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Consultation Document

Tax Devolution in Wales – Land Transaction Tax



Date of issue: **10 February 2015**
Action required: Responses by **6 May 2015**

Overview

This consultation seeks views on a Land Transaction Tax, which will replace Stamp Duty Land Tax in April 2018 in Wales.

How to respond

Responses to this consultation should be submitted to arrive by **6 May 2015** at the latest. Responses can be submitted either electronically via the online form:

<http://wales.gov.uk/consultations/forms/land-transaction-tax/?lang=en>

E-mailed to:

FinancialReformMailbox@wales.gsi.gov.uk

(please enter 'Consultation on a Land Transaction Tax' in the subject matter box).

Or, posted to:

Tax Policy and Legislation Division
2nd Floor East

Welsh Government

Cathays Park, Cardiff, CF10 3NQ

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

The consultation documents can be accessed from the Welsh Government's website at:

www.wales.gov.uk/consultations

The consultation and analysis of responses on the Collection and Management of Devolved Taxes White Paper can be accessed from the Welsh Government's website at:

www.wales.gov.uk/consultations

Details of the Commission on Devolution in Wales (Silk Commission) first report, the UK Government's response to the first report and the Wales Bill can be accessed from the Welsh Government's website at: <http://wales.gov.uk/funding/financereform/?lang=en>

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Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Foreword by the Minister for Finance and Government Business

The Wales Act 2014, recently passed by Parliament, paves the way for new tax powers to come to Wales, further strengthening our ability to manage our own financial affairs.

This welcome step forward in Welsh devolution will allow us, for the first time, to replace established UK taxes with our own distinctively Welsh taxes, designed and implemented in ways that reflect our circumstances.

With this consultation - the second of three consultations that I am issuing on different aspects of the new tax powers - I am seeking your views on the format of a new Welsh tax to replace UK Stamp Duty Land Tax, from April 2018.

This tax affects so many of us - as home buyers and sellers, as builders, as developers of or investors in property, as businesses renting premises in the non-residential market, and as those who play important roles in the transaction processes. The impact of the changes we make to the tax will potentially be felt by a sizeable proportion of the Welsh population. That is why I hope you will be willing to share your ideas on how we should tackle this.

I have already set out my principles on Welsh taxes. I am looking to develop taxes that are fair to the businesses and individuals who pay them; which are simple, with clear rules, aiming to minimise compliance and administration costs; that support growth and jobs, and in turn will help tackle poverty; and which provide stability and certainty for taxpayers.

One reason for improving simplicity and clarity is to help minimise the opportunities for tax avoidance and tax evasion. The public services that we all depend upon are funded through taxation. But while most of us pay the taxes that are due, I know there is a minority who will seek to take unfair advantage. That is totally unacceptable. This consultation therefore invites your views on measures to encourage tax compliance, and on the penalties that should follow tax evasion and avoidance. I am determined to establish robust arrangements to tackle this issue.

One key reform that we have been seeking is - the removal of the so-called 'slab' approach to residential Stamp Duty Land Tax. This was recently addressed by the UK Government in its 2014 Autumn Statement. I am not looking for change for change's sake, I am, however, keen to explore any other ways in which we can improve the current system to make it more effective, more efficient, and better suited to the priorities of Wales. In particular, I am keen to look at improvements that could make it easier to do business in Wales, ensuring we can maintain our attractiveness to commercial enterprises.

This consultation will be open and wide-ranging. I want to ensure that we thoroughly consider the full range of options. I urge you to contribute your views, and I look forward to reading your proposals for the design of the first Welsh taxes in over 800 years.

Jane Hutt

Minister for Finance and Government Business

February 2015

Chapter 1: Introduction and policy background

History of SDLT

1.1 Stamp Duty was first introduced in 1694. It was a duty applied to a wide range of documents including transfers of land. Stamp Duty on land transactions was replaced by Stamp Duty Land Tax (SDLT) in 2003; it is a self-assessed tax on land transactions with separate rates on residential and non-residential transactions. Until the Chancellor of the Exchequer's Autumn Statement on 3 December 2014, a 'slab' structure existed in respect of both residential and non-residential transactions so that the relevant tax rate applied to the full consideration paid (tables 1.1 and 1.2).

Table 1.1: SDLT rates and bands as introduced in 2003 on residential transactions

Purchase price/lease premium or transfer value	Rate
Up to £60,000	0%
Over £60,000 to £250,000	1%
Over £250,000 to £500,000	3%
Over £500,000	4%

Table 1.2: SDLT rates and bands as introduced in 2003 on non-residential transactions

Purchase price/lease premium or transfer value	Rate
Up to £150,000	0%
Over £150,000 to £250,000	1%
Over £250,000 to £500,000	3%
Over £500,000	4%

1.2 When SDLT was introduced, the starting threshold for non-residential transactions was £150,000, the same level as now, but for residential it was £60,000. Since December 2003, the starting threshold for residential transactions has been increased to £120,000 in 2005 and again in 2006 to £125,000.

1.3 With the exception of the rates applied to high-priced residential properties, the SDLT rates did not change between 2003 and 2014, for both residential and non-residential transactions. For high-priced residential transactions, two additional bands have been introduced; the first in April 2011 for properties worth £1m or more which were taxed at five per cent and the second was in 2012 for properties worth £2m or more which were taxed at seven per cent. A special rate of 15 per cent also applies to residential transactions of more than £500,000 where the purchaser is a 'non-natural person' (i.e. companies, partnerships with one or more company members and collective investment schemes).

1.4 In December 2014 residential SDLT was changed so that the slab system was replaced by a new marginal or 'slice' rate system with new rates and bands (table 1.3). It is estimated that the cost of this change to the UK Exchequer is £800 million per annum. This is discussed more in the next chapter.

1.5 The new SDLT rates and bands are shown in the following table;

Table 1.3: SDLT rates and bands as introduced in December 2014 on residential transactions

Purchase price/lease premium or transfer value	Rate (percentage of portion of purchase price)
Up to £125,000	0%
Over £125,000 to £250,000	2%
Over £250,000 to £925,000	5%
Over £925,000 to £1.5 million	10%
Over £1.5 million	12%

1.6 The UK Government estimate that 98 per cent of residential purchases liable for tax will pay the same or less SDLT under these new rules. Under the new rules, those purchasing residential property costing more than £937,500 will pay more SDLT.

Devolution of SDLT to Wales

1.7 The Wales Act 2014 provides for the disapplication of UK SDLT in Wales and confers powers on the Assembly to replace it with a Welsh tax on transactions involving interests in land. These provisions will need to be commenced by Order made by the UK Government. The *Wales Bill: Financial Empowerment and Accountability* Command Paper contains explanatory information on how many of the powers in the Act will be implemented, and sets the target date for the commencement of these provisions as April 2018.

1.8 Provision is also made in the Wales Act 2014 for the disapplication of Landfill Tax in Wales and for it to be replaced by a Welsh tax on waste disposed to landfill. A consultation on proposals for a replacement tax on waste disposed to landfill in Wales will be launched shortly.

1.9 The *Wales Bill: Financial Empowerment and Accountability* Command Paper confirmed that the process of devolving SDLT and Landfill Tax will result in the Welsh Government's block grant being reduced. The exact adjustment method is yet to be determined. However, it is assumed that the estimated amount of SDLT and Landfill Tax that would have been raised in Wales in 2018-19 (the first year of devolved taxes) will be deducted from the block grant.

1.10 If the Welsh Government chose not to implement a form of tax on land transactions (and tax on waste disposed to landfill) in Wales, the Welsh Government would either need to operate with a significantly reduced budget or find alternative ways of raising revenues to maintain existing resource levels.

1.11 It is this Government's intention to continue to levy a tax on transactions involving interests in land in Wales from April 2018. This tax will be called Land Transaction Tax (LTT). The Welsh Government has chosen to continue to levy a tax because of the potential impact of reduced levels of resources on public service delivery, particularly in this prolonged period of budget austerity. Furthermore, this form of tax is now a familiar feature of the process of acquiring or leasing land and buildings across the UK and a form of this tax is likely to continue elsewhere in the UK beyond 2018.

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 land transactions. Although there are suggestions for possible alternatives to tax land and property in a more economically efficient way, these are not covered in the scope of this consultation and proposed legislation.

1.13 The Welsh Government's budget has fallen by nine per cent in real terms between 2010-11 and 2015-16 and it is likely that there will still be a very challenging fiscal climate when SDLT is devolved in 2018. At that time, the Welsh Government will need to consider carefully the proposed new rates and bands in relation to their possible impact on the resources available to fund public services, as well as on the economy in Wales. The wider UK SDLT regime at the time of devolution will also be an important factor, and it is clear from the recent announcement that this can change significantly and suddenly. Decisions about rates and bands of a new Welsh land transaction tax will, therefore, need to be made much closer to April 2018. In making those decisions, it will be important to balance fiscal consideration with the impact on taxpayers and the wider economy.

1.14 The Welsh Government has already set out its proposals for tax collection and management arrangements in a White Paper on devolved tax collection and management published on 23 September 2014 (see <http://wales.gov.uk/consultations/finance/devolved-taxes/?status=closed&lang=en>). It is intended that legislation on tax collection and management will be introduced in summer 2015. The tax collection and management legislative process will also need to be informed by proposals following the conclusion of this consultation and the forthcoming consultation on a replacement tax on waste disposed to landfill in Wales.

1.15 However, the main purpose of this consultation is to inform the development of policy and legislation on a tax on land transactions in Wales. This will enable the next Welsh Government to introduce legislation on these taxes soon after the next election (5 May 2016).

1.16 One element which will change is how transactions are treated in respect of land which straddles the border between England and Wales. The Wales Act 2014 sets out how this will be treated as two transactions; one liable to SDLT and the other liable to LTT. The value will be apportioned across the two transactions on the basis of their relative values. With tax devolution also occurring in Scotland, any transaction which includes multiple sites or buildings that are in Wales, Scotland and the rest of the UK may now have to provide separate tax returns relating to the properties within each tax jurisdiction. This may lead to a different amount of tax being paid to each of the respective Governments in total relative to that which would have been paid under SDLT.

1.17 In order to understand the scope and impact of a tax on land transactions in Wales, the next section introduces what the current UK tax on property transactions, SDLT, looks like in Wales.

SDLT in Wales

1.18 SDLT generates a significant amount of revenue in Wales and the UK. The latest HMRC estimates for SDLT in 2013-14 show UK revenues of £9.3 billion and Welsh revenues of £145 million (see table 1.4), 1.6 per cent of the UK total. With

regards to transactions, there were 51,600 SDLT property transactions in Wales, 4.2 per cent of the UK total.

Table 1.4: SDLT transaction and revenue data for Wales, 2013-14

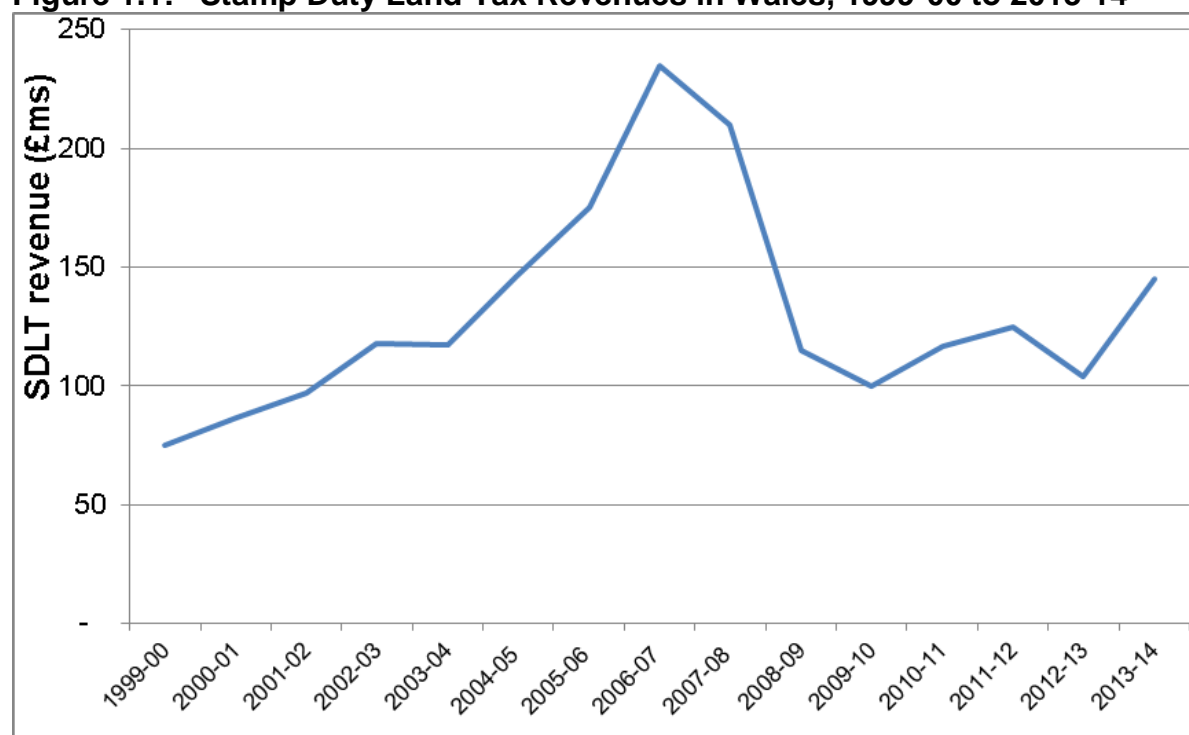
	No. of transactions*	Estimated revenue (£m)
Wales	51,600	145
UK	1,239,200	9,275

Source: HMRC (2014) UK Stamp Taxes 2013-14

* Figures include all SDLT returns, so excludes exempt transactions and those where the consideration is less than £40,000.

