

Number: WG24245



Llywodraeth Cymru  
Welsh Government

[www.gov.wales](http://www.gov.wales)

Welsh Government

## Consultation – summary of responses

### Land Transaction Tax

Date of issue: September 2015



## **Overview**

This document provides a summary of the responses to the consultation that sought views on Land Transaction Tax.

## **Action required**

None – for information.

## **Contact details**

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

E-mail: [WelshTreasury@wales.gsi.gov.uk](mailto:WelshTreasury@wales.gsi.gov.uk)

## **Additional copies**

This document can be accessed from the Welsh Government's website at [www.gov.wales](http://www.gov.wales)

# **Land Transactions Tax Consultation Summary**

**September 2015**

# Contents

	Page
<b>1. Introduction</b>	<b>3</b>
<b>2. Residential property transactions</b>	<b>6</b>
<b>3. Non-Residential property transactions</b>	<b>12</b>
<b>4. Partnerships, trusts and companies</b>	<b>15</b>
<b>5. Leases</b>	<b>16</b>
<b>6. Reliefs and exemptions</b>	<b>19</b>
<b>7. Compliance, avoidance, disputes and penalties</b>	<b>21</b>
<b>8. Additional questions</b>	<b>27</b>

**Annex A: List of consultation respondents**

**Annex B: Glossary**

## 1. Introduction

- 1.1 The Land Transaction Tax (LTT) consultation is the second in a series of Welsh Government consultations aimed at developing devolved tax arrangements in Wales. It was designed specifically to help the Welsh Government consider the options and opportunities for developing a Land Transactions Tax, which will replace UK Stamp Duty Land Tax (SDLT) when it is devolved to Wales in April 2018.
- 1.2 In preparation for the devolution of taxes the Welsh Government has already consulted on collection and management arrangements<sup>1</sup> and laid before the National Assembly for Wales the Tax Collection and Management (Wales) Bill (the Bill) in July 2015<sup>2</sup>. The issues discussed in this previous consultation and the subsequent provisions of the draft Bill link directly to the development of both LTT and Landfill Disposal Tax (LDT). A public consultation on the development of LDT, which will replace the UK Government's Landfill Tax, closed on 19 May 2015. A summary of the responses to the consultation was published on 15 September 2015<sup>3</sup>

### Engagement

- 1.3 Views were invited as part of a 12-week consultation period which began on 10 February 2015 and ended on 6 May 2015. Respondents were able to submit their views and comments on paper or online, and in either Welsh or English.<sup>4</sup> The consultation was widely publicised via digital media, newsletters and other publications.
- 1.4 The Welsh Government held several stakeholder engagement events during the consultation period. These included a tax seminar hosted by the Law Society, a LTT awareness session with the Royal Institute of Chartered Surveyors and a LTT presentation at the Welsh conference for the National Association of Estate Agents. There has also been engagement with multiple stakeholders at meetings of the Minister for Finance and Government Business' Tax Advisory Group and the LTT Technical Experts Group and with tax experts during the consultation process and throughout policy development.

### Proposals

---

<sup>1</sup> <http://gov.wales/consultations/finance/devolved-taxes/?lang=en>

<sup>2</sup> <http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IID=12989>

<sup>3</sup> <http://gov.wales/consultations/finance/devolved-taxes/?lang=en>

<sup>4</sup> <http://gov.wales/consultations/finance/land-transaction-tax/?status=closed&lang=en>

- 1.5 The consultation on LTT considered options to replace Stamp Duty Land Tax (SDLT) in Wales from April 2018. It asked about where it would be necessary to keep any Welsh tax arrangements consistent with existing UK arrangements, but also where changes or improvements might be made which could have a positive effect for Wales.

### **Consultation responses**

- 1.6 There was good overall interest in the consultation, the consultation web page received over 3,700 visits which included 2,068 unique views and the consultation document was downloaded 168 times.
- 1.7 In total the consultation received 38 responses from a range of stakeholders. The responses came from individuals and various organisations representing different sectors including umbrella organisations representing their associated affiliations and members.
- 1.8 Responses came from respondents in Wales, the Wales branch of UK-wide organisations or UK wide organisations with experience of operating existing tax arrangements in Wales.
- 1.9 All respondents were invited to request anonymity; seven respondents decided to utilise this option and therefore their identities have been anonymised throughout this document. Any quotes used have not been attributed to the individual respondent for the purposes of the summary but have been attributed to their respondent category as listed in Annex A.
- 1.10 Table 1 shows the number of responses by respondent category. Further details of respondents can be found at Annex A and copies of responses are available in an Index published separately alongside this summary document.
- 1.11 The differing nature of the respondents provides an important context for considering the issues raised in the responses, and care should be taken in reaching conclusions based purely on the number of responses voicing a similar view.

