

Agenda Supplement – Finance Committee

Meeting Venue:

Committee Room 3 – Senedd

Meeting date: 3 November 2016

Meeting time: 09.00

For further information contact:

Bethan Davies

Committee Clerk

0300 200 6372

SeneddFinance@assembly.wales

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

– Consultation Responses: Consultation on the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

9 Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill: Consideration of evidence

(15.00–15.30)

(Pages 1 – 83)

Attached Documents:

Contents

LTTA 01 Land Registry

LTTA 02 Geldards LLP

LTTA 03 Country Land and Business Association Cymru

LTTA 04 Council of Mortgage Lenders

LTTA 05 The Chartered Institute of Taxation

LTTA 06 Deloitte

LTTA 07 Residential Landlords Association

LTTA 08 The Institute of Chartered Accountants in England and Wales

LTTA 09 Eversheds

LTTA 10 Law Society

LTTA 10a – Additional evidence from the Law Society

LTTA 11 National Association of Estate Agents



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

LTTA 12 Royal Institution of Chartered Surveyors

LTTA 13 National Farmers' Union Cymru

Y Pwyllgor Cyllid

**Bil Treth Trafodiadau Tir a Gwrthweithio Osgoi
Trethi Datganoledig (Cymru)**

**Ymatebion i'r Ymgynghoriad
Hydref 2016**

.....

Finance Committee

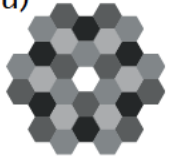
**Consultation on the Land Transaction Tax and
Anti-avoidance of Devolved Taxes (Wales) Bill**

**Consultation Responses
October 2016**

Cynnws | Contents

*Ar gael yn Gymraeg /Available in Welsh

Rhif Number	Sefydliad	Organisation
LTTA 01	Y Gofrestrfa Tir	Land Registry
LTTA 02	Geldards LLP	Geldards LLP
LTTA 03	Cymdeithas Tir a Busnes Cefn Gwlad Cymru	Country Land and Business Association Cymru
LTTA 04	Cyngor Benthycwyr Morgeisi	Council of Mortgage Lenders
LTTA 05	Sefydliad Siartredig Trethiant	Chartered Institute of Taxation
LTTA 06	Deloitte	Deloitte
LTTA 07	Cymdeithas y Landlordiaid Preswyl	Residential Landlords Association
LTTA 08	Sefydliad Cyfrifwyr Siartredig Cymru a Lloegr	The Institute of Chartered Accountants in England and Wales
LTTA 09	Eversheds	Eversheds
LTTA 10	Cymdeithas y Gyfreithwyr	Law Society
LTTA 10a	Cymdeithas y Gyfreithwyr	Law Society
LTTA 11	Cymdeithas Genedlaethol yr Asiantau Tai	National Association of Estate Agents
LTTA12	Sefydliad Brenhinol y Syrfewyr Siartredig	Royal Institution of Chartered Surveyors
LTTA 13	Undeb Cenedlaethol Amaethwyr Cymru	National Farmers Union Cymru



Land Registry Report

Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

Written evidence to the Finance Committee,
National Assembly for Wales

21 September 2016



Land Registry

Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

Written evidence from HM Land Registry

Land Registry's main concern is that the Land Transaction Tax should be essentially similar in its operation as Stamp Duty Land Tax. This would make it easier for both conveyancers and the Land Registry to comply with their obligations under the legislation of both England and Wales. This in turn helps the English and Welsh tax authorities to ensure that any tax properly due is paid.

HM Land Registry maintains and develops the register of freehold and leasehold land (and other interests in land) in England and Wales. Under section 79 of the Finance Act 2003 (which we shall refer to as the Finance Act) Land Registry cannot register a notifiable transaction unless the applicant produces with the application a certificate as to compliance with the Stamp Duty Land Tax requirements of the Finance Act, (or such information about compliance as the Commissioners for HM Revenue and Customs specify in regulations).

We note that the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill (which we shall refer to as the LTT Bill) includes a similar provision at section 58. We are therefore concerned that LTT and SDLT should work in the same way, to alleviate additional burdens and complexity for both conveyancers and Land Registry caseworkers. This will help to ensure that land transactions are not registered in error, when LTT requirements have not been complied with.

Our particular areas of concern are—

1. That we can expect to receive a certificate of compliance in the same circumstances as we would expect to do so with SDLT, in particular in relation to—
 - a. Anti avoidance
 - b. Sub-sale relief
2. Certificate of compliance – digital options – in English – or other information
3. Cross border properties
4. Immediate changes to rates and bands without prior notice
5. Transitional provisions

1. Production of certificates of compliance

Most transactions are straightforward, and the need for a certificate (or not, for an exempt transaction) is clear. But reliefs have caused problems both for Land Registry and HMRC in the past, particularly in relation to sub-sales. Several tax avoidance schemes were devised, mainly based on a sub-sale where the ultimate transfer was also subject to another relief. So applicants claimed that no SDLT certificate was needed due to the combination of reliefs. Most of these claims were based on a misinterpretation of the provisions of the



Land Registry

Finance Act, but nevertheless, they resulted in many applications for registration being delayed while we served notice of the applications on HMRC, and HMRC disputed them.

Subsequently HMRC changed the Finance Act by the addition of Schedule 2A, to make it clearer when a relief must be claimed. Land Registry worked with HMRC for many months to find a solution that worked both for conveyancers, Land Registry and HMRC.

We believe that Schedule 1 of the LTT Bill largely follows Schedule 2A of the Finance Act. We have some concerns that Land Registry staff may not have the expertise to recognise what may be a tax avoidance arrangement under section 31 of the Bill, so we think it will be important to have links with staff at the Welsh Revenue Authority with whom we can liaise if necessary. We have done this successfully in the past in relation to the types of claim referred to above.

Land Registry also has a data-sharing arrangement with HMRC, to assist with anti-avoidance measures. If the Welsh Revenue Authority Land Transaction Tax return and collection system are separate, we expect that they would want a similar arrangement. There may be a small cost for setting up the separate service.

But we are as comfortable as we can be given that most reliefs will have to be claimed, so that an SDLT return will be issued. This means that in the vast majority of cases there will always be an SDLT return, so that Land Registry staff will not have to make judgements as to whether or not LTT obligations have been complied with.

2. Certificates of compliance

Under SDLT legislation, the registrar can accept a certificate of compliance “or such information about compliance as the Commissioners for HMRC may specify in regulations”.

That additional provision allows us to accept the submission receipt which is generated when customers apply electronically for an SDLT certificate, but it is not the actual certificate itself. However, the submission receipt contains all the information required to be in a certificate. The submission receipt is issued automatically by the HMRC system, but confirms that a customer has complied with the requirements to submit an SDLT return using the electronic facility offered by HMRC. This in turn allows the conveyancer to apply to register the transaction without delay. They do not have to wait for an HMRC officer to inspect the return and issue a formal certificate.

As both Land Registry and the tax authorities become more digital, we would prefer to be able to rely on digital tax submission receipts as far as possible.

It might therefore be appropriate to include the same or similar wording in the LTT Bill so that we could agree with the WTA as to different types of evidence that could be accepted if LTT returns are lodged electronically.



Land Registry

3. Cross border properties

Our recent detailed research has shown that there are many more cross border properties than we originally estimated. We found over 400 titles straddle the border or exist in both England and Wales to a sufficient extent to exclude mapping or other scale issues. Of these—

- 442 titles are freehold, 33 titles are leasehold and 10 titles are either cautions, rentcharges or unclassified (pending titles);
- 136 titles are residential, 47 titles are commercial, 32 titles are mixed use and the remaining are either general land registration, water, mines and minerals or other interests on land;
- 130 titles had a total of 141 transactions lodged against them (transfers, new leases and first registrations) in the last 5 financial years;

In addition, 27.45% of the border length is identified as unregistered (not straddled nor adjoined by titles in the Welsh side) but, due to capturing methods or to titles being close to the border, significant limitations exist in that analysis.

Section 9 of the Bill states that the consideration for the transaction is to be apportioned on a just and reasonable basis, but does not indicate how. An easy and accessible mechanism will be needed to determine and record the split in value for the purposes of LTT and SDLT. We can see that in practice this could cause delays and complexity for those properties affected. Land Registry will not be able to register a transaction until both certificates (or other evidence) are received.

It is intended that the valuations of the respective parts of the property should be permanent (unless development or other factors alter the respective values), or will customers have to apply for an apportionment to be calculated each time they sell/buy? If permanent, where should the valuation be recorded? Should the percentage split in valuation be recorded on the register of each of these titles? If so, who will calculate it, and what will be the procedure for changing those values if any changes are made to the property? Also, what if the owner disputes the apportionment? No doubt the WRA is considering all these practical problems, but the Bill does not seem to make any provision for regulations to be made in this regard (except for the general power under section 71(1)). These might not be matters for Land Registry, but we will inevitably be asked for guidance by our customers, and registration will be affected by them.

4. Immediate changes to rates and bands without prior notice

Land Registry is used to dealing with sudden changes to SDLT made in the Budget, and will be able to do so for LTT. But immediate changes to the rates and bands without prior notice



Land Registry

could cause problems if there was a sudden change to the minimum threshold for tax. This might mean that we would need evidence, for instance, of the date of exchange of contracts if transitional provisions were made.

5. Transitional provisions

Land Registry (and conveyancers) will need guidance regarding transitional arrangements for transactions for which contracts are exchanged before the date that the Bill comes into force, but not completed until after that date. We could not see any reference to transitional arrangements in the Bill.

Any queries regarding this response can be directed to—

[Redacted]

[Redacted]
[Redacted]
[Redacted]

[Redacted]

[Redacted]

or

[Redacted]

[Redacted]
[Redacted]
[Redacted]

[Redacted]

[Redacted]

**RESPONSE TO LAND TRANSACTION TAX AND ANTI-AVOIDANCE OF
DEVOLVED TAXES (WALES) BILL**

Introduction

The purpose of this paper is to respond to the publication of the Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Bill (the “Bill”) and assist the Finance Committee of Welsh Government with its deliberations of the Bill in advance of the oral representations to be made on 13 October 2016.

General observations

We have been provided with suggested consultation themes and areas that the Finance Committee may wish to consider which have been particularly helpful in considering the Bill given the length of the Bill and the time available for comments.

We are supportive of the need for the Bill and legislation to raise taxes from property transactions and legislation to counter tax avoidance. Given the prospect of Welsh Government losing up to £250M (based on ONS projections) on the switching off of stamp duty land tax (“SDLT”) from 1 April 2018 and the corresponding reduction in the block grant from Westminster, the option of doing nothing to replace SDLT is not a realistic option. The existing pressure on public finances is only likely to increase in 2018 and a decision not to replace a £250M funding stream would probably be unacceptable, both from a public perception and political point of view.

We support the decisions made regarding the use of the powers of Welsh Government to make secondary legislation including changes to the rates and bands of LTT. It is important that the LTT legislation can be amended quickly to enable Welsh Government to react to changes in market practice and changes to SDLT which could have a negative impact on the wider Welsh economy. It is important that Welsh Government can react quickly to any LTT tax-avoidance schemes that escape the proposed anti-avoidance legislation, rather than the response from HMRC which is sometimes slow with regard to SDLT. As professional advisers, it can be tricky advising clients who have heard of a particular scheme which uses a certain interpretation of the legislation with which we as advisers may disagree but has not been stopped by the relevant legislation.

We welcome the decision of Welsh Government to mirror the provisions of SDLT when preparing the LTT legislation and to accept the responses to the previous consultation on LTT which supported the premise that replication of the existing processes and procedures would be desirable.

From a practitioners’ point of view, the existence of clear, unambiguous legislation and guidance together with a notification and payment system that works smoothly will be vital. Clients will not appreciate having to spend substantial fees in order to make a payment of LTT and to file a return. It will also be important for the Welsh Revenue Authority (“WRA”) to be able to support professional advisers and taxpayers with the provision of suitable tax clearances and advice services where there are uncertainties in the legislation and/or guidance issued on LTT.

A failure to provide sufficient resources to WRA in relation to both systems that work and have been adequately tested before going “live” on 2 April 2018 (1 April 2018 being a Sunday) and having personnel with sufficient experience and knowledge to deal with queries could have an adverse effect on the ability to implement the LTT provisions.

Specific areas of the legislation

We do not propose to comment on all the areas of the legislation and unfortunately our comments have been curtailed by a limited amount of time being available to devote to a full, considered review of the legislation.

1. Tax bands and rates

Certainty of the tax bands and the rates in relation to non-residential transactions is important so that commercial property clients can plan ahead with regard to major property developments. An announcement in early 2018 of the bands and rates that differ substantially from the current bands and rates will not give sufficient time for clients to factor in the changes into their budgets.

The relatively high amount of SDLT that is collected from a small number of non-residential property transactions (compared to residential transactions) shows the importance of the non-residential property sector to LTT. It is important that the commercial property sector is not seen as a “cash cow” to fund the spending promises of Welsh Government. Property investors are highly mobile and may choose to invest their money in developments in England if LTT is seen as imposing a greater cost on equivalent developments.

2. Approach to tax avoidance

We recognise that it is important to tackle tax avoidance and to discourage artificial schemes. As a firm we have taken a positive decision not to promote tax avoidance “schemes” to our clients. However, it is sometimes possible to structure transactions in different ways to reduce the amount of tax payable and this would fall within the definition of a “tax advantage” used in clause 31 and the proposed section 81B of the Tax Collection and Management (Wales) Act 2016 (“TCMA”).

Clause 31 uses terms such as “genuine economic or commercial substance” which will be interpreted on a subject basis. Section 81B(1) refers to obtaining a tax advantage with section 81B(2) refers to less tax being paid as a result of entering into the particular arrangement.

There could be a disagreement between the client and the WRA as to whether the transaction was genuine or commercial. The fact that the client had a choice between two structures and chose the structure which results in a lower tax liability should not be caught by a tax avoidance rule.

It has long been the case (since the House of Lords decision in IRC v Duke of Westminster (1936)) that taxpayers, when faced with two alternatives, are entitled to choose the option which results in the lower amount of tax being paid.

Section 81C gives the power to WRA to decide what is “artificial” by reference to whether the transaction was a “reasonable course of action” by reference to the

Welsh tax legislation. Subsection 81C(2) lists a couple of factors to be considered but only refers to the fact that the WRA “may” refer to the factors. There is no compulsion and the WRA could consider other factors not listed in the legislation. There does not appear to be an acceptance of the Duke of Westminster principle.

The let out in section 81C(3) providing for a “whitelist” of arrangements that WRA is prepared to accept are consistent with generally prevailing practice will not assist a client who has structured a transaction on the basis of advice of which the WRA was not aware. The WRA would have to offer a form of advance clearance in relation to a particular structuring of a transaction that varied slightly from an arrangement on a “whitelist”. Without the clearance service the client could be faced with an unexpected tax demand and potentially adverse publicity if the transaction ends up before a court or tribunal as provided for in section 81H.

3. The proposed exemptions and reliefs

We welcome the retention of a substantial number of reliefs that are contained within the SDLT legislation. This approach should avoid the steady “roll back” that occurred with the Scottish Land and Buildings Transaction Tax where reliefs had to be added to the LBTT legislation once Scottish Government had been persuaded of the commercial merits of the reliefs rather than being tax avoidance by the backdoor.

Conclusion

Geldards has been delighted to be able to assist Welsh Government with the development of the devolved taxes through its involvement with the Tax Advisory Group, the Tax Forum and membership of the SDLT Technical Experts Group. Geldards is also looking forward to continuing with its assistance during the passage of the LTT Bill through the Welsh Assembly.

23 September 2016

About Geldards

Geldards is a leading law firm in Wales and England with a heritage of over 160 years of legal expertise. Recognised by the independent legal directories as a regional heavyweight, the firm continues to grow from its Cardiff base with offices in London, Nottingham and Derby.

With 350 talented people, our teams specialise in infrastructure, projects and construction, banking and project finance, real estate, planning and environmental, commercial and procurement, state aid and competition law, employment and pensions, health and safety, charities, constitutional and administrative law and dispute resolution. As multi-disciplinary deal facilitators, we have significant experience in orchestrating high-value transactions involving complex structuring and negotiations within time and cost constraints.

We are also experts at understanding how the law in Wales is rapidly diverging from English law. Under the devolution settlement, there is a growing body of Welsh law which impacts on a broad range of areas. Given the complex and far-reaching reforms and jurisdictional changes, we help clients navigate the legal, regulatory and policy differences in Wales.



Consultation Response

Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

Call for Evidence

Date: 27 September 2016

Introduction

1. The CLA is the membership organisation for owners of land, property and businesses in rural England and Wales. We help safeguard the interests of landowners and those with an economic, social and environmental interest in rural land and the rural economy. CLA Cymru has 3,300 members in Wales who between them own and manage about half of the rural land in Wales. Our membership is engaged in all sectors of the rural economy and includes farmers, landowners and around 250 types of rural business.
2. We welcome this opportunity to respond to the call for evidence by the Finance Committee. In commenting on the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill we have focused on our areas of concern.

Land Transaction Tax

3. As can be seen from the length of the Bill, the legislation on Stamp Duty Land Tax (SDLT) and the new Land Transaction Tax (LTT) is complex. However, SDLT has been in place since 2003 and it is understood by advisers, so we welcome the decision of the Welsh Government to maintain consistency with existing legislation on SDLT. Where there are differences, it would be helpful if a document setting out the differences as a quick reference guide could be published to assist taxpayers and their professional advisers. It should be remembered that responsibility for complying with LTT will fall on property lawyers, rather than experienced tax advisers, so anything that can make their role easier is to ensure compliance is to be encouraged.
4. Differences between the two régimes will particularly have an impact on those seeking to purchase land that straddles the E/W border and their professional advisers. We believe that something like 25% of the Welsh population and 10% of England's live within 30 miles of the border. Whilst we acknowledge the need of the Welsh Government to establish the rates and bands for LTT that are most suitable to Wales, there is a risk of market distortions should there be any significant

difference between the two tax régimes. An individual taxpayer or business looking to purchase property or take a long lease of commercial premises, for example, may chose to do so just over the border in England rather than in Wales if the LTT régime in Wales is that much less attractive to them and they are in a position to make that choice. A factor affecting many property acquisition decisions may be the tax payable as part of their purchase costs.

