

**Ymatebion i ymgynghoriad Llywodraeth Cymru ynghylch Treth
Trafodiadau Tir**

**Responses to the Welsh Government's consultation on Land
Transaction Tax**

September/Medi 2015

Mynegai o'r ymatebion/ Index of responses

The Welsh Government received 38 responses to the Land transaction Tax Consultation. All respondents were invited to request anonymity and 7 respondents decided to utilise this option and therefore their identity has been anonymised throughout this document.

For ease, please click the reference number to take you to the response.

Ref.	Name of Respondent	Category
1	Penar Tharbyd	Individual
2	Darwin Gray LLP	Legal / Tax & Accountancy Professionals
3	Anonymous	Estate Agency
4	Pontardawe Town Council	Town and Community Councils
5	Anonymous	Bank
6	Anonymous	Town and Community Councils
7	Peter Black AM	Individual
8	Mrs L M Mackintosh	Individual
9	National Association of Estate Agents	Business
10	"Too Complicated"	Individual
11	Anonymous	Legal / Tax & Accountancy Professionals
12	Geldards LLP	Legal / Tax & Accountancy Professionals
13	NFU Cymru	Organisation
14	Anonymous	Business
15	Community Land Advice Service Cymru	Charity
16	Anonymous	Building Trade
17	Land Registry	Public Body
18	KPMG Accounting	Legal / Tax & Accountancy Professionals
19	Penarth Town Council	Town and Community Councils
20	Institute of Fiscal Studies	Organisation
21	Bevan Foundation	Charity
22	Council of Mortgage Lenders	Business
23	Federation of Small Businesses	Business
24	Law Society	Professional Body
25	Chartered Institute of Taxation	Professional Body
26	Price Waterhouse Cooper	Legal / Tax & Accountancy Professionals
27	Anonymous	Business
28	Residential Landlords Association	Business
29	Welsh Council for Voluntary Action	Charity
30	Institute of Chartered Accountants for Eng and Wales	Professional Body
31	British Property federation	Business
32	Canal and River Trust Wales	Charity
33	Mike Bird	Individual
34	Deloitte	Legal / Tax & Accountancy Professionals
35	Community Landlords Association	Business
36	Welsh Local Government Association	Public Body
37	Royal Institute of Chartered Surveyors	Professional Body
38	Ersnt & Young	Legal, Tax & Accountancy Professionals

Reference 1

Name:	Penar Tharbyd
Email:	
Organisation:	
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.:	
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.:	
Q3: What would the key impacts be on the residential market in Wales of having a different transaction tax regime from England?:	
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.:	
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).:	
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)?:	
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.:	
Q8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?:	
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.:	
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?:	
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?:	
Q12: Do you think that licences and tenancies at will should be taxed in the same way as leasehold agreements?:	
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?:	
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.:	
Q15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?:	
Q16: Do you think there are any suitable cases for introducing new reliefs? Please explain why.:	
Q17: How do you think the rate of online filing could be increased compared to SDLT?:	
Q18: What arrangements should there be for those who cannot file online?:	
Q19: How do you think the rate of online payment could be increased compared to SDLT?:	
Q20: Would requiring payment of the tax at the same time as submitting the return cause any problems? Please explain why:	
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?:	
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.:	
Q23: Should LTT impose penalties for late payment of tax similar to those available to HMRC to encourage prompt payment of tax?:	
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?:	
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.:	
Q26: Do you have any comments on the initial impact assessment:	
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.:	
Q28: Do you have any other comments on the Welsh Government's plans to implement a land transaction tax in Wales?:	<p>If the Welsh Government is serious about wanting to help first time buyers without losing a penny in revenue (and potentially gaining) this is how you go about it. For every property sale transaction there are two parties: buyer and seller. That means that a roughly equal amount of tax would be taken if stamp duty were to be shifted from the buyer to the seller. I say 'roughly' because the effect of transferring the tax would mean that instead of there being every incentive for the seller to inflate the price of the property – they don't pay the tax currently – there might be slight downward pressure on prices because as the sale price increases so does the tax burden for the person who is benefitting from the sale price. I don't think that would have a huge impact on house prices but then I'm not a property economist. This shift in tax burden would have an immediate impact on the housing market, because struggling first time buyers by definition would have no tax to pay. And while there may be some very wealthy first time buyers who would benefit inordinately, they would be in the tiny minority. Most first time buyers purchase houses of modest price. This would also avoid at least one of the problems associated with government support schemes, principally that taxpayers' money (in some form) is being used simply to</p>

	<p>inflate the market and create windfall house price increases for those already owning property. So that's the plus point from the buyers' end of the market. How about the sellers' end? Let's imagine that upon your death your house (if you own one) is sold. As part of your estate, solicitors dealing with your affairs will simply take the tax from the value in the estate. And if your estate is in the negative then the tax man comes pretty high on the debtors' list. The main snag of this idea as far as I can tell is that if someone purchased well beyond their means and died suddenly, leaving an estate massively in debt, then the Welsh Government could struggle to get that tax revenue. Would the tax impact of that eventuality be counteracted by the activity associated with the increased ability of first time buyers to enter the market? Possibly. Another advantage of this plan is that it would be a way of redistributing the tax burden from those of middle income (or capital) to the families of those of high income (capital) because stamp duty would be paid by the estate of people with enormous, highly valued houses (for example), who currently pay diddly squat. Is there an issue with selling a house to pay for the care of elderly relatives, and the tax being an additional burden on families with these caring responsibilities? Again, possibly. But as time goes by those families will themselves have benefited from not paying stamp duty on their first purchase. In terms of timing, the move would be instant so the tax take wouldn't take the hit. Some people would benefit from the change taking place on a particular date, but as long as the date were announced with a year or so's notice that shouldn't be too problematic. It would mean a rush for sellers eager to complete a transaction before the cut-off date with an equivalent resistance from buyers. I said earlier on that it could be a way to increase the tax take. And this is a further benefit of the idea. Because it's the vendor, not the purchaser, who would pay stamp duty under this proposal, and the vendor has an asset (house), tax can be levied on any sale price. A 1% tax on someone selling a £100,000 house should cause less problems than for someone trying to buy that house. The obvious exception is if you've gone and ended up in negative equity. Who knows, perhaps this revision of the tax would be a means of making people treat house purchase with a little more sobriety. There's one more point about this plan. Someone's bound to say that house prices will equalise in any case and the purchase price for first time buyers will just increase as more competition for available housing arises. My answer to that is that perhaps that's a possibility – but at least then the increased tax is paid by the vendor, not the first-time buyer.</p>
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Reference 2

Name:	Donald Gray
Email:	
Organisation (if applicable):	Darwin Gray LLP
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	Yes

for alternative rates and bands.:	
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.:	No. The bands and rates should apply to share transactions based on the consideration. These sort of transactions should be on an equal footing. It will simplify things.
Q3: What would the key impacts be on the residential market in Wales of having a different transaction tax regime from England?:	The only impact will be if the cost of acquisition is lowered.
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 (new rates and bands). There should be a period in which data is collected to understand the impact of the change before any other changes are made.
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).:	
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)?:	Inconsistency will result in additional transaction charges for businesses outside Wales which may be familiar with SDLT but not LTT. For that reason unless LTT is to be based on a basis which is materially different (e.g. taking a number of transactions outside the scope of LTT) then it will be seen as an additional hurdle for doing business in Wales.
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.:	Not in my experience as the majority of commercial transactions I deal with are commercial leases where the basis of calculation is too complicated for the slab structure to be readily understood
Q8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?:	It might influence location of a business where SDLT is a large element of the transaction cost. However for most SMEs this will not be material as the cost of SDLT on e.g. a commercial lease will not normally determine location.
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.:	No.
Q10: Do you think the rent element of residential leases in Wales should be taxed under LTT? What effects do you think will	No. Generally rent is a nominal sum. Typical rent would range from a peppercorn to £400 per annum. Leasehold property will continue to be important for first time buyers and additional costs should be avoided. In

occur if tax on the rent element was not replicated?:	addition if it is felt that there should be a tax charge on all payments being made there does not seem to be any economic benefit in collecting the data to charge tax on rent if it could be more effectively done by changing the tax on the premium.
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?:	No this would add to the burden. There should be a once only return when a lease is entered into.
Q12: Do you think that licences and tenancies at will should be taxed in the same way as leasehold agreements?:	No, these are by their nature short term informal arrangements. Adding an additional layer of bureaucracy and taxation will mean these arrangements will no longer be cost effective ways of dealing with short term arrangements. They are a useful way of giving limited property rights to start up business such as business incubator units and costs should be kept to a minimum.
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?:	
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.:	
Q15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?:	Yes; to maintain consistency.
Q16: Do you think there are any suitable cases for introducing new reliefs? Please explain why.:	
Q17: How do you think the rate of online filing could be increased compared to SDLT?:	I had assumed that most filing is done on line so it should encouraged by having some financial incentive
Q18: What arrangements should there be for those who cannot file online?:	They would need to be able to access forms and submit in hard copy.
Q19: How do you think the rate of online payment could be increased compared to SDLT?:	There would need to be a financial incentive
Q20: Would requiring payment of the tax at the same time as submitting the return cause any problems? Please explain why.:	Possibly in cases where the client wishes further time to pay although generally that does not happen in my experience.
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 in difficult cases
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.

Q23: Should LTT impose penalties for late payment of tax similar to those available to HMRC to encourage prompt payment of tax?:	Yes.
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?:	
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.:	
Q26: Do you have any comments on the initial impact assessment:	
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.:	
Q28: Do you have any other comments on the Welsh Government's plans to implement a land transaction tax in Wales?:	

Reference 3

Name:	Anonymous
Email:	
Organisation (if applicable):	
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.:	Yes the recent changes to SDLT have made this a fairer system.
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.:	Not really as I would guess that very few transaction take place in Wales under this regulation, and probably costs more to administer, than revenue gained. If there are a high number of transactions then yes keep it.
Q3: What would the key impacts be on the residential market in Wales of having a different transaction tax regime from	The obvious ones are cross border transactions, if a better system in Wales than England someone may chose to live in say Wrexham rather than Chester. However it could also lead to confusion.

England?:	
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 but don't know what other areas are being considered
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).:	Yes
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)?:	Yes to avoid confusion and would have an impact on business location decisions
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.:	Yes as new residential system seems fairer
Q8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?:	as Q6
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.:	I really don't know if there are significant transactions under this type of purchaser is it a lot of legislation for nominal impact
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?:	More transactions would take place, I Have had examples where transactions have been avoided due to this tax
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?:	NO
Q12: Do you think that licences and tenancies at will should be taxed in the same way as leasehold agreements?:	No
Q13: Do you think any other element of the current SDLT regime on leases for either	No

residential or non-residential arrangements should be changed? If so, why?:	
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.:	No
Q15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?:	No
Q16: Do you think there are any suitable cases for introducing new reliefs? Please explain why.:	Maybe for first time buyers, to help them onto the housing ladder
Q17: How do you think the rate of online filing could be increased compared to SDLT?:	Yes
Q18: What arrangements should there be for those who cannot file online?:	A paper system
Q19: How do you think the rate of online payment could be increased compared to SDLT?:	By offering an incentive, or disincentive for alternative methods
Q20: Would requiring payment of the tax at the same time as submitting the return cause any problems? Please explain why.:	No
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?:	Not sure what is meant
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
Q23: Should LTT impose penalties for late payment of tax similar to those available to HMRC to encourage prompt payment of tax?:	Yes
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?:	Not familiar
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.:	Not familiar
Q26: Do you have any comments on the initial impact assessment:	No
Q27: Do you think the move to LTT could or should have implications for other areas of	Yes

taxation in Wales? Please provide an explanation specifying the areas of taxation and what the implications could or should be.:	
Q28: Do you have any other comments on the Welsh Government's plans to implement a land transaction tax in Wales?:	No

Reference 4

Name:	D Phillips
Email:	
Organisation (if applicable):	Pontardawe Town Council

Dear Sir/Madam

The Council believed that the consultation was premature, as there was legislation to be issued later in the year that would have a bearing on the consultation and also that a change in Government in 2017 may radically alter future plans in this area.

Regards
D Phillips (Mrs)
Town Clerk
Pontardawe Town Council

Reference 5

Name:	Anonymous
Email:	
Organisation (if applicable):	
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.:	<p>The current rates and bands appear suitable for Wales. The key principles for Welsh Taxes set out by the Minister for Finance and Government Business appear to be met by the current approach. Specifically, the current regime achieves: (1) "fairness" by changing to a marginal rate system and removing the slab system which applied the relevant tax rate to the entire transaction; (2) "simplicity and clarity" by removing the dramatic increases in SDLT liability that arose once the purchase price moved in to the next tax band; (3) "supporting growth and jobs" by enhancing the efficient operation of the housing market; and, (4) "stability and certainty" through the creation of a tax system that has less scope for distortion than the former slab system.</p> <p>We support your taxation principle for the land transaction tax to be simple and clear to minimise consumer confusion. There is a risk that</p>

	<p>prospective house-buyers could be left uncertain of their land transaction tax liability if there is significant variance between England and Wales' tax systems. This risk could be greater for First Time Buyers who are potentially more vulnerable as they are new to the home buying process.</p> <p>However, we note the consultations observation that Wales has relatively fewer high price residential property transactions compared to the UK and Scotland (paragraph 2.20). For example, the paper observes that Wales had 385 SDLT property transactions (1.0% of its total) priced 500k or more in 2012-2013. As a result, the higher bands have a limited impact on Welsh tax revenue and the Welsh housing market.</p>
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.:	<p>The SDLT is charged at 15% on residential properties costing more than £500k bought by bodies such as: (a) companies; and (b) collective investment schemes. We would prefer for tax rates to be harmonised across England and Wales where possible to minimise the impact on our customers and on our systems/processes. We request that you consider the impact of the proposed land tax on the ambitions to create more affordable housing, support growth/jobs and tackle poverty. We encourage you to consider appropriate tax treatments that will encourage all housing sectors to move forward in support of economic growth.</p>
Q3: What would the key impacts be on the residential market in Wales of having a different transaction tax regime from England?:	<p>A different tax regime between England and Wales could create local housing market distortions along the border (e.g. property prices near Chester, Wrexham, Shrewsbury, the Forest of Dean, and Bristol could be impacted by local differences in the respective SDLT regimes). The impacts could be realised: (1) upon announcement; (2) prior to transition; and (3) once implemented. These impacts are of greater significance between England and Wales than between England and Scotland due to the greater number of residential properties and centres of population that run along the Welsh-English border.</p>
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.:	<p>We would strongly prefer a consultation period to allow impacted stakeholders to engage with a potential Welsh Government proposal. In the event of the Welsh Government facing a material funding shortfall, we recognise their potential need to change tax raising strategy at shorter than normal notice (including potentially with immediate effect).</p>
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).:	<p>The proposed definition of property is aligned to the current UK Stamp Duty Land tax definition which the Scottish parliament has also adopted. Maintaining a level playing field is our strongly preferred option to avoid a scenario where differences in definition create incentives for people to "game the system".</p>
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)?:	

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.:	
Q8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?:	
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.:	
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?:	
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?:	
Q12: Do you think that licences and tenancies at will should be taxed in the same way as leasehold agreements?:	
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?:	
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.:	
Q15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?:	
Q16: Do you think there are any suitable cases for introducing new reliefs? Please explain why.:	
Q17: How do you think the rate of online filing could be increased compared to SDLT?:	
Q18: What arrangements should there be for those who cannot file online?:	
Q19: How do you think the rate of online payment could be increased compared to SDLT?:	
Q20: Would requiring payment of the tax at the same time as submitting the return cause any problems? Please explain why.:	

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?:	
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.:	
Q23: Should LTT impose penalties for late payment of tax similar to those available to HMRC to encourage prompt payment of tax?:	
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?:	
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.:	
Q26: Do you have any comments on the initial impact assessment:	
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.:	
Q28: Do you have any other comments on the Welsh Government's plans to implement a land transaction tax in Wales?:	

Reference 6

Name:	Anonymous
Email:	
Organisation: (if applicable)	
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.:	Council tax rates were revalued in Wales some years ago, raising levels quite sharply in some area, including this one in the north east. Any further tax on transactions will be damaging if it compares unfavourably with rates in England, and seems an unsound approach.

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.:	I am not sure what is meant by 'non natural' persons! Does this mean purchases by people not resident in Wales? Would that be legal?
Q3: What would the key impacts be on the residential market in Wales of having a different transaction tax regime from England?:	Wholly damaging.
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.:	No
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).:	I have no views on this.
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)?:	It is vital to have consistency. Otherwise the more expensive will suffer continued handicaps.
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.:	No thoughts
Q8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?:	Damaging
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.:	Yes
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?:	No
Q11: Do you think that a system of taxing	No

leases in Wales would be improved by requiring a regular return? If so, how frequent do you think these should be?:	
Q12: Do you think that licences and tenancies at will should be taxed in the same way as leasehold agreements?:	No
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?:	No
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.:	No views
Q15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?:	No views
Q16: Do you think there are any suitable cases for introducing new reliefs? Please explain why.:	No views
Q17: How do you think the rate of online filing could be increased compared to SDLT?:	Possibly
Q18: What arrangements should there be for those who cannot file online?:	By correspondence, surely.
Q19: How do you think the rate of online payment could be increased compared to SDLT?:	No views
Q20: Would requiring payment of the tax at the same time as submitting the return cause any problems? Please explain why.:	I don't see the problem
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?:	No views
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.:	Normally late payment requires a sanction, or will increase.
Q23: Should LTT impose penalties for late payment of tax similar to those available to HMRC to encourage prompt payment of tax?:	Similar, when the system settles down
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?:	No views
Q25: Should the Welsh Government replicate the existing Section 75A Finance Act 2003	No views

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.:	
Q26: Do you have any comments on the initial impact assessment:	Apart from a dislike of the whole project
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.:	The less tax the better
Q28: Do you have any other comments on the Welsh Government's plans to implement a land transaction tax in Wales?:	I think it would be disastrous

Reference 7

Name:	Peter Black AM
Email:	
Organisation: (if applicable)	Welsh Liberal Democrats

I refer to the consultation document: Tax Devolution in Wales – Land Transaction Tax and would be grateful if you could take my comments into account when considering how to progress this matter.

Much of this document is technical so I really just want to make a few basic points:

1. I support a Welsh specific Land Transaction Tax
2. Given the recent changes to stamp duty by the UK Government it is my view that we should allow these to settle down before embarking on any wholesale reform.
3. Having said that there is a case to adjust the bands to reflect Welsh land values.

I hope that is helpful

Peter

Reference 8

Name:	Mrs L.M.Mackintosh
Email:	
Organisation (if applicable):	

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.:	Yes
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.:	Yes
Q3: What would the key impacts be on the residential market in Wales of having a different transaction tax regime from England?:	impact detrimentally
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.:	No
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).:	Definition adequate
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)?:	Very Important
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.:	Would distort the market
Q8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?:	Reflect badly having different regimes
Q9: Do you think the SDLT provisions for	No

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.:	
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?:	No
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?:	No. Too much State interference
Q12: Do you think that licences and tenancies at will should be taxed in the same way as leasehold agreements?:	No
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?:	keep the tax system the same as England and the rest of the UK
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.:	Any relief should be kept
Q15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?:	Yes
Q16: Do you think there are any suitable cases for introducing new reliefs? Please explain why.:	No
Q17: How do you think the rate of online filing could be increased compared to SDLT?:	No
Q18: What arrangements should there be for those who cannot file online?:	Continue to use hard copies
Q19: How do you think the rate of online payment could be increased compared to SDLT?:	rate should not be increased
Q20: Would requiring payment of the tax at the same time as submitting the return cause any problems? Please explain why.:	Time for payment should be allowed
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
Q22: Do you think that penalties should be levied on the late filing of returns similar to those imposed by HM Revenue and	Yes. Do not cause confusion

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.:	
Q23: Should LTT impose penalties for late payment of tax similar to those available to HMRC to encourage prompt payment of tax?:	No
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?:	keep everything simple
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.:	No
Q26: Do you have any comments on the initial impact assessment:	No
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.:	Will have huge implications.
Q28: Do you have any other comments on the Welsh Government's plans to implement a land transaction tax in Wales?:	Bad move!

Reference 9

Name:	Susan Needham
Email:	
Organisation: (if applicable)	National Association of Estate Agents (NAEA)

<p>Chapter 2: Residential property transactions</p> <p>Question 1: Do you think the current residential SDLT rates and bands are suitable for Wales?</p> <p>The National Association of Estate Agents (NAEA) believe that the new marginal 'sliding' system is the correct approach, as it means home buyers will not face a sudden increase in the tax amount payable following only an incremental increase in their property's value.</p> <p>However, we believe that the bands should be reformed to reflect the lower value of property in Wales compared to England.</p> <p>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.</p> <p>NAEA believe that the higher slab rate for certain transactions by non-natural persons should continue following the introduction of LTT. This is because it is important that the character of unique local communities in Wales is protected, which an influx of outside investment could affect. The uniqueness of Welsh communities is often what makes property in the region so desirable, so this attribute must be maintained for the benefit of the Welsh housing</p>
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market.

However, whilst the maintenance of local communities should be the Welsh Government's priority, it is important that non-natural persons are not entirely put off from investing in property in the region as foreign investment can often bring with it economic prosperity. Therefore NAEA believe that, whilst a higher rate should remain for non-natural persons, the rate should be lowered slightly to ensure that this type of investment is not entirely discouraged.

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

The key impact on the residential market in Wales would be largely positive. It could lead to many people, who reside on the English side of the Welsh border, deciding to move to Wales to buy a property, due to a favourable property tax regime.

In the longer term, this may lead to an increase in prices due to the influx in demand, however it will ensure that the Welsh residential market remains healthy and does not fall into decline, which will benefit our members.

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.

Yes, NAEA believes that the Welsh Government should have the ability to change or introduce new rates and bands. However, it believes that a consultative approach to any change, with a long lead in time, would be beneficial to the property market. This is because any sudden change would negatively distort prices and cause uncertainty in the market.

Question 5: 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).

We are of the belief that this definition needs amending. In order to define "residential property" adequately an explicit reference to "personal habitation" should be included within the definition, be it as a primary or secondary residence. Currently this distinction is not made.

Furthermore, confusion can arise 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 clear under which taxation system such properties fall.

This definition should be enshrined by statute in order to ensure that there is absolute clarity for the purposes of collecting LTT.

Chapter 5: Leases

Question 10: 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?

No, 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.

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, there is no other element of the current SDLT regime on leases that NAEA feel should be changed.

Chapter 6: Reliefs and Exemptions

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.

NAEA believes that the current reliefs and exemptions for SDLT should be retained. The reliefs and exceptions as they stand will apply equally to Welsh home buyers as they currently do to home buyers in the rest of England.

Question 15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?

Yes, NAEA believes that Wales should adopt the same form of sub-sale relief as the rest of England.

Stakeholder groups such as property developers operate across both England and Wales. Therefore consistency is important in order to streamline their business transactions and to retain clarity in the market.

Question 16: Do you think there are any suitable cases for introducing new reliefs? Please explain why

We believe that new reliefs could be brought in to mitigate in the areas of Wales where there are acute regional differences in house prices.

Other Questions

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

NAEA agree with the outcome of the impact assessment, and take the view that to do nothing is not an option.

The need for action is particularly acute as, under the stipulations of the devolved powers laid out in the Wales Act 2015, the Welsh Government is set to lose a proportion of its grant money from the UK Government, to offset its

newly devolved tax collecting powers.

It is therefore important that the Welsh Government optimises its tax regime, particularly through this reform of SDLT, to ensure that it takes into consideration the uniqueness of the Welsh property market, in order to maximise tax revenue.

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.

Yes, the principles applied to LTT could easily be applied to a reform of council tax banding. A reform of council tax banding is long overdue, during which time house prices have soared.

A change in banding, based on a new sliding scale, would allow poorer households to pay less, whilst yielding more revenue from wealthier home owners.

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

NAEA has nothing else to add other than to say that it agrees with the plans to introduce LTT to replace SDLT, and is supportive of the newly devolved tax regime in Wales.

We would also like to highlight that we plan on publically publish this consultation response.

Reference 10

Name:	Too complicated
Organisation (if applicable):	Too complicated for average educated person to understand
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.:	This is way too complicated for even an educated adult to understand! The only thing I can make from any of it is that there should be more staggered percentages between the second section of value eg £150k to 250 k should maybe be 0.5% 1% 1.5% etc
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.:	
Q3: What would the key impacts be on the residential market in Wales of having a different transaction tax regime from England?:	
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.:	
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).:	
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)?:	
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.:	
Q8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?:	
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.:	
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?:	
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?:	
Q12: Do you think that licences and tenancies at will should be taxed in the same way as leasehold agreements?:	
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?:	
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.:	
Q15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?:	
Q16: Do you think there are any suitable cases for introducing new reliefs? Please explain why.:	
Q17: How do you think the rate of online filing could be increased compared to SDLT?:	
Q18: What arrangements should there be for those who cannot file online?:	
Q19: How do you think the rate of online payment could be increased compared to SDLT?:	
Q20: Would requiring payment of the tax at the same time as submitting the return cause any problems? Please explain why.:	
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?:	
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.:	
Q23: Should LTT impose penalties for late payment of tax similar to those available to HMRC to encourage prompt payment of tax?:	
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?:	
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.:	
Q26: Do you have any comments on the initial impact assessment:	
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.:	
Q28: Do you have any other comments on the Welsh Government's plans to implement a land transaction tax in Wales?:	

REFERENCE 11

Name	Anonymous
Email:	
Organisation:	

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)?

ANSWER

As the consultation recognises any divergence will increase the administrative burden on business with properties in Border Regions because of the need to ascertain definitively whether and if so what part of a property is in Wales, to take survey or valuation advice to apportion the rent or other consideration in relation to properties which straddle the Border and then to submit two separate Tax Returns possibly applying different rates or bands.

Unlike the Scottish Border regions where properties can normally easily be identified by lawyers as being in one country or the other because there will be separate title deeds, there will be many legal titles - registered and unregistered- which straddle the Welsh Border. Without easy access to a definitive map to enable taxpayers to ascertain which part of a property was on either side of the Border submitting a return will be far more expensive in terms of time and fees. The difficulty experienced when trying to ascertain if or to what extent a property qualified for disadvantaged area relief is instructive.

Businesses with properties in both England and Wales and their professional advisers will need to familiarise relevant personnel with two sets of rules. On some subsequent transactions (eg. assignment of a lease where relief claimed on grant, later linked transactions) the professional adviser to the buyer of a property straddling the border may have to check 2 tax returns for accuracy and in addition assess whether the apportionment of consideration between the 2 properties was defensible.

From an administrative perspective it is more important that there is consistency in how transactions are taxed rather than whether it is a marginal or slab system or that the rates and bands coincide as these are matters of calculation.

LTT should be designed to be as consistent with SDLT in its application as is possible also because the Land Registry is responsible for properties in England and Wales and confusion will be caused by divergence in the documentation required to be provided to the Land Registry in relation to SDLT and LTT.

QUESTION 7

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.*

ANSWER

The majority of non-residential transactions in the respondent's practice involve leaseholds at market rents. As SDLT on rent is paid at a single rate above the nil rate band there is no obvious distortion where no non-rent consideration is payable.

QUESTION 8

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

ANSWER

The key impact would be the increased burden on business of additional bureaucracy and the associated professional costs of tax advisers, solicitors and valuers. This would be apparent in both the need to skill up on and apply a separate, but similar, tax for properties in Wales rather than England and exacerbated in the case of border properties. A major concern about SDLT for non-residential transactions is the complexity of the tax when applied to ordinary leasehold transactions. For example if a tenant merely remains in occupation paying the same rent following expiry of a

lease this might result in any one of six different SDLT return outcomes for the tenant so working out whether or when a return is due is not straightforward. Even if LTT created a far simpler system for taxing leaseholds in Wales that would add at least a seventh return option for border properties even if it might in the end reduce the administrative costs by providing an easier return exercise for those properties wholly in Wales. If a system of similar complexity to SDLT when applied to leaseholds were introduced, the administrative burden would be at least doubled.

QUESTION 11

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

ANSWER

Applying SDLT regulations to leasehold transactions cannot be easily undertaken by a layperson and most Returns are in fact completed by qualified lawyers. Even they struggle to make sense of the forms and the associated reams of HMRC guidance. Frequently the taxpayer tenant incurs considerable legal fees to calculate what turns out to be a comparatively small amount of tax on a leasehold transaction. The increased burden imposed by further Returns being required during the term would often be disproportionate to the tax raised. For example, under current SDLT rules, if it turned out that the original estimate of a turnover rent was not correct but was not far out, the additional tax due would be very little but the cost of calculating and submitting a revised return quite significant. To place such a burden on all leases over a certain length in order to catch the few where an additional sum might be payable would be most unhelpful to business tenants for the sake of a very modest increase in tax revenue. In the case of properties straddling the Welsh-English border there would be the additional administrative burden caused by the need to apportion consideration to that part of the property subject to LTT on the further return, which is not an issue in Scotland as dealings with Scottish and English titles will always be separately documented.

SDLT rules on leaseholds are so complex that for all but the most sophisticated clients with in-house tax professionals, unless an event triggers the involvement of the tenant's lawyers, no SDLT return is likely to be made in practice. Holding over is the typical example as a tenant might remain in occupation long after the lease expired, but only when or if terms are agreed for a renewal and lawyers instructed will a SDLT return be made in practice.

If tenants now fail to remember to submit a return on lease expiry or when the rental changes within the first 5 years, why would they be any more likely to remember to submit a return on a specified date?

If a regular return were required it should be at 5 year intervals. The average length of business leases is now below 5 years, and normally the rent is fixed for the duration of the term. The majority of ordinary business leases do not reserve rents which vary during the first 5 years or any variations are fixed at the outset and included in the initial SDLT calculation. So it is quite likely a regular return would in many cases produce no additional tax unless (unlike SDLT) it was proposed to tax increases in rent occurring after the 5 year threshold.

QUESTION 12

Do you think that Licences and Tenancies at Will should be taxed in the same way as Leasehold Agreements?

ANSWER

Unlike Scotland, which has no system of business security of tenure, the Landlord and Tenant Act 1954 applies to Wales. For that reason few Licences to occupy are granted which will extend for a period beyond six months and similarly Tenancies at Will normally have a short lifespan because the landlord wishes to avoid the risk of granting security of tenure. In the respondent's experience they are adopted as flexible arrangements to cover short term occupation or as interim measures pending proper documentation being implemented rather than deployed to mitigate SDLT. In an arm's length transaction the risk to the landlord of granting a secure tenancy will outweigh any desire it might have to assist the tenant in reducing its tax bill. Because the terms are short it is unlikely that applying leasehold rates of tax to them would increase significantly the amount of tax collected unless no nil rate threshold was adopted or it was set at a very low level. Tenancies at will are by definition of uncertain duration at the date of grant so an assumption would have to be made as to length of term to calculate the tax due - which might result in an increased administrative burden on tax payer and tax authority in applying for and refunding overpayments.

Many tenancies at will arise as a matter of law (rather than express grant) on expiry of a contracted out lease where the tenant remains in occupation. In those circumstances, as explained in the answer to Question 11, returns are rarely made in practice unless or until the parties agree new lease terms.

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?

It is difficult to decide when transactions are linked transactions for SDLT purposes, the guidance is opaque and once it is decided the transactions are probably linked, the tax calculation is by no means intuitive. The respondent would recommend that, as for LBTT, transactions subject to any LTT should never be linked with a transaction subject to SDLT.

QUESTION 20

Would requiring payment of the tax at the same time as submitting a Return cause any problems? If so please explain why.

ANSWER

Most SDLT Returns are submitted on-line by lawyers and the associated payments are separately processed by the firm's accounts department, on the authority of the lawyer. There are likely to be internal checks and authorisations required before the sum is transferred direct to HMRC (whether by TT or BACS) or a cheque issued. It makes little difference whether payment is electronic or cheque, both are subject to the same scrutiny so there is no obvious reason to prefer cheques. Dovetailing the two so that the return is not submitted online until the online payment can be despatched simultaneously would either require the lawyer to get directly involved in the accounting process or the accounts team to get directly involved in the SDLT submission process. Either will involve more lawyer time in co-ordinating the return with payment and so translate into additional professional fees for the taxpayer. Further, depending on the time of day when completion of the transaction occurs, it may be impossible to make the electronic payment that same day. BACS payments take three working days to clear, would that mean that with returns close to the deadline the taxpayer would have to incur an additional TT fee in case BACS payments are not considered made until cleared?