1.19 SDLT revenues are volatile as they are driven by the number of transactions in the property market as well as property prices. As an illustration, SDLT revenues in Wales fell sharply during the recession, from £236 million in 2006-07 to £100 million in 2009-10 (see figure 1.1).

Figure 1.1: Stamp Duty Land Tax Revenues in Wales, 1999-00 to 2013-14



Source: HMRC (2014) Disaggregation of HMRC tax receipts

1.20 To help manage cyclical volatility of a future property transaction tax in Wales, the Wales Act 2014 and its Command Paper outline new financial flexibilities. A cash reserve facility will allow the Welsh Government to save surplus tax revenues. These can then be used in the future when tax revenues are lower than forecast. In addition, the Wales Act 2014 also provides a facility for borrowing of £500m to cover fluctuations in the revenue stream from the fully devolved taxes.

Forecasts of SDLT in Wales

1.21 In December 2014, for the first time, the OBR published forecasts of Welsh tax revenues up to 2019-20 for the two taxes which will be devolved in April 2018. In the absence of knowing what the replacement for SDLT in Wales will look like from 2018, the OBR assumes that SDLT will continue in Wales with the existing structure, rates and bands.

Table 1.5: SDLT revenue forecast for Wales¹

	2013-14 Outturn	2014-15 Forecast	2015-16 Forecast	2016-17 Forecast	2017-18 Forecast	2018-19 Forecast	2019-20 Forecast
Residential SDLT (£m)	90	106	107	124	142	158	171
Non-residential SDLT (£m)	60	59	61	65	69	73	75
Total SDLT (£m)	145*	165	168	189	211	231	246

Source: HMRC, *UK Stamp Taxes 2013-14* (2014) outturn and OBR, *Economic and fiscal outlook: Devolved taxes forecast* (2014: p. 18)

* Total different due to rounding.

1.22 The OBR forecasts (see table 1.15) suggest that SDLT revenues in Wales might increase by 10 per cent or £20m to £165m in 2014-15, and then by a further £3m in 2015-16. Despite the OBR forecasting increases in both transactions and property prices, the forecasted revenue increases are relatively small because the recent UK Government reform of SDLT reduces revenues (see next chapter for details). In future years, according to the OBR, revenues are forecast to grow more as the number of property transactions and prices continue to grow. The OBR forecasts that, in 2018-19, the SDLT revenues could be £231m in Wales.

1.23 To produce these tax forecasts the OBR forecasts both property price and transaction volumes, which are both subject to large margins of error. Therefore these revenue forecasts are liable to change, especially for the years further in the future and should be treated with a degree of caution. They will be updated at each UK Government Autumn Statement and Budget, with the next update due on 18 March 2015.

¹ OBR forecasts for 2018-19 and 2019-20 are based on the existing SDLT structure, rates and bands.

Chapter 2: Residential property transactions

2.1 This section provides an overview of the SDLT residential system to help inform consultation on the development of a LTT. In addition, as SDLT will be devolved to Scotland this section also looks at how Land and Buildings Transaction Tax (LBTT), which is replacing SDLT in Scotland from April 2015, will be applied to residential property transactions in Scotland.

Residential property transactions in Wales

2.2 Residential property transactions are a significant element of SDLT in Wales. In 2013-14 there were 47,000 residential SDLT transactions in Wales, 91 per cent of total SDLT transactions in Wales². These residential transactions contributed £90 million³ of Welsh SDLT revenues in 2013-14, 62 per cent of the total.

Recent reform to residential SDLT

2.3 On 3 December 2014, the UK Government reformed residential SDLT. With effect from 4 December 2014, the structure, rates and thresholds were changed so that the slab system was replaced by a new marginal rate system.⁴ Under the slab system, the relevant tax rate applied to the entire transaction. This meant that SDLT liabilities would dramatically increase once the price moved into the next tax band. For example, a house priced at £250,000 would attract an SDLT of £2,500, but one of £250,001 would be liable to SDLT of £7,500 (see table 1.3 in chapter 1). With the new marginal rate system, the tax increases in a smoother fashion, as each new SDLT rate is now only payable on the portion of the consideration given which falls within each band.

2.4 The UK Government has described the reform as creating a more 'efficient and fairer system'⁵. Changing SDLT to a marginal rate system had been called for by many tax professionals⁶, and featured strongly in the initial views stakeholders gave to the Welsh Government on options for reforming SDLT in Wales.

2.5 The new SDLT residential rates and bands are shown in the following table;

² HMRC (2014) *UK Stamp Taxes 2013-14*

³ HMRC (2014) *UK Stamp Taxes 2013-14*

⁴ The special 15 per cent rate remains as a 'slab' charge.

⁵ See HMRC (2014) Impact assessment of Stamp duty land tax: reform of structure, rates and threshold;

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/382365/TIIN_2007_sdl_t_structure.pdf

⁶ E.g. see Chartered Institute of Taxation (2013) *Stamp Duty Land Tax: consultation on the potential impacts of devolving to the National Assembly for Wales and Welsh Government*.

<http://www.tax.org.uk/Resources/CIOT/Documents/2013/09/130905%20SDLT%20Devolution%20Wales%20-%20CIOT%20comments.pdf>

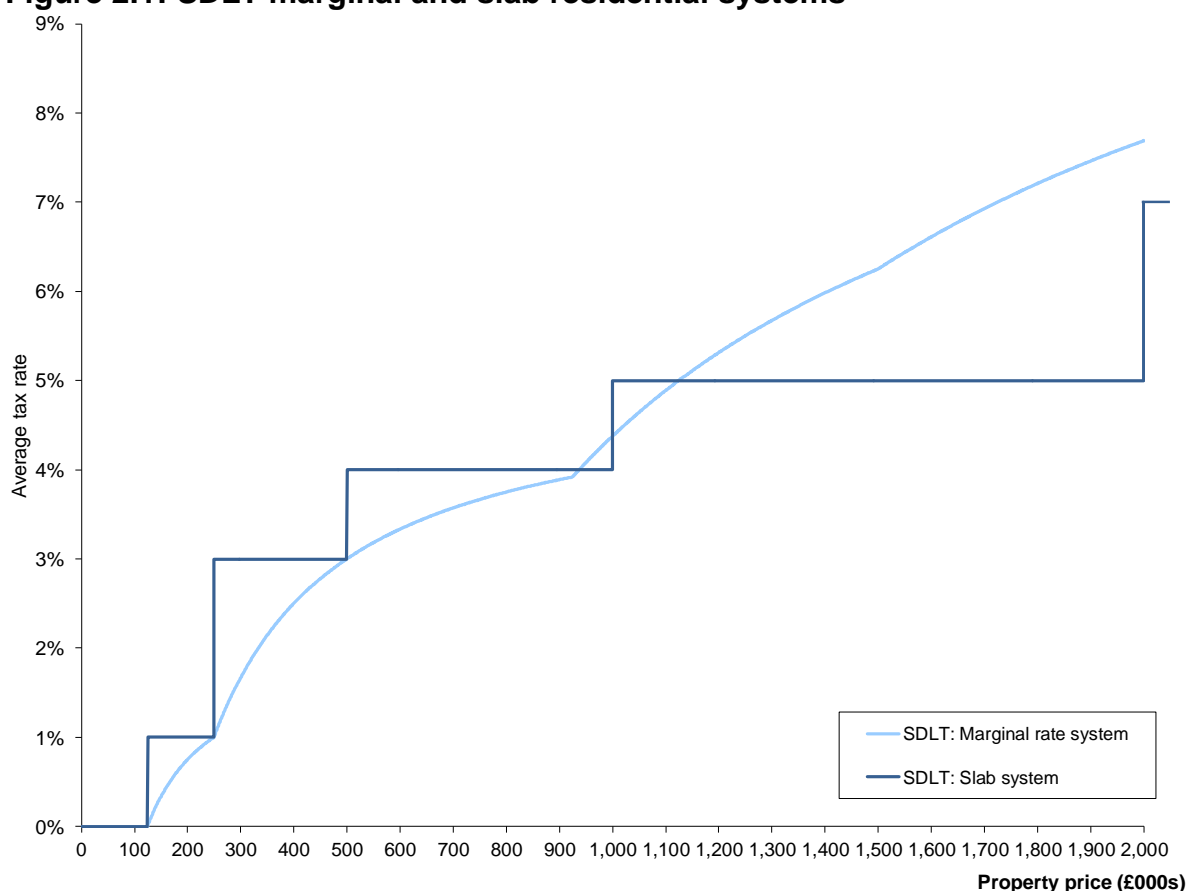
Table 2.1: SDLT rates and bands on residential transactions

Purchase price/lease premium or transfer value	Rate (percentage of portion of purchase price)
Up to £125,000	0%
Over £125,000 to £250,000	2%
Over £250,000 to £925,000	5%
Over £925,000 to £1.5 million	10%
Over £1.5 million	12%

2.6 These rates apply to UK⁷ residential freeholds or premiums paid when a lease is taken on a residential property.

2.7 The following chart compares the SDLT slab and marginal rate system for residential transactions.

Figure 2.1: SDLT marginal and slab residential systems



Examples:

A) A residential property purchased for £140,000 will pay £300 SDLT ($2\% \times (140,000 - 125,000)$). Previously £1,400 SDLT was payable.

B) A residential property purchased for £255,000 will pay £2,750 SDLT ($2\% \times (250,000 - 125,000) + 5\% \times (255,000 - 250,000)$). Previously £7,650 SDLT was payable.

⁷ These rates will not apply in Scotland from April 2015.

- C) A residential property purchased for £505,000 will pay £15,250 SDLT ($2\% \times (250,000 - 125,000) + 5\% \times (505,000 - 250,000)$). Previously £20,200 SDLT was payable.
- D) A residential property purchased for £2,000,000 will pay £153,750 SDLT ($2\% \times (250,000 - 125,000) + 5\% \times (925,000 - 250,000) + (10\% \times (1,500,000 - 925,000) + 12\% \times (2,000,000 - 1,500,000))$). Previously £100,000 SDLT was payable.

Land and Buildings Transaction Tax (LBTT) in Scotland

2.8 From April 2015, LBTT will replace SDLT in Scotland and will apply both to residential and non-residential property transactions (see next chapter for more detail of LBTT on non-residential property transactions). The Scottish Government will introduce a marginal rate system of taxation for property transactions. The rates and bands were announced in January 2015⁸. The LBTT residential rates are shown in the below table.

