

SPF submitted response to The Land and Buildings Transaction Tax: proposed relief for Green Freeports Submitted

Overview and eligibility for the relief

Qualifying Green Freeport land

1 Do you agree that the provisions as drafted in respect of qualifying Green Freeport land work as intended?

Yes

2 If not, what amendments would you propose to the draft legislation and on what basis?

Please give us your views:

We agree with the draft legislation specifying the qualifying area of land works that will be eligible for Green Freeport LBTT relief. We see the legislation as clear and unambivalent. Our only concern is whether the time period for eligibility will synchronise with the effective operational period for the Green Freeport bodies themselves? At the moment we believe the appropriate governing and legal procedures are still being finalised and we would not wish to lose valuable investment time (for LBTT relief) because the LBTT relief period has begun ahead of the operating bodies themselves. We understand as well that there are other UK tax reliefs relating to capital allowances and national insurance contributions, which will apply to the tax sites in the Scottish Green Freeports. These reliefs will be available from the date the tax sites are formally designated by the Treasury under section 113 of the Finance Act 2021. We encourage the Scottish Government to coordinate the timings of the availability of the LBTT relief with the UK Government and the emerging Green Freeport bodies themselves in order to maximise the time limited period for investment opportunities.

Qualifying transaction land

3 Do you agree that the provisions as drafted in respect of qualifying transaction land work as intended?

Do not know

4 If not, what amendments would you propose to the draft legislation and on what basis?

Please give us your views:

We broadly support the policy intention for the qualifying transaction land provisions but we have a concern relating to the relationship between developer and investor (ultimate owner). A developer will often need to sell land to the investor ahead of commencing development works and we are concerned this may be disqualify a developer from LBTT relief due to the provisions within the legislation that relate to stock that is sold without development or redevelopment? It is the developer who will attract the long term investor and the longer term occupier of a site, as well as take the risk with onsite planning, engineering etc works. We believe it is vital therefore that developer is supported to take this risk by the incentives related to Green Freeports, in addition to the investor, as the investor will seek to ensure the developer addresses the development related risks.

Qualifying manner

5 Do you agree that the provisions as drafted work as intended?

Do not know

6 If not, what amendments would you propose to the draft legislation and on what basis?

Please give us your views:

Again we support the general policy intent but as addressed under Question 4 we are concerned that the legislation may act against developers seeking LBTT relief where they are forward funded by a long term investor.

Ancillary land

7 Do you agree that the provisions as drafted work as intended?

Yes

8 If not, what amendments would you propose to the draft legislation and on what basis?

Please give us your views:

We support these pragmatic provisions to support LBTT relief for land works ancillary to investments in Green Freeport tax sites.

Full relief

9 Do you agree that the provisions as drafted achieve the policy intent of allowing full relief for qualifying transactions where at least 90% of chargeable consideration is attributable to qualifying transaction land?

Yes

10 If not, what amendments would you propose to the draft legislation and on what basis?

Please give us your views:

Partial relief

11 Do you agree that the provisions as drafted achieve the policy intent for partial relief where between 10% and 90% of chargeable consideration is attributable to qualifying Green Freeport land?

Do not know

12 If not, what amendments would you propose to the draft legislation and on what basis?

Please give us your views:

We agree with the policy intent to reduce the level of relief in line with the amount of chargeable consideration not eligible for relief. The only caveat we would hold is to echo our earlier concern with the provisions in the legislation relating to sale of undeveloped land required to secure forward funding of Green Freeport land works.

13 Are there any specific scenarios to which the Scottish Government should give careful consideration to the arrangements for partial relief?

Please give us your views:

There may be large scale developments covering part of a FreePort area where the government may wish to ensure incentives for the Green Freeport are supported - in order to secure wider sustainable economy benefits. The legislation relating to qualifying land should seek to ensure it does not deny the possibility of financial incentives in such scenarios.

Attributing chargeable consideration to land

14 Do you agree that the provisions as drafted achieve the policy intent of requiring just and reasonable apportionment of consideration to land?

Yes

15 If not, what amendments would you propose to the draft legislation and on what basis?

Please give us your views:

We support the draft proposals for calculating partial relief.

Alternative property finance arrangements

16 Do you agree that the provisions as drafted work as intended in terms of the provision or withdrawal of relief under alternative finance arrangements?