Many firms now use Landscape or similar to submit SDLT returns and the involvement of a third party system might further complicate any requirement to submit payment simultaneously. Where a lawyer makes the online return we doubt that payment of the tax will be often overlooked so we wonder whether separate payments are in fact a problem in practice.

Whilst the Consultation document says in Scotland payment of LBTT is "at the same time as" submitting the return, the Revenue Scotland guidance suggests there is at least a 5 working day window for payment - subject to the overall deadline of 30 days after the effective date. That would not create the same problems as requiring despatch of funds actually at the same time as submitting a return.

As an associated point the information required by the returns for SDLT in relation to leasehold transactions is extremely voluminous and much of the required information has little to do with the SDLT calculation. This is especially the case where a leasehold interest is being sold or assigned when additional information is required for the purposes of The Valuation Office which has nothing to do with the transaction itself or the tax calculation. For multi-tenanted properties, a large amount of information is, usually, required in relation to each occupational lease and it is time consuming to extract the necessary information and provide it in the required format. This in itself increases the professional fees payable by the client taxpayer.

If leasehold information is required by the VOA, this should be collected separately.

It is hoped that the Welsh Government will benefit from those experiences with SDLT and avoid the unnecessary administration and cost for taxpayers by not requiring the provision of information that has nothing to do with the transaction or the amount of tax due on it.

QUESTION 28

Do you have any other questions on the Welsh Government's plans to implement a Land Transaction tax in Wales?

ANSWER

If it is intended to permit submission of Returns in Welsh then they must be accompanied by a requirement for a translated version in English.

REFERENCE 12

Name	GELDARDS LLP
Email:	
Organisation:	GELDARDS LLP

TAX DEVOLUTION IN WALES
LAND TRANSACTION TAX CONSULTATION

RESPONSE FROM GELDARDS LLP

Introduction

Geldards LLP (“**Geldards**”) is delighted to be able to respond to the Consultation Document issued on 10 February 2015 by Jane Hutt AM, Minister for Finance and Government Business and add to the informal responses provided by Andrew Evans, a partner at Geldards, in his role as a Tax Expert on the Tax Advisory Group for Welsh Government. Land Transaction Tax (“LTT”) has an important part to play in the Welsh property market.

Responses

Chapter 2: Residential property transactions

Question 1: *Do you think the current residential 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.*

A key issue when setting the level of taxes is the link between the asset being taxed and the ability of the taxpayer to pay the tax. It is also important that the tax system is easy to understand and to calculate. Economic drivers may also influence the tax rate if there is a wish to attract business to Wales in order to grow the economy – the cost to executives of buying a home in Wales compared to England may be a factor in deciding the location of the business.

As identified in the consultation document that average house price in Wales (£162,000) is lower than the UK average (£242,000) so it could be argued that the starting point for LTT should be lower than £125,000 so that the starting point properly reflects the average house price and more members of the property owning public in Wales contribute via LTT. Alternatively a 1% band could be inserted below £125,000, although the cost of collection may outweigh the amount of revenue such a “starting rate” band may raise.

The same argument could be used to justify inserting additional tax bands between £250,000 and £500,000 (a 5% band) and £500,000 to £925,000 (at 7%) so that the increase in the bands is more graduated rather than the immediate jump from 5% to 10% at £925,000. The fact that there were only 385 residential house purchases above £500,000 in Wales in 2012/13 indicates that the current band of £250,000 to £925,000 at 5% is particularly wide given the residential property values in Wales.

The counter argument is an increase in the number of bands would be administratively complex and a higher LTT charge in Wales compared to England may be counter-productive in attracting business to move to Wales. The incidence of large population centres close to the England and Wales borders in both north and south Wales should not be ignored as business owners may choose to base themselves one side of the border and commute to work. In order to avoid a tax competition with England Welsh Government may choose to mirror the rates in England, although face the risk of being accused of having a tax power and then not doing anything with it.

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.*

We see no reason to vary the position from that operated in England. The slab rate for non-natural persons was introduced to counter potential tax avoidance involving high value residential properties. Without the

high tax rate there is always the risk that the ownership of residential properties via companies could filter down into lower value transactions. There is nothing to be gained by removing the provisions.

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

The key impact would be the additional complexity for conveyancers in dealing with LTT in Wales or SDLT in England particularly if there were varying bands and different rates of tax between the two jurisdictions. Additional training would be required at the outset and on-going as and when recruiting new members of staff.

Differential rates at the higher end of property transactions may have an impact on whether the individual moves to Wales or England and possibly bring their business with them. The self-interest in asking "What is it going to cost me?" rather than economic reasons may become more important.

Higher rates of LTT may have a negative effect on house prices although the residential market above £500,000 is not significant in terms of numbers of transactions (the amount of LTT could be significant in relation to the individual house purchase).

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.*

Welsh Government should have the ability to make immediate changes to the rates of LTT if Welsh Government chose to mirror the rates in England. If a different level of rates is decided upon, the need to make immediate changes becomes less important and the requirement to obtain the approval of Welsh Government in session to an amendment could enable more considered consideration of any changes.

One area where immediate changes may be required and would be appropriate is the question of tax avoidance and the ability to counter-act misuse of loopholes or reliefs as and when it becomes apparent that LTT avoidance schemes are being developed. One drawback of SDLT was the length of time it took before certain SDLT avoidance schemes were successfully counteracted by amendments to legislation or HMRC obtained a successful result in the tax Tribunals and appeal courts.

Question 5: *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).*

In our view the definition for residential property is adequate although any LTT legislation should include a single definition of residential property. Issues may arise where part of a garden is being sold to a developer; in our view the land ceases to be residential land and becomes non-residential until it is then sold by the developer (perhaps having been built out as residential property).

Chapter 3: Non-residential property transactions

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)?

Consistency is required if ease of operation from a practitioners point of view is considered – one less jurisdictional change to be considered. Consistency would also enable investors to make a considered decision as to where they invest their money in property investments and in managing existing investments. A number of clients manage portfolios of industrial properties in both England and Wales and at present there is no need to consider different rates of SDLT when considering whether a commercial rate of return could be achieved from a transaction.

A slight reduction in the rate of LTT above £500,000 may not make an appreciable difference to the commercial viability of a transaction. A developer will be interested in the amount of profit it can make from the transaction. The larger number of large commercial centres within 20 miles of the England and Wales border compared to the England and Scotland border make a strong case for the need for consistency on the basis that businesses could be much more mobile between England and Wales compared to England and Scotland.

Question 7: *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 is not considered that a slab system creates a substantial distortion to the market unlike the impact the slab system had on the residential property market around the SDLT rate thresholds. We do not see an adjustment of values around the current SDLT rate thresholds for commercial property transactions.

A large number of transactions involve the grant of leases at a rack rent and the net present value of calculating SDLT creates a fairly level playing field in that all of the net present value above £150,000 is taxed at 1%.

Question 8: *What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?*

The key impacts would be the additional complexity and a potentially negative investor decision to investing in Wales if they do not wish to understand the differences. The additional complexity could be “final nail” in reaching a decision not to invest in Wales.

Chapter 4: Partnerships, Trusts, and Companies

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.*

The whole regime should be replicated. The legislation for partnerships and group relief for companies in particular is extremely complicated as a result of previous legislation being incomplete and/or badly drafted. Re-writing the legislation could result in unexpected loopholes. The property industry understands the current regime and how to work within the regime. The only winners from a change would be the few property professionals advising in the area.

Chapter 5: Leases

Question 10: *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?*

Very few residential leases in Wales give rise to a SDLT charge as the net present value calculation will result in values below the £125,000 threshold for residential properties. The risk in abolishing the tax on the rent element is that LTT avoidance schemes may be developed to take advantage of the lack of a tax on rental elements. Any such schemes would be a challenge from a commercial point of view, sellers would be reluctant to receive what would have been capital as income and funding the arrangements may be difficult. However, Welsh Government may not wish to take the risk.

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?*

The requirement to file a LTT return every three years could improve compliance with some of the less well known requirements under the existing SDLT regime. The need to file a return after one year of holding over at the end of a lease is one example. However, with holding over the compliance regime was relaxed as previously tenants had to file a return within 30 days of the termination of the old lease and in our experience very few tenants complied with this requirement (and HMRC made no effort to enforce the rule).

The problem with requiring a return every three years is the additional cost such compliance will place on business, particularly if nothing has changed and there is no additional LTT liability. In addition, Welsh Government or the Welsh Revenue Authority would have to ensure sufficient resources were available to check the returns that were filed and police the non-filing of returns. The main instances where a failure to file a return on the grant of a lease is picked up is when the leaseholder is acquired in a corporate transaction and the non-filing is discovered in due diligence. We are not aware of a proactive approach by HMRC even though the legislation exists for such enquiries to be made. There is no point requiring a return to be filed if it does not give rise to a tax liability or no resources to check the returns.

If it is considered that a regular return is required, it should be no more than every three years. A shortened "No change" return should be an option. Welsh Government or the Welsh Revenue Authority should consider investing in a compliance check system to ensure the three year return is made.

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

No. Licences tend to be short term arrangements with no exclusive occupation (which is the difference between a licence and a lease from a legal point of view). The fees paid for a licence tend to be low value and probably below the current threshold for when SDLT becomes payable (a net present value of at least £150,000). At present a SDLT return is not required for leases under 7 years in length where the net present value is below £150,000. It is difficult to see how bringing licenses and tenancies at will into the LTT will help raise any money and merely add to the compliance burden for businesses.

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, other than perhaps simplifying the SDLT or LTT return forms to make them easier and quicker to complete by removing some of the unnecessary information requested. For example, Form SDLT4 requests information about the property use or if there are mineral rights reserved which has nothing to do with SDLT.

Chapter 6: Reliefs and Exemptions

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.*

We agree with the statement in the Consultation document that most of the SDLT reliefs are necessary to support certain types of transactions. A valid case for retaining all the reliefs can be made even if the reliefs have very limited application, such as demutualisation of insurance companies and building societies and variation of parliamentary constituencies.

Question 15: *Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?*

The current form of sub-sale relief forms an important element in structuring some commercial property transactions and the revised legislation brought in by the Finance Act 2013 appears to have stopped most, if not all, of the SDLT avoidance schemes using sub-sale relief. Removing sub-sale relief would add to the cost of “doing business” in Wales compared to England and the extra 4% charge on the land value could mean the difference between a major development proceeding or not going ahead.

The Scottish sub-sale regime of allowing sub-sale relief where there is a significant redevelopment within five years of the transaction could cause practical problems. The final purchaser would have paid LBTT on the purchase with the sub-sale relief being claimed by the party or parties within the chain. The obligation is on the final purchaser to carry out the development and the party claiming the sub-sale relief will have no control over the timing or extent of the development. However, this party would be liable for the LBTT over five years after the original claim for relief. This could give rise to a substantial compliance issue and an unexpected tax liability. To put matters in context HMRC are unable to claim for unpaid tax after four years unless the taxpayer has been careless or fraudulent.

Question 16: *Do you think there are any suitable cases for introducing new reliefs? Please explain why.*

No new reliefs are apparent. In some cases the ability to claim certain reliefs could do with clarification. For example, when considering whether the consideration for the construction of a building on land owned by a developer should include the build cost and not just the cost of the land, the calculation of SDLT depends on the timing of certain contracts and interpretation of the legislation from HMRC.

Welsh Government should be very careful in trying to use LTT to influence changes in behaviour, such as LTT reductions for energy efficient homes.

Chapter 7: Compliance, Avoidance, Disputes and Penalties

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?*

The on-line filing system has got to continue to be easily accessible, robust and easy to operate. As acknowledged in the Consultation document, on-line filing is cheaper to operate for the revenue authorities than paper returns. On-line filing is also cheaper for practitioners compared to dealing with paper forms and results in less errors as the on-line system rejects incorrect forms.

Mandatory on-line filing would be “nice to have” but provision has to be made for the few taxpayers who do not have access to computers or do not use computers for religious reasons. Giving the 96% of current taxpayers who file on-line a discount to try and encourage the remaining 4% to file on-line does not appear particularly tax efficient.

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

Perhaps access to computers at government or local government offices.

Question 19: *How do you think the rate of online payment could be increased compared to SDLT?*

The on-line payment system would have to be made extremely easy to use so that the payment can be matched with no difficulty to the LTT return.

Part of the issue will be governed by controls that exist for solicitors in dealing with client money. Client accounts holding client money which are used to pay SDLT are strictly controlled both by the Solicitors Regulation Authority and by firm's internal controls to limit access to client money. Payment by cheque may be the most appropriate method for some firms to control payment.

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

Requiring payment of LTT at the same time as filing the return could assist practitioners in dealing with clients that wish to delay paying the tax until the last possible moment. From a practical point of view it is much easier to deal with all the filing and payment requirements shortly after completion of the transaction rather than having to pick matters up say 28 days after completion. For this reason a shorter period for filing the returns and paying the tax rather than the current 30 day deadline may be necessary although this shorter deadline may not be welcomed by some practitioners.

It is usually a requirement involving transactions with mortgage or bank finance that completion cannot proceed unless the professional is in funds to comply with the registration formalities (including registering the legal charge at HM Land Registry). This would include having funds to pay the SDLT as no registration is permitted at the Land Registry until the relevant SDLT certificate has been received from HMRC.

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?*

Tax legislation always gives rise to issues where there is no clear answer and guidance is required from the tax authorities to ensure that the taxpayer pays "the right amount of tax" in order to avoid a penalty for non-compliance.

The benefits of a pre-clearance facility would be certainty for taxpayers and their advisers. However, the resources required to operate a clearance facility should not be under-estimated. Queries on transactions are usually urgent and arise at a late stage in transactions. There is usually a large amount of tax at stake. It is important that personnel with sufficient experience are employed in a pre-clearance facility rather than a call-centre type operation with a regimented script.

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.*

Yes, although the level of penalties could be reviewed. The £100 penalty for initial late filing and a further £100 penalty for continued late filing after three months were introduced in 2003 and have not been increased. Welsh Government could consider increasing the level of penalties for delayed non-compliance.

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

Please see answer to question 22.

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 had no practical experience of dealing with appealing a SDLT return so do not feel we can usefully comment.

A “pay first and argue later” approach must have sufficient checks and balances to deal with cases of genuine hardship. However, LTT would be rather different to income tax and vat as it would be triggered by a land transaction involving a value of at least £125,000 under current SDLT limits so real issues of hardship may be difficult to justify.

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.*

The introduction of a motive test would be useful in ensuring that Section 75A applied to the transactions involving genuine tax avoidance. At present there is a risk that Section 75A applies to a genuine sub-sale where the final purchaser is paying less for the land than the party claiming sub-sale relief, perhaps due to a fall in the market or selling off a smaller part of the whole. Section 75A can apply in these circumstances to charge SDLT on the highest amount of the consideration payable at any stage of the transaction. The rewritten sub-sale rules contain a motive test but this is not replicated in Section 75A. In our view Section 75A requires wholesale rewriting to ensure that it achieves the desired effect and can be readily understood.

The key element with anti-avoidance legislation is certainty for the taxpayer. The legislation needs to be clear in its application and not give rise to further unexpected loopholes.

Other Questions

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

We support the devolution of SDLT to Wales and the introduction of LTT. However, LTT on commercial property or on high value residential property should not be used as an easy way of raising additional tax revenue. The economic impact in Wales of any tax rises should be considered. Wales is a small economy compared to England and any barriers to external investment in Wales via higher taxes should be resisted.

The cost of collection and administration is an issue. The amount raised by SDLT in Wales is relatively small compared to the overall Welsh Government budget and the amount of SDLT raised in the UK. It could be very easy to ignore the cost of operating a LTT system.

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.*

The size and operation of the Welsh Revenue Authority would have to be considered if and when Welsh Government obtained powers over additional taxes such as income tax and corporation tax.

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

No.

Information about Geldards

Geldards is a leading regional law firm with regular cross border activity undertaken through its offices in Cardiff, Derby, Nottingham and London.

It has 52 partners and over 300 staff and undertakes a substantial amount of activity in the property infrastructure and construction fields. In Wales alone, the property team comprises of 18 property lawyers and a further 15 in our other offices, so SDLT plays an important role in our everyday work.

The main legal directories regularly identify us as the leading commercial property practice in Wales. In 2011 we won the “Insider” magazine Welsh Property Law Firm of the Year for the second time since 2008. The property team can call upon specialist support teams for construction law, planning, property litigation and the charity law aspects of property disposals.

Geldards LLP

30 April 2015

Reference 13
NFU CYMRU



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Date: 5th May 2015

Dear Neil

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 is 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 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.

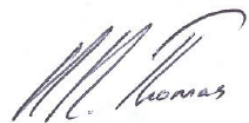
Given that the policy rationale for the introduction of the ATED was to prevent SDLT avoidance on residential property we would suggest that any revenues raised by the ATED in relation to property located in Wales should pass to the Welsh Government

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



Huw Thomas
Assembly Adviser
NFU Cymru

Reference 14

Name:	Anonymous
Email:	
Organisation: (If applicable)	

In general, airport retailers are granted concessions to trade by airport operators. Concession arrangements are property licences and so any change to the taxation status of licences would impact directly on airport retailers and would also be detrimental to the interests of Cardiff Airport.

Impact on Airport Retailers
A tax on property licences would increase costs for airport retailers which already operate under constraints not faced by shops on the High Street.

- Airport shops can only be accessed by passengers in possession of a boarding pass.
- The recent increase in airport security processes required by the Government mean that airport

users are under ever-increasing time pressure and are usually rushing for a flight. Furthermore, unlike the High Street, sales are controlled in airport shops; to make a purchase, passengers have to show their boarding card and, in some cases, their passport - processes which slow down the sales transaction. Consequently, the amount of available time passengers have to spend on airside shopping is severely limited. It has been estimated that, during the average time spent at airports before a flight, only 14 minutes are devoted to shopping i. Contrast this to the unlimited time customers have to browse in their local shopping malls or High Street where there are no controls on access or constraints on sales procedures.

- Airport retailers have greater staff costs than High Street shops of similar sizes as they are required to stay open for as long as the airport operates which is typically from 4am until the last flight at night, every day of the year, including Christmas day.
- Airport retailers are in direct competition with retail outlets at other international airports and with airline onboard sales ii. Airlines operating from Cardiff airport typically offer their products at more competitive prices than the airport retailer as they do not pay retail concession fees – this advantage would be exacerbated as airlines would not be subject to LTT whereas airport retailers will see an increase in their cost base.
- The income of suppliers of specialist Welsh products may also suffer economically from the imposition of LTT on airport shops. Retailers are likely to focus on those brands which offer the highest margins, which may exclude local products, to guarantee the highest level of sales in order to offset the loss of profits. This would in turn have a detrimental impact on consumer choice as well as on local Welsh producers.

Impact on Cardiff Airport Commercial income is a vital source of funding for maintaining and developing the airport infrastructure. Income from duty-free sales is an important component of Cardiff Airports nonaeronautical revenue and, as Cardiff Airport “exists in a competitive aviation context in which market conditions are key factors” iii, a new tax on its retail partners is likely to have a knock-on effect on its profitability.

With the growth of the low cost airline model, retail income has become even more relevant and vital to the airport's viability.

- Extending the scope of LTT to airport concession arrangements may make it more difficult to attract and retain high quality retailers at Cardiff airport, who might instead choose to focus on business opportunities at airports in England and Scotland, or indeed overseas, where LTT would not apply.
- There would also be pressure on Cardiff Airport to take account of LTT in concession fee negotiations, with a consequent reduction in its revenues.

Any reduction in airport retail revenue puts investment in infrastructure at risk which ultimately impacts all airport customers and business partners. It is telling that, facing similar risks at Scottish airports, the Government there recently withdrew its proposals to apply Land and Buildings Transaction Tax to concession agreements.

Conclusion

Airport retailers operate in a unique environment which is totally different to that of the High Street. Retail revenue makes an increasing valuable contribution to financing airport investment, thus supporting better airports, a greater choice of routes and more connectivity for passengers. We fear that any new tax burdens imposed on the sector at this stage could jeopardise a business model which has been fundamental to upgrading the infrastructure and connectivity of Wales's main airport.

Reference 15

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Email:	
Organisation (if applicable):	Community Land Advisory Service Cymru C/O The Federation of City Farms and Community Gardens
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.:	
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.:	
Q3: What would the key impacts be on the residential market in Wales of having a different transaction tax regime from England?:	
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.:	
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).:	
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)?:	
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.:	
Q8: What would be the key impacts on the	

non-residential market in Wales of having a different transaction tax regime from England?:	
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.:	
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?:	
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?:	Please consider not for profit or low profit enterprises. Community growing projects are often on low rents from the landowner and make little or no profit so a LTT would be prohibitive to them setting up/ continuing.
Q12: Do you think that licences and tenancies at will should be taxed in the same way as leasehold agreements?:	Please consider not for profit or low profit enterprises. Community growing projects are often on low rents from the landowner and make little or no profit so a LTT would be prohibitive to them setting up/ continuing.
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?:	Please consider not for profit or low profit enterprises. Community growing projects are often on low rents from the landowner and make little or no profit so a LTT would be prohibitive to them setting up/ continuing.
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.:	Please consider not for profit or low profit enterprises. Community growing projects are often on low rents from the landowner and make little or no profit so a LTT would be prohibitive to them setting up/ continuing.
Q15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?:	Please consider not for profit or low profit enterprises. Community growing projects are often on low rents from the landowner and make little or no profit so a LTT would be prohibitive to them setting up/ continuing.
Q16: Do you think there are any suitable cases for introducing new reliefs? Please explain why.:	Please consider not for profit or low profit enterprises. Community growing projects are often on low rents from the landowner and make little or no profit so a LTT would be prohibitive to them setting up/ continuing.
Q17: How do you think the rate of online filing could be increased compared to SDLT?:	
Q18: What arrangements should there be for those who cannot file online?:	
Q19: How do you think the rate of online payment could be increased compared to SDLT?:	
Q20: Would requiring payment of the tax at the same time as submitting the return cause any problems? Please explain why.:	
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?:	
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.:	Please consider not for profit or low profit enterprises who have no finance for professional advice and would not be aware of LTT. Community growing projects are often on low rents from the landowner and make little or no profit so a LTT would be prohibitive to them setting up/ continuing.
Q23: Should LTT impose penalties for late payment of tax similar to those available to HMRC to encourage prompt payment of tax?:	Please consider not for profit or low profit enterprises who have no finance for professional advice and would not be aware of LTT. Community growing projects are often on low rents from the landowner and make little or no profit so a LTT would be prohibitive to them setting up/ continuing.
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?:	
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.:	
Q26: Do you have any comments on the initial impact assessment:	
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.:	
Q28: Do you have any other comments on the Welsh Government's plans to implement a land transaction tax in Wales?:	

Reference 16

Name:	Anonymous
Email:	
Organisation:	
Chapter 2 – Residential Property Transactions	
<p>1. High rates of Residential Property Transaction Taxes discourage mobility of labour and therefore discourage optimum allocation of resources, thereby reducing wealth creation and living standards in the long run. High residential transaction taxes discourage workers from moving house at all, and so discourage them from moving to where there are more jobs and where they would be more productive. High residential transaction taxes discourage</p>	

entrepreneurs from moving their businesses to Wales as they will need to pay a substantial tax on a high value house just to move from an equivalent house elsewhere. It would therefore be unhelpful and counter-productive to raise rates and/or create lower thresholds as this would put Wales at a competitive disadvantage in terms of encouraging workers, executives and entrepreneurs from moving to and within Wales. A marginal rate system is preferable for obvious reasons.

2. I think it would be beneficial to Wales to remove the 15% non-dom rate as this would encourage wealthy foreigners to come to Wales and locate businesses here, and bring their money here. The benefits to Wales would probably far outweigh any loss of the 15% tax revenues as the numbers of transactions would be minimal and yet the benefit of attracting wealthy people to Wales would be significant.
3. To keep the system similar to the system in England would keep the costs of administering the system low, and keep the costs to businesses and house-buyers of complying with the system low too.
4. Yes, I think the Welsh government should have the ability to change rates promptly to enable them to prevent Wales being at a competitive disadvantage to England in the event that England reduced rates or thresholds.
5. In general, consistency with English laws will be preferable to keep administrative and compliance costs low unless there is a compelling reason to be different. I think a wait and see approach is preferable here.

Non-Residential Property Transactions

6. I believe consistency is important to keep administrative and compliance costs low. This consistency is more important in terms of the tax structure and how transactions are taxed, but it is important that we do not have higher rates and lower bands for the reasons in question 8 below.
7. It would be better if the slab structure was replaced by a marginal rate in both England and Wales, but it is not a significant problem.
8. The key impact of a different transaction tax regime from England would be on our competitiveness. It would be preferable to have lower rates and the same bands to enhance our competitiveness – or at least not higher rates and lower bands - as there is very little commercial property development taking place in Wales now, as most schemes are not commercially viable. This is in large part due to the numerous regulatory obstacles, together with related costs – mostly UK in origin but some Welsh in origin - which discourage developers from engaging in development. Occupier demand is limited, and end values low, whilst there have been numerous increases in regulatory costs over the last couple of decades, not to mention enforced delays. Additional transaction taxes would discourage business activity even further, particularly in the poorer, disadvantaged areas, and when the economy is weak. Transaction taxes are payable even where there is no profit or even a loss, and so are not even fair. And they are in addition to all the other taxes and charges payable by a property developer, and so deter a developer from acquiring a property with a view to putting it to a more productive use, and so they work to prevent the most efficient utilisation of resources.

High Commercial Property Transaction Taxes therefore discourage business activity, discourage an efficient allocation of resources, and therefore discourage wealth creation and result in lower living standards in the long run. It would therefore be damaging to the Welsh

economy and wealth creation and living standards if we had higher commercial property transaction taxes in Wales than in England. Likewise, lower commercial property transaction taxes would encourage business activity and therefore wealth creation and improved living standards in the long run.

Partnerships, Trusts and Companies

9. I believe there is a strong argument for consistency to reduce administrative and compliance costs unless there is a compelling reason for a change.

Leases

10. Not sure.
11. Not sure. Whilst a regular return would increase accuracy and improve compliance, it would be administratively burdensome without raising significant amounts.
12. I do not think licenses and tenancies at will should be taxed in this way as it would be administratively burdensome and yet raise minimal amounts of revenue.
13. Not sure.

Reliefs and Exemptions

14. I believe that gifts, property left in a will and property transferred on divorce should remain exempt. I believe that it is essential for group relief to remain to enable business reorganisations to be made for commercial reasons without penalty, whilst many of the other reliefs are desirable.
15. I agree with the Welsh Government view that not to include a form of sub-sale relief could be detrimental to enabling high-value commercial development schemes to take place, and that it would be sensible to replicate the SDLT provision to ensure consistency with England, unless there is a compelling reason to do otherwise (which is not known to me).
16. I think there is an argument for relief (or a lower rate) for new developments of both residential and commercial development – to encourage development.

Compliance, Avoidance, Disputes and Penalties

I would be minded to maintain consistency with England rather than create additional bureaucracy and costs, and therefore adopt the same anti-avoidance measures as in England.

Summary

In my opinion, it is clear that high Commercial Property Transaction Taxes discourage business activity, discourage a more efficient allocation of business resources, and therefore discourage wealth creation, which causes lower living standards in the long run. It is also clear that high Residential Property Transaction Taxes discourage mobility of labour and therefore discourage optimum allocation of resources, thereby reducing wealth creation and living standards in the long run. Please see answers 1 and 8 for a more detailed explanation.

Therefore, I believe it would be better to reduce our dependency on property transaction taxes for revenues, but I acknowledge that this is difficult in a Welsh context in the absence of other devolved tax-raising powers.

Reference 17

Name:	Angela Shaw
Email:	
Organisation:	Land Registry

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

Land Registry maintains and develops the register of title to freehold and leasehold land in England and Wales, under the provisions of the Land Registration Act 2002. Under section 79(1) of the Finance Act 2003, 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 (SDLT) requirements of the Finance Act 2003 in relation to the transaction, (or such information about compliance as the Commissioners for Her Majesty's Revenue and Customs (HMRC) specify in regulations). Land Registry therefore has an interest in the details of the proposed Land Transaction Tax (LTT) regime, if section 79(1) of the Finance Act 2003 or its equivalent, will continue to apply in relation to LTT.

The Welsh Government may want to consider similar arrangements that are currently in place for HMRC in relation to compliance and legislation, where Land Registry could continue to accept either a certificate or other evidence of compliance. As Land Registry is becoming an increasingly digital organisation, a procedure for electronic notification would be preferable.

Cross-border properties

Some transactions will involve properties which straddle the England/Wales border. Previous analysis suggests that there are at least 81 such cross border titles, although there may be more, as some may be unregistered properties. Different transaction tax regimes for England and Wales would, from what we can gather, involve a system of apportionment for cross-border properties, which may introduce some complexity in the conveyancing process.

Some mechanism will be needed to determine any split of value for stamp duty purposes for cross-border properties, and this will need to be recorded somewhere easily visible and accessible. In order for the parties to a conveyance to calculate the correct tax payments to be made to the respective authorities. For the conveyancer, there will be additional time spent completing two separate tax returns and calculating the amount payable on an apportioned property.

Additionally, some transactions might involve separate properties in both jurisdictions. For example, a person might own a property in London and a second property in Cardiff. At present, if they sell both properties at the same time to the same buyer, the transfer of both properties can be effected by the same transfer deed. A clear policy on approach in these circumstances will need to be decided.

General comments

Land Registry operates a single registration system for England and Wales. All Land Registry offices and systems will need to be able to manage the two different sets of tax requirements, reliefs and evidence. This is because SDLT requirements have to be considered in all registrations involving a transfer or lease. In the financial year 2013-14 that amounted to 4,311,370 applications.

Likewise, conveyancers deal with transactions in both England and Wales, so they will have to familiarise

themselves with two different regimes, where applicable. If there is any confusion or mistake as to which regime to apply, this could result in delays in registration, and possibly the loss of priority for transactions that must be registered.

The possible confusion of two separate regimes may be mitigated, if an online system for SDLT/LTT returns and payment could be designed to reject at the outset, a return being prepared in the wrong geographic system.

We do not believe that having different regimes would significantly add to Land Registry costs, although there may be some costs as referred to above, and also in preparing separate guidance for our staff and customers about the two regimes, and some in-house training for caseworkers. Those costs would be higher, if the regimes are or become very different. Similar guidance and training will obviously be required for conveyancers and their administrative staff.

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.

We currently deal with situations if changes are made by the budget, so it would be possible to accommodate for Wales if required, however immediate changes to the rates and bands without prior notice could cause problems if we were not aware of the minimum threshold for tax, otherwise we would have to ascertain whether or not a certificate/receipt is required.

If a tax return, and consequently a Land Transaction Return Certificate/submission receipt, is required for all transactions, Land Registry need not be concerned about immediate changes, as we would still receive a certificate/receipt, which would allow us to register the transaction.

Question 5: 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).

Again, this will not be a problem provided all transactions are notifiable and require a return to be made to the Welsh Revenue Authority provider, and a land transaction return certificate/submission receipt is issued. However if there is any potential for dispute, this could create problems for Land Registry staff, if they have to make decisions about whether or not a registered title is a residential property, if some residential properties were taxable, and others not.

Chapter 3: Non-residential property transactions

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)?

It would be helpful for both regimes to keep consistent.

Land Registry does sometimes liaise with HMRC when SDLT problems arise. If the tax regimes in England and Wales are inconsistent, additional liaison may be required in trying to establish whether or not tax is payable in such situations.

Question 8: What would be the key impacts on the non-residential market in Wales of having a different

transaction tax regime from England?

Please see our reply to question 6.

Chapter 4: Partnerships, Trusts, and Companies

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.

It would be simpler for Land Registry as well as businesses, if the tax provisions for partnerships, trusts and companies were the same for both England and Wales. However, the simplest solution for Land Registry would be if all transactions were to be notifiable, thus requiring a tax return and certificate/submission receipt on which we could rely in order to register transactions.

Chapter 5: Leases

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?

Land Registry should be able to register the lease on the basis of the first return and its certificate/submission receipt. We would prefer to be involved only once in the tax process.

Chapter 6: Reliefs and Exemptions

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.

It is not for Land Registry to comment on reliefs and exemptions, except to say that it would be simplest for Land Registry if all transactions, including exempt transactions, were notifiable. That would make Land Registry's responsibilities straightforward – we should be able to rely on the evidence of compliance lodged with each application.