Table 2.2: LBTT rates and bands on residential transactions

Purchase price/lease premium or transfer value	Rate (percentage of portion of purchase price)
Up to £145,000	0%
Over £145,000 to £250,000	2%
Over £250,000 to £325,000	5%
Over £325,000 to £750,000	10%
Over £750,000	12%

Examples:

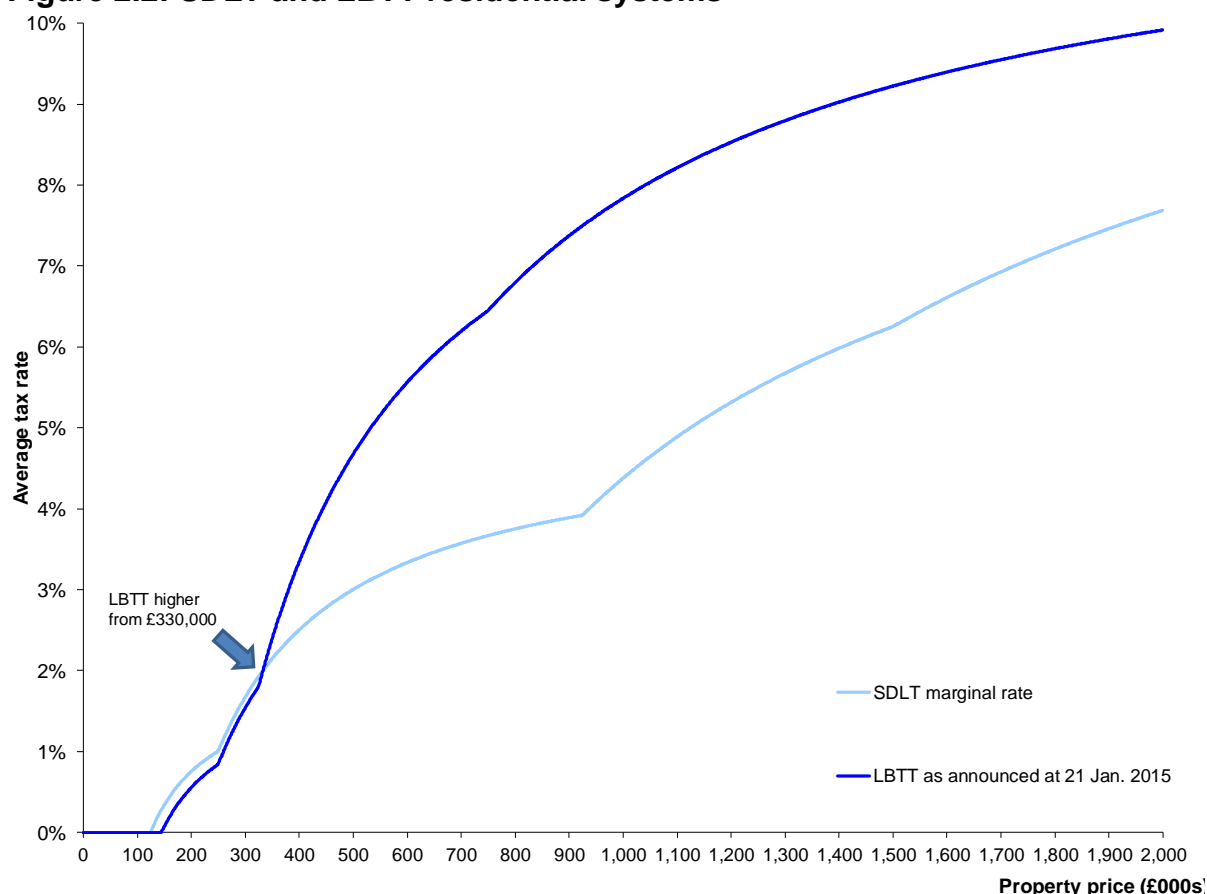
- A) A residential property purchased for £140,000 will pay zero LBTT.
- B) A residential property purchased for £255,000 will pay £2,350 LBTT.
- C) A residential property purchased for £505,000 will pay £23,850 LBTT.
- D) A residential property purchased for £2,000,000 will pay £198,350 LBTT.

2.9 The rates and bands for LBTT are designed so that the tax is broadly revenue neutral compared to the current version of SDLT.

2.10 The figure below (2.2) plots the residential SDLT and LBTT rates. It shows that these two marginal rate systems have relatively gradual increases in tax as property prices increase, as compared to the steps seen with the slab structure shown in the previous figure, 2.1.

⁸ The rates and bands for LBTT were first announced in October 2014 by the Scottish Government. However, following the reform to residential SDLT by the UK Government in December 2014, the Scottish Government revised the rates and bands of LBTT in January 2015. See Scottish Government (2014) *Scottish Approach to Taxation: Land and Buildings Transaction Tax* <http://www.scotland.gov.uk/Topics/Government/Finance/scottishapproach/lbtt>

Figure 2.2: SDLT and LBTT residential systems



2.11 The Welsh Government believes that a marginal rate of tax would be appropriate for residential property transactions in Wales. It provides a fairer system with less distortion than the former residential slab system of taxation in SDLT.

Rates and bands of residential LTT

2.12 As well as the type of tax system, an equally important aspect of LTT will be the rates and bands. A decision on these will be made by the Welsh Government much closer to the date when SDLT is devolved to Wales in April 2018⁹.

2.13 The appropriate rates and bands for Wales will be influenced by a number of factors which are uncertain at this time. These include:

- the situation of the property market in Wales and the general economic situation around the time when the new tax will commence (and beyond) in Wales. Figure 1.1 in chapter 1 demonstrates how volatile receipts from a tax on land transactions can be; and
- the prevailing UK SDLT rates closer to the time of devolution. The reform announced in the Autumn Statement has demonstrated that these can be changed suddenly and substantially.

2.14 The Welsh Government will consider the market conditions and the shape of the SDLT regime when deciding the rates and bands for LTT.

2.15 In addition to these factors, a decision on the rates and bands of the tax will

⁹ As a comparison, the Scottish Government consulted in June 2012 about LBTT and announced the rates and thresholds in October 2014. LBTT goes live in April 2015.

need to be considered in the context of the effect on the funding available for public services in Wales. If the new tax raises around the same amount as SDLT in Wales will raise at the time of devolution, then the overall level of funding for public services should be unchanged. A reduction in the level of taxation relative to SDLT at the time of devolution would mean less funding available for public services in Wales, but could potentially provide a boost to the economy. An increase in the level of taxation could increase the funding for public services, but could have a negative impact on the economy.

2.16 A comparison of the current rates and bands that apply to SDLT and LBTT (see figure 2.2, above) provides a useful illustration of the main variables to be considered when deciding what the future rates and bands for LTT might be.

2.17 Starting threshold: LBTT will have a zero rate band of £0 to £145,000, higher than SDLT of £0 to £125,000. This will reduce the number of properties liable for the tax in LBTT relative to SDLT. LTT could adopt one of these thresholds, or have a different one again. For example, the starting threshold could be lower than SDLT as the average house price in Wales (£162,000) is lower than both the UK (£242,000) and Scotland averages (£181,000)¹⁰. Alternatively, the starting threshold could be increased relative to both LBTT and SDLT.

2.18 Starting tax rate: LBTT and SDLT have the same starting tax rate of two per cent. However, as these are marginal rates and that LBTT starts at a slightly higher threshold, the tax due under LBTT will be slightly lower than SDLT for properties between £125,000 and £330,000. The starting rate applied to LTT, which may partly depend on the starting threshold, could be set higher, lower or the same as either LBTT or SDLT.

2.19 Number of bands: SDLT and LBTT both have four bands in addition to the zero per cent band. Most residential transactions which are taxed in Wales are likely to be in the SDLT two per cent band. By having more bands, it would be possible to introduce different rates within the existing SDLT bands. However, having more bands, especially with a marginal rate system, could make the tax more complicated to calculate. This could be mitigated by provision of easy to use online calculators (as are provided by both HMRC and Revenue Scotland).

2.20 Rates on high value properties: LBTT taxes high value transactions relatively more than SDLT. The divergence is created mostly by the difference in the rates which apply to the amount in excess of £325,000. The LBTT band for the consideration from £325,000 to £750,000 is taxed at 10 per cent, with amounts in excess of £750,000 taxed at 12 per cent. With SDLT, the consideration from £250,000 to £925,000 is taxed at five per cent, with the amount from £925,000 to £1.5m taxed at 10 per cent and in excess of £1.5m taxed at 12 per cent. Having a higher rate of tax can generate more revenue. However, it can also result in fewer high value transactions occurring which can have a counter effect on revenues. However, Wales has relatively fewer high price residential property transactions compared to the UK and Scotland. For example, in 2012/13, Wales had 385 (1.0 per cent of its total) of its SDLT residential transactions priced £500,000 or more,

¹⁰ Average mix-adjusted house prices ONS (2015) House Price Index, November 2014;
<http://www.ons.gov.uk/ons/rel/hpi/house-price-index/november-2014/rft-annual-november-2014.xls>

Scotland had 1,275 (1.7 per cent) and the UK had 53,170 (5.7 per cent)¹¹. Therefore high rates of tax for high valued residential properties may affect very few transactions in Wales and may generate very little additional tax revenue.

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.

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.

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

Subsequent changes to rates and bands

2.21 An important consideration for the effective implementation of LTT will also be how the rates and bands for both residential and non-residential should be changed and the speed with which changes should take effect. Sudden changes to the economy and the housing market might mean that the Welsh Government may require the ability to change rates and bands quickly. For example, sudden large changes in property values, either up or down, may put pressure on the Welsh Government to change rates and bands immediately.

2.22 The potential impact on behaviour of changes to rates or bands also needs to be considered. Having a long period between a change being announced and the change taking effect risks transactions either being brought forward (to take place before a change in rates or bands), or delayed (to take place after a change). This may have a distortive impact on the property market and may also have an undesirable impact on revenues.

2.23 In addition, if the UK Government was to make a significant and sudden change to SDLT, then it may be desirable for the Welsh Government to have the facility to be able to also act quickly to help ensure consistency where this feature of the tax is desirable. This might be especially so for changes to taxation of non-residential transactions (this is discussed more in chapter 3).

2.24 The Autumn Statement on 3 December 2014 provides an example of how the UK Government is able to make changes with almost immediate effect. The reform to SDLT that the UK Government announced came into effect the day after it was

¹¹ Numbers rounded to the nearest five. Source from data requested from HMRC.

announced, on 4 December 2014. It is likely that had such a large change to the tax been pre-announced this could have led to people delaying transactions to take advantage of the new SDLT residential structure, stalling the housing market.

2.25 Immediate changes to the amount of SDLT due can also be made by changing or introducing new reliefs. The UK Government has the power to implement new reliefs more or less immediately (reliefs are discussed more in chapter 6). For example, the UK Government announced on 24 March 2010 that from 25 March 2010, the starting threshold for SDLT would increase to £250,000 for first time buyers. This suggests that there might be other areas of the tax system in which the Welsh Government may also usefully be able to change with immediate effect.

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 definition of residential property

2.26 Residential property is defined in the SDLT legislation and LBTT in the same way¹². The Welsh Government is aware that some stakeholders do not consider the definition to be sufficiently clear. In particular they draw attention to the two aspects of the definition of residential property; firstly a building being “suitable for use as a dwelling”, and secondly, “land that subsists for the benefit of a building”. For both aspects, some stakeholders believe that the law is unclear leading to uncertainty and that it may be applied in a potentially subjective manner.

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).

¹² In this Act “residential property” means— a) a building that is used or is suitable for use as a dwelling, or is in the process of being constructed or adapted for such use, (b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or other structure on such land), or (c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b). (Section 59 Land and Buildings Transaction Tax (Scotland) 2013)

Chapter 3: Non-residential property transactions

3.1 This section provides an overview of the SDLT and LBTT non-residential regimes to help inform development of a LTT for non-residential transactions. Non-residential transactions can be particularly complicated and create challenges. By definition they can include anything that does not explicitly fall under the category of residential transactions. Within SDLT and LBTT, non-residential transactions include:

- commercial property such as shops, factories, offices etc.;
- agricultural land;
- forests;
- development land;
- any other land or property which is not used, or suitable for use, as a dwelling; and
- six or more dwellings acquired in a single transaction.

3.2 In addition to residential and non-residential properties, there is a third category of transaction within SDLT which is 'mixed'. This is a transaction which incorporates both residential and non-residential elements. Such transactions are taxed as non-residential transactions.

SDLT

3.3 Non-residential transactions are taxed under a slab system. This element was unaffected by the reform to SDLT by the UK Government in December 2014's Autumn Statement. The current UK tax rates for SDLT which apply to non-residential transactions are shown below (see table 3.1). These rates have not changed since 2003.

