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Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Cabinet Secretary for Finance and Local Government



Llywodraeth Cymru
Welsh Government

Simon Thomas AM
Chair
Finance Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

23 January 2017

Dear Simon,

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

Thank you once again for your consideration of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill during stage 1. I am pleased that the general principles of the Bill have been agreed, and I thank both the Finance Committee and the Constitutional and Legislative Affairs Committee for their recommendations in this regard.

During the General Principles debate on the Bill on 10 January, I confirmed that I would provide a detailed response to your Committee's Stage 1 report and its 18 recommendations. I have set out below my response to the recommendations; this includes details of where I agree there is need to put forward amendments to the Bill. I have already tabled 23 Government amendments and will table further amendments before the close of the tabling period.

I have already set out my response to the three recommendations made by the Constitutional and Legislative Affairs Committee in my letter to them on 10 January. I have accepted two of these recommendations, and welcome the positive comments from the Chair of this Committee at the General Principles debate in relation to this Bill.

I hope that the attached information helps to inform your further scrutiny as the Bill progresses through Stage 2. I look forward to working with Committee members on the details of the legislation in the future.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee.

Best wishes,

Mark

Mark Drakeford AM/AC

Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Cabinet Secretary for Finance and Local Government

Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill - Stage 1

Finance Committee Report recommendations

Recommendation 1

The Committee recommends that the general principles of the bill should be agreed by the National Assembly. It does, however, make a series of recommendations in this report which it believes should be addressed by the Welsh Government in order to strengthen the provisions in the Bill.

I am grateful for all the input from the Assembly Committees who have contributed to the robust scrutiny of the Bill, and am pleased that they have been able to recommend to the National Assembly that the general principles are agreed.

Recommendation 2

The Committee requests that the Cabinet Secretary keeps the National Assembly and the Committee informed of progress in establishing the WRA. It recommends this is done through statements once per Assembly term.

I **accept** this recommendation and will continue to keep the National Assembly and the Committee informed of progress in establishing the WRA. I am happy to provide this on a termly basis.

Recommendation 3

The Committee recommends that formal Memoranda of Understanding are established with HMRC and the Land Registry on both sharing information and access to expert knowledge.

I **accept** this recommendation. My officials continue to work closely with HMRC and Land Registry. There will be formal agreements in place on specific issues such as data sharing, and on developing processes between both organisations and the WRA.

Specifically, discussions are underway with HMRC in regards to establishing a Memorandum of Understanding on broader strategic relationships. An Information Sharing Agreement (ISA) is already in place between Welsh Government and HMRC and it is expected that an ISA will be established this year with both HMRC and Land Registry.

Recommendation 4

The Committee recommends that the Welsh Government establishes a working group of practitioners as soon as possible to discuss technical and practical operational issues. The responsibility for such a group should be passed to the WRA as soon as practicable; The Committee believes the workings of this group should be as transparent and open as possible.

I **accept** this recommendation. As the Committee will be aware, the Welsh Government set up three external groups in 2014 which have, since this date, assisted the Welsh Government in the development of the devolved taxes policy and legislation - these are the Ministerial Tax Advisory Group, the official-level Tax Forum, and the tax-specific Technical

Expert Groups. The Tax Forum is attended by professionals and representative organisations on tax policy and administration, and leads discussions on technical and practical operational issues for all devolved Welsh taxes. Dyfed Alsop, Implementation Director for the WRA, has recently taken over as chair of the Tax Forum.

In addition to these groups, a working group will be established to help with the drafting of guidance. The WRA Implementation Programme will lead on the arrangements for this group.

Furthermore, an operational working group will also be formed shortly to test the digital systems and processes with agents.

Recommendation 5

The Committee recommends that the WRA engage with relevant professions from the outset on the production of LTT guidance.

I am happy to **accept** this recommendation. I previously set out in a letter to the Chair of the Finance Committee on 11 October that the development of operational guidance and advice should be through discussions with taxpayers and agents to ensure that it meets their needs.

The development of guidance will be the responsibility of the WRA, and this is an opportunity for the WRA to develop and consolidate strong working relationships with taxpayers and agents. There have been calls from stakeholders to improve existing guidance in some areas, and also there are aspects of our Bill which are new or require more detailed guidance, such as the relief TAAR.