5. Policy decisions taken, not just on the LTT rates and bands, but also in relation to planning and housing policy, may have a negative impact on the number of transactions, leading to a reduction in the amount of revenue from LTT available to fund public services, including the cost of running the new Welsh Revenue Authority. Whilst we note that there is an acknowledgement in the paper '*Land Transaction Tax: Setting Rates and Bands*' that tax strategy and policy decisions can be used to support wider policy aspirations, it is also important to take into account the impact other policy measures may have on tax receipts and policy.
6. We consider that the Welsh Government should have the flexibility to react to changes in the economy or to mirror any changes to SDLT in England by changing the rates or bands at short notice. However, if any changes are proposed that alter the structure of the new tax then this should be subject to consultation.
7. In a significant number of cases the provisions of the Bill are to be supplemented by regulations which have not yet been published in draft form. This makes it difficult to assess the full impact of the legislation contained in the Bill. Regulations are generally not subject to the same level of Assembly scrutiny as primary legislation. While we understand the logistical pressures that compel the use of regulations to supplement primary legislation, we feel that it is important that regulations should be published in draft form and should be the subject of a consultation so that adequate consideration can be given to their effectiveness. We also recommend that the default position is that the regulations should be made by a positive approval procedure rather than the negative resolution procedure.
8. We are disappointed that the Welsh Government has not taken the opportunity to address the issue of the consideration on which the LTT will be payable. The current position for SDLT purposes, which is reflected in clause 8 and Schedule 4, paragraph 2, is that chargeable consideration will include any VAT charged in relation to non-residential property, where the vendor or a landlord in relation to the granting of a commercial lease has opted to tax their land. This will result in LTT being paid on an amount of VAT which does not in reality form part of the consideration as it is recoverable by the purchaser/lessee from HMRC if they themselves are VAT registered. In our view, the imposition of a tax on a tax is unacceptable and is perceived as being unfair. We would therefore recommend

that the same approach is adopted in Wales as in Ireland¹ so that the VAT element of consideration is ignored in calculating the LTT due. If the policy of excluding VAT is adopted this may make Wales a more attractive place for business to locate and to invest in their business property.

9. We note that the Welsh Government has opted to use the same definition of residential property in clause 71 that currently exists for SDLT in section 116(1) Finance Act 2003. Difficulties can arise with the definition, particularly as to the term “suitable for use as a dwelling” or what is meant by “garden or grounds”. The latter can cause particular difficulty for property in rural or semi-rural areas where homes are typically bought with a number of accompanying acres which may not be clearly designated as gardens or grounds. As clause 71 mirrors the existing SDLT terminology, then in our view these terms should be defined so that the taxpayer does not have to rely on inadequate guidance to determine their tax position.
10. The Bill adopts the same treatment of non-residential leases as that for SDLT purposes. This means that it can be complex, particularly in calculating the tax payable, where the rent is not certain, for example an element of the rent is linked to a tenant’s income/profits. More certainty could also be given whether the LTT would be chargeable and how much is chargeable in situations such as those that can arise in relation to agricultural tenancies where there is no lease premium and only a rent is paid. The existence of online calculators and clear guidance will be essential.
11. For those wishing to take on farm tenancies of over 7 years, consideration will have to be given to any potential LTT liability on the granting of such longer term tenancies. The need to pay LTT may act as a deterrent to tenants taking on longer term arrangements. If the Welsh Government and, more particularly, Assembly members wished to encourage farmers, and particularly new entrants to the industry to take on longer tenancy arrangements, they could facilitate these longer terms by exempting agricultural tenancies from LTT. This will also prevent the difficulties that arise if an Agricultural Holdings Act tenancy (AHA) is surrendered and converted to modern farm business tenancy, with a successor to the AHA tenancy included as a tenant on the new tenancy. Such a surrender and re-grant would not be excluded from LTT by virtue of paragraph 17 of Schedule 5 of the Bill. Paragraph 17 only applies on surrender and re-grant “between the same parties”. Unfortunately the current SDLT position in these circumstances can be very unclear, as the SDLT manuals do not address agricultural tenancies, only more common residential and business leases and there is little in the way of case law to

¹ See Sections 48 and 56 of the Stamp Duties Consolidation Act 1999:
<http://www.irishstatutebook.ie/1999/en/act/pub/0031/index.html>

assist. This is an opportune moment for Wales to lead the way and simplify the position for farm tenants.

12. Clause 43 imposes a duty on the buyer of property to make a return to the Welsh Revenue Authority (WRA). The returns that currently need to be completed for SDLT can be lengthy and time-consuming, whether this is done online or not. Much of the information that has to be provided in the SLDT return is not required to determine the liability to pay SDLT or the amount due. We would encourage the Committee to recommend that the Welsh Government does not follow this example and provides that the returns required by clause 43 are simpler and limited to the information required to ascertain the taxpayer's liability to pay LTT and the amount due.
13. As with any tax, clarity and certainty for taxpayers and their agents should be a priority for the Assembly, the Welsh Government and the WRA. Certainty as to how tax legislation applies to a particular taxpayer and their particular circumstances also aids compliance. Access to comprehensible guidance and assistance will help enormously in the ease of operation of the LTT. The WRA could improve the position by providing more comprehensive and clearer guidance than that currently available from HM Revenue and Customs for SDLT. Consulting relevant stakeholders will help to ensure the guidance to be provided meets the needs of taxpayers and their advisers.

Anti-Avoidance

14. The Bill introduces a general anti-avoidance rule (GAAR) into the Tax Collection and Management Act. Whilst we recognise the importance of the ability of the WRA robustly to tackle tax avoidance across devolved tax legislation, and help to deter and prevent tax avoidance, it is disappointing that the Welsh Government has decided to include in this Bill its own GAAR, rather than to mirror the existing UK general anti-abuse rule, introduced in the UK by the Finance Act 2013 after a lengthy period of consultation with stakeholders. Whilst the Welsh Government consulted on whether a GAAR should be introduced for Wales, it has not consulted on the scope of the GAAR that is now included in clause 65.
15. It should be remembered that avoidance (unlike evasion) is perfectly legal and is usually taken to mean the structuring of a person's affairs in a way that minimises the tax payable. However, the language used by politicians in the UK and elsewhere (such as in the OECD) in the ongoing debate on these issues seems to be confusing avoidance with evasion. There is an argument that the boundaries between very aggressive avoidance and evasion are sometimes blurred.

16. A tax avoidance arrangement is defined in proposed section 81C as an arrangement that is “artificial”. However, the definition of “artificial” in proposed section 81C leaves scope for doubt. What is a reasonable course of action for one person, may not be for another. Where legislation is complex, this in itself can give rise to uncertainty, particularly if there is a lack of clarity as to the “anticipated result” when the provision was enacted. Effective working of the GAAR will depend on the ability of the taxpayer and their advisers to be able easily to identify what the purpose of the legislation is. One of the difficulties with existing tax legislation, including that on SDLT and the application of the current UK GAAR, is that it can be a challenge to determine with any certainty what the anticipated result of the legislation is.

17. It has previously been recognised in the published principles for Welsh taxes that it is important to be fair to businesses and individuals who pay them; be simple, with clear rules that seek to minimise compliance and administration costs; and provide stability and certainty for taxpayers. It is not clear whether it is intended to produce guidance to clarify the approach of the WRA in applying the GAAR. Proposed section 81C of the TCMA(3) provides that the WRA will indicate its acceptance of generally prevailing practice and detailed practical guidance would be the natural home for the WRA to do so. It would also meet the principles for the Welsh tax system. The UK GAAR is supported by detailed guidance that is approved by the GAAR advisory panel. Although we agree that it is not appropriate to have guidance approved by a similar advisory panel at this stage, as the GAAR is likely to be extended to other devolved taxes, we believe there should have been a full consultation on both the rule and accompanying detailed practical guidance prior to the introduction of the rule into a Bill before the Assembly to ensure that taxpayers and their advisers can be certain of its scope and application.

18. The majority of CLA members own and farm their own land, but a significant number let land to tenant farmers and run wider, diversified rural businesses. CLA members on the whole hold land for generations. It is commonplace for our members to enter into arrangements, which owe more to concerns about succession planning than to tax planning and as such we would not wish to see a rule put in place, without clear detailed guidance that will hinder such succession planning.

19. We are pleased to see that the onus will be on the WRA to show that any particular arrangement is artificial (proposed section 81E).

Disclosure of Tax Avoidance Schemes

20. The existing UK disclosure of tax avoidance schemes rules (DOTAS) are understood by professional advisers and there is little benefit in having a separate

system for Wales, particularly as the taxes it would cover are less likely to be the subject of marketed avoidance schemes. This is evidenced by the fact that the number of SDLT schemes disclosed to HMRC in 2014 were fewer than 5, a substantial decrease in the number of schemes from the high of 485 schemes in 2005-06². This is no doubt influenced in part by the publication of a warning notice by Solicitors Regulation Authority in 2012 following concern about the promotion or facilitation of SDLT schemes³.

21. The Welsh Government has the opportunity to ensure that the taxes it develops are based on firm principles, are fair and certain and clearly set out in legislation so that there is less scope for the type of schemes that are the subject of the DOTAS régime.

For further information please contact:

[Redacted contact information]

[Redacted contact information]

² [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/379821/HMRC - Tax avoidance disclosure statistics 1 Aug 2004 to 30 Sept 2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/379821/HMRC_-_Tax_avoidance_disclosure_statistics_1_Aug_2004_to_30_Sept_2014.pdf)

³ <http://www.sra.org.uk/solicitors/code-of-conduct/guidance/warning-notices/Stamp-duty-land-tax-schemes--Warning-notice.page>

Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

Submission by the Council of Mortgage Lenders to the Welsh Assembly Finance Committee stage 1 scrutiny inquiry

Introduction

1. The CML is the representative body for the residential mortgage lending industry that includes banks, building societies and specialist lenders. Our 139 members currently hold around 97% of the assets of the UK mortgage market. In addition to home ownership, CML members also lend to support the social housing and private rental markets across the UK.
2. We welcome the opportunity to provide this submission to the [stage 1 scrutiny inquiry](#) of the Assembly's Finance Committee, looking at the general principles of the Bill. Although the CML's expertise lies in other areas than property taxation law and the technicalities of its structure and operation, we offer the following general comments on the Land Transaction Tax proposals.
3. Our comments here should be read alongside our earlier response to the Welsh Government's 2015 consultation on tax devolution and the proposed LTT, which is **appended**.

General principles of the Bill and the proposed LTT

4. It is encouraging that the proposed approach is broadly consistent with that set out in previous consultation papers and with SDLT. We are keen to see more detail of the proposed rates and bands emerge through the subsequent development of secondary legislation. In this respect, we welcome the recent [Written Statement](#) of the Cabinet Secretary for Finance and Local Government and the related [research paper](#) on setting LTT rates and bands.
5. The recently introduced supplemental 3% stamp duty on BTL and second homes could risk adversely affecting availability and pricing of rental homes, and potentially disrupting owner-occupied activity such as house purchase chains and parental help for first-time buyers. Welsh Ministers will wish to consider the possible impacts of replicating the supplement in LTT.

Recent changes in Scotland

6. There are key learning points from the Scottish experience of the introduction of the LBTT, particularly around the impacts of rates and bands that were set when LBTT was introduced. The Scottish Parliament's Finance Committee is undertaking an inquiry on this matter. Evidence to the inquiry suggests high LBTT rates for higher value properties has had a dampening effect on housing market activity at this level, and that this has percolated down to other levels of the market too.

Rates and Bands: considerations for Wales

7. The setting of LTT rates and bands should consider and weigh the potential impacts on all parts of the market, and balance the priorities of revenue generation via LTT against assistance for market participants; and LTT revenue generation against housing delivery and supply. Higher LTT rates can have negative effects for market activity and government revenue. We suggest that Wales consider implementing rates that are no higher than those in England.
8. We suggest that, to avoid distorting the operation of the housing market and maintain a fair and equitable approach, government might consider rates and bands that do not place a disproportionate burden on middle to higher-value purchases. We suggest that this could help avoid negative fiscal impacts on growing families and aspirational home movers. If the tax were to be set such that it becomes a disincentive to such moves, then an effect might be to limit the potential for others to progress as first time buyers onto the property ladder or existing owners from moving-up. We suggest it would be important to keep in mind that buyers at this level are likely to be constrained by the total funds available to them to meet the cost of purchase, including LTT. A reasonably-set tax

could be better able to strike a balance between generating revenue for government and enabling housing market activity.

9. While it might appear an attractive proposition to structure the tax rates and bands so that the burden falls more on the perceived broader shoulders of those with the means to purchase middle and higher value properties, the potential for a disproportionate burden in this area to reduce activity in this part of the market could, in time, have implications for other parts of the market.

10. We suggest that, to ensure a healthy and well functioning housing market in Wales, the LTT framework and structures should support residential sales at higher and lower price points, without placing disproportionate burdens or disincentives on taxpayers to move. If aspirational movers are unable to move, more upward pressure could be put on the price of the fewer homes that do come on the market. This could, in turn, distort the market with higher house prices caused by low supply and high demand.

11. In the forthcoming consideration of rates and bands, we suggest that it would assist certainty and consistency if major changes to the SDLT arrangements could be minimised. This would allow taxpayers to plan ahead. We further suggest that Ministers might consider ensuring that there is not a significant leap in the rate of tax from band to band, and in particular from any nil rate band to the lowest rate of LTT. This would help to smooth the impact for taxpayers and avoid market distortions.

12. As Ministers and the Assembly move forward on important decisions on LTT, it will also be important to take into account the broader context. The government programme [Taking Wales Forward](#) includes measures to make Wales an attractive place for investment and business. LTT should, we suggest, be aligned to this intent. It will be necessary to consider how LTT rates and bands compare to those in the rest of the UK, to ensure that Wales continues to be able to attract investment and business not just in the south-east, but across the country and the north.

13. In establishing the LTT and considering appropriate rates and bands for Wales, we suggest there is an opportunity for government to underline its commitment to other issues, such as affordable homes provision; the potential for new initiatives including a pan-Wales shared ownership scheme; and housing for older people. These are issues that have equality and inclusion at their core. We believe there is an opportunity for Wales to use its new tax freedoms in building the LTT in a way that encourages and incentivises inclusion and opportunity. This might be achieved not only through the setting of rates and bands, but also through the structuring and operation of reliefs and exemptions.

Forecasts

14. In forecasting potential LTT revenues, it would be useful to understand more about how the anti-avoidance policies and processes might operate and how the new WRA would be set up and resourced to manage this. In terms of the current SDLT tax take in Wales, available data from HMRC suggests that cash purchase represents a larger share of property transactions in Wales than for England, perhaps 40%, and this means that any analysis based on mortgage-financed transactions only shows part of the picture. In addition, residential stamp duty provides less than half the yield than for Scotland, so the overall revenue “pot” that can be considered in terms of bands, rates, exemptions and reliefs could be relatively small. Relative to England, the tax also generates much less revenue. Welsh Government will wish to consider carefully the overall extent and shape of the existing SDLT take in Wales when looking at how best to structure LTT, to deliver at least the same revenue for government in the context of balancing priorities in a fair and equitable way.

Buy-to-let and the PRS: additional homes supplement

15. A vibrant and well functioning PRS is a priority in the mix of delivery of housing supply for Welsh Ministers. The CML, with its tenure-neutral position, welcomes this. There has been a raft of recent legislative and regulatory changes directly affecting not only buy-to-let mortgage lending, but also the landlord-tenant relationship. Layering of the SDLT additional homes supplement has the potential to alter investor sentiment and behaviour in the market. The combined effect of these changes will take time to emerge. We expect Welsh Ministers will want to carefully consider the

available evidence and opinion on the impact of the supplement, following its introduction in England and Scotland.

Definitions

16. We believe further consideration should be given to definitions, such as “residential property”, which should perhaps make an explicit reference to “personal habitation” whether as a primary or secondary residence. In addition, there could be potential confusion with properties which have mixed elements of residential and commercial use such as hotels, residential care homes, hostels, mobile homes and park homes, as it is not clear under which taxation system such properties fall.

Implementation timeframe

17. We suggest the go live date of 1st April 2018 looks challenging to operationalise the required processing and IT procurement/ systems. It will be important that implementation and transition is achieved in a seamless way. Given the close interaction of the LTT with the conveyancing process and legal profession, we suggest that the relevant professional bodies be fully engaged in further development of LTT and its associated process and systems.

Resources

18. It will be important for the WRA to have, from the outset, the resource and expertise it needs to provide a dynamic service across a range of engagement and communication channels with taxpayers. For instance, it might prove useful if the WRA were to be able to offer an “opinion service” and, we suggest, it will be important to ensure it is resourced and able to provide guidance and assistance that is dynamic and responsive to taxpayer queries.

19. Looking towards April 2018, there is limited time remaining for training, system and process needs to be identified and delivered. Clarity in these areas will be important as soon as practicable before Royal Assent.

Other comments

20. While we welcome and agree with the proposed approach and the reformed SDLT structure now proposed for Wales, we suggest that Ministers and the Assembly might keep in mind for the future that tax devolution could still provide opportunities for Wales to strike-out in a different direction on property taxation. We suggest that there are other ways and approaches that might be considered in future to design and implement distinctly Welsh property taxes. In this respect, the Institute for Fiscal Studies has, as part of its work with the [Mirrlees Review](#), mooted a “housing services tax” that might take the form of a reformed council tax and offer a potentially viable opportunity to replace SDLT approaches, for example.

Contact

21. To discuss this submission further, please contact 

28 September 2016

Tax devolution in Wales - Land Transaction Tax

Response by the Council of Mortgage Lenders to the Welsh Government consultation paper

Introduction

1. The CML is the representative trade body for the first charge residential mortgage lending industry, which includes banks, building societies and specialist lenders. Our 128 members currently hold around 95% of the assets of the UK mortgage market. In addition, in terms of commercial funding, CML members have invested around £75 billion in the housing association sector UK-wide for new build, repair and improvement of social and affordable housing.
2. We welcome the opportunity to respond to the Welsh Government [consultation](#) on proposals for a Land Transaction Tax (LTT) to replace Stamp Duty Land Tax (SDLT) from 2018 in Wales.
3. Our interest is primarily in the residential property market, and our response focuses on aspects of the proposed LTT most likely to impact on that market.

General comments

4. The CML has long campaigned for a comprehensive re-think of stamp duty, to address issues around its impact on mobility and the creation of perverse incentives. We welcome the recent move from the former slab structure of SDLT as such a system would be fairer and have less distorting effects on the property market. We support the introduction of a new system in Wales which would resolve the slab structure issues.
5. We believe that tax devolution provides a unique opportunity for Wales to do something different in how housing and housing services are taxed.
6. Given that Wales is the only part of the UK to have revalued Council Tax values, and to introduce a new higher rate band, there is a natural opportunity for Wales to consider future alternative sources of revenue from housing. We recognise, however, that development and consideration of such alternatives now would be practically and politically challenging.
7. Accordingly, within the parameters of the current proposals, we support the broad intention to introduce a marginal rate system in Wales, similar to the reformed SDLT. Given the fluid nature of cross-border transactions, we favour equivalence as far as possible with prevailing SDLT arrangements. This should, however, be seen as a short term expedient.
8. Replication of the SDLT system could leave Wales exposed to the potential of changes being made in Westminster. Any new system must take into account the specific circumstances of the Welsh housing market and Wales' fiscal position.