**Table 1: Breakdown of response by Respondent Category**

<b>Respondent category</b>	<b>Number</b>	<b>%</b>
Banks	1	3
Building Contractors	1	3
Businesses	8	21
Estate Agents	1	3
Professional Bodies	6	16
Legal / Tax, Accountancy	7	18
Town & Community Councils	3	8
Public Bodies	2	8
Individuals	5	13
Third Sector	4	11
<b>Total</b>	<b>38</b>	<b>100%</b>

\*Percentages have been rounded up to the nearest whole number

- 1.12** In addition to the formal consultation, a Survey Monkey questionnaire was also published. This was aimed at the general public – particularly those about to purchase a property – to ascertain levels of awareness about tax and stimulate engagement beyond the interested practitioners who would be most likely to engage with the formal consultation.
- 1.13** The questionnaire was made available for the final two weeks of the consultation. 71 responses were received, all of which are included with the published consultation responses.
- 1.14** Responses to the Survey Monkey questionnaire have not been counted as formal responses but have been considered as a snap shot of public awareness and views during the consultation period.

## 2. Residential Property Transactions

### Introduction

2.1 This chapter of the consultation provided an overview of the current SDLT residential system and the development of LTT as a replacement. It also looked at how Land and Buildings Transaction Tax (LBTT), which replaced SDLT in Scotland in 2015, will be applied to residential property transactions in Scotland.

**Question 1: Do you think the current residential SDLT rates and bands are suitable for Wales?**

**- If you think the current rates *are suitable*, please provide reasons why.**

**- If you think the current rates *are not suitable*, please provide reasons why and, where appropriate, provide suggestions for alternative rates and bands.**

2.2 Of the 24 responses to this question, many suggested that the current SDLT rates and bands were appropriate for Wales. Respondents highlighted the positive impact of the new 'slice' system introduced by the UK Government in December 2014, the importance of maintaining cross-border consistency and the need to avoid confusion for practitioners. Comments included:

- "the recent changes to SDLT have made this a fairer system" (Estate Agent); "the new marginal 'sliding' system is the correct approach, as it means home buyers will not face a sudden increase in the tax amount payable following only an incremental increase in their property's value" (Business);
- "many of the higher-value properties are likely to be clustered around the England/Wales border and consequently any disparity could produce a distorting effect on the property markets in these areas" (Legal/ Tax Accountancy); and,
- "Continuing with the current residential SDLT rates and bands would provide stability for all stakeholders, reduce any potential confusion for taxpayers and would mean no cross-border impact of differing tax regimes". (Third Sector).

2.3 Of the respondents, many recognised that Wales has lower property values and suggested bands could be adjusted to reflect this. Some options were suggested such as keeping the rates the same but increasing/decreasing the

bands, or having more gradual increases within the existing bands.

Comments included:

- “we believe that the bands should be reformed to reflect the lower value of property in Wales compared to England” (Business);
- “it could be argued that the starting point for LTT should be lower than £125,000 so that the starting point properly reflects the average house price and more members of the property owning public in Wales contribute via LTT” (Legal/ Tax, Accountancy);
- “given the lower prices there are strong arguments for reducing the threshold at which LTT starts to be paid” (Professional Body); and,
- “a 1% band could be inserted below £125,000, and additional tax bands [could be inserted] ... so that the increase in the bands is more graduated rather than the immediate jump from 5% to 10% at £925,000” (Legal/ Tax, Accountancy).

- 2.4 One respondent suggested a radical approach to LTT, based on a unified system for residential and non-residential properties, a marginal rate system with modest rates and the minimum of reliefs. Further to this, one Legal Association commented that “the Welsh Government should not simply adopt the SDLT rates, but instead, should design a band and rate structure which reflects and supports the Welsh policy priorities”.

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

- 2.5 Of the 21 responses to this question, the majority of respondents felt that the 15% slab rate should be discontinued in Wales once LTT is introduced. Most commented that it would not be worthwhile for so few high value transactions in Wales. A number of respondents noted that the 15% slab was introduced to address specific issues in the London property market and these were not relevant to Wales. Comments included:
- “I would guess that few transactions take place in Wales under this regulation, and probably costs more to administer, than revenue gained” (Estate Agent);
  - “there are likely to be very few transactions falling within these provisions and so the retention of this measure would seem to carry little benefit” (Legal/Tax, Accountancy); and,
  - “this whole system was introduced because of very high end transactions in the overheated London property market, which has very little relevance in Wales”. (Business).

- 2.6 Of the respondents who commented that they would prefer to keep the 15% rate, many said that it assisted in tackling tax avoidance, although some suggested the rate could be reduced slightly to ensure that high value investments weren't completely discouraged. Comments included:
- “any change would need to be considered alongside the entirety of the tax system and measures intended to reduce tax avoidance” (Third Sector); and,
  - “the slab rate for non-natural persons was introduced to counter potential tax avoidance involving high value residential properties. Without the high tax rate there is always the risk that the ownership of residential properties via companies could filter down into lower value transactions” (Legal/Tax, Accountancy).
- 2.7 Conversely, a leading accountancy firm disagreed that the 15% rate had any bearing on tax avoidance, commenting that by “removing the charge would also not appear to carry a material risk of potential non-compliance or avoidance”. The same respondent added that the “HM Treasury view of perceived avoidance through “enveloping” residential property was not happening in practice (or not to the extent perceived by HM Treasury)”.

