**Land and Buildings**

**Transaction Tax: Property Investment Funds**

**Analysis of Consultation and**

**Scottish Government Response**

December 2018



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**Introduction**

1. Land and Buildings Transaction Tax (LBTT) introduced by the Land and Buildings Transaction Tax (Scotland) (Act) 2013 (‘the Act’) replaced UK Stamp Duty Land Tax (SDLT) in Scotland from 1 April 2015. It is a tax applied to residential and non-residential land and buildings transactions (including non-residential leases) where there is an acquisition of a chargeable interest.
2. A consultation on *LBTT – Property Investment Funds* was launched 3 May 2018 to gather views from the property sector, investors and other interested stakeholders on the potential introduction of a relief from LBTT for the transfer (seeding) of properties into certain collective authorised investment schemes namely Property Authorised Investment Funds (PIAF’s) a type of Open Ended Investment Company designed for property investment and the wider treatment of Co-ownership Contractual Schemes (CoACS).
3. This consultation follows the introducing in September 2015 of an exemption, by way of a claimable seeding relief, for properties held by Authorised Unit Trusts (AUT’s) converting or amalgamating with an Open Ended Investment Company. Seeding in this consultation means the initial transfer of property or an existing property portfolio into a new or empty fund.
4. The Scottish Government would like to thank all respondents for their contributions. Where permission has been granted, responses have been published in full on the Scottish Government Consultation Hub website.
5. The Scottish approach to taxation enshrines the principles that tax legislation is better aligned with Scots law and practice and that tax reliefs or exemptions are available only introduced when clear evidence supports the need for them. Scottish Ministers have made a clear commitment to take all reasonable steps to reduce the risk of artificial avoidance of the devolved taxes to foster tax compliance and safeguard public finances.
6. This report presents an overview of findings from the analysis of responses to the consultation and sets out the Scottish Government’s response at the end of the document.

**Executive summary**

1. The purpose of the consultation was to ensure that Scottish Ministers have a full and accurate understanding of the operation of these collective property investment vehicles and the role they play in real economy, including the asset management, construction and property sectors. Lastly key driver for consulting was to establish the likely consequences for these sectors and the wider economy if a relief were or were not available.
2. The consultation ran from 3 March to 3 August 2018. Fifteen responses were received in total with one respondent wishing to remain anonymous. Three responses where received by the Financial Services industry, six responses from professional law and accountancy sector, four from professional bodies and two responses from trade bodies (including the Scottish Property Federation). A list of respondents is available in **Annex A**. The Scottish Government also held a stake holder event on the 3 September 2018, a minute of this meeting can be found in **Annex B**.
3. The consultation set out twenty questions and sought views on proposals for a seeding relief for Property Authorised Investment Funds (PAIF’s) and Co-ownership Authorised Contractual Schemes (CoACS), opinions and insights on the LBTT treatment of CoACS, the potential for tax avoidance issues, the technical aspects of a seeding relief and finally the possible impact of a possible relief on human rights, equal opportunities, privacy, business, island communities and sustainable development in Scotland.
4. Respondents provided considerable detail in their responses to the consultation questions an analysis of the replies follows the main findings summary below.