Table 3.1: SDLT rates on non-residential or mixed property and land

Purchase price/lease premium or transfer value (£)	Rate
Up to 150,000	0%
Over 150,000 to 250,000	1%
Over 250,000 to 500,000	3%
Over 500,000	4%

Non-residential SDLT in Wales

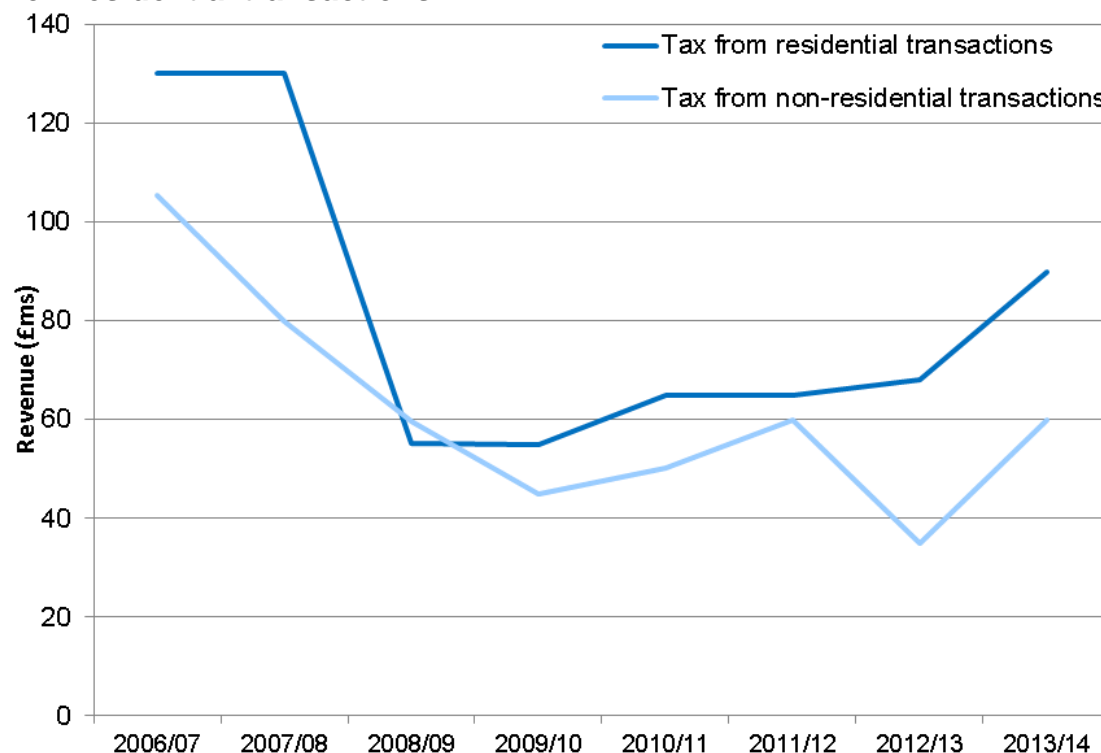
3.4 Non-residential transactions in Wales are a smaller element of SDLT than residential, both in terms of revenues and the number of transactions. In 2013-14, non-residential transactions generated £60m of SDLT in Wales, 40 per cent of the total¹³. In the same year, there were 4,600 non-residential transactions (including mixed property) in Wales, less than nine per cent of the total transactions¹⁴.

3.5 The following figure (3.1) plots the SDLT revenues from both residential and non-residential transactions between 2006-7 and 2013-14 in Wales. It shows that revenues from both fell over the recession. Since 2008-9, residential revenues have steadily grown. However, the non-residential transaction revenue has been more volatile - both increasing and decreasing since 2008-9.

¹³ HMRC (2014) *UK Stamp Taxes 2013-14*

¹⁴ HMRC (2014) *UK Stamp Taxes 2013-14*

Figure 3.1: SDLT tax revenue in Wales 2006-7 to 2013-14 by residential and non-residential transactions



Source: HMRC *UK Stamp Tax Statistics 2006-07 to 2013-14*

LBTT

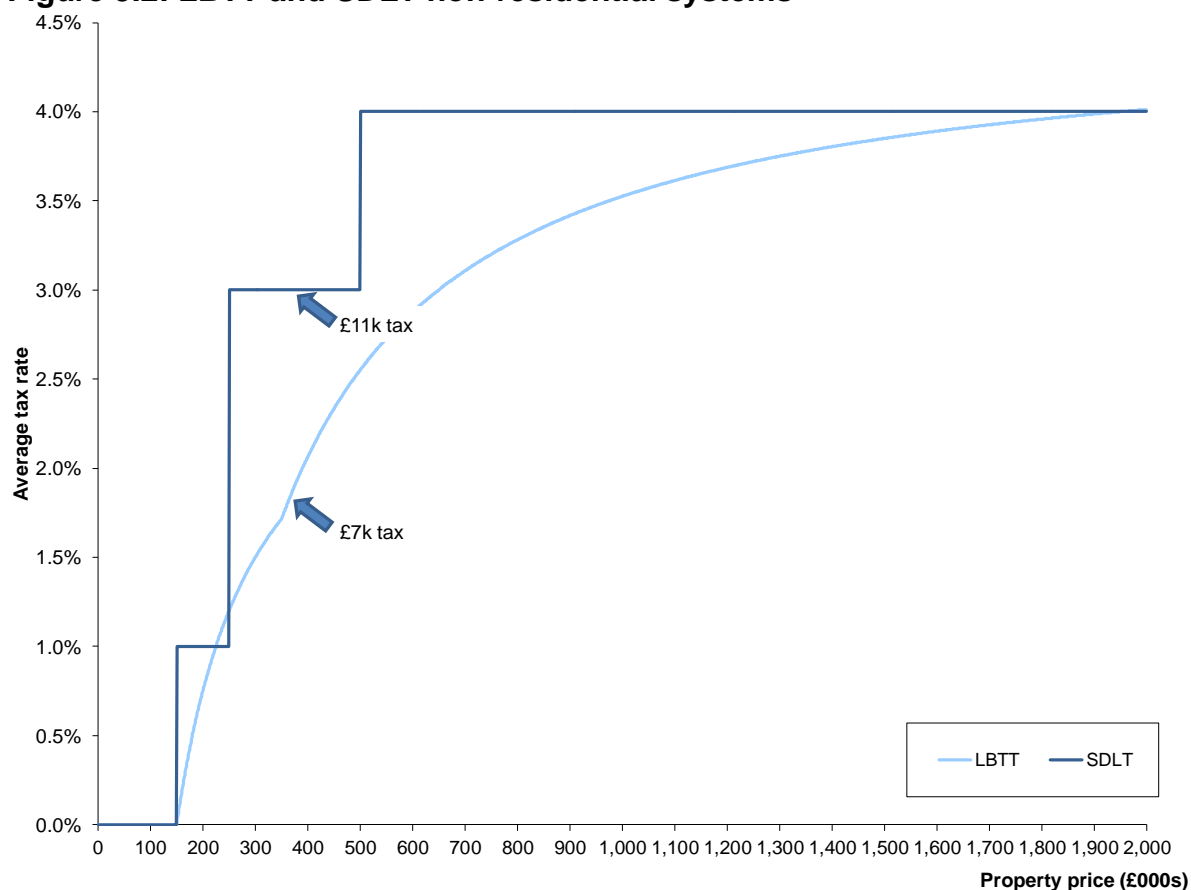
3.6 In Scotland, non-residential LBTT rates are on a marginal basis consistent with the residential rates. The current LBTT rates which apply to non-residential transactions are set out in the following table;

Table 3.2: LBTT non-residential rates and bands

Property price threshold (£)	Rate
Up to 150,000	0%
Over 150,000 to 350,000	3.0%
Over 350,000	4.5%

3.7 The LBTT rates and bands for non-residential transactions are designed to be broadly revenue neutral compared to SDLT. However, the SDLT and LBTT rates are not immediately comparable as they operate as slab and marginal rate systems. The following figure (3.2) compares the effective rates for different transaction values for the two taxes.

Figure 3.2: LBTT and SDLT non-residential systems



3.8 The tax due under SDLT for non-residential transactions is generally higher than LBTT until the consideration paid is around £2m. This is despite generally higher rates for LBTT, and arises because they are on a marginal rate basis. For example, a non-residential property priced £375,000 under LBTT would incur £7,125 in tax and with SDLT £11,250 would be due.

3.9 The top rate for non-residential LBTT is 0.5 percentage points higher than the top rate of SDLT, so the two systems of tax do not significantly diverge above £2m (not shown in the diagram). For example, a £40m property will incur around £1.6m tax with SDLT or £1.8m with LBTT (assuming no reliefs are applied). Therefore, compared to SDLT, the higher tax charged for high priced non-residential properties with LBTT offsets the slightly lower tax charged for low priced properties, making the tax broadly revenue neutral.

A non-residential transactions tax for Wales

3.10 Despite having a marginal rate system, LBTT diverges very little from SDLT in the way non-residential transactions are treated for tax. Even with a different structure, rates and bands, the resulting difference in liability also generally varies little from SDLT, as shown in figure 3.2.

3.11 Wales, in comparison to Scotland, has a more integrated land and property market with England, because of the more densely populated border areas as well as sharing the same land law. There could be advantages in retaining the current SDLT tax system and structure in Wales for non-residential transactions. This would provide consistency, certainty and stability for businesses in Wales, and those which operate cross-border. It would also minimise the burdens on businesses (including the conveyancing sector) because they would not need to become acquainted with a

new tax regime. 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. A regime which taxed non-residential transactions very differently in Wales from the rest of the UK may be considered unfavourable by foreign investors. These factors could influence continued investment and also the ability to attract new businesses to Wales.

3.12 However, it is also important to ensure that the new tax is developed in a way that meets the needs and priorities of Wales and to recognise the opportunity that devolution represents to implement a tax regime which could represent a competitive advantage for Wales. Furthermore, recent events have illustrated that there may be sudden changes within the UK tax system, so consistency with the UK should only be one factor in the decision on what is appropriate for Wales.

3.13 Information on non-residential property transactions is limited as it involves - commercially sensitive information and, in some instances, relatively few transactions. It would, therefore, be useful to understand more about whether the slab structure of the UK tax creates distortions in the market for commercial properties and whether a marginal rate system, like LBTT, could improve this. In addition, it would be useful to hear views about whether different rates and bands could be appropriate for Wales and what the impact of changes might be.

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)?

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.

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

Chapter 4: Partnerships, trusts, and companies

4.1 The taxation of transactions entered into by persons that are not individuals requires a number of rules to reflect the nature of the entities involved and the fact that some transfers of economic ownership of land do not fit a 'natural' transfer transaction.

4.2 The rules concerning partnerships are considered particularly complicated in SDLT because there is a desire to tax transactions that result in a change in the economic interest in land. However, some transactions, such as a partner joining or leaving a partnership, do not result in a traditional or natural land transaction and therefore special rules are required for these transactions.

4.3 Another particular feature of business is that a single economic endeavour may have a number of separate companies within a group structure. This may be so the business can manage risk, or in order to meet lending requirements. As such, there are many good reasons why transfers of ownership of land or property may occur within the group but where the transfer does not result in any real change of beneficial ownership. In SDLT, group relief exists to ensure that businesses can transfer property within a group without a tax charge arising. This is considered a necessary feature of the tax system but, again, means added complexity is necessary firstly to permit such transactions without tax applying, and secondly to ensure that such a relief is not exploited by the unscrupulous.

4.4 It is for these reasons that the application of SDLT to partnerships and companies is particularly complex. The Welsh Government is also aware of some of the current issues and uncertainty which remain within the existing provisions for some transactions involving partnerships, trusts or companies and the Welsh Government will seek to resolve these where appropriate. However, to enable commercial property transactions to be appropriately treated within LTT, specific provisions may be needed to ensure compatibility with UK law on companies and partnerships, which remains non-devolved.

Partnerships

4.5 The taxation of partnership transactions embodies some of the most complicated and technical provisions in SDLT. Essentially, partnerships can transact in land or property by transferring:

- land or property to a partnership from; an existing partner, a person joining the partnership, or a person connected with either an existing or new partner;
- land or property from a partnership to a partner;
- land or property from a third party to a partnership; or
- an interest in a partnership.

4.6 The Office of Tax Simplification (OTS) has been undertaking a review of the treatment of partnerships in UK taxation and published its final report on 19 January 2015¹⁵. The report made recommendations in relation to the operation of SDLT for

¹⁵ See <https://www.gov.uk/government/organisations/office-of-tax-simplification>

partnerships. The primary recommendation is that clear guidance should be published. The Welsh Government will ensure that the findings of the report will be taken into account when developing proposals for LTT.

Trusts

4.7 The key feature of a trust is that the legal ownership (and for a 'settlement' the beneficial interest as well) of an asset is held by one person for the benefit of another person. Trusts usually comprise a tripartite arrangement, where the person granting the trust ("the trustor/settlor") sets up the trust by making a declaration of trust and stipulating its purposes and the persons to benefit from the trust. The trust is administered by the trustee(s) who have legal ownership of the trust funds, which have been transferred to the trust by the settlor for the ultimate benefit of the beneficiary/ies.

4.8 Under the SDLT legislation, trusts are categorised as either 'settlement' or 'bare' trusts. The trustees in settlements have some control in relation to the administration of the trust and how the beneficiaries are to benefit. An example of a settlement trust would be a discretionary trust¹⁶. In a bare trust, the trustee(s) own the legal interest whilst the beneficial interest (which is where the value of the property rests) is owned by the beneficiary. Examples of where a bare trust may exist are where the beneficial owner is a minor, is incapacitated or where the legal interest is held by a nominee (for example where privacy is important).