Different reliefs for England and Wales could introduce more difficulties and compliance costs for conveyancers.

Question 15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?

This is an area that has caused issues for Land Registry as well as HMRC. Previously, many applications were received without an SDLT certificate/submission receipt, on the basis that they were not needed due to a combination of reliefs. Many applications had to be delayed while notice was served on HMRC, and where HMRC objected to the registration the dispute had to go through Land Registry's dispute process. HMRC has since amended legislation to try to clarify the reliefs.

It would be helpful for Land Registry and conveyancers, if the regimes were the same. If not, then it would be helpful if all transactions where reliefs are claimed were notifiable, that way, Land Registry could rely on a certificate/submission receipt from the Welsh Revenue Authority provider in order to register the transaction.

The Welsh Revenue Authority can of course continue with action for enforcement if it believes any tax is due. It will be assured of having notification of the transaction, in order to assess for itself whether reliefs have been properly claimed.

Other Questions

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

If it was decided that Land Registry should continue in its compliance role, as more and more applications are made to Land Registry by electronic means, we would prefer to be able to rely on digital tax submission receipts as far as possible. A simple, efficient digital system would benefit all stakeholders.

Land Registry and conveyancers will require guidance regarding transitional arrangements made for transactions for which contracts are exchanged before April 2018, but not completed until after the new regime is in force.

Reference 18

Name:	Pauline Hudd
Email:	
Organisation (if applicable):	KPMG
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.:	<p>The introduction of a new system for calculating SDLT on UK residential properties introduced in December 2014 transformed the way in which SDLT rates are applied. The replacement of the former "slab" system with a new "slice" approach has been widely welcomed, not only because it has resulted in a significant reduction in the amount of SDLT paid by the majority of home-buyers, but also because it helps to address distortions around the thresholds.</p> <p>A comparable system of charging has been introduced in Scotland when LBTT came into effect.</p> <p>In order to achieve parity of treatment for home-buyers across the UK we consider that a similar "slice" system should apply to Welsh transactions. While LBTT in Scotland will tax higher value transactions relatively more than SDLT, given the proportionately low volume of transactions over £500K in Wales (1% in 2012/2013) then any increase in the current rates would have little revenue-raising benefit. Therefore, maintaining the current SDLT rates would seem appropriate. In addition, many of the higher-value properties are likely to be clustered around the England/Wales border and consequently any disparity could produce a distorting effect on the property markets in these areas.</p> <p>We have seen previously the distorting effect of different rate bands in suppressing property values around the thresholds. Any differences in rates between England and Wales is likely to have the same impact.</p>
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.:	<p>There are likely to be very few transactions falling within these provisions and so the retention of this measure would seem to carry little benefit. Removing the charge would also not appear to carry a material risk of potential non-compliance or avoidance. We have previously commented on HM Treasury view that the perceived avoidance through "enveloping" residential property was not happening in practice (or not to the extent perceived by HM Treasury).</p>
Q3: What would the key impacts be on the residential market in Wales of having a different transaction tax regime from	<p>This could bring with it a number of disadvantages for tax-payers both within Wales and outside Wales. There would be inconsistencies in the system, with a dual-system of taxing property transactions which are</p>

England?:	<p>governed by the same land law principles. This could add considerable administrative burden for those involved in property transactions across the UK as well as adding to transaction costs and advisory fees with members of the professional bodies needing to invest resource in up-skilling staff to understand both systems. It could also create a two-tier system of conveyancing with law firms specialising in either Welsh or non-Welsh work, where previously the shared legal process in both England and Wales has not led to any distinction.</p> <p>The biggest impact (if any) would be likely to be felt around the border areas – with 48.8 % of people in Wales and 9.5% of the English population living less than 25 miles from the borders this would create distortions, inequity and influence commercial decision-making particularly around the siting of large-scale housing developments.</p> <p>There is no direct correlation with Scotland, where only 3.7% of Scotland's population and 0.5% of England's population live within 25 miles of the England/Scotland border. In addition Scotland has a different land law regime to England & Wales, so differences in treatment can be accommodated more readily without impacting the conveyancing process. Any consideration being given by the Welsh Government to the introduction of a more favourable rate for Wales to incentivise home-ownership and support economic growth should be weighed carefully against a likely corresponding negative effect on the bordering counties of England.</p> <p>We have previously seen the impact of localised reliefs when Disadvantaged Area Relief was available on commercial properties (repealed by Finance Act 2005). This resulted in buyers actively seeking properties in areas to take advantage of the relief, in preference to neighbouring areas where the tax would still apply. We are aware that the designation of areas which benefited from the relief was definitely influencing commercial behaviour, and producing a resulting effect on demand and prices.</p>
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.:	<p>Yes. This would seem appropriate, particularly where a change in the SDLT rates in England had been introduced which could lead to inconsistencies in treatment between England and Wales.</p> <p>The abolition or introduction of specific measures in relation to SDLT should also be capable of being replicated under LTT with immediate effect to prevent anomalies and discriminatory treatment.</p>
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).:	<p>No, we do not consider the current definition provides sufficient clarity, we would cite the following examples:</p> <p>There are currently a number of different definitions within the SDLT legislation.</p> <ul style="list-style-type: none"> · S116 FA 2003 meaning of “residential property” · Para 7 Sch 4A FA 2003 meaning of “dwelling” for the purposes of the higher rate of SDLT applicable to certain transactions. · Para 7 Sch 6B FA 2003 what counts as a dwelling for the purposes of Multiple Dwellings Relief · ATED definition of “dwelling” in S112 FA 2013 <p>In addition there are certain correlations with the definition of dwellings for the purposes of the VAT and Capital Allowances legislation.</p> <p>The differing definitions are confusing and lack clarity and consistency. We therefore consider this to be a specific area of the legislation which would benefit from consolidation and simplification.</p> <p>Ancillary definitions such as “gardens and grounds” are defined by reference to the concept of a permitted area for CGT and some aspects of</p>

	<p>SDLT but not for most purposes of SDLT and ATED. Instead they are defined by reference to the concept of “reasonable enjoyment”. The informal SDLT guidance that “permitted area” will be applied to interpret “reasonable enjoyment” is not supported by the Statute. Any further changes to the legislation, whether in the context of LTT or SDLT should aim to resolve these apparent inconsistencies.</p>
<p>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)?:</p>	<p>Many owner/occupiers and investors hold portfolios of property across England and Wales. Any inconsistency in treatment, tax regime or rate of tax could create significant challenges in relation to the consolidation of their asset portfolio, valuation principles and tax provision. In addition, a dual system could impact the level of legal and professional fees in understanding and interpreting different regimes and inflate deal costs.</p> <p>Our preference would be for the LTT to follow closely the existing SDLT regime for non-residential property in every respect to avoid any additional cost and administrative burden for business.</p>
<p>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.:</p>	<p>In our view the current system does not create distortions in the same way as the prior rules (pre 4 December 2014) created perceived distortions in the residential market around the thresholds. This is because anecdotal evidence suggests that the majority of non-residential transactions fall squarely within the higher 4% band, with the majority of commercial properties valued well in excess of 500K.</p>
<p>Q8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?:</p>	<p>It could make the system overly burdensome for business, complex, costly to administer, as well as creating the potential for anomalies and inequity for tax-payers in different (but neighbouring) locations – see also response to Q3.</p>
<p>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.:</p>	<p>The current rules for partnerships, companies and trusts are particularly complex. The regimes are not coherent, frequently produce anomalous results, inconsistent and counter-intuitive in places, guidance is sparse, frequently addresses the most simple transaction type only and is out of date. One of the reasons for these effects is the extent to which targeted anti-avoidance rules have inserted into the legislation. The purpose of those rules is often unclear and in many cases the rules are otiose in the sense that the specific schemes at which they are targeted are no longer effective due to other measures. This means that the rules frequently affect cases that were not their target. All of this adds significant complications to commercial transactions which are not motivated by any sort of tax-avoidance motive. Particular areas of difficulty are:</p> <p>Partnership provisions – Sch 15 FA 2003</p> <p>Para 17A – A withdrawal of money from a partnership after the transfer of a chargeable interest. No distinction is made between loans made prior to or in connection with the transfer of property into a partnership and ongoing lending arrangements by the partners to fund the partnership business. HMRC have stated that the provision was introduced “to prevent inappropriate manipulation of the legislation”. However it is impacting ordinary commercial transactions where there is no ill intent and money simply needs to be made available for the partnership to carry on its business, and repaid in the normal course of business.</p> <p>Para 24 – Charge imposed where all the partners are corporate entities and the sum of lower proportion is or exceeds 75%. The impact of this provision is particularly felt where the transferee is grouped with some but not all of the partners, as there is no concept of partial group relief (cf the position for contributions).</p> <p>Partial relief – lack of clarity over whether partial relief can be claimed</p>

	<p>where some but not all of the partners can qualify for charity relief, relief for Registered Providers. This is particularly pertinent following the ruling in the case of Pollen Estate Trustee Company Limited and King's College London [2012] UKUT 277. While limited application of the partial relief for joint purchasers under Para 3A of Sch 8 FA 2003 is now permitted there is no corresponding provision in the partnership legislation.</p> <p>Interaction with s75A FA 2003 which effectively "switches off" the partnership charging provisions where S75A could apply – see specific comment on s75A below.</p> <p>Group relief – Sch 7 Part 1 FA 2003</p> <p>Lack of clarity over claw-back and applicability of the relief in the case of a strike off of the</p> <p>vendor company as opposed to a liquidation – Para 4(4) .</p> <p>Trusts – Sch 16 FA 2003</p> <p>Treatment of leases in the context of bare trust arrangements – an apparent anti-avoidance measure introduced in 2005 results in a divergence of treatment for freehold transfers and leases, with bare trustees being deemed to acquire and dispose of a new lease in their own capacity. This produces absurd results where the identity of the seller or buyer is important for other provisions: eg, sale and leasebacks, surrender and regrants, contributions and distributions of land to/by partnerships: see Simon Yeo's article Analysis – Leases, nominees and SDLT in Tax Journal, Issue 1249 at page 12.</p>
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?:	<p>Since most residential leases are excluded from the charge to SDLT as the net present value of the rent payable under the leases usually falls below the charging threshold, then there would appear to be no material disadvantage for tenants with retaining the charge on new leases.</p>
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?:	<p>We consider that the introduction of regular returns would be unwelcome and would add greatly to the administrative burden for tax-payers.</p> <p>We would cite as evidence the changes required to the reporting requirements initially introduced under ATED which imposed a filing obligation on genuine property businesses. Following representations and further consultation a more streamlined, less onerous reporting system was brought in.</p> <p>At the moment the only requirement to revisit the position and revise the amount of tax due on leases arises under the special rules contained within Para 8 Sch 17A FA 2003 . These rules apply where the rent is uncertain, contingent or unascertainable. In such cases SDLT is initially calculated based on the estimated amount of rent payable for the first five years. The position is then reviewed when the end of the fifth year is reached or the rent ceases to be uncertain, whichever is sooner. This process is difficult to monitor for the tax-payer as the trigger-date for filing an amending return needs to be kept under constant review.</p> <p>While a process of mandatory filing at specified intervals throughout the duration of the lease may improve the compliance process and marginally improve the tax-take on certain types of leases, the incidence of this type of lease with uncertain rents is likely to be low in Wales, and confined mainly to the retail sector in large regional centres. Imposing this obligatory reporting requirement on the entire leaseholder population would therefore appear disproportionate.</p>
Q12: Do you think that licences and tenancies at will should be taxed in the same way as	<p>We do not consider that licences and tenancies-at-will should be brought within the scope of the charge. The revenue yield would be likely to be</p>

leasehold agreements?:	very low, and this would adversely impact certain occupiers such as retail concessionaires, airports, railway stations and other small retail out-lets in shared locations. As the legal rights afforded to a licensee differ considerably from those of a tenant under a lease in terms of security of tenure, and enjoyment of the premises, then we consider that the distinction in terms of the tax treatment should be maintained.
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?:	The targeted anti-avoidance provision contained within Para 11 of Sch 17A imposes a type of claw-back on the assignment of leases following certain claims for relief. This provision is not time-barred unlike the other claw-back provisions within Sch 7 Part 2 and Sch 8 Para 2. It therefore unfairly penalises those who wish to acquire a rental lease many years after the original claim for group or other relief has taken place.
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.:	All existing reliefs available under SDLT should in our view be retained under LTT to prevent inconsistency of treatment for tax-payers.
Q15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?:	We infer that the Welsh Government is concerned that the removal of sub-sale relief could be detrimental to enabling high value commercial development schemes to take place in Wales. We share that concern and we would encourage the retention of this relief. However, the introduction of Sch 2A FA 2003 from July 2013 has created considerable complexity, with rules which are difficult to interpret, riddled with definitions and language which is difficult to understand and produces seemingly unexpected results in the context of standard commercial transactions. Since developers routinely enter into sub-sale arrangements where they acquire land with a view to an immediate onward sale in the market, these provisions have the potential to impact the way in which land is acquired by house-builders and adversely affect the financial viability of large-scale housing projects. The repeal or simplification of Sch 2A would be widely welcomed.
Q16: Do you think there are any suitable cases for introducing new reliefs? Please explain why.:	We consider this to be a matter for representation to be made by affected groups so that Welsh Government may assess the business impact.
Q17: How do you think the rate of online filing could be increased compared to SDLT?:	We do not consider that mandatory filing should be mandatory, but it should be encouraged.
Q18: What arrangements should there be for those who cannot file online?:	We would suggest that the ability to file paper returns is maintained for those who do not wish to file information electronically.
Q19: How do you think the rate of online payment could be increased compared to SDLT?:	We have no comment.
Q20: Would requiring payment of the tax at the same time as submitting the return cause any problems? Please explain why.:	We cannot foresee that this would create any practical difficulties for our clients. It should be noted however that we do not operate client accounts in the same way as law practices operate these payment arrangements and our clients are therefore responsible for submitting the payment themselves directly to HMRC.
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?:	We consider it to be essential that this service to tax-payers is provided. Given the likely complexity of the legislation (assuming that many of the SDLT rules are replicated) then there is likely to be considerable doubt over the interpretation, particularly with regard to non-standard commercial transactions involving a number of elements. In addition, the absence of sufficiently detailed guidance in the public domain regarding the eligibility for certain reliefs, and the view which HMRC will take in

	<p>applying the relief provisions often leads to protracted and costly enquiries. The ability to seek a view prior to entering into a transaction would greatly improve the position, and enable businesses to make informed decisions on the true cost of the transaction based on a realistic appraisal of the actual tax charge. This would also assist lenders in arriving at a view on the level of funds they will be prepared to advance instead of having to assess the potential risk of tax leakage.</p>
<p>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.:</p>	<p>It would seem appropriate to encourage good behaviour and discourage non-compliance by levying fines for late-filing of returns. Care should be exercised in the introduction of a more wide-ranging system of penalties for errors, particularly where non-standard transactions are undertaken and the filing procedures required are not always adequately explained in the guidance.</p>
<p>Q23: Should LTT impose penalties for late payment of tax similar to those available to HMRC to encourage prompt payment of tax?:</p>	<p>As above, we consider that good behaviour should be encouraged and penalties should be levied out of fairness to other tax-payers who do make timely payments.</p>
<p>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?:</p>	<p>We note the comment that the Welsh government is interested in exploring the conditions in which postponement of payment may be permitted, in particular to ensure fairness, access to justice, and in cases of hardship and we would support this move to ensure that exceptional cases are considered on their merits and not subject to prescribed rules.</p>
<p>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.:</p>	<p>Any moves to replicate S75A should be considered in the context of the current status of the legislation and the recent ruling of the Upper Tier Tribunal in the case of Project Blue Limited and the Commissioners for Her Majesty's Revenue and Customs [2014] UKUT 0564 (TCC), which has called the interpretation of these rules into question. Mr Justice Morgan saw the legislation as being defective in a number of respects and stated that it "leaves a lot to be desired". In addition he concluded that the current published guidance and the powers afforded to HMRC described therein is seemingly at odd with the statute. The statutory interpretation is therefore extremely difficult even on simple facts and a strict reading of the legislation does not limit its scope to matters of tax avoidance.</p> <p>For these reasons we consider that s75A is problematic in its application and interpretation, and we would favour a repeal of the Section to be replaced with General Anti-avoidance Rules in line with that introduced in Scotland, enabling Revenue Scotland to take counteraction where either i) a tax avoidance arrangement is not a reasonable course of action having regard to the principles and policy objectives on which the relevant tax legislation is based, or, ii) where the arrangement lacks economic or commercial substance.</p>
<p>Q26: Do you have any comments on the initial impact assessment:</p>	<p>We have no comment.</p>
<p>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.:</p>	<p>We have no comment.</p>
<p>Q28: Do you have any other comments on the Welsh Government's plans to implement a land transaction tax in Wales?:</p>	<p>No specific comment, other than we generally welcome the introduction of the first Welsh tax in over 800 years.</p>

Reference 19
Penarth Town Council

Name:	S E Bowen
Email:	
Organisation:	Penarth Town Council

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

5th May 2015

Dear Sir/Madam

Land Transaction Tax

We note that the Minister is aiming to develop taxes that are fair to businesses and individuals but which are simple, support growth and tackle poverty. Looked at in the round therefore it is disappointing that whilst it is recognized that most taxes fall on income and expenditure there was not more reference to opportunities in the future to start to rebalance the tax system. The taxation of land and property has long been argued as less distorting of behaviour and enterprise. But the transition it appears is too politically difficult.

We note the consultation says:-

Para 1.12

The Wales Act 2014 clearly limits the scope of the Assembly's powers to legislate for a replacement tax to SDLT to taxing transactions in land and property in a more economically efficient way, these are not covered in the scope of this consultation and proposed legislation.

In this constrained context, the Council believe as an interim measure, the general proposals are sensible. However we hope that the provision of more tax powers will lead to more than incremental moves which in aggregate mean there is no room for manoeuvre to rebalance the system.

The Silk Commission Stage, note that if SDLT were devolved and if the Welsh Government was given powers to introduce innovative taxes such as a land tax, there would be scope for more radical reform of property taxation in Wales in line with the recommendations of the Mirrlees Review" (4.2.33) In addition they note they have heard arguments for Doing Things Differently (Section 4.5) including Land Value Tax. This in the short term could be an alternative to Business Rates given transitional provisions. And we understand is being researched for the FSB.

In the longer term there is the opportunity to consider Transaction Value and Development taxation on Land in the round. We hope that opportunity will not be missed.

Turning to the specific questions:

Q1

The current rates and bands should initially reflect those across the border to minimize unforeseen consequences. If flexibility is provided for, variations can be attempted once confidence in the administration of the system builds up. On present evidence the propensity of the UK Government to manipulate demand is an ever present external factor which will dominate other considerations.

Q2

No comment

Q3

Silk Stage 1, paras - 4.2.23- 4.2.24 notes that variations are unlikely to be the dominant factor in decisions about location. However Silk makes no recommendations, but does observe that it would be a useful policy lever. The UK Government are promoting home zones to address difficulties in the residential market, in part stimulated by their own initiatives to stimulate demand. This does suggest that there is limited scope to deploy such initiatives provided that a comprehensive policy impact is undertaken having regard to the conflicts presently apparent in England.

Q 6, 7, 8

Initially the maintenance of consistency is important as confidence builds. No doubt the property Industry will provide additional evidence about the consequence of producing a two tier market which should be examined critically before diverging or attempting limited zonal experiments.

Yours sincerely



Town Clerk

Reference 20

David Phillips, Senior Research Economist, Institute for Fiscal Studies

Introduction

The IFS was set up in the 1960s by a group of individuals who felt that the way tax policy was being made was poor, and did not make use of the experience and expertise of practitioners and analysts. This led to a complex system of taxes that did not properly integrate, were inefficient and sometimes unfair. This remains the case today (see the Mirrlees Review), but one thing that has improved to an extent is the degree to which consultation occurs when significant changes are made. The devolution of SDLT (and other taxes) to Wales is one such change – and could, in principle, herald a significant shift in tax policy for the better given the devolution to Wales of “property taxes” more broadly defined (i.e. including Council Tax and Business Rates).

Stamp Duty is fundamentally a bad tax – the reasons are oft repeated by the IFS and are neatly

summarised in the aforementioned Mirrlees Review. As such it is a shame that the starting point for this consultation is that radical reform seems not to be on the agenda. It is not clear whether this is for political reasons (the greater salience of alternative taxes to voters), or reflects a desire to not stray too far from tax policy in England (although property taxes are perhaps the taxes where issues around inter-jurisdictional competition and interaction are least problematic). Having said that, it is worthwhile consulting widely on the structure and operation of the tax, and we welcome the broad range of questions. We also note that while it has been concluded that a replacement tax will exist, it need not be “revenue neutral”, which does not preclude reductions in its size, and a concomitant improvement in Wales’ tax system.

Responses to questions

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.

SDLT and the replacement LTT are bad taxes – the removal of the slab structure removes a particularly poorly designed feature, but taxes on transactions are more fundamentally economically distorting. As such, as far as possible, LTT rates should be reduced, and revenue made up elsewhere from less economically damaging taxes (such as recurrent taxes on property). **The current rates are therefore not economically desirable and should, if possible, be reduced.** Revenues could be made up from increases in other taxes – notably recurrent property taxes –, or public expenditure could be reduced.

As highlighted by the OBR, cuts in stamp duty are likely to benefit existing property owners to a significant extent, by increasing prices. The extent to which increases in thresholds and lower rates would help “buyers” should therefore not be overstated: much of the gains will accrue to existing home-owners. Similarly much of the burden of increases in recurrent taxes on properties would also be borne by existing owners (offsetting gains from lower stamp duty).

Despite this incidence, cuts in the rates would still have beneficial effects on the property market and wider economy. This is because stamp duty creates a disincentive to property transactions (i.e. moving house). Reducing stamp duty would reduce these disincentives and thereby increase the frequency of property transactions. This will result in more mutually beneficial trades and increases in labour mobility. There would also be a related increase in the type of economic activities associated with moving property (such as DIY, trades, furniture and white goods, garden products etc). If the economy was operating below potential this could boost overall economic activity. If the economy were operating at potential this would instead lead to reductions in activity in other areas of the economy.

Reductions in stamp duty could take a number of forms: the threshold(s) for stamp duty could be increased; the lower rates could be cut further; or the higher rates on high-valued properties could be reduced. In deciding which of these strategies to pursue, a number of points are worth noting:

1. The distortions and damage caused by stamp duty are increasing in the tax rate, and in the degree of responsiveness of buyers and sellers to prices/taxes.
 - a. The first factor would make cutting the higher 5%, 10% and 12% rates particularly attractive;
 - b. Assessing which groups are most responsive to changes in stamp duty is an empirical exercise.
2. Increases in the stamp duty thresholds (and especially the lower threshold) and reductions in the lower rates of stamp duty would benefit many more people than a (larger) cut to higher rates costing the same amount.

3. Compared to England, Wales' distribution of property values is shifted to the left, meaning that a higher fraction of properties are subject to no stamp duty already, and a lower fraction are subject to the higher rates.
4. In the context of an unreformed council tax system, recovering the revenues from houses in the same part of the house price distribution as where stamp duty is cut will be difficult – especially if the cuts are to higher rates. This shows the benefits that would exist from a broader reassessment of property taxes in Wales. This could include at one end, tweaking the relativities of bands, through to revaluation and more radical moves towards a more proportional recurrent property tax.

If it were felt that the new tax did have to be revenue-neutral, similar trade-offs would arise. The Welsh Government would have the option of maintaining the existing rate structure; increasing the lower thresholds or reducing rates for lower-value properties and making up the lost revenues from higher rates on high-valued properties; or vice versa.

Revenue-neutral increases in lower thresholds or reductions in lower rates require large increases in taxes on the (far fewer) high valued transactions. For instance, Scotland's £20,000 higher threshold (which reduces the amount of stamp duty paid at 2% by a maximum of £400) requires a marginal rate of 10% (as opposed to 5%) on values between £325,000 and £750,000, and 12% above that (a rate which only kicks in at £1.5 million in the rest of the UK). A property priced £1million in Scotland therefore attracts tax of £78,350 compared to £43,750 in the rest of the UK. Given Wales' property value distribution, such effects would likely be further magnified.

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. :

The 15% rate for certain transactions by non-natural persons was introduced as an anti-avoidance measure. There may or may not be good reasons to maintain a higher tax rate on such transactions for this purpose (as with all anti-avoidance measures it is worthwhile assessing the efficacy of the measure on a regular basis). However, it is difficult to imagine a good reason for any tax to operate with a slab structure.

It may also be worth noting that the Annual Tax on Enveloped Dwellings similarly targets avoidance by purchases via companies (albeit above a higher threshold than the 15% rate). And that the Scottish Government has chosen not to maintain the 15% slab rate.

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

Reducing (increasing) rates relative to England would likely increase (reduce) house prices in Wales relative to England, and would likely lead to an increase (decrease) in transaction volumes. Any increases (decreases) in recurrent taxes on properties (such as council tax) to compensate for the change in revenues would offset (much or all of) the price effects, but would leave the effect on transaction volumes in place. A reduction (increase) in rates would therefore allow more (fewer) mutually beneficial housing transactions to occur, and may also increase (reduce) labour mobility. Reductions (increases) in stamp duty may lessen (worsen) the difficulties facing buyers subject to credit constraints. Higher transaction volumes may be associated with more activity in sectors related to the housing market – DIY, trades, furniture and white goods, garden products etc –, although if the economy is operating at full capacity, this would be offset by reductions in activity in other sectors.

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.

The UK government currently has the power to amend rates of stamp duty and implement reliefs with immediate effect.

As highlighted in the consultation document there are three key advantages for Wales having the same powers:

- The ability to respond quickly, if necessary to any immediate changes made by the UK government to Stamp Duty in England and Northern Ireland;
- The ability to respond quickly to any changes in housing market conditions in Wales;
- And, in order to avoid distortions to the market from having to pre-announce changes.

Consideration should also be given to whether the Welsh Government should also have the ability to make changes with immediate effect when it has determined that a particular aspect of the system is causing problems of evasion or avoidance, to avoid further distorting behaviour (e.g. by publicising the loophole before it can be closed). The benefits of such powers would need to be weighed carefully against the costs, which would include fewer opportunities for consultation and legislative scrutiny of Land Transactions Tax changes, and less stability and certainty for taxpayers and practitioners.

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).

Differences in the tax regimes for residential and commercial properties make it necessary to be able to define a property as one or other type. If the systems of residential and commercial tax were brought into alignment (e.g. by reducing rates on high value residential property, replacing the commercial property slab structure with a marginal rate structure etc), the incentive to misrepresent a property as the wrong type in order to reduce tax liabilities would be reduced. This would reduce the importance of the definition of residential versus non-residential property in practice, although, of course, a consistent definition should be aimed for.

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)?

The consultation document rightly recognises that differences in the system of stamp duty between England and Wales can increase complexity and administration and compliance costs, and can distort economic activity. However a few things are worth bearing in mind when thinking about differences in rates and bands:

- Differences in these do not really add much to complexity. While the UK has traditionally had a highly centralised tax system, other countries often operate systems with a significant degree of decentralisation and differentiation. For instance, Denmark operates a system of local income taxes whereby companies deduct different rates of income tax from different employees wages based on which municipality they live in. And the United States has a system of local sales taxes. Businesses in these countries operate successfully despite such differences and there seems little reason why UK businesses would not also be able to cope with the (rather less substantial) differences in rates and bands of tax on property transactions that may arise.
- Differences in these may have an effect on economic variables. A significant part will be

borne by changes in property prices, although reductions (increases) in rates will boost (reduce) transaction volume and market liquidity relative to England. Having said this though, any economic distortions resulting from differences in rates and bands of taxes is likely to be relatively low for a tax on property transactions, reflecting the relative immobility of the tax base in question.

In summary, on the important issue of rates and rate structures, Wales should not feel too constrained by existing or future policy in England. Where complexity is more likely to arise is from the rules around the tax base (exemptions, reliefs etc) and administration and compliance procedures. This does not mean that Wales should not vary from England in these areas – but that such changes would need a clear and strong rationale.

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.

One would expect distortions in the same way but not necessarily to the same extent. Analysis of Stamp Duty data (for the UK as a whole, to improve sample size) would uncover the scale of any distortions in the distribution of transactions value.

Even if the empirical evidence for distortions is less than for residential transactions, there is no economic justification for a slab structure for non-residential transactions either. This would suggest that, as in Scotland, the slab structure should be removed. Furthermore, as per recommendations for the residential element, the overall revenue raised from LTT on commercial premises should be reduced if possible, in order to improve the functioning of the commercial property market (Stamp Duty/LTT can prevent mutually beneficial trades from taking place, and may reduce investment in the commercial property market).

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

In many respects the impacts on the commercial market would be similar to those on the residential market: changes in prices and transactions volumes. The scale of the effects will depend upon the rate of market turnover, and elasticity of demand and supply of properties. See also response to Q6.

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? And

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

The consultation document highlights a risk that if the rental component of leases is not taxed, then there may be a shift from “up front” payments to “rent payments” in order to avoid taxation. Such a risk exists, but for the residential sector at least, may not be too great. As it stands, parties engaged in leasehold residential transactions generally do not make full use of the ‘tax free’ allowance on annual rents to reduce the taxed up-front payment. This suggests the up-front versus rent make-up of transaction value may be largely determined by factors other than tax.

More broadly though, the present system of taxing rent components also causes distortions (likely to be more problematic for the commercial as opposed to residential sector):

- An incentive to pay more in the form of rent as opposed to up-front payment, as the tax rate is potentially lower on rents than up-front payments (esp. for higher valued properties).
- An incentive for shorter leases as opposed to longer leases when rent is the main component, in order to minimise the net present discounted value of rental payments to get under the

threshold.

- Sometimes an incentive for longer as opposed to shorter leases when an up-front payment is the main component, in order to minimise the frequency of transactions.

There is also an existing distortion towards “licenses” and “tenancies at will” as these are not taxed (taxing these would, in principle, remove the distortion *vis a vis* regular leases, and may reduce avoidance opportunities, but may face practical difficulties).

These issues show the difficulty in trying to tax transactions in land on a consistent basis when you have a freehold market, a leasehold market, and payment in the form of rent. These types of distortions would not exist if the LTT were abolished, and would be smaller if LTT on up-front transaction values were reduced.

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.

As highlighted in the introduction and response to Q1, the devolution of stamp duty to Wales gives Wales relatively broad power over property taxation – and therefore has implications for this broader area of taxes.

The structure (and indeed existence) of LTT should be considered alongside the structure and level of recurrent taxes on property – which currently take the form of business rates and council tax. There is a chance for Wales to make real improvements to its tax system by looking at this area as a whole – by abolishing (or at least reducing) stamp duty, and making up for lost revenues by reformed systems of non-domestic and domestic property taxes. Such reforms could also remove the regressivity of the current system of residential property tax by moving to a proportional tax – so even if it raised more than now as a whole, residents of low and middle valued homes would actually pay less tax per year than now. Radical reform of the system of non-domestic property taxation could remove many of the difficulties around empty properties, speculative development, plant and machinery etc highlighted by the recent Business Rates panel report.

There are undoubtedly political difficulties in pursuing radical reform, but Wales has a chance to create a much improved system of property tax. Property tax by the nature of tax base is one where differences in systems across jurisdictions cause relatively fewer problems of economic distortion and cross-country competition compared to other taxes. It is also one of the areas where the existing structure of taxation is most obviously deficient. It therefore offers an opportunity for the Welsh Government to forge a distinct and significantly improved policy in an area of tax where the costs of any differences in policy from the rest of the UK are likely to be lower than average.

Reference 21

The Bevan Foundation

www.bevanfoundation.org



Tax Devolution in Wales –

Land Transaction Tax

Response by the Bevan Foundation

The Bevan Foundation develops ideas to make Wales a better place and improve people's lives. It is independent of government and politically neutral, and is a registered charity. We welcome the opportunity to respond to the consultation on the proposed Land Transaction Tax (LTT).

Preamble

The Wales Act brings a unique opportunity to reform the tax on land transactions.