Main findings

1. Respondents to the consultation were strongly in favour of the Scottish Government introducing a seeding relief for PAIF’s and CoACS. There were a number of specific comments on the Scottish Government’s approach to the proposed relief and how it would operate. Broadly respondents expressed a desire for such a relief to be similar in scope to the equivalent relief for SDLT but not copy it exactly clawback arrangements exactly. Key points raised by respondents included that:
* the Scottish Government should introduce a general seeding relief;
* parity between a LBTT seeding relief and it’s SDLT equivalent is desirable;
* Scots Law terminology should be used for any introduced legislation;
* UK Genuine diversity of Ownership (GDO) and portfolio rules mirroring the UK should be introduced with regards to any relief;
* Given the pan-UK nature of the funds in question respondents wanted the Scottish and UK governments to work collaboratively around the issue of claw back provisions however current SDLT should not be directly copied into LBTT legislation;
* Any seeding relief should apply to residential and non-residential property;
* LBTT should be aligned with SDLT and the Welsh Land Transaction Tax in terms of its treatment of CoACS;
* The Scottish Government should consider extending any relief to other types of investment vehicles funds where property is seeded – for example Real Estate Investment Trusts, which are often used in the same circumstances as PAIFs;
* By providing these reliefs Ministers would be helping support the attractiveness of Scottish property as an investment asset and the economic benefits of its future development, including construction; and
* The majority of the SDLT anti-avoidance should remain (although some respondents measures should remain however given the pan-UK nature of the funds in question, respondents wanted the Scottish and UK Governments to work collaboratively around amending, what they deemed to be severe, anti-avoidance clawback provisions and that these should not be directly copied into LBTT legislation.
1. Institutional investment activity plays a key role in supporting (primarily) the commercial property sector, itself an important sector of the economy with commercial construction, repair, maintenance and real estate contributing almost £4.8 billion to Scottish GVA. This is equivalent to 3.7% of Scottish GVA. Commercial property investment transactions totalled £2.8 billion in Scotland during 2017 whilst Scotland’s share of UK commercial property investment was 5.8% in 2017. It is estimated that 55% of the commercial property sector is owned by institutional investors. reporting that every £100 million of demand for commercial property raised a further £73 million contribution to the economy.
2. The Scottish Government’s response to relevant issues identified in the consultation responses and its planned future approach is set out at the end of this document.
3. The following sections provide a more detailed analysis of the consultations responses received and the broad themes drawn out in each section.

**Property Investment in Scotland**

1. The second chapter considered the property investment market in Scotland both historically and the current position, in regards to LBTT compared to SDLT in England and Northern Ireland. It also looked at the value of the investment market in the UK, the proportion that applies to Scotland, how this has traditionally been managed and the types of funds that hold UK and Scottish properties was considered.
2. Detail was provided describing the types of investment funds available and being considered for relief from LBTT focussing on PAIF’s and CoACS, and how they operate in a Scottish context.
3. Respondents were asked for their views on the described funds, the value and size of fund, their exposure to Scottish property and the general property investment landscape within Scotland.
4. The responses generally agreed with the Scottish Governments description of the property investment market in Scotland and types of funds operating within it. There was however a significant comment on the described operation of CoACS. It was noted that for the purposes of SDLT and Land Transaction Tax (LTT) operated in Wales, CoACS are treated as opaque, that is it is the entity (investment fund) that is the tax payer in such situations and not the individual members of the fund.
5. Various details were provided on the amount, the size and value of current investment funds in the UK and their potential portfolios of Scottish property. Several replies provided that the UK government and HM Treasury had stated in 2014 and 2016 that the amount of UK property currently held in investment funds was approximately £60 billion. Most respondent’s agreed that the amount of Scottish property held in these funds varies between 10 – 12% depending on the fund. One contributor stated they were aware of certain investment funds holding both higher and lower amounts of property than the figures provided.
6. In addition extra information was provided as general commentary on the property investment market in the UK and its impact on the wider economy. It was noted that the Bank of England closely monitors the commercial property values as an indicator of UK wide investment; a fall of 10% in property values would roughly equate to a 1% reduction in the overall economy. This statistic was further reinforced in a Scottish context by the Fraser of Allander Institute which was quoted as reporting that every £100 million of demand for commercial property raised a further £73 million contribution to the economy.[[1]](#footnote-1)

**Seeding relief**

1. Chapter three of the consultation focussed on whether or not the Scottish Government should introduce a seeding relief for PAIF’s and CoACS, the potential effects on businesses and how such a relief would compare to the equivalent SDLT relief. The Scottish Government’s priority in this area was establishing the link between these types of funds and the wider Scottish economy.
2. Respondents were unanimous in support for the introduction of a seeding relief from LBTT. 15 positive replies in support of the introduction of a relief were received alongside comments on the other questions proposed, these responses focussed on comparisons with SDLT and the potential impact such a relief could have and the consequence of a ‘do nothing approach’.
3. Some of the responses to this section of the consultation provided comments that are relevant to the later questions. For this reason they are not covered here and have been considered alongside the relevant sections to which they refer.
4. The most consistent reply was that any LBTT relief should be similar in scope and effect to what is available under SDLT. This approach was summed up by KPMG who stated,

 “Parity with the SDLT regime…would allow Scottish property to be treated on an equal…with property in other parts of the UK…prevent bias against investing in property in Scotland…Simpler for business if conditions…for SDLT and LBTT were uniform”.

