

Finance Committee
**Land Transaction Tax and
Anti-avoidance of Devolved Taxes
(Wales) Bill: Committee Stage 1 Report**

December 2016



National Assembly for Wales
Finance Committee

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To carry out the functions of the responsible committee set out in Standing Order 19; the functions of the responsible committee set out in Standing Orders 18.10 and 18.11; and consider any other matter relating to the Welsh Consolidated Fund.

Current Committee membership:



Simon Thomas AM (Chair)
Plaid Cymru
Mid and West Wales



Mike Hedges AM
Welsh Labour
Swansea East



Steffan Lewis AM
Plaid Cymru
South Wales East



Eluned Morgan AM
Welsh Labour
Mid and West Wales



Nick Ramsay AM
Welsh Conservative
Monmouth



Mark Reckless AM
UKIP Wales
South Wales East



David Rees AM
Welsh Labour
Aberavon

The following Member attended as a substitute member during the course of this inquiry:



Neil McEvoy AM
Plaid Cymru
South Wales Central

Contents

Recommendations.....	5
01. Introduction.....	8
02. Background.....	10
03. General principles and the need for legislation	13
04. Part 2 – The tax and key concepts	16
05. Part 3 – Calculation of tax and reliefs.....	31
06. Part 6 – Returns and Payments.....	45
07. Part 7 – General anti-avoidance rule	48
08. Financial Implications	54
Annex A – List of oral evidence sessions.....	57
Annex B – List of written evidence	58

Recommendations

Recommendation 1. The Committee recommends that the general principles of the Bill should be agreed by the National Assembly. It does, however make a series of recommendations in this report which it believes should be addressed by the Welsh Government in order to strengthen the provisions in the Bill.

.....Page 15

Recommendation 2. The Committee requests that the Cabinet Secretary keeps the Assembly and the Committee, informed of progress in establishing the Welsh Revenue Authority. It recommends this is done through statements once per Assembly term.Page 18

Recommendation 3. The Committee recommends that formal Memoranda of Understanding are established with HMRC and the Land Registry on both sharing information and access to expert knowledge.Page 21

Recommendation 4. The Committee recommends that the Welsh Government establishes a working group of practitioners as soon as possible to discuss technical and practical operational issues. The responsibility for such a group should be passed on to the Welsh Revenue Authority as soon as practicable. The Committee believes the workings of the group should be as transparent and open as possible.Page 21

Recommendation 5. The Committee recommends that the Welsh Revenue Authority engage with the relevant professions from the outset on the production of Land Transaction Tax guidance.Page 24

Recommendation 6. The Committee recommends that a table outlining the differences between Land Transaction Tax and Stamp Duty Land Tax should be included in guidance.Page 24

Recommendation 7. The Committee recommends that, should the National Assembly agree the provisions in this Bill, the Welsh Government should commission the Land Registry to carry out the work of providing a map of the border between Wales and England in readiness for the commencement of Land Transaction Tax.Page 29

Recommendation 8. The Committee recommends that further information is produced by the Welsh Government explaining how it intends the legislation to determine the apportioning of the consideration payable on cross-border property transactions. This information should cover issues such as “just and reasonable apportionment”, and clarity on requirement for two transfers for cross-border transactions. This information should be available before any Stage 2 considerations.Page 29

Recommendation 9. The Committee recommends that the Welsh Government publishes a communications plan, including the likely resource implications, for the period leading up to the coming into force of any Land Transaction Tax provisions.Page 30

Recommendation 10. In order to address witnesses' concerns, the Committee recommends that the Cabinet Secretary commits to a full and extensive consultation on rates and bands in advance of the Welsh Government's determination.Page 36

Recommendation 11. The Committee recommends that the Welsh Government should make provision for appropriate reliefs for Property Authorised Investment Funds and Co-ownership Authorised Contractual Schemes through amendments at Stage 2 in order to ensure that commercial investment in property in Wales is not disincentivised inadvertently.Page 40

Recommendation 12. The Committee recommends that the Welsh Government should monitor carefully the impact of all reliefs, in particular the multiple dwelling relief, with a view to using the regulation making powers to amend the provision of reliefs should it be necessary to address any perverse incentives.Page 40

Recommendation 13. The Committee recommends that guidance be provided on the implementation of the Targeted Anti-avoidance Rule.Page 44

Recommendation 14. The Committee recommends that a statement of policy intent for each of the reliefs, including the new reliefs recommended by the Committee, be included in detail in the explanatory notes to the Bill.Page 44