Specific comments

9. We have responded to those of the consultation questions which relate to the broad operation of the proposals in the residential property market. We have not commented on the setting of rates or bands or their suitability or otherwise, as these issues are beyond our remit.

Question 3: *What would be the key impacts on the residential market in Wales of having a different transaction tax regime from England?*

10. If the two regimes are aligned differently, there could be a strong "push" or "pull" effect on border transactions. This could be detrimental or advantageous for the Welsh tax take, depending on direction. As there is much two-way household movement between Wales and England as well as residential developments spanning both jurisdictions, this further reinforces the need for broad regime equivalence.

Question 4: *Do you think the Welsh Government should have the ability to change or introduce new rates and bands in LTT with immediate effect?*

11. Yes, we believe it would be important for Welsh Government to have the ability to do so, as this will ensure the tax is sufficiently flexible to be able to adapt and respond to the market and economic circumstances at the time of implementation, and beyond. Equally, however, we would not want to see rates or bands changing frequently as this could cause uncertainty for customers, and potentially disrupt the operation of the market, resulting in surges in activity if buyers and sellers perceive that the tax cost to them might rise or fall quickly.

Question 5: *Do you think the definition used in SDLT defines residential property adequately for the operation of the taxes?*

12. We favour broad parity with the prevailing definition in SDLT, in order to provide consistency between the operation of the markets in both Wales and England.

Question 26: *Do you have any comments on the initial impact assessment?*

13. In our view, the initial impact assessment should more fully consider and explore the potential indirect consequences of the default or reformed stamp duty arrangements on the wider housing market.

14. The profile of property values in Wales is sufficiently different from England (see chart, Annex 1) to suggest that there could be little to be gained from modifying tax rates and thresholds on the relatively small proportion of higher value properties. Again, this suggests broad equivalence with SDLT could be the most pragmatic approach, currently. Similarly, the table (Annex 2) illustrates that adjustments to the SDLT regime in Wales might achieve only small changes in the overall tax take.

Question 28: *Do you have any other comments on the Welsh Government's plans to implement a land transaction tax in Wales?*

15. In our general comments, above, we suggested that Wales might consider in future a new and different approach to taxation of housing and housing services, than SDLT – although we recognise and support the current proposals as the most practical at this time.

Other issues: conveyancing process

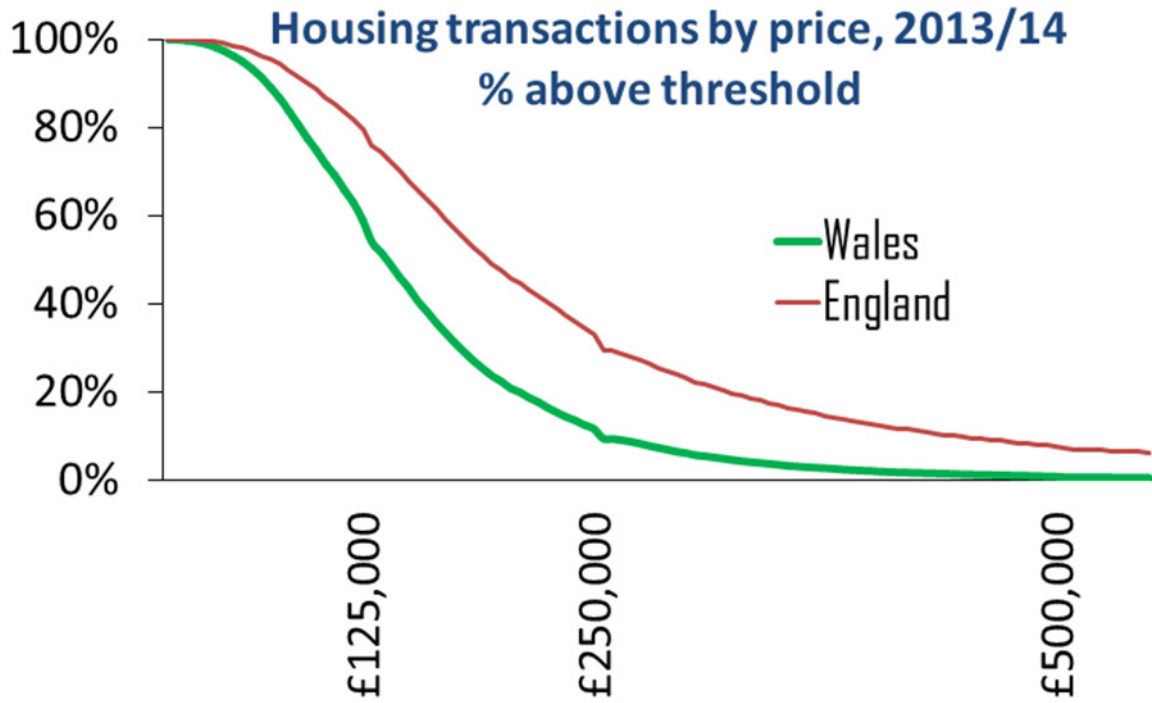
16. Prior to the implementation of new arrangements, Welsh Government will need to engage with the legal profession and conveyancers to ensure a smooth transition and avoid complications. The CML looks forward to engaging with the Welsh Government and the new revenue collection authority with regard to updating our Lenders' Handbook for conveyancers, to reflect the new arrangements.

Contact

17. Please contact [REDACTED] if you would like to discuss further.

30 April, 2015

Annex 1



Source: HM Land Registry

Annex 2

Property transactions completions priced at £40k or above Analysis by type of property and range of price - Wales

Estimates for Wales

2012R

Range of price (lower limit, £s)	Residential property		Non-residential property		All property	
	000s	£m	000s	£m	000s	£m
40,000	7	410	1	33	7	443
75,001	6	566	0	30	7	597
100,001	6	741	0	31	7	773
125,001	5	700	0	35	5	735
150,001	4	636	0	26	4	662
175,001	3	548	0	29	3	576
200,001	4	888	0	54	4	942
250,001	1	361	0	30	1	391
300,001	2	741	0	107	2	848
500001+	0	277	0	1111	1	1388
Total	39	5869	3	1487	42	7356

2013P

40,000	7	433	1	38	8	471
75,001	7	618	0	34	7	652
100,001	8	877	0	32	8	909
125,001	6	786	0	36	6	822
150,001	5	768	0	24	5	792
175,001	3	622	0	29	3	651
200,001	5	1085	0	66	5	1150
250,001	2	441	0	35	2	475
300,001	2	884	0	115	3	999
500001+	0	353	0	1506	1	1859
Total	45	6867	3	1915	48	8782

Source: HM Revenue & Customs

Showing estimates for Welsh SDLT transactions, in price brackets



Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill Response by the Chartered Institute of Taxation

1 Introduction

- 1.1 The CIOT welcomes the opportunity to respond to the Finance Committee of the National Assembly call for evidence on the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill ('the Bill').
- 1.2 The Bill makes provision for introducing Land Transaction Tax (LTT) to replace the UK Stamp Duty Land Tax in Wales from April 2018 and includes measures to tackle the avoidance of devolved taxes. The Bill is the second of three bills to establish devolved tax arrangements in Wales. This Bill was preceded by the Tax Collection and Management (Wales) Act 2016 (TCMA) which provides the powers and duties to collect the tax, including the establishment of the WRA, and will be followed by a bill to establish Landfill Disposals Tax (LDT).
- 1.3 Overall we think the Bill is comprehensive and well laid out.

2 About us

- 2.1 The CIOT is an educational charity. Our primary purpose is to promote education in taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 Our stated objectives for the tax system include:
 - A legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences.
 - Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
 - Greater certainty, so businesses and individuals can plan ahead with

- confidence.
 - A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
 - Responsive and competent tax administration, with a minimum of bureaucracy.
- 2.3 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes.

3 Tax bands and tax rates

- 3.1 Sections 25-26 of the Bill set out the procedure for regulations specifying tax rates and bands. The Bill provides that LTT tax bands and rates are to be set initially by a statutory instrument (SI) to be laid before and approved by a resolution of the Assembly. Subsequent changes can be made a SI that needs to be laid before the Assembly and ceases to have effect on the expiry of 28 days unless, before that time, it is approved by a resolution of the Assembly (the Provisional Affirmative procedure).
- 3.2 We welcome the certainty provided by section 26 in dealing with the consequences for purchasers of failed regulations under the Provisional Affirmative process.
- 3.3 We note the Welsh Government's commitment to the use of a marginal rate calculation of LTT for both residential and non-residential transactions rather than the 'slab' system. The adoption of marginal rates is in line with the current rates system for both SDLT and LBTT. The Bill requires Welsh Ministers to set at least three bands (of which one is a zero rate band) and requires the rates to be progressive in nature in the sense that the tax rate increases as the taxable amount increases.
- 3.4 We are not economists or experts in the property market and we do not generally comment on the setting of rates of tax, as these are decisions for politicians. We therefore limit our comments on this aspect to a few observations on the progressive nature of high marginal rates.
- 3.5 The 'slab' system has clear and well accepted distorting effects in terms of the 'cliff edge' when the price for a transaction moves into a higher band and in creating an incentive to re-characterise part of the consideration as paid for non-land elements of the transaction (eg chattels).
- 3.6 Assuming the aim is to secure revenues, the corollary to the move away from a slab approach is the need for higher nominal rates for the upper bands. This in turn may mean higher effective average rates of tax for higher value transactions. High marginal and effective average rates of tax lead to the possibility of greater deterrence of transactions, which to the extent it occurs, would adversely affect tax revenues. This disincentive to move house may be exacerbated in populous border areas to the extent that higher value properties are clustered in such areas.

Although we cannot estimate the economic effect of higher marginal rates, if the effect were to reduce the volume of transactions with a consequential reduction in revenue, there is then less revenue to spend on public services and the effect may not be regarded as especially progressive. This form of economic argument is often made against progressive rates. However the possible behavioural change in response to

higher marginal rates should be weighed particularly seriously for the residential rates of a transaction tax because it is generally easier to move house less often than to say, forego income, in the case of higher marginal income tax rates.

We note the reference in the recent paper: Land Transaction Tax: Setting rates and bands¹ to the lower than forecast residential revenues for LBTT for 2015/16 being due in part to the effect of forestalling. The forestalling effect is of course a short term effect while higher marginal rates may impact the volume of transactions on an ongoing basis.

- 3.7 In terms of forestalling in relation to the first announcement of LTT rates, we recognise the difficulties in balancing certainty (by announcing rates as early as economic assessment allows) and the risk of forestalling as a result of pre-announcing tax rates. The timing of the UK 2017 Autumn Statement and any announcement of a change in SDLT rates will no doubt have a bearing on that process.

4 Consistency with SDLT

- 4.1 We note that, in line with the views of stakeholders including the CIOT, the legislation will be broadly consistent with SDLT to provide stability and clarity to all affected by it – taxpayers, their advisers and the Welsh Revenue Authority. Adoption of much of the SDLT code is clearly in line with stakeholders' views. It brings with it the benefits of consistency but inevitably involves the adoption of its flaws. It is therefore important to continue to monitor the impact of this approach, we comment further below at paragraph 11 in respect of post-implementation review.
- 4.2 It would be helpful to have a detailed technical summary of all the differences between LTT and SDLT, ideally with practical examples of how the differences might affect common transactions. This will assist conveyancers in particular who may not be tax specialists.
- 4.3 If a detailed note of all the differences in wording is provided, we will be happy to consider whether there may, in our view, be some unintended consequences.
- 4.4 It will also be helpful to have an indication of the extent that the previous SDLT (and wider UK case law) is considered relevant in construing common provisions.
- 4.5 To the extent that SDLT and LTT provisions are consistent, we note that there are a number of significant common areas that would benefit from more extensive and improved guidance than that provided for SDLT, such as the scope of the linked transactions rule (see section 28) and the definition of residential property (sections 71 -72) common areas of uncertainty for advisers and taxpayers alike.

5 General Anti-Avoidance Rule (GAAR) – section 65

- 5.1 The GAAR counteracts tax advantages in relation to devolved taxes that arise from artificial tax avoidance arrangements. It is to be inserted into the TCM (Wales) Act 2016.

¹ <http://gov.wales/docs/caecd/publications/160915-ltt-bands-en.pdf>

- 5.2 An arrangement is a tax avoidance arrangement if the obtaining of a tax advantage for any person is the main purpose, or one of the main purposes, of a taxpayer entering into the arrangement. Regard may be had in particular to the amount of devolved tax that would have been chargeable in the absence of the arrangement.
- 5.3 A tax avoidance arrangement is artificial if the entering into or carrying out of the arrangement is not a reasonable course of action in relation to the provisions of Welsh tax legislation applying to the arrangements. Regard may be had in particular to a) any genuine economic or commercial substance to the arrangement (other than the tax advantage); b) as to whether the arrangement results in an amount of tax chargeable that was not the anticipated result when the relevant provision of Welsh tax legislation was enacted.
- 5.4 We fully respect the decision to include a general anti-avoidance rule (GAAR) in the TCM (Wales) Act. Our concern here is balancing the desire to protect the tax system against the need for certainty. It is vital for business in Wales that the GAAR provisions do not interfere or delay commercial decisions. Business and individuals must be able to plan ahead with confidence. The best way of countering avoidance is to make the legislation and its effect as certain as possible. Our comments and recommendations below are made with those aims in mind.
- 5.5 In defining both 'tax avoidance arrangements' and the meaning of 'artificial' particular regard is to be had to the amount of tax that would have been chargeable without the arrangement and the amount of tax anticipated when the relevant provision was enacted. We do have a concern that the implication that might be drawn from those provisions is that a shortfall in revenue from a particular measure must be due to avoidance activity. Even with the legislative safeguards in sections 81F - 81G, and the placing of the burden of proof on the WRA, such an implication would appear to disproportionately tip the balance of power in favour of tax collection as against the rights of the taxpayer.
- 5.6 In order to realign that balance and enshrine in the legislation the policy intention underpinning the provision at the time of enactment, we reiterate our suggestion in our joint (with the Stamp Taxes Practitioners Group) response to the LTT consultation that a statement of the intent in respect of each LTT relief is included in the Bill. The advantage of a purpose clause for each relief is that it makes the intention clear at the point of enactment and is therefore visible to i) taxpayers when considering whether the relief applies and ii) to the court or tribunal in considering the application of the GAAR.
- 5.7 The GAAR begins with a wide definition of a 'tax avoidance arrangement' which is narrowed by the 'artificial' formulation in section 81C. However we are concerned that the use of 'one of the main purposes' means there is a very low threshold for deciding that a transaction has an avoidance element. While recognising that the formulation is deliberately designed as a 'broad spectrum' deterrent, the breadth of the provision means that some form of clearance system or opinion service² would provide certainty. (Revenue Scotland's opinion service is an example although the turnaround time of 25 days may not be fast enough for large commercial transactions).
- 5.8 Publication of guidance by the WRA of what is and what is not caught by the GAAR

² In order to allow taxpayers to file with certainty, Revenue Scotland will, in certain circumstances, provide its opinion on the tax consequences of specific transactions with a turnaround time of 25 working days – see <https://www.revenue.scot/contact-us/revenue-scotland-opinions>

would also assist from the outset. As experience grows the guidance can be updated with (suitably anonymised) examples. A general point is that guidance is likely to work best for taxpayers and the WRA if it is dynamic and agile with regular updates (publicised on the WRA website via a dedicated updates page). In terms of avoidance, we have previously pointed to the UK SDLT experience where SDLT schemes were widely marketed for some considerable time before action was taken despite feedback from practitioner members of HMRC's stakeholder group (SDLT Working Together). We think that setting up a similar stakeholder group in Wales to provide a platform for discussion between the WRA and those working with LTT will be helpful here. (Paragraph 8.41 of the Explanatory Memorandum indicates that such engagement is envisaged alongside the existing forums.)

6 Reliefs

6.1 The Explanatory memorandum states at 3.21 :

'Tax reliefs are an important part of the tax regime and targeted at a variety of different objectives. Some reliefs are designed to encourage a particular behaviour, aimed at achieving social or economic policy objectives, whereas others are created to ensure fairness within the tax regime, for example, to prevent 'double taxation', where land is transferred without any effective change in its economic ownership. The intention is to provide a suite of reliefs consistent with the LBTT and SDLT regimes.'

6.2 The availability of the reliefs is subject both to the overarching TAAR for all LTT reliefs (section 31) and the general anti-avoidance rule (section 65). We note that the GAAR is intended to operate in tandem with the targeted anti-avoidance rules. We welcome the fact that the flawed FA 2003 sections 75A-C have not been replicated in the Bill.

6.3 The TAAR denies relief for a tax avoidance arrangement defined as being one where the obtaining of a tax advantage is the main purpose, or one of the main purposes, of the buyer and the arrangement lacks genuine economic or commercial substance other than the obtaining of a tax advantage. As with the GAAR formulation, we are concerned that using 'one of the main purposes' rather than 'the sole or main purpose' means there is a very low threshold for deciding that the claiming of the relief has an avoidance element. A clearance facility would aid certainty.

6.4 The rationale for the overarching TAAR is to be found in the EM where it is noted (at 3.39) that SDLT legislation includes a number of Targeted Anti-avoidance Rules (TAARs) in the various reliefs, many of which are expressed in the same way so can appear repetitive. The intention is therefore to extend, significantly simplify and strengthen the approach by creating an overarching TAAR for all LTT reliefs.

6.5 While entirely recognising the value of simplifying the code, the 'one size fits all' approach of the overarching TAAR may not sit comfortably alongside all the reliefs given their different objectives, particularly the public benefit reliefs³ for example a charity may not operate according to economic or commercial principles; its charitable purposes may override those principles. We note that note 44 of the Explanatory

³ The category of public benefit reliefs include charities relief, certain acquisitions by registered providers of social housing, relief for transactions relating to the reorganisation of public bodies, compulsory purchases, transactions relating to compliance with planning obligations, changes to parliamentary boundaries, and compliance with treaty obligations.