As I set out under **Recommendation 4**, a working group will be established in the first part of this year to help with the drafting of guidance – both to improve existing guidance and develop and test new guidance. My officials set out their early thinking and principles for developing guidance at a well attended Tax Forum workshop, on 7 December, and I would like to thank stakeholders and practitioners for continuing to give their time and to contribute to these important discussions. I anticipate that the WRA will have final versions of guidance ready to share with taxpayers and agents from early 2018 – in good time to help their understanding of the new tax regime.

Recommendation 6

The Committee recommends that a table outlining the differences between Land Transaction Tax and Stamp Duty Land Tax should be included in guidance.

I recognise the importance of providing clear and robust guidance, and as part of the development of the guidance I would expect the WRA to provide an outline summary of the main differences between SDLT and LTT, including practical examples of how the differences might affect some transactions.

I will expect the WRA to work closely with stakeholders to ensure that the information is available in an accessible and useful format. On this basis, I **accept** this recommendation.

Recommendation 7

The Committee recommends that, should the National Assembly agree the provisions in the Bill, the Welsh Government should commission the Land Registry to carry out the work of providing a map of the border between Wales and England in readiness for the commencement of Land Transaction Tax.

I recognise the potential complexities in identifying borders for cross-title properties.

It is of paramount importance that a collaborative approach is adopted with Land Registry. This work is in progress - the WRA Implementation Team is exploring with Land Registry how to best assist taxpayers and practitioners in identifying where the border lies on the respective titles and the scope and cost of the work involved.

I will provide an update on this to the Committee as soon as is practicably possible. It is on these grounds that I **accept** this recommendation.

Recommendation 8

The Committee recommends that further information is produced by Welsh Government explaining how it intends the legislation to determine the apportioning of the consideration payable on cross-border property transactions. This information should cover issues such as "just and reasonable apportionment", and clarity on requirement for two transfers for cross-border transactions. This information should be available before any Stage 2 considerations.

I **accept** this recommendation, and consider that a joint operational approach needs to be taken to cross border property transactions, as set out in my recent letter of 10 January. I intend to share with the Committee before Stage 2 proceedings, on 16 February, a joint letter from WRA and HMRC providing more information on this intended integrated approach.

In my letter of 10 January, I set out that the WRA will lead on developing guidance on cross border and cross title properties, including consideration of apportionment on a 'just and reasonable' basis. There will be a clear indication of how the border will be established in these cases. The guidance will be developed with stakeholders.

Recommendation 9

The Committee recommends that the Welsh Government publishes a communications plan, including the likely resource implications, for the period leading up to the coming into force of any Land Transaction Tax provisions.

I am happy to **accept** this recommendation. Work is underway to engage with key stakeholders and this will continue during the period leading to the commencement of Land Transaction Tax in Wales.

My officials have established a joint Devolved Welsh Taxes Transition Project with HMRC. This project will include a joint communications group of core stakeholders in both administrations to develop a comprehensive, joined-up communications strategy to support the transition to devolved taxes more generally. The key aim of this work is to ensure that there is a smooth transition between the existing and new systems and to minimise disruption for those purchasing property in Wales.

A technical briefing has been arranged with the Committee on **8 February**, on the progress of establishing the WRA, which will include an update on developing a communications plan.

Recommendation 10

In order to address witnesses' concerns, the Committee recommends that the Cabinet Secretary commits to a full and extensive consultation on rates and bands in advance of the Welsh Government's determination.

As I set out at the General Principles debate and my recent letter of 10 January, I am committed to ongoing engagement and dialogue with a wide range of stakeholders in relation to tax rates and bands.

However, the decision to set tax rates and bands is a key function of government. This view has been supported by those who responded to the LTT consultation and agreed that setting tax rates and bands is a policy matter for the Welsh Government.

It is important to recognise that the National Assembly has a crucial role in this process. The Bill requires the first set of regulations specifying the tax rates and bands to be laid and approved by the Assembly by the affirmative procedure before they can come into force. Any variation to those tax rates and bands would be given effect through further regulations which will be subject to the provisional affirmative procedure.