Recommendation 15. The Committee recommends that detailed guidance be provided to deal with the application of the Targeted Anti-avoidance Rule, particularly as it is intended to apply to non-devolved taxes and to ensure that its purpose remains narrow and focused as set out by the Cabinet Secretary's letter to the Committee of 2 November 2016.Page 44

Recommendation 16. The Committee recommends that the Welsh Government consults with stakeholder groups prior to making regulations on the form of the certificate required under section 64 of the Bill, to ensure that their views are taken on board.Page 47

Recommendation 17. The Committee recommends that the preparation of guidance on the implementation of the general anti-avoidance rule should be an immediate priority for the Welsh Revenue Authority. It recommends that the WRA should work with stakeholders on the production of guidance, possibly through establishing a GAAR advisory panel.Page 52

Recommendation 18. The Committee recommends that the Cabinet Secretary provides updated estimated costs before any Stage 2 proceedings, with particular reference to IT and establishment costs.Page 56

01. Introduction

1. On 12 September 2016, the Cabinet Secretary for Finance and Local Government (the Cabinet Secretary), Mark Drakeford AM, introduced the **Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill** (the Bill) and accompanying **Explanatory Memorandum** (EM). The Cabinet Secretary made a **statement** on the Bill in Plenary on 13 September 2016.

2. At its meeting on 12 July 2016, the National Assembly's Business Committee agreed to refer the Bill to the Finance Committee (the Committee) for consideration of its general principles (Stage 1), in accordance with Standing Orders 26.9.¹ The Business Committee agreed that the Committee should report to the National Assembly by 22 December 2016.²

Terms of reference

3. The Committee agreed the following terms of reference for its Stage 1 scrutiny of the Bill:

To consider-

- the general principles of the Bill;
- any potential barriers to the implementation of these provisions and whether the Bill takes account of them;
- whether there are any unintended consequences arising from the Bill;
- the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum);
- the appropriateness of the powers in the Bill for the Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum).

4. Alongside the terms of reference, respondents to the consultation were also invited to consider the provisions of the Bill, in particular:

- implementation of tax bands and rates and how to ensure it can deal with subsequent changes and other UK wide changes;
- approach to tax avoidance – including ensuring there is appropriate information flow from taxpayers, advisers and the Welsh revenue Authority (WRA) as well as provision of any clearance mechanisms and ensuring adequate resources for WRA;
- the proposed exemptions;
- the proposed reliefs;
- how residential and non-residential transactions are defined and treated;
- how companies, trusts, non-profit organisations and partnerships are treated in terms of provisions and reliefs.

¹ Standing Orders of the National Assembly for Wales, Standing Order 26.9

² National Assembly for Wales, **Business Committee, Report on the timetable for consideration of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill, September 2016**

The Committee's approach

5. The Committee took oral evidence from a number of witnesses. The schedule of oral evidence sessions is attached at Annex A. The Committee also issued a public consultation which invited anyone with an interest in the Bill's provisions to submit written evidence to inform the Committee's work. A list of the 13 consultation responses is attached at Annex B.

6. In addition, the Committee held an informal stakeholder event, which 12 stakeholders representing nine organisations attended, and ran an online discussion forum to gather participants' views on the Bill, which generated seven comments made by six participants.

7. This report sets out the Committee's conclusions and recommendations, based on the evidence received during the course of its inquiry.

8. The Committee would like to thank all those who have contributed to its work. The Committee is also grateful to its Expert Adviser, Lakshmi Narain, for his advice and guidance during its consideration of this complex subject area.

Other Committees' consideration of the Bill

9. The National Assembly's Constitutional and Legislative Affairs Committee took evidence from the Cabinet Secretary on the appropriateness of the provisions in the Bill that grant powers to make subordinate legislation on 3 October 2016. It reported on its conclusions in December 2016.

02. Background

10. **The Wales Act 2014** conferred on the National Assembly for Wales legislative competence over devolved areas of taxation and provided for UK Stamp Duty Land Tax (SDLT) to be dis-applied in Wales.