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

- 2.8 Of the 25 responses to this question, the majority of respondents highlighted the possibility of market distortions close to the border which could have either a positive or negative effect on the Welsh housing market depending on the tax rate differences. Comments included:
- “the biggest impact (if any) would be likely to be felt around the border areas – with 48.8 % of people in Wales and 9.5% of the English population living less than 25 miles from the borders this would create distortions, inequity and influence commercial decision-making particularly around the siting of large-scale housing developments” (Legal/Tax, Accountancy);
  - “the key impact on the residential market in Wales would be largely positive and could lead to many people who reside on the English side of the Welsh border deciding to move to Wales to buy a property, due to a favourable property tax regime” (Business); and,
  - “if the two regimes are aligned differently, there could be a strong “push” or “pull” effect on border transactions. This could be detrimental or advantageous for the Welsh tax take, depending on direction” (Business).
- 2.9 Other respondents commented on the additional complexity for professionals working in the area. Comments included:

- “the key impact would be the additional complexity for conveyancers in dealing with LTT in Wales or SDLT in England particularly if there were varying bands and different rates of tax between the two jurisdictions. Additional training would be required at the outset and on-going as and when recruiting new members of staff” (Legal/Tax, Accountancy); and,
- “this could add considerable administrative burden for those involved in property transactions across the UK as well as adding to transaction costs and advisory fees with members of the professional bodies needing to invest resource in up-skilling staff to understand both systems” (Legal/Tax, Accountancy).

**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.**

- 2.10** Of the 24 responses to this question, the large majority of respondents agreed that the Welsh Government should have the ability to change rates and bands with immediate effect. The majority of those who were supportive had some degree of caution as to how these powers would be used. Some respondents said that they would prefer a consultation on any changes to rates and bands, or additional reliefs, but did understand the need for immediate change in certain circumstances, e.g. if the UK Government were to make a change without warning. Some respondents thought that the behavioural impacts would be more significant if prior notice was given.
- 2.11** Of these respondents, one organisation commented “that it would be appropriate and important for the Welsh Government to have the ability to change rates quickly and particularly in response to developments elsewhere”. In addition, one business suggested that this ability would ensure that the tax was sufficiently flexible to be able to adapt and respond to the market and economic circumstances.
- 2.12** There was also support for making immediate changes to other areas, for example, to counteract avoidance loopholes or the misuse of reliefs. It was noted that if the Welsh Government chose to implement different rates to that of the UK Government, making changes with immediate effect would be less important. Some respondents were keen to highlight that the power to do this should not be over-used as sudden changes could undermine stability for business and investment. Additional comments included:

- “immediate changes may be required and would be appropriate for the question of tax avoidance and the ability to counter-act misuse of loopholes or reliefs as and when it becomes apparent that LTT avoidance schemes are being developed” (Legal/Tax, Accountancy); and,
- “the benefits of such powers would need to be weighed carefully against the costs, which would include fewer opportunities for consultation and legislative scrutiny of Land Transactions Tax changes, and less stability and certainty for taxpayers and practitioners” (Professional Body).

**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).**

- 2.13** There were 23 responses to this question. These gave mixed views, with some respondents suggesting that the definition of residential property used in SDLT was suitable for LTT, yet others said that it needed to be amended. Of those that commented that it was suitable, many suggested that it would be easier for taxpayers and their advisors to have a consistent approach with the rest of the UK. Others thought that the current differing definitions cause confusion and lacked clarity. A small number of respondents suggested that if non-residential and residential had the same rates and structure, this could overcome the problem.
- 2.14** A popular suggestion among respondents was to address the problem in guidance, using practical examples of when a property was “residential” or “non-residential”. Additional comments included:
- “while some definitions in the SDLT legislation are subject to interpretation, the industry seems to understand the current definition and any deviation from this would only add uncertainty” (Business); and,
  - “there are currently a number of different definitions within the SDLT legislation. The differing definitions are confusing and lack clarity and consistency. The respondent went on to suggest that this specific area of the legislation would benefit from consolidation and simplification” (Legal/Tax, Accountancy).

### 3. Non-residential property transactions

#### Introduction

- 3.1 This chapter provided an overview of the SDLT and LBTT non-residential regimes and sought views on the importance of retaining consistency between the tax regimes on these types of 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)?**

- 3.2 Of the 22 responses to this question, many suggested that it was important to maintain consistency for non-residential transactions. Concerns were raised regarding inconsistency, with some suggesting that conveyancing companies who work across both England and Wales would be familiar with SDLT and not LTT, causing a hurdle to doing business in Wales. Additional time/costs would be involved and this could be a real disincentive to some investors.
- 3.3 Many respondents felt that even if the inconsistencies meant lower rates in Wales, this would be unlikely to have much impact as lower rates would have only a marginal impact on the overall commercial viability of a transaction. Consistency would be more important to investors so that businesses could be more mobile between England and Wales.
- 3.4 One legal respondent commented that "unlike the Scottish Border regions where properties can normally easily be identified by lawyers as being in one country or the other because there will be separate title deeds, there will be many legal titles - registered and unregistered- which straddle the Welsh border. Without easy access to a definitive map to enable taxpayers to ascertain which part of a property was on either side of the border submitting a return will be far more expensive in terms of time and fees. Any inconsistency in treatment, tax regime or rate of tax could create significant challenges in relation to the consolidation of their asset portfolio, valuation principles and tax provision. In addition, a dual system could impact the level of legal and professional fees in understanding and interpreting different regimes and inflate deal costs".