4.9 For the purposes of SDLT, settlements and bare trusts are treated differently. When a bare trustee or nominee undertakes a land transaction thereby acquiring a 'chargeable interest', SDLT, broadly, applies as if the interest had been acquired by the person for whom the bare trustee holds property. In the case of a settlement, where the trustee acquires a chargeable interest, the trustees are treated as purchasers of both the legal and the beneficial interest.

Companies

4.10 As is the case with partnerships and trusts, the SDLT framework and legislative provisions for companies is technical in nature and adds complexity because, in this area too, the legislation has been introduced and amended in a gradual manner to address specific issues around avoidance (in particular in relation to group relief).

4.11 Any attempts to change or simplify the approach to taxing companies under LTT compared to SDLT will need to be considered carefully. The way in which companies are treated for SDLT purposes is highly integrated with Corporation Tax which is not devolved.

4.12 The administration of transactions undertaken by companies can also prove challenging because of the many different forms of companies (particularly where foreign companies are involved). Additional complexity arises in the interplay

¹⁶ These are trusts where the trustees can make certain decisions, in compliance with the trust deed or letter of wishes, about how to use the trust income and capital.

between partnerships and companies; companies and trusts; and the different reliefs and exemptions that can apply to the transactions entered into by these entities.

Proposed approach to partnerships, trusts, and companies

4.13 The following areas have been identified by stakeholders as potentially offering scope for improvement or clarification:

- whether a partner's chargeable consideration should be based on the partners' capital sharing ratios as opposed to their income sharing ratios;
- the distinction between the joint holding of properties in partnership or a joint holding of investments;
- any difference between a partnership buying a property and a partnership's structure changing; and
- how to treat trusts when they fail.

4.14 The Welsh Government recognises that, although the provisions in relation to partnerships, trusts and companies are complex and technical, they are understood to a large degree by practitioners. Changes to the current system could both create unnecessary administrative burdens on businesses, and open up possible new avenues for avoidance that may be exploited. It is not possible to establish how many transactions there are in Wales involving partnerships, trusts and companies or how much SDLT is paid on such transactions. It is therefore difficult to assess what the impact might be of any potential changes to these areas of the legislation, either on revenue or the burden on businesses.

4.15 The current SDLT provisions for partnerships, trusts and companies are likely to be used by organisations which operate UK-wide. The Welsh Government is keen to retain cross-border consistency with regards to the tax system across the rest of the UK where appropriate, so as to support businesses in Wales and those that operate cross-border. In this context, there appears to be a strong argument to replicate the SDLT partnerships, trusts and companies areas of legislation for LTT. In Scotland, LBTT is considered to closely replicate how SDLT treats land transactions involving partnerships, trusts and companies.

4.16 Even if there are good reasons to maintain the existing legislative provisions around partnerships, trusts, and companies and the taxation of land transactions, it will be a priority for the Welsh Government to bring all the relevant legislation in one place to make it more user-friendly. Regardless of whether any legal changes are made to LTT compared to SDLT with respect to partnerships, trusts, and companies, it will be a high priority to develop and publish clear and comprehensive guidance on these issues.

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.

Chapter 5: Leases

5.1 SDLT and LBTT both tax leases. The Welsh Government believes there is a strong case to continue taxing these. This section describes how LBTT and SDLT treat leases and some of the challenges.

Leases in SDLT

5.2 Leases are taxed differently in SDLT according to whether they are granted (new) or transferred (also known as an 'assignment'). New leases are taxed according to their value both in terms of their premium (the capital value paid upfront) and also the value of the rent payable under the lease.

5.3 The premium is treated in the same way as consideration payable on a transfer of a freehold interest and taxed accordingly, that is to say, the full amount paid as premium is taxed at the residential or non-residential rates. With regards to the rent element, the value of the annual rent is added-up over the duration of the term of the lease with future year values discounted (by 3.5 per cent) to generate a net present value (NPV) of rent for the duration of the lease. This value is then taxed depending on whether the value of the NPV exceeds the relevant tax threshold (see below tables 5.1 and 5.2).

5.4 With assignment of leases, any premium paid by the purchaser to the current lessee for transferring the lease will be subject to SDLT. The rent part of an assigned lease is not subject to SDLT as the tax payable on this would have been paid on the grant of the lease.

5.5 The below tables (5.1 and 5.2) show the rates and bands which are applied to new residential and non-residential leases, respectively. In SDLT, residential leases are taxed at one per cent on the NPV above £125,000 and non-residential leases are taxed at one per cent on the NPV above £150,000. Therefore this element of SDLT is also on a marginal rate basis.

Table 5.1: SDLT rates for new residential leases (rent)

Net present value of rent	Rate (percentage of portion of purchase price)
Up to £125,000	0%
Over £125,000	1%

Table 5.2: SDLT rates for new non-residential leases (rent)

Net present value of rent	Rate (percentage of portion of purchase price)
Up to £150,000	0%
Over £150,000	1%

5.6 In Wales, it is expected that non-residential transactions involving leases will be a higher proportion of returns and revenues than residential. Although it is expected that most residential transactions will be of freehold or the assignment of long leasehold interests. Some SDLT returns will need to be made where rent is payable under a newly granted lease, for example on the sale of a newly built or converted flat. However, the structure of most residential leases (high premiums and

low annual rent) means that revenues from the rent element of residential transactions in Wales are expected to be low.

Leases in LBTT

5.7 The tax treatment of non-residential leases is very similar for LBTT and SDLT. For example, the rates and thresholds for new non-residential leases for SDLT and LBTT are the same (see tables 5.2 and 5.3). However, for residential leases, the two tax systems differ as in Scotland the rent element is exempt from LBTT, although an exception does apply to ultra-long leases exceeding 175 years, because under Scottish law these leases convert to ownership under the Long Leases (Scotland) Act 2012.

Table 5.3: LBTT rates for new non-residential leases

Net present value of rent	Rate
Up to £150,000	0%
Over £150,000	1% of value that exceeds £150,000

Potential treatment of leases under LTT

5.8 The Welsh Government proposes to continue to tax leases as part of LTT, consistent with LBTT and SDLT. However there are grounds for reviewing whether the rent element of residential leases should continue to be taxed under LTT. Residential leases are likely to be a small element of SDLT in Wales both in terms of the number of returns and revenues. It is possible that most residential lease returns in Wales that need to provide details on their rental arrangements yield very little or no revenue in respect of the rent element although SDLT may still be payable on any premium. Further work will be carried out to assess how many returns and how much revenue is generated from residential leases in Wales.

5.9 The Welsh Government is considering whether to continue to tax the rent element of residential leases in Wales. In doing so the Welsh Government is mindful that there is a possibility that behaviour may change with transaction values switching from the premium to the rent.

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?

Complexity and compliance issues with leases

5.10 A number of factors make the system of taxing leases through both LBTT and SDLT challenging. In particular:

- different systems apply to premium and rent elements;
- calculation required to assess the rent value over the duration of the lease; and

- the requirement to know the exact length and value of the lease at the time of the return, or to make subsequent returns as these become apparent.

5.11 Given that SDLT is a self-assessed tax, the complexity around calculating the tax liability for leases gives rise to additional issues around compliance, enforcement, and notification. For example, where the rent is unknown at the time of entering into the lease, perhaps because it will be linked to the occupying business' performance (i.e. a turnover rent), in SDLT it is the responsibility of the taxpayer to work out the NPV of the rent based on a '*reasonable estimate*' of what they think the rent will be. A further calculation should then be undertaken when the actual amount of the rent is known or the first five years have passed. A further return is then required if the NPV increases so that tax is now due (i.e. the rent now exceeds the tax threshold) or the tax liability has increased. There are also a number of other instances where supplementary returns are required in SDLT for leases.

5.12 It is unknown how much tax is 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. This could be due to a lack of awareness or oversight that SDLT is payable even though the occupation of the property may not have changed, which is the usual trigger for an SDLT return. In Scotland, LBTT will request three yearly returns on non-residential leasehold transactions to be filed. In Wales, requiring a regular return on LTT leasehold transactions may also address some existing compliance issues with SDLT leasehold transactions. However, the cost to businesses may rise in order to comply with regular filing requirements.

5.13 In an attempt to address some of the issues around compliance, any possible solution would need to balance the resource and potential administrative burden, both on the part of taxpayers and the tax authority, with the potential improvement in compliance.

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?

Licences and tenancies at will

5.14 Licences¹⁷ and tenancies at will¹⁸ are not subject to SDLT. The Scottish Government has taken powers to enable non-residential licences to be taxed as land transactions, but residential licences and tenancies at will are not taxable under

¹⁷ HMRC defines a license as "simply a permission to use land. It allows someone access to the land of another for an agreed purpose. It is an authority that justifies what would otherwise be a trespass. It does not confer any interest in land. If there is no exclusive possession then the arrangement cannot be a lease and must be a license." (IHTM24074)

¹⁸ HMRC defines a tenancy at will as "an arrangement, whether documented or not, where a tenant occupies land as tenant (for example, not as servant or agent) with the consent of the owner, on the basis that the arrangement can be brought to an end by either party at any time. The arrangement will also automatically cease if either party dies or if the owner sells the land. A tenancy at will does not create an estate and thus cannot be assigned."(SDLTM 10050)

LBTT at present. The main reason for considering taxing licences and tenancies at will is the potential to improve compliance and reduce avoidance.

5.15 It is possible that businesses may maintain they are in occupation through a licence agreement or tenancy at will, when in fact the actual arrangement reflects the characteristics of a lease and should therefore, be treated as such and taxed accordingly. This is on the basis that case law provides that the most important consideration in determining whether or not an occupational agreement is a lease or licence is the substance of the agreement rather than the label attributable to it.

5.16 It is recognised that this could be a difficult area to enforce but taxing licences, particularly long-term licences, would send a clear message on anti-avoidance. However, taxing licences or tenancies at will could act as a deterrent to entering such arrangements, making enforcement a secondary consideration.

5.17 Licences and tenancies at will might also be of short duration and low value, which under the current SDLT thresholds and rates may yield very little revenue. In addition, taxing licences and tenancies at will could lead to administrative difficulties (as outlined above with some leases) as tenancies at will are not for a fixed duration and continue until either party serves a termination notice. This can create potential difficulties in calculating the NPV for the rent over the entire period.

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

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?

Chapter 6: Reliefs and exemptions

6.1 The Welsh Government believes there is a strong case to maintain consistency with SDLT where appropriate, and only change things where doing so would represent an improvement. Therefore it is proposed to use the reliefs and exemptions that currently exist in SDLT as a starting point to consider what reliefs and exemptions there should be within LTT.

6.2 Reliefs and exemptions are integral to the effective operation of SDLT, with the current system containing over 30 separate reliefs and exemptions.

6.3 The Welsh Government considers there to be three main reasons why reliefs and exemptions are required for a land transaction in Wales. These are to:

- make the tax system fairer for taxpayers e.g. group relief, exempting transactions as a consequence of divorce, and, alternative finance arrangements;
- attempt to influence behaviour in order to meet specific policy objectives e.g. the now repealed first time buyer's relief or zero carbon homes relief; and
- support the smooth operation of the market by enabling certain types of transactions e.g. relief when a house builder purchases a customer's home when that customer is acquiring a new home from the house builder.

6.4 Although both reliefs and exemptions result in a reduction in tax revenue, they can be distinguished from each other.

Exemptions

6.5 HMRC describe exemptions as being a transaction that has no charge and in some instances, can also be exempt from completion of an SDLT return or notification. Current examples include:

- where no money or 'consideration' changes hands (although there are exceptions to this rule in respect of some company and partnership transactions when a market value rule operates);
- property left in a will (unless there is an outstanding mortgage);
- on divorce or dissolution of a civil partnership; and

6.6 Some leasehold transactions can also be exempt from the requirement for notification if they are:

- grants of leases of seven years or more with chargeable consideration of less than £40,000 and annual rent of less than £1,000;
- assignment of leases of more than seven years in length when originally granted with chargeable consideration of less than £40,000; and

- grants of leases of less than seven years where the chargeable consideration is less than the SDLT (residential or non-residential) tax threshold.

6.7 Licences and tenancies at will are also exempt from SDLT. This is discussed more in the leases chapter.

Reliefs

6.8 With reliefs, a tax return must be submitted and the relief claimed. The relief can have the effect of reducing the tax liability or completely negating it.

6.9 The below table (6.1) provides a summary of the most common residential and non-residential reliefs claimed in Wales in 2012-13 (the most recent data available to the Welsh Government). It shows that disadvantaged area relief was claimed the most number of times. This was a relief which reduced the amount of SDLT in areas designated by the UK Government as 'disadvantaged' on transactions priced between £125,000 and £150,000. This relief was repealed in April 2013. Other common reliefs for residential transactions include part-exchange (with a house-building company) and charities relief. A full summary of SDLT reliefs is attached at Appendix 1.