11. The Bill will introduce a Land Transaction Tax (LTT) to replace SDLT in Wales from April 2018, as well as measures to tackle the avoidance of devolved taxes. The EM states that the Bill is:

“The second of three Bills to establish devolved tax arrangements in Wales. This legislation is interlinked with the Tax Collection and Management (Wales) Act 2016 (TCM (Wales) Act 2016) which provides the powers and duties to collect the tax, and will be followed by a Bill to establish Landfill Disposals Tax (LDT).”³

12. **The Tax Collection and Management (Wales) Act 2016** (the TCM Act) provided for the establishment of the Welsh Revenue Authority (WRA), which is to be the responsible authority for the collection and management of LTT.⁴

Legislative competence

13. The EM states:

“The National Assembly for Wales (“the Assembly”) has the legislative competence to make the provisions in the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill (“the Bill”) pursuant to Part 4 of the Government of Wales Act 2006 (“GoWA 2006”). The relevant provisions of GOWA 2006 are set out in section 108 and Schedule 7.

Paragraph 16A of Schedule 7 set out the following subject on which the Assembly may legislate.

16A Taxation

Devolved taxes (as defined in section 116A(4))

Section 116A(4) of GOWA 2006 provides that a tax specified in Part 4A of GOWA 2006 is defined as a devolved tax. Part 4A gives the Assembly legislative competence to make provision in relation to a tax on transactions involving an interest in land (section 116L), and a tax on disposals to landfill (section 116N).⁵

14. The Llywydd issued a **statement** on 12 September 2016 that in her opinion the provisions of the Bill would be within the legislative competence of the National Assembly for Wales. She **wrote to the Committee** on 16 September 2016 to provide further detail on the human rights and Crown consent issues which she took into account in reaching that view. The Committee explored these

³ Explanatory Memorandum, paragraph 1.1

⁴ Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill Section 2(3) (As Introduced)

⁵ Explanatory Memorandum, paragraphs 2.1-2.3

issues, together with other issues pertaining to human rights, with the Cabinet Secretary when he appeared before us on 21 September 2016.

15. In relation to Crown consents, the Cabinet Secretary told the Committee the Welsh Government's position was that the consent of the Queen or Duke of Cornwall was not required for this Bill. He explained that this was on the basis of the Crown Private Estates Act 1862, which makes the sovereign liable to pay tax on their private estates. The Cabinet Secretary said:

“The Bill does nothing to upset that long-standing position and, as a result, we have concluded that consent is not required.”⁶

16. In relation to whether the provisions in the Bill relating to the General Anti-avoidance Rule (GAAR) comply with the Human Rights Act 1998 and the European Convention on Human Rights (the Convention), the Cabinet Secretary stated the Welsh Government's position was that the provisions were compliant. He explained this view drew on provisions of the TCM Act, which provided for decisions made by the WRA (including decisions about any penalties payable), to offer two levels of protection to the taxpayer – namely the right to request a review of a decision taken by the WRA and subsequently the right to appeal to a first-tier tribunal. The Cabinet Secretary said:

“I think that we have constructed the Bill in a way that has proper safeguards and, therefore, is article 6 ... compliant.”⁷

17. The Committee also asked the Cabinet Secretary for his views on whether the Bill was compliant with Article 1 of Protocol 1 of the Convention, with particular reference to the rates and bands of LTT. The Welsh Government lawyer responded that as the rates and bands are to be set in regulations, the regulations would have to comply with the Convention in the same way as the Bill does.⁸ The Cabinet Secretary referred the Committee to the Welsh Government's paper “**Land Transaction Tax: Setting Rates and Bands**” which set out the basis upon which decisions about rates and bands would be made.⁹

Pre-legislative consultation

18. In 2015, the Welsh Government published its consultation “**Tax Devolution in Wales – Land Transaction Tax**” which covered:

- residential and non-residential property transactions;
- partnerships, trusts and companies;
- leases;
- reliefs and exemptions;
- compliance, avoidance, disputes and penalties.

19. The EM states that the Welsh Government has drawn on the responses to the consultation in “developing policy and establishing a tax which meets the needs of Wales”.¹⁰

⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 193

⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 174

⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 186

⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 185

¹⁰ Explanatory Memorandum, paragraph 3.6

Fiscal Framework for Wales

20. LTT is one of a range of taxes intended to be devolved to Wales, including a Landfill Disposals Tax. These tax streams would provide the Welsh Government with a direct source of funding, independent of funding via the Welsh block grant. As a consequence, an adjustment to the block grant will be required to take account of the revenue controlled by the Welsh Government. The methodology for making this reduction will be set out in a fiscal framework for Wales, the basis for which is currently the subject of negotiations between the Welsh Government and the UK Government.¹¹