- 3.5 Some respondents said that the Welsh Government should do what was best for Wales and that compliance costs should not be an absolute barrier to change which might deliver improvements. One legal respondent commented that “consistency as to the “basic principles of how a transactions is taxed” would be desirable. This respondent went on to suggest that simplifying the current regime was likely to be particularly important”.

**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.**

- 3.6 Of the 19 responses to this question, there was strong views expressed that a slab structure did not create distortions in the non-residential property market. Conversely, a small minority felt that it did have an impact on transaction values around the thresholds, with a number of respondents pointing out that evidence showed that many commercial transactions were in excess of £500,000 and fall within the 4% higher tax rate. Comments included:
- “SDLT is not often a key issue as to whether a transaction is to proceed and the additional cost, where the price is marginally in excess of the thresholds, will be factored into the negotiations as to the final price (possibly with some trade-off as regards any rent, fit out costs etc.)” (Professional Body); and,
  - “it is not considered that a slab system creates a substantial distortion to the market unlike the impact the slab system had on the residential property market around the SDLT rate thresholds”. (Legal/Tax, Accountancy).
- 3.7 Some respondents suggested that slab rates were perceived as easier to calculate and retaining them would be simpler, however, some considered that a marginal system would be fairer. It was recognised that there could be tensions with mixed transactions where there were both residential and commercial elements. There was also an increased chance of individuals using various methods to avoid paying the higher rates of tax, either by splitting transactions or artificially depressing valuations.
- 3.8 Additional comments included:
- “even if the empirical evidence for distortions is less than for residential transactions, there is no economic justification for a slab structure for non-residential transactions either” (Professional Body); and,
  - “a slab system by its nature will result in distortions in the commercial market and tax planning and potentially avoidance to stay within the thresholds, for

example by way of sale splitting or paying separately for chattels etc. in principle, therefore, we would recommend a marginal system for non-residential property” (Professional Body).

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

- 3.9 Of the 20 responses to question 8, many reiterated earlier comments and themes such as competitiveness, business continuity and complexity for professionals. Comments included:
- “the key impact would be the increased burden on business of additional bureaucracy and the associated professional costs of tax advisers, solicitors and valuers” (Tax/Legal, Accountancy);
  - “the key impacts would be the additional complexity and a potentially negative investor decision to investing in Wales if they do not wish to understand the differences” (Tax/Legal, Accountancy);
  - “the key impact of a different transaction tax regime from England would be on our competitiveness (Building contractor); and,
  - “it could make the system overly burdensome for business, complex, costly to administer, as well as creating the potential for anomalies and inequity for tax-payers in different (but neighbouring) locations” (Tax/Legal, Accountancy).

## **4. Partnerships, trusts and companies**

### **Introduction**

- 4.1 This chapter outlined the complexities in the treatment of transactions involving partnerships, trusts and companies and asked where improvements might be made without creating confusion, or whether ensuring consistency with the current SDLT regime would be the preferred option.

**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.**

- 4.2 Of the 18 responses to the question, the majority considered that the current SDLT provisions should be broadly replicated, but a detailed review should be

undertaken to simplify where possible. One common theme was that complex as the current processes are; they are now understood by professionals, so to start working with a new set of rules, even if simpler, would add further complexity. Some respondents drew attention to the complexities and problems that arose from existing UK legislation and suggested where improvements could be made. Comments included:

- “whilst these provisions may be complex in order to prevent avoidance, they are currently largely understood by professional advisers, and any changes, however subtle could have significant implications” (Professional Body); and,
- “broadly, we are in favour of consistency between the two regimes, However numerous specific changes should be made as some of the SDLT provisions are poorly structured particularly in relation to group relief ... and partnerships” (Professional Body).

## 5. Leases

### Introduction

5.1 This chapter described SDLT and LBTT tax leases and the associated challenges that arose from these, before asking if there were changes that might be made to help deliver improvements.

**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?**

5.2 Of the 18 responses to this question, there were strong views that the rent element of residential leases should not be taxed under LTT. Most of those who expressed this view suggested that the likely revenue raised for taxing the rent element would be negligible and administration costs would be considerable. Some respondents highlighted that LTT avoidance schemes may be developed to take advantage of the lack of tax on rental elements. It was also suggested that the option of taxing for this should be retained so that it might be introduced if there was subsequent evidence of tax avoidance increasing. Comments included:

- “the yields from such taxes would be too low to make the arrangement worthwhile” (Business);
- “the rental element payable under residential leases should not be taxed under LTT. The revenue forgone by not collecting such tax would, we suspect, be very small” (Legal/tax, Accountancy);
- “the risk in abolishing the tax on the rent element is that LTT avoidance schemes may be developed to take advantage of the lack of a tax on rental elements” (Legal/Tax, Accountancy); and,
- “If there is a concern that this could open up opportunities for avoidance, the Government could retain the right to reintroduce it through regulation at a later date” (Business).

**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?**

5.3 Of the 20 responses to this question, many respondents generally felt that regular returns should not be implemented for LTT. Respondents suggested that this would be a considerable extra burden on businesses, added

administration for the Welsh Revenue Authority (WRA) and would be disproportionate for the amount of revenue involved.

