or intend to hold a portfolio of property which is situated in (or partly situated in) Scotland.  Without a relief for amalgamations and reconstructions of funds then these are unlikely to happen which makes the fund market inefficient, and is incompatible with the aims of EU Directives (such as the UCITS Directive) which aim to create larger and more efficient investment funds. |
| Aberdeen Asset Management | Yes | No | Negative impression towards investing in Scotland as more restrictive tax environmentPrevents existing funds from converting to PAIF structure. Investing in Scottish property less attractive to some investors making Scottish property less liquid than other areas of the UK.  Funds proposing to convert disinvest their Scottish property holdings ,with risk that don’t reinvest after conversion. Property values held back due to Scotland being perceived as “higher risk”.  Development more difficult and less attractive resulting in less regeneration of town centres or provision of new accommodation for expanding businesses. |
| Aviva | Yes | No | The absence of an LBTT exemption has the potential to have a significant impact on the investment sector in Scotland.  The absence of a relief from Scottish LBTT equivalent to the SDLT relief means that investors may not be able to convert authorised investment trusts into PAIFs. This means tax-exempt investors such as charities and pension funds would be significantly disadvantaged. We believe that this will serve as a significant disincentive for investors to invest in Scotland.  Faced with a LBTT charge funds will either have to consider not converting, thus disadvantaging tax exempt investors, or reducing their exposure to Scottish property, thus reducing investment in the Scottish property market. In our specific case, we may not be able to convert our £2bn Aviva Investors Property Trust into a PAIF. Our fund has approximately 11% exposure to Scottish property. |
| CBI | Yes | No | It is important to send the message that Scotland is open for business and a level playing field across the UK will be critical to that when attracting investment. The absence of an LBTT exemption equivalent to the relief from Stamp Duty Land Tax (SDLT) will in this case affect charities, ISAs and pension funds investing in authorised property funds and serve as a disincentive for investors looking to invest in Scotland, translating into a financial incentive to invest elsewhere in the UK instead. |

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| KPMG | Yes | No | What is easy to predict is that the absence of an LBTT exemption for AUTs converting to OEICs, logically it should follow that:  (a) investing in Scottish property will to some extent be less attractive to AUTs, as such property will attract a tax charge on conversion whereas property in the rest of the UK would not, and  (b) those AUTs with significant investments in Scottish property may become less attractive to investors, as any later conversion could impact on returns to investors. These considerations are likely to become more relevant as the popularity of PAIFs increases.  Various efforts have been made, and continue to be made, to encourage the growth of the UK property fund industry and enhance the UK’s position as a leading domicile of investment funds. Failing to replicate the SDLT exemption for Scottish property would dampen those efforts and be a step back. As a result the fund management and investment sector in Scotland, along with the fund management and investment sector in the rest of the UK, would likely suffer. |
| Pinsent Masons LLP | Yes | No | The absence of an LBTT exemption will discourage the fund management and investment sector in Scotland from investing in Scottish property; they should ordinarily be better disposed towards investment in Scottish property due to their familiarity with the area, but the absence of an LBTT exemption works against that.  The absence of an LBTT exemption makes it less likely that investment funds will invest in Scottish property, due to the increased transactional costs arising from there being a charge to LBTT. Funds have a range of potential property investment opportunities open to them, and when faced with the choice between investing in property in England & Wales where they will benefit from the exemption, and investing in property in Scotland where they will require to pay LBTT, this makes it more likely they will choose not to invest in Scotland.  The property sector is a significant driver of economic activity in Scotland, including construction activity and the ability to attract inward investment; the sector needs investment funds to invest in it, and if they choose not to do so this will have negative effects on the Scottish economy. |
| The Law Society of Scotland | Yes | No | We believe that it will adversely affect the investment sector as they have a natural tendency to acquire and manage properties in their own country; lack of this relief would be a disincentive to do so.  There would potentially be a very serious adverse impact indeed on investment property sector as funds, both within and outwith Scotland, that are currently organised as authorised unit trust schemes (AUTS) but that have not yet converted will recognise that LBTT would require to be paid on any future conversions. That will have the effect of either discouraging those funds from investing in Scottish property or will reduce its value (as they will discount prices by the amount of the LBTT involved). |