21. The Cabinet Secretary told the Committee that “the framework is vital to this Bill”, adding that:

“for the first time, the National Assembly for Wales will be a revenue-raising, as well as a revenue-dispersing body. That’s very important for this committee particularly, of course. But, in doing that, we have to have a set of rules that govern the new relationship between us and the Treasury. We’ve embarked on that already. I had a meeting with the Chief Secretary to the Treasury before the summer break. It was introductory, as he had been in that post himself for a matter of days. But, it was, I felt, a constructive introductory meeting. We agreed a timetable to work on the detail, and I will meet him again for the first of those meetings on the twenty-eighth of this month.”¹²

22. The Committee wrote to the Cabinet Secretary requesting an update on his discussions with the Treasury.¹³ In his reply the Cabinet Secretary said that he had attended a subsequent meeting with the Chief Secretary to the Treasury, at which they had discussed a range of options for adjusting the Welsh block grant and how these would interact with the Barnett formula and the funding floor.¹⁴

23. At the Committee’s meeting on 3 November, the Cabinet Secretary informed Members that during his meeting with the Chief Secretary, his “starting point” was that adjustments to the block grant “must reflect income foregone to the Treasury”:

“if the current system had continued the Treasury would have collected a certain amount of revenue, which in the future they won’t, and the block grant must reflect the fact that that revenue no longer flows to them. That’s how we should begin to approach the Welsh block grant adjustment mechanism.”¹⁵

24. The Cabinet Secretary issued a statement on 19 December 2016 confirming that an agreement had been reached between the Welsh Government and the UK Government on a fiscal framework for Wales.¹⁶

¹¹ Cabinet Secretary for Finance and Local Government, [Oral Statement - Tax Devolution and the Fiscal Framework 5 July 2016](#)

¹² National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraphs 13 and 14

¹³ [Letter from the Finance Committee to the Cabinet Secretary for Finance and Local Government, 17 October 2016](#)

¹⁴ [Letter from the Cabinet Secretary for Finance and Local Government to the Finance Committee, 27 October 2016](#)

¹⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 486

¹⁶ Cabinet Secretary for Finance and Local Government, [Cabinet Statement 19 December 2016](#)

03. General principles and the need for legislation

Purpose of the Bill

25. The Cabinet Secretary explained to the Committee the key purpose of the Bill was:

“to respond to the circumstances created by the Wales Act 2014, which make it clear that, sometime in April 2018, the Westminster Government will turn off stamp duty land tax as far as Wales is concerned.”¹⁷

26. The EM states:

“If the Welsh Ministers chose not to implement a form of tax on transactions involving interests in land in Wales, then the Welsh Government would not receive the receipts from this tax, which have varied from £100 million to £235 million per annum. This would have a significant impact on the resources available to fund public services in Wales.

The intended effect of the legislation is to provide a replacement for SDLT so that public services in Wales can continue to receive the benefit of the revenues raised by that tax... Not levying LTT would result in reduced transaction costs to those acquiring interests in land in Wales as no tax would be payable. This may have the effect of increasing the number of property transactions. There would also be no additional costs to Welsh Government from the implementation of tax collection and administration systems.”¹⁸

27. The Cabinet Secretary told the Committee that although he had given consideration to other policy options, including not replacing SDLT in Wales, he concluded the introduction of a new tax was his preferred position in order to:

“ensure that a flow of revenue for core public services in Wales is continued when stamp duty land tax no longer applies to Wales.”¹⁹

28. The EM states that should the Bill not be approved by the National Assembly or receive Royal Assent, there would be no legislative mandate for the collection of LTT:

“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.”²⁰

Consistency with Stamp Duty Land Tax

29. The Cabinet Secretary told the Committee that in introducing a new tax, he was mindful of the need for it to be broadly consistent with SDLT in order to allow for a smooth transition between the old and new tax systems. He added that his intention was to design a Bill which allowed for a new

¹⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 8

¹⁸ Explanatory Memorandum, paragraphs 3.2-3.3 and 7.6

¹⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 10

²⁰ Explanatory Memorandum, paragraph 3.71

system to be easily recognisable to advisers on both sides of the Wales-England border, while allowing for the possibility of greater differentiation between the systems in time.²¹

30. Many of the organisations who provided evidence to the Committee welcomed the broad consistency between LTT and SDLT. Representatives of the Land Registry said:

“the risk is we have to learn a completely dual or different system. So, the closer it is to the requirements for stamp duty land tax, it’ll be easier for our caseworkers.”²²

31. The Country Land and Business Association (CLA) concurred that it would be beneficial to maintain consistency between both taxes “so there’s a smooth transition for advisors in Wales from one tax to the other when it comes in”.²³ This view was shared by representatives from the Law Society, who said that from a conveyancer’s perspective “the impact of change for the sake of change, shall we call it, would be undesirable”.²⁴

32. The Chartered Institute of Taxation (CIOT) noted that the adoption of many provisions similar to SDLT “brings with it the benefits of consistency but inevitably involves the adoption of its [SDLT] flaws. It is therefore important to continue to monitor the impact of this approach”.²⁵

33. The CIOT suggested a detailed technical summary of the differences between LTT and SDLT should be included in any guidance provided by the WRA, which should include practical examples of how the differences might affect common transactions in order to assist conveyancers in particular who may not be tax specialists.²⁶

34. The Residential Landlords Association in Wales conveyed an alternative view to the Committee, saying:

“we should not be in a position where we’re tempted to keep things the same just for simplicity’s sake. The needs and desires of Wales, and some of the economic challenges of Wales, are different enough that we should be looking at this as a real opportunity to tailor this for the Welsh situation.”²⁷

Committee view

35. The Committee acknowledges that as a consequence of the cessation by HMRC of the collection of SDLT applicable to property transactions in Wales and the associated adjustment to the block grant, Wales will experience a significant reduction in the amount of funding it receives from Westminster. It believes that losing out on such funding would be detrimental to the Welsh Government’s revenue stream and therefore the proposal by the Welsh Government to implement a replacement tax is a justifiable course of action to follow.

36. The Committee acknowledges that SDLT is a well-established tax and practitioners in Wales are accustomed to its operation. It notes the call made by stakeholders that a consistent approach between SDLT and LTT would be beneficial in ensuring a smooth transition between the two tax

²¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 11

²² National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraph 194

²³ National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraph 78

²⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 345

²⁵ Written evidence, Finance Committee, LTTA05, Chartered Institute of Taxation

²⁶ Written evidence, Finance Committee, LTTA05, Chartered Institute of Taxation

²⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 197

systems. The Committee therefore concludes that the approach taken in the Bill to introduce a similar system to SDLT, but with the ability to tailor provisions in future to meet Welsh needs, is an appropriate way forward.

Recommendation 1. The Committee recommends that the general principles of the Bill should be agreed by the National Assembly. It does, however make a series of recommendations in this report which it believes should be addressed by the Welsh Government in order to strengthen the provisions in the Bill.

04. Part 2 – The tax and key concepts

37. Part 2 of the Bill sets out the key concepts of the tax, including definitions, and provides for LTT to apply to transactions involving property (including land and buildings) situated in Wales. It specifies the type of transactions which would be regarded as land transactions and which interests would be regarded or not regarded as chargeable interests or exempt interests and identifies the persons liable to pay LTT and comply with notification requirements. Section 2 specifies that the WRA would be responsible for the collection and management of the tax.

38. Section 3 defines a land transaction as an acquisition of a “chargeable interest” for the purposes of LTT. A chargeable interest, as defined in section 4, is any estate, interest, right or power over land in Wales,²⁸ or the benefit of an obligation or any restriction that affects such an estate, interest, right or power over land in Wales. Chargeable interests would not include exempt interests, which are listed in section 5.

Collection and management of Land Transaction Tax

39. The Bill specifies that the collection and management of LTT would be the responsibility of the WRA. The Cabinet Secretary explained that the experience of Revenue Scotland, the body responsible for the collection of the equivalent tax in Scotland, Land and Buildings Transaction Tax (LBTT), had led him to believe that the WRA should be the authority responsible for the collection of LTT, rather than HMRC. He said:

“The reasons why things moved in favour of the WRA, I think, include the following: the experience of Revenue Scotland, which suggests that taking on stamp duty land tax was at the easier end of the spectrum that they had anticipated, and the fact that a great deal of these transactions are doable in an electronic and mechanical sort of way. So, I think we’ve worked very closely with Scotland over the whole of these things and their experience gave us some comfort that we would be able to do the same for the Welsh Revenue Authority.”²⁹

40. The Cabinet Secretary also explained that concerns about the extent to which HMRC would be able to deliver a Welsh language service added to his conclusion that LTT should be collected and administered by the WRA. He spoke of his concern that HMRC were not:

“...geared up to doing it in a way that we would expect and want to do and think that the Welsh Revenue Authority can do. There is the fact that the HMRC’s work programme for updating their systems in relation to stamp duty land tax, and therefore able to do something different for us, is fairly distant. It’s in their work programme, but it’s not in the early part of it and we are able to do that if we do it through the WRA.”³⁰

41. He also added that giving the responsibility to the WRA from the outset would be beneficial for building its capacity and expertise, and in shaping service delivery in the long-term:

²⁸ The tax may not be imposed on so much of the land transaction as relates to land below mean low water mark (**Government of Wales Act 2006**, section 116L)

²⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 46

³⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 47

“as Wales takes on more of these responsibilities, so we will need to build up the capacity of our own institutions to be able to carry these things out. If we did feel that we were able to get the WRA to do these things from the beginning, then that’s an investment not just at the start, but in the longer-term way in which we will wish to do things.”³¹

Welsh Revenue Authority resources and preparedness

42. Witnesses expressed to the Committee the importance of the WRA being ready to deal with LTT transactions and the associated queries and requests for advice from the outset. Geldards LLP stated:

“It will also be important for the Welsh Revenue Authority (“WRA”) to be able to support professional advisers and taxpayers with the provision of suitable tax clearances and advice services where there are uncertainties in the legislation and/or guidance issued on LTT.

A failure to provide sufficient resources to WRA in relation to both systems that work and have been adequately tested before going “live” on 2 April 2018 (1 April 2018 being a Sunday) and having personnel with sufficient experience and knowledge to deal with queries could have an adverse effect on the ability to implement the LTT provisions.”³²

43. Similar concerns were expressed by the Council of Mortgage Lenders:

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

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

Looking towards April 2018, there is limited time remaining for training, system and process needs to be identified and delivered. Clarity in these areas will be important as soon as practicable before Royal Assent.”³³

44. The Cabinet Secretary responded to calls to ensure that the WRA be ready to implement LTT from the outset by stating that:

³¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 48

³² Written evidence, Finance Committee, LTTA02, Geldards LLP

³³ Written evidence, Finance Committee, LTTA04, Council of Mortgage Lenders

“guidance will be very important in making sure that stakeholders and those who operate in this field will be properly informed about the way that the new legislation will operate and that there’s transitional guidance available as well, which we will prepare jointly between HMRC and the Welsh Revenue Authority as the old system moves into the new one.”³⁴

45. He also assured the Committee that in terms of IT systems, it would be:

“a very early priority for the WRA and lots of work is going on at the moment to try and make sure that we secure the best possible system from a digital perspective to be able to carry out these duties effectively in Wales.”³⁵

Committee view

46. The Committee agrees with the Cabinet Secretary’s rationale for making the WRA responsible for the collection and management of Land Transaction Tax rather than HMRC. However, it believes that it will be crucial for sufficient time and resources to be allocated to the early recruitment and training of WRA staff and the development of appropriate IT systems to ensure that the Authority can take responsibility for LTT from its commencement and that disruption for taxpayers and practitioners is kept at a minimum. It believes that the WRA will need to work jointly with partner agencies such as HMRC, Land Registry and the Valuation Office Agency (VOA), and practitioners to ensure that its preparations are fit for purpose.

47. The Committee is encouraged by the Cabinet Secretary’s assurance that practitioners will be provided with information on the operation of the new tax system and that transitional guidance will be available. Nevertheless, it believes that close monitoring of the WRA’s preparations for the implementation of LTT will be needed in order to ensure that it meets its targets of establishing a trained workforce and IT systems ready for the commencement of the new system.

Recommendation 2. The Committee requests that the Cabinet Secretary keeps the Assembly and the Committee, informed of progress in establishing the Welsh Revenue Authority. It recommends this is done through statements once per Assembly term.