- 5.4 The respondents who thought that regular returns would be a good idea suggested that Wales should observe how this system worked in Scotland, prior to making a final decision. Comments included:
- “the increased burden imposed by further Returns being required during the term would often be disproportionate to the tax raised” (Legal/Tax, Accountancy);
  - “the problem with requiring a return every three years is the additional cost such compliance will place on business, particularly if nothing has changed and there is no additional LTT liability. In addition, Welsh Government or the WRA would have to ensure sufficient resources were available to check the returns that were filed and police the non-filing of returns” (Legal/Tax, Accountancy); and,
  - “the requirement for a regular return would provide additional information and, arguably, improve compliance. However the compliance advantage of a return at regular intervals will be balanced by an increase in the administrative Tax Devolution in ... burden for businesses, a cash flow cost and a need for additional resources within the WRA, or the body responsible for collection and management of LTT. An assessment of these factors would be needed” (Professional Body).

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

- 5.5 Of the 20 responses to this question, respondents commented that licenses and tenancies at will should not be treated as leases. It was suggested that the introduction of an additional layer of bureaucracy and taxation would mean that such arrangements would no longer be cost-effective ways of dealing with informal short-term agreements. Also the fees paid for a licence tended to be low value and probably below the current threshold of SDLT. Similarly the revenue yield would be very low and likely to increase the administrative burdens and complexities of LTT considerably, with a consequent increase in compliance costs for collecting what were likely to be very small amounts of LTT. Comments included:
- “I do not think licenses and tenancies at will should be taxed in this way as it would be administratively burdensome and yet raise minimal amounts of revenue” (Building contractor);
  - “the revenue yield would be likely to be very low, and this would adversely impact certain occupiers such as retail concessionaires, airports, railway

stations and other small retail out-lets in shared locations” (Tax/Legal, Accountancy); and,

- “licences and tenancies at will should not be taxed in the same way as leasehold agreements, due to the substantial differences between these types of interests. Licences and tenancies at will are frequently created that have little or no economic value and carry few rights over the land or property in question... Licences (and tenancies at will) do not provide any exclusive right of occupation, and therefore a licence (or tenancy at will) is in many cases unlikely to be a viable alternative to a leasehold agreement” (Tax/Legal, Accountancy).

**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?**

**5.6** Of the 19 responses to this question, respondents were split between those who were in favour of replicating the SDLT legislation for leases and those who suggested areas for improvement.

**5.7** Many respondents, provided suggested areas for improvement, which were in relation an issue to claw back on the assignment of leases, regular lease returns, and simplifying and improving guidance. Additional comments included:

- “no, other than perhaps simplifying the SDLT or LTT return forms to make them easier and quicker to complete by removing some of the unnecessary information requested”. (Tax/Legal, Accountancy);
- “there are technical elements of the SDLT lease provisions that need to be addressed ...As a general point the existing FA 2003 Schedule 17A provisions are extensive and complex, largely through trying to arrive at an initial figure on which to charge SDLT on leases which may contain provisions to vary rents, offer break clauses etc. for commercial reasons as well as, sometimes, avoidance reasons”. (Professional Body); and,
- “in our view under Welsh LTT overlap relief should be given where Welsh LTT was originally paid and also where SDLT was originally paid on the original lease, to ensure that taxpayers are not disadvantaged in respect of leases on which they have previously paid SDLT” (Tax/Law, Accountancy).

## 6. Reliefs and exemptions

### Introduction

6.1 This chapter focused on reliefs and exemptions. 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. This chapter 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.

**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.**

6.2 Of the 21 responses to this question, the majority of respondents were in favour of adopting the current SDLT reliefs and exemptions. Consistency between Wales and England was the reason most cited. It was recognised that some existing reliefs were rarely used, but that there were good reasons to justify their existence. Comments included:

- “the current reliefs and exemptions for SDLT should be retained” (Business);
- “a valid case for retaining all the reliefs can be made even if the reliefs have very limited application, such as demutualisation of insurance companies and building societies and variation of parliamentary constituencies” (Tax/Law, Accountancy);
- “all existing reliefs available under SDLT should in our view be retained under LTT to prevent inconsistency of treatment for tax-payers” (Tax/Law, Accountancy); and,
- “as part of the design of a radically simpler LTT, we believe that there should be a thorough review of all exemptions and reliefs starting from a ‘zero base’, to identify if they are absolutely necessary and provide value for money” (Professional Body).

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

7. Of the 20 responses to this question, the majority of respondents recommended adopting the SDLT version of sub-sale relief. Respondents commented that there should be consistency with SDLT; that not adopting would increase the cost of doing business in Wales; that there were early indications that the 2013 changes had tackled previous avoidance issues; it provided liquidity to the real estate market; and it was very important in encouraging commercial investment.

**7.1** Additional comments included:

- “the Welsh Government should enact a general sub-sale relief which is consistent with the principles under the SDLT relief, and should not replicate the narrower “sub-sale development relief” introduced under LBTT. Unless there is a compelling case for change existing systems should continue, particularly where exploitation issues have already been addressed as is the case with the SDLT form of sub-sale relief” (Legal/Tax, Accountancy);
- “this relief is very important in the context of large real estate transactions involving the transfer of land to a developer before completion. The SDLT sub-sale legislation is still relatively new and we would encourage the Welsh Government to allow more time for users to get used to the legislation before making any significant changes” (Business); and,
- “all reliefs and exemptions should be subject to thorough review and this applies equally to sub-sale relief” (Professional Body).