1. They did however make it clear that there were some parts of the current SDLT seeding relief that may require amendment. This observation was echoed by other respondents, specifically in relation to the SDLT claw back provisions.
2. It is also of note that several respondents requested the Scottish Government consider extending a seeding relief from LBTT to cover seeding into Real Estate Investment Trusts (REITs). These funds are where described as sharing common features with PAIFs and that PAIFs were introduced shortly after and as a direct consequence of the introduction of the REIT regime.
3. This section considered what the impact of a ‘do nothing’ approach on the part of the Scottish Government would be and the impact that this would have on businesses and business decisions.
4. As with other comments in this section of the responses were in general agreement that a do nothing approach would have a negative consequence for Scotland whereas introduction of a relief would have a positive effect. Eversheds explained,

 *“the positive impact would be property situated in Scotland would be considered on an equal basis with property in England and Northern Ireland…used to seed…CoACS and PAIFs”.*

1. In contrast to this another contributor explained it has not launched a Real Estate CoACS as a lack of a current LBTT seeding relief has to date been one of the barriers to seeding Scottish property into CoACS.Some professional bodies advised that they suggest their clients do not invest in Scottish property and current fund operators do not seed Scottish properties into new fund types, in turn this could result in them potentially disposing of those properties.
2. There was one call for a retrospective effect should an LBTT seeding relief be introduced. The suggestion proposed that funds that had seeded recently and left out Scottish property would be able to seed that property into their new fund and retrospectively benefit from the proposed relief.
3. In summary respondents were unanimous in their support for a seeding relief, that any relief should be similar to SDLT but not copy the claw back provisions for the current SDLT relief, consider using different but targeted anti avoidance provisions alongside the existing Scottish GAAR in the longer term and to consider including Real Estate Investment Trust’s (REITs) if any LBTT seeding relief is introduced.

LBTT Treatment of Coacs

1. This section of the consultation sought to gather views on the possible introduction of an LBTT relief for the exchange of units within CoACS, the potential benefits and drawbacks of this, the effect of a do nothing approach and general comments, evidence or detail related to the exchange of units.
2. There was unanimous support for the introduction of a relief for the exchange of units within CoACS, similar to the support for introducing a seeding relief. Several respondents stated the exchange of units in a CoACS should be opaque for LBTT purposes similar to SDLT and LTT.
3. The replies received on positive or negative impacts of a relief for exchanges focussed exclusively on the positive consequences of such a relief. Four contributions stated explicitly that there would be no negative consequences if a relief for exchanges was introduced. The replies did not provide any examples of potentially negative consequences.
4. The general theme extracted from responses is that the Scottish Government could and should seek to achieve parity with SDLT. This would be achieved by introducing a relief for exchanges of units within CoACS. It was suggested that this would be welcomed by investment fund managers, investors themselves and other operators as it would reduce the tax administration burden, be convenient and create certainty of tax treatment across regimes (SDLT, LBTT and LTT) within the UK. CIOT summed this up in their reply that

“A relief along the lines of that available under SDLT...would represent a welcome streamlining of tax administration…and…aid efficiency of LBTT. Alignment of SDLT and LBTT reliefs…would also provide simplicity and certainty for the taxpayer”.

1. To further expand on this point HSBC stated,

 *“*property funds are…pan UK. Without parity between LBTT and SDL there is significant risk Scottish properties would be excluded from CoACS”.