We welcome the Welsh Government's proposal to continue with a transaction tax. Although many economists argue that a tax on transactions is not 'rational',¹ we note that a tax on property transfers is the most common property tax in the OECD² not least because it is easy to collect and hard to avoid. Abolishing a transaction tax would also lose revenue. While in theory the lost revenue could be replaced by increases in business rates and Council Tax, neither of these are popular and Council Tax is highly regressive. There is also some evidence that transaction taxes reduce volatility in housing markets.³

The introduction of a new land transaction tax provides a once in a generation opportunity to get the tax on a fair and firm footing. While we understand the Welsh Government wishes to maintain the revenue generated by a tax on land transactions, we suggest there is potential to develop the new tax as part of the wider effort to encourage regeneration and improve the provision of housing in Wales.

Some have argued that responsibility for paying the tax on transactions should shift from the purchaser to the vendor.⁴ This change would mean that investment in land and property, whether by individuals or institutions, is incentivised by being free of tax. Vendors are also typically in funds, realising any increase in land or property values. Further investigation of this option should be undertaken to establish if a switch from payment of the tax by the vendor rather than the purchaser could be beneficial to the regeneration of Wales.

Question 1: Do you think the current residential 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.*

¹ Mirrlees, J. et al (2011) **Tax by Design**. Institute for Fiscal Studies.

² Lawton, K. and Reed, H (2013) **Property and Wealth Taxes in the UK: the context for reform**. IPPR

³ Oxley, M. and Haffner, M. (2010) **Housing taxation and subsidies: international comparisons and the options for reform**. Joseph Rowntree Foundation.

⁴ For example Henderson, G., Lodge, G., Raikes, L. and Trench, A. (2015) **Assessing the implications of a stronger Wales for the west of England**. IPPR

The current residential SDLT rates and bands are in our view not suitable because they are arbitrary and have no obvious connection with Wales' residential property market or any policy objectives. The rates and bands should be based on the principles of fairness and soundness, should reflect the circumstances in Wales, and should reflect the Welsh Government's policy objectives in respect of housing.

We would suggest:

- **Review of bands:** There should be provision to review the bands regularly to reflect changes in the housing market e.g. by annual uprating. This would avoid increasing numbers of low value purchases being dragged into the transaction tax net as house values rise.
- **The lowest band –** Careful definition of lowest bands and rates can be used to facilitate access to home ownership for lower-income households. We suggest that the definition of the lowest band should be linked to the structure of the housing market (such as – by way of illustration only – the cheapest fifth or similar).
- **Additional bands -** the additional bands should also be linked to the structure of the Welsh residential property market (for example – and again for illustration only – each band being the value of a fifth of transactions). This would avoid having very high value tax bands that are effectively redundant in Wales. The need for simplicity and compliance suggest that a relatively small number of bands – four or five - would be appropriate.
- **Rates –** we strongly support progressive rates, i.e. that higher rates are applied to higher value transactions. There should be a clear rationale for the different rates – there is at present for example no obvious explanation for the doubling in tax rates at £925,000.

The rate applied to the lower bands is key. Housing costs have an important and direct impact on poverty, although the relationship between poverty and tenure (and in particular owner occupation) is complex.⁵ It is important to stress that home ownership is **not** a solution to poverty, as it is neither necessarily cheaper than other tenures, nor can owner-occupiers access any equity in their property. Nevertheless there is some evidence that owner-occupation offers some 'corrective' against poverty for a minority of people, at any point in time as well as over the life course. For example, owning a home outright can reduce the impact of poverty (e.g. in older age) for some people.

We therefore consider that a zero rate on the lowest band(s) would help lower- income households to be able to purchase property to meet their housing needs and would make a modest contribution to the long-term reduction of poverty.

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

⁵ Tunstall, R. et al (2013) **The Links Between Housing and Poverty: an evidence review.** Joseph Rowntree Foundation

explain the reason for your answer.

It is right that purchases of residential properties by companies, investment schemes etc (non-natural persons) pay a higher rate of tax than individuals and households as the purchase is for business rather than residential purposes. The 'slab' approach is discredited and should be replaced with a marginal approach, at no detriment to revenue.

We suggest that rather than distinguish by the type of purchaser, residential property bought for letting should be regarded as a commercial transaction and taxed accordingly. This approach would allow LTT to distinguish more effectively between property bought as primary residences by individuals or households and property bought for business reasons whether by an individual or a company (e.g. second homes, buy to let).

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

The response to this question depends on:

- a. whether transaction taxes have an impact on the residential market and
- b. what impacts are deemed to be desirable and undesirable.

In our view, difference in itself is unlikely to have a significant impact. Transactions between individuals are unlikely to be affected by a different regime in England as most residential purchases are not 'mobile' over a long distance.

There is strong evidence that the residential property market responds quickly to taxation on transactions in terms of activity, prices and timing of purchases.⁶ Some have suggested that temporary tax relief for first time buyers has also been found to have encouraged increased activity in the market in the short- and longer-run,⁷ although the UK Treasury⁸ concluded that the impact was limited. Land Transaction Tax could therefore be a useful tool with which to stimulate the Welsh Housing Market.

Differences between Wales and England are most likely to have an impact where there are cross-border considerations - there are at least two possible areas where this might be significant:

1. **Cross border residential property market:** a study by IPPR North⁹ found that property prices in south east Wales, even in Cardiff, are significantly lower than those in Bristol and the

⁶ Best, M. C. and Kleven, H. J. (2013) **Housing Market Responses to Transaction Taxes: Evidence From Notches and Stimulus in the UK.**

⁷ Ibid.

⁸ Bolster, A. (2011) **Evaluating the Impact of Stamp Duty Land Tax First Time Buyer's Relief**, HMRC Working Paper.

⁹ Henderson, G., Lodge, G., Raikes, L. and Trench, A. (2015) **Assessing the implications of a stronger Wales for the west of England.** IPPR

south west. It concluded that a difference in transaction tax regimes would be most unlikely to overcome the price differential and affect cross-border movement or attractiveness to investors.

2. **Residential property investment market:** the differential in property prices between Wales and some areas of England is often suggested to be a key factor in the purchase of Welsh property for investment e.g. holiday homes, buy-to-let property, although we have been unable to identify any data on this.

As with the wider residential market, it is unlikely that a difference in transaction tax regimes would overcome the price differential, although it is possible that some purchases could be redirected to low-cost areas of England. Whether this is desirable depends on the policy objectives.

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

The Welsh Government needs the same powers to change LTT as the Treasury does in respect of transaction taxes in England. This includes being able to make immediate changes to rates and bands – either on its own initiative or because of changes made in England. The Welsh Government also needs the power to make other changes e.g. to introduce temporary reliefs or exemptions. There is a case for Welsh Government to be able to make such changes with immediate effect to avoid ‘blight’ on the market.

Question 5: Do you think the definition used in SDLT defines residential property adequately for the operation of the tax and will be suitable for LTT? Please give details of practical problems with the definition and how you think the definition can be improved (either by statute or by guidance).

As a matter of principle we oppose lack of clarity and uncertainty in taxation matters as they increase the risk of avoidance and evasion. The existence of two different definitions of residential property is a recipe for confusion. We would therefore support a clearer definition but do not have the expertise to suggest one.

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)?

The response to this question depends on:

- how sensitive commercial transactions are to taxation and
- the sensitivity of national and international investors to variation in tax regimes and
- the outcomes that the Welsh Government wishes to achieve.

Changes in LTT compared with SDLT have the potential to encourage beneficial investment in Wales and could in theory be a useful tool for the Welsh Government to encourage regeneration. However, IPPR North's study of the potential impact of changes in taxation on the south west of England¹⁰ found that the market for office space in Cardiff is already more competitive than in Bristol (with lower rents and higher vacancies). It is unlikely that a reduction in transaction taxes would increase competitive advantage in Cardiff compared with the south west. The evidence on retail was too limited to draw conclusions.

We are sceptical of the possible deterrent effect of a different tax regime on investors, simply on the grounds of difference. They will of course prefer consistency but as they manage already substantial differences in other policy areas e.g. planning, they ought to be able to cope.

Question 7: 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

We are not aware of any evidence on the impact of the slab structure. As the 'slab' approach is discredited a marginal rate is a better approach.

Question 8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?

See answers to question 6.

<mailto:info@bevanfoundation.org>

Reference 22
Council of Mortgage Lenders

¹⁰ Op. cit.

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 john.marr@cml.org.uk if you would like to discuss further.

30 April, 2015

Reference 23

FSB Wales

Land
Transaction Tax

6th May 2015





Land Transaction Tax

FSB Wales

FSB Wales welcomes the opportunity to present its views to the Welsh Government on its proposals for a Land Transaction Tax for Wales. FSB Wales is the authoritative voice of businesses in Wales. With 10,000 members, a Welsh Policy Unit, two regional committees and twelve branch committees; FSB Wales is in constant contact with business at a grassroots level. It undertakes regular online surveys of its members as well as a biennial membership survey on a wide range of issues and concerns facing small business.

Introduction

The consultation on a Land Transaction Tax is a landmark for Welsh tax devolution. By 2018, the capacity of the Welsh Government and National Assembly to legislate on Welsh devolved property taxes will be significant when taken in the context of other taxes such as non-domestic rates. FSB Wales therefore welcomes this consultation and hopes there will be a robust debate around the design of a tax system fit for Wales' economic needs.

Residential Transaction

FSB Wales does not have a strong view on the structure of the tax on residential transactions. However, it is important that any decisions are taken in the context of the economic impact of housing transactions.

Non-Residential Transactions

In relation to non-residential transactions, FSB Wales believes the system in use in Scotland should be adopted. This would mean removing the 'slab' nature of the current SDLT dispensation in favour of a marginal form of taxation. FSB Wales notes that under the Scottish proposals most transactions below £2m would be net beneficiaries. It is important to recognise that a large number of these will be SMEs based in communities across Wales.

FSB Wales notes that the consultation states that; *"Many businesses in the UK are pan-UK, meaning a markedly different non-residential tax system to SDLT and LBTT may put Wales at a disadvantage when it comes to investment"*. While FSB Wales agrees with the sentiment around supporting Wales to be an investment destination it is important to keep this issue in perspective. 96.4% of Wales businesses are micro businesses¹. Micro-businesses tend to trade in their locality and would likely not have multiple premises that straddle the border. As such, FSB Wales believes issues such as replicating a marginal rate for non-residential transaction should be designed with Wales SMEs in mind.

It is also important to note that large firms that cross UK borders will already be used to dealing with different jurisdictions for tax purposes. For instance, the current LBTT applies to Scotland as distinct from the rest of the UK and each local authority has a separate NDR jurisdiction for tax purposes. As

¹ Welsh Government. 2014. *Size Analysis of Welsh Businesses* [Online]. Available at: <http://gov.wales/docs/statistics/2014/141023-size-analysis-welsh-business-2014-en.pdf> (accessed 31st March 2015).



such, while this issue should be considered it should be kept in perspective. FSB Wales therefore feels that the importance of symmetry with England is a lower order concern.

Leases

FSB Wales agrees with the Welsh Government's approach in maintaining consistency with both SDLT and LBTT in terms of transactions relating to leases. In relation to more regular returns, the consultation document states that; *"It is unknown how much tax if foregone in Wales through leaseholders either not providing supplementary returns due to a change in circumstances or a lease continuing after the expiry of the fixed term"*. FSB Wales believes that it is impossible to make a judgement about frequency of returns without further information in this area. Given the potential for increased bureaucracy as a result of more regular returns, it is difficult to quantify the cost in staff time of such an approach, or the cost of enforcement. Should this information be forthcoming then the question of the proportionality of such a measure could be better answered. Once again, this needs to be in keeping with the principles of Better Regulation².

Reliefs and Exemptions

The proposal to continue the existing relief structure is to be welcomed in the first instance. However, this should not preclude the Welsh Government from examining further reliefs specific to Wales following devolution of the tax in 2018. For instance, there could be targeted reliefs used for new leases in town centres with high vacancy rates, should that be appropriate.

² For the approach to regulation advocated by FSB Wales, please see FSB Wales. 2014. *Better Regulation for Wales*. Available at: <http://www.fsb.org.uk/policy/rpu/wales/images/better%20regulation%20wales.pdf> (accessed 21 April 2015).

**Federation of Small Businesses Wales**

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The Federation of Small Businesses Wales

The FSB Wales is non-profit making and non-party political. The Federation of Small Businesses is the UK's largest campaigning pressure group promoting and protecting the interests of the self-employed and owners of small firms. Formed in 1974, it now has 200,000 members across 33 regions and 194 branches. FSB Wales currently has around 10,000 members, a Welsh Policy Unit, two regional committees and twelve branch committees meaning FSB Wales is in constant contact with small businesses at a grassroots level in Wales.

Lobbying

From the Press and Parliamentary Affairs Office in Cardiff, FSB Wales campaigns with AMs, MPs and MEPs in Cardiff Bay, Westminster and Brussels in order to promote our members' interests. FSB Wales also works closely with local, regional and national media outlets to highlight our members' concerns. Development Managers work alongside members in our regions to further FSB Wales influence at a regional level. More widely, the FSB has Press and Parliamentary Offices in Westminster, Glasgow, Belfast and Brussels to lobby the respective Governments.

Member Benefits

In addition, Member Services is committed to delivering a wide range of high quality, good value business services to members of the FSB. These services will be subject to continuing review and will represent a positive enhancement to the benefit of membership of the Leading Business organisation in the UK.

Vision

A community that recognises, values and adequately rewards the endeavours of those who are self employed and small business owners within the UK.

The Federation of Small Businesses is the trading name of the National Federation of Self Employed and Small Businesses Limited. Our registered office is Sir Frank Whittle Way, Blackpool Business Park, Blackpool, Lancashire, FY4 2FE. Our company number is 1263540 and our Data Protection Act registration number is Z7356876. We are a non-profit making organisation and we have registered with the Information Commissioner on a voluntary basis.

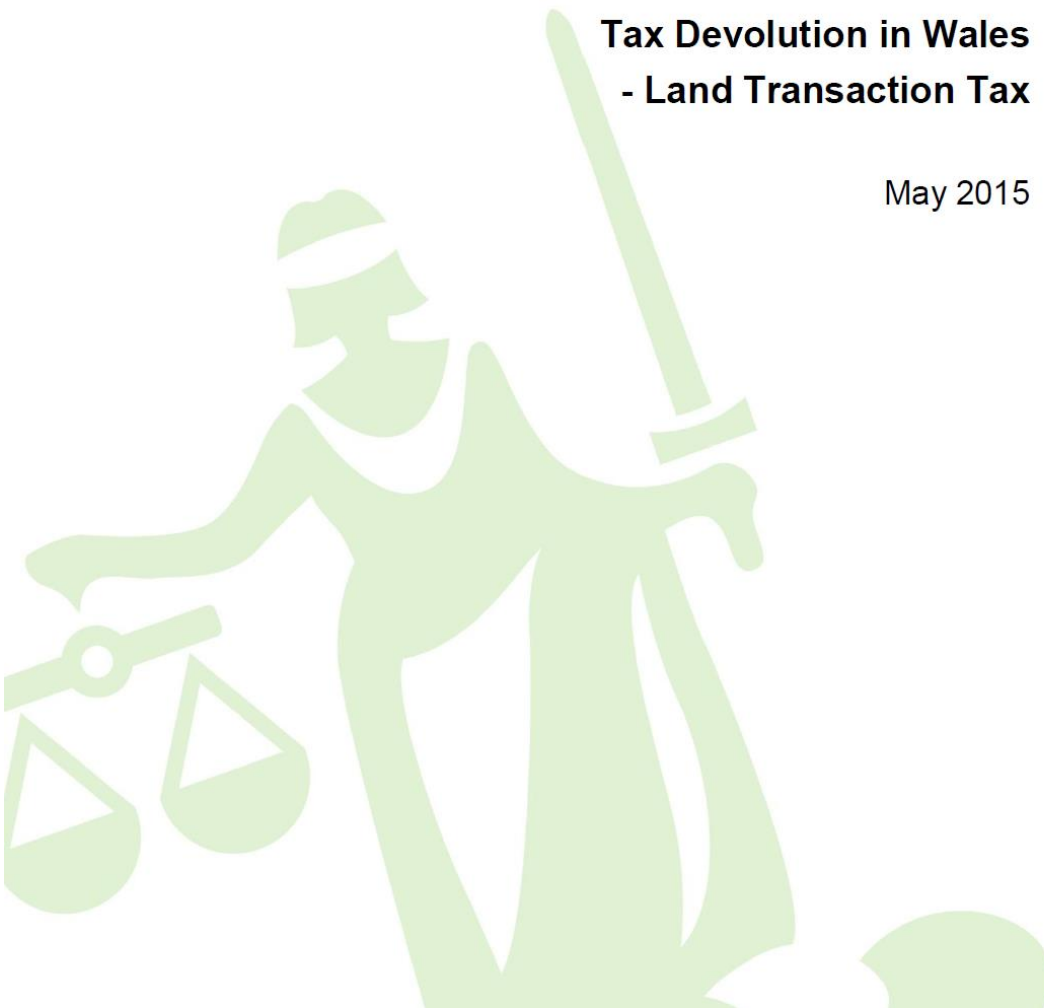
Associate Companies

We have three active subsidiary companies, FSB (Member Services) Limited (company number 02875304 and Data Protection Act registration number Z7356601), FSB Publications Limited (company number 01222258 and Data Protection Act registration number Z7315310) and FSB Recruitment Limited. (company number 07836252 and Data Protection Act registration number Z3131666).



Tax Devolution in Wales - Land Transaction Tax

May 2015



Introduction

The Law Society of England and Wales ("the Law Society") is the representative body for more than 160,000 solicitors. The Law Society represents the profession to legislators, governments, regulatory bodies and wider stakeholders.

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. Contributions to this response have been made through the Tax Law and Conveyancing and Land Law committees which are specialist committees of the Law Society. In addition the Wales Committee, which has both solicitor and lay members, and individual members across England and Wales have had an opportunity to contribute and respond.

The Law Society Wales Office delivers the Law Society's aims in Wales, working with Welsh institutions; influencing and responding to the devolution of law-making; and promoting and supporting the legal community in Wales.

Overview

The thorough approach to consultation on the implementation of the proposed Land Transaction Tax ("LTT") for Wales is welcomed. The current stamp duty land tax ("SDLT") affects both private citizens and commerce consequently Wales' replacement requires a careful approach.

We believe that it is important that where possible LTT should be designed to be as consistent with SDLT as is possible. This is particularly important in view of the fact that the Land Registry is responsible for properties in England and Wales and there is much sense in attaining consistency in terms of which documentation is provided to the Land Registry in relation to SDLT and LTT. Also many professionals involved with the tax filing requirements for portfolio transactions comprising English and Welsh properties may encounter difficulties including excessive administration if the systems for filing and the key aspects of SDLT and LTT are markedly different. This is not an issue in the same way for Scottish properties since the same professionals are unlikely to be involved both sides of the Scottish border, property law being different in each jurisdiction. Additional administration will cause unnecessary complexities and, ultimately, greater cost for the taxpayer.

Land transactions are a necessary event in the life of a business and adopting a consistency of approach with both England and Scotland is supported. The 2014 *Doing Business* report ranks the United Kingdom as 8th out of 189 economies for 'ease of doing business'. We believe that it is important that where possible LTT legislation should be designed to be as consistent as possible with land transaction taxes across the UK even if rates, bands and individual reliefs and exemptions vary in order to pursue different policies.

When the legislation comes to be drafted it will be necessary for it to be sufficiently agile to respond to changes both within Wales and elsewhere in the UK whilst ensuring adequate opportunity for changes to be scrutinised.

The Consultation

SDLT was overhauled in 2003 and over the last few years issues which have arisen with the implementation of the new regime have begun to be ironed out. The experience of the current SDLT system and implementation of the Land and Buildings Transaction Tax (LBTT) in Scotland will provide a firm foundation for the LTT for Wales and this is an opportunity to take account of all developments, both positive and negative.

Given the breadth of questions in the consultation, including policy issues on which solicitors will hold personal views, this response deals with specific areas where our members have particular experience and concerns and are presented to inform the Welsh Government on practical as well as legal issues.

Chapter 5: Returns

We would not recommend regular returns in respect of leases. Returns are best made at the point of the transaction when the professional, such as the conveyancer, is involved. A major concern that we have had with SDLT is the large amount of administration involved with filling out the returns and the requirement to provide further returns in certain circumstances.

We are concerned that if further returns are required some period (perhaps years) after the completion of the transaction then at that point there may be no professional adviser involved. The consequence of this is that the taxpayer may be unaware of his or her legal obligation to submit the return and possibly pay further tax. The impact for the tax collecting body is that they too may be unaware and so insufficient tax is collected. Also, if the tax collecting body is not seen to be pursuing returns and payments it will affect the image of the body and fairness in the pursuit of its functions.

This was particularly an issue with the SDLT treatment of a tenant “holding over” at the end of the fixed term of a lease. Usually at the point of holding over, the tenant does not have the benefit of professional advice and is unaware that he or she potentially has to submit a return and pay further SDLT. HMRC listened to the comments of the Law Society of England and Wales and others and helpfully changed the law to link return obligations in relation to holding over to the return requirements for any new lease subsequently completed of the same premises to the same party. The rationale for this is that having professional involvement in the filling out of the return for the subsequent lease will ensure that the SDLT consequences of the previous holding over are taken into account.

Subsequent returns are also potentially required for SDLT in the case of uncertain or contingent rents and there must be some uncertainty about the extent to which lay taxpayers comply with their filing requirements in that regard years after the transaction. It may be worth seeking information from HMRC to ascertain the extent to which taxpayers comply with the legal duty to file further returns at a time when there is no professional involvement, because there is no transaction at that stage.

The original SDLT legislation included provisions in relation to abnormal rent increases which potentially required taxpayers to make further returns years down the line. For various reasons, this legislation was repealed, but the possibility that a professional may not be involved some years down the line at the time of the rent increase did not help comprehension of the legislation and the filing requirements.

We cite all of those examples to support the proposition that further returns beyond the return for and at the time of the transaction should be avoided. Professionals are less likely to be involved and the consequence for the Welsh Government is that it is more likely that the further returns will not be filed.

There is also the obvious objection that the requirement to file regular returns will materially increase the associated administration, not only for the taxpayer but also for the Welsh Revenue Authority.

We acknowledge that there will be circumstances where further returns may be needed, for example, because of uncertainty in the consideration for the transaction at the point at which the return is required at the time of completion of the transaction. We consider that linking the filing of any further return to a point at which a professional will in the course of events be advising the taxpayer makes it more likely that the returns will be made.

There is also an important point in relation to whether the extra administration and cost of filing further returns are justified by any extra tax that may be due. Often, if the taxpayer instructs a professional to assist him or her with a further return in relation to a lease, the taxpayer tenant ends up paying legal fees to calculate and make the necessary filings for what may turn out to be a comparatively small amount of extra tax. The increased administrative burden imposed by the further return(s) being required during the term would often be disproportionately excessive to the small amount of extra tax raised. For example, under SDLT, if it turned out that the original estimate of a turnover rent was not correct but was not far out, the additional tax due would, often, be very little, but the cost of calculating and submitting a further return would be quite considerable and often more than the extra tax. To place such a burden on all leases over a certain length in order to catch the few where an additional sum may be payable would be most unhelpful to business tenants for the sake of a modest increase in tax revenue.

In the case of properties straddling the Welsh-English border there would be the additional administrative burden caused by the need to apportion consideration to that part of the property subject to LTT on the further return.

Also the requirement to file a regular return begs the question whether a return would be required if nothing has changed from when the previous return was filed.

While we oppose the proposal for a regular return, if a regular return were to be required, it should only be so if the lease is for more than 5 years (at 5 yearly intervals). Business leases are often for 5 years or less with the rent fixed for the duration of the term. The majority of ordinary business leases do not reserve rents which vary during the first 5 years or, if there are variations, they are fixed at the outset and included in the initial SDLT calculation. So it is quite likely that a regular return would produce no additional tax in most situations, unless (unlike SDLT) it was proposed to tax increases in rent occurring after the end of the first 5 years of the term, or there is an element of uncertain or contingent rent (but even then the actual amount of rent may not generate much more tax than that paid on the estimate).

Level of information required by the returns

The information required by the returns for SDLT in relation to leasehold transactions is extremely voluminous and much of the required information has little to do with the

SDLT calculation. This is especially the case where a leasehold interest is being sold or assigned. Such information is required for the purposes of the Valuation Office Agency ("VOA"), keeping its information up to date, and the Law Society has continually objected to the return, which relates to the particular taxable transaction, being used for wholly unconnected information purposes (such as updating the VOA's information for rating purposes). If leasehold information is required by the VOA, this should be collected separately and not by "piggybacking" off the opportunity provided by a separate obligation on a taxpayer to file a return because of a transaction.

Especially for multi-tenanted properties, a large amount of information is, usually, required in relation to each occupational lease and even though HMRC offers the possibility of a schedule, it is still time consuming to extract the necessary information to complete the schedule. The time spent by a professional in providing this information and otherwise filling out the return often reflects itself in an increased cost for the client taxpayer.

Having experienced the frustrations caused by this requirement for information unconnected to the transaction or the tax payable for the transaction, we hope that the Welsh Government will benefit from those experiences with SDLT and avoid the unnecessary administration and cost for taxpayers of requiring the provision of information that does not relate to the transaction.

Chapter 7: Online and simultaneous payments

Regarding timing section 40(2) of the Land and Buildings Transaction Tax (Scotland) Act 2013 states:

"the tax ... payable must be paid at the same time as the return is made"

Revenue Scotland guidance <https://www.revenue.scot/land-buildings-transaction-tax/guidance/how-to/pay-lbtt> for electronic payments states:

"If the return is submitted before the effective date:

- The 'Payment Date' must be no later than the fifth working day after the effective date,

If the return is submitted on or after the effective date:

- The 'Payment Date' must be no later than the fifth working day after the submission date; or the last working day which is, or precedes, the thirtieth calendar day after the effective date, if this is earlier."

So although the expression "at the same time" is used in an LBTT context, it does not mean the same time. There is at least a five working days' window for payment. We, therefore, suggest that simultaneous payment is avoided and the Scottish approach in relation to payment is considered.

This is important because depending on the time of day when completion of the transaction occurs, it may be impossible to make the electronic payment that same day. It is also worth noting with BACS that payments take three working days to clear.

Often conveyancers will have obligations to lenders not to delay in paying the tax. The Council of Mortgage Lenders Handbook states in paragraph "10.4 You are only authorised to release the loan when you hold sufficient funds to complete the purchase of the property and pay all stamp duty land tax and registration fees to perfect the security as a first legal mortgage or, if you do not have them, you accept responsibility to pay them yourself" and also "15 You must not allow non-payment of fees or disbursements to delay the payment of stamp duty land tax, the lodging of any stamp duty land tax return and registration of documents".

In addition, it is important to note that many firms use third party software to submit returns and this may further complicate a requirement to submit payment simultaneously with the electronic submission of the return.

Chapter 7: Avoidance

The views of the Law Society's Tax Law Committee on avoidance are set out in our response to the consultation on the collection and management of devolved taxes in December 2014.

Other

A stakeholder group, the Stamp Duty Working Together Stakeholder Group, was established to bring together industry and professional bodies with 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. Such a group should be established for LTT.

The Law Society has been pleased to engage closely with the Welsh Government in its consideration of the implementation of historic new tax raising powers and should be pleased to provide further comment on these and any additional issues.

Please refer any questions regarding this response to:

Kay Powell LLM Solicitor / Cyfreithiwr
Policy Adviser / Ymgynghorydd Polisi
The Law Society / Cymdeithas y Cyfreithwyr
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T 029 2064 5254 F 029 2022 5944
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**Tax Devolution in Wales- Land Transaction Tax
Joint Response by the Chartered Institute of Taxation and the Stamp Taxes
Practitioners Group**

1 Introduction

- 1.1 The Chartered Institute of Taxation and the Stamp Taxes Practitioners Group welcome the opportunity to respond to this consultation on the design of the first Welsh tax in over 800 years. We commend this wide-ranging and thoughtful consultation.

2 Question 1: Do you think the current residential 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.

- 2.1 We would not normally comment on rates and bands as these are largely matters of policy for the Welsh government. However we make some observations. The comparative property transaction statistics (as set out in the consultation) for England and Wales indicate that a rate structure for residential properties that is appropriate for England is not necessarily appropriate for Wales. There are some criticisms of the rate structure as regards the English property market but generally it is not (now that the slab system has been removed) considered by practitioners to distort the market in any significant way. For Wales, the high zero band threshold and the very few higher value property transactions indicate that system is not being stress tested in the sense that the rate structure should not create any obvious issues that practitioners need to consider.

3 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.

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- 3.1 There does not appear to be any sensible reason for the SDLT higher rate for certain transactions to be retained given a marginal rate tax base (as favoured by the Welsh government) and so few high value property transactions. As we explain below, the CIOT and the STPG had significant reservations about the evidential basis and rationale for the introduction of the measure in 2012. Therefore removing the penal rate would not appear to carry a material risk of potential non-compliance or avoidance.
- 3.2 The policy aim of the original package of measures that included the 15% rate (together with ATED and ATED-related CGT) was to address avoidance of SDLT through the use of a company to buy expensive residential property, so-called 'enveloping'.
- 3.3 However, in response to the UK Government's consultation, the CIOT noted that enveloping, in the experience of most advisers, is not used to any great extent for SDLT planning. It is difficult to sell an offshore company in practice because of the extent of due diligence needed. The purchaser of the shares inherits all the tax liabilities and legal history of the company. It is extremely costly to identify all undisclosed liabilities particularly in the absence of audited accounts. A company may be more commonly used to acquire residential property to mitigate inheritance tax or for reasons of anonymity or foreign jurisdiction rules on forced heirship.

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

- 4.1 Again this is not an area upon which we would normally comment. We observe that the impact would clearly depend upon the extent of the changes. The property market in Wales is clearly quite different from that for England (based upon the statistics highlighting less than 2% or total revenues with over 4% of transactions).

5 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.

- 5.1 There are a number of types of changes that the Welsh Government might want to make to the rates and structure of LTT. The question of whether change should take immediate effect (with appropriate transitional measures) will depend on the nature of the change, and whether it should take effect through delegated or primary legislation.
- 5.2 A change of rates (following perhaps an English SDLT rate change) might need a standing agenda item within the Assembly or for the Minister to consider the impact of the UK Budget/Autumn Statement and respond within say, 21 days. The closing of a loophole or anomaly in the legislation could require an immediate change by means of a statutory instrument. However, actual structural changes, such as the introduction of a new relief, should be considered initially through formal consultation and change effected through primary LTT legislation.
- 5.3 One caveat is that immediate and frequent change undermines stability for business and investment. Sudden changes that affect long term commercial investment decisions are undesirable.

6 Question 5: 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).

- 6.1 The definition of residential property is far from clear and could be refined. Currently there are a number of subtly different definitions used within the SDLT legislation (FA 2003 section 116 meaning of 'residential property', FA 2003 Schedule 4A para 7 meaning of 'dwelling' for the purposes of the higher rate of SDLT applicable to certain transactions, FA 2003 Schedule 6B para 7 what counts as a dwelling for the purposes of Multiple Dwellings Relief). Small variations between definitions of residential property depending upon the context make it difficult to discern the underlying policy and set traps for the unwary. In particular, the 'garden or grounds' limb at FA 2003 section 116(1)(b) can be difficult to apply in practice.
- 6.2 Given that any definition is inevitably unlikely to cover all circumstances clear guidance from the Welsh Revenue Authority will be important. This could, and should, be supported by a facility to provide a binding pre-transaction agreement.
- 6.3 Of course if the rate structure for commercial and residential property were to be aligned, many of the current issues around the definitions would be removed. For example, the differential in rates between residential and non-residential property transactions causes tensions, particularly where the subject – matter of the transaction is mixed (both residential and commercial). Under FA 2003 section 55 Table A residential rates (with a top rate of 12%) apply where the relevant land consists **entirely** of residential property, otherwise Table B and the lower rate of 4% applies. A similar tension exists around the rule in Section 116 (7) that provides for a single transaction consisting of six or more separate dwellings to be treated as non-residential.
- 6.4 The question of definitions is therefore part of the wider policy decision around whether non-residential and residential rates and structure should be the same.

**7 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 eg tax structure (marginal or slab, rates and bands, how transactions are taxed)?**

- 7.1 Many commercial property owner/occupiers and investors hold portfolios of property across England and Wales. Consistency in treatment, tax regime and rate of tax is therefore important in minimising administrative burdens for business in relation to the consolidation of asset portfolios, valuation and tax provision. Therefore the Welsh Government needs to be sure that differences introduced in LTT are carefully evaluated and are of benefit to the Welsh economy to warrant the extra administrative burdens imposed on businesses and those operating the conveyancing process in the context of high cross-border activity.