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

- 7.2** Of the 15 responses to this question, a small number suggested that new reliefs should be introduced. Reasons for this varied, but some comments suggested: first time buyers’ relief, regional reliefs, local authority relief to assemble land for building council houses, relief for canal house building, and farm business tenants. Comments included:
- “reliefs for first time buyers, to help them onto the housing ladder” (Estate Agent);
  - “reliefs (or a lower rates) for new developments of both residential and commercial development – to encourage development” (Building contractor); and,
  - “any new incorporation relief could be limited to assets used in, or for the purposes of, a trade, and should also be subject to a claw back upon a sale of the company within a certain period. This would more closely align the Welsh LTT treatment with the capital gains tax treatment” (Tax/legal, Accountancy).

## 8. Compliance, avoidance, disputes and penalties

### Introduction

- 8.1 This chapter asked questions regarding online payment, pre-clearance and penalties for non-compliance.

**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?**

- 8.2 There were 16 responses to this question. There were mixed views from respondents with several clear in their objection to mandatory on line filing, whilst others had no preference but offered suggestions for improving the online filing rate and some felt that online filing should be mandatory.
- 8.3 Those who were opposed to mandatory online filing argued that it was unnecessary because there was already a very high rate of compliance (97%). Further to this, some commented that paper returns would naturally phase out. A common argument against mandated online filing was the lack of access to broadband in rural Wales. Some respondents commented on ideas to help incentivise, which included: making the process simple and easy to access; reducing the amount of information required; and, a possible financial incentive. Of those who considered that online filing should be mandated one reason given was that the forms were almost always completed by conveyances who should already have access to the internet. Comments included:
- “mandatory on-line filing would be “nice to have” but provision has to be made for the few taxpayers who do not have access to computers or do not use computers for religious reasons. Giving the 96% of current taxpayers who file on-line a discount to try and encourage the remaining 4% to file on-line does not appear particularly tax efficient” (Legal/Tax, Accountancy);
  - “there are many rural areas of Wales lacking access to reliable and sufficiently fast broadband, and we are firmly of the view that there should be no compulsion to online filing” (Professional Body); and,
  - “not convinced that online filing should be, or needs to be, mandatory given the online filing rate for SDLT is very high already ( 97.46%)” (Professional Body).

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

8.4 Of the 15 responses to this question, the majority of respondents considered that paper returns should be the alternative for those who could not file online. Others suggested that access to computers at local government offices and restricting the payment method to cheque for manual returns (as with LBTT). A small number of respondents felt strongly that a manual option should not be offered as they could not envisage a situation where either a conveyancer or somebody buying land or a property could not get access to the internet.

Comments included:

- “the option should exist to file a paper return although this could be made less attractive by providing only one payment method, being payment by cheque, as is the case for LBTT. Online filing would therefore be more attractive as payment could be made by BACS, CHAPS, credit card, debit card and cheque” (Legal/Tax, Accountancy);
- “I simply do not believe that a taxpayer involved in a transaction upon which LTT will be due really cannot file online themselves or via an agent” (Individual); and,
- “it’s difficult to envisage a scenario where conveyancers are unable to file online. For exceptional cases paper filing should be allowed” (Public Body).

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

8.5 Of the 13 responses to this question, a number of respondents said that the WRA could improve the use of online payment by offering financial incentives. One respondent suggested that this should be made easy to use, and easy to match the payment with the cheque. Some respondents suggested that because of the controls of the Solicitors Regulatory Authority for the holding of client’s money and internal controls, payment by cheque is often the most appropriate method of payment. Other respondents commented that making payment due at the same time of filing would increase the use of online payment. Comments included:

- “to incentivise online payment potentially by adding an administration charge to any other forms of payment” (Public Body);
- “By requiring that LTT must be paid at the same time as the return is submitted” (Professional Body); and,
- “One way would be to link online payment directly with online tax returns” (Public Body).

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

8.6 Of the 18 responses to question 20, respondents were split between those who felt that linking filing and payment would cause problems and those who could not see any reason why it should. Some suggested that most SDLT returns were submitted on-line by lawyers and associated payments were separately processed by the firm's accounts department, on the authority of the lawyer. There were likely to be internal checks and authorisations required before the sum was transferred to HMRC (whether by TT or BACS) or a cheque issued. Comments included:

- “BACs payments take three working days to clear, would that mean that with returns close to the deadline the taxpayer would have to incur an additional TT fee in case BACs payments are not considered made until cleared?” (Legal/Tax, Accountancy);
- “before making any decision to follow the LBTT approach, it would help to know whether the Scottish system gives rise to any practical problems, but given the tax has only been in place since 1 April 2015, we suspect that more time will be needed to see how it will work in practice” (Professional Body); and,
- “even where returns are submitted online, the funds required to pay LTT may not immediately be available at completion of a transaction and we would therefore recommend that the leeway of thirty days is allowed for payment of LTT, as is currently the case for SDLT” (Business).