Memorandum attempts to address this concern noting that while a charity may not have a commercial reason for the acquisition, an economic purpose would be present as the charity has exchanged cash for a physical asset with the aim of furthering its charitable purposes. We are concerned that this helpful interpretation⁴ may not be readily apparent from the legislation. The CIOT has long opposed the use of concessionary guidance to narrow the effect of widely drawn anti avoidance legislation.

- 6.6 The suggestion, noted above, that a statement of the intent in respect of each LTT relief is included in the Bill would assist in applying the TAAR also.
- 6.7 We note also that it is not immediately apparent how the TAAR is to be applied where a combination of reliefs are claimed as part of a larger transaction in circumstances where each relief has an economic purpose but the result (as in the case of *Project Blue*⁵, for example) is that no tax is claimed to be due.
- 6.8 We note from Table 3 of the Explanatory Memorandum the low take up of the relief for certain acquisitions by registered social landlords (Schedule 14 Part 6) despite the fact that social housing is a key issue for Wales. One of the conditions for this relief is that the transaction is funded with the assistance of a public subsidy. Anecdotal evidence from members suggests that since the enactment of this relief for SDLT, the availability of grant funding for housing associations has reduced so that associations are now more likely to raise external funding in the market or by selling off part of their developments. The lack of grant funding denies relief, is that result consistent with the policy intent? There is a further lack of clarity in what level of grant funding is required as the condition refers to funding 'with the assistance of a public subsidy'? A statement of legislative purpose would help to clarify when relief is intended to be available.
- 6.9 Section 31(3) defines 'tax' for the purposes of the TAAR as meaning LTT and defined UK non-devolved taxes. Explanatory Note 45 notes that prohibiting the relief from LTT where the arrangement involves avoidance of tax imposed at a UK level is without prejudice to any action HMRC might take to recover the non-devolved tax that has been avoided.
- 6.10 The inclusion of non- devolved taxes in the definition of the TAAR appears to present significant practical difficulties; it is unclear to us how the WRA will have access to the information to determine whether non-devolved taxes have been avoided.
- 6.11 We suggest that in fact consideration might be given to reversing the definitions of 'tax' in the GAAR and the TAAR: for the TAAR, only devolved taxes is likely to be of concern as it is the misuse of the relief from LTT that is the presumed focus; for the GAAR the concern is more perhaps with an artificial structure that may be aimed at avoiding other taxes but happens to give rise to a loss of devolved tax.

⁴ The relevant part of Note 44 reads: '*Whether an arrangement has a genuine economic or commercial main purpose will, ultimately, depend on the facts of the transaction. However, the rule should not prohibit a claim to relief by a charity where it acquires a property for charitable purposes (for example housing people who meet the charity's charitable purposes) as, whilst there may not be a commercial reason to the acquisition, there is an economic purpose as the charity has exchanged cash for a physical asset – the property – with which to further its charitable purposes.*'

⁵ *Project Blue Ltd v HMRC* [2016] EWCA Civ 485

7 Powers to make subordinate legislation

- 7.1 The extent of the regulation making power conferred by the Bill is apparent from the table in the Explanatory Memorandum setting out 33 powers. We note the careful consideration that has been given to deciding whether the more rigorous affirmative procedure is prescribed for powers that could affect a buyer's tax liability with the negative procedure restricted administrative changes.
- 7.2 We have some reservations about the lack of scrutiny by the Assembly for powers to change substantive matters by statutory instrument even where the process is subject to the affirmative procedure, for example the power to introduce, modify or remove reliefs conferred by section 30(6) to reflect policy changes and/or economic and property market conditions.
- 7.3 Section 76 provides a power to make further ancillary changes to give full effect to the Bill. Is this section intended to provide for the enactment of transitional provisions? Otherwise there is no mention of transitional measures.

8 Filing and payment deadlines

- 8.1 We note the current HMRC consultation 'Stamp duty land tax: changes to the filing and payment process' that proposes changes relating to SDLT filing and payment process, the main change proposed being to reduce the filing and payment window from 30 days to 14 days. (Consideration of the SDLT penalty regime will also reflect the wider Making Tax Digital consultations). We note that the Bill includes powers to amend the filing and payment dates by secondary legislation if Wales choose to make similar amendments.
- 8.2 The CIOT is responding to the current HMRC consultation. In broad terms, our view is that for a straightforward residential sale and purchase transaction (freehold and leasehold), filing the return and making payment within 14 days should not generally present difficulties particularly as the preparation of the draft return is usually done at an earlier stage in the conveyancing process. Nevertheless 14 days (which includes non-working days) will significantly shorten the time available to file and pay before a fixed penalty is incurred particularly over bank holiday periods. We think the shortened period will present difficulties for firstly, complex commercial transactions requiring detailed enquiries to establish the information required for the return and secondly, for deferment applications in the case of contingent or uncertain consideration (section 57 of this Bill) that have to be made by the filing date.
- 8.3 One of the long-running issues in completing the SDLT return is the need to include the data for VOA rating purposes rather than to establish the SDLT liability. We note that the LBTT return does not require the equivalent rating information.
- 8.4 It is to be hoped that the new LTT return will remove the need to include the rating data and will ideally de-couple the deferment application from the return, via a separate online application.
- 8.5 We note that the deferment provisions in the Bill differ slightly from the equivalent provisions for SDLT; subtle differences may provide a trap for the unwary. For example the deferral request must propose an 'effective end date' by which the tax must be paid unless a further extension is agreed. It is unclear why this provision is necessary as the timing of the deferral may simply not be known.

9 Land partly in Wales and partly in England

- 9.1 Land straddling the border of Wales and England will be treated as two transactions, one relating to land in the UK (chargeable to SDLT) and one relating to land in Wales (chargeable to LTT). The Bill provides for the consideration to be apportioned on a just and reasonable basis.
- 9.2 We note that the Explanatory Memorandum (at 8.42) indicates that data is not currently available on the extent to which two returns will be required although it is expected to be 'very small' for both residential and non-residential properties whether cross border properties or purchases of multiple properties.
- 9.3 We suggest that land straddling the border be regarded as linked (section 28) to ensure that developments are not structured to straddle the border and take advantage of rate differentials between SDLT and LTT.

10 The 15% per cent slab rate

- 10.1 We support the decision not to include the 15% charge (and associated reliefs) for the purchase of high value residential property by companies or other non-natural persons which was introduced into the SDLT code by Finance Act 2012. We note that there is power at clause 24(4) of the Bill to introduce this provision through regulations

11 Post implementation review

- 11.1 We welcome the anticipation that the legislation will be reviewed on a regular basis and at a minimum in 3-5 years' time once the WRA has bedded in (para 11.1 of the Explanatory Memorandum).
- 11.2 In relation to the treatment of leases, Part 4 of the Bill broadly mirrors SDLT. As we noted in our consultation response, a requirement for a regular return (rather than the current SDLT approach, as adopted in the Bill, of returns at a 5 year date or when the rent becomes certain, if earlier) would provide additional information and, arguably, improve compliance. However the compliance advantage of a return at regular intervals (as adopted for LBTT) will be balanced by an increase in the administrative burden for businesses, a cash flow cost and potentially a need for additional resources within the WRA. An assessment of these factors should however form part of the early experience of the WRA and the post implementation review.
- 11.3 The Bill retains the current SDLT approach to partnerships again providing welcome consistency in a complex but now reasonably familiar area for advisers (at least those who specialise in real estate transactions). However, partnership taxation is an area that is open to change and subject to consultation⁶ and the wholesale adoption of the SDLT regime needs to be kept under review. There is a priority need for more

⁶ There is the current consultation for example <https://www.gov.uk/government/consultations/partnership-taxation-proposals-to-clarify-tax-treatment>

comprehensive guidance in this area as the guidance provided to date by HMRC is incomplete.

12 Cross reference to other statutes

- 12.1 As a general point, we would strongly recommend that where the Bill makes reference to or uses a term from a provision of a UK statute, the relevant words should be re-stated in the Bill itself rather than effected by cross references (see in particular the cross references at Part 8). This would avoid finding that the LTT code is amended by some unrelated change to a UK Act, necessitating an amendment to the Bill. It also, pragmatically, makes the LTT code easier to read as a stand-alone Welsh Act.

13 Acknowledgement of submission

- 13.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

14 The Chartered Institute of Taxation

- 14.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 17,600 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation



30 September 2016

FAO Catherine Hunt
Finance Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1HA

Dear Catherine

Land Transaction Tax and Anti-avoidance of Devolved Taxes (wales) Bill ("The Bill").

We welcome the opportunity to respond to the Finance Committee of the National Assembly call for evidence on the Bill.

We have had sight of, and have contributed to, the response by the Chartered Institute of Taxation on the Bill and would support and endorse the points made the Institute in their response. We have included our specific comments on the Bill in an Appendix but the general points we would like to make are:

1. We note that the Bill follows closely the Stamp Duty Land Tax ("SDLT") that it replaces, although there are a number of differences which we have noticed. As with SDLT the tax will largely be handled by conveyancers and other agents who will have got used to SDLT and so it will be important to highlight and explain any differences in the Land Transaction Tax ("LTT") so that disruption to the conveyancing process for transactions in Wales is kept to a minimum. It will also be important to establish whether or to what extent if any, existing case law and SDLT practice is to be carried across to LTT but it seems to us that to promote continuity such case law and practice should be applied unless there is good reason not to or the relevant provisions are not carried across into LTT.
2. Although we support the CIOT view that rather than rely on guidance it is better that the legislation is clear and comprehensive, it is inevitable that guidance will play an important role, as it does for SDLT and the Scottish LBTT. For example, it will be necessary for the Welsh Revenue Authority ("WRA") to indicate what practices are acceptable under section 81C(3) TCMA when applying the General Anti-avoidance Rule. Our recent experience is that guidance on SDLT is being held up through the gov.uk processes and we hope that the WRA or the helpline will be able to issue guidance independently (like Revenue Scotland) so that it can be kept up to date and respond to particular areas of concern. In our experience, without proper guidance there will be more direct queries raised with the WRA and so drafting proper and comprehensive guidance up front is essential. We would be happy to discuss or review such guidance as it is being developed.

Deloitte LLP is a limited liability partnership registered in England and Wales with registered number OC303675 and its registered office at 2 New Street Square, London EC4A 3BZ, United Kingdom.

Deloitte LLP is the United Kingdom member firm of Deloitte Touche Tohmatsu Limited ("DTTL"), a UK private company limited by guarantee, whose member firms are legally separate and independent entities. Please see www.deloitte.co.uk/about for a detailed description of the legal structure of DTTL and its member firms.

© 2016 Deloitte LLP. All rights reserved.

3. The process by which the tax is administered needs to keep disruption and costs to a minimum. As mentioned by CIOT one of the long running issues with completing SDLT returns is the need to include information required by the Valuation Office Agency which is not strictly necessary for the payment and administration of the tax. The LBTT return does not require this additional information, which can be onerous to compile and provide particularly in some commercial transactions, and we would urge you to follow the LBTT example.

If you have any queries or comments then please do not hesitate to get in touch.

Yours sincerely



Deloitte LLP

Appendix

1. Clause 10 (10) – should “transfer” also include any “conveyance” as for SDLT. A conveyance may cover more instruments than a transfer.
2. Clause 12 – this clause should be expressly subsidiary to section 13 and the provisions of Schedule 2 as there can be an overlap. The equivalent provisions of Clauses 11 and 13 were introduced into SDLT to plug a possible gap in the rules where typically a builder has the right to call for a conveyance of a completed building to a third party that they have “sold” the building to. The SDLT provisions which are reflected in Schedule 2, are a later and more comprehensive rewrite of the “sub-sale” rules and as such where a transaction falls within both provisions, Schedule 2 should be applied and it would help if the legislation, unlike SDLT, clarified this so that clause 12 only applies as a back up.
2. Clause 24 – As with SDLT the residential rates only apply if the transaction(s) are entirely residential. In Scotland where the higher 3% charge applies you have to apportion a mixed transaction between the residential element and the non-residential and apply the respective rates accordingly. We think the regulation making power in this section should enable the legislation to be changed so that the both rates can be applied to mixed transactions based on an apportionment. This might also be required to protect the tax base.
3. Clause 31 – This clause contains the TAAR for the LTT reliefs. It is not clear what the word “genuine” adds anything to “economic or commercial” in clause 31(2)(b). Given that you have excluded a tax advantage it seems to us either the arrangement has other economic or commercial substance or it does not. The Courts would assume the word will add an additional condition to the arrangement which will widen the impact of the TAAR. It would be useful to have examples of what a non-genuine arrangement would be so that we can understand the purpose behind the drafting here. Given that, for example, charities relief could apply to gifts or below market transfers it is not clear if such transactions would pass this test and yet relief should be available for these transactions. It would also be useful to understand what transactions would pass the TAAR but not the GAAR. For example, it seems to us possible that the transactions involved in the Project Blue SDLT case, where the acquisition of a development site was financed through an Islamic finance structure would pass the TAAR for alternative property finance relief because the transactions clearly have a commercial purpose of funding the acquisition by the purchaser. However, we could see that because the combined effect of the sub-sale rules and the relief arguably meant no tax was payable on an acquisition that such a provisions would be counter-acted by the GAAR. Guidance on these provisions and how they apply when reliefs are combined would be useful. The legislation is much improved from SDLT by the omission of equivalent rules to sections 75A-C FA 2003 which are too widely drafted and cause problems in practice because their application is mandatory and can arise without any tax avoidance motive.
4. Clause 47 – the 12 month period to amend a return can cause difficulties in certain cases. Three or four years would be a better period and reflect other provisions of the stamp tax code.
5. Clauses 57-63 – the provisions on deferral of the tax are more elaborate than the equivalent SDLT provisions. In particular, the requirement to specify an expected end date of the deferral period could cause additional burdens on the tax payers where there is genuine uncertainty as to when any additional consideration is payable. For example, often a landowner may sell land to a developer for a base price and additional consideration if the developer succeeds in gaining planning permission and/or develops and sells houses on the land. Often the period over which such a development can be completed is many years and unpredictable. If the landowner has to keep on requesting variations to the deferral request under section 62 in order to postpone the tax when the

development or permission is unexpectedly delayed this will add an additional burden onto the sale of land for development.

6. Clause 65 – see our comments above in relation to the TAAR and the use of the word “genuine” which is repeated in the GAAR clause 81C TCMA. Why has sub-clause 81H(2) in the draft legislation been deleted?
7. Clauses 68-73 – the headings do not have quotations marks around the relevant words defined.
8. Clauses 76 & 79 – there are no transitional rules in the Act and we would expect that, as with LBTT, a statutory instrument will be passed setting out the detailed rules to ensure that transactions that interact with SDLT do not result in double taxation. We wonder if there should be an express power to pass such regulations in clause 79 as contained in the equivalent clause in the LBTT legislation (section 70(3) LBTT (S) Act 2013).
9. Paragraph 19 Schedule 6 – we support the inclusion of the tax avoidance test in this provision as compared to the equivalent SDLT rule which applies automatically and is now unnecessary in the light of intervening anti-avoidance provisions.
10. Paragraphs 47 & 48 “a” and “an” missing in the headings.
11. Schedule 18 – this does not include the new SDLT relief for PAIFs introduced in the Finance Act 2016. We would also encourage the Welsh Government to consider extending this relief to the seeding of REITs as opposed to just the open ended structures and would be happy to discuss this with you.

Land Transaction Tax: Higher Rates for Purchases of Additional Residential Properties

ABOUT THE RESIDENTIAL LANDLORDS ASSOCIATION

The Residential Landlords Association (RLA) represents 20,000 small and medium-sized landlords in the private rented sector (PRS) who manage over 250,000 properties across the UK. It seeks to promote and maintain standards in the sector, provide training for its members, promote the implementation of local landlord accreditation schemes and drive out those landlords who bring the sector into disrepute. Members also include letting and managing agents.

Summary

The devolution of Stamp Duty powers to the Welsh Assembly is an important opportunity for the Welsh Government to tailor and shape current rules into a form that works for Wales. RLA Cymru welcome the change from Stamp Duty Land Tax to Land Transaction Tax (LTT) and the open approach the Welsh Government has taken in shaping how this tax will work for Wales.

The Private Rented Sector (PRS) in Wales has, over recent years, faced a whole host of changes from both Welsh and Westminster Governments. Financially, the sector has never come under such pressures, and in terms of new compliance, landlords in Wales are going to have to face two of the largest Acts the Welsh Assembly has ever passed.

The RLA works to understand how the sector will react to new statutory requirement and tax changes in advance of implementation. In a recent survey of our membership, 84% of landlords indicated that they are likely to consider increasing rents to cover their increased tax burden and 78% of members said that these changes have deterred them from investing further.

This is a troubling prospect for a country facing an ongoing housing crisis, especially as Wales sees some of the lowest and stable rents in the UK. With landlords under extreme financial pressure and regulatory demands, many are looking to increase rents or exit the sector. All of which has an impact on rents and standards as tenants have less choice, all of which creates the perfect climate for criminal landlords to operate.

The finances of most landlords have never been under more pressure, and they are no longer in a position where they can continue to absorb further costs. This means that although many landlords are, rightly, working to ensure they fully comply with the law and tax regime, many of the costs have to be reflected in the rents. As a result, new taxes and costly regulation are ultimately paid by the tenant.

Despite these difficulties the PRS is an important provider of housing in Wales, catering for a number of different markets from students to families. The Homes for Wales coalition states that Wales needs 12,000 homes each year just to keep up with current demand. No single sector of the housing market can fix the housing crisis, however PRS landlords do have a part to play. Landlords provide a

significant amount of investment in bringing new properties into use, bringing old and derelict properties back into supply, increasing the standard of some of Wales' oldest and most difficult to maintain pre-1914 properties, and investing in new developments by purchasing off-plan. All of this is however at risk given the changes coming from both Westminster and Welsh governments.

We strongly believe that for Wales to solve its housing crisis, it needs to encourage all housing sectors to grow and offer people more choice when it comes to housing. Stamp-duty is however, a policy designed in London, for London, and to tackle issues that are London specific. We do not believe that the additional 3% levy is best designed for Wales.

Although we are fully against the continued implementation of the 3% levy, on the grounds that the PRS in Wales is broadly on the right track but facing tough pressures, and that this was a policy designed for the London market, we would encourage the Welsh Government to look at alternatives that work best for Wales.

Our first option would be to remove the 3% levy in its entirety, however if this were not possible we would urge the Welsh Government to consider a number of exemptions, which would help tailor the policy to Welsh needs.