Table 6.1: Frequency of residential reliefs in Wales: 2012/13

Relief	No. of claims	% of total
Disadvantaged areas (residential)*	1,764	54.7%
Part-exchange (house-building company)	727	22.6%
Charities relief	188	5.8%
Registered social landlords	110	3.4%
Multiple dwellings relief	69	2.1%
First-time buyers relief*	53	1.6%
Group relief	51	1.6%
Relocation of employment	<30	<1%
Compulsory purchase facilitating development	<30	<1%
Transfers involving public bodies	<30	<1%
Right to buy relief	<30	<1%
Alternative property finance	<30	<1%
Collective enfranchisement by leaseholders (relief not yet available)	<30	<1%
Combination of reliefs	<30	<1%
Other relief ¹⁹	201	6.2%
Total	3,222	100%

Source: Calculations based on HMRC administrative datasets²⁰

* Relief no longer available.

¹⁹ Other relief is a relief code used by HMRC to provide flexibility where the legislation has introduced a new relief but a specific code has not yet been created (e.g. First Time Buyers Relief) in the computer system or for the miscellaneous reliefs (see Appendix).

²⁰ This work contains statistical data from HMRC which is Crown Copyright. The research datasets used may not exactly reproduce HMRC aggregates. The use of HMRC statistical data in this work does not imply the endorsement of HMRC's interpretation or analysis of the information.

6.10 For non-residential transactions, charities and group relief were the two most commonly claimed reliefs in 2012-13 (see table 6.2).

Table 6.2: Frequency of non-residential reliefs in Wales: 2012/13

Relief	No. of claims	% of total
Charities relief	132	35%
Group relief	111	29%
Transfers involving public bodies	32	8%
Disadvantaged areas (residential)*	<30	<8%
Disadvantaged areas (mixed-use)*	<30	<8%
Reconstruction relief	<30	<8%
Incorporation of a limited liability partnership	<30	<8%
Acquisition by bodies established for national purposes	<30	<8%
Registered social landlords	<30	<8%
Multiple dwellings relief	<30	<8%
Other relief	63	17%
Total	377	100%

Source: Calculations based on HMRC administrative datasets²¹

* Relief no longer available.

6.11 The final table (6.3) shows the value of reliefs in Wales. It shows that in 2012-13, nearly £26m in tax was relieved. Therefore reliefs can have a significant impact on potential tax revenues. Total tax relieved is also larger for non-residential transactions than residential. This is despite non-residential transactions contributing around a third of total SDLT revenues and less than 10 per cent of SDLT transactions in Wales.

Table 6.3: Value of SDLT reliefs in Wales, 2012-13

Relief	Residential (£)	Non-residential (£)
Group relief	400,000	13,700,000
Charities relief	1,000,000	1,500,000
Disadvantaged areas relief*	2,000,000	-
Part-exchange (house-building company)	800,000	-
Registered social landlords	600,000	-
Transfers involving public bodies	-	600,000
Multiple dwellings relief	200,000	-
Other relief	200,000	4,100,000
Total⁺	5,300,000	20,500,000

NB values shown for reliefs with 30 or more uses.

* Relief no longer available.

+ May not total due to rounding.

Source: Calculations based on HMRC administrative datasets²¹

6.12 In Scotland, LBTT will retain many of the SDLT reliefs²². However, LBTT excludes a number of SDLT reliefs for example, the demutualisation of insurance

²¹ This work contains statistical data from HMRC which is Crown Copyright. The research datasets used may not exactly reproduce HMRC aggregates. The use of HMRC statistical data in this work does not imply the endorsement of HMRC's interpretation or analysis of the information.

²² See *Land and Buildings Transaction Tax (Scotland) Act 2013* Schedules 3 to 16.
<https://www.revenue.scot/land-buildings-transaction-tax/frequently-asked-questions>

companies and building societies, reorganisation of Parliamentary constituencies, acquisitions by bodies established for national purposes, right to buy transactions including shared ownership leases and collective enfranchisement by leaseholders. Some of the difference may be explained by the different land law in Scotland compared to English land law. The Welsh Government considers most of the SDLT reliefs are necessary to support certain types of transactions to occur.

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.

Sub-sale relief

6.13 Sub-sale transactions are considered to play an important role in the property market. Not having any form of relief or exemption may prevent some forms of property transactions from being financially viable and they will therefore not occur.²³ However, the SDLT sub-sale rules have been associated with a number of high profile avoidance schemes.

6.14 The UK Government reformed the sub-sale rules and introduced a new relief in 2013 (so this relief is not reflected in the previous tables). This change, along with tightening-up how the relief could be used, is considered to have removed the problem of avoidance with sub-sale transactions in SDLT. The intermediate purchaser is now required to submit a return specifically claiming relief which departs from the previous rules which disregarded the intermediate purchaser's acquisition.

6.15 The Scottish Government is proposing to introduce a different sub-sale relief limited to development transactions.²⁴ The LBTT relief is to apply to sub-sales where a "significant –development" will be completed within 5 years of the sub-sale. The relief will be claimable with a potential withdrawal or partial withdrawal of relief at the five year point if the development has not been completed. The sub-sale relief available in SDLT is wider and not tied to there being any development of the land or buildings. There will be other transactions to which sub-sale relief is available under SDLT but is not available under LBTT.

6.16 The Welsh Government considers that not to include a form of sub-sale relief in Wales could be detrimental to enabling high value commercial development schemes to take place in Wales. In order to ensure consistency with England, it is minded to replicate the SDLT provision for sub-sale transactions.

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

²³ A sub-sale purchase, sometimes referred to as a transfer of rights or a pre-completion transaction, is when three parties are involved in a transaction; a seller, an intermediate purchaser, and the ultimate purchaser. The intermediate purchaser does not substantially perform the contract before transferring the right to the property to the ultimate purchaser.

²⁴ See Revenue Scotland website: <http://www.scotland.gov.uk/Publications/2014/06/8803/0>, and, <http://www.scotland.gov.uk/Publications/2014/12/2637>

Delivering policy objectives through LTT

6.17 The UK Government has in the past sought to deliver other policy objectives through the provision of SDLT reliefs such as zero carbon homes relief and the first time buyer's (FTB) relief. However, the effect of these has been mixed and may not have achieved the policy outcomes as intended. For example, evidence from the UK Government's recent evaluation on FTB relief²⁵ suggests that this did not have any significant impact on making housing more affordable for first time buyers, and, for those who used the relief, most would have purchased anyway, causing very few additional transactions.

6.18 In addition to the direct cost of the relief - the foregone revenue - reliefs and exemptions can also add complexity and bureaucracy to the tax system. This can increase the administrative and compliance costs for the tax authority and also for tax agents and payers, as all those engaged in the tax will need to be aware of how the relief operates. Reliefs and exemptions can also create potential opportunities for tax avoidance (discussed more in chapter 7).

6.19 Given the UK experience of the effectiveness of trying to deliver various policy goals through SDLT reliefs, it is important that consideration is given to whether a tax relief represents the most appropriate policy instrument to deliver other Welsh Government policy objectives. Other ways of using LTT to achieve wider policy objectives which do not reduce revenues may also be considered.

6.20 Therefore any changes to existing SDLT reliefs, or the introduction of any potentially new reliefs or exemptions in Wales, would need to be carefully considered and designed in such a way that they could not be applied in ways for which they were not intended, or promoted a change behaviour which was undesirable. Additional reliefs may therefore provide a trade-off between the principles of simplicity (by having fewer reliefs) and fairness (in that a possible new relief could make the tax fairer). This is one of the many potential trade-offs that the Government will need to decide on when developing new taxes for Wales.

6.21 Any proposal for a new relief would need a very strong evidence base that it would be the most appropriate policy tool, achieve the desired objective, and that it can be designed in such a way that is likely to be cost effective, not increase the potential for avoidance nor create a disproportionate additional burden on taxpayers or the Welsh Revenue Authority.

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

²⁵ See HMRC (2011) *Evaluating the Impact of Stamp Duty Land Tax First Time Buyer's Relief* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/331717/sdl-tftb-workingpaper.pdf

Chapter 7: Compliance, avoidance, disputes and penalties

7.1 The Welsh Government's overarching approach to compliance, avoidance and disputes was laid out in the consultation on Collection and Management of Devolved Taxes which closed on 15 December 2014. A summary of responses was published on 9 February 2015. This will include establishment of a Welsh Revenue Authority in which will be vested the powers of collection and management of devolved taxes.

7.2 The overarching legal framework for how LTT will be collected will be set out in the tax administration legislation (e.g. establishing the powers necessary to charge a penalty to address non-compliance) which will be introduced into the National Assembly for Wales in July 2015. However, it will be for the policy and legislation on LTT to outline how to: encourage compliance, its specific penalty framework and include any tax specific anti-avoidance measures. These issues are discussed in the subsequent sections.

Compliance

7.3 The Collection and Management of Devolved Taxes consultation describes the Welsh Government's approach to encouraging compliance as being risk-based and proportionate. This approach will include effective communication and education tools to ensure taxpayers are aware of their responsibilities to comply with the devolved tax regime. Consequently, advice and assistance, together with the provision of clear and consistent guidance, will be important mechanisms to support taxpayers complying.

Online filing

7.4 Our tax principles state that our taxes will be 'simple, with clear rules which seek to minimise compliance and administration costs'. The Collection and Management of Devolved Taxes consultation states that it will be the tax authority's responsibility to encourage and enable taxpayers to comply with the relevant tax regime. This begins with providing an effective and easy interface for taxpayers use, and to deliver a system which promotes compliance. It should also seek to reduce the administrative burdens on taxpayers, their agents and the tax authority. This can partly be achieved by helping taxpayers get their returns right first time, ensuring that any errors and the need for amended returns are reduced. One way of achieving this is through online filing where only correctly completed returns are accepted.

7.5 Currently under SDLT, the vast majority of returns, 96 per cent in 2014²⁶, are filed online, usually by conveyancers. Online returns are more accurate and this reduces administrative burdens on HMRC and the taxpayer.

7.6 The remaining four per cent are submitted manually in paper form. Paper returns are disproportionately resource intensive to administer, because they are most likely to contain errors which require attention and effort to resolve. This can increase costs to the tax authority and also the taxpayer. This is especially so if it results in a delay in the submission of a tax return and penalties arise for that late submission. Therefore taxpayers and the Welsh Revenue Authority have a common interest in an online service being available.

²⁶ Source: requested data from HMRC.

7.7 It will be a priority for the Welsh Revenue Authority to enable taxpayers to file as efficiently and effectively as possible. Enabling and promoting online filing will be key to this. However, there are a number of reasons why taxpayers do not currently file online and it will be important to properly understand the reasons for this so that the proportion of LTT taxpayers who file online can be increased relative to SDLT in Wales.

7.8 Given the current high rate of online filing in SDLT the Welsh Government will consider the merits of mandating online submission for LTT. Even if the decision is made to make online submission mandatory, consideration will need to be given to those persons who may require exemptions, for example on religious grounds, or persons without computer access.

7.9 Therefore alternative ways of submitting a return will need to be available (e.g. paper returns), regardless of whether online filing is mandatory. However, by making online submission the easiest and most seamless way of being able to file a tax return, the Welsh Government hopes to maintain and improve upon the current rate of online returns.

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?

Online payments

7.10 The current rate of online SDLT payments is approximately 60 per cent²⁷, low relative to the proportion of returns submitted online. Two possible reasons for this are the current functionality of the SDLT online system not driving online payment, and, working practices in agents offices where there may be a preference to use cheques over electronic payment. Reconciling subsequent payment with the corresponding return can also be an extra administrative burden. It can also create an extra opportunity for taxpayers to make errors or mistakes on the payment of their tax.

7.11 In Scotland, an LBTT return must be made within 30 days of the effective date of the transaction (the same as for SDLT). LBTT must be paid at the same time as the return is submitted unless other arrangements to pay have been made that are approved by Revenue Scotland. With SDLT payment is required within the same 30 day period as the submission of the return (i.e. not necessarily “at the same time”).

7.12 Linking the payment and tax return process more tightly by requiring the return and the tax due to have been paid (or arrangements made to do this) may also help to encourage compliance. It may also eliminate the chance for a taxpayer to submit a return but then make their payment late or not at all. This could be achieved in part by having the most accessible and flexible forms of accepting online

²⁷ Source: requested data from HMRC.

payment. This is an issue which will be further explored as the operational aspects of LTT are developed.