**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?**

8.7 Of the 17 responses to this question, the majority suggested that the WRA should provide a pre-clearance facility as it was an essential service for a tax authority to provide. Several respondents referred to the complicated and technical nature of the tax, and that pre-clearance would facilitate compliance and avoid penalties and tribunals. In addition, a small number of respondents noted that the Welsh Government should be mindful of the cost of offering such a service. Comments included:

- “the benefits of a pre-clearance facility would be certainty for taxpayers and their advisers. However, the resources required to operate a clearance facility

should not be under-estimated. Queries on transactions are usually urgent and arise at a late stage in transactions. There is usually a large amount of tax at stake. It is important that personnel with sufficient experience are employed in a pre-clearance facility rather than a call-centre type operation with a regimented script” (Legal/Tax, Accountancy);

- “the ability to seek a view prior to entering into a transaction would greatly improve the position, and enable businesses to make informed decisions on the true cost of the transaction based on a realistic appraisal of the actual tax charge. This would also assist lenders in arriving at a view on the level of funds they will be prepared to advance instead of having to assess the potential risk of tax leakage” (Legal/Tax, Accountancy); and,
- “SDLT is a complex tax when applied to the wide range of transactions, and commercially driven structures, used to acquire an interest in land. Assuming that a lot of the existing SDLT legislation is replicated in LTT the new tax will be equally complex to apply to commercial transactions. In our view it is therefore essential that LTT should have a pre-transaction clearance facility” (Legal/Tax, Accountancy).

**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.**

**8.8** Of the 18 responses to this question, the majority of respondents were in favour of maintaining consistency with the HMRC penalty regime for late filing and errors. Further to this, a small number of respondents were concerned that a complicated tax system could lead to an increase in penalties. Another recurrent theme was that penalties must be effective in ensuring compliance and should be set at an appropriate level. Respondents were also concerned that genuine mistakes made by taxpayers should not automatically be subject to penalties and that a degree of leniency should be exercised whilst practitioners adjusted to the new system. Comments included:

- “it is important to ensure taxpayers file prompt and accurate returns... As a general rule, we do not think that a normally compliant taxpayer who makes a genuine mistake or who misses a deadline should not automatically subject to penalties” (Business); and,
- “penalties are used by HMRC as a means of ensuring compliance. Providing penalties are set at an appropriate level and take into account the complexity of the tax and taxpayers actions we believe they should be retained” (Professional Body).

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

- 8.9 Of the 11 responses to this question, most respondents agreed that the WRA should impose penalties for late payment similar to HMRC. The reasons given were very similar to the responses given to question 22, and many repeated their answers. One additional response was that the charging of interest on overdue tax would compensate the Welsh Government for late payment. However, if a penalty was not levied in addition then some taxpayers might see the Welsh Government as a source of funds, accepting the interest cost as a charge for the service. Fairness to the taxpayer was also given as a good reason to adopt a penalty regime for late payment. Additional comments included:
- “good behaviour should be encouraged and penalties should be levied out of fairness to other tax-payers who do make timely payments” (Legal/Tax, Accountancy); and,
  - “Yes but again provided that they are proportionate to each case individually” (Professional Body).

**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?**

- 8.10 Of the 9 responses to this question, a number commented that any approach to postponement of payment under appeal should be consistent with the current approach used for SDLT. One respondent stated that a “pay first and argue later” approach must have sufficient checks and balances to deal with cases of genuine hardship. Further to this, several respondents suggested that any appeal arrangements established should be fair, simple, transparent, efficient and affordable and that the WRA should ensure that exceptional cases were considered on their merits and not subject to prescribed rules. Others felt that introducing a tried and tested system similar to HMRC’s for the early stage process of dispute resolution would help taxpayers and their advisors by avoiding unnecessary differences between England and Wales. Comments included:
- “support for an approach that looks to ensure that exceptional cases are considered on their merits and not subject to prescribed rules. It is desirable to keep the tax regimes as aligned as possible, to avoid confusion and in the interests of simplicity” (Legal/Tax, Accountancy); and,

- “we welcome the Welsh Government’s commitment to fairness and also seeking to resolve disputes without them going to court, which is a slow and expensive process for taxpayers and revenue authorities” (Professional Body).

**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.**

- 8.11** Of the 13 responses to this question, the significant majority of respondents considered that the existing Section 75A FA2003 legislation should not be replicated. Many respondents commented that the section was problematic in its application and interpretation, going on to say that it was commonly criticised as being a badly drafted piece of legislation. Although responses were strongly against replicating the section, it was suggested that at the very least, the Welsh Government should apply a motive test to the legislation. Comments included:
- “the legislation needs to be clear in its application and not give rise to further unexpected loopholes. We believe that the Welsh Government must protect tax revenue, however we agree that applying the UK GAAR would result in a more effectively targeted anti-avoidance provision than replicating Section 75A FA 2003 without a motive test” (Legal/Tax, Accountancy); and,
  - “S75A is problematic in its application and interpretation, and we would favour a repeal of the Section to be replaced with General Anti-avoidance Rules in line with that introduced in Scotland, enabling Revenue Scotland to take counteraction where either i) a tax avoidance arrangement is not a reasonable course of action having regard to the principles and policy objectives on which the relevant tax legislation is based, or, ii) where the arrangement lacks economic or commercial substance” (Legal/Tax, Accountancy).

