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Real Estate



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Perceived wisdom is that uncertainty is not good for investment markets. The Scottish Independence Referendum was launched in May 2012 and the Referendum itself is due to take place on 18 September 2014. Notwithstanding this, 2012 and 2013 have seen continuing (and indeed increased) activity in the Scottish Property Investment market. Therefore, the Independence Referendum does not appear to have had a detrimental impact on activity thus far. There are some differences of opinion amongst market commentators as to why there does not appear to have been an impact on the Scottish Property Investment market and views include the following:

- Based on opinion polls, a Yes vote may not happen;
- even if there were a Yes vote, there should not be a material impact on the Scottish Property Investment market fundamentals; or
- a Yes vote may create opportunities for the Scottish Property Investment market (such as requirements for additional Scottish Government offices in Scotland).

There are also a range of views as to whether a Yes vote could be positive or negative for the Scottish Property Investment market and these views tend to mirror those in relation to investment in Scotland generally with the key questions being around

economy, currency, Europe and financial regulation. In this connection please see the points contained in our INFORM Bulletin of January 2014 in relation to the Financial Services Industry (of which the Real Estate Sector forms a part).

Notwithstanding the ongoing Independence Referendum debate, there are a number of specific changes which are already impacting on the Real Estate sector in Scotland and which will impact over the forthcoming months/year and we would highlight these as follows:

Core areas of impact for Real Estate:

- Taxation
- Business rates
- Building efficiency
- Enterprise zone incentives
- Planning
- Long leases

There are others, but these are the areas we see most heavily impacted or likely to be impacted by change – both in terms of



To take a snapshot look at each of those areas and the most significant changes proposed to each:-

Taxation

- **Land and Buildings Transaction Tax:** being introduced to replace SDLT in Scotland in 2015 and administered by a new body called Revenue Scotland. The proposal is for a progressive tax. Early indicators are we may see increased rates at the higher end but there is no hard evidence of that at this stage and politically there will be a need to continue to encourage investment in Scotland, so we can expect continued business lobbying against any material differentiation.
- **Scottish Landfill Tax:** being introduced to replace the current Landfill tax and administered by Revenue Scotland. Indicators are it will be no less than the current rate.
- **Income Tax:** Proposals have been tabled to introduce a Scottish tax in 2016 – one where we may also see a rates differential introduced but again to be assessed against the political background and the need to secure economic growth in Scotland.

Our partner Iain Doran appeared before the Justice Committee of the Scottish Parliament along with the Tax Committee of the Law Society of Scotland in January 2013 to provide expert advice on the introduction of the Land and Buildings Transaction Tax. Iain has also summarised the tax for the Estates Gazette and a copy of his article can be found on our website.

Business rates

- **Empty Property Business Rates relief:** from 1 April 2013 relief levels have been reduced from 50% relief after 3 months to 10% relief (the first 3 months attracting 100% relief) for commercial properties, with certain exceptions. Greater relief applies for new builds and new build occupiers of shops or offices which have been empty for at least a year.
- **Large Retailers or Health Business Rates Levy:** introduced a rates supplement of 13p in the pound on all large retail properties in 2013/14 with a rateable value on or over £300,000 which sells both alcohol and tobacco.
- **Renewable energy rates relief:** provides up to 100% rates relief for renewable energy producers concerned with the production of heat or power from various specified sources.

Our partner Donald Shaw has discussed the impact of business rates and the investment market in Scotland in The Scotsman and a copy of his article can be found on our website.



Building efficiency

- **EPCs:** different rules apply, resulting in amongst other things different bandings and ratings between the jurisdictions; there is no sign of alignment
- **Compulsory improvements for older Scottish buildings:** through the Climate Change (Scotland) Act 2009 we are seeing the proposed introduction in Scotland, anticipated for later this year or in 2015, of certain minimum energy efficiency improvements to commercial buildings subject to a floor cap and limited exceptions, benched against the 2002 Scottish building regulations.
- **Letting prohibitions on poorly rated properties:** through the Energy Act 2011 various energy controls are being introduced to both Scotland and England, but with a different timetable and indeed differential regulatory control over lettable residential or commercial properties with poor efficiency ratings dependent on location. It is possible Scotland may “jump first”.

Public Aye, our dedicated online update service for the public sector, has further information on this which can be found at www.public-aye.com.

Enterprise Zone incentives

- **Different rules already apply**
- **Recently created zones:** created in 2012 in Scotland and England through different legislation and with different incentives.

Planning

- **Historically different systems**
- **Increasing divergences appearing:** such as the statutory 6 week Judicial Review period in England, where Scotland has no defined statutory terms, and the reduction of the default implementation period in Scotland, where England has moved back towards a greater time grant.

On 12 June 2013, Dundas & Wilson hosted a conference which set out to explore the contribution that Town and Country Planning is making to Scotland’s economic well-being. The title “Planning Contribution to Our Economic Recovery”, was carefully chosen: too often the planning system is considered to be a barrier to economic development. However, recent changes to modernise the system have sought to make it more fit for purpose in line with the aims of Scottish Ministers, and to deliver sustainable economic growth in Scotland. The underlying question was “Have we gone far enough with modernisation?”

A summary of the debate can be found on our website.

Long leases

- **Length:** New Leases are already capped at 175 year duration in Scotland as opposed to 999 years which remains common in England.
- **Residential lettings:** There are already restrictions on residential lettings extending beyond 20 years in Scotland, yet such lettings are very common in England. There are, however, suggestions that the 20 year rule might be abolished in Scotland.
- **Proposal to convert long leases to ownership:** in 2015 current leases where the duration remains in excess of 175 years with a rental level below £100 per annum will automatically convert to outright ownership. Procedures are in place for landlords to preserve existing rights after conversion.

A bulletin from a series designed to inform our clients' analysis of the Scottish Independence Referendum debate. Each bulletin covers an industry sector or other area of interest to our clients. As any analysis has to be driven by the prospects for, and differences that would result from the proposals of the Scottish Government (who are the advocates for change), each bulletin contains our views on the implications and issues in that sector or area.

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