**8 Question 7: 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.

- 8.1 Generally, in our members' experience, SDLT is not often a key issue as to whether a transaction is to proceed and the additional cost, where the price is marginally in excess of the thresholds, will be factored into the negotiations as to the final price (possibly with some trade-off as regards any rent, fit out costs etc.). In addition to the extent that most large commercial transactions fall squarely within the 4% band, the slab rate structure for non-residential transactions does not create the same distortions as in the residential market pre- 4 December 2014 with bunching around the thresholds. However to the extent that the profile of non- residential transactions falls below the 4% threshold of £500,000, the distorting effect of the thresholds may be more marked.
- 8.2 Having different rates/systems for residential and non- residential property has other consequences (see our response to question 5).
- 9 Question 8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?**
- 9.1 This would depend upon how radical any changes were. Please see our comments to Questions 6 and 7 above.
- 10 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.**
- 10.1 Broadly, we are in favour of consistency between the two regimes for the reasons noted above in response to question 6. However, numerous specific changes should be made as some of the SDLT provisions are poorly structured particularly in relation to group relief (FA 2003 Schedule 7) and partnerships (FA 2003 Schedule 15) as identified in the consultation document. We are happy to continue to engage with the Welsh Government to help address these issues. We welcome the commitment to clear guidance for partnerships as recommended by the OTS, although guidance can only operate by explaining or amplifying the rules as laid down in statute. To reiterate the CIOT's often- stated position, guidance should not be a substitute for drafting good law in the first place. HMRC's guidance (and, in relation to LTT, the Welsh Revenue Authority) should be there to explain or amplify HMRC's view of the law where it is within its collection and management powers to do so. It should not be used to correct defects in the law, in that if there are defects, the answer is to correct them by amending the law, not by publishing guidance.
- 10.2 Examples of particular areas of difficulty in relation to the partnership provisions in Schedule 15 are:
- Taxpayers often suppose incorrectly (although more logically) that changes in partnership capital account (as for CGT) rather than changes in partnership (income) profit sharing ratios (which can vary) give rise to the SDLT charge.
 - Para 17A – A withdrawal of money from a partnership after the transfer of a chargeable interest. No distinction is made between loans made prior to or in

connection with the transfer of property into a partnership and ongoing lending arrangements by the partners to fund the partnership business. This anti-avoidance provision adversely impacts on ordinary commercial transactions where there is no avoidance motive.

- Para 24 – This charge imposed is where all the partners are corporate entities, with limited group relief provisions which are potentially barred where there is a non-group partner.
- There is a lack of clarity over whether partial relief can be claimed where some but not all of the partners qualify for reliefs such as charities relief (FA 2003 Schedule 8), relief for acquisitions by registered social landlords (FA 2003 section 71) . This is particularly relevant following *Pollen Estate Trustee Company Limited and King's College London* [2012] UKUT 277.

10.3 In relation to group relief (Schedule 7 Part 1), areas of difficulty include:

- Uncertainty around what constitutes a 'body corporate' where a transaction involves non-UK companies. Obtaining clearance from HMRC on the specific treatment of these foreign entities is complex and time-consuming. Additional detailed guidance and a comprehensive list of the bodies which have been accepted or the tests which must be met to fall within the definition would improve the position.
- Lack of clarity in relation to claw-back in the case of a strike off of the vendor company as opposed to a liquidation
- Significant uncertainty over the application of the 'bona fide commercial reasons' test in Schedule 7 para 2 (4A) and the interaction with section 75A.

11 Question 10: 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?

11.1 The current threshold for SDLT on rent is such that it would be surprising if very much, if any, SDLT is collected. The consequence of taxing the rent element under LTT is likely to be significant administration for probably very small returns. We would note, however, that if there is no charge and no anti-avoidance rule, there may be a risk of loss of revenue through higher value properties being acquired through leases.

12 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?

12.1 In terms of the benefits of a regular return, in our view, the key compliance issue is the lack of information as to compliance with the SDLT rules where the rent is variable, contingent or unascertainable. A requirement for a regular return would provide additional information and, arguably, improve compliance. However the compliance advantage of a return at regular intervals (rather than the 5 year date or when the rent becomes certain, if earlier) will be balanced by an increase in the administrative

burden for businesses, a cash flow cost and a need for additional resources within the WRA, or the body responsible for collection and management of LTT. An assessment of these factors would be needed.

- 12.2 In terms of the administrative burden for business, one of the central issues is setting up internal systems to deal with taxing points during a lease term that are unrelated to an actual land transaction. In practice, professional advisers are unlikely to be involved at such return and payment trigger points.

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

- 13.1 The question of whether the LTT tax base should extend to licences and tenancies at will is largely a matter of policy and will depend upon factors such as forecast yield and the extent to which their exclusion gives rise to concerns about avoidance balanced against the administrative cost of compliance for both business and the organisation responsible for collection and management. We make three observations:

- Firstly, there is the question of enforcement as licences are not required to be registered with the Land Registry and often professional advisers will not be involved in the process at all; and
- Secondly, the largely transient nature of such interests points to the conclusion that the amount of LTT collected on licences and tenancies at will may be small.
- Thirdly, the fact that such interests are not required to be registered may make the process of collecting and evaluating data difficult but will be required in order to underpin a policy decision about taxing them.

- 13.2 If licences and tenancies at will are to be subject to LTT, definitions of those terms and the scope will need to be included in the legislation. It may be useful to consider the VAT guidance¹ concerning licences to occupy land.

14 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?

- 14.1 As with the company and partnership SDLT provisions, there are technical elements of the SDLT lease provisions that need to be addressed, we are happy to assist in resolving these issues when the legislation is being drafted. As a general point the existing FA 2003 Schedule 17A provisions are extensive and complex, largely through trying to arrive at an initial figure on which to charge SDLT on leases which may contain provisions to vary rents, offer break clauses etc for commercial reasons as well as, sometimes, avoidance reasons. We think there is a need to take a careful decision on how leases should be taxed under LTT and not follow SDLT into the equivalent of Schedule 17A without reviewing alternatives and balancing the administrative burden of different regimes in England and Wales.

- 14.2 One area of difficulty is the targeted anti-avoidance provision contained within FA 2003 Schedule 17A Para 11 that imposes a restriction on the assignment of leases

¹ See HMRC VAT Notice 742 (June 2012):
P/tech/subsfinal/PT/2015

following certain claims for relief. This provision is not time-barred unlike the other claw-back provisions within FA 2003 Schedule 7 Part 2 and Schedule 8 Para 2. It therefore unfairly penalises those who wish to assign a leasehold interest many years after the original claim for group or other relief has taken place.

- 14.3 A further area (relevant to both trusts and leases) is the current SDLT treatment of nominees as although purchases by bare trustees/nominees are treated as purchases by the beneficial owner, so far as the grant of a lease is concerned, nominees and bare trustees are treated as the lessor or lessee with the beneficial lessor or lessee ignored (FA 2003 Schedule 16 para 3(3)(4)). The effect is to produce counter-intuitive results that lead to distortions in commercial transactions. The provision was introduced in Finance (No 2) Act 2005 to counter avoidance. It would be preferable to treat all transactions by bare trustees/nominees as transactions by the beneficial owners and counter avoidance by other means.

15 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.

- 15.1 A process for reviewing and evaluating the effectiveness of reliefs (and indeed for all substantive tax changes) is part of good tax policy-making. There are clear benefits in evaluating reliefs against their declared objectives in order to assess whether they are achieving those objectives in Wales.
- 15.2 Effective evaluation requires information and data gathering specific to Wales as part of the role of the revenue authority. In relation to reliefs and exemptions, a requirement to claim the benefit on the face of the return will allow the revenue authority to monitor the use of the relief/exemption. One of the issues with the old form of sub-sale relief (pre- July 2013), for example, was that the 'relief' applied automatically so it was difficult to monitor compliance.
- 15.3 The current SDLT reliefs and exemptions appear to be appropriate although with the caveat that reliefs will need to be necessary and justified in a Welsh context. Reliefs need to be policed and add complexity around definitions and boundary issues, so the administration burdens created should not be underestimated (as the consultation recognises).
- 15.4 Changes should be made to some reliefs to reflect the decision in the case of *Pollen Estates* (as noted at our response to question 9).
- 15.5 There is also an argument for focusing the reliefs more clearly by including a purpose test and to replace both the provisions in FA 2003 sections 75A-C and the DOTAS rules with provisions that consider the use of combinations of reliefs outside the legislative intent.
- 15.6 Although not technically a relief, one aspect of SDLT that is often cited as unjust is that SDLT is chargeable on the VAT that is paid on a transaction, particularly where the VAT is recoverable. Consideration might be given to not charging LTT on VAT paid on a transaction particularly to the extent that VAT is recoverable or perhaps only where the purchaser is VAT registered.
-

16 Question 15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?

- 16.1 The SDLT form of sub-sale relief (transactions entered into before completion at FA 2003 Schedule 2A) is relatively new having been introduced in 2013. It may need more time before its efficacy can be properly evaluated (see our response to question 14) but early indications are that it has been effective in preventing the widespread avoidance of the previous provision.
- 16.2 However, the new regime has created complexity, with rules which are difficult to interpret, riddled with definitions and language which is difficult to understand and produces sometimes unintuitive results in the context of standard commercial transactions particularly housing development. Consideration should be given to re-writing the provisions.

17 Question 16: Do you think there are any suitable cases for introducing new reliefs? Please explain why.

- 17.1 No comment.

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

- 18.1 We are not convinced that online filing should be, or needs to be, mandatory given the online filing rate for SDLT is very high already (97.46%). The CIOT has a continuing concern about 'digital exclusion', ie the risk that a section of the community could be excluded from government services by a move to compulsory on-line access. We are not convinced that 100% online compliance is possible throughout Wales for technological reasons. Certainly before such a requirement is laid down, careful consideration needs to be given to whether this will exclude any areas of the country and/or individual firms². We agree that the ability to file paper returns should be retained for those who are prevented from filing online because of lack of adequate broadband access. In the context of an already established high level of online filing and therefore the likelihood of a very low level of paper returns in Wales, it may be that there is little need to devote significant resources to increasing the level of online filing. The focus should be on maintaining the high level of online submissions.
- 18.2 The best way of ensuring a consistently high level of online submissions (and payments) is to have simple and attractive systems with carrots rather than sticks. Too often the default option is the stick (including compulsory e filing) whereas what is more effective is to design a good, simple, easy to use system. We note and endorse the objective of **promoting** good compliance by designing it into systems and processes in the recent HMRC discussion document on penalties³.

² See for example the case of *LH Bishop Electric Company Limited v HMRC* [2013] UKFTT 522 (TC), in which one of the appellants ran a filling station in the Brecon Beacons where limited broadband availability made compliance with mandatory online VAT filing difficult.

³ <https://www.gov.uk/government/consultations/hmrc-penalties-a-discussion-document>
P/tech/subsfinal/PT/2015

- 18.3 A simplified online return (as adopted in respect of LBTT) may help to maintain and promote online filing and payment. We note in this context that SDLT returns currently require the submission of information which is not relevant to collection of the tax.

19 Question 19: How do you think the rate of online payment could be increased compared to SDLT?

- 19.1 As we note in response to question 17, carrot is better than stick in promoting online payment. Perhaps some form of small (cash) incentive or prompt payment discount (by way of example a 0.25% discount with a maximum cap of say £1,000) for online payment would be a way of promoting it.

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

- 20.1 In practice, most transactions have SDLT paid promptly when the return is made so that registration takes place. Lenders will normally expect that payment of SDLT is in hand on completion of a purchase and mortgage. Accordingly we question whether there is a need to impose a requirement for payment at the same time as submitting the return.
- 20.2 We note that although the expression 'at the same time' is used in LBTT legislation, however, guidance allows a five working days' window for payment in recognition of the fact that it may not be possible to make payment at the same time, for example, depending on the time of day when completion of the transaction occurs, it may be impossible to make the electronic payment on that same day. In addition BACS payments take three working days to clear.

21 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?

- 21.1 We consider that for specific facets of the regime a pre-clearance facility should be available. The advantage for the taxpayer is assurance that the filing position, when the issues are complex, is acceptable. (Experience indicates that the SDLT helpline can deal only with questions on very basic technical matters.) For the revenue authority, it would provide a useful flow of information both as regards transactions being undertaken and the pressure points in the legislation.

22 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.

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

- 22.1 It is appropriate to encourage good behaviour and discourage non-compliance by levying penalties for late-filing of returns or late payment. Care should be exercised in

the introduction of a more wide-ranging system of penalties for errors, particularly where non-standard transactions are undertaken and the filing procedures required are not clear.

- 22.2 A coherent and consistent framework and approach to penalties for all taxes devolved to Wales is desirable.

23 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?

- 23.1 No comment

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?

- 24.1 We consider that the provisions in sections 75A-C are fundamentally flawed and should not be fully replicated in LTT particularly if a narrowly targeted General Anti-Abuse Rule along the lines of the provision introduced in the UK (with the same safeguards) is introduced. (We are not in favour of the wider anti-avoidance rule because of the potential uncertainty it would engender for businesses operating both in Wales and cross-border.)
- 24.2 We suggest that any changes to the current rules within sections 75A-C take full account of the views of the judiciary in the recent decision of the Upper Tribunal in the case of *Project Blue Limited and the Commissioners for Her Majesty's Revenue and Customs* [2014] UKUT 0564 (TCC) and that a purposive interpretation in the context of anti-avoidance should be incorporated into statute.
- 24.3 A possible better approach may be to:
- make reliefs, exemptions and any provision resulting in an adjustment to the 'consideration' chargeable to LTT more consistent (requiring all to be claimed in the return as noted above)
 - introduce a clear purpose to each exemption and relief so as to reduce the scope for doubt as to whether it is available
 - introduce an anti-avoidance purpose test on the use of combinations of reliefs.

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

- 25.1 The assessment considers the indirect costs in relation to the disapplication of SDLT and the introduction of LTT. One of the ways that these indirect costs can be minimised is by early consideration of effective transitional rules to facilitate transactions which may fall within the two regimes such as a lease granted under SDLT but with a later return obligations due to variable rents, the variation of leases, linked leases, transactions with overage payments and reliefs subject to clawback.

Transitional rules will need to address transactions which have either completed or are subject to contract.

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.

26.1 It is difficult to anticipate what further changes may arise. If further tax devolution gains pace (corporation tax, NIC, income tax, CGT etc) then the structure and capacity of the WRA would come into particular focus.

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

27.1 No other comments at this stage.

28 The Stamp Taxes Practitioners Group (STPG)

28.1 The STPG is the leading professional forum for stamp taxes practitioners consisting of 173 members. Members are drawn from the legal, accountancy and surveying professions and include practitioners in the fields of tax, real estate and conveyancing

29 The Chartered Institute of Taxation

29.1 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 17,000 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 and the STPG
6 May 2015

Reference 26
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6 May 2015

Response to Consultation Document 'Tax Devolution in Wales – Land Transaction Tax'

PricewaterhouseCoopers (we) welcome the opportunity to respond to the Welsh Government's Consultation Document. We have provided in depth responses to the specific questions posed within the Consultation Document in the Appendix.

We note that from the Initial Regulatory Impact Assessment that, at this stage, the Welsh Government is looking at the impact of two high level options; 'do nothing' and implement a Welsh replacement tax for stamp duty land tax ("SDLT"). Whilst we acknowledge that a full Regulatory Impact Assessment will be published in due course, it would be helpful to understand the Welsh Government's overall vision for a possible replacement of SDLT, before considering specific exemptions and reliefs. We consider that setting out a clear vision for the purpose of the replacement tax would be helpful before quite specific reliefs and exemptions are considered.

As detailed in the attached Appendix, we consider that there should be consistency between Welsh and English land tax regimes and we recommend that the Welsh Government adopt the existing SDLT provisions as a starting point. Efforts could then be focused on targeting changes and additions to the rules to address known difficulties or anomalies in the SDLT regime. It would be helpful to taxpayers and advisors alike if such changes and differences were made explicitly clear in the relevant legislation or supporting guidance.

In order to minimise cost and complexity, any changes need to be clearly in pursuit of a specified Welsh Government policy objective and this should be subject to a cost/benefit analysis.

We would welcome the opportunity to discuss the responses made in this paper further with the Welsh Government and to offer assistance and additional analysis, where helpful, on the economic/technical issues.

If you have any questions or would like to discuss any of the points raised in this letter in more detail, please do not hesitate to contact me (02920 802242) or my colleague Paul Emery, Head of Stamp Taxes (020 7213 3071).

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Matthew Hammond'.

Matthew Hammond
Wales Regional Chairman

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Chapter 2: Residential property transactions

Question 1: Do you think the current residential 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.***

We recommend that, prior to determining appropriate rates and bands, the Welsh Government should consider conducting a detailed impact assessment.

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.

From the opening statements of Jane Hutt, Assembly Member for Finance and Government Business as set out in the Forward to the Consultation Document, it is clear that the policy behind introducing the Welsh LTT and other taxes is to replace established UK taxes with new, distinctively Welsh taxes which are to be designed and implemented in ways that reflect the circumstances in Wales. The intention is for these new Welsh taxes to be "simple, with clear rules, aiming to minimise compliance and administration costs" so that they are "more effective, more efficient, and better suited to the priorities of Wales".

The imposition of a higher rate of Welsh LTT similar to the 15% rate of stamp duty land tax (SDLT) for certain acquisitions of residential property by non-natural persons adds complexity to the SDLT charging regime which runs contrary to the objective of keeping legislation simple. Additional legislation should only be used where absolutely necessary to protect the integrity of the regime. In our view, the 15% rate is not necessary for the following reasons:

- The 15% rate was introduced as part of a package of measures directed principally against activity in the London Prime and Superprime markets. Our experience also indicates that many purchasers have other reasons for using companies to hold property and rarely wish to acquire shares in a company, preferring to purchase the property itself because of due diligence issues. It needs to be examined carefully whether Welsh LTT would need similar policy objectives.
- If Wales were to impose a top rate of Welsh LTT close to the 12% top rate now applicable to residential property under the SDLT regime, a top rate of 15% may no longer be effective as a disincentive to using a corporate acquisition vehicle.
- The Annual Tax on Enveloped Dwellings should provide sufficient discouragement against enveloping residential property for the purposes of avoiding transfer tax to the extent that such avoidance was to arise.

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

As noted in the Holtham Report ¹, 48.8 per cent of the Welsh population and 9.5 per cent of the English population live within 25 miles of the border. We consider that having significantly different rates of tax in Wales as compared England is likely to result in economic distortions to the construction industry, and may have an impact on house prices. If property tax rates were to rise in Wales, it might encourage purchasers to locate in England rather than Wales. This could be detrimental for the wider Welsh economy, as it could depress overall demand for goods and services produced in Wales. We would recommend that the Welsh Government consider this issue carefully in any impact assessment conducted in relation to the introduction of a Welsh LTT, including a detailed economic analysis of the impact, in particular on house prices, of any difference in rates and bands prior to the introduction.

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.

We agree with the Welsh Government that there should be the ability to introduce changes immediately to respond to sudden changes in the economy or in house prices. However, in our experience, businesses and individuals require certainty in their financial affairs, and as such immediate changes should be utilised rarely in practice.

Question 5: 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).

The definition of “residential property” for SDLT purposes is found in section 116 Finance Act 2003 (FA 2003). This provision is modified for the definition of ‘dwellings’ for the purposes of ‘higher threshold interest’ in Schedule 4A Paragraph 7 FA 2003, for ‘relief for certain acquisitions of residential property’ in Schedule 6A Paragraph 7 FA 2003 and for multiple dwellings relief in Schedule 6B Paragraph 7 FA 2003. In addition to the above, other taxes contain similar (but not identical) definitions of residential property or dwellings.

However, whilst simplicity and consistency is desirable, the purpose of each modification to the definition is to ensure the definition either encapsulates, or excludes, certain properties with a view to either the giving of a relief or the levying of a charge in order to give effect to a policy objective. It seems highly unlikely that there could be a common definition without modifications being made to achieve a desired effect.

When designing the Welsh LTT regime, consideration will need to be given to the purpose of the definition and whether the objectives in the SDLT regime are appropriate for the Welsh LTT regime.

¹ Independent Commission on Funding and Finance for Wales 2010. Fairness and Accountability: a new funding settlement for Wales

Chapter 3: Non-residential property transactions

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)?

So far as is possible, tax regimes in Wales and England for non-residential property should be consistent. The greater the differences, the more complex the overall tax regime in the UK will become, and the more confusion will arise for taxpayers. Investors in UK real estate are facing increasing complexity and more frequent changes to the regime. The more stable and well understood the regime, the less likely it is that investors, in particular overseas investors, will be discouraged from investing in UK real estate.

We consider that seeking consistency means looking at the tax structure as a whole, including how transactions are taxed.

Question 7: 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.

We do not have data available to comment fully on whether the slab structure creates distortion in the non-residential market. The data for the residential market published by the Treasury, when the change to a progressive structure for SDLT was announced, clearly illustrated distortions and the spike in transaction volume just below the band edges was clear to see.

In the non-residential market, our expectation is that a significantly higher proportion of transactions are in the top rate of SDLT and the distortion is therefore likely to be much less pronounced. Nevertheless, we believe that there is likely to be some distortion around the bands.

Question 8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?

As explained above, we consider that having significantly different rates of tax from England could result in economic distortions to the construction industry as well as having an impact on property prices and investment. We would urge the Welsh Government to consider this issue carefully in any impact assessment conducted on the introduction of a Welsh LTT. We recommend a detailed economic analysis of the impact of any difference in rates and bands between Wales and England, prior to the introduction.

Chapter 4: Partnerships, Trusts, and Companies

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 an LTT.

This is an extremely broad question. To start from scratch when drafting Welsh LTT provisions for partnerships, trusts and companies would be a major undertaking and potentially result in differences between tax codes that need to be applied by taxpayers active in Wales and England. Recognising the overriding desire for consistency between the Welsh and English provisions (particularly given that the land law considerations are the same for the two countries), we would recommend that the Welsh Government adopt the existing SDLT provisions as a starting point, and focus their efforts on targeting changes and additions to the rules to address known difficulties or anomalies in the SDLT regime that need to be reviewed in England and Wales. It would be helpful to taxpayers and advisors alike if such changes and differences were made explicitly clear in the relevant legislation or guidance.

Partnerships

Suggestions as to material changes in approach / guidance

The partnership rules could be simplified significantly if a more general rule of transparency was applied to land transactions involving partnerships, such that partners were treated as owning and dealing in fractional interests in the underlying property (without the added complexity of the specific partnership provisions of Part 3 Schedule 15 FA 2003). This would, however, be a material departure from the existing SDLT provisions so for the sake of consistency it may be preferable to adopt the partnership provisions in Part 3 Schedule 15 FA 2003.

Irrespective of whether a general “transparency” approach, or the more detailed rules in Part 3 Schedule 15 FA 2003 are adopted, it is still necessary to decide how to assess a person’s interest in underlying property by reference to their particular partnership interest. We acknowledge that the inherent legal flexibility of partnerships means that one reasonably has to make a relatively arbitrary choice between looking at capital or income entitlements. Starting afresh, we would not have adopted entitlement to “income profits” as the determining factor in the existing SDLT provisions and these rules ideally should be harmonised and revised in England and Wales. If one is to assess a person’s interest in a partnership and the underlying property by reference to their economic interest, it would seem more equitable to look at entitlements to capital proceeds. Rights to income profits only exist for so long as the partnership owns the property; unless there are restrictions on the timescale in which the asset can be sold, it would seem to us that most value should be in the capital partnership interests in many cases. Bearing in mind the introductory comments, it is probably too late to adopt a different approach in Wales. However, if the Welsh government decide to adopt the SDLT provisions and the “income profits” test, we would strongly recommend that steps are taken to more clearly define what the term “income profits” really means.

We consider that detailed guidance on the application of the partnership rules is needed.

Specific SDLT provisions that should in our view be abolished / amended

The withdrawal of capital provisions in paragraph 17A Schedule 15 FA 2003 should be considered obsolete. The circumstances that these provisions were introduced to address has been adequately counteracted by the new rules for transfers of partnership interests in paragraph 14 Schedule 15 FA 2003, which apply SDLT to transfers of partnership interests where a partner whose interest is reduced withdraws capital from the partnership.

The purpose of the anti-avoidance provisions in paragraph 24 Schedule 15 FA 2003 is unclear. These provisions mean that SDLT is chargeable on the full market value of underlying property on a transfer out of a partnership to partners or people connected with them, if the normal charging provisions would have produced a charge by reference to less than 25% of the market value, and the partners in the partnership are all bodies corporate. Unless all the relevant companies are 100% grouped and SDLT group relief is separately claimed, a charge to SDLT based on the full market value arises. This is anomalous, since no such charge arises where a very small interest in a partnership is held by an individual or unconnected entity. The equivalent provisions for transfers of assets into a partnership have been abolished, and there seems no reason why they remain for transfers out of a partnership.

Partial group relief is available for transfers of assets into a partnership but again the consequences of transfers out of a partnership are different and penal. In order to make the law consistent and equitable, we recommend that partial group relief (i.e. an equivalent of paragraph 27A Schedule 15 FA 2003) should be introduced for transfers of assets from a partnership to a company which is grouped with a partner.

It would be useful for the Welsh LTT provisions, or related guidance, to make it clear which provisions take precedence over others. For example, the trust rules override the main charging provisions as they are more specific, but similarly the partnership rules would seem to override the bare trust provisions because they are more specific still.

Trusts

It would be helpful if the Welsh LTT provisions or related guidance could make clear the extent of the “deeming” provisions of Schedule 16 FA 2003 in relation to settlements. Trustees of a settlement are treated as acquiring the whole of an interest in land or a partnership interest under these provisions, but it is not then explicitly stated whether they should be treated as the vendor when that asset is subsequently sold. In relation to bare trusts (as discussed further below), trustees are explicitly stated to be the purchaser of both legal and beneficial interests in a lease granted to them, and the vendor of a lease which is granted by them.

Companies

We consider that the main SDLT provisions applicable to companies work well in practice and, subject to the specific points below, are well understood by taxpayers.

Two of the main SDLT provisions affecting companies are the market value rule in section 53 FA 2003 applicable to transfers of chargeable interests to connected companies, and the exemptions from that market value charge contained in section 54 FA 2003, particularly the exemption for distributions of a company's assets. It is not entirely clear from the legislation whether the market value rule applies where some consideration, such as the assumption of a debt, arises on a distribution by a company. Is there a market value charge, or is section 53 FA 2003 disapplied and SDLT charged by reference to the amount of the consideration given only?

The different definitions of "company" and "body corporate" could be clarified to remove inconsistencies and areas of doubt in the current SDLT legislation. For example, section 101 FA 2003 deems the trustees in a unit trust scheme to be a "company" but neither Section 101 FA 2003 nor any other provision deems the trustees to be a "body corporate". The market value provisions of section 53 FA 2003 state that, for these provisions, "company means any body corporate". Since a unit trust scheme is not a body corporate, it is not at all clear that the market value rule in section 53 FA 2003 applies to transfers of property to unit trust schemes from connected parties (even though HMRC take the view that it does).

We have suggested amendments to SDLT group relief (applicable to land transactions between grouped companies) in our response to Question 14.

Chapter 5: Leases

Question 10: 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?

If the current bands utilised for the rent element of residential leases were to be replicated in Wales, we consider it would generate negligible tax revenues. In practice, given the level of the nil rate band, the majority of residential leases would not normally give rise to a SDLT charge.

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?

We do not think that the system of taxing leases in Wales would be improved by requiring a regular return due to the additional administrative burden that this would place on tax payers, for example, supermarkets and high street stores that potentially hold a large number of leases.

If the decision is taken in Wales to introduce a regular return for leases, we recommend that there is an exclusion from this requirement for leases where the acquisition of that lease was covered by a relief from Welsh LTT (for example group relief). In this case no Welsh LTT would have been payable on the acquisition, and therefore, an adjustment to the rent figures used in the original calculation would not result in further tax being payable, so that the imposition of additional filing requirements would be unnecessary.

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

We do not think that licences and tenancies at will should be taxed in the same way as leasehold agreements, due to the substantial differences between these types of interests. Licences and tenancies at will are frequently created that have little or no economic value and carry few rights over the land or

property in question. An example of where a licence may be commonly used would be the grant of a licence to provide temporary access to a builder to undertake works. Licences (and tenancies at will) do not provide any exclusive right of occupation, and therefore a licence (or tenancy at will) is in many cases unlikely to be a viable alternative to a leasehold agreement.

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?

Under the current SDLT regime, relief is given where a lease is surrendered and re-granted to ensure that when calculating SDLT on the new lease, credit is given in respect of the rents on which SDLT has already been paid (when the original lease was granted). This is referred to as overlap relief, and ensures that SDLT is not paid twice on the same rents.

Overlap relief is not given from where stamp duty (rather than SDLT) was paid on the original lease. In our view, under Welsh LTT overlap relief should be given where Welsh LTT was originally paid and also where SDLT was originally paid on the original lease, to ensure that taxpayers are not disadvantaged in respect of leases on which they have previously paid SDLT.

Chapter 6: Reliefs and Exemptions

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.

We consider that the SDLT reliefs are largely necessary to support transactions that the Welsh government would wish to promote, and also to ensure that Welsh LTT is not payable where there is no overall economic change in control or ownership of assets.

Suggested amendments to existing reliefs

Given the high number of charities relief claims in Wales, the Welsh Government should consider clarifying the existing SDLT provisions to cover partial charities relief, where a charity is one of a number of purchasers (codifying the decision in *Pollen Estate Trustee Co Ltd v Revenue and Customs Comrs* [2013] All ER (D) 256 (Jun)).

A large number of SDLT group relief transactions rely on a “white list” of particular transactions, which HMRC published as a means of setting out where relief would not be denied under the “not for the avoidance of a liability to tax” condition in paragraph 2(4A) Schedule 7 FA 2003. Codifying these “white list” transactions would be preferable to taxing by statute and relieving by guidance, a practice which has been consistently criticised in judicial guidance.

It would be useful to have a stated position (ideally in statute, but possibly in guidance) as to whether Welsh LTT group relief would apply in a situation where a vendor company is in administration / liquidation. In the case of SDLT, this has historically been an area of doubt and inconsistent HMRC practice.

Question 15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?

Including a form of subsale relief for Welsh LTT should facilitate liquidity in the market, and allow market makers to buy and sell land more easily without Welsh LTT becoming an impediment to market makers. As such, in order to ensure that doing business in Wales is as attractive and fair as doing business elsewhere in the UK, it would be our recommendation to include a similar relief under Welsh LTT. However, anti-avoidance provisions are likely to be required to prevent abuse.

As for SDLT, Welsh LTT could impose a requirement for both the intermediate purchaser and the ultimate purchaser to submit land transaction returns notifying the Welsh tax authorities of the transactions. The Welsh tax authorities would then be able to gauge the extent to which the relief is being claimed, and could then tackle any perceived tax avoidance as appropriate.

Question 16: Do you think there are any suitable cases for introducing new reliefs? Please explain why.

In our opinion, a notable omission in the SDLT legislation is a tailored exemption for the incorporation of a trading business. Where an individual trader transfers a property to a partnership that they own, no SDLT is payable. However, where they incorporate a company and transfer a property to that company, a full market value SDLT charge arises. This means there is a significant cost to a wholly commercial transaction that many small businesses may wish to undertake. We consider that any new incorporation relief could be limited to assets used in, or for the purposes of, a trade, and should also be subject to a clawback upon a sale of the company within a certain period. This would more closely align the Welsh LTT treatment with the capital gains tax treatment.

The outgoing UK Government announced its intention in September 2014 to introduce a seeding relief for property authorised funds and co-ownership authorised contractual schemes (“CoACs”), with a proposed amendment to the SDLT provisions to ensure that transfers of interests in CoACs did not give rise to SDLT. For consistency consideration should be given to the introduction of similar reliefs from Welsh LTT.

Chapter 7: Compliance, Avoidance, Disputes and Penalties

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?

PwC utilises the current online filing system, on behalf of its clients, which in the majority of cases is efficient. However, we recognise that there may be some purchasers without internet access and who therefore would not be in a position to file Welsh LTT returns online. For this reason, we consider compulsory online filing would be undesirable.

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

We consider that paper returns should be used for those unable to file online.