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| British & Scottish Property Federation | Yes | No | At its heart, the proposed relief aims to make it easier to restructure real estate investments in situations where no change in effective ownership is envisaged.  Ultimately, failure to introduce this relief will mainly affect existing AUT investors that are tax-exempt, as they will continue to suffer a tax charge for investing in authorised funds investing in UK real estate including Scottish real estate where they wouldn’t if they invested elsewhere (by virtue of being able to invest through a PAIF). |
| Deloitte | Yes | No | We believe you should take action as envisaged in this conultation. Collective investment in propoerty under a PIAFhas the potential to serve investors better (most of whom are pension investors) by putting life companies in a better position to meet liaibilities to policy holders, or indeed by offering an alternative to the life company model.  It also benefits Scottish propoerty investment as the exemption will attract more money into property funds in Scotland. |
| Ernst & Young | Yes | No | We believe that the availability of such a relief in relation to both SDLT and LBTT would encourage use of PAIFs as property investment vehicles and would support the competitiveness of the UK funds industry (including the fund management and investment sector in Scotland). |
| Stirling Council | Yes | No | We would support the proposals, which the consultation states are intended to ensure Scotland remains an attractive location for investment, and is not disadvantaged to the rest of the UK. |

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| Brodies LLP | Yes | No | If fund managers look to take advantage of the tax regime provided by a PAIF and transfer their investments from a AUT to an OEIC to ensure that their investment qualifies as a PAIF, they will be charged LBTT in relation to any properties in Scotland. It seems to be partly defeating the purpose of the PAIF regime if the lack of an LBTT exemption means that a tax charge is incurred as a result of a transfer of properties to a PAIF.  The risk is that funds finding that they have to pay LBTT will be discouraged from investing and dealing with property in Scotland. Their perceptions of the Scottish tax system as being more expensive than the remainder of the UK will affect their decisions on where to invest. They are already facing higher rates of LBTT when compared with SDLT if they are purchasing properties at the higher end of the market. An additional charge on top of this additional expense may be the deciding factor. Funds may then find it difficult to recommend that they invest in Scottish property when there is English property on offer which could bring similar returns at less cost at the outset. |

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| PricewaterhouseCoopers | Yes | No | The key risk of an absence of an exemption is a reduction in investment in Scottish property and that it creates a barrier to investment. Current AUT’s may also be inclined to divest of Scottish property.  The key risk is a reduction in investment in Scottish property. For funds constituted as AUTs that do not currently hold Scottish property, it creates a barrier to their investing in Scotland (other things being equal), as by doing so they restrict the future cost effective options available for the fund structure. AUT funds already holding Scottish property and, considering the benefits of OEIC status, may become more inclined to divest, there being no difference in LBTT terms between the charge on simple disposal and the charge on amalgamation/conversion. The alternative for such funds would be to forgo the benefits of OEIC status, where the LBTT charge on amalgamation/conversion is considered prohibitive.  Holding Scottish property could thus come to be perceived as relatively unattractive due to the time needed to deal with LBTT compliance, as well as the LBTT cost itself of converting to an OEIC.  To counter these factors, funds could require their Scottish property to produce a higher yield to be considered equivalent to English, Welsh and Northern Irish property. This could either depress property values in sectors where investments funds are strongly represented, and/or place an additional cost burden on tenants, in terms of higher rents and lease premium (and/or reduced lease incentives).  Clearly the proposals do not directly affect properties already held by OEIC funds, but if they are the only class of property investment funds willing to consider Scottish and other UK properties on an equal footing, the pool of potential purchasers for Scottish property could be reduced, again adversely affecting pricing (other things being equal). |

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| Association of Real Estate Funds | Yes | No | A lack of relief from LBTT on conversion of an AUT invested in property to an open-ended investment company (OEIC) or on amalgamation with an existing OEIC is a problem for both property funds based in Scotland and funds with Scottish property.  PAIFs are a more attractive option for many investors wishing to invest in UK property. This is particularly true for non-taxpayers, including charities, pension funds and ISAs. They achieve the same tax result by investing in a PAIF as they would by investing directly in property.  This lack of an equivalent LBTT relief is preventing existing funds from taking advantage of the PAIF regime. This is to the detriment of investors, particularly non-taxable investors such as pension funds, charities and ISAs.  Funds have an important role as vehicles for long term saving and for providing for retirement. It is important to ensure that funds invested in property are able to convert to or amalgamate with PAIFs to be able to fulfil this role.  A lack of relief from LBTT may have a negative impact on the Scottish property market. The capital raised by funds represents a key source of investment capital to finance economic activity. |

**Scottish Government**

**September 2015**