1. HSBC stated that these funds are ‘pan UK’ (they contain assets across the UK). It follows that if the tax treatment across regimes in the UK is the same it would reduce the administration burden and ease the operation of these funds.
2. There was agreement that an exchanges relief would be beneficial to Scottish real estate. Responses stated that properties in Scotland would no longer be considered undesirable assets, seen to decrease the liquidity of funds, inferring the absence of relief (currently) reduces the investment potential in Scottish property. The liquidity argument was presented as problematic by KPMG who explained,

 *“where there is a change in unit holding…the strict legal position may be…a technical need to account for very small amounts of LBTT”.*

1. In other words where there is a change in units within a fund an LBTT return would be required by every unit holder for each Scottish property within the fund, a significant and potentially complex administrative burden. Eversheds expanded on this in detail explaining that the exchange of units in funds needs to be ‘opaque’ for LBTT purposes.
2. Respondents to chapter four were asked their opinion on what the consequences of a ‘do nothing approach’ by the Scottish government could have. Again similar to contributions on a ‘Seeding relief’ there was general agreement that such an approach would be detrimental to Scotland and Scottish real estate. While there were replies to this question by every respondent only a few provided detail of the consequences of ‘do nothing’. The consensus being that a do nothing approach would encourage professional advisors to the industry to advise against clients investing in Scottish property. Whereas respondents from fund operators explained that, *“*It is unlikely that Scottish properties would be held in or seeded into CoACS*”.*
3. In summary there was unanimous support for a relief from LBTT for the exchange of units within CoACS funds. A do nothing approach by the Scottish Government was viewed as being detrimental to investment in Scottish real estate. The benefits of relief would be the streamlining of the tax treatment of property assets in CoACS funds across the UK, reducing administration for operators and reducing tax complexity for tax payers.

**tax avoidance**

1. The potential for avoidance around these reliefs is complex, presents a real risk to revenue and needs to be considered carefully. The Scottish Government is also aware that current UK SDLT anti-avoidance arrangements have prevented many fund conversions or seeding taking place and limited opportunities for investors to take advantage of the new investment vehicles. The majority of stakeholders stressed their wish that whilst the Scottish Government should provide parity by way of these reliefs, any LBTT seeding relief should not copy the SDLT claw back provisions exactly.

1. Ernest and Young’s comments cover the substance of several other responses, in their reply they state,

 *“*Consideration should be given…to ensure…the relief cannot be abused without adopting the claw back measures…in SDLT*”* and that,

 “Consideration should be given to providing alternative safeguards to abuse…we note PAIF’s are subject to Genuine Diversity of Ownership rules (GDO) and similar rules could be introduced for CoACS…as well as the GAAR”.

1. GAAR refers to the Scottish Revenue and Tax Powers Act’s General Anti Avoidance Rules. Related to this point the Law Society of Scotland and others highlighted that the current claw back for SDLT may be amended and any change made should be considered if a similar LBTT relief is introduced.
2. Stakeholders believed that, should the UKGov change SDLT clawback arrangements, the industry would see a sudden increase of fund managers initiating seeding into PIAF’s and CoACS which in turn would create associated economic risks around the desirability of Scottish property.
3. Almost all respondents commented that the investment industry was having difficulties with plans to seed properties into these new types of investment vehicle as SDLT anti-avoidance claw back provisions created underwriting issues. For example it was noted that actuaries were usually obliged to consider their policy holders wishes (over the operation of funds as a whole). It was argued that unit linked funds have little control over individual investors behaviors, if an individual leaves a fund, claw back can be triggered. This was because fund managers are compelled to release assets to meet the costs of policy redemptions and examples where given of Scottish assets being separated out at the point of seeding and used precisely for this purpose. Some stakeholders stated that this claw back issue is more acute in the insurance industry given the volatility of policy holder behavior and potential liabilities.
4. Despite this there was a general, but not unaminous, consensus amongst stakeholders that many aspects of the other SDLT anti-avoidance measures replicated should the reliefs be put in place.