Question 19: How do you think the rate of online payment could be increased compared to SDLT?

Our experience is that online payments are favoured by our clients who prefer to use the existing facilities to pay SDLT online (after first submitting the SDLT return online), for reasons of administrative convenience.

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

In principle, we agree with the aim of moving to an integrated online system to allow for the simple, quick and efficient registration of land transactions and payment of all taxes due.

Under the current SDLT system, tax due is not paid until after the return has been submitted. It is also possible to register the change of ownership without first paying the tax due.

HMRC issues a reference number for each taxpayer to supply with payment of the tax. If the SDLT return is submitted online then the online system instantly generates the SDLT certificate (which is used to update the Register of Title to register the change of ownership), which includes the reference number.

In many cases, advisers will submit SDLT returns online for clients, and clients will then subsequently use the reference number provided to make payment of tax. If the Welsh LTT system were to require payment of tax at the same time as submission of the return, this could lead to unnecessary difficulty.

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?

An ability to engage with the Welsh Revenue Authority to discuss technical questions will be desirable. Clients are increasingly asking us to seek confirmation of technical issues from HMRC prior to undertaking transactions, whether in the form of a formal pre-transaction clearance, or by way of requesting an informal opinion. It is likely that clients will want to be able to engage with the Welsh tax authority in the same way.

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.

We would encourage a newly established Wales Revenue Authority to consider whether specific incentives for compliance, perhaps through the penalty regime, could be offered. We would favour an approach that would involve flexing the level of penalties on the basis that there has been prompted, or unprompted, disclosure by the taxpayer. We would welcome an approach based on Schedule 24 Finance Act 2007 regime, which is now well understood by taxpayers and their advisers.

We consider having a different penalty regime from that operated by HMRC may lead to increased complexity.



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

See comment 22

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?

It is desirable to keep the tax regimes as aligned as possible, to avoid confusion and in the interests of simplicity. We are not aware of any major concerns with the existing approach.

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 note that a Welsh GAAR is being considered by the Welsh Government and was included in the consultation on 'Collection and Management of Devolved Taxes in Wales'.

If a section 75A FA 2003 type anti-avoidance provision is to be included in a Welsh LTT, consideration should be given to addressing a number of shortcomings in its structure which have been highlighted in the Courts. A detailed critique of section 75A FA 2003 is beyond the scope of this response, but the following are a few examples of particular areas which need to be addressed.

- Introduction of an explicit motive test to ensure that the rule does not apply to innocent, wholly commercial series of transactions. We understand that the absence of a motive test was deliberate, given that such tests are, to a degree, subjective. But HMRC's own guidance states that the provision would only be invoked where it was considered that the right amount of SDLT had not been paid, suggesting that the right amount of SDLT could be determined by applying a sense test rather than looking at the detailed rules to determine whether the right amount of SDLT had been levied, even if that gave rise to sometimes surprising results. In *Project Blue Ltd v Revenue and Customs Commissioners* [2014] UKUT 564 (TCC), the Courts have confirmed that HMRC have no such discretion to determine what they consider is the right amount of SDLT for a given set of transactions and they must simply apply section 75A FA 2003 prescriptively.
- Introduction of a de minimis limit (for example, by reference to the market value of the underlying real estate interest) so that the rule does not need to be considered where the value of land, and the related SDLT liability, is low. These provisions are complicated to interpret and understand. It is likely that many taxpayers and general tax advisors are either unaware of the provisions, or unable to apply them correctly to the transactions.
- Clarification of the provisions to make it clearer who "V" and "P" are when considering what the notional transaction is (including clarification of how the identification rules work whether properties are transferred to or from partnerships).

Other Questions

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

As noted above we recommend that a more detailed impact assessment is undertaken, which should consider the following.

The purchase of second homes: second homes can bring advantages and disadvantages to local communities such as the impact on house prices and tourism revenues.

The issue of property tax capitalisation: property taxes can be capitalised into property prices. We would consider the regional outcomes regarding property prices to be an important question for the impact assessment.

Issues of inter-industry competitiveness: these exist between industries that are property intensive relative to businesses that are less property intensive. It will be important to assess the strength of these inter-industry effects going forwards.

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.

The degree of impact will depend on the amount of change from SDLT and the policy objectives it is decided to embed. It would be necessary to understand these further before addressing wider impacts.

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

It is essential not to underestimate the level of skills, expertise and technical background required to ensure that the newly established Welsh Revenue Authority can efficiently run a new Welsh LTT.

Finally, the volume and scope of land transaction taxes are very difficult to forecast. Historically, when HMRC or the Office for Budget Responsibility has published evaluations of forecast receipts versus actual receipts, some of the largest errors are regularly attributed to SDLT. Relying on a property based tax where revenues are difficult to predict could create budgetary problems for the Welsh Government going forward if forecasts do not prove to be accurate.

Reference 27

Name:	Anonymous
Email:	
Organisation (if applicable):	
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.:	Based on our experience the Welsh economy (house prices) performs relatively poorly within the UK, so this needs to be considered when setting the SDLT rates in order that Wales is not put at a disadvantage. The rates should definitely not be set higher than in England and there is the potential to encourage housing development in Wales by setting them slightly lower, this is particularly important when looking at the border areas in the South and North east. As the document states the rates will be set at the time of implementation and take account of the market conditions at the time, there are many influences on house prices and it would be wrong to try and guess where house prices will be in the future.
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.:	
Q3: What would the key impacts be on the residential market in Wales of having a different transaction tax regime from England?:	Although the divergence of Wales from the rest of the UK is accepted this must not put Wales at a disadvantage as accepted in the consultation document. Wales already performs less well economically to much of the UK and anything which makes it cheaper or easier to do business outside of Wales will further increase this disadvantaged position. This issue is particularly important in the border areas in the North and South East of Wales where a lot of cross boundary commuting already takes place.
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 we agree that a quick change to rates is less disruptive to the market.
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).:	The phrase 'suitable for use as a dwelling' does appear open to misinterpretation particularly following the recent rise in the conversion of former office buildings to residential use.
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)?:	

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.:	
Q8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?:	
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.:	
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?:	
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?:	
Q12: Do you think that licences and tenancies at will should be taxed in the same way as leasehold agreements?:	
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?:	
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 would support consistency across the UK on this issues again to avoid Wales being put at a disadvantage, or being seen to be a harder place to do business.
Q15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?:	
Q16: Do you think there are any suitable cases for introducing new reliefs? Please explain why.:	
Q17: How do you think the rate of online filing could be increased compared to SDLT?:	
Q18: What arrangements should there be for those who cannot file online?:	
Q19: How do you think the rate of online payment could be increased compared to	

SDLT?:	
Q20: Would requiring payment of the tax at the same time as submitting the return cause any problems? Please explain why.:	
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?:	
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.:	
Q23: Should LTT impose penalties for late payment of tax similar to those available to HMRC to encourage prompt payment of tax?:	
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?:	
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.:	
Q26: Do you have any comments on the initial impact assessment:	
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.:	
Q28: Do you have any other comments on the Welsh Government's plans to implement a land transaction tax in Wales?:	

Reference 28

Your Ref:

Our Ref: 10/DB/39492/35-3836

Dated: 6 May 2015

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

By email to FinancialReformMailbox@wales.gsi.gov.uk

Dear Sirs

Consultation: Tax Devolution in Wales – Land Transaction Tax

About the Residential Landlords Association (RLA)

The Residential Landlords Association (RLA) is the premier national landlords association operating in England and Wales. We have over 17,000 subscribers representing 20,000 members. Our members own or control over 250,000 units of accommodation. Primarily our members are landlords in their own right but a number are managing and letting agents, some of whom are also landlords. Our members operate in all sub-sectors of the Private Rented Sector (PRS). Properties are rented out to families, working people, young professionals, the elderly, students and benefit claimants.

Introduction

The Association's interest in responding to this consultation is confined to certain aspects relevant to the private rented sector in Wales. According to the Welsh Government's own statistics there are some 190,000 rented properties in the private rented sector in Wales. We estimate that there are approximately 70,000 landlords in the private sector, although no definitive figure exists for the number of such landlords.

We have answered certain questions which we consider relevant to the interest of our members and landlords generally and have included some general comments in our replies to certain of these questions.

Question 1

Do you think the current residential SDLT rates and bands are suitable for Wales?



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We welcome the changes introduced by the UK Government effectively introducing a "slice" system in place of the former "slab" system for residential properties. We have always considered that the slab system was unfair and introduced artificial distortions into the property market where prices were at or approaching a changeover point. For reasons referred to in Question 3 we consider that it is important that SDLT rates for residential properties in Wales are kept very much in line with those applicable in England.

Question 2

Do you think the 15% slab rate for certain transactions by non natural persons should continue to operate in Wales following the introduction of LTT?

We would be against the continuation of this system, as there are relatively few high priced properties in Wales. We have latterly been concerned overall about the amount of administration and paperwork generally which is being generated around this issue. In our view, this is very much disproportionate to the amount of any revenue likely to be received in Wales. This whole system was introduced because of very high end value transactions in the overheated London property market, which has very little relevance in Wales. If at a later date it is shown that there is evidence of serious abuse after all further legislation could be introduced.

Question 3

What would be the key impacts on the residential markets in Wales and having a different tax transaction regime from England?

As indicated in our response to Question 1 we would be very much concerned if the tax regime in Wales were to impose a higher burden on the residential sector in relation to land transaction tax than could be payable for comparable properties in England under SDLT. We believe that for economic reasons it is essential that the Welsh Government promotes Wales as a place for investment. There is considerable evidence of cross border investment into Wales especially from close by parts of England both in the South West and long the borders into Merseyside and the Manchester area. This issue needs to be looked at in the round. The Welsh Government have already introduced a system of registration and licensing for landlords. Major changes are envisaged on the Renting Homes Bill which will introduce a new legal code for the operation of the rental sector in Wales. Increased regulation such as a requirement for fire sprinklers in new homes mean that the potential investor in the private rented sector in Wales already faces considerable challenges which may persuade that investor to look elsewhere, particularly as England has a far larger private rented sector than in Wales. If LTT were to impose a greater burden and SDLT at the point of purchase then this would, in our view, be a strong disincentive to inward investment in the private rented sector in Wales, to the general detriment of that sector. Wales is a small country relatively and a small jurisdiction. If it gains a reputation of being a higher cost centre for investment in private renting then this will dissuade

potential investors, either from expanding their portfolios in Wales or buying for the first time in Wales.

Question 5

Do you think the definition used in SDLT defines residential property adequately for the operation of the taxes and will be suitable for LTT?

We have not had any concerns raised with us around this definition.

Question 10

Do you think the rent element of residential leases in Wales should be taxed under LTT?

We believe that in the case of residential properties there is no need for the rental element to be taxed. Our calculation is that on the basis of a tenancy for one year the rent has to be at least £126,000 approximately per annum before tax would be payable. Most residential lettings at a rack rent are for one year so having to look at the rental element is, in reality, an irrelevance. After all, if a long lease is granted it is going to be by way of a sale where only a ground rent will be payable with tax payable instead on the premium; not the rental element. We feel that having to involve the rental element in any calculation in that situation is an additional and unnecessary burden which introduces little or no revenue.

Question 12

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

No – these are informal agreements often granted for short term periods and we see little need for them to be caught up in the tax net.

Question 15

Do you agree that LTT should adopt the SDLT form of sub-sale relief?

We consider that the same sub-sale relief should be available. Sub-sale transactions play an important role as the consultation paper indicates. Not having a form of relief exemption available is unfair because it leads to double taxation of what is, in effect, the same transaction. The tightening up referred to has by and large done away with the avoidance issues that had previously arisen. We do not agree with the Scottish idea of confining this to development transactions. Contracts can be transferred on for a number of perfectly legitimate commercial reasons that have nothing to do with tax and, as we have said, it would be unfair for these to be taxed twice when they are, in reality, one and the same transaction ultimately.

Question 21

Do you think that LTT should have a pre-clearance facility?

This is very useful in practice. SDLT (and LTT) are complex taxes on which questions are only encountered occasionally. Professional advisers will find it very helpful to have such a facility.

Yours faithfully


R.O.JONES – POLICY DIRECTOR
RESIDENTIAL LANDLORDS ASSOCIATION
rjones@rla.org.uk

Tax Devolution in Wales – Land Transaction Tax



Wales Council for Voluntary Action

1. Wales Council for Voluntary Action (WCVA) is a registered charity and umbrella body working to support, develop and represent Wales' third sector at UK and national level. We have over 3,350 organisations in direct membership, and are in touch with many more organisations through a wide range of national and local networks. WCVA's mission is to provide excellent support, leadership and an influential voice for the third sector and volunteering in Wales.
2. WCVA is committed to a strong and active third sector building resilient, cohesive and inclusive communities, giving people a stake in their future through their own actions and services, creating a strong, healthy and fair society and demonstrating the value of volunteering and community engagement.

Reliefs and exemptions

3. WCVA welcomes the opportunity to respond to the Land Transaction Tax consultation. As an umbrella body for the third sector in Wales, we are concentrating our response in particular on Chapter 6: Reliefs and exemptions.
4. Relief from stamp duty is an important component of being a charity, along with other tax reliefs. The consultation document reveals that charities in Wales have benefited from residential and non-residential relief, as have – to a lesser degree – registered social landlords. Any changes to this relief would have a damaging effect on the third sector.
5. We maintain that it is a false economy to reduce financial support for third sector organisations: such cuts would not realise notable savings – or, in this case, yield substantial tax revenues. Retained relief will help to deliver considerable added value through the sector's ability to lever in additional resources. It should therefore be a priority to maintain the relief available for charities and registered social landlords who are able to maximise resources available in the community, and support the massive contribution made by volunteers.

6. We therefore believe that it is vitally important that third sector organisations continue to benefit from the reliefs when the changes from Stamp Duty Land Tax to Land Transaction Tax are made.
7. Also, in general regarding matters related to the changing picture of devolution, we would argue for clarity and simplicity in administration and transposition of powers.

Gareth Coles
WCVA

Reference 30



Tax Devolution in Wales – Land Transaction Tax

ICAEW welcomes the opportunity to comment on the consultation paper [Tax Devolution in Wales – Land Transaction Tax](#) published by the Welsh Government on 10 February 2015.

This response of 6 May 2015 has been prepared on behalf of ICAEW jointly by the Tax Faculty and the ICAEW's Director for Wales, supported by input from a working party of members based in Wales.

The Tax Faculty is a leading authority on taxation and internationally recognised as a source of expertise. 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. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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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 144,000 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.

MAJOR POINTS

Introduction

1. We welcome the opportunity to comment on the proposals in the Welsh Government's consultation document of 10 February 2015 [Tax Devolution in Wales – Land Transaction Tax](#). On 12 December 2014 we commented on the consultation paper *Collection and management of devolved taxes in Wales* which was published as TAXREP 62/14.
2. In principle we support the overall approach adopted by the Welsh Government in the paper.
3. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

General comments

4. ICAEW welcomes the opportunity to support the introduction of a Welsh land transaction tax (LTT).
5. We believe the introduction of LTT provides the Welsh Government with an opportunity to devise a tax that is better suited to the needs of Wales and is far simpler to understand and operate for both taxpayers and the Welsh Revenue Authority (WRA).
6. In our view SDLT has become far too complicated to operate and administer and high marginal rates and the retention of a slab system for non-residential property will continue to encourage planning to mitigate or avoid the charge.
7. We would urge the Welsh Government to design LTT so that it is much simpler and more straightforward than its SDLT equivalent, and more closely aligned to our *Ten Tenets for a Better Tax System*, by which we benchmark the tax system and changes to it (summarised Appendix 1), in particular:
 - commercial and non-commercial property rates and bands should be unified;
 - a marginal rate system should be adopted for a unified LTT;
 - the aim should be to set rates that are closer to those currently in use for SDLT on non-residential property;
 - there should be a detailed cost benefit analysis review of all reliefs to see if they are justified in the light of the suggested approach set out above; and
 - the aim should be to have a simple unified tax with a straightforward and reasonable set of rates with the minimum possible number of reliefs.

RESPONSES TO CONSULTATION QUESTIONS

8. We set out below our detailed responses to the questions set out in the consultation document.

Chapter 2: Residential property transactions

9. See our general comments set out above. We support in principle a marginal rate approach to LTT.

Q1 Do you think the current residential 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.

10. Tax rates are ultimately a question for the Government to decide. However, the introduction of LTT provides an opportunity to the Welsh Government to devise a tax that is far more simple and straightforward than its SDLT equivalent. As noted in the general comments above, we would argue strongly for a radical approach to LTT based on a unified system for residential and non-residential properties, a marginal rate system with modest rates and the minimum of reliefs.
11. The introduction of LTT provides an opportunity to set rates that work for Wales. The current SDLT rate bands do not appear particularly logical and a case might be made for adopting a more straightforward and progressive system of rates that is more intuitive and easier for taxpayers to understand, for example:

On the first £125,000	0
On the next £125,000	2%
On the next £125,000	4%...

...and so on.

12. However, it is reasonable to question whether the existing rates and bands work for Wales, given the lower average house prices and that the number of higher value properties is much lower than the rest of the UK - according to para 2.20 of the consultation document only 1% of all Welsh property transactions are above £500,000. Given these lower prices there are strong arguments for reducing the threshold at which LTT starts to be paid, for example zero rate band could be lowered from £125,000 to £100,000, and marginal rate bands set at lower amounts than the SDLT equivalents.
13. Given the need to maintain revenues, adopting a radical approach to LTT will require careful consideration of the rates and bands so as to ensure current revenues were as far as possible maintained. However, the Government also needs to factor in the compliance costs that would be incurred by a more complicated system, both for taxpayers and the WRA.
14. High marginal rates of SDLT will encourage greater planning designed to reduce the LTT charge through, for example, enveloping or fragmentation.
15. We suggest that the rates and income levels should be reviewed after the new system has been allowed to bed down. We suggest this should be after three years.

Q2 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.

16. The 15% rate adds considerable complexity of the SDLT tax system and we are not convinced that its adoption in Wales is justified. We have suggested a radical simplification of LTT over SDLT and the adoption of unified rates. Given that recommendation we do not think this provision should be included in the LTT rules.
17. As a minimum, the 15% rate should be subject to a thorough review as to its costs and benefits. It is difficult to know how often it applies in practice without knowing precisely the extent of the number of properties that are enveloped within companies and how much SDLT at the 15% rate is collected in Wales. Given that it applies only to residential property and the relatively small number of high value properties as compared to the UK generally, we would not have thought that it applied very often and therefore the potential increased revenue is likely to be very modest.

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

18. Any differences between SDLT and LTT are likely to create differences between the English and Welsh property markets and these are likely to be most noticeable around the border between England and Wales. However, the residential market is heavily influenced by other factors, including council tax rates, availability of local schools and services and so on. Given that most residential property will be subject to duty at the lower rates the impact of differences between the regimes is unlikely to be a major factor when set against the wider considerations of the residential property market and that it is a once off cost rather than a recurring one.

Q4 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.

19. As a general principle we think Governments should avoid introducing changes with immediate effect unless it is to counter avoidance or that a prospective change will result in major behavioural changes. However, we appreciate that an announcement of prospective changes in LTT rates will distort the market in the short term. So on balance we think the Welsh Government should have the power to change or introduce new bands with immediate effect but it should use any such powers sparingly and judiciously.

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).

20. Given we have suggested a unified system there would be no requirement for a definition of residential property. The need for a definition will inevitably create boundaries with the scope for uncertainty, increased compliance costs and potential planning opportunities.

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)?

21. Ultimately this is a policy question for the Welsh Government to decide. While consistency might be preferable at the UK level in terms of reducing compliance costs we do not think this should be a barrier to the Welsh Government adopting a more radical approach that works for Wales. There appears to be little or no point in devolving taxes if they remain exactly the same as the rest of the UK. It is important to ensure that any devolved taxes not only work for Wales but also raise revenue to replace any lost.

22. As noted earlier we would recommend a single unified LTT regime for both commercial and residential property. This avoids the need for any special definitions and attendant complexity. We believe that a marginal tax system is preferable because it is right in principle and avoids unnecessary complication and attendant compliance costs, both for businesses and the WRA. The differences between the higher rates of SDLT for residential and commercial property inevitably cause difficulties in practice and encourage tax planning to take advantage of the lower rates available for commercial property. As stated above there is much to be said for one single and coherent regime that applies to all property and with uniform rate bands.

23. As average property prices in Wales are lower than in England consideration should be given to lowering the threshold at which LTT applies. We believe that LTT rates should be reasonable but a critical look should be taken at all reliefs to see whether they are needed, thereby maximising revenue, reducing complexity and minimising the scope for avoidance. We believe a simple and straightforward regime would work for Wales and encourage inward investment, and we recommend this approach to the Welsh Government.

24. We think it is unlikely that a lack of consistency with SDLT rates would have a major impact on the location of businesses given the many other factors to be considered.

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.

25. A slab system by its nature will result in distortions in the commercial market and tax planning and potentially avoidance to stay within the thresholds, for example by way of sale splitting or paying separately for chattels etc. The system is therefore likely to generate more uncertainty, disputes, investigations and attendant costs. In principle, therefore, we would recommend a marginal system for non-residential property.

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

26. The key impacts would be felt closest to the border but it will depend upon how different are the SDLT and LTT regimes. We believe a LTT regime that was simpler and not significantly more expensive would not have any major impact on the commercial market. Clearly if the tax rates differed markedly then the markets will be different and this would impact on investment decisions, both around the border and potentially across the whole of Wales. It would be important to ensure that LTT does not discourage investment into 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.

27. We recognise that certainty and consistency are particularly important for businesses. We have suggested a radical simplification of LTT as compared to SDLT and if this approach is adopted we think that all of these provisions should be thoroughly examined to see if they are actually necessary and whether there is scope to simplify them. Subject to that the Welsh Government should consider replicating the equivalent SDLT rules.

28. The introduction of LTT provides an opportunity to provide a coherent and consolidated set of rules. We also agree with the comment in paragraph 4.16 that it should be a priority of the Welsh Government to develop clear and comprehensive guidance on these issues.

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?

29. We do not have any detailed information to make a judgment on this but the Welsh Government approach appears reasonable. In principle, if the rent is equivalent to part of a capital transaction then it should be subject to LTT. However, the potential admin costs of collecting a large number of very small rent LTT payments is likely to be considerable and

could be a waste of scarce resources for the WRA. We would suggest that this element of LTT should be subject to a detailed cost benefit analysis.

30. The need to discount the future rents adds to the complexity of the calculations and given current interest rates we wonder if this element should be abolished in favour of just adding up all the rents due under the lease at inception.

31. It is difficult to predict whether abolition of this element of LTT would result in unexpected behavioural changes that may reduce revenues from LTT.

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?

32. Regular returns might improve compliance but they need to be tested against the inevitable increased compliance costs, both for the taxpayer and critically for the WRA. The compliance costs of providing and checking regular returns is likely to be high as they are likely to require detailed knowledge of some highly technical and complicated issues and these requirements need to be balanced against the potential revenue risk. In our view, a compelling business case would need to be made for requiring regular returns – we suggest that the revenue to cost ratio should be a minimum of two to one.

33. If it was decided to request regular returns, we would suggest a reasonable period would be five years and that a review should be undertaken of the reporting regime at that stage to see if it is actually required.

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

34. This would be a major change in existing SDLT policy and likely to increase the admin burdens and complexities of LTT considerably, with the consequent increase in compliance costs for collecting what are likely to be very small amounts of LTT. We would therefore not recommend this although consideration could be given to introducing a standard fixed charge on such transactions similar to the former charges on documents under stamp duty, but the revenue that resulted is likely to be modest and would need to be tested against the cost of collection – see our comments in Q11 above.

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?

35. We would suggest that this question is best discussed with SDLT specialists: in practice they are likely to be solicitors and/or licensed conveyancers.

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.

36. Reliefs inevitably introduce complexity and increase the chances of them being used in inappropriate ways, especially where the marginal tax rate is relatively high. The recent work of the National Audit office on tax reliefs highlights the need for the policy reasons for and effectiveness of reliefs to be kept under review as well as the overall costs of them and whether they provide value for money. Given the relative importance of LTT in the Welsh Government's budget, it is all the more important to monitor the cost effectiveness of tax reliefs. In order to manage LTT tax reliefs effectively, however, the returns will need to capture management information and systems will need to be devised to monitor and control them – and this will need resources and money to devise and implement.

37. We have said above that the Welsh Government should consider adopting a more radical approach to the design of LTT aimed at simplifying the system. As part of the design of a radically simpler LTT, we believe that there should be a thorough review of all exemptions and reliefs starting from a 'zero base', to identify if they are absolutely necessary and provide value for money.

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

38. We said above that all reliefs and exemptions should be subject to thorough review and this applies equally to sub-sale relief. Nevertheless sub-sale relief performs an important function in the property development market and our understanding is that changes introduced by the FA 2013 have stopped it being used in inappropriate circumstances to reduce SDLT. Nevertheless it adds to the complexity of the tax system, especially following the FA 2013 changes. If it is retained we suggest its effectiveness should be reviewed at some future date.

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

39. Given all we have said above we do not think that any further reliefs should be introduced. In the current fiscal climate and the need for LTT to provide the Welsh Government with a stable source of tax revenues, there would need to be a compelling business case to justify any new relief and what effect it would have on behaviours and revenue streams. At the present time we cannot see what that might be.

Chapter 7: Compliance, Avoidance, Disputes and Penalties

Q17 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?

40. Taxpayers need to have confidence that any electronic system will be robust, reliable, secure and easy for taxpayers to use. Over the longer term we would expect the use of paper returns to decline and there may come a point where it is not economic to continue with paper returns but that should be a decision for the future.
41. As a general principle we do not support mandatory e-filing of returns and believe this should be a business decision based on speed, convenience and certainty. The Welsh Government should look to encourage taxpayers to adopt online filing and this will include emphasising the cost benefits of online payments and filing. As a further encouragement the Government might include financial incentives, eg a discount for filing electronically, or a payment like that made to employers some years ago to encourage online filing of end-of-year PAYE return form P35.

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

42. We would expect that most LTT returns would be made by a legal representative using electronic means as part of a conveyancing process. The aim should be for online filing to be the normal method, but some provision will be needed for making and submitting paper returns, for example where it is not practicable to file electronically.

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

43. A well-designed electronic system should be easier and more convenient to use and also reduce admin costs. Cash incentives are always likely to encourage a greater take-up of online/electronic payment but given the speed, convenience and lower transaction costs we would expect any incentive needed could be quite modest.

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

44. In principle we do not see why it should. Usually we would have expected SDLT to be paid promptly on completion, although paying it at the same time as submitting a return might give rise to a greater compliance burden. Before making any decision to follow the LBTT approach, it would help to know whether the Scottish system gives rise to any practical problems, but given the tax has only been in place since 1 April 2015 we suspect that more time will be needed to see how it will work in practice.

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?

45. If the Welsh Government adopts a radically simplified LTT as described above, the likely take up of a pre-clearance facility would be much less than for SDLT.
46. That said, we would recommend the Welsh Government considers the introduction of a pre clearance facility along the lines of the existing HMRC procedures. The one factor taxpayers value most above others is certainty at the time of the transaction giving rise to the tax charge.
47. Clearly a clearance system will require resources and these would need to be factored in to any decision. We would not recommend charging taxpayers who wish to obtain certainty. However, to help reduce the numbers of applications consideration should be given to publishing the results of clearance applications, and taxpayers should be encouraged to check any published statements before an application is made.

Q22 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.

48. Yes, because it is important to ensure taxpayers file prompt and accurate returns. However, the design of LTT should take account of any outcome of the review currently underway of the existing UK penalty regime. As a general rule, we do not think that a normally compliant taxpayer who makes a genuine mistake or who misses a deadline should be automatically subject to penalties. A better approach might be to first issue them with a warning letter that penalties will be applied if there is another failing within a certain period.

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

49. Yes, because it is important to ensure that taxpayers pay their taxes promptly.

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?

50. This is a difficult area and we welcome the Welsh Government's commitment to fairness and also seeking to resolve disputes without them going to court, which is a slow and expensive process for taxpayers and revenue authorities.
51. If LTT is radically simplified from SDLT, we would expect that there would be far fewer appeals than under SDLT, thereby reducing the resources and costs associated with resolving appeals.
52. We do not support the Scottish approach adopted for LBTT (in effect pay any disputed tax even if the taxpayer wishes to appeal) and believe the Welsh Government should adopt a more reasonable approach, especially in cases of clear uncertainty.

Q25 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.

- 53.** We are aware of a number of concerns about this legislation. In the short term we would expect that the Welsh Government would want to replicate this provision given the need to protect potential revenue streams. Consideration should be given to consulting further with stakeholders about whether the provisions could be replaced with a simpler and more targeted provision.

Other Questions

Q26 Do you have any comments on the initial impact assessment (located at Appendix 2)?

- 54.** Not at this stage. We would welcome the opportunity to provide any further help in updating it in due course.

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.

- 55.** Not that we are aware of at this stage.

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

- 56.** A crucial decision is: who will actually operate and administer the tax? Will it be entrusted to HMRC or will another provider be sought? It is important for the credibility of the devolution of taxes that full consideration is given to identifying and addressing implementation problems before they arise, whether HMRC is the preferred provider or some other provider is contracted to administer LTT.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)

Reference 31



To: FinancialReformMailbox@Wales.gsi.gov.uk

Date: 6 May 2015

BPF response to Welsh Government consultation on the introduction of a Land Transaction Tax

Dear Sir/Madam,

Introduction

The British Property Federation (BPF) is the voice of property in the UK, representing businesses owning, managing and investing in property. This includes a broad range of businesses comprising commercial property developers and owners, financial institutions, corporate and local private landlords and those professions that support the industry.

Executive summary

We are delighted to comment on the introduction of a new Welsh Land Transaction Tax (LTT) and commend the genuinely broad and open nature of this consultation. In general terms, we would encourage the Welsh Government to develop a tax that is as consistent as possible with the UK SDLT regime. Any deviations from SDLT would ideally be clearly signposted for taxpayers. Ultimately, we are concerned that any significant changes to the current, familiar, regime could act as a deterrent to investment.

That said, the development of this new tax presents a unique opportunity to improve upon the operation of certain aspects of the UK SDLT rules. In Appendix 1 we have sought to provide input on areas where the Welsh LTT could achieve this outcome, but in summary:

- **Anti-avoidance** – The current SDLT anti-avoidance legislation creates significant uncertainty for taxpayers because it is so broadly drafted. We would recommend including a motive test element to any LTT anti-avoidance rules.
- **Leases** – We do not think the system of taxing leases in Wales would be improved by requiring a regular return. It is important not to lose sight of the fact that LTT is a transaction tax. Any potential payment which may be required long after the transaction date simply creates uncertainty for the taxpayer.
- **Slab vs. slice** – We are pleased that the UK Government moved away from a slab system for residential SDLT, which created distortions in the market around the thresholds. We understand that a slab system for commercial property does not create the same distortions – largely because the bulk of the value of commercial property rests in properties paying the

highest rate. We would therefore not recommend changing the slab system for commercial property, unless evidence indicates that it creates distortions in the Welsh market.

- **Pre-clearance facility** – It is important that the Welsh Government can provide a well resourced pre-clearance facility, particularly for any areas of LTT that end up deviating from UK SDLT. Certainty regarding tax treatment is normally required much more quickly for transaction taxes than for other types of taxes.

We look forward to continuing to engage with the Welsh Government as it further develops LTT proposals. We are confident that an open and consultative approach to tax policymaking will improve the quality of final legislation.

Please do not hesitate to contact us if you would like to discuss our response in more detail or if you have any questions.