One of the main reasons for adopting the provisional affirmative procedure is to ensure changes can happen quickly, avoiding the potential for forestalling within the market. Undertaking a public consultation on tax rates and bands could revive the risk of forestalling in the property market, something we are keen to avoid.

I am confident that the procedures adopted in this Bill will ensure ample opportunity is taken to scrutinise the tax rates and bands framework at the suitable time and ensure it is appropriate for Wales. I therefore **do not accept** this recommendation. This does not, however, preclude ongoing engagement and dialogue to which we remain committed.

Recommendation 11

The Committee recommends that the Welsh Government should make provision for appropriate reliefs for Property Authorised Investment Funds and Co-ownership Authorised Contractual Schemes through amendments at Stage 2 in order to ensure that commercial investment in property in Wales is not dis-incentivised inadvertently.

I **accept** this recommendation. I tabled **Amendment 1**, to Part 5 of the Bill, on 11 January. This proposes a general rule that sets out how Co-ownership Authorised Contractual Schemes (CoACS) are to be treated for tax purposes and ensures that LTT is not charged on the transfer of an interest within a Scheme and only on the acquisition of property by the Scheme itself.

This rule *does not* provide a seeding relief for CoACS or Property Authorised Investment Funds (PAIFs) as I do not consider there is a strong enough case to include such a relief in the Bill at this point. However, I am making provision so that we may also introduce a seeding relief in the future if needed through regulations made under section 30. This is as

an important step, as I recognise it may attract more investment into the Welsh property market.

This is a new relief and therefore will require work to be undertaken to start analysing the potential effect of the relief in Wales, and indeed to consider whether it is appropriate to replicate it in Wales. I do not consider the SDLT seeding relief for PAIFs and CoACS can be simply transposed and it be assumed that the relief will work in Wales. It is crucial that the relief is framed appropriately for Wales to ensure that it targets the right transactions and is not exploited by the unscrupulous.

One particular area where change may be necessary concerns the eligibility conditions for claiming the relief, and the 'portfolio test'. This condition requires the transaction to involve a minimum number of properties (10 non-residential properties or 100 residential properties) and a minimum value of £100 million. Even though these types of transactions in Wales would be very rare, I would like the opportunity to explore whether there may be a case for different eligibility conditions.

As part of our work to understand the potential effect of the relief in Wales, my officials will be engaging with key stakeholders, including HMRC, to consider whether this portfolio test should be adjusted to ensure that the relief is framed appropriately for Wales.

Recommendation 12

The Committee recommends that the Welsh Government should monitor carefully the impact of all reliefs, in particular the multiple dwelling relief, with a view to using the regulation making powers to amend the provision of reliefs should it be necessary to address any perverse incentives.

I **accept** this recommendation. I recognise that both Assembly Members and stakeholders have emphasised the importance of monitoring carefully the impact of all reliefs. It is also worth reiterating that stakeholders have emphasised the advantages in maintaining a degree of consistency between the reliefs proposed for LTT and those that are currently provided by SDLT; there will be no change for change's sake.

Table 2 of the Explanatory Memorandum provides a summary of the most common residential and non-residential reliefs claimed in Wales in 2014/15. You will see that we are already assessing the take up and value of SDLT reliefs in Wales on an annual basis. This will continue in the run up to April 2018 and after LTT goes live.

The provision of reliefs is likely to have cost implications so it will be important to have confidence that any amendments to existing reliefs, or any proposed new relief will benefit the target group and have the desired policy outcome.

As I set out at the General Principles debate, the policy approach to changing reliefs or introducing new reliefs in the future will replicate the Welsh Government approach to considering new taxes. This has a clear process and evidence-gathering stage, which includes ensuring that potential new reliefs should be aligned with the Welsh Ministers' priorities, cost-effective, and reach their intended policy target.

Recommendation 13

The Committee recommends that guidance is provided on the implementation of the TAAR.

I **accept** this recommendation, although note it will be for the WRA to lead on the provision of guidance.

I acknowledge the need for clear and robust practical guidance to accompany this new rule; and I am keen to ensure that the WRA works with stakeholders to develop this guidance on the underlying principles behind this rule. This guidance should include examples of how the TAAR will be applied; including how it is intended to apply to non-devolved taxes.