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

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

Pre-clearance

7.13 HMRC's pre-transaction, post-transaction and non-statutory business clearance ('pre-clearance') regime provides a mechanism through which taxpayers can seek to confirm compliance with the SDLT regime.²⁸ It is available where there is genuine uncertainty over the application of the legislation (for example legislation passed in the last four Finance Acts). The pre-clearance process allows taxpayers to seek advice from HMRC that their treatment of a particular transaction accurately reflects the intended purpose of the SDLT legislation. HMRC will review the information provided and provide the taxpayer with their view. The taxpayer can then choose to follow HMRC's view or if they disagree, submit the return based on their understanding of the legislation (in such cases HMRC may enquire into the return).

7.14 Taxpayers can only apply to HMRC for a ruling where the legislative provision in question is untested in the courts or there is genuine uncertainty over the meaning of the legislation. This approach ensures that the tax authority is not inundated with requests for rulings under its pre-clearance regime, and serves to manage resources more effectively for this service. The pre-clearance process also allows the tax authority to obtain information from taxpayers on areas of the legislation considered unclear.

7.15 A pre-clearance unit, if it is to be sufficiently useful and of value to both taxpayers and the tax authority, will need to be suitably resourced by technically trained staff. Given the number of transactions in Wales (in 2013-14 around 50,000 annual transactions²⁹ compared to in excess of 1.2m in the UK), the size of such a facility may not need to be very large, especially if clear detailed guidance is also provided on how LTT will be applied and administered.

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?

Penalty for late filing, incorrect returns and late payment

7.16 Another mechanism used to encourage compliance involves the use of penalties. SDLT penalties in relation to late filing of returns begin with a fixed

²⁸ See HMRC Stamp Duty Land Tax Manual SDLT M51000

²⁹ It is not known how many SDLT referrals related to land in Wales

penalty of £100 if the SDLT return is not received within 30 days of the transaction taking place. A further £100 penalty is levied if the return is not submitted within 90 days from the filing date, and if the SDLT return is filed more than 12 months late, a tax-based penalty is due - up to the full amount of tax due and is in addition to the fixed penalty.

7.17 SDLT also charges penalties where a return contains errors. These penalties will be calculated at the end of an enquiry and will be based on the amount of the tax underpaid as a result of the error and the behaviours of the taxpayer. These penalties are set in bands depending on the behaviour of the taxpayer: 30 per cent for careless action, 70 per cent for deliberate but not concealed action and 100 per cent for deliberate and concealed action.

7.18 Furthermore, penalties for the failure to make payments on time exist for SDLT, although these provisions have not yet been made operational. They provide for penalties based on the amount of the tax unpaid at 30 days, 6 months and 12 months after the payment date to be charged. The amount of penalty is fixed at five per cent of the unpaid tax at each penalty date.

7.19 If penalties are not paid then interest is charged (three per cent from September 2009). Interest accrues on the outstanding amount starting from the day it should have been paid until the date it is paid. The same is also the case for late payment of SDLT liabilities.

7.20 As some transactions incur large amounts of tax, increasing the size of penalties relative to what is currently levied with SDLT may be more appropriate as this would make the penalty more proportional to the tax due.

7.21 Increasing penalties may help to prevent non-compliance, acting as a stronger incentive to file correctly and on time. The trade-off here is fairness, and penalties should not be set too high when perhaps the cause of the problem is a simple error or when the outstanding liability due is relatively small.

7.22 In order to set an appropriate penalty regime for LTT one option could be for penalties to be related to the tax due from the moment a tax return or payment is late rather than simply replicating the SDLT penalty regime.

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?

Arrangements for appeals and disputes

7.23 The Welsh Government's tax principles will shape the approach to appeal arrangements in Wales. In particular, these will be established to be fair, simple, transparent, efficient and affordable.

7.24 One of our key policy objectives will be to try and avoid disputes arising in the first place. The Welsh Government will expect the Welsh Revenue Authority to work on the basis of 'getting it right first time' and fostering a culture of collaboration with taxpayers to resolve disputes where they do arise.

7.25 The Welsh Government intends to introduce early stage process of dispute resolution similar to that currently used by HMRC, which includes stages of informal discussion, internal review and a mediation approach to Alternative Dispute Resolution. If the tax dispute is not resolved through this early stage process then a taxpayer may refer the matter to be determined within the tribunal system.

7.26 Disputes within SDLT may relate to issues such as appeals against penalty notices (for late filing, for example), and claims for reliefs or exemptions. Under these circumstances, the taxpayer can apply for postponement of payment on 'reasonable grounds' during the appeal process.

7.27 The Scottish Government has introduced a more stringent approach to payment. The Revenue Scotland and Tax Powers Act 2014 contains a general pay-first principle to the effect that, pending a review or appeal, tax remains due and payable.³⁰ Regulations have been made under that provision enabling an application for postponement to be made where there are 'exceptional circumstances'³¹ in the case of LBTT.

7.28 The Welsh Government's White Paper on devolved tax collection and management explored the conditions under which payment could or should be postponed in these circumstances. There were sixteen responses to this question. Of these, fourteen emphasised the need to ensure that provisions should be made for particular challenging circumstances. Only two respondents considered that the rules should be more stringent than those that HMRC currently operate.

7.29 On the basis of these responses, the Welsh Government is clear that the pay-first principle should remain as a key pillar of our approach to tax collection and management. However, we are interested to explore the conditions in which we might allow postponement of payment, in particular to ensure fairness, access to justice, and in cases of hardship.

7.30 We will look to ensure that there are opportunities to postpone payment of tax or penalties under LTT when the amount or decision is being appealed. There may be opportunities to streamline and clarify the existing process, and we would welcome views on whether there are improvements or simplifications that could be made.

³⁰ Section 245 Revenue Scotland and Tax Powers Act 2014.

³¹ The Revenue Scotland and Tax Powers Act (Postponement of Tax Pending a Review or Appeal) Regulations 2015

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?

Avoidance

7.31 Those who engage in tax avoidance gain an unfair advantage over those who pay the fair amount of tax. It also reduces the amount of money available to fund public services and can also undermine confidence in the wider tax system.

7.32 The Welsh Government will expect the Welsh Revenue Authority to support taxpayers who pay the appropriate amount of tax in a timely way, but take firm action against those who avoid, or seek to avoid, paying tax. The Welsh Government will not limit the options available to the Welsh Revenue Authority to deal with aggressive or intentional tax avoidance, and will consider the full range of operational, policy and legislative tools to deliver this aim.

7.33 In line with the tax principles of the Minister for Finance and Government Business, the new devolved taxes will be designed and implemented in a way that is fair to those who pay taxes, has clear rules, provides stability and certainty to tax payers, and which will support jobs and economic growth. We recognise the need to be clear in our expectations, and will provide comprehensive support and guidance on the meaning and application and our legislation to ensure that taxpayers and their agents can operate confidently within the new tax system.

7.34 The Welsh Government's White Paper on devolved tax collection and management included a number of questions around the benefit or need for a General Anti-Avoidance or Anti-Abuse Rule (GAAR), and the possible need and proportionality of safeguards and other measures to support and enable its application.

7.35 The consultation responses suggested that, on balance, there should be a GAAR, and that if one were adopted, it should be the narrower UK GAAR (which aims to target abusive arrangements rather than wider avoidance arrangements). The key justification for this was that a wider anti-avoidance rule might create unwelcome uncertainty for businesses, but also that any GAAR should be drawn tightly so that it did not interfere with well-established, legitimate, commercial arrangements. The benefit to businesses of retaining cross-border consistency was noted. There were other respondents who suggested that the GAAR should be wider to ensure that taxes were collected accurately.

7.36 There were also responses which emphasised that neither the UK nor the Scottish GAARs were tested, and queried whether there was a clear need for a Welsh GAAR for just two taxes. Importantly, a respondent drew attention to the range of anti-avoidance tools in existing legislation and the importance of a good understanding of the wider anti-avoidance landscape in which any Welsh GAAR would be located. There was a small set of respondents who suggested that any decision about the adoption of a Welsh GAAR might be deferred until such time as the devolved taxes had bedded in, or at least after further consideration and consultation.

7.37 On the basis of the responses to the Welsh Government's White Paper on devolved tax collection, the Minister for Finance and Government Business has

confirmed that she will look to develop a Welsh tax avoidance rule (an anti-avoidance rule). This will draw on both the UK General Anti-Abuse Rule and Scottish General Anti-Avoidance Rule, and we will look to wider experience and knowledge in considering how widely to apply this rule to new Welsh devolved taxes. Specifically, the Minister wishes to ensure that taxpayers and their agents, tax experts, landfill operators and wider stakeholders have an opportunity to provide information and evidence on the key avoidance challenges in relation to SDLT (and potentially LTT), and Landfill Tax (and potentially TDL). This will be included in the consultations on the two devolved taxes, to inform the development of this Welsh tax avoidance rule.

7.38 For SDLT, a key issue is the role of wider anti-avoidance tools and behaviours. In particular, the Welsh Government recognises that the current SDLT system has a range of targeted anti-avoidance rules. In developing our wider legislative approach to avoidance, we would welcome stakeholder views on the nature, scale and challenge of avoidance in relation to SDLT at the moment, and potentially in relation to LTT.

Section 75A Finance Act 2003

7.39 Section 75A-C Finance Act 2003 contains a wide ranging SDLT anti-avoidance rule, which was introduced by the Finance Act 2007. HMRC's guidance states that:

"Section 75A is an anti-avoidance provision. HM Revenue & Customs (HMRC) therefore takes the view that it applies only where there is avoidance of tax. On that basis, HMRC will not seek to apply s.75A where it considers transactions have already been taxed appropriately.

...

Section 75A applies where:

- One person ('V') disposes of a chargeable interest, and another person ('P') acquires, that interest, or a chargeable interest derived from it (s.75A (1) (a)).
- A number of transactions ('scheme transactions'), including the disposal and acquisition, are involved in connection with the disposal and acquisition (s.75A (1) (b)).
- The total Stamp Duty Land Tax payable in respect of all the scheme transactions is less than the amount that would be payable on a notional land transaction effecting the acquisition (s.75A (1) (c)).

...³²

7.40 Section 75A is broad in scope. A number of examples are provided by HMRC to illustrate the types of schemes and transactions Section 75A is designed to deter. These include transactions based on sub-sales relief which were designed to ensure that little or no tax was paid when there was no genuine economic sub-sale; transactions based on terminating a lease to radically alter its value without incurring an SDLT charge; and to prevent individual vendors from using partnerships to avoid an SDLT liability on a sale. This list is not exhaustive and the width of the scope of Section 75A means that it creates uncertainty around the various schemes and transaction types that could be caught by the rule.

7.41 Initial discussions with stakeholders have suggested that a motive test to determine whether the scheme in question is avoidance would help reduce the

³² HMRC SDLT Manual (SDLT09175- <http://www.hmrc.gov.uk/manuals/sdlmanual/sdl09175.htm>)

uncertainty around how Section 75A may apply. In the absence of a motive test, some stakeholders believe that there is a risk that Section 75A may catch innocent transactions. LTT stakeholders have consistently expressed the view that the UK GAAR as drafted is much stronger than the Section 75A provisions, not only because of the safeguards that support it, but because it is clearly drafted with set parameters that support taxpayers to determine what is, and what is not, caught by the rule.

Approach to targeted anti-abuse rules

7.42 The SDLT legislation has been subject to significant amendment and additions through HMRC's attempts to strengthen the legislation. The SDLT legislation not only includes the wide ranging Section 75A anti-avoidance rule but also other targeted anti-avoidance rules (TAARs) in the form of various provisions, which are often specific to the application of reliefs and exemptions. For example, rules in group relief require the transaction to have been carried out for genuine commercial reasons. Some stakeholders have expressed the view that given the existence and application of Section 75A, most of the other TAAR-type provisions provided throughout the SDLT legislation are no longer required.

7.43 The Scottish Government has included a number of TAARs within the rules governing the LBTT reliefs. It has been deliberate in describing these provisions as TAARs, which is consistent with its wider commitment to tackle tax avoidance activity. It has not included a Section 75A rule but has included a General Anti-Avoidance Rule (GAAR).

7.44 The operation of S75A is currently being tested before the UK Tax Tribunals and the way it applies to transactions is being established. The UK GAAR (and the Scottish GAAR) has not yet been tested before the courts so how the courts, will apply the legislation is as yet unknown.

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.

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

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.

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

Question summary

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.

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.

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

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.

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).

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)?

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.

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

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.

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?

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?

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

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?

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.

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

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

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?

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

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

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

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?

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?

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?

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.

Other Questions

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

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.