We believe that the higher rates (£% levy) should not apply to properties purchased with intent to let, where:

- 1) The property has genuinely been on the market for one year or more
- 2) The property has not been occupied for over 1 year (empty home)
- 3) The property is being purchased off-plan
- 4) The property is derelict or in severe disrepair

Ideally we would like to see the additional levy removed, however having a list of exemptions within the Act, which the Minister would have the power to amend later, would give Wales a flexible tax system which it could alter to accommodate its changing needs.

A Different PRS in Wales

Wales is unlike any other part of the UK when it comes to the cost and regulation of the PRS. We are currently in the midst of implementing Rent Smart Wales, which not only requires landlords to register, but also to train and obtain a licence. Furthermore, landlords will soon be using standardised contracts and a new Fit for Human Habitation standard under the Renting Homes Act. All this points to a better class of landlord which reflects in the standard of properties in the PRS and our high satisfaction rating. The National Survey for Wales finds that 90% of PRS tenants are satisfied with their accommodation (this compares to 83% of tenants in the social housing sector).

Rents in Wales are also lower and far more stable than most other parts of the UK. Since 2012, yearly change in rent levels in Wales have not exceeded 1% according to the ONS. However, the Index of Private Housing Rental Prices (IPHRP) recorded a fall in rent prices in Wales for the 12 months to June 2016. This is in stark contrast to London (for which the additional levy was designed) which has seen rental prices rocket due to a chronic lack of supply.

Further, the PRS is becoming increasingly secure, with the number of possession claims from PRS property substantially lower than the social sector. Figures from the Ministry of Justice show that in

2015, in Wales, the social sector made 4,265 claims for possession compared to just 677 from PRS landlords.

Although work remains to be done, it is fair to say that many of the misconceptions held against the PRS ought to be dismissed, as the PRS in Wales has continued to demonstrate that it is part of the solution to the housing crisis.

A Policy for London, Not Wales

We have argued that Stamp-duty is a taxation policy primarily designed to tackle issues in the London housing market. This argument is most evident when we consider exactly where stamp-duty revenue comes from.

11% of the stamp duty receipts in England and Wales are from Westminster, Kensington and Chelsea alone, where the average bill was almost £110,000. Over 2015 London contributed to 44.6% of all stamp duty receipts while only accounting for 12.3% of transactions¹. The current stamp duty policy is designed for London, not Wales, and as such has detrimental effect on the Welsh property market.

The latest House Price Index from the Office for National Statistics revealed the calming of house price growth from 9.7% in the year to June, to 8.3% in the year to July². This is because stamp duty is dampening the transaction volume across the UK, however transaction volume has already been suppressed most in Westminster, Islington and Chelsea and Kensington³ – again demonstrating that this is a policy designed for London not Wales.

Ultimately, fewer transactions results in less tax. A large proportion of the revenue from stamp duty is generated from London (44.6%), and two specific London boroughs account for 11% of total receipts. The number of transactions in these areas is already decreasing⁴, however Wales experiences the decreasing transaction effect without gaining the same financial benefits generated by Westminster, Kensington and Chelsea. As such, the additional 3% levy will decrease the number of transactions, without generating a significant amount of revenue, due to the impact on transactions.

The knock-on effects of this is an overall reduction in stamp duty returns. Provisional figures suggest that stamp duty returns could be down by 2% by the end of the year, however this figure could have been a lot lower were it not for the surge in buy-to-let at the start of the year to beat the introduction on the 3% levy⁵. Because this surge would not be repeated if Wales continues the UK policy, we can reasonably assume that the revenue from stamp duty is only set to decrease further. Wales is therefore left in a position where it is still implicated by the negative effects of stamp duty, but does not receive anywhere near the same revenue generated by the London boroughs of Westminster, Kensington & Chelsea.

¹ <https://kfcontent.blob.core.windows.net/research/78/documents/en/autumn-2016-4079.pdf>

² <http://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/housepriceindex/july2016>

³ <https://kfcontent.blob.core.windows.net/research/78/documents/en/autumn-2016-4079.pdf>

⁴ Ibid

⁵ Ibid

The Stimulus Effect of Cutting Stamp Duty

While superficially attractive in terms of possible extra revenue for the Welsh Government, the reality may well be the opposite effect, namely, less revenue overall.

Research finds that a 1% cut in Stamp Duty results in a 20% increase in market activity. Indeed, this figure was reflected and exceeded in the month before the additional 3% SDLT was introduced UK wide⁶. Before the additional 3% SDLT levy was introduced in April 2016, the market saw what many commentators have called a 'boom' in buy-to-let mortgages. Data from the Council of Mortgage Lenders shows that the number of buy-to-let mortgages was up in March 2016 by 142% annually, which reflected in lending was a 163% Increase.

This was a substantial increase in the amount of activity in the buy-to-let market, which will have had an impact on the number of homes available to renters. However, more activity in the buy-to-let sector isn't just good news for tenants, who benefit from lower rents and increased choice, plus more competition between landlords, but it has significant economic advantages for many in the 'local economy'.

Purchasing a house is associated with substantial household spending on repairs, renovations, durable goods (domestic appliances, consumer electronics, furnishing, etc.), and commissions to agents and lawyers. Using UK consumption survey data, Best and Kleven estimate conservatively that a house transaction triggers extra spending of about 5% of the house price⁷. When combined with the estimated increase in transaction volume (20%) this begins to represent a very real form of economic stimulus.

*"The large effect is due to the strong responsiveness of house purchases to transaction taxes along with the complementarities between moving house and consumer spending. More generally, reducing transactions costs in the housing market (using tax cuts or subsidies) may be a powerful form of stimulus"*⁸

Landlords typically invest heavily after purchasing a property, because the property needs to meet high standards to attract potential tenants, but must also comply with a litany of legislation impacting solely on PRS landlords and not owner-occupiers. Therefore, a much greater economic stimulus would be expected.

The reverse will be the case if the 3% levy is maintained. The levy on the purchase of a buy to let property will mean that less money is available at the outset for spending on the property. It will also result in lower initial investment into the property due to less expenditure on repairs and improvements.

Market Dynamics, Landlord and First Time Buyers

Landlords, as buyers, help lubricate the housing market. They form a very important part of the house buying mechanics, and encouraging investment from landlords is important for all types of

⁶ https://web.stanford.edu/~mbest/best-kleven_landnotches_feb2016.pdf

⁷ https://web.stanford.edu/~mbest/best-kleven_landnotches_feb2016.pdf

⁸ Ibid

tenures. Often, when moving home, buyers and sellers can become linked together in a chain, which eventually needs to be broken in order for completion to happen. Because landlords are acting as buyers and not sellers, they can bookend chains.

A survey of 2,000 home movers by Which? found that around three in ten (28%) people have experienced a property purchase falling through, due mostly to reasons relating to the difficulties with Chains. 21% have had to pull out of a Chain because their own sale fell through, and 13% said the seller had pulled out because the process was taking too long⁹.

Landlords can often be a solution to these long chains, giving more liquidity into the market and dramatically shortening the time taken for completion for all types of buyers, including first time buyers.

Much has been said about PRS landlords and first time buyers competing for the same properties, however this is a narrative that has no basis in fact. Whilst the Chancellor (then George Osborne) has argued that the Stamp Duty levy is about freeing up more properties for purchase instead of being bought for buy to let, there is very little evidence to support the assertion that landlords and home owners are competing for the same properties. A recent report by the London School of Economics has noted: "*The (very limited) research into direct competition between investors and private owner-occupiers has found that nationwide only a minority of sales to landlords involved bids from both types of buyer*"¹⁰.

Closing Comments

Wales has worked hard to shape the PRS into a sector that contributes positively towards the overall housing situation in Wales. Landlords are registering and undergoing training, with greater satisfaction rates among tenants in the PRS and consistently low rents. However, this is at threat through a number of taxation changes and policies designed in Westminster. As stamp-duty is devolved to Wales, the Welsh Government has the opportunity to shape the policy in a way that works for Wales. At present, the stamp-duty policy is designed to tackle issues in London, generating detrimental effects on the housing market of other parts of the UK, notably Wales. This is evidenced that London accounts for 44.6% of stamp-duty revenue despite only accounting for just over 12% of transactions. Given the positive PRS here in Wales and the need for every housing sector to grow, in order to tackle the housing crisis in Wales, we see no reason why Wales needs to adopt the London centric policy of adding an additional 3% levy on stamp-duty to the cost of homes available to rent.

⁹ <https://press.which.co.uk/whichpressreleases/three-in-10-property-purchases-fall-through/>

¹⁰ London School of Economics, "Taking Stock - Understanding the effects of recent policy measures on the private rented sector and Buy-to-Let", 11th May 2016, Page 5 - <http://londonhousing.org/wp-content/uploads/2016/05/GRP12392-LSE-report-design-WEB.pdf>.



LAND TRANSACTION TAX AND ANTI-AVOIDANCE OF DEVOLVED TAXES (WALES) BILL

ICAEW welcomes the opportunity to comment on the Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Bill (the Bill) published by the Welsh Government on 12 September 2016.

This response of 4 October 2016 has been prepared on behalf of ICAEW by the Tax Faculty in partnership with the ICAEW's Regional Director for Wales. Internationally recognised as a source of expertise, the faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world.

Contents	Paragraphs
Introduction	1 – 2
Major points	3 – 10
Specific points	11- 21

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 145,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

Copyright © ICAEW 2016
All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is appropriately attributed, replicated accurately and is not used in a misleading context;
- the source of the extract or document is acknowledged and the title and ICAEW reference number are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

For more information, please contact ICAEW Tax Faculty: taxfac@icaew.com

icaew.com

LAND TRANSACTION TAX AND ANTI-AVOIDANCE OF DEVOLVED TAXES (WALES) BILL

INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation Land Transaction Tax And Anti-Avoidance of Devolved Taxes (Wales) Bill (the Bill) published on 12 September 2016.
2. We are pleased to participate in this consultation and for the opportunity to provide oral evidence to the consideration of this Bill.

MAJOR POINTS

3. We support the approach the Welsh Government has adopted in the introduction of Land Transaction Tax (LTT). We believe that the initial consultation process has been well designed and encouraged participation. The subsequent review process has been transparent and it is clear that the Government has listened and taken account of concerns raised during the consultation process.
4. The Welsh Government has made a good start in its tax legislative process and the approach has provided a high degree of confidence that the new tax will work well for Wales.
5. Generally we support the approach of modelling the tax on the existing and familiar rules found in SDLT. We appreciate the problem that the Welsh Government has been formulating its approach to LTT at a time when the UK Government has been making significant changes to the SDLT regime, most recently in abandoning the 'slab' system in favour of a marginal rate system for both commercial and residential property. The result of this has been that the Welsh Government has been forced to play 'catch up' with the changes to the UK SDLT system. Once LTT is up and running, we would hope that the Welsh Government can resist the temptation to keep tinkering with the LTT rules. We believe certainty is essential for taxpayers and we believe that a stable and certain LTT regime will help to encourage investment in Wales.
6. While the Welsh Government has understandably modelled LTT on SDLT, there are of course a number of differences between them, for example the anti-avoidance provisions and the non-introduction of the 15% rate. To help taxpayers and provide certainty, the WRA should publish a list of the differences between the two taxes, including detailed differences and any omissions and inclusions.
7. We note the publication on 16 September 2016 of a separate discussion paper on setting rates and bands. Again, we think this is a good approach given the introduction of LTT is still 18 months away and the rates will need to be set by reference to the prevailing conditions of the time. The setting of rates is clearly a policy question for the Welsh Government to decide and is not one for us to comment on in detail. All we would say is that if the Welsh Government is seeking to attract inward investment and growth, it should set rates that work for Wales and resist the temptation to set too high marginal rates of LTT.
8. LTT should be framed to be simple, certain, straightforward to operate and be fair and reasonable. Before 1997, the UK stamp duty system was simple and straightforward but the successive moves to raise the marginal rates of SDLT have not only introduced distortions (for example between residential and commercial property) but have encouraged extensive attempts to avoid SDLT, and efforts to counter this have introduced a considerable amount of unwelcome complexity into the UK tax system, for example the 15% rate for enveloped dwellings and the ATED regime. We are concerned about the long term stability of such an

approach and that in the long run such measures might prove counterproductive. We therefore welcome the Welsh Government's decision not to proceed with the introduction of a 15% rate.

9. In our original submission to the first consultation on Stamp Duty devolution we proposed that the Welsh government should consider removing the differentiation between commercial and non-commercial and thereby remove a key area of dispute and administration required to classify properties in the current system. Whilst this Bill does not appear to rule out this possibility neither does it refer to it. We remain of the view that such a move could significantly reduce the cost of administration of LTT and remove what is an artificial differentiation if the overall tax take can be retained within one scale of charges.
10. Turning to the Bill itself, we believe it is well set out and a model of clarity and conciseness.

SPECIFIC POINTS

11. Set out below are our high level points on the Bill. We will continue to review the detail and submit further detailed points as part of the consultation process.

Chapter 2 Land Transactions

CI 9, Land partly in Wales and partly in England

12. While we suspect that there are very few estates that straddle the England/Wales border, we would welcome clarification as to the position when an estate is situated partly between England and Wales. Which Revenue authority will decide whether any apportionment is on a just and reasonable basis? What happens if there is a disagreement and how will it be sorted out? This points to the need for at least some form of operating agreement between the WRA and HMRC and a protocol governing how any disputes in valuations are resolved.

CI 31, Reliefs: anti-avoidance

13. In principle we support the approach adopted by the Welsh Government to ensuring that reliefs are not abused. In our earlier submissions, we suggested that the Welsh Government should not adopt the approach used in relation to avoidance of SDLT and which is set out in s 75A to 75C, FA 2003. The latter adopts a very mechanistic approach based upon transactions and a reduction in the SDLT charged but without any motive test.
14. The approach adopted in this Bill is to introduce, in effect, a targeted anti avoidance rule (TAAR) such as is found in a number of parts of the UK tax legislation. However, while TAARs have become a common approach adopted by the drafter when seeking to counter avoidance, care needs to be taken in using them as they can result in considerable uncertainty. Usually, extensive guidance will be needed to accompany them to ensure that the policy purpose is achieved, but the result is often that taxpayers will find that they are taxed according to the law, but then are untaxed as a result of a published practice or concession. The WRA will need to publish guidance on how this TAAR is expected to apply in respect of each relief that has been granted, and given that each relief is different the 'answer' may be different depending upon the individual circumstances of the relief and the underlying policy behind each relief.
15. In cl 31(2)(b), we are not convinced that the wording is particularly helpful – for example the use of the word 'genuine' is unusual although we appreciate it has also been used in the drafting of the anti-avoidance rule – see further below. We would have thought the test would be better framed as arrangements that lacked economic substance or where the economic substance was insignificant when compared to the tax advantage received. An alternative formulation would be to link this test to arrangements that are artificial and/or contrived – wording that is used elsewhere in the tax legislation.

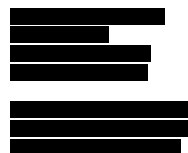
16. We are concerned that the list of taxes included within a tax avoidance arrangement includes those which are not devolved, including for example income tax, corporation tax and capital gains tax. Given this measure is aimed at the avoidance of LTT, we do not see that these taxes should be included in a list of taxes that could trigger this provision. However, and more generally, we are concerned as to how this provision might apply given all of those taxes will continue to be administered at the UK level so that the WRA will not have those details to hand. We think the non-devolved taxes should be removed from the list but as a minimum we would welcome greater clarity on how such a provision would operate both legally and in practice. An alternative would be to not list the taxes but use a catch all phrase such as “All taxes devolved to the Welsh Government”.

Part 7 Anti avoidance rule

17. We appreciate the Welsh Government’s decision to adopt a general anti avoidance rule but are concerned that the Welsh version of the rule has significant differences both to the UK’s general anti abuse rule and the anti-avoidance rule adopted by the Scottish Government. While we appreciate that, by definition, devolved taxes should be exactly that, nevertheless for the sake of consistency and the need to encourage inward investment, we think that this is an area where some consistency across the constituent countries of the UK would be helpful.

Cl 81, Artificial tax avoidance arrangements

18. In cl 81C(2)(a), again the Welsh approach has been to adopt a similar wording and tests used in cl 31, however we are concerned about the use of ‘any genuine economic or commercial substance to the arrangement’. The equivalent definition in s 64 of the Revenue Scotland and Tax Powers Act 2014 is that the arrangements lack economic or commercial substance. The Welsh version of this test appears to set quite a low threshold, namely was it genuine, rather than look to the actual substance of the arrangement. The test is likely to create further uncertainty and argument in what is already a difficult area for advisers and taxpayers.
19. It would appear that the taxpayer is not under a duty to ‘self-assess’ under the Welsh GAAR and that instead the WRA must issue a counteraction notice. In this respect, the rules appear to largely follow the rules in the Scottish GAAR rather than the rules in the UK GAAR. However, the Scottish rules include provisions (in s 66(4) Revenue Scotland and Tax Powers Act 2014) which would allow the taxpayer to make the adjustment, but these provisions do not appear to have been carried over into the Welsh Bill. We would have thought that taxpayers should have the ability to amend a return in these circumstances.
20. More generally, we are concerned as to whether the Welsh GAAR provides sufficient certainty to taxpayers. We can appreciate why the Welsh Government would not want to adopt a clearance mechanism, but, nevertheless the broad sweep on the anti-avoidance provision makes it difficult for taxpayers to obtain certainty and we question whether some way might be found to provide greater certainty.
21. In the absence of any clearance mechanism, we note that the UK GAAR is accompanied by extensive guidance which helps to identify when transactions may, or are more likely to, fall foul of the GAAR. Given there is no GAAR advisory panel, we believe the WRA should work with the professions to produce some practical guidance on the likely application of the GAAR in advance of the introduction of LTT.



Finance Committee
National Assembly for Wales

Date: 5 October 2016

Your ref:

Our ref: [REDACTED]

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

Dear Sirs

Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

We welcome the opportunity to comment on the proposed introduction of Land Transaction Tax in Wales.

Eversheds is a leading international law firm. Through its offices in Callaghan Square in Cardiff, Eversheds offers a global legal service to its clients. This includes a real estate service which encompasses institutional, inward and property company investment mandates, multi jurisdictional portfolio management, energy related real estate projects and regeneration schemes. The real estate practice works closely with the Eversheds tax practice on SDLT and other tax aspects of such mandates, projects and schemes.

We have a number of general points on the draft Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill.

1. Stamp Duty Land Tax and Land Transaction Tax

Any arbitrary differences between stamp duty land tax ("SDLT") and Land Transaction Tax ("LTT") should be avoided, unless there are clear policy reasons why this should be the case. In practice, the same legal practitioners will be involved in land transactions in England and Wales, and so to avoid errors and inefficiencies, technical differences should be kept to a minimum where this is consistent with Welsh policy objectives.