Yes

17 If not, what amendments would you propose to the draft legislation and on what basis?

Please give us your views:

Our members support these provisions.

Claims giving effect to relief

18 Do you agree that the provisions as drafted achieve the policy intent?

Yes

19 If not, what amendments would you propose to the draft legislation and on what basis?

Please give us your views:

While we agree with this process we highlight again our concern that the relief period may precede the actual effective physical establishment of the Green freeport bodies. As such the LBTT relief may be available when there is not a legal entity capable of agreeing investment transactions and as cited earlier we are aware there are wider UK government timescales that need to be achieved for all of the potential of the Green Freeport areas to be

achieved. We suggest again a trigger mechanism whereby relief is set for five years upon the successful establishment of a Green Freeport organisation and the designation of the tax sites within the Green Freeport for the purposes of the associated UK tax reliefs which will apply to the Green Freeport tax sites.

Additional return required when relief is withdrawn

20 Do you agree that the provisions as drafted achieve the policy intent of requiring an additional return where relief is withdrawn?

Yes

21 If not, what amendments would you propose to the draft legislation and on what basis?

Please give us your views:

Interest payable where relief is withdrawn

22 Do you agree that the provisions as drafted achieve the policy intent of requiring interest to be paid where relief is withdrawn?

Yes

23 If not, what amendments would you propose to the draft legislation and on what basis?

Please give us your views:

Withdrawal of relief

24 Do you agree that the provisions as drafted achieve the policy intent of providing for withdrawal of relief where land ceases to be used in a qualifying manner?

Yes

25 If not, what amendments would you propose to the draft legislation and on what basis?

Please give us your views:

We do not oppose these provisions but we would add that guidance needs to be clear in respect of the 'unforeseen circumstances' phrase used in part 4 8(2) of the Withdrawal of Relief provisions. There may be events that mean land can no longer be used in the manner intended to be eligible for Green Freeport relief status. Perhaps an unexpected severe flooding situation or indeed a Port incident which means that land ceases to be usable for the purposes intended when relief was granted. In this event, unlikely as it may be, we would not want the drafting of the legislation to prevent any understandable discretion being applied by Revenue Scotland.

Control period

26 Do you agree that the provisions as drafted reflect the intended definition of a 'control period'?

Yes

27 If not, what amendments would you propose to the draft legislation and on what basis?

Please give us your views:

Part-disposal of an interest in qualifying Green Freeport land within the control period

28 Do you agree that the provisions as drafted achieve reflect the policy intent of how part disposals are treated?

Yes

29 If not, what amendments would you propose to the draft legislation and on what basis?

Please give us your views:

Lease assignments out with the relief period

30 Do you agree that the provisions as drafted work as intended to treat the assignment of a lease, against which relief has been claimed, as the grant of a lease?

Do not know

31 If not, what amendments would you propose to the draft legislation and on what basis?

Please give us your views:

The policy intent appears reasonable and the provisions of the draft Article appear to work as intended, however we think the explanation of this provision in the consultation document is misleading. The consultation document suggests that the assignment of a lease in relation to which Green Freeports Relief was available when the lease was granted will only be treated as the grant of a new lease by the outgoing tenant if the assignment takes place after the relief ceases to be available.

In fact under the draft legislation assignments of such leases during the period when the Green Freeports Relief is available will also be treated as the grant of a new lease if Green Freeports Relief is not available in relation to the assignment itself, for example because the land will not be used for a qualifying purpose after the assignment.

32 Are there other aspects of lease transactions which the Scottish Government should give further consideration to in providing for this relief?

Please give us your views:

It appears possible that a three year review might be triggered during the five year -period in relation to a lease where partial Green Freeports relief has been claimed. Could this not be set aside given that lease transactions will receive relief generally and it is therefore likely to be a complex and revenue-light requirement?

Equality impacts

33 Do you think that the proposed amendments will in any way impact upon equal opportunities, human rights, businesses, island communities, privacy and/or sustainable development in Scotland?

Businesses

34 If so, please give us your views.

Please give us your views:

The proposals should support investment in the two Green Freeports. Our only concern is the constraint for the five year period and whether the effective operation of the UK reliefs for the two areas, as well as the steps needed to establish them as fully functioning legal entities able to undertake land transactions are synchronised. We would not wish to see a significant period of relief lost because the Freeport's are not in effective operation yet.

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