The WRA Implementation Programme will lead on the arrangements for the working group established to help in the drafting of guidance, this will include input from policy experts where required.

Recommendation 14

The Committee recommends that a statement of policy intent for each of the reliefs, including the new reliefs recommended by the Committee, be included in detail in the explanatory notes to the Bill.

I **accept the guiding principle** and acknowledge calls from stakeholders that greater clarity and certainty could be provided to explain the purpose behind certain reliefs in this Bill.

Additional information will be provided in the explanatory notes to clarify the intended purpose of key reliefs such as multiple dwelling relief, charities relief, group relief and alternative property finance relief.

The WRA will also make available detailed guidance to ensure practitioners and taxpayers are clear about when a relief may be claimed. I am confident that these steps will ensure that taxpayers and their advisers will have sufficient information about the reliefs provided by this bill.

Table 2 of the Explanatory Memorandum sets out the take-up and value of reliefs in Wales, and this will be used as a guide to establish where it would be appropriate to provide this additional information and clarity.

I will lay the revised Explanatory Notes ahead of Stage 3 proceedings.

Recommendation 15

The Committee recommends that detailed guidance be provided to deal with the application of the TAAR, particularly as it is intended to apply to non-devolved taxes and to ensure that its purpose remains narrow and focused as set out by the Cabinet Secretary's letter to the Committee of 2 November.

I **accept** this recommendation, although note it will be for the WRA to lead on the provision of guidance.

As I set out under **Recommendation 13**, I acknowledge that detailed guidance should be provided on how the TAAR will be applied, and this will include how it is intended to apply to non-devolved taxes.

I have previously responded to a letter from the Chair of this Committee on my position in relation to the development of guidance. WRA will engage with stakeholders in the preparation of guidance with the aim of having this ready for taxpayers and their agents from early in 2018.

Recommendation 16

The Committee recommends that the Welsh Government should consult with stakeholder groups prior to making regulations on the form of the certificate required under section 64 of the Bill, to ensure that their views are taken on board.

I **accept** this recommendation. I recognise the importance of engagement with the Land Registry prior to making regulations on the form of the certificate. The Land Registry will be the key stakeholder who will receive the certificate issued by the WRA once the return has been made. It is therefore important that the form of the certificate is acceptable to both the WRA and the Land Registry.

I expect discussions regarding the certificate to form part of the ongoing engagement between my officials and the Land Registry in preparation for April 2018.

Recommendation 17

The Committee recommends that the preparation of guidance on the implementation of the general anti avoidance rule should be an immediate priority for the WRA. It recommends that the WRA should work with stakeholders on the production of guidance, possibly through establishing a GAAR advisory panel.

I **accept** that the preparation of guidance on the GAAR should be a priority for the WRA. I am keen to ensure that WRA works with stakeholders to develop this new guidance on the underlying principles behind this rule.

As I have set out previously, a working group will be established in this first part of this year to help with the drafting of guidance, on which the WRA Implementation Team will lead, utilising trusted external experts to take advice on the development of this guidance.

Recommendation 18

The Committee recommends that the Cabinet Secretary provides updated estimated costs before any Stage 2 proceedings with particular reference to IT and establishment costs.

As I set out at the General Principles debate and in my recent letter of 10 January, I am committed to providing the Finance Committee with an update on the costs to establish the WRA during the passage of this Bill. The main costs are the people needed to operate the WRA from April 2018, and the provision of digital ICT services for it to collect and manage its taxes.

The WRA will be small organisation with a modest sized yet highly-skilled workforce (around 40 staff). Work on defining the workforce requirements is continuing and recruitment will start later this year.

In the first instance, we will look to use existing Welsh Government and wider civil service skills and expertise. In particular, utilising the knowledge and skills we have already nurtured in the Welsh Government during tax policy development and the implementation of the authority, building on this to develop capability in tax collection. We will also continue to work closely with HMRC and draw on their expertise and knowledge. We will consider possible staff loans and secondments to develop and enhance the WRA's compliance expertise.

I **accept the principle** of this recommendation. I have previously set out my intention to provide an update on the work to develop cost estimates and on when a revised estimate will be available before Stage 2 proceedings.

In addition to this, a technical briefing will take place on **8 February** to provide an update to Committee members on the progress of establishing the WRA.