2. Property Authorised Investment Funds

There is nothing in the draft Bill in relation to Property Authorised Investment Funds ("PAIFs"). These are open-ended investment companies of sub-funds of umbrella OEICs that are elected in to the PAIF regime in Pt 4A Authorised Investment Funds (Tax) Regulations 2006 (SI 2006/964). The SDLT rules have two reliefs.

The longstanding relief is for the conversion of existing authorised unit trusts invested in property to convert in to OEICs. Only OEICs qualify for PAIF status. Scotland failed to enact an equivalent Land and Buildings Transaction Tax ("LBTT") relief but this is included in the draft Bill for LTT.

The new relief for SDLT-free seeding by one or more initial investors which was introduced in the Finance Act 2016 does not however appear to have been included in the Bill. Basically one or more initial investors can transfer one or more

properties in to a PAIF free of SDLT but there is a clawback of the unpaid SDLT if they sell within a three-year control period. The seeding relief should be considered for inclusion in the draft bill for LTT. The clawback provisions are not helpful and would be better not replicated.

3. Authorised Contractual Schemes in co-ownership form, sometimes abbreviated to CoACS.

There is nothing in the draft Bill in relation to Authorised Contractual Schemes ("ACS's"). These are the new contract-based collective investment schemes in s235A Financial Services and Markets Act 2000. They are tax-transparent pools of co-owned assets for tax purposes except where the tax legislation provides otherwise for them. There was no special SDLT regime for them until one was enacted in the Finance Act 2016. Until this was introduced, every time the numbers of units held by the unitholders changed, there was a proportionate change in the beneficial ownership of each of the underlying assets. Now the ACS is effectively treated as opaque for SDLT purposes so that the shifts in beneficial interests do not present SDLT problems (though they are still potentially chargeable transactions for LBTT so it is not normally possible for them to hold any Scottish property). It is important for the Welsh property market that there is a matching LTT system. Because the ACS is now effectively opaque for SDLT purposes, a seeding relief is now necessary, and so there is a matching seeding relief for ACSs in the Finance Act 2016 introduced alongside the PAIF seeding relief.

4. Filing and Payment Deadline

We understand there have been preliminary discussions around shortening the deadline for submitting returns and making payments of LTT to 14 days, although the draft Bill refers to the existing 30 day period. In our experience, 30 days is required for taxpayers to take advice, prepare returns and ensure these are approved by the correct personnel. This is particularly the case in complex transactions or where valuation advice is required. Any shortening of the period is likely to give rise to inaccuracies and increased compliance costs for taxpayers and the Welsh Revenues Agency.

5. Section 31 : targeted anti-avoidance rule

We understand why a targeted anti-avoidance rule may be considered. The rule applies to a "tax avoidance arrangement" if a tax advantage is a main purpose and the arrangement lacks genuine economic or commercial substance other than obtaining a tax advantage. We are concerned that this provision is of wide application applying not just to tax avoidance arrangements but to arrangements which have a tax advantage. If enacted in this form, clear guidance will be required on its interpretation and the arrangements which fall within its ambit and which arrangements do not, if uncertainty is to be avoided.

6. Section 65 : General anti-avoidance rule

The General Anti Avoidance Rule will apply to an "artificial tax avoidance arrangement" having regard to whether the arrangements gives rise to a tax result which it is reasonable to assume was not intended by the legislation. If enacted in this form, clear guidance will be required on the intent of any legislation, particularly where this differs from SDLT or LBTT, to enable taxpayers to apply the test objectively.

7. Higher rates for purchases of additional residential property

This is not in the draft Bill but is under consideration. As mentioned earlier arbitrary differences between SDLT and LTT should be avoided unless there are reasons for different policies in Wales. These provisions in relation to SDLT are not

Date: **5 October 2016**

Your ref:

Our ref: [REDACTED]

Page: 3

helpful to corporate investors in private rental accommodation, including funds whose investment in such accommodation may be deterred by the application of the higher rates for additional residential property. In particular for SDLT purposes where a claim for multiple dwellings relief ("MDR") is made on bulk purchases of private rental accommodation (six or more properties), the additional 3% rate applies. For LBTT in Scotland there is an exemption from the additional 3% rate in this situation. Which approach is appropriate depends on whether the policy is to deter institutional purchasers of residential property or not.

If you have any questions in relation to our comments, or would like to discuss any of the points raised, please contact David Jervis on 0113 200 4780 or at [REDACTED].

Yours faithfully

Eversheds LLP

Pwyllgor Cyllid | Finance Committee

Bil Treth Trafodiadau Tir A Gwrthweithio Osgoi Trethi Datganoledig (Cymru)

Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Bill

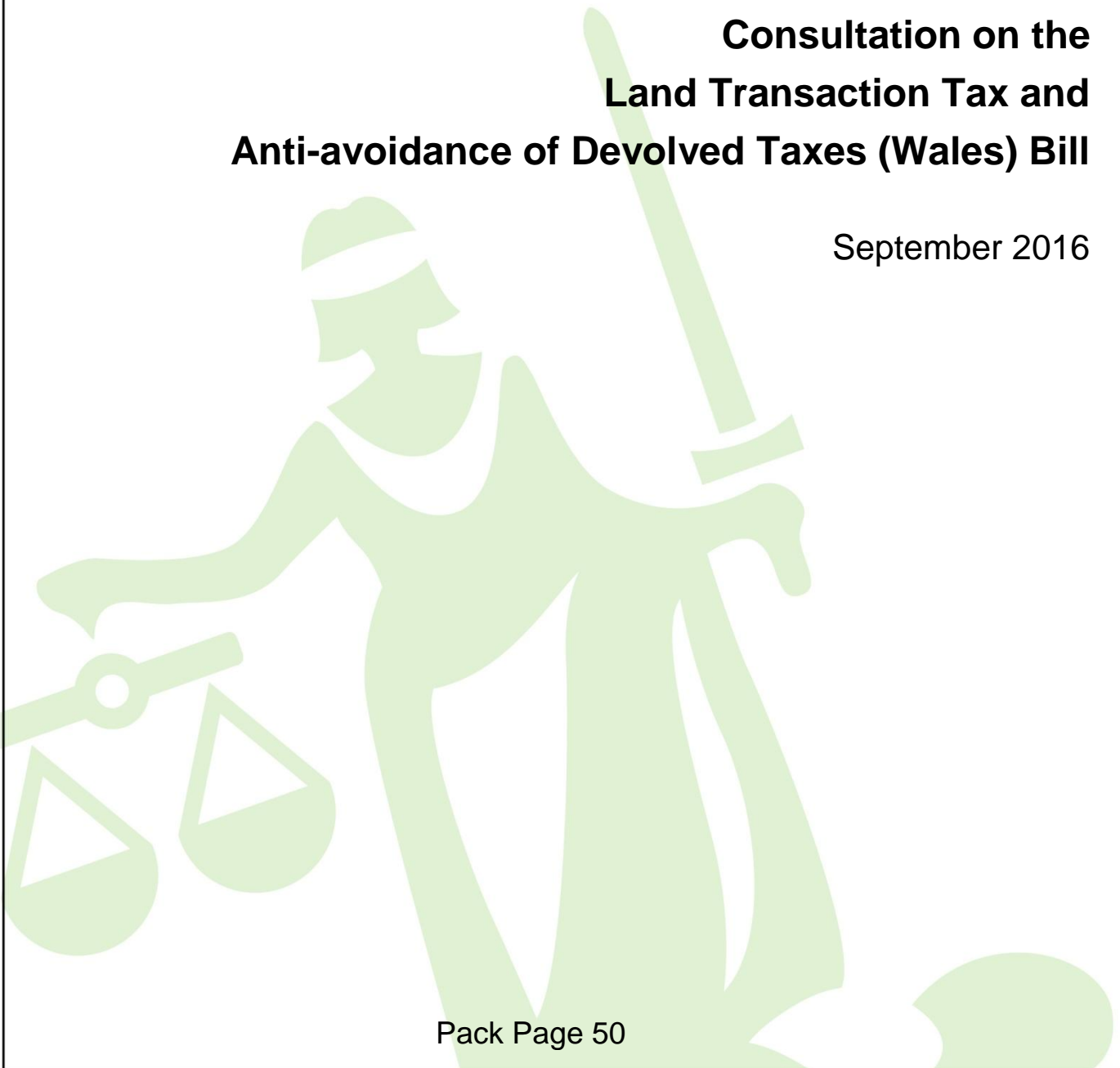
LTTA 10 Chymdeithas y Cyfreithwyr | The Law Society



Cymdeithas y Cyfreithwyr
The Law Society

Consultation on the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

September 2016



Pack Page 50

Introduction

1. The Law Society of England and Wales ("the Law Society") is the professional body for the solicitors' profession in England and Wales, representing over 170,000 registered legal practitioners. The Law Society represents the profession to legislators, governments, regulatory bodies and wider stakeholders.
2. The Law Society has a public interest in law reform and plays an active role in the effective operation of legal institutions and access to justice in England and Wales.
3. The Law Society Wales Office delivers the Law Society's aims in Wales, working with Welsh institutions; influencing and responding to law-making for Wales; and promoting and supporting the legal community in Wales.

Background

4. The current stamp duty land tax ("SDLT") affects both private citizens and commerce consequently Wales' replacement requires a careful approach. On the publication of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill ("the Bill") the Cabinet Secretary for Finance and Local Government stated "The Bill retains key elements of stamp duty land tax, ... This provides consistency and will enable a smooth transition for the property market."¹ This approach is welcomed.

Overview

5. The Bill is long and detailed and a careful approach to line by line scrutiny is necessary. Errors have appeared in Welsh Government Bills in the past which have been corrected during passage through the Assembly. We note that the Cabinet Secretary has provided a "table ...to signpost to existing UK and Scottish legislation"² to assist this process.
6. Additionally, the Welsh version of the Bill requires special attention because provisions have been borrowed from other existing land transaction tax legislation which is stated in English only. The legislative glossary³ which has been published is helpful but does not have legislative effect.
7. In many instances property practitioners rather than tax specialists deal with this tax. Currently, the intention is that the Land Transaction Tax ("LTT") should replicate SDLT however, where there is divergence e.g. as may be the case between the guidance issued by the Welsh Revenue Authority ("WRA") and HM Revenue and Customs ("HMRC") specialists in SDLT will no longer be able to advise for LTT. Unless practitioners develop expertise in LTT a dearth could emerge: this is a particular concern regarding commercial property.

¹ [Written Statement 12 September 2016](#)

² [Letter from the Cabinet Secretary for Finance and Local Government – 28 September 2016](#)

³ [Geirfa'r Gyfraith Bil Treth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig \(Cymru\)](#)

8. The provision for a "general anti-avoidance rule" ("GAAR") operates as an amendment to the Tax Collection and Management (Wales) Act 2016 ("TCM") which was passed by the previous Assembly on the 8th of March this year. Such a fundamental provision requires careful scrutiny as it will apply to all Welsh taxes not just LTT. There is a danger that the provision will be considered in the context of LTT only whereas it has a wider impact. In addition, the move to amend the TCM only 6 months later raises the question of how easily any future changes in policy or improvements can be enacted without a vehicle such as a regular Finance Act?
9. As a matter of good law-making there is a need to review the impact and operation of new laws in this case a formal review is vital to appreciate the effect of a move to a new regime and tax collection authority.
10. The comments set out below are made to highlight areas of concern where the Bill requires careful interrogation to ensure there are no unintended consequences, that there is clarity and fairness for taxpayers and that the provisions are workable.

PART 2 The Tax and Key Concepts

Chapter 2 Land Transactions

Section 9 Land partly in Wales and partly in England

11. This section introduces a new and additional step to the process of buying or leasing land along the border. Properties straddling the border ("cross-border properties") will now fall into a special category. The most important point that has been repeatedly made is that buyers will want to know what their LTT/SDLT liability is before they make the offer to buy. Although the section states "the consideration ... is to be apportioned on a just and reasonable basis" this does not help with implementation.
12. Where a single transaction includes Welsh and English land, the transaction will be treated as if there were two transactions, and their consideration is apportioned. The apportionment required by the legislation is very difficult in practice. It would be inappropriate for solicitors to calculate the apportionment. It may therefore fall to the selling agent who has a duty to the seller but has a potential immediate conflict if asked by the buyer to provide the LTT/SDLT apportionment report.
13. Assuming an agent produces a report (hopefully backed by their insurance) and the solicitor considers it safe to rely on that report, we will not then know whether it is agreed by HMRC and WRA until the two returns are submitted and the assumed liabilities discharged. The buyer, their solicitor and the agent could end up in the middle of a dispute between the two tax authorities: it will take any and all certainty out of almost every transaction.
14. Clear guidance will need to be given about how a just and reasonable apportionment will be arrived at and confirmed by the tax authorities so that it can be relied on by the buyer.

15. How closely will the WRA interact with HMRC? Will there be a ruling system available from the WRA? Should SDLT legislation for England include a new provision to accommodate the treatment of cross-border properties?
16. The Land Registry have given evidence regarding the number of properties which could be described as cross-border properties but the number is uncertain and the Land Registry do not currently take account of the geographic border.
17. The whole process needs certainty, preferably from the outset of the transaction. It has been suggested that a notice could be served on HMRC and WRA at the outset of the transaction setting out what the parties believe to be the liability and giving them 28 days in which to object.
18. Another suggestion is to appoint an independent panel of agents (possibly on a tender basis as was the case for the valuations in respect of TB compensation) whose decision would be binding on the parties, the WRA and HMRC. This would ensure that the total LTT/SDLT liability would never be more than the one calculated tax.
19. Whatever the process for cross-border properties it needs to be early, certain and quick.
20. A further issue regarding allocation of properties as being in Wales or in England is that where they are 'near to' the border that location cannot be confirmed as being in Wales or England by reference to the post code. There are lots of cross border postcodes such as Hay on Wye which has an HR (Hereford) post code and further up the SY and CH postcodes criss-cross the border. It is possible that solicitors might not know which side of the border a property is on and without a definitive map showing the location of the border who will bear the burden of any mistake? A definitive border map will be needed at the Land Registry otherwise they will be unable to satisfy themselves that the correct tax been paid to the correct authority.

PART 3 Calculation of Tax and Reliefs

s31 Reliefs: anti-avoidance

21. Lawyers and their clients want certainty insofar as that is possible. Section 31 introduces a targeted anti-avoidance rule ("TAAR") to a variety of reliefs. Our main observations are:
22. The TAAR covers more reliefs than is the case for SDLT. For example, there is no TAAR for sale and leaseback relief for SDLT.
23. The TAAR is a "tax advantage" rather than a "tax avoidance" provision. The former is much wider. It may catch transactions, therefore, which are not caught by the SDLT equivalent. Consider a company which owns land in Wales and England which is transferred to a 75% subsidiary. It may get group relief in England, but not in Wales (or visa versa). This does not "provid[e] consistency".

24. The general anti-avoidance rule ("GAAR") in clause 65 should provide wholly comprehensive effect and so would cover any transaction to which the TAAR would also apply. So why is there any need for a TAAR? If in fact the TAAR covers arrangements which are not covered by the GAAR, can the GAAR genuinely be called a general anti-avoidance rule?
25. When the current English law GAAR ("the English GAAR") was introduced, it was the hope of Graham Aaranson QC, who provided the original research and drafting on the GAAR, that existing TAARs could be phased out and further TAARs rendered unnecessary. This admirable principle should, we suggest, be followed for the LTT.
26. What possibility will there be of clear guidance and/or a ruling system? Time, effort and money can be spent in trying to come to terms with legislation whose effect is unpredictable (i.e. the TAAR) and this can delay, if not completely frustrate, transactions. If there is no ruling system, then the burden of risk will be thrown onto the professions with accompanying additional cost and uncertainty.
27. Detailed guidance would be helpful, but our experience of "anti-avoidance" guidance in SDLT is that it is unhelpful. The examples given are clearly one side of the divide or the other, on the facts, and so are no good as a steer as to how the legislation should be interpreted in marginal cases (which is always going to be the difficult area).
28. We are offering our assistance to help the WRA in producing detailed guidance as well as assisting in the training of WRA officers in future in this difficult area.
29. Because the LTT TAAR is different from the current, or English, TAAR, there is little that can be read across from the SDLT know how/guidance into the LTT. This is a very real distinction between the two regimes.
30. Consider the following example:

For SDLT purposes, Section 57A Finance Act 2003 deals with sale and leaseback relief and, as is mentioned above, is not subject to any TAAR. Relief under Section 57A is only available if the leaseback is granted to the person who transfers the freehold. If the leaseback is granted to a group company, relief is unavailable.

The English GAAR recognises that there seems little wrong with reorganising ownership of the asset to be sold and leased back either prior to the sale and leaseback, or subsequent thereto. So if A owns a property and wishes the leaseback to be not to it, but to another group company, a transfer of the property to that other group company prior to the sale and leaseback is "English GAAR compliant". How would the LTT TAAR operate in these circumstances?

Part 7: General anti-avoidance rule

31. There is no double reasonableness test as there is in the English GAAR.

32. Nor is there any indication that there will be GAAR guidance which has an important statutory status for the English GAAR. We would expect detailed guidance of the application of the GAAR in Wales to be promulgated at the same time as the legislation is enacted. We would expect such guidance to include “marginal” examples, plus an explanation as to why they fall one or other side of the avoidance line (in the same way that the English GAAR guidance does), since it is those reasons which can be extrapolated to real life situations which are not on all fours with any of the examples in the guidance.
33. The GAAR should cover everything that is covered by the relief TAAR in Section 31, thus rendering the latter unnecessary.
34. Taxpayers will have to self-assess whether the GAAR applies. Will there be a ruling facility? Consider the following example; do you think the organisation should be subject to the GAAR (or indeed a TAAR)? A care home organisation owns land which is subject to a lease from a local authority. It wishes to refurbish its premises extensively, i.e. knocking down its existing building and building a new one in its place. The local authority landlord is amenable to the proposition. If the care home surrenders its tenancy and the local authority then sells it the freehold, that is an exchange with a market value imputation, for LTT, for both transactions. If on the other hand the existing tenancy is surrendered and a new lease is granted by the local authority, that benefits from the relief in paragraph 17 of Schedule 5. Does the committee think that choosing the latter course of action should (or indeed does) fall foul of the GAAR? Does the committee think that the granting of the lease has more economic substance than the sale of the freehold? Does it matter that the only reason why the arrangements are structured as a surrender and leaseback, rather than a surrender and sale of freehold, is to save LTT? If this does not fall foul of the GAAR, why is that?