1. Respondents were also of the general opinion that That Scottish Government should it legislate for a percentage of ownership test and portfolio test in the same manner as the rest of the UK and that that the fund managers and scheme operators should be liable for the recovery of any tax liability resulting from these potential reliefs.
2. Aberdeen Standard *stated,*

 *“*The commercial property portfolio test should be based on the value of pan UK property using the same thresholds as apply for SDLT. This simplifies compliance and means that a fund that qualifies for SDLT seeding relief will automatically qualify for LBTT seeding relief as well.

 Investment funds are subject to non-tax regulation and legislation that make it very difficult for investment funds to engage in tax avoidance. The regulation that exists around setting up investment funds contains substantial anti-fraud and anti-avoidance measures.”

**potential impacts**

1. The consultation asked if LBTT parity with SDLT regarding PAIFs and CoACS would in any way, impact upon equal opportunities, human rights, island communities, privacy and/or sustainable development in Scotland. Two respondents noted that not introducing re;iefs would impact upon sustainable development. No other comments were received from stakeholders and no negative impacts were identified.

Scottish Government Response

1. The Scottish Government would like to thank all those who responded to this consultation. The high level of detailed and technically informed responses along with the feedback and comments provided separately during our stakeholder event (see Annex B) has helped to inform the Scottish Government’s approach to an LBTT ‘seeding relief’ and an ‘CoACS unit trading relief’. The Scottish Government will introduce these two reliefs from LBTT for property investment funds over the course of 2019.
2. The Scottish Government is aware of the importance of investment sector activity in supporting the commercial property sector, itself an important sector of the economy with commercial construction, repair and maintenance and real estate estimated at contributing almost £4.8 billion to Scottish GVA . This is equivalent to 3.7% of Scottish GVA. Commercial property investment transactions totalled £2.8 billion in Scotland during 2017 whilst Scotland’s share of GB commercial property investment was 5.8% in 2017.
3. The one of the main considerations of the Scottish Government was linkages between these investment vehicles and the real economy, however consideration was also given to how these investment vehicles perform and behaviours of investors if the reliefs were, or were not, provided for in LBTT legislation. The Scottish Government understands the main benefits that would flow to the asset management sector, pension funds and insurance companies wishing to collectivise their current property portfolios which may allow them to structure their operations more efficiently. This includes benefits passed down to policy holders. In addition without a relief new funds may not purchase or invest in Scottish property, given the relative inflexibility of these assets, which would be detrimental to future LBTT forecasts.
4. Stakeholders also made arguments that access to this type of capital may be impeded as competition for investment is increasingly on an international basis with other countries and areas of the UK providing equivalent reliefs. Equally whilst much of Scottish and UK capital is often invested overseas, it is estimated that over 50% of commercial property investment transactions in Scotland involve overseas capital.
5. Stakeholders were also supportive of a relief for the exchange of CoACS units saying it would increase the liquidity in CoACS units and may encourage managers of CoACSs to invest in and develop Scottish property. Through the consultation managers of CoACS stated they were cautious of investing in and developing Scottish property in favour of property in the rest of the UK due to the relief available under SDLT.
6. Whilst stakeholders responded wishing to see LBTT parity with SDLT in terms of a seeding relief they also highlighted that, due to underwriting issues in relation to anti-avoidance clawback arrangements, they were prevented from converting funds or seeding assets into these relatively new investment vehicles.
7. Scottish Ministers are however mindful of the history around seeding reliefs – specifically that the UK government previously introduced an SDLT exemption for the seeding of assets into unit trusts which was widely acknowledged, through practices such as ‘enveloping’, as being a key vehicle for tax avoidance. This relief was subsequently repealed through the 2006 Finance Act.
8. The Scottish Government will therefore, as a starting point, consult on legislation bringing parity with the UK on anti-avoidance measures including:
* a UK wide ‘portfolio test’ limiting the application of the relief to transactions where a minimum number of properties and a minimum value of properties are transferred, in order to eliminate the risk of enveloping,
* replicate Genuine Diversity of Ownership rules present in SDLT legislation; and
* provisions which introduce a mechanism to recover (‘claw back’) from the fund LBTT where the conditions of the seeding tests have not been met, or when a fund no longer qualifies as being a PAIF or CoACS (in the first 3 years of the seeding).
1. The Scottish Government will engage further with the investment sector and Revenue Scotland at this time on with regards to the specific claw back arrangements.
2. Scotland has many advantages as a place to invest in and for which to domicile funds. It has a stable and well respected legal system, a highly developed financial system, excellent global and local connectivity, long term experience of supporting international investment activity, some of the highest performing higher and further education institutions, supportive investor-friendly policies and a growing portfolio of large scale investment opportunities. These reliefs will help safeguard the investment in, and the development of, Scottish real estate and will further increase the attractiveness of Scotland as an investment destination.
3. The Scottish Government therefore intends to introduce these two reliefs from LBTT for property investment funds which will be provided for through secondary legislation. Once the nature of the UK’s withdrawal from the EU becomes clear - there will be a consultation launched in 2019 on a draft Scottish Statutory Instrument (SSI) that will provide for properties to be seeded (without an LBTT charge) into a CoACS or PAIF and for the trading of units in Co-owned Authorised Contractual schemes to be exempt from an LBTT charge.