Yours faithfully,



Rachel Kelly
Senior Policy Officer, British Property Federation
Email: Rkelly@bpf.org.uk
Tel: 0207 802 0115

Appendix 1: Responses to consultation questions

Chapter 2: Residential property transactions
<p>1. Do you think the current residential SDLT rates and bands are suitable for Wales?</p> <p>- If you think the current rates are suitable, please provide reasons why.</p> <p>- If you think the current rates are not suitable, please provide reasons why and, where appropriate, provide suggestions for alternative rates and bands?</p>
<p>We do not have a view on whether the rates and bands are suitable for Wales.</p>
<p>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?</p>
<p>We understand that the 15% slab rate was introduced to act as a disincentive to people enveloping properties that they live in. If this type of structuring is considered to be a problematic feature of the Welsh real estate market, the Government may want to consider replicating this higher rate. However, we would encourage any such measures to be carefully targeted so as to not apply to those who have no choice but to own property through a non-natural person.</p> <p>It is important to ensure that the compliance and administration burden placed on any specifically exempt businesses is kept to a minimum. The UK Government recently consulted on simplifying the administrative burden of this tax on exempt businesses and we would encourage the Welsh Government to replicate these changes if this 15% slab rate is introduced.</p>
<p>3. What would be the key impacts on the residential market in Wales of having a different transaction tax regime from England?</p>
<p>In general, the nature of the residential transaction tax in a certain jurisdiction will be far from the main factor driving where an individual chooses to buy a home – unless the tax rate is particularly prohibitive. As such, the type of transaction tax in place should have a limited impact on individuals buying homes for their own occupation.</p> <p>It is more likely to have an impact on investors who will consider all financial factors when assessing the viability of an investment opportunity. To that end, there would be merit in not setting a rate or system which is uncompetitive. In this context, it would be important to maintain reliefs such as the multiple dwellings relief (MRD) to ensure that large scale developers and investors in residential are able to benefit from commercial SDLT rates where they purchase more than 6 properties (to the extent that the LTT rate on commercial property is set at a lower level than that for similarly valued residential property).</p>
<p>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?</p>
<p>As a general matter, we would encourage the Welsh Government to consult on any future changes to LTT – including rates and bands. This would achieve two important objectives; firstly it would assist the government in properly assessing the potential impacts and secondly it would send out an important signal to investors that the government recognises the value of stability and certainty in</p>

the tax system.

Since 2010, the UK government has broadly followed a clearly defined tax policymaking process, where changes to the legislation are extensively consulted on. On the whole, this has led to better legislation that is easier to understand and works with – rather than against – the grain of commercial reality. Where this process has not been followed (e.g. the sudden introduction of the 15% SDLT rate, changes to the VAT treatment of certain items of hot food, diverted profits tax) the result has often been legislative confusion and general dissatisfaction. We would therefore caution against introducing legislative changes without consultation.

That said, we recognise that there may be times when the Welsh Government may want to adapt the tax to respond to changes in the Welsh economy and property market; or to immediately take action regarding an anomaly or loophole in the legislation. Rate and band changes that have immediate effect also create smaller market distortions as people do not have time to take responsive action (such as delaying or bringing forward transactions). Accordingly, it is probably appropriate for the Welsh Government to have the ability to make instant changes to LTT rates, bands and anti-avoidance provisions, but to use these powers sparingly.

5. 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)?

While some definitions in the SDLT legislation are subject to interpretation; the industry seems to understand the current definition and any deviation from this would only add uncertainty. If the Welsh Government chose to implement a tax broadly similar to SDLT; it is important that any differences are clearly highlighted. To that end; should any changes be made to the definition of residential property, it would be preferable to have very clear and specific legislative change, rather than small tweaks to definitions.

Chapter 3: Non-residential property transactions

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)?

It is important for the tax regimes in England and Wales to be consistent. It is arguably more important for there to be consistency in the commercial market where a larger proportion of the stock is owned by investors rather than being owner occupied. There may be reluctance for investors to have to get to grips with a totally new tax system and as such; they may be inclined to invest in jurisdiction where they have experience and knowledge of the tax system. To that end; it is important for the structure of the tax to be fundamentally the same and for there to be consistency in the way that transactions and entities are taxed. If and where there are differences between the two taxes; these should be clearly sign posted through guidance.

7. 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?
We understand that a slab system does not create the same distortions as it did in the residential market in the UK – largely because most of the value transferred in non-residential property transactions is subject to the upper rate of SDLT. Policy makers should explore whether the same is true for the commercial real estate market in Wales specifically.
8. What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?
See response to question 6. A far larger proportion of the non-residential market is owned by investors than the residential. Therefore, the amount of transaction tax charged on a particular investment will be an important consideration in the investor's feasibility calculation. Furthermore, as noted previously, a different tax regime all together could put off potential investors who are already familiar with the SDLT regime.
Chapter 4: Partnerships, trusts and Companies
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?
Overall, we consider that it would be better to replicate the SDLT provisions for partnerships, trusts and companies within LTT on the basis that a different regime would be unhelpful. While these areas of the legislation have their complexities, at least users are familiar with them. However, we would be supportive of the Welsh Government exploring and consulting on possible options to simplify specific areas of the legislation or guidance.
Chapter 5: Leases
10. 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?
The Welsh Government should consider whether any tax currently gets collected on the rent element of residential leases. Given that the rent element of residential leases would need to be unusually large to warrant an SDLT charge, it seems unlikely that much, if any, tax is collected on the rent element of residential leases. If this is the case, then there may be scope to simplify the LTT legislation by removing this charge. If there is a concern that this could open up opportunities for avoidance, the Government could retain the right to reintroduce it through regulation at a later date.
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?
We do not think the system of taxing leases would be improved by requiring a regular return. The current system requires a calculation of the net present value (NPV) of lease payments occurring following the grant of a lease with the opportunity to make an adjustment after 5 years. A system which requires more regular returns will not only increase the compliance burden for both tax payers and collection authorities, but it will reduce tax payers' certainty of their tax charge.
We understand that little if any tax is currently collected through adjusted NPV calculations at the 5

year point in a lease. Therefore, we would question whether this adds any value to the legislation or whether this could be removed. It is important not to lose sight of the fact that this is a transaction tax and as such, we would not recommend further returns after the transaction has taken place.
12. Do you think that licences and tenancies at will should be taxed in the same way as leasehold agreements?
No comment.
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?
One area of difficulty is the targeted anti-avoidance provision contained within FA 2003 Schedule 17A Para 11 that impose a restriction on the assignment of leases following certain claims for relief. This provision is not time-barred unlike the other claw-back provisions within FA 2003 Schedule 7 Part 2 and Schedule 8 Para 2. It therefore unfairly penalises those who wish to assign a leasehold interest many years after the original claim for group or other relief has taken place.
<i>Chapter 6: Reliefs and Exemptions</i>
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?
<p>The current SDLT reliefs and exemptions appear to be appropriate and we would suggest that the default should be to transfer them all over in the first instance. However, we appreciate that it is sensible to evaluate and assess whether these reliefs are appropriate and effective for the Welsh market.</p> <p>We understand that there is a lack of data on what reliefs and exemptions are applied and therefore it is hard to monitor how they are utilised and whether they are effective. It would be sensible to include a section on the SDLT/LTT return for the tax payer to confirm whether any reliefs or exemptions have been applied.</p>
15. Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?
This relief is very important in the context of large real estate transactions involving the transfer of land to a developer before completion. The SDLT sub-sale legislation is still relatively new and we would encourage the Welsh Government to allow more time for users to get used to the legislation before making any significant changes. However, it would be sensible to monitor its effectiveness and review whether any simplifications should be made in the coming years.
16. Do you think there are any suitable cases for introducing new reliefs? Please explain why?
In the Autumn Statement 2014, the UK Government committed to introduce an SDLT seeding relief for PAIFs (Property Authorised Investment Funds) and CoACS (Co-ownership Authorised Contractual Schemes), subject to addressing any avoidance concerns. We are fully supportive of this initiative and would encourage the Welsh Government to monitor developments and ensure that the same relief is mirrored in the Welsh LTT legislation.
<i>Chapter 7: Compliance, Avoidance, Disputes and Penalties</i>
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?
No comments.
18. What arrangements should there be for those who cannot file online?
No comments.
19. How do you think the rate of online payment could be increased compared to SDLT?
No comments.
20. Would requiring payment of the tax at the same time as submitting the return cause any problems? Please explain why?
In practice, SDLT is generally paid at the same time as the transaction is completed. We therefore do not foresee any significant problems with requiring payment at the same time as submitting the return.
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?
Yes – particularly where there are differences with UK SDLT. The facility will need to be adequately resourced to respond to queries within a reasonable timeframe. Certainty is normally required much more quickly for transaction taxes than for other types of taxes.
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?
It seems sensible to broadly replicate similar penalties – with a view to allowing some reasonable application of the rules in cases where particularly complex or non-standard transactions are undertaken or where the compliance or filing procedures are unclear.
23. Should LTT impose penalties for late payment of tax similar to those available to HMRC to encourage prompt payment of tax?
No comments.
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?
No comments.
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.
The current legislation in s75A is far too broadly drafted and this results in considerable uncertainty for businesses. We would strongly recommend changes are made to this anti-abuse provision and would suggest that at the very least the rule should contain a motive test so as to apply only in cases

of genuine tax avoidance.
Other questions
26. Do you have any comments on the initial impact assessment (located at Appendix 2)?
No comments.
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?
No comments.
28. Do you have any other comments on the Welsh Government's plans to implement a land transaction tax in Wales?
No comments.

Reference 32



**Glandŵr
Cymru**

The Canal & River Trust in Wales

06 May 2015

Glandŵr Cymru – The Canal and River Trust in Wales

POSITION STATEMENT: Land Transaction Tax

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.

At the Canal and River Trust we work nationally over England and Wales. Whilst we are most often associated with boating, our Estates department manages **a significant portfolio of property that includes historic warehouses, cottages, offices, industrial estates and land. All profits made from our assets are then reinvested to secure the future of our canal and river network.**

Because of this, the Trust recommends that the charities relief remains in line with the UK SDLT legislation. Removal or reduction of the Charities relief could seriously impact on the Trust's ability to unlock further economic benefits from the canals and rivers of Wales.

Due to the complexity of SDLT, from our perspective it seems sensible to keep compatibility in Wales with UK government legislation. This should avoid confusion and additional bureaucracy.

Whilst we appreciate that other bodies may have differing views on the other reliefs outlined in the consultation, in this context we support the intention of the Welsh Government to follow the UK and retain most (if not all) reliefs.

Laura Lewis

Public Affairs Officer – Glandŵr Cymru - Canal and River Trust in Wales

Reference 33

Mike Bird

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, our 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. :

No, if the slab rate system is wrong in principle (and it is), it is wrong.

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

If simpler in Wales, it could make the tax demonstrably fairer.

If 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. The problem is outlined in the Consultation Document, can the authors come up with a less ambiguous definition?

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, it could deter investment. But if the system is simple and seen to be fair, most businesses (who find their way around Capital Tax reliefs, etc.) 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. It really is up to the authors to undertake factual research.

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

If simpler in Wales, it could make the tax demonstrably fairer.
If 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. :

It does seem unnecessarily complicated. Right to gather everything in one place, but treatment of different types of “person” should be consistent between taxes (e.g. with Corporation Tax).

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? :

No, it is pretty irrelevant. 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 radically so that more of the value is taken in higher rents, rather than in premiums (highly unlikely), that would be the time to consider an amendment to the system.

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? :

No, an unnecessary burden (see answer to Q10). Use an old Stamp Duty measure to ensure a contract (transfer on sale or a lease) 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 (and the law on this is straightforward enough), 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? :

Nothing springs to mind.

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. :

Retain some, not others. I agree LLT should exclude SDLT reliefs for demutualisation of insurance companies and building societies, right to buy transactions including shared ownership leases and collective enfranchisement by leaseholders, as these are there for political reasons I do not wish to see encouraged. But I do not see any reason not to continue some reliefs, such as reorganisation of Parliamentary constituencies or acquisitions by bodies established for national purposes. I don't think the question and response here does justice to the subject, and would urge a full discussion of all reliefs proposed to be included or excluded, perhaps in a separate, small consultation.

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

If the UK Government reform is actually effective, yes.

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

Yes, local authority purchases, to enable assembly of land banks for “council house” building.

Chapter 7: Compliance, avoidance, disputes and penalties

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

Make it simpler.

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

None. I simply do not believe that a taxpayer involved in a transaction upon which LTT will be due really cannot file online themselves or via an agent.

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

Adopt the Scottish LBTT (that LTT must be paid at the same time as the return is submitted unless other arrangements to pay have been made).

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

No, it shouldn't.

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, 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, increasing the size of penalties relative to what is currently levied with SDLT, as suggested.

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

Yes.

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? :

I agree with what is described.

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. :

I do not know enough about the specifics of anti-avoidance enough to comment, except to point out that 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 will be a problem.

Other questions

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

I am a little surprised the Welsh Government have not undertaken 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. :

No, it should not.

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

Yes, that there is absolutely no need for a Welsh Revenue Authority, unless it is a small body to administer the tax and to commission collection of LTT by HMRC. I responded separately to this in an earlier consultation.

Reference 34

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CF10 3NQ

By email: FinancialReformMailbox@wales.gsi.gov.uk

6 May 2015
Our ref: WJID/TP/AP1

Dear Sir or Madam

Tax Devolution in Wales – Land Transaction Tax

We welcome the opportunity to comment on the proposed replacement in Wales from April 2018 of Stamp Duty Land Tax (SDLT) by a new tax to be called Land Transaction Tax (LTT).

By way of general comment, we consider there to be areas where there is potential for LTT to be a better tax than SDLT, and to be better adapted to Wales than SDLT. SDLT can be excessively complicated and lack clarity. LTT can be better adapted to Wales in, for example, its choice of reliefs or the rate structure for residential property.

Divergence from the SDLT rules should, however, initially at least, be selective. This is because there is inevitably some cost to tax payers and tax administrators alike in having to follow two sets of rules rather than one (and ultimately a cost to Wales where this discourages investment). There is also greater risk of uncertainty and unintended consequences where LTT differs from SDLT. This selective approach was, rightly in our view, the one taken in Scotland, where Land and Buildings Transaction Tax (LBTT) was introduced in April this year.

A related question is whether LTT should diverge from SDLT in the same areas as LBTT has, and thus align with choices which have already been made in Scotland. The challenge in this regard is that the Scottish economic and political situation may be closer to that in Wales than in England, but the Welsh economy is geographically and legally far more integrated with England. Perhaps for this reason, in some cases we prefer the rules applying under LBTT but, in most cases, we believe staying close to SDLT is a better option.

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Member of Deloitte Touche Tohmatsu Limited



Our responses to specific questions are set out in the Appendix.

Yours faithfully

A handwritten signature in blue ink that reads "Bill Dodwell". The signature is written in a cursive, slightly stylized font.

W J I Dodwell
Tax Policy Group

Appendix

Question 1: 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.

We believe that the rates (but not necessarily the bands) could be the same as those applying under SDLT and LBTT, i.e. 2%, 5%, 10% and 12%. This would provide consistency with those taxes, without denying the Welsh Government flexibility. The Welsh Government would be able, for instance, to exempt lower and medium value transactions by introducing a relatively high nil rate band but then apply the higher rate bands at relatively low levels.

As noted in the consultation, this indeed is the model followed in Scotland (where the nil rate band is £145,000 as compared with £125,000 currently in England and Wales, but the 10% and 12% rates then engage at significantly lower levels than for SDLT). Scotland has adopted a more progressive structure, reflecting different political choices and lower average house prices. If desired, a similar path could be followed in Wales.

Question 2: 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.

Although introduced as recently as 2012, the 15% charge in Schedule 4A FA 2003 now sits less comfortably within the SDLT regime following the introduction of the slice rate system and the introduction of a 12% top rate. We would certainly question the relevance of the 15% rate charge in the Welsh context. Further, the LTT legislation will be shorter and simpler if it does not need to include the charge and, in particular, the long list of exemptions required to make the charge workable.

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

We are not in a position to comment in detail on this question but clearly any impact would depend on the degree of difference between the taxes. Additionally, there are always likely to be many other factors (such as differences in council tax rates, local economy, planning and housing supply) that have as much or more impact on the residential housing market as differences of transaction tax regime.

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? 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.

We cannot see why the Welsh Government should not have similar powers to change rates, and make other changes by regulation, as exist in Westminster in relation to SDLT and Holyrood in relation to LBTT. Such powers, which should be subject to checks, including National Assembly scrutiny, seem appropriate - not least to enable Wales to move quickly to stay aligned with changes made to SDLT at short notice.

Question 5: 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).

The definition of residential property is relevant to a number of areas in SDLT (rates, multiple dwellings relief, 15% rate charge), and is subject to some subtle differences (for instance, the inclusion of off-plan purchases within multiple dwellings relief and the exclusion of the types of buildings in section 116(2) FA 2003 from the 15% charge). We consider that the definition is broadly satisfactory and, above all, consider that this is an area where uniformity would be valued by taxpayers and their adviser. We therefore consider that, as far as possible, differences in the definition of residential property within the LTT regime and from SDLT should be avoided. This should also allow existing guidance (such as that in SP 1/2004) to be adopted without qualification.

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)?

We believe that the regimes for dealing with non-residential property in Wales and England should be aligned. Businesses operating or engaged in merger and acquisition activity on both sides of the England/Wales border will not generally welcome having to allow for different rates or rules in Wales. Businesses will place value on transacting in a regime with which they are familiar, albeit that there will be some additional compliance cost in completing different returns and making separate payments for Welsh properties. If Wales is perceived as having a different regime for non-residential property, that might harm investment in Wales by businesses more familiar with the current rules.

Question 7: 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.

Our experience of non-residential property transactions is mostly in dealing with those where the consideration is over the £500,000 threshold. In such situations, the slab rate is easy to calculate and does not, unlike the case formerly with residential property, tend to cause distortions or other difficulties. It is simpler than operating a marginal rate system and should be preferred for that reason.

Question 8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?

The actual effect would depend on what the differences are but, as stated above, the perception that Wales has a different transaction regime for non-residential market may in itself be detrimental to 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.

The SDLT provisions dealing with trusts and companies are relatively straight forward. With the exception of a problematic rule under which bare trustees are not transparent for lease transactions (paragraph 3(3)(4) Schedule 16 FA 2003), their operation does not generally cause difficulty.

The partnership provisions are, by contrast, widely acknowledged to be excessively complex. They also include rules which are hard to justify (such as charges arising by reference to income rather than capital profit share and, in certain circumstances, on the mere withdrawal of capital or repayment of debt). However, our view is that, particularly as reform appears likely, Wales would do best to replicate the current rules applying under SDLT (Schedule 15 FA 2003) in anticipation of adopting reform as SDLT is improved. There may, however, be some scope for making the layout of the rules easier to follow as has been done under LBTT (Schedule 17 LBTT(S)A 2014).

Question 10: 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?

The rental element payable under residential leases should not be taxed under LTT. The revenue forgone by not collecting such tax would, we suspect, be very small. If the nil rate band for residential leases is, say, £145,000 (or even £125,000 as currently applies under SDLT), the number of leases where the net present value of rent payable exceeds that amount will be very small. Additionally, even where LTT would arise, the amount due may be disproportionate to the compliance cost. This is particularly true where the nil rate band is only exceeded after a lease is renewed a number of times. Additionally, in such cases, there may also be uncertainty around whether such renewed leases should be aggregated (which depends on whether they are "linked transactions" under section 108 FA 2003) with inadvertent non-compliance by tenants with access to estate agents and perhaps lawyers, but not specialist tax advice.

The balance of convenience is therefore against a regime for taxing rents under residential property, particularly in Wales where rents may generally be lower. There is a deregulatory benefit in not doing so.

We do not consider that exempting rents is likely to encourage landlord and tenants artificially to move consideration into rents rather than premium. Short leases are generally for rent and long leases for premium and that is unlikely in our view to change, or at least not for reasons relating to LTT.

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?

The SDLT regime for taxing leases (in Schedules 5, 17A FA 2003) strikes a good balance between the desire that tax should 'follow the money' and a desire for finality. By taking all the actual premium plus only the first five years of rent into account (and assuming rent for the remainder of the term based on the highest 12 months of rent in that period), most tenants are able to achieve certainty at the outset. This is because the rent is usually known for that period (which usually takes the lease up to its first rent review). And, in cases where it is not, finality is achieved at the five year point. The regime has been simplified over the years, including the abolition of adjustments for "abnormal rent increases" after year five (in 2013).

We think this is the regime which LTT should adopt, rather than following the much more compliance-heavy route adopted in Scotland (of requiring returns every three years until the end of the lease), which is disproportionate for a 1% tax.

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

Our experience is that licences and tenancies at will tend to be preferred in intra-group or low value circumstances where no SDLT would be due (although a return claiming relief might be required) even if they were structured as leasehold agreements. In cases where a significant

amount of rent is payable, parties prefer the formal leasehold agreement structure because of the legal certainties and protections that affords (e.g. in the event of a change of ownership, dispute regarding obligations or raising of finance against the property). Leasehold interests confer lasting rights in land, whereas licences are contractual in nature and tenancies at will are generally terminable without notice.

In conclusion, therefore, we believe it appropriate that licences and tenancies at will are not taxed to LTT, both because of the differences in legal character and commercial usage, and the relatively little amount of tax they may yield (proportionate to additional taxation).

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?

The regime for dealing with commercial leases that continue by operation of law until expressly renewed has sophisticated provisions in place to prevent double taxation. However, the provisions are spread across different paragraphs of Schedule 17A (paragraphs 3, 3A, 9 and 9A) and we believe it would help if these were consolidated into a single provision.

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.

We believe there should be a presumption in favour of carrying all reliefs forward. LBTT does not include the relief for relocation of employees (Para 5 and 6 Schedule 6A FA 2003) for reasons that are not clear to us, and we are already aware of cases where this has caused cost to businesses relocating Scottish based employees.

Question 15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?

We believe that sub-sale relief should be preserved in its current form. That relief is important in providing liquidity to the real estate market. Where large sites or portfolios are being acquired, it may frequently be the case that a sole purchaser is unable or unwilling to expose itself to the full deal size. Sub-sale provides a commercial and well understood method of allowing such transactions to occur without unfair double SDLT.

However, sub-sale relief is certainly an area where there is an opportunity for LTT to be simpler and clearer than SDLT. The sub-sale code in Schedule 2A FA 2003 is generally seen by practitioners as overly complex and, despite its detail, not without some areas of uncertainty. By contrast, the SDLT *guidance* on sub-sales is however perceived as much more accessible, as well as addressing some of the areas of uncertainty. This guidance may be a better starting point for the sub-sale rules under LTT. This should not prevent substantive rules of that regime, including targeted anti-avoidance provisions, being wholly or largely the same.

Question 16: Do you think there are any suitable cases for introducing new reliefs? Please explain why.

Special SDLT reliefs are thought to have a mixed record of delivering policy objectives. It is open to doubt that reliefs for disadvantaged areas and first-time buyers achieved their purpose, or did so without undue cost to the Exchequer. However, we do believe that this is an area which can be kept under review, particularly in view of reliefs that might be introduced into SDLT and LBTT by future governments.

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 believe that the trends are towards increased online filing. Investment in software and streamlined forms that are as simple as possible support this. For example, we do not believe that tax payers should be required to provide information about encumbrances (including tenancies) to which a property is subject if this is not relevant to the transfer tax payable.

We do not believe online returns should be mandatory (see our answer to question 18 below).

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

A paper return facility should continue to be made available.

Question 19: How do you think the rate of online payment could be increased compared to SDLT?

Almost all of our clients pay online and already find it convenient to do so, so we do not have suggestions in this area. We assume the Wales Revenue Authority would not want to make it more inconvenient or costly to pay by cheque.

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

Many of our clients need or prefer to file online shortly after completion. This supports quicker registration of the transaction at HM Land Registry, as well as on occasion being a condition precedent for financing. They may not however be required to pay SDLT within the same timeframe and appreciate the availability of a statutory 30 day period to do so. Additionally, online payment can then be made using the UTRN as reference to ensure reconciliation with the return. Since the UTRN is not issued until the return is filed, this provides a clear system benefit to filing first and then paying afterwards rather than doing both simultaneously.

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? :

We believe a pre-clearance facility will be welcome. It should adopt models followed by HMRC, including the non-statutory business clearance procedure.

Question 22: 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.

SDLT and other taxes have a sophisticated penalty regime. The intention, as we understand it, is that SDLT will be fully harmonised with other taxes (once Schedules 55 and 56 FA 2009 are introduced into SDLT). We cannot see why LTT should opt for another regime.

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

We believe the same penalty regime should be adopted.

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 make no suggestions in this area.

Question 25: 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.

Section 75A has been the subject of much criticism. As has been highlighted by recent case law (*Project Blue v HMRC* [2015] BTC 501), it has no motive test. It is also framed in wide terms, essentially applying wherever there is a notional transaction which could, if implemented, have resulted in a higher SDLT - even if the transaction structure actually chosen was commercial and of a type of transaction intended as a matter of policy to benefit from relief. As well as creating uncertainty and potential unfairness, we believe section 75A to be unnecessary if LTT includes a General Anti-Abuse Rule (which we prefer to the much less predictable General Anti-Avoidance Rule) and targeted anti-avoidance to protect certain reliefs.

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

We do not comment in this area.

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.

We believe this should be kept under review, particularly once the arrangements for administration have been put in place.

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

We provide no further comment at this stage but would be happy to comment as proposals progress.

Reference 35



Consultation RESPONSE

Tax Devolution in Wales – Land Transaction Tax

Date: 6th May 2015

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 3,500 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. The CLA welcomes this opportunity to respond to the Consultation Paper 'Tax Devolution in Wales – Land Transaction Tax' published on 10 February 2015.

General Comments

3. As we commented in our response to the White Paper on the collection and management of taxes, our concern would be the potential for confusion for taxpayers and particularly businesses if there were two different fundamentally different tax regimes for property transactions. This would particularly have an impact on those seeking to purchase land that straddles the border and their professional advisers.
4. Although the existing Stamp Duty Land Tax (SDLT) regime is complex, it is understood by advisers. We would therefore urge the Welsh Government to exercise caution before introducing any substantive changes in how the new Land Transaction Tax (LTT) would operate so that it is different to SDLT.
5. We believe that something like 25% of the Welsh population and 10% of England's live within 30 miles of the border and so there is larger risk of market distortions should there be any significant difference between the two tax regimes. An individual taxpayer or business looking to purchase property or take a long lease of commercial premises, for example, may choose to do so just over the border in England rather than in Wales if the LTT regime in Wales is that much less attractive to them and they are in a position to make that choice.
6. There is likely to be considerable impact in border areas creating local anomalies.
7. One of the issues that the Welsh Government should take the opportunity to address is the issue of the consideration on which the LTT will be payable. The current position for SDLT purposes 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. The current position can frequently result in SDLT 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. 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 Welsh Government adopts the policy of excluding VAT this may make Wales a more attractive place for business to locate invest in their business property.

Specific Comments

8. We have the following additional comments in relation to the consultation questions, some of which have been answered together.

Question 1: Do you think the current residential 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.*
9. We are not in a position to comment on the suitability of the current residential SDLT rates and bands, which have only been in place since December 2014. However, these rates and bands are preferable to those that apply in Scotland under the new Land and Business Transaction Tax which imposes a substantially higher burden on taxpayers purchasing property over £325,000. We regard this as a transactional 'Mansion tax'. If a similar approach were to be adopted in Wales this would penalise those who are looking to purchase a reasonably sized family home in the more expensive areas of Wales, such as Cardiff. Our concern is that such an approach may inhibit transactions and hamper the ability of taxpayers to sell or purchase property where their circumstances dictate the need to engage in the property market (e.g. job relocation, sale to pay care home fees or inheritance tax on death).
10. Whilst we recognise the fact that the Welsh Government may wish to adopt rates and bands suitable for the Welsh Economy, whether that is to stimulate or dampen the property market, there is a lot to be said for maintaining some consistency in the amount of tax payable with comparable properties in England. There may therefore be a need for the Welsh Government to act to maintain some consistency as to both the rates and bands with those applicable for SDLT.

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.

11. We have no comment.

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

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

12. As we have said above in paragraph 5, if a taxpayer can choose whether they purchase a property in Wales or England, then a factor affecting their decision may be the tax payable as part of their purchase costs.

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.

13. 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.

Question 5: 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).

14. We consider that the opportunity to improve the definition of residential property could be taken by the Welsh Government. Difficulties can arise with the definition in section 116 (1) Finance Act 2003 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 typically bought with a number of accompanying acres which may not be clearly designated as gardens or grounds. If it is proposed to use similar terms for LTT 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.
15. We also consider that the guidance in relation to the definition of residential property, non-residential property and in particular 'mixed use' property can be improved, particularly by the inclusion of additional practical examples.

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)?***
16. Consistency between the tax regimes in Wales and England may be desirable for non-residential property. A business looking to purchase property or take a long lease of commercial premises, for example, may choose to do so just over the border in England rather than in Wales if the LTT regime in Wales is that much less attractive to them and they are in a position to make that choice.

17. Under the existing slab system we would expect many of the transactions undertaken by our members to fall within the upper 4% rate which allows a straightforward calculation as to the tax payable. While in principle the progressive rate might be a fairer system, the mere fact that there is a difference in the tax creating a different regime in England than in Wales is likely to be anti-business and to deter inward investment. Wales is different to Scotland in that it is not a cohesive homogeneous and unified economy. Most trade follows the markets from West to East.

Question 7: 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.*

18. We are not aware of any distortions in the non-residential market caused by the slab structure of SDLT.

Question 8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?

19. Please see our comments in relation to question 6.

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.

20. Whilst it is recognised that the SDLT provisions in relation to partnerships, trusts and companies are complex, we would caution against major changes to these provisions, except where they genuinely improve the drafting to provide more clarity for taxpayers and their professional advisers. There was considerable uncertainty in this area after the introduction of SDLT and it was some time before appropriate guidance was available to provide assistance. As with all taxes, it is preferable for certainty as to the scope of the tax charge and amount payable to be derived from legislation rather than having to rely on guidance to form a view as is often the case.

Question 10: 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?

21. We have no comment.

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?

22. We do not consider that the system would be improved by increasing the number of returns that would have to be made in relation to leases as this will increase

compliance costs for tax payers and potential administrative costs for processing the returns for the WRA.

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

23. Licences and Tenancies at will tend to be arrangements that landowners use to allow access to land or premises for a short period. These are currently excluded from the SDLT regime and this should be replicated in the new LTT regime.

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?

24. The treatment of leases for SDLT purposes 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. We would therefore encourage improvements to provide more clarity to the LTT treatment of leases.

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.

25. We recommend that existing exemptions from charge to SDLT and reliefs should be maintained under the new LTT regime

Question 15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?

26. We agree that this relief should be adopted for LTT. There are many genuine commercial arrangements where this relief is claimed to prevent a double charge.

Question 16: Do you think there are any suitable cases for introducing new reliefs? Please explain why.

27. With a move to encourage more agricultural holding act tenancies (AHAs) to be converted to modern farm business tenancies (FBTs) it would be helpful to confirm that the surrender of an AHA and re-grant of a FBT is exempt from SDLT, even where the terms of the FBT do not mirror exactly the terms of the original AHA, for example as to the rent payable. 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 assist.



28. In addition, under the existing SDLT rules consideration has to be given to any potential SDLT liability on the granting of longer term FBTs. The need to pay SDLT may act as a deterrent to tenants taking on longer term arrangements. If the

Welsh Government wished to facilitate longer term FBTs then exempting these from LTT may be also appropriate.

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?

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

29. The returns that need to be completed for SDLT can be lengthy and time-consuming to complete, whether this is done online or not. Much of the information that has to be provided in the SDLT returns is not required to determine the liability to pay SDLT or the amount due. It is our understanding that the questions seeking this superfluous information are there at the request of other Government agencies but it not used by them. Therefore there are strong grounds for the Welsh Government to introduce a much simplified form which should be easy to complete in an online version.
30. Online filing of returns can be helpful if well designed forms and software make completion easier to use. For example, pop ups to provide assistance for questions as the user progresses through the form and an intuitive system that only provides the questions that need to be answered depending on information already provided. Online users should have the ability to partially complete the form and save this before returning to complete and submit it as well as the ability to print off a version the form whether complete or otherwise.
31. Whilst we accept that online submission is invariably quicker, we would not want this to be mandatory since as many rural areas may not have adequate broadband to enable online filing. A taxpayer, or their adviser should still have the option to complete and return a paper version of a LTT return.

Question 19: How do you think the rate of online payment could be increased compared to SDLT?

32. Whilst we accept that there is a need to look at the practicality of making online payments. This is an issue that would be better addressed by the professional firms who make payments on behalf of their clients as the method of payment adopted may be dependent on their internal financial compliance systems.

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

33. Even where returns are submitted online, the funds required to pay LTT may not immediately be available at completion of a transaction and we would therefore recommend that the leeway of 30 days is allowed for payment of LTT, as is currently

the case for SDLT. In practice payment is made promptly, particularly where certificate of payment is needed to enable a transaction to be registered at HM Land Registry.

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?