Further points

35. With regard to the powers to make subordinate legislation we suggest that any changes to the legislation which impose a financial burden on taxpayers should be scrutinised and debated by the National Assembly.
36. A stakeholder group, the Stamp Duty Working Together Stakeholder Group, was established to bring together industry and professional bodies with UK government and bodies such as the Land Registry to discuss develop and promote co-operative strategies for dealing with tax affairs with particular reference to HMRC's role. This stakeholder group meets regularly and is a useful opportunity for stakeholders to work together to ensure the system works for all those involved. Such a group should be established for LTT and we would advise the early establishment of a formal group before the LTT comes into effect in 2018.

Emerging Issues

37. The Welsh Government is undertaking a consultation on the introduction of an additional rate of tax for residential properties. The definition for residential and non-residential transactions, which is taken from the SDLT legislation, has some intrinsic difficulties (what is a similar establishment to a hotel, for

example?) and then suffers from a very significant lack of specificity and guidance.

38. Residential property has always been (until the last three years) the poor relation of SDLT. The main guidance dealing with it, therefore (SP1/04), was produced at a time when values were smaller, the rates were lower and neither HMRC nor tax payers were worried, over duly, about residential property. The situation is now completely different. We have produced a paper which has been submitted to HMRC about the lack of clarity there is surrounding the definition of residential property. For example, if a substantial residential property has three or four rooms put to use as self-contained "bed and breakfast" accommodation, what impact does that have on the overall qualities of the substantial property? Does it render it not "entirely" residential? Do you split the non-residential from the residential and tax the two elements at different rates? What if there is a business in the garden or grounds? Does that prevent the property being residential at all, or again, do you pro-rate?
39. The additional 3% is causing a very great deal of trouble in England. HMRC have vastly underestimated the difficulties it has caused and thus has been very slow to provide the advisory resources that taxpayers could rightly expect.
40. It has also provided difficulties for professionals (both conveyancers and accountants) since tax payers have become used to conveyancing fees of a modest level and have not seen SDLT advice as being tax advice; merely part of the conveyancing process. It is difficult for the profession to persuade taxpayers that the two are distinct pieces of advice.
41. The Law Society has been pleased to engage closely with the Welsh Government in its consideration of the implementation of this historic new tax raising power. We are pleased to contribute to the scrutiny of this legislation through the Finance Committee and will provide further comments on these and any additional issues which the Finance Committee wishes to examine.

Please refer any questions regarding this response to:

████████████████████████████████████████
████████████████████████████████████████

The Law Society / Cymdeithas y Cyfreithwyr
Capital Tower / Twr y Brifddinas
Greyfriars Road / Heol Y Brodyr Llwydion
Cardiff / Caerdydd
CF10 3 AG

████████████████████████████████████████
████████████████████████████████████████

TAAR



What is the name of the relief?	Where is the relief found for SDLT?	Where is the relief found in the LTT Bill?	Does the SDLT relief contain a TAAR?	Does the LTT TAAR cover this relief?
Relief for notional transactions associated with assignments of rights and relief for certain subsales	Schedule 2A, Finance Act 2003	18(2), 19(2) and 19(3) of Schedule 2	Yes (paragraph 18, schedule 2A, Finance Act 2003)	Yes
Sale and Leaseback relief	Section 57A of Finance Act 2003	Paragraph 1 of Schedule 8	No	Yes
Relief for certain alternative property finance transactions	section 71A and 73 Finance Act 2003	Paragraphs 2 and 3 of Schedule 9	No	Yes
Relief for certain transactions relating to alternative finance investment bonds	Section 123 and Schedule 61 of the Finance Act 2009	Paragraphs 13(1) and 15(1) of Schedule 10	Yes (paragraph 22, Schedule 61 Finance Act 2009)	Yes
Relief for incorporation of limited liability partnership	Section 65 Finance Act 2003	Paragraph 1 of Schedule 11	No	Yes
Relief for certain acquisitions of dwellings	Schedule 6A Finance Act 2003	Paragraphs 2(1), 2(3), 3(1), 3(4), 4(1), 4(4), 5(1), 5(3), 6(1), 6(4), 7(1) and 7(4) of Schedule 13	No	Yes

Relief for transactions entered into by persons exercising collective rights	Section 74 Finance Act 2003	Paragraph 10 of Schedule 13	No	Yes
Shared Ownership Leases: relief for certain reversions	Section 70 and Schedule 9 of Finance Act 2003	Paragraph 4 of Schedule 14	No	Yes
Shared Ownership Leases: relief for certain staircasing transactions	Section 70 and Schedule 9 of Finance Act 2003	Paragraph 6(2) of Schedule 14	No	Yes
Shared Ownership Trust Relief: transfer upon termination	Section 70 and Schedule 9 of Finance Act 2003	Paragraph 13 of Schedule 14	No	Yes
Shared Ownership Trusts: relief for certain staircasing transactions	Section 70 and Schedule 9 of Finance Act 2003	Paragraph 14 of Schedule 14	No	Yes
Relief relating to contingent consideration in the case of a right to buy transaction	Section 70 and Schedule 9 of Finance Act 2003	Paragraph 2 of Schedule 14	No	Yes
Shared Ownership Leases: election for consideration to be taken to be market value	Section 70 and Schedule 9 of Finance Act 2003	Paragraph 3 of Schedule 14	No	Yes

Shared Ownership Leases where staircasing allowed: election for consideration to be market value	Section 70 and Schedule 9 of Finance Act 2003	Paragraph 5 of Schedule 14	No	Yes
Shared Ownership Trusts: election for consideration to be market value	Section 70 and Schedule 9 of Finance Act 2003	Paragraph 12 of Schedule 14	No	Yes
Relief for certain acquisitions by social housing providers	Section 71 of Finance Act 2003	Paragraph 19(1) of Schedule 14	No	Yes
Group Relief	Section 62 and Schedule 7 of Finance Act 2003	Paragraph 2(1) of Schedule 15	Yes (Paragraph 2(4A), Schedule 7 of the Finance Act 2003)	Yes
Reconstruction Relief	Section 62 and Schedule 7 of Finance Act 2003	Paragraph 2(1) of Schedule 16	Yes (paragraph 7(5) Schedule 7, Finance Act 2003)	Yes
Charities Relief	Section 68 and Schedule 8 of Finance Act 2003	Paragraphs 3(1), 5(1), 6 and 8 of Schedule 17	Yes (paragraph 1(3) Schedule 8 Finance Act 2003)	Yes
Open-ended investment companies relief	Section 102 Finance Act 2003 and the Stamp Duty Land Tax (Open-ended Investment Companies) Regulations 2008	Paragraphs 1(1) and 2(1) of Schedule 18	No	Yes
Relief for acquisitions by public bodies and health bodies	Sections 66 and 67A Finance Act 2003	Paragraphs 1(1) and 2 of Schedule 19	No	Yes

Compulsory purchase relief and planning obligation relief	Sections 60 and 61 Finance Act 2003	Paragraphs 1(1) and 2(1) of Schedule 20	No	Yes
Relief for acquisitions involving multiple dwellings	Section 58D and Schedule 6B of the Finance Act 2003	Schedule 12	No	Yes
Acquisition Relief	Section 62 and Schedule 7 of the Finance Act 2003	Schedule 16	Yes (Paragraph 8(5B), Schedule 7 to the Finance Act 2003)	Yes



Response to the Welsh Assembly's Finance Committee inquiry into the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill from National Association of Estate Agents (NAEA)

October 2016

Background

1. National Association of Estate Agents (NAEA) is the UK's leading professional body for estate agency personnel, being part of a group representing more than 16,000 members who practice across all aspects of property services both in the UK and overseas. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land. The NAEA is a sister organisation to the Association of Residential Letting Agents (ARLA).
2. NAEA is dedicated to the goal of professionalism within all aspects of property, estate agency and land. Its aim is to reassure the general public that by appointing an NAEA member to represent them they will receive in return the highest level of integrity and service for all property matters. Both NAEA and ARLA members are bound by a vigorously enforced Code of Practice and adhere to professional Rules of Conduct. Failure to do so can result in heavy financial penalties and possible expulsion from the Associations.

Evidence

General principles of the Bill

3. NAEA welcomes the new powers for the Welsh Government to collect Land Transaction Tax (LTT) receipts. We think it will have a largely positive impact on the residential housing sector in Wales. The introduction of the new initiative will create a fairer system and in turn increase the desirability of Welsh property.
4. In the longer term we think that an LTT system that is reflective of the regional differences in housing markets will lead to an increase in house prices as demand rises. As a consequence the Welsh Government is likely to see an increase in revenue which can be used to regenerate communities across the country.
5. NAEA acknowledges the intention of LTT to provide a replacement for Stamp Duty Land Tax (SDLT) so that public services in Wales can continue to receive the benefit of



the revenues raised by that tax. However, it is essential that the revenues are ring-fenced by the Welsh Government to spend on house building projects.

6. We believe that flexibility to create an LTT system unique to Wales will help to ensure that the Welsh residential market is healthy. However, where possible the LTT should broadly replicate SDLT processes and systems in order to provide stability and ensure that procedures and processes used to collect and manage the tax continue to be understood by tax payers, estate agents and businesses in both England and Wales.

Whether there are any unintended consequences arising from the Bill

7. The Welsh Government need to communicate widely to estate agents, purchasers, solicitors and mortgage advisors to ensure that everyone understands the changes and what tax they will be paying on a planned purchase. People in England and Wales need to be aware that LTT is a replacement tax and not an additional one.

Potential barriers to implementing provisions of the Bill

8. We believe that further guidance is needed when land transactions involve the acquisition of a chargeable interest where the land is partly in Wales and partly in England and are treated as comprising two separate transactions – one relating to land in Wales and the other relating to land in England. We note that the legislation states “land in Wales”, however under the proposed arrangements this could create some complicated valuations and thus guidance models are needed.

The Financial implications of the Bill

9. As previously stated, NAEA agrees with the Welsh Government’s decision to introduce LTT to replace SDLT. We approve of the commitment made by Welsh Ministers for the use of a marginal rate calculation of LTT for residential and non-residential transactions, which means the rates will be payable on the portion of a property price which falls within each band. This is consistent with SDLT and will help the majority of buyers.
10. However, we urge the Welsh Government to caution against revenue forecasting following the introduction of LTT. NAEA members in Scotland reported a slowdown in



sales at the high-end of the market following the introduction of Land Buildings Transaction Tax (LBTT).¹

Implementation of tax bands and rates

11. NAEA believes that the Welsh Government should consider making the tax bands and rates more suited to the value of property in Wales in comparison to England and Scotland. By doing this the Welsh Government can take into consideration the uniqueness of the Welsh property market in order to better meet the housing needs of the population and maximise tax revenue. Further to the issue we raised at Point 7 in this response online calculators and guidance is also useful for estate agents.

12. Taking Scotland as a comparison, any proposals need to avoid slowing down sales in an economic centre like Cardiff where property prices are well above average, but demand remains high. For instance, the LBTT rates in Scotland mean that for purchasing property priced up to £325,000, purchasers are paying less tax in Scotland than they would on the same priced property under UK SDLT. Conversely, purchasers buying property priced from £500,000 to £1,000,000 in Scotland pay more tax than they would on similar priced property outside of Scotland under UK SDLT. This makes Scotland a more affordable place to invest for first-time buyers and middle-income earners. However, whilst policy makers may believe that those buying prime property are less sensitive to tax changes, we know that property sales in the high end of the market have slowed since the introduction of LBTT. Furthermore, sales activity in the high end of the market increased prior to the introduction LBTT while after the change our members in Scotland saw fewer properties sold valued up to £145,000 in the months after the introduction of LBTT when comparing the same period in 2015.²

13. If the Welsh Government decide to change or introduce new rates and bands they should take a consultative approach with a long lead in time to benefit the property sector. This is because any sudden change would negatively distort prices and cause uncertainty in the market.

¹ <http://www.naea.co.uk/media/1043549/naea-scottish-parliaments-finance-committee-call-for-evidence-on-lbtt.pdf>

² <http://www.naea.co.uk/media/1045004/naea-response-to-scottish-parliament-call-for-evidence-lbtt-august-016.pdf>



Approach to tax avoidance

14. NAEA welcomes the Welsh Government's desire to enable the Welsh Revenue Authority (WRA) to robustly tackle tax avoidance. However, it is our view that there needs to be transactional consistency between LTT and SDLT in relation to the General Anti-Abuse Rule (GAAR). There is a risk that property transactions in Wales could be reduced if there are more favourable tax loopholes in England for example.
15. Where appropriate we support the simplification of the Targeted Anti-Avoidance Rules (TAARs), but we believe that strong guidance around both GAAR and TAAR is needed. It would also seem appropriate for the WRA to set up a panel to look at the implications of property deemed "land in Wales" and the anti-avoidance rules.

Proposed exemptions

16. NAEA does not believe that the rent element of residential leases in Wales should be taxed under LTT. This is because the yields from such taxes would be too low to make the arrangement worthwhile.
17. We understand that the provision for 15 per cent slab rate for certain transactions involving non-natural persons is not considered currently relevant to Wales. NAEA believes that for some transactions a lower rate will potentially benefit revenues because, for instance, foreign investment can often bring with it economic prosperity and this type of investment should not be discouraged.

Proposed reliefs

18. NAEA believes that the current reliefs and exemptions for SDLT should be retained. The reliefs and exceptions as they stand are understood by tax payers which will mean that they apply equally to Welsh home buyers as they currently do to home buyers in England. This will also assist in a smooth transition to LTT for the property market in Wales.

How residential and non-residential transactions are defined and treated

19. We are concerned that whilst the definition of "residential property" means "dwelling" we think that it should include a more explicit reference to "personal habitation" be it as a primary or secondary residence. Currently this distinction is not



clear and will be particularly important if the Welsh Government decide to introduce a 3% surcharge on the purchase of additional homes.

20. Furthermore, greater clarity will help prevent confusion with properties which have mixed elements of residential and commercial use such as residential hotels, residential care homes, hostels, mobile homes and park homes, as it is not always clear under which taxation system such properties fall.
21. We agree with the WRA's approach to allow taxpayers to submit a return electronically, while retaining the option for tax payers to submit a paper return. Over 90% of SDLT returns are done online as well as millions of firms who already manage their VAT returns, Corporation Tax and Self-Assessment returns online.
22. In order to maintain consistency with SDLT, NAEA believes that an LTT return should be submitted within 30 days of the transaction. If HM Revenue and Customs decide to change this date then it is advisable that the WRA also align themselves with this change in order to avoid confusion for estate agents and tax payers working and living across England and Wales.

Pwyllgor Cyllid | Finance Committee
Bil Treth Trafodiadau Tir A Gwrthweithio Osgoi Trethi Datganoledig (Cymru)
Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Bill
LTTA 12 Sefydliad Brenhinol y Syrfewyr Siartredig | Royal Institution of
Chartered Surveyors

Clerk to the Finance Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

Dear Ms Davies,

Please find below RICS responses to Welsh Government Consultations on property taxation that we would like to submit for consideration in advance of the oral evidence giving session. If you have any queries in respect of this response please do not hesitate to contact me.

Yours sincerely,

[Redacted signature block]

Tax Policy and Legislation Division
2nd Floor East
Welsh Government
Cathays Park,
Cardiff
CF10 3NQ

Dear Sir,

Tax devolution in Wales - Consultation on a Land Transaction Tax

Thank you for the opportunity to respond to the consultation

RICS Wales is the principal body representing professionals employed in the land, property and construction sector and represents some 4000 members divided into 17 professional groups. As part of our Royal Charter we have a commitment to provide advice to the Government of the day and in doing so we have an obligation to bear in mind the public interest as well as the interest of our members

In response to the Consultation we would like to make the following replies:

Q1: Do you think the current residential Stamp Duty Land Tax (SDLT) rates and bands are suitable for Wales? If you think the current rates are suitable, please provide reasons why. If you think the current rates are not suitable, please provide reasons why and, where appropriate, provide suggestions for alternative rates and bands. :

No. RICS feels the property market spread is at generally lower values.

Q2: Do you think that the 15% slab rate for certain transactions by non-natural persons should continue to operate in Wales following the introduction of Land Transaction Tax (LTT)? Please explain the reason for your answer. :

RICS opposes the SLAB approach to property taxation in principle.

Q3: What would the key impacts be on the residential market in Wales of having a different transaction tax regime from England?

Provided it is made simpler in Wales, it could make the tax demonstrably fairer. In addition if the tax is set at lower rates, it could encourage more housebuilding in Wales.

Q4: Do you think the Welsh Government should have the ability to change or introduce new rates and bands in LTT with immediate effect? Do you think there are other areas of LTT where it would be appropriate for the Welsh Government to make changes with immediate effect? Please specify. :

Yes. On the one hand, there is an argument for people and business needing certainty and the ability to plan. The problem with that is that part of the planning will be avoidance, so transactions tend to bunch up or be rushed, depending upon the timing of changes. The ability to change rates at short notice should avoid some market distortions.

Q5: Do you think the definition used in SDLT defines residential property adequately for the operation of the taxes? Please give details of practical problems with the definition and how you think the definition can be improved (either by statute or guidance). :

Possibly not. RICS feels the definition could be made clearer

Chapter 3: Non-residential property transactions

Q6: How important is it to have consistency between the tax regimes in Wales and England for non-residential property transactions? Please provide practical examples to support your answers. If consistency is important, what key elements need to be consistent, e.g. tax structure (marginal or slab, rates and bands, how transactions are taxed)? :

If businesses see another system in Wales that is hard to understand, then it could deter investment. But if the system is simple and seen to be fair, most businesses should be able to cope.

Q7: Does a slab structure create distortions in the non-residential property market? Please provide practical examples to support your answers. If so, would a marginal rate be an improvement on this? Please give details. :

It must, if it does in the residential market, as different non-residential properties will also have different values and, since business will always seek to minimise tax costs, will lead to distortion.

Q8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England? :

Again as with residential if it is made simpler in Wales, it could make the tax demonstrably fairer. Further again if taxed at lower rates, it could encourage more non-residential transactions in Wales.

Chapter 4: Partnerships, Trusts, and Companies

Q9: Do you think the SDLT provisions for partnerships, trusts and companies should be replicated within LTT? If appropriate, please state specific areas in which it should be altered and what the potential implications of this might be for Wales and LTT. :

We feel this could potentially introduce complexity. We would therefore urge a full review of the definition of these classes of organisation to see if they are still justified and relevant.