- 9.1 The final three questions of the consultation gave respondents the opportunity to comment on the impact assessment and any other areas of taxation that could be affected by the move to LTT.

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

- 9.2 The 12 responses to question 26 expressed a range of views. Comments included:
- “the Welsh Government optimises its tax regime, particularly through this reform of SDLT, to ensure that it takes into consideration the uniqueness of the Welsh property market, in order to maximise tax revenue” (Business);
  - “the economic impact in Wales of any tax rises should be considered. Wales is a small economy compared to England and any barriers to external investment in Wales via higher taxes should be resisted” (Legal/Tax, Accountancy); and
  - “the cost of not levying a replacement for SDLT far outweighs that of implementing a new tax regime and subsequently increasing the administrative burden for a small number of transactions” (Public Body).

**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.**

- 9.3 Of the 16 responses to this question, many agreed that the implications would depend on further tax devolution. One respondent suggested that if it did gain momentum, the structure and capacity of the WRA would come in to focus. In addition, some respondents felt that changes were due to Council Tax and that reforms should be considered to other domestic and non-domestic rates. Comments included:
- “the size and operation of the WRA would have to be considered if and when Welsh Government obtained powers over additional taxes such as income tax and corporation tax” (Legal/Tax, Accountancy);
  - “there is a chance for Wales to make real improvements to its tax system by looking at this area as a whole – by abolishing (or at least reducing) stamp duty, and making up for lost revenues by reformed systems of non-domestic and domestic property taxes” (Public Body); and,

- “in the new tax environment, local democratic responsibility for taxation remains a key feature. Just as there is recognition in the Welsh Government’s proposals that the new devolved taxes should be brought together, there must equally be recognition of the link between nationally devolved taxes and their administration with the management and control of local taxation” (Public Body).

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

- 9.4 There were 23 responses to this final question. Comments provided varied greatly and often were provided to reinforce statements that had already been made. The vast majority of respondents welcomed the devolution of LTT to Wales, but considered that consistency with the UK would be important yet still recognised that variations could be put in place in order to suit the Welsh economy. Comments included:
- “tax devolution provides a unique opportunity for Wales to do something different in how housing and housing services are taxed” (Business);
  - “there is the opportunity to consider Transaction Value and Development taxation on Land in the round. We hope that opportunity will not be missed” (Town & Community Council); and,
  - “The consultation on a Land Transaction Tax is a landmark for Welsh tax devolution. By 2018, the capacity of the Welsh Government and National Assembly to legislate on Welsh devolved property taxes will be significant when taken in the context of other taxes such as non-domestic rates”. (Business).

## List of respondents

### Individuals and organisations who responded to the consultation

Ref.	Respondent	Category
1	Penar Tharbyd	Individual
2	Darwin Gray LLP	Legal / Tax, Accountancy
3	Anonymous	Estate Agent
4	Pontawdawe Town Council	Town & Community Council
5	Anonymous	Bank
6	Anonymous	Town & Community Council
7	Peter Black AM	Individual
8	Mrs LM Mackintosh	Individual
9	National Association of Estate Agents	Business
10	"Too complicated"	Individual
11	Anonymous	Legal / Tax, Accountancy
12	Geldards LLP	Legal / Tax, Accountancy
13	National Farmers Union Cymru (NFU)	Professional Body
14	Anonymous	Business
15	Community Land Advice Service Cymru	Third Sector
16	Anonymous	Building Contractor
17	Land Registry	Public Body
18	KPMG	Legal / Tax, Accountancy
19	Penarth Town Council	Town & Community Council
20	Institute of Fiscal Studies (IFS)	Professional Body
21	Bevan Foundation	Third Sector
22	Council of Mortgage Lenders (CML)	Business
23	Federation of Small Businesses (FSB)	Business
24	Law Society	Professional Body
25	Chartered Institute of Taxation (CIOT)	Professional Body
26	Price Waterhouse Coopers (PWC)	Legal / Tax, Accountancy
27	Anonymous	Business
28	Residential Landlords Association (RLA)	Business
29	Welsh Council for Voluntary Action (WCVA)	Third Sector
30	Institute of Chartered Accountants in England and Wales	Professional Body
31	British Property Federation	Business
32	Canal and River Trust Wales	Third Sector
33	Mike Bird	Individual
34	Deloitte	Legal / Tax, Accountancy
35	Community Landlords Association (CLA)	Business
36	Welsh Local Government Association (WLGA)	Public Body
37	Royal Institution of Chartered Surveyors (RICS)	Professional Body
38	Ernst and Young	Legal / Tax, Accountancy

## **Glossary**

HMRC – Her Majesty’s Revenue and Customs

SDLT - Stamp Duty Land Tax

WRA – Welsh Revenue Authority

LTT – Land Transaction Tax

LDT – Landfill Disposals Tax

RS – Revenue Scotland

LBTT- Land and Buildings Transaction Tax

GAAR – General Anti-avoidance Rule / General Anti-abuse Rule