**ANNEX A**

**List of Respondents**

1. Pinsent Masons LLP

2. Chartered Institute of Taxation (CIOT)

3. Eversheds Sutherland International LLP

4. HSBC Securities Services

5. KPMG LLP

6. Ernst & Young LLP

7. Organisation wishing to remain anonymous

8. The Association of Real Estate Funds (AREF)

9. Scottish Property Federation

10. Aberdeen Standard Investments

11. The Investment Association (IA)

12. Brodies LLP

13. Law Society of Scotland

14. ICAS

15. Deloitte LLP

**ANNEX B**

**Discussion on a Potential Seeding Relief for PAIFS and CoACS**

**&**

**LBTT Treatment of CoACS**

Meeting of Wednesday 5th September 2018 (13:30 – 15:30)

Conference Room 2, Victoria Quay, Scottish Government, Edinburgh

**Attendees**

Joanne Walker – CIOT, John Buckeridge – Eversheds Sutherland International LLP, Sinead Stocks – HSBC, Gordon Gray – KPMG LLP, Gordon Foster – E&Y LLP, Graham Miller – Royal London, Bob Langridge – Brodies LLP, Bryan Flint – ICAS, Neil Sanford – Aberdeen Standard, Jim Hillan – LSS, Isobel D’Inverno – LSS, Rupert Seggins – SFC, Claire Murdoch – SFC, Avril Campbell – RS, Martin Davidson – RS, David Melhuish – SPF, Ewan Cameron-Nielsen - SG, David Kerrouchi - SG, Ian Goldsmith - SG

**Welcome and introduction**

1. Officials welcomed attendees to the discussion on the possible introduction of an LBTT ‘seeding relief’ for PIAFS and CoACS. Delegates were thanked for their contributions to the consultation document and for their continued engagement with officials in the development of the devolved taxes. The importance of following Adams Smiths principles and the value collaborative working and discussion with stakeholders has brought to policy development was reiterated. A brief outline of the agenda circulated points was then provided attendees to give context to the following conversion.