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

Appendix 1: SDLT relief summary

Relief	Purpose
Qualifying sub-sales relief	Relief provided to intermediate purchasers where they transfer the rights under a contract prior to completion.
Reliefs for transfers involving multiple dwellings	Lowers the cost of bulk purchases of residential property so that it applies to the average price, with the aim to improve the supply of private rented housing.
Certain acquisitions of residential property	Includes acquisitions where employers, house-building companies or property traders purchase a property on defined, but usually, temporary basis, e.g. enabling employee relocations, breakdown of chains and house-builder part-exchanges.
Alternative property finance	Relief from multiple charges for alternative property finance scheme, so that the users of such finance are not disadvantaged by the SDLT regime.
Right to buy transactions and shared ownership leases	Tax only due on discounted value (not market value). Applies to transactions such as right to buy transactions, shared ownership leases and rent-to-shared ownership lease schemes.
Certain acquisitions by registered social landlords	Relief on interests for registered social landlords.
Sale and leaseback	Leasebacks are relieved in sale and leaseback transfers.
Overlap	Removes double taxation on a lease when a new lease is taken on the same property when lease periods overlap.
Group, reconstruction or acquisition relief	Allows company groups to transfer property between connected companies for commercial reasons (e.g. merger, acquisitions) without incurring tax.
Demutualisation of insurance company	Relieves the interest of the business of a mutual insurance company to a limited company.
Demutualisation of building society	Relieves the interest of the business of a building society to a company.
Incorporation of limited liability partnerships	Following certain conditions, relief on interests from a person (the transferor) to a limited liability partnership in connection with its incorporation.
Charities	Relief when a charity, or a charitable trust, purchases an interest.
Diplomatic premises	Relief for acquisitions of certain diplomatic and consular premises.
Sovereign bodies and international	Relief for the purchase or lease of headquarters premises by international organisations which are treated by accord and

organisations	UK tax arrangements as diplomatic premises.
Arrangements involving public or educational bodies	Partial relief for certain arrangements involving qualifying public or educational bodies.
Transfers involving public bodies	Relief where a public body reorganisation under a statutory provision.
Crofting community right to buy	Reduces tax for purchase by a crofting community, where two or more properties purchased, total consideration divided by number of dwellings.
Transfer in consequence of reorganisation of parliamentary constituencies	For new local constituency association to claim on an interest due to an order with new parliamentary constituencies that requires a transfer from the former local constituency association.
Acquisition by bodies established for national purposes	Relief for interests acquired by: Historic Buildings and Monuments Commission for England, Nesta (now a charity), Trustees for the British Museum, Trustees of the National Heritage Memorial Fund and Trustees of the Natural History Museum.
Collective enfranchisement by leaseholders	When flat leaseholders act collectively to purchase the freehold, this divides the freehold consideration by the number of leases.
Compulsory purchase facilitating development	Relieves local authority when it uses CPO and then sells on to property developer.
Compliance with planning obligations	Relieves the acquisition by a public authority from a developer of an interest created following planning obligations for extra work, e.g. a road.
Miscellaneous provisions	Includes reliefs relating to elements such as: NHS Trusts and NHS Foundation Trusts; Visiting Forces and Allied Headquarters; Friendly Societies; Building Societies; Highways; municipal Airports; Heritage bodies; Lighthouses.
15 per cent rate reliefs	Reliefs operate so that the taxpayer pays SDLT at the standard SDLT rates rather than 15 per cent, examples include business letting, trading in or redeveloping dwellings.

Appendix 2

INITIAL REGULATORY IMPACT ASSESSMENT

Background

A1 The Wales Act 2014 provides for the disapplication of UK Stamp Duty Land Tax (SDLT) in Wales and confers powers on the National Assembly for Wales to replace it with a Welsh tax on land transactions. These provisions will need to be commenced by Order made by the UK Government. The *Wales Bill: Financial Empowerment and Accountability* Command Paper, which contains explanatory information on how many of the powers in the Act will be implemented, sets the target date for the commencement of these provisions to be April 2018.

A2 A full Regulatory Impact Assessment (RIA) for a Land Transaction Tax (LTT) in Wales will be completed prior to the introduction of legislation. This will consider the likely impact of tax on the Welsh public, key stakeholders, the Welsh economy, and the costs of administering the tax.

A3 For the purposes of this consultation we take a summary look at the options and the implications for a Regulatory Impact Assessment, we would be grateful for any comments you have on our initial thoughts.

Options

A4 In this summary we are looking at the impact of two high level options; 'do nothing' and implement a Welsh replacement tax for SDLT.

Do nothing

A5 In the do nothing option, SDLT will cease to be collected in Wales from April 2018, resulting in the Welsh Government's block grant being reduced. The exact adjustment method is yet to be determined. However, it is assumed that the amount SDLT would have raised in Wales in 2018/19 (the first year of devolved taxes) will be the amount taken off the block grant. In 2013-14, the value of SDLT collected on transactions in Wales was £145 million.

A6 If the Welsh Government chose not to implement a form of tax on transactions involving interests in land in Wales, the Welsh Government would either need to operate with a significantly reduced budget or find alternative ways of raising such revenues to maintain existing resource levels.

A7 Therefore it is the Welsh Government's intention to levy LTT from April 2018 to replace SDLT in Wales. This is because of the potential impact of reduced levels of resources on public service delivery, particularly in this prolonged period of budget austerity. In addition, this form of tax is now a familiar feature to the process of acquiring land and buildings across the UK and a form of this tax is likely to continue elsewhere in the UK beyond 2018.

Implementing a replacement tax for SDLT in Wales

A8 The scale of the additional costs and/or benefits generated by this option depends upon the design of the replacement tax and the extent to which it replicates SDLT.

A9 Chapters two and three of this consultation set out options and questions on

the structure of LTT and provide analysis on the current cost. Until we undertake further detailed analysis and assess the consultation responses, it is too soon to accurately assess the full impact of implementing LTT. In addition, even once the structure has been decided on, the full effect of the tax will not be known until the rates and bands for the new tax have been announced. However, this will not be made by the Welsh Government until much closer to when SDLT is devolved to Wales in April 2018.

A10 Until then, we can only consider in broad terms how and on whom LTT may impact. Stakeholder engagement to date has highlighted the concerns of the impact on business and the economy in Wales. Specifically the impact if we have a tax that diverges widely from SDLT as Wales has an integrated land and property market with England and also shares the same land laws. Concerns raised to date include:

- Consistency, certainty and stability for businesses in Wales;
- Burdens on businesses from having to familiarise themselves with a new tax regime;
- Burdens on business in border locations having to operate two tax systems;
- The risk of putting Wales at a disadvantage when it comes to investment, both national and international;
- Changing tax structure and the impact on rates – both negative and positive; and
- Impact a new tax regime may have on the property market in Wales.

A11 The latest data suggest that there were 51,600 SDLT transactions in 2013-14 in Wales (this excludes exempt transactions and those where the consideration is less than £40,000). If LTT was to replicate SDLT in terms of what transactions are liable for tax and which are required to submit a return, then this may represent the likely number of transactions which are likely to be affected by LTT each year in Wales. Given the powers provided through the Wales Act 2014, it is likely that many of the types of transactions (e.g. residential, non-residential, leasehold and freehold) and therefore the individuals who are currently affected by SDLT in Wales will also be affected by LTT from April 2018. It is expected that the scope of the tax will become clearer following the consultation responses.

A12 LTT is likely to have both direct and indirect costs on individuals and businesses. The direct cost is the amount of tax due. The amount of tax that is payable will be largely dependent on the rates and bands that are applicable. These will not be included in the consultation or in the future LTT Bill, as they will need to be decided much closer to April 2018. An assessment of the impact of the rates and bands of LTT will be used to inform the decision, with that assessment published when the decision is announced.

A13 The indirect costs are around the compliance and administrative burden that LTT incurs on businesses and individuals. As land and building transactions are already taxed in Wales through SDLT, the compliance and administrative burden is not expected to increase for the vast majority of transactions. Tax devolution creates an opportunity for the Welsh Government to look for ways in which compliance and administrative burdens can be minimised. This issue will also be included as part of the future Bill on the collection and management of devolved taxes in Wales.

A14 For transactions which involve multiple properties, both in Wales and elsewhere in the UK (and those which straddle the Wales-England border), then it is likely that more than one tax return will be required, one for each tax authority. These transactions might incur some additional administrative costs as a result of LTT but are expected to be relatively few.

A15 Increased costs for multiple property, inter-Wales transactions, are unavoidable unless the Welsh Government chose not to introduce a replacement for SDLT in Wales. However, doing so would result in the Welsh Government having fewer resources to deliver public services for Wales, which many businesses also benefit from. Therefore, in total, the cost of not levying the tax is considered to be much larger than levying LTT in Wales and increasing the administrative burden for a small number of transactions.

OTHER IMPACT ASSESSMENTS

A16 A series of specific impact tests on the policy relating to the Bill have been considered as part of the Regulatory Impact Assessment. These assessments are at a high level and will be considered in full as the policy progresses.

Impact on small business

A17 The majority of businesses that will have to be directly involved with LTT are professional firms such as solicitors and conveyancers paying the tax on behalf of their clients. This would not be a change from the existing situation, but the operation of LTT may be different from the existing SDLT and some businesses may feel that there is an increased administrative burden for their staff to deal with more than one tax regime. By April 2018 when the devolved taxes become live, this will already be the case with different Scottish taxes, but there is less of an impact there due to less cross-border activity.

A18 The impact LTT may have on small businesses will be assessed as part of the policy development taking into account the responses to this consultation. The tax should also be consistent with the principles on Welsh taxes which the Minister for Finance and Government Business has set out, which will look to create a tax that:

- Is fair to the businesses and individuals who pay them;
- Is simple, with clear rules, aiming to minimise compliance and administration costs;
- Supports growth and jobs, and in turn will help tackle poverty; and
- Provides stability and certainty for taxpayers.

Impact on voluntary sector

A19 UK Stamp Duty Land Tax has a charities relief. This relief is available where a charity, or a charitable trust, purchases an interest in land, subject to certain conditions.

A20 Chapter six of this consultation covers reliefs and exemptions and stakeholders have expressed a preference that LTT should maintain consistency with SDLT reliefs, so this will be our starting point.

A21 Further assessment of the impact on the voluntary sector will be completed as the policy develops and we analyse the consultation responses.

Equality impact assessment

A22 The Government of Wales Act states that a Bill will not be within legislative competence of the National Assembly for Wales if it is incompatible with the European Convention on Human Rights (ECHR) and could not become law (section 108(6) (c) GOWA 2006).

A23 The areas in the ECHR relevant to tax consist of a number of Articles setting out basic principles of human rights. The principal Articles which are relevant for the purposes of this Bill are:

- Article 1 of the First Protocol which protects the right to property.
- Article 6 which guarantees the right to a fair trial in the determination of civil obligations and affords further rights where a person is charged with a criminal offence.
- Article 8 which requires respect for private and family life.
- Article 14 which prohibits discrimination.

A24 The articles above are being considered as part of the Collection and management of devolved taxes in Wales Bill. The LTT Bill will be revisited and consider the above articles as the policy develops and in relation to the consultation responses.

A25 In considering if there is any differential impact for Gender and Gender Reassignment, Religion and Belief and Non-Belief, Sexual Orientation, Pregnancy and Maternity, Civil Partnerships and Race, we have determined there is no evidence to indicate a differential impact to any of the protected groups.

Privacy Impact Assessment

A26 A Privacy Impact Assessment screening has been completed and the Information Rights Unit has confirmed that a full Privacy Impact Assessment is not required at this stage.

Rights of the child impact assessment

A27 Having explored the Articles, the Welsh Government considers that, at this stage in the policy development, there are no identified issues in this legislation but further consideration will be given as the policy develops.

Rural proofing checklist

A28 We have undertaken an early Rural Proofing Checklist and will assess further, taking into account consultation responses and policy development.

Impact on Welsh language

A29 There is no evidence to suggest that UK SDLT has a negative impact on the Welsh language. Therefore continuing with a similar regime in Wales should not have any impact either. However, a potential impact on Welsh speaking communities could be the effect LTT may have on residential purchases and how this may influence the ability of Welsh speakers to buy homes in their existing communities and the potential influx of non-Welsh speakers into these communities.

A30 The impact LTT may have on Welsh speaking communities will be fully assessed as the policy is developed.

Competition assessment

A31 There are two stages to the Competition Assessment. The first is a short filter that assesses whether there is a risk of a significant detrimental effect on competition.

A32 The table below summarises the competition filter results.

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

A33 In view of the answers above, the second stage of the competition assessment is not required.

Post implementation review

A34 An assessment of the effects of the rates and bands of LTT will be provided following their announcement. These will have a direct bearing on some of the main costs of LTT. However, these will not be included in the consultation or in the future LTT Bill, as they will need to be decided much closer to April 2018. Therefore these will be reviewed when they are announced.

A35 In addition, it is anticipated that the legislation will be reviewed two years from Royal Assent, or sooner if the need arises.