Chapter 5: Leases

Q10: Do you think the rent element of residential leases in Wales should be taxed under LTT? What effects do you think will occur if tax on the rent element was not replicated? :

RICS feels it is not particularly relevant. Almost all residential leases will have rents of a few hundred pounds a year, so it is not worth the effort. If the standard form of lease changes significantly so that more of the value is taken in higher rents, rather than in premiums that would be the time to consider potential changes

Q11: Do you think that a system of taxing leases in Wales would be improved by requiring a regular return? If so, how frequent do you think these should be? :

RICS feels this risks an unnecessary burden (see answer to Q10). Using an old Stamp Duty measure to ensure a contract (transfer on sale or a lease) would mean it cannot be enforced if the correct LLT is not paid, so placing the burden on the buyer to get it right, and enabling any taxes to be caught at that point.

Q12: Do you think that licences and tenancies at will should be taxed in the same way as leasehold agreements? :

Only if there are significant licence fees (“rents”), otherwise set a *de minimus* figure. But if a purported licence is actually a lease they should be taxed as leases.

Q13: Do you think any other element of the current SDLT regime on leases for either residential or non-residential arrangements should be changed? If so, why? :

Not at present

Chapter 6: Reliefs and exemptions

Q14: Do you think that any of the current reliefs or exemptions in SDLT should be retained, removed or modified? Please state which you think should be retained, altered or removed and why. :

We feel this question should be addressed in a separate consultation.

Q15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why? :

Yes we feel it should make matters simpler

Q16: Do you think there are any suitable cases for introducing new reliefs? Please explain why. :

Yes. For example local authority purchases or other strategic site assembly organisations, to help enable assembly of land banks for building.

Chapter 7: Compliance, avoidance, disputes and penalties

Q17: How do you think the rate of online filing could be increased compared to SDLT? :

By concentrating on making the form swifter to complete online.

Q18: What arrangements should there be for those who cannot file online? :

Some paper filing should be retained as an option but gradually phased out.

Q19: How do you think the rate of online payment could be increased compared to SDLT? :

By requiring that LTT must be paid at the same time as the return is submitted.

Q20: Would requiring payment of the tax at the same time as submitting the return cause any problems? Please explain why. :

RICS feels this is unlikely.

Q21: Do you think that LTT should have a pre-clearance facility? If so, what do you think the benefits and key features of a pre-clearance system in Wales would and should be? :

Yes, we feel it should be similar to that for SDLT.

Q22: Do you think that penalties should be levied on the late filing of returns similar to those imposed by HM Revenue and Customs (HMRC)? Do you think that penalties similar to those imposed by HMRC should be used in LTT for errors in returns? Please explain your answers.

Yes, provided research is done first to ensure proportionality

Q23: Should LTT impose penalties for late payment of tax similar to those available to HMRC to encourage prompt payment of tax? :

Yes but again provided that they are proportionate to each case individually.

Q24: With regards to appeals, are there any improvements or simplifications that could be made to the existing approach to postponement of payment pending an appeal? :

RICS agrees with the present approach.

Q25: Should the Welsh Government replicate the existing Section 75A Finance Act 2003 legislation, or if it is to be replicated are there improvements that could be made? Are there any further anti-avoidance provisions that you would support? Please describe and explain.

RICS would like to observe that in principle the simpler a tax is, and the more burden for getting it right is put on the taxpayer (as with Stamp Duty, where contracts such as transfers on sale or leases could not be enforced if the correct LLT was not paid), the less avoidance should be a problem.

Other questions

Q26: Do you have any comments on the initial impact assessment :

We would like Welsh Government to carry out more modelling.

Q27: Do you think the move to LTT could or should have implications for other areas of taxation in Wales? Please provide an explanation specifying the areas of taxation and what the implications could or should be. :

RICS feels this unlikely

Q28: Do you have any other comments on the Welsh Government's plans to implement a land transaction tax in Wales? :

That a separate Welsh Revenue Authority should only be looked at once some time has been allowed after devolution of the tax, to allow it to be observed in action and any issues addressed before looking at changing the collecting organisation. To make a change at the same time as devolution is we feel an unnecessary risk given the importance of ensuring the devolution of the tax is smooth.

If you have any queries in respect of this response please do not hesitate to contact me.

Yours sincerely,

[Redacted signature]

[Redacted contact information]

Financial Reform Division
2nd Floor East
Welsh Government
Cathays Park
Cardiff, CF10 3NQ

Dear Sir,

Collection and management of devolved taxes in Wales

Thank you for the opportunity to respond to the consultation

RICS Wales is the principal body representing professionals employed in the land, property and construction sector and represents some 4000 members divided into 17 professional groups. As part of our Royal Charter we have a commitment to provide advice to the Government of the day and in doing so we have an obligation to bear in mind the public interest as well as the interest of our members

In response to the Consultation we would like to make the following replies:

Question 1: Do you agree with the proposal to establish the Welsh Revenue Authority as a Non-Ministerial Department, which is accountable to the Assembly?

RICS feels it might be easier to keep the current system at least for an interim period after the devolution of new powers in the next few years. As is said

“HMRC’s processes and procedures are commonly understood by taxpayers and their agents and Welsh taxpayers will continue to pay tax to HMRC for non-devolved taxes.”

Local authorities could continue to collect NNDR. For the replacement taxes (TTiiL and WLfT), there could be a specialist unit (or one each) to assess and administer TTiiL and WLfT, then HMRC could be asked to act as collection agent for the small sums assessed to be paid.

Question 2. What are your views on the proposed core set of duties for the Welsh Revenue Authority?

We would only say that high standards must be maintained

Question 4: What are your views on proposals to establish a Taxpayers' Charter?

The introduction of an alternative charter may be a benefit/disadvantage to some tax payer's potentially leading to moving tax base locations in order to take advantage of alternative charters. We recommend a Task and Finish group be established to look at this issue directly.

Question 5: What in your view are the most important considerations in determining the approach to collecting and managing devolved Welsh taxes, and why? (In answering please consider the factors shown in paragraph 2.37, but also draw attention to any other factors that are not included, which you consider to be important).

Firstly simplicity and retaining well established services that are already understood
If implemented, clearly one of the main considerations will be the effective and economic management and collection of taxes. Initially at least we feel continuity in the agency of tax collector will be important.

Question 6. In light of your response to question 5, which organisation(s) do you consider should collect and manage devolved Welsh taxes, and why?

We would suggest that a steering group be employed to look at the benefits of negotiating alternative revenues and levels of taxation collected in Wales by HMRC and the means of redistribution of this tax revenue directly back to the Welsh Government.

Question 8: Do you agree with our proposed approach to invest powers in the Welsh Revenue Authority to enable it to collect taxpayers' information

Only so far as it is necessary to the assessment and proper administration of TTiiL and WLfT. Simplicity and fairness are essential.

Question 10: What are your views on other actions that the Welsh Revenue Authority should take to promote and encourage compliance?

Compliance with the Welsh Language commission guidelines

Question 11: Do you agree that the Welsh Revenue Authority should be provided with the powers to levy penalties

Yes provided they are proportionate and allow flexibility for individual circumstances

Question 14: Should Wales establish a specific tax disclosure regime for devolved taxes?

We feel this to be unnecessary at this point although it should be kept under review.

Question 17: Is there a need for a Welsh General Anti-Abuse Rule or Welsh General Anti-Avoidance Rule (GAAR) for devolved taxes?

No. The UK GAAR can already cover SDLT when devolved so, if it needs widening the UK Government could be asked to make any necessary amendments avoiding potential delays.

Question 21: Do you agree with our approach to avoiding tax disputes and achieving early resolution?

This looks appropriate, but periodic reviews to determine if this is still the case in response to any changing conditions is something we would recommend.

Question 26: Do you have any related issues which we have not specifically addressed or other comments that you would like to make?

Just to comment that we hope the principle of the removal of the SLAB element to SDLT will be maintained when the tax is devolved to Wales.

If you have any queries in respect of this response please do not hesitate to contact me.

Yours sincerely,

David Morgan
Policy Manager

T + 44 (0) 29 2022 4414
F + 44 (0) 29 2022 4416
dmorgan@rics.org



Bethan Davies
Clerk to the National Assembly's
Finance Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

Your Ref:
Our Ref:
E-mail: [REDACTED]
Phone: [REDACTED]
Date: 19th October 2016

Dear Bethan

**Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill
Consultation**

NFU Cymru is pleased that the National Assembly's Finance Committee is to undertake an inquiry into the general principles of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill, and the Union welcomes the opportunity to comment on the Bill's provisions.

The last few years have been challenging for Welsh agriculture, and the Welsh Government's own Farm Income forecast published earlier this year points to a decline across all the key farming sectors in Wales. The forecast figures based on the latest Farm Business Survey results show that average net farm business income across 'All Farm Types' is set to decrease by around £4500 (or 25%) to £13,000 for 2015-16. For dairy farms income is forecast to drop by 47%, whilst for LFA cattle and sheep farms a drop in income of 4% is predicted, whilst for lowland sheep and cattle farms the forecast decline is 11%.

The problems around the profitability of agriculture are particularly acute when it comes to the tenant farmer, who of course as well as being needing to derive an income on which to live from their farming activities, also needs to generate income in order to be able to cover rent. It is with the tenanted sector in particular in mind that NFU Cymru makes this submission to the Finance Committee.

Whilst we do not intend to rehearse in detail our commentary from 2015 when the Welsh Government previously consulted on the Land Transaction tax (a copy of our original response is attached for reference) we would like to reiterate one of the key points from our 2015 consultation response, whereby we called upon the Welsh Government to give further consideration to a relief or exemption from LTT for agricultural tenancies.

Whilst the Welsh Government is understandably modelling LTT on SDLT, the SDLT treatment of agricultural tenancies is overly and unnecessarily complex, with many instances where there is uncertainty over the rental value, the point when a charge to tax will first arise, and the final length and value for LTT proposes of an agricultural tenancy. In our view, under SDLT this has placed an undue cost and administrative

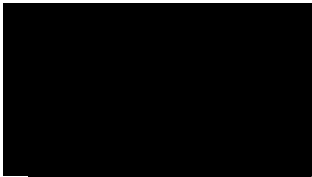
burden on tenant farmers despite the very low value of SDLT that is likely to have arisen from SDLT.

Many agricultural tenancies granted in Wales are unlikely to give rise to a LTT liability and many others will produce only a very small liability. Indeed we would suggest total LTT revenue raised from agricultural leases in Wales is likely to be very small. However without a change in approach the disproportionate cost and burden for farmers will continue. In addition LTT could deter tenant farmers or prospective tenant farmers from taking on longer term leases.

We would therefore like to see the Welsh Government take a lead in supporting tenant and prospective tenant farmers in Wales. This is of course a very difficult and uncertain time for Welsh farming and we therefore propose an exemption from Land Transaction Tax on all grants, assignments or surrenders of agricultural tenancies in Wales.

I trust you will find my comments useful as part of your consultation

Yours sincerely







Your Ref:

Our Ref:

E-mail:

Phone:

Date: 5th May 2015

Dear [REDACTED]

Consultation – Tax Devolution in Wales – Land Transaction Tax

On behalf of its members, NFU Cymru welcomes the opportunity to be able to respond to the Welsh Government's Consultation on a Land Transaction Tax for Wales. The consultation poses quite a number of questions, not all of which are directly relevant or applicable to our membership. We have therefore confined our answers to those questions which are of greatest relevance and interest to our members.

Consultation Questions

Question 2: Do you think that the 15 per cent slab rate for certain transactions by non-natural persons should continue to operate in Wales following the introduction of LTT? Please explain the reason for your answer.

The high rate for a purchase of residential property by a non-natural person, such as a limited company or a mixed partnership, pre-supposes that the motive for doing so in the avoidance of SDLT. NFU Cymru would make the comment that a limited company or mixed partnership might wish to buy a property worth more than £500,000 as an investment. In addition we are concerned about the risk that as more residential property in escapes a charge, more of the burden in terms of making up the shortfall, will fall to business.

Question 4: Do you think the Welsh Government should have the ability to change or introduce new rates and bands in LTT with immediate effect? Furthermore, do you think there are other areas of LTT where it would be appropriate for the Welsh Government to make changes with immediate effect? Please specify.

NFU Cymru believes it appropriate and important that the Welsh Government has the ability to change rates quickly, particularly in response to developments elsewhere. It may be that Welsh Government considers alternative bands to be more appropriate given any significant differences in values in Wales. We would add that as suggested at paragraph 1.2 of the consultation, the starting rate for non-residential transactions has remained static, meaning that more of the burden of the tax already falls on businesses, particularly smaller businesses and any further shifting of the tax burden in this direction would be counter-productive.

Question 6: How important is it to have consistency between the tax regimes in Wales and England for non-residential property transactions? Please provide practical examples to support your answers. If consistency is important, what key elements need to be consistent e.g. tax structure (marginal or slab, rates and bands, how transactions are taxed)?

NFU Cymru takes the view that it is important to have consistency between tax regimes in England and Wales for non-residential property transactions. Such consistency would ensure that businesses and their professional advisers operating in both England and Wales would not have to consider these additional complexities when making investment decisions. Consistency in terms of the rates, for example in terms of moving away from the slab rate system for non-residential property might not be as crucial, and could incentivise business investment in Wales.

Question 9: Do you think the SDLT provisions for partnerships, trusts and companies should be replicated within LTT? If appropriate, please state specific areas in which it should be altered and what the potential implications of this might be for Wales and LTT.

NFU Cymru is of the view that these provisions should be replicated. Whilst these provisions may be complex in order to prevent avoidance, they are currently largely understood by professional advisers, and any changes, however subtle could have significant implications. We would for example take the view that reliefs available for introducing land owned by individual partners into a partnership are important to many farming businesses where land tenure has become spread across a family over many years.

Question 11: Do you think that a system of taxing leases in Wales would be improved by requiring a regular return? If so, how frequent do you think these should be?

NFU Cymru is of the view that rather than increasing the frequency of returns, it would be desirable to reconsider how the charge is calculated for low value transactions, for example on agricultural tenancies. Whilst more complex leases which include both a premium and rent element can present a significant exchequer risk and the frequency of returns should be considered, those solely involving a rental element should be determined at the start of the lease only as they are likely to produce a relatively small amount of tax revenue compared to the administrative cost and burden of reporting. We would be happy to discuss our views on amending the taxation of agricultural tenancies in more detail.

Question 12: Do you think that licences and tenancies at will should be taxed in the same way as leasehold agreements?

NFU Cymru does not believe that licences and tenancies should be taxed in this way as they will typically be of short duration and low value, and are likely to produce little if any tax revenue. The burden of such reporting is significant and difficult and a re-examination of these arrangements is needed.

Question 13: Do you think any other element of the current SDLT regime on leases for either residential or non-residential arrangements should be changed? If so, why?

No

Question 14: Do you think that any of the current reliefs or exemptions in SDLT should be retained, removed or modified? Please state which you think should be retained, altered or removed and why.

NFU Cymru considers it important that the existing reliefs and exemptions in SDLT are made available under the Welsh Land Transaction tax. We are also of the view that the way in which agricultural tenancies are taxed warrants further consideration given the cost and burden of reporting compared to the small amount of tax revenues that are likely to be raised.

Question 17: How do you think the rate of online filing could be increased compared to SDLT? Do you think online submission of returns should be mandatory?

We have no objection to considering ways in which online filing could be increased but it is essential that it is not made mandatory. There are many rural areas of Wales lacking access to reliable and sufficiently fast broadband, and we are firmly of the view that there should be no compulsion to online filing. Even with improved broadband provision, there will still be some taxpayers who will be unable to file in this way, and in our view there should always be an alternative means of filing where it is needed.

Question 18: What arrangements should there be for those who cannot file online?

For the reasons given above it is essential that online filing is not made mandatory, and a paper option should continue to be available. Whilst the majority of returns may be filed by professional advisers there may still be instances for example with licences or tenancies at will where the cost of doing so is prohibitive but the taxpayer lives in a remote rural area without adequate internet access or are elderly or disabled and unable to use computers.

Question 20: Would requiring payment of the tax at the same time as submitting the return cause any problems? Please explain why.

NFU Cymru is of the view that further discussion is needed with the professionals that submit the returns in order to more fully understand the circumstances where they would not hold client monies when filing a return. We envisage that requiring payment of the tax at the same time as submitting the return would have practical problems in a number of instances where the professional does not hold funds, for example where a lease is taken without any premium being paid

Question 21: Do you think that LTT should have a pre-clearance facility? If so, what do you think the benefits and key features of a pre-clearance system in Wales would and should be?

Whilst this would be a welcome facility for some taxpayers, the costs of providing such a service and the circumstances under which pre-clearance requests would be considered would need to be very carefully considered.

Question 22: Do you think that penalties should be levied on the late filing of returns similar to those imposed by HMRC? Do you think that penalties similar to those imposed by HMRC should be used in LTT for errors in returns? Please explain your answers.

Penalties are used by HMRC as a means of ensuring compliance. Providing penalties are set at an appropriate level and take into account the complexity of the tax and taxpayers actions we believe they should be retained.

Question 23: Should LTT impose penalties for late payment of tax similar to those available to HMRC to encourage prompt payment of tax?

Yes

Question 24: With regards to appeals, are there any improvements or simplifications that could be made to the existing approach to postponement of payment pending an appeal?

We have no comment to make in respect of question 24

Question 25: Should the Welsh Government replicate the existing Section 75A FA 2003 legislation, or if it is to be replicated are there improvements that could be made? Are there any further anti-avoidance provisions that you would support? Please describe and explain.

We believe that the Welsh Government must protect tax revenue, however we agree that applying the UK GAAR would result in a more effectively targeted anti-avoidance provision than replicating Section 75A FA 2003 without a motive test.

Question 26: Do you have any comments on the initial impact assessment (located at Appendix 2)?

We have no comment to make in respect of question 26

Question 27: Do you think the move to LTT could or should have implications for other areas of taxation in Wales? Please provide an explanation specifying the areas of taxation and what the implications could or should be.

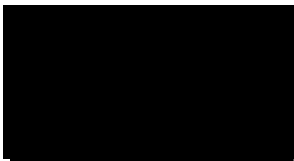
Given that the policy rationale for the introduction of the ATED was to prevent SDLT avoidance on residential property we would suggest that any revenues raised by the ATED in relation to property located in Wales should pass to the Welsh Government

Question 28: Do you have any other comments on the Welsh Government's plans to implement a land transaction tax in Wales?

We have no further comments to make

I trust you will find NFU Cymru's response useful, if there is anything that you would like to discuss further then please do not hesitate before getting touch with me

Yours sincerely

A large black rectangular redaction box covering the signature area.A black rectangular redaction box covering contact information, with a smaller rectangular extension to the right.