34. We agree that there should be a pre-clearance facility for LTT. Such a facility should enable taxpayers and/or their advisers to seek expert advice from the WRA as to the application of the legislation to their particular circumstances so as to ascertain whether and how much LTT is payable. The WRA should also be prepared to confirm their advice in writing.

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.

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

35. Before any penalty regime is introduced we consider that there should be a period of leniency following the introduction of the new LTT regime to allow taxpayers and their advisers to adjust to the new regime, particularly if there are any differences between LTT and SDLT, and new forms and procedures to be used. We would encourage the Welsh Government to consult separately on any penalty regime once more information as to the powers of the WRA and the processes for LTT is available.

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?

36. We have no comment.

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.

37. We have no comment.

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

38. We have no comment.



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.

39. We do not consider that the LTT would have implications for other areas of taxation in Wales, although ATED was introduced specifically to address the weaknesses in collecting SDLT, this is not devolved.

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

40. We have no comment.

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Reference 36

INTRODUCTION

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales. The three fire and rescue authorities and the three national park authorities are associate members.
2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
3. The WLGA welcomes the opportunity to comment on the consultation on the tax that will replace SDLT in Wales once this tax is devolved from April 2018 and to contribute to policy development in this area. We will respond to the detailed questions below but it is important that we set out our general position in respect to the new tax environment as we did in our response to the White Paper on Tax Management and Collection. It reiterates our strongly held view that resources should be controlled as closely as possible to the communities from which they are raised and spent.

WLGA's general position on the new tax environment

4. In our response to the White Paper on Tax Management and Collection we set out our general position in respect of the proposals for tax devolution. An essential part of our vision is that local government should have maximum freedom and flexibility to control the resources needed to deliver services locally to communities. The tax raising powers which local government already possesses are a key feature of the resource landscape at the local level and are a key element in our vision for greater local control of resources.
5. The WLGA would argue that in the new tax environment, local democratic responsibility for taxation remains a key feature. Just as

there is recognition in the Welsh Government's proposals that the new devolved taxes should be brought together, there must equally be recognition of the link between nationally devolved taxes and their administration with the management and control of local taxation.

6. The WLGA has welcomed a role in the Tax Advisory Group and our officers are contributing constructively in other fora. We believe that there is a need for Local Government to have a close relationship with the proposed Welsh Revenues Authority and a means for high level and meaningful interaction with the new body.

Devolution of Stamp Duty Land Tax

7. Stamp Duty Land Tax (SDLT) is a key consideration when planning a land transaction, whether residential or non-residential. Varying SDLT has been utilised by Governments to provide economic stimuli, most recently by the Coalition Government in March 2010 when first time buyers were given relief from payment of SDLT on properties up to a value of £250,000 until March 2012.
8. The WLGA supports the Welsh Government's decision to replace SDLT in Wales once it is devolved from April 2018 with the Land Transaction Tax (LTT). While it is a very volatile tax in terms of yield, it never the less contributes towards the costs of public services. Since the Welsh Government's block grant will be reduced to reflect its devolution, it is important that given the continuing impact of austerity measures on public services that resources are not further reduced by not replacing the SDLT on devolution.
9. We also concur that final decisions on rates and bands will need to be made much closer to April 2018, in order to take account of the wider UK SDLT regime and the prevailing economic situation within Wales both for taxpayers and for public services. Welsh Government and wider stakeholders within Wales will also be able to benefit from learning from the experiences of Scotland due to the earlier devolution of this tax to the Scottish Government from April 2015.

RESPONSE TO THE CONSULTATION QUESTIONS

Chapter 2: Residential property transactions

Question 1: Do you think the current residential 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.

10. Continuing with the current residential SDLT rates and bands would provide stability for all stakeholders, reduce any potential confusion for taxpayers and would mean no cross-border impact of differing tax regimes which may be desirable on the outset of the devolution of this tax. Even though the battle for greater fiscal devolution has been hard fought, it may be wise to guard against change for change's sake.
11. That said, there is clearly an opportunity to align the residential rates and bands of the Land Transaction Tax more closely to the residential housing market within Wales where the average house price, at £162,000 is significantly lower than the UK average house price of £242,000.
12. The starting threshold could be reduced to reflect the lower average prices in Wales, but this could adversely affect the housing market in Wales and would increase the tax burden on less well off citizens. If the starting threshold is raised (as it has been in the Land and Buildings Transaction Tax (LBTT) in Scotland) this will remove a number of transactions from the LTT, reducing the yield.
13. In Scotland this slight reduction in yield at lower property values has been compensated for by lowering the thresholds where higher rates of LBTT take effect, resulting in a significantly higher tax rate for higher

value residential properties in Scotland when compared to the SDLT yield. Consideration will need to be given to the potential impact of increasing the tax burden on the relatively few high value transactions that take place within Wales (only 385 residential transactions priced at £500,000 or more in 2012-13, 1% of the total number of transactions in Wales, compared to 5.7% of all UK transactions). Given the nature of the border between England and Wales such a significant difference might have a greater distorting effect between the two tax regimes than will be experienced in Scotland.

14. There is scope to increase the number of bands at the lower end of the band range given that currently most residential transactions in Wales fall within the 2% band of SDLT (transactions valued over £125,000 to £250,000). This would need to be balanced with considerations around greater complexity in calculating the tax, although this could be mitigated to some extent by providing easy to use online calculators.
15. Care needs to be taken to ensure that the new rates and bands will not significantly reduce the yield from that of SDLT in Wales, as a key consideration for the WLGA is to ensure that the overall level of funding for public services is not reduced significantly.

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.

16. Yes - Since the 15% slab rate for certain residential properties where the purchaser is one of a specified class of non-natural persons (e.g. companies, collective investment schemes) was introduced by the UK Government as one aspect of a range of measures aimed at tackling tax avoidance, any change would need to be considered alongside the entirety of the tax system and measures intended to reduce tax avoidance.

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

17. A different transaction tax regime will increase complexity for those who need to understand the tax regimes in both countries.
18. There is potential for any transaction tax regime which is less costly to taxpayers to result in any potential purchasers opting to purchase a property in Wales rather than England, potentially increasing the values of properties along the very porous border between Wales and England. This may in turn make house ownership less accessible and less affordable for local people.
19. Regardless of the differences between the two tax regimes, where the land concerned straddles the border between England and Wales, post-devolution, this transaction will need to be treated as two separate transactions – one liable to SDLT in England and one liable to LTT.

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.

20. Yes – there is potential for unintended impacts on the property market to occur if there is a significant amount of time between the announcement of a change and its implementation. It would also allow the Welsh Government to react swiftly to changes in circumstances, whether in the property market itself or as a result of tax regime changes introduced by the UK Government.
21. It is important for all stakeholders that there is stability in the transaction tax regime on the whole.

Question 5: 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).

22. Yes – the definition used in SDLT and in LBTT defines residential property adequately for the operation of the taxes, as it has been in

place for many years and is well understood. Any change to the definition, whether through statute or guidance, would result in greater complexity for all stakeholders who need to understand the tax regimes in both England and Wales.

Chapter 3: Non-residential property transactions

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)?

23. There are significant arguments for maintaining consistency between England and Wales on non-residential property transactions given the more densely populated border areas and the UK-wide nature of many businesses. Beyond additional complexity of introducing a different tax regime, the key element that would influence business decisions between England and Wales would be the actual tax liability resulting from the tax regime.
24. It could be argued that it may deter potential investors but the converse may also be true and the liability will be just one of a number of considerations that influence an investor's decision. A number of the other factors will also vary between England and Wales, with Welsh Government policies having an impact. For example, the differing planning regimes, diverging regulatory burdens, support available for training and levels of business rates. Also, the tax payment is a one-off payment whereas over the lifetime of the investment there will be other factors in the costs of production (e.g. wage levels, transport costs) that will have a much greater influence on businesses' decisions.
25. In summary, small differences in tax levels may indeed influence investment decisions at the margin if all other things are equal but in many cases the impact could be outweighed by other, more significant considerations.

Question 7: 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.

26. A slab structure can provide incentives for artificially depressing transaction valuations at the thresholds between the different bands, while a marginal rate system would negate this.

Question 8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?

27. A different transaction tax regime will increase complexity for those who need to understand the tax regimes in both countries. There are potentially greater numbers impacted by this in the non-residential sector than in the residential sector.
28. This is a potentially complex area for impacts of different tax regimes given that many larger businesses are pan-UK. It will be useful to be able to take account of the impact of the different regime in Scotland ahead of final decisions in Wales.

Chapter 4: Partnerships, Trusts, and Companies

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.

29. There needs to be provisions to enable circumstances where there are transfers of economic ownership that do not fit a "natural" transfer transaction not to attract LTT. This does not necessarily mean the complete replication of the SDLT provisions, where improvements can be made, particularly in relation to simplifying the tax regime. Wherever reliefs are introduced, consideration will need to be given to ensure that they are not exploited.

Chapter 5: Leases

Question 10: 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?

30. Whether or not the rent element of new residential leases in Wales should be taxed under LTT depends a great deal on the yield of this particular element and the costs associated with collecting it. It would appear that the yield is likely to be low, leading to the conclusion that the rent element of residential leases in Wales should not be taxed under LTT.
31. This would result in a simpler system and reduce the costs of all stakeholders in collecting a relatively low amount of tax.

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?

32. Where there is potential for tax to be foregone (whether intentionally or not) through the leaseholder not providing voluntary supplementary returns then introducing a regular mandatory return would improve the system. Local Government takes a firm stance that all tax due should be collected wherever possible. A balance would need to be struck between the additional administrative burden on businesses and ensuring that the return achieves its goal of reducing tax foregone. Making returns every three years seems to be a balanced requirement.
33. Again this is a policy that the Scottish Government has introduced so it will be possible to learn from the experience in Scotland ahead of devolution to Wales.

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

34. The potential increase in yield resulting from introducing LTT to licences and tenancies at will would need to be balanced by the potential costs incurred in implementing and enforcing such changes.

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?

35. Any change that reduces complexity and / or reduces tax avoidance would be welcomed by the WLGA, with the aim of increasing the LTT yield.

Chapter 6: Reliefs and Exemptions

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.

36. While other elements of the tax regime may change, if there is no compelling case for change then existing reliefs and exemptions should be retained, given they have been in existence for some time allowing any potential exploitation to have been dealt with.
37. Small changes to differing elements of reliefs and exemptions has the potential to create greater complexity and to create opportunities for exploitation.

Question 15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?

38. Yes – as mentioned in paragraph 36 above, unless there is a compelling case for change existing systems should continue, particularly where exploitation issues have already been addressed as is the case with the SDLT form of sub-sale relief.

Question 16: Do you think there are any suitable cases for introducing new reliefs? Please explain why.

39. No, WLGA is not aware of any case of the introduction of new reliefs at this stage that outweighs the revenue foregone.

Chapter 7: Compliance, Avoidance, Disputes and Penalties

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?

40. Given that the vast majority of returns are made by conveyancers and that 96% of returns are filed online already, the WLGA believe that the online submission of returns should be made mandatory in Wales. While accepting that there will be a need for limited alternatives to be available, it is important that the new system for online submission of returns post-devolution will be at least as easy to use as existing systems if not easier.

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

41. Although this is not an area we feel strongly about, it difficult to envisage a scenario where conveyancers are unable to file online. For exceptional cases paper filing should be allowed.

Question 19: How do you think the rate of online payment could be increased compared to SDLT?

42. One way would be to link online payment directly with online tax returns. Another alternative would be to incentivise online payment potentially by adding an administration charge to any other forms of payment.

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

43. There are no obvious reasons why requiring payment of the tax at the same time as submitting the return would cause any problems.
44. Again this is a policy that the Scottish Government has introduced so it will be possible to learn from the experience in Scotland ahead of devolution to Wales.

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?

45. A pre-clearance facility can provide helpful advice on areas where the correct treatment is not clear, but comes with the potential for a significant cost. There needs to be a robust business case for a pre-clearance facility specifically for Wales given the number of transactions likely to be affected in Wales.
46. The additional work required to amend returns or to ensure compliance in these cases would need to outweigh the cost of establishing the small team of technical experts required to provide a pre-clearance facility.

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.

47. Penalties should be levied for both late filing of returns and for errors in returns, but the system of penalties should be as simple as possible and applied consistently. Linking with the amount of tax due would mean that the penalty would be in line with the amount of revenue foregone due to late filing or errors.

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

48. Again penalties for late payment based on the amount of tax due should be levied to encourage prompt payment of tax.

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?

49. **The WLGA agrees that any appeal arrangements to be established will be fair, simple, transparent, efficient and**

affordable. We also agree with the key policy objective of avoiding disputes arising in the first place. Introducing a tried and tested system similar to HMRC's for the early stage process of dispute resolution will help taxpayers and their advisors by avoiding unnecessary differences between England and Wales.

- 50. If a "pay-first" principle is to be adopted then it is imperative that the systems in place to calculate the tax liability are accurate. Opportunities for early informal discussions in relation to accuracy also need to be available, well understood and widely publicised.**
- 51. It is important that any postponement or appeals processes do not allow scope for widespread abuse / tax avoidance purposes.**
- 52. There need to be clear and accessible safeguard systems and processes in place in order to discuss issues in relation to genuine hardship.**

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.

- 53. Some practitioners consider section 75A of the Finance Act 2003 to be badly drafted legislation that is problematic and formulaic and can hinder non-residential land and property transactions. Practitioners need certainty to ensure that they are not inadvertently falling foul of regulations.**
- 54. At the recent Tax Forum workshop on Land Transaction Tax, it was clear that while there is a need for anti-avoidance regulation, the system needs to be simple and avoid several "layers" of legislation and regulation. It was also suggested**

that a Disclosure of Tax Avoidance Schemes (DoTAS) regime would help to identify avoidance and act to prevent it more quickly, providing greater clarity for practitioners.

55. **The WLGA is supportive of the introduction of a general anti-abuse / avoidance rule (GAAR). As stated in our previous consultation response, continuity and maintenance of collection rates are crucial as this tax is devolved to Wales. Not introducing a GAAR at the same time as the tax is devolved could send signals that the rules in Wales are being relaxed in comparison with England and would work against Welsh Government and Local Government's standpoint that all taxpayers should pay the tax they are due to pay. It would be more difficult to tighten this back up following a perceived relaxation of rules than to maintain the current system.**

Other Questions

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

56. **The WLGA agrees that the cost of not levying a replacement for SDLT far outweighs that of implementing a new tax regime and subsequently increasing the administrative burden for a small number of transactions. It is a key priority for WLGA given the continuing impact of austerity measures on public services, that resources are not further reduced by not replacing the SDLT on devolution.**

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.

57. **As set out in our introduction, the WLGA would argue that in the new tax environment, local democratic responsibility for taxation remains a key feature. Just as there is recognition in the Welsh Government's proposals that the new devolved taxes**

should be brought together, there must equally be recognition of the link between nationally devolved taxes and their administration with the management and control of local taxation.

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

58. **None.**

Cleared by: Cllr Aaron Shotton (WLGA Spokesperson Finance & Resources)

For further information please contact:

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Reference 37

Royal Institute of Chartered Surveyors

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 LTT 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,

David Morgan
RICS Policy Manager in Wales

Reference 38



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Dear Sirs

Consultation on a Land Transaction Tax

Please find enclosed our comments on the above consultation document issued on 10 February 2015. We welcome this opportunity to comment on what constitutes an important issue, particularly given that the consultation will help shape the one of the first two taxes for which the Welsh Government will have responsibility in over 800 years.

Our detailed comments are set out in the attached Appendix.

If you require any further information, please do not hesitate to contact my colleague Ken Wright (0141 226 9299 or kwright1@uk.ey.com) or me.

Yours faithfully

A handwritten signature in black ink that reads 'Chris Sanger'.

Christopher Sanger
Head of Tax Policy
For and on behalf of Ernst & Young LLP

Enc.

Question 1: Do you think the current residential stamp duty land tax (SDLT) rates and bands are suitable for Wales?

We support the Welsh Government's decision to adopt a marginal rate system as this should avoid the market distortions which would otherwise take place at the edge of each of the rate bands under a slab system.

A key decision for the Welsh Government is whether it wishes the land transaction tax (LTT) to be revenue neutral in its first years or to raise more tax than would have been raised under SDLT. For the purpose of this response, we have assumed that raising less tax would not be a feasible option.

However, even if the decision is to aim for revenue neutrality, different bands, and possibly rates can be used to promote and reflect the objectives of the Government. For example, consideration could be given to having a higher starting threshold for LTT, than exists for SDLT, which may boost the first time buyer market. The Scottish Government have gone for a starting threshold of £145,000, taking a substantial number of house purchases in Scotland out of LBTT entirely. Recognising that average property prices in Wales are lower than those in Scotland it may be that, say £135,000, could be a suitable starting threshold to pursue such a policy. This would be higher than that under SDLT, thereby giving a boost to the lower end of the property market and could be compensated for by higher tax rates for higher value properties.

For LBTT the cross-over point, above which the LBTT charge is higher than the SDLT charge, is £330,000. It may be that, given that average house prices are lower in Wales than in Scotland, the Welsh Government could aim for a cross-over point at a lower value.

In summary we believe the Welsh Government should not simply adopt the SDLT rates for residential property, but should design a band and rate structure which reflects and supports the Welsh policy priorities.

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?

We do not believe that the 15 per cent slab rate for high value transactions should be adopted under LTT. Firstly, the Consultation Document points out that in 2012/13 Wales had 385 (1% of its total number of transactions) residential transactions priced at £500,000 or more. Consequently, given the low volume of transactions to which such a 15 per cent slab rate would apply, it seems likely very little additional tax would be raised.

Secondly, the SDLT 15 per cent slab rate is designed to discourage private individuals from acquiring high value properties into a company (or other non-natural person) and then transferring the shares of that company, owning the property, to a future owner, free of SDLT. We suspect that there is little evidence of, or appetite for, such activity in Wales. The initial and ongoing costs of the corporate entity, due diligence costs on any future sale etc are likely to outweigh the benefit the vendor might get from being able to sell the Property free from LTT.

Finally one of the Welsh Government's objectives is to have a simple tax with clear rules and minimal administration costs. Introducing a 15 per cent slab rate would be contrary to that objective and should, in our view, be avoided.

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

Given that England and Wales share a border, a different land tax regime applying on either side of that border may lead private individuals, and commercial investors in residential property, to make an informed choice to buy under whichever regime is most advantageous to their particular transaction. However, the opportunity open to the Welsh Government is to design LTT, and set the rates and bands for residential property, so as to encourage activity in those parts of the residential housing market which the Government particularly wants to promote.

We suspect that, whilst LTT/SDLT will undoubtedly be a factor in deciding whether to buy in England or Wales, there are likely to be many other, probably more important, factors that will determine the place of purchase.

There may well be additional compliance costs for investors in residential property who are buying under the three different land tax regimes in the UK of SDLT, LBTT and LTT. However, if the Welsh Government can design a simple and efficient tax, with reduced compliance, the incentive will be there to invest in Wales.

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?

We would agree that the Welsh Government should have the ability to change or introduce new LTT rates and bands with immediate effect. This will allow the Welsh Government to react quickly to a sudden change in the property market or a change to the SDLT rates and bands, which might otherwise put the Welsh residential housing market at a disadvantage.

It would also seem appropriate that the Welsh Government should have the ability to introduce a new relief from LTT, or to enhance an existing LTT relief, with immediate effect, as again that would enable it to react quickly to changing market conditions.

The other area where an ability to make changes with immediate effect would be useful would be to introduce legislation to prevent tax avoidance.

Question 5: Do you think the definition used in SDLT defines residential property adequately for the operation of the tax and will be suitable for LTT?

We do not believe there is anything inherently wrong with the definition of residential property under SDLT, but an issue lies with the lack of clarity of the guidance in relation to that definition. For example, HMRC guidance has indicated that if a property is being marketed as suitable for residential development it may be residential property. This does not fall within a straight forward reading of the legislation which refers to current use, or suitability for use, as a dwelling as being the determinative factor. It is also sometimes suggested that if bare land or non-residential land is acquired, but a planning application has been made (or is to be made) to develop the land as residential property, then the acquisition should be treated as residential property. Again this matter can be resolved with clear guidance.

Question 6: How important is it to have consistency between the tax regimes in Wales and England for non-residential property transactions?

We believe the Welsh Government's aim should be to design a land tax regime for non-residential property transactions which is simpler than SDLT and therefore more attractive to investors. However it is important that the rates and bands are set at such a level that there is no significant disadvantage to investing in Wales. Consideration could be given to making the LTT rates and bands lower than those for SDLT, so as to encourage investment.

In considering the levels, it would be helpful to evaluate the data setting out the values at which non-residential property transactions are taking place in Wales. For example, could an approach similar to that adopted for LBTT, where property purchases up to a value of circa £2,000,000 incur a lower tax charge, be adopted so as to encourage investment at the lower end of the commercial property market.

Consistency as to the basic principles of how a transaction is taxed would be desirable. However simplifying the tax regime compared to SDLT, and setting competitive rates and bands are likely to be particularly important.

Question 7: Does a slab structure create distortions in the non-residential property market?

We have not seen any evidence of the slab structure distorting the non-residential property market given that a high proportion of the transactions we deal with exceed the £500,000 threshold, and are therefore taxed at the highest rate of 4%. It would however be useful to examine the data summarising the values at which non-residential property transactions take place in Wales, to understand whether there is a significant volume of transactions at or below the £500,000 threshold.

Question 8: What would be the key impacts on the non-residential market in Wales of having a different transaction tax regime from England?

A commercial investor is likely to have the choice of investing in different parts of the UK and therefore it will be crucial that LTT does not act as a significant disincentive to investment coming to Wales if the aims of attracting investment are to be achieved. Making the basic principles of LTT the same as SDLT, but the tax regime and the compliance process simpler, and setting the LTT bands and rates either at the same, or at lower levels, compared to SDLT, should help to encourage commercial investment in Wales.

Question 9: Do you think the SDLT provisions for partnerships, trusts and companies should be replicated within LTT?

The Consultation Document highlights that the SDLT provisions in relation to partnerships are amongst the most complex within the SDLT legislation and we would endorse this view. Whilst the provisions are complex, we believe that they deliver a logical result in relation to the tax payable for a high proportion of transactions involving partnerships. However, the provisions have developed over a number of years, often as responses to specific avoidance techniques, and are in need of review and simplification. The basic principles of the SDLT provisions could be retained, but each section within the legislation should be analysed, its purpose understood, superfluous provisions removed and overly complex provisions simplified.

It is highlighted in the consultation document that the LBTT rules on partnerships closely parallel those of SDLT. Our understanding is that this is due more to a lack of time and resource to create a more user friendly regime, than any desire to maintain consistency with the SDLT rules.

We believe that the SDLT provisions regarding companies and trusts generally achieve a logical outcome and are reasonably well understood. It would therefore seem appropriate that these should be replicated within LTT.

Question 10: 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?

Our understanding of the reason that LBTT is not charged on residential leases is that under Scots law it is not generally possible to grant a lease over residential property for more than 20 years (there are some exceptions). It is also uncommon in Scotland for long leases to be granted over residential property. The Scottish Government was therefore of the view that little LBTT would be payable on the grant of leases over residential property and consequently the grant, assignation or renunciation (surrender) of such leases is exempt from LBTT.

If the land law, and practice, in Wales is different as regards the ability to grant leases over residential property for substantial periods then there is a risk that providing an exemption from LTT for rent on leases of residential property could lead to a change of behaviour, with values switching from premium to rent.

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?

The principle that LTT should be payable on the actual rent payable over the term of a lease, rather than adopting the SDLT regime (which taxes by reference to the rent payable in the first five years of the lease, with the highest 12-monthly rent then being extrapolated over the remaining term of the lease), seems sound. In addition, the SDLT system risks further returns not being made, probably due to a lack of awareness rather than any intentional non-compliance. The requirement to file a regular return should address this issue, particularly as lessees become familiar with the new system, although this will place an increased compliance burden on both the lessee and the tax authority. However, if an automated system of reminders from the tax authority, and a simplified regular return is designed, it should be possible to keep the compliance burden to a minimum. On balance we believe the Welsh Government should consider a system of regular returns, for leases, under LTT.

Given that many leases will have five-yearly rent reviews adopting a three-yearly cycle for the regular returns seems sensible given that any increase in rent after five years will then be taxed after six years. We would therefore suggest that carrying out the regular review at three-yearly intervals has merit.

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

A licence to use or occupy land is an exempt interest under SDLT and this treatment should be replicated under LTT. The Scottish Government considered taxing licences to occupy properties to be used as retail premises, but eventually concluded that this would put Scotland at a competitive disadvantage. We believe this would equally apply to Wales if it was to tax licences to occupy land.

The same argument applies to tenancies at will, which we believe should also be an exempt interest for the purposes of LTT.

The risk of LTT avoidance, through businesses occupying premises under licences or tenancies at will, rather than leases, is likely to be mitigated by the commercial requirement to have exclusive rights of occupation and security of tenure.

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?

Adopting a system of requiring a regular return for the grant of leases which are notifiable, or become notifiable, together with a replication of the other SDLT rules regarding leases, should provide Wales with a reasonably coherent regime for the taxation of leases.

Question 14: Do you think that any of the current reliefs or exemptions in SDLT should be retained, removed or modified?

We consider that consistency in the availability of reliefs under LTT, compared to the reliefs available under SDLT, will be important in maintaining the competitiveness of the Welsh property market, compared to the rest of the UK. Hence the reliefs available under SDLT should be replicated under LTT. As outlined in the Consultation Document, with the exception of sub-sale relief (which is discussed below), the reason that certain SDLT reliefs have not been replicated under LBTT is due to the different land laws in Scotland compared to England and Wales.

Generally, the SDLT reliefs operate as intended and we do not believe there is need for significant changes. We would however suggest that a review of each of the major reliefs be considered to determine whether there are any opportunities to remove unnecessary complexity.

Question 15: Do you agree that LTT should adopt the SDLT form of sub-sale relief? If so, why?

The “pre-completion transaction” legislation in schedule 2A, FA 2003 is extremely complex and difficult to apply in practice. However it does seem to have achieved its objective of retaining a general sub-sale relief, whilst preventing the use of the relief for tax avoidance.

We believe that the Welsh Government should enact a general sub-sale relief which is consistent with the principles under the SDLT relief, and should not replicate the narrower “sub-sale development relief” introduced under LBTT.

However, it should be possible to simplify the provisions in schedule 2A, FA 2003 whilst still retaining safeguards against the use of the relief for avoidance. Whilst this would be our favoured option, if it is not feasible, we agree that the SDLT “pre-completion transaction” legislation should be replicated under LTT.

Question 16: Do you think there are any suitable cases for introducing new reliefs?

There are a number of reliefs within the UK tax code which can be claimed to eliminate a tax charge on the incorporation of a sole trader business. There is, however, no relief under SDLT, and where significant interests in land and buildings are held, the resultant SDLT charge can be a significant disincentive to incorporation. Given that in such a situation there is generally no change in the underlying economic ownership of the land and buildings it would seem appropriate to have a relief in these circumstances. To prevent the relief being used for avoidance there could be a withdrawal of the relief if, say, the shares in the company are sold within three years of the incorporation transaction.

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?

The rate of online filing under SDLT is already high at 96 per cent in 2014. The Welsh Government should encourage online filing by creating an online portal which is easy to use and intuitive, together with an online tax return which does not require the superfluous information currently required to be provided with an SDLT return. However, we do not believe that online filing should be made mandatory.

There is likely to be a small minority of people who do not have access to the internet, or who have valid reasons for not using the internet, and who will therefore find it difficult to comply with their LTT obligations if online filing is made mandatory.

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

The option should exist to file a paper return although this could be made less attractive by providing only one payment method, being payment by cheque, as is the case for LBTT. Online filing would therefore be more attractive as payment could be made by BACS, CHAPS, credit card, debit card and cheque.

Question 19: How do you think the rate of online payment could be increased compared to SDLT?

Online payment could be increased by requiring that payment is made at the same time that the return is filed and by requiring that the tax must have been paid before title to the land can be registered. This may, however, be more difficult to achieve for Wales, than it was for Scotland, given that the one land registry for England and Wales would be dealing with both SDLT and LTT.

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

Under LBTT tax is treated as having been paid provided “arrangements satisfactory” to Revenue Scotland are made for the payment of the tax. If a similar concept is adopted for LTT this should avoid any delays to registering title as a result of funds having to clear into the tax authority’s bank account etc. Consequently, we believe that it should be possible to design a system which requires payment of the tax to be made at the time the return is filed, without causing any significant problems.

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?

SDLT is a complex tax when applied to the wide range of transactions, and commercially driven structures, used to acquire an interest in land. Assuming that a lot of the existing SDLT legislation is replicated in LTT the new tax will be equally complex to apply to commercial transactions. In our view it is therefore essential that LTT should have a pre-transaction clearance facility.

Comprehensive guidance, dealing with the application of the tax to commercial transactions, which does not merely repeat what is in the legislation, should reduce the number of applications for pre-transaction clearance.

The requirement that there should be a genuine uncertainty as to how the law applies to the particular transaction should be the principle requirement, and there should be no restriction by reference to, say, laws enacted in the last four years. An uncertainty can arise on a particular transaction even though the law was enacted some time ago.

There will have to be sufficient resource to deal with the expected number of applications in a reasonable period of time, say 30 days, and that resource will have to have the technical knowledge to respond appropriately to the applications.

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?

We believe that the current SDLT regime for penalties in relation to late filing of returns and for errors in filed returns are proportionate and encourage compliance. Providing for a tax geared penalty to become payable immediately a person becomes liable for a penalty would, in our view, be disproportionate and may actually discourage any filing of a return which is late, or correction of an error in a return, due to the severity of the penalty. We therefore believe that replicating the current SDLT penalty regime should give protection against non-compliance and would maintain consistency with the position under SDLT.

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

The charging of interest on overdue tax would compensate the Welsh Government for the late payment of tax. However, if a penalty is not levied in addition then some taxpayers might see the Welsh Government as a source of funds, accepting the interest cost as a charge for the service.

Linking the payment of LTT to the registration of the land interest, and requiring the payment of LTT to take place at the time land transaction return is filed, should limit the need to impose penalties for late payment of tax.

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

The existing approach under SDLT is reasonable but it will be important to have clear guidance as to what will constitute "reasonable grounds" for postponement of the tax. Whilst guidance cannot cover every eventuality it should be as comprehensive and clear as possible.

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?

We would strongly recommend that the existing Section 75A is not replicated within LTT. The section is extremely difficult to apply to many common transactions by which land is acquired and it is generally accepted that the legislation is poorly drafted. For example, in the recent decision of the Upper Tribunal in the case of *Project Blue Ltd v HMRC* (UT [2014] UKUT 564) Mr Justice Morgan stated:

"The drafting of sections 75A to 75C leaves a lot to be desired. The facts of the present case are not complicated but the applications of sections 75A to 75C to these uncomplicated facts has given rise to a number of points of statutory interpretation which are high up on the scale of difficulty."

When attempting to apply section 75A to 75C to standard commercial transactions there can often be a number of different outcomes depending upon which party is chosen as the vendor and purchaser. The current situation under SDLT is particularly concerning since the HMRC guidance states that Section 75A only applies where there is avoidance of SDLT, whereas a straightforward reading of the legislation makes it clear that there is no requirement for an avoidance motive to fall within the section (as has now been confirmed by the Upper Tribunal).

If the Welsh Government wishes to enact a tax which is simple to apply in practice and delivers certainty to taxpayers, in our view it should not replicate Sections 75A-75C in LTT.

Adopting a similar approach to that taken by the Scottish Government, in relation to LBTT, and relying on the targeted anti-avoidance rules, which we assume will be replicated from the existing SDLT legislation (including a sub-sale relief which has been "tax avoidance proofed"), and developing a Welsh general anti-avoidance rule, would seem to offer protection from tax avoidance whilst delivering more certainty to taxpayers.

If the decision is to replicate Sections 75A to 75C, then it should be drafted in such a way that it requires a main purpose of avoiding LTT before the section is applicable. However, the drafting of Sections 75A-75C is such that this will inevitably result in uncertainty for taxpayers.

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

No comments.

Question 27: Do you think the move to LTT could or should have any implications for other areas of taxation in Wales?

If the Welsh Government does not replicate the 15% slab rate for residential properties acquired by non-natural persons, the implications for the continued application of the "Annual Tax on Enveloped Dwellings" to properties in Wales should be considered, since these two provisions are linked.

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

No further comments.