**Seeding Relief**

1. Officials sought views as to the relevance of the relief for investment fund activity, the Scottish property market and Scottish economy. Further detail was also sought on the type of funds which might have an interest in making use of a seeding relief were it to be available. During discussion, attendees made the following points:
* The behavior of fund managers is governed by the need to maximise investment returns for their clients. Any tax which might be due in relation to a transaction is therefore a relevant consideration.
* A range of investment funds would have a potential interest in seeding properties into a PAIF or COACS, including: life assurance with profit funds, which are no longer commercially attractive to new investors and UK and non-UK occupational pension funds.
* With regard to pension funds, it was noted that various consortiums of local authority pension funds in England and Wales are currently looking to pool assets, including property holdings, although with continued independent management (given differing sizes). The aim is to drive down management costs and create greater efficiency. Not all have decided on the form of a collective holding for property, but CoACS are a viable option.
* In very broad terms, there was a suggestion that PAIFS are largely used for non-residential property investment, whilst CoACS are more residential (focused on e.g. student housing or other built to rent projects, rather than family homes or individual apartments). Residential property in PAIFs may be becoming more significant however and there is already one fully residential PAIF, focused on build to rent properties.
* Clawback provisions for the SDLT relief (discussed further below), along with other issues, have to date prevented widespread seeding. Two funds have however been launched using the SDLT seeding relief, both of which have excluded Scottish property from their seed portfolio. One of the 2 “new” funds was launched in October 2017. They left approximately £90m - £100m of Scottish real estate out of the portfolios due to LBTT issues. A further seeding exercise is planned for the future. There is now a programme in place for selling these down. It was separately suggested that, given clawback issues, these properties could be used to provide the necessary flexibility when policy holders wished to redeem their investment.
* There was no evidence, from the operation of current funds, that property turnover is greater or lesser for properties owned by investment funds than property not under fund management; and
* In terms of timing, it was noted that decisions taken to seed funds into new investment vehicles is not a short term decision and can often take over 18 months to resolve.
* Similarly decisions to move large high value assets between funds or to dispose of them are not short term decisions, negotiations and decisions can take many months.

**SDLT Claw Back and Tax Avoidance**

3. Attendees highlighted concerns about current SDLT claw back provisions, which are seen as limiting the value of the relief, and noted that representations were being made to HMT/HMRC. Any fix could result in a sudden increase of fund managers initiating seeding into CoACS or PAIFS. This would need to be considered in relation to LBTT; attendees stressed that any arrangements across the two regimes should be uniform. More specifically, areas of concern highlighted with regard to the claw back provisions were that:

* Actuaries are obliged to consider only their policy holders wishes not the operation of funds as a whole. For example unit linked funds have no control over individual investors behaviors which in turn can trigger claw back provisions when an individual leaves a fund. Fund managers have to release assets to meet the costs of policy redemptions.
* When a fund becomes a CoACS it changes the tax treatment of the fund beneficiaries. The individuals become liable for tax on their income and the fund itself it is no longer taxed at source. This transparency can trigger claw back provisions when properties in the fund are bought and sold. In turn this can hamper growth in funds due to concerns over triggering claw back.
* Should the Scottish Government proceed with a seeding relief it could introduce a clearing process which alongside a TAAR would reduce avoidance risk**.**

4. Attendees set out their view that investment funds are subject to non-tax regulation and legislation which contains substantial anti-fraud and anti-avoidance measures that in turn make it difficult for investment funds to engage in tax avoidance. As such, they saw no need for additional claw back provisions in the seeding relief legislation. It was suggested that Scottish Government should contact the Collective Investment Team at HMRC for further information on investment fund regulation. Stakeholders highlighted that they thought it was important that the Scottish Government work collaboratively with their UK Government couterparts.

**LBTT Treatment of CoACS**

* Transparency of CoACS could technically result in a large number of potential LBTT returns whenever property or units in a fund change. This is not practical from a fund management perspective. Consequence is CoACS holding Scottish property should be made tax opaque for LBTT.
* Small scale social housing is being invested in, this includes assisted living facilities and properties. This type of investment is often by Real Estate Investment Trust funds.
* Large number of the funds are offshore funds - specifically Jersey– currently changing due to UK changes to offshore tax treatment (March/April 2019 CGT change).
* When properties are traded regularly there is a requirement for regular valuations and consequent adjustments to accurately reflect value of fund when units are traded, could be multiple valuations required in any given year.
* Trusts LBTT legislation refers to English and Welsh Trust laws. Relief should use Scots law but any tests such as on chargeable interest should be similar in scope to SDLT.
1. <https://workplaceinsight.net/wp-content/uploads/2018/03/The_economic_contribution_of_the_commercial_property_sector_March_2018.._.pdf> [↑](#footnote-ref-1)