Joint working between agencies

48. The Land Registry told the Committee that the WRA would need to develop relationships with a number of organisations such as itself, the VOA and HMRC in order to provide an effective service to conveyancers and taxpayers. Representatives from the Land Registry said:

“we hope that we’ll be able to develop equally good relationships with the Welsh Revenue Authority, the relevant people there, so that, if problems do come up, we can contact you and work with you.”³⁶

49. The Cabinet Secretary explained that a joint transition project board had been established between Welsh Government and HMRC officials to discuss arrangements for transferring collection responsibility and acknowledged that the WRA would need to commission support from HMRC as it established itself and built expertise on the collection and administration of LTT. He believed that the

³⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 498

³⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 639

³⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraph 198

WRA would need to have “dialogue” with HMRC over the routine cases it dealt with, but also to have access to their expertise when dealing with more complex cases:

“we will negotiate with HMRC to continue to have access to advice from them in those much more unusual sets of circumstances, where they have a long history of being involved, and where we will want to make sure that that advice is still available to Wales.”³⁷

50. The Cabinet Secretary suggested that access to such support from HMRC could be achieved through the secondment of staff or through dedicated access to such advice.³⁸

51. In relation to partnership work between the WRA and the Land Registry, the Cabinet Secretary informed the Committee that the WRA implementation team had already begun discussions with the Registry about information-sharing requirements.³⁹

52. The Land Registry pointed out that it has a Memorandum of Understanding with HMRC to ensure formal collaboration:

“Our relationships with HMRC have just developed over the years in a bit of an ad hoc way, it has to be said. We do now have a memorandum of understanding with HMRC but it does cover more than just stamp duty land tax, so it will be really up to the officers in the Welsh Revenue Authority to decide what it is that they really want from us and, obviously, we can negotiate arrangements with them accordingly.”⁴⁰

53. The Cabinet Secretary’s official explained that the WRA would be replicating the existing system used by HMRC in producing certificates to demonstrate that a taxpayer had provided a return for a transaction, and it would be looking to foster a similar relationship with the Land Registry so continuing the information exchange between the agencies.⁴¹

54. The Land Registry said that it would expect to develop a similar relationship with the WRA to one it had already developed with HMRC. The Land Registry told the Committee that it wanted to:

“engage in discussions into setting up data-sharing arrangements and establish exactly what it is that the Welsh Revenue Authority needs.”⁴²

55. The Cabinet Secretary told the Committee that the information he had at that time was that:

“there will be a formal relationship between the WRA and others who are collaborating with it. What I’ve seen is what they call an information sharing agreement.”⁴³

56. In their evidence the Land Registry, Law Society and CIOT referred to the SDLT Working Together Steering Group, set up between HMRC, industry bodies and professional bodies

³⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 52

³⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 52

³⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 57

⁴⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraph 201

⁴¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 58

⁴² National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraph 211

⁴³ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 643

representing conveyancers, legal, finance and tax professionals to discuss, develop and promote co-operative strategies for dealing with tax affairs. The Law Society told the Committee that it saw a role for a Welsh branch of the SDLT steering group as a liaison between the WRA, HMRC and practitioners during the transition period between SDLT and LTT. The Law Society added that it would be anxious to be involved in the establishment of the WRA and in the training of its staff.⁴⁴

57. Witnesses suggested that the establishment of a similar steering group for LTT in Wales would be useful, the CIOT said:

“We think that setting up a similar stakeholder group in Wales to provide a platform for discussion between the WRA and those working with LTT will be helpful here.”⁴⁵

58. The Law Society commented that the group was “a useful opportunity for stakeholders to work together to ensure the system works for all those involved.” The Society suggested that:

“Such a group should be established for LTT and we would advise the early establishment of a formal group before the LTT comes into effect in 2018.”⁴⁶

59. The Cabinet Secretary reacted positively to suggestions that a user group on the implementation of LTT be established, stating that:

“we will agree with the WRA that a user group will be established as a sort of successor to some of the groups that we’ve had to make sure that it will have, as part of its job, to test the guidance prior to the land transaction tax going live.”⁴⁷

Committee view

60. The Committee believes that good working relationships between the WRA and agencies such as the Land Registry and HMRC will be crucial if the WRA is going to deliver an effective service to taxpayers and their representatives in Wales. It will be vital for the WRA to have access to the same expertise and exchange of information HMRC currently has in order for the transition to LTT to be seamless.

61. The Committee acknowledges that work is already underway to prepare for the transition to a new system in Wales. However, it believes it will be crucial for arrangements to be finalised by the end of summer 2017 in readiness for the commencement of the new tax system.

62. The Committee acknowledges the benefits of establishing a working group of practitioners involved in the implementation of LTT. It notes that this has been a useful tool in relation to SDLT, and welcomes the assurance given by the Cabinet Secretary that such a group would be established. The Committee believes that the group will play a key role in maintaining the sharing and building of knowledge and experience among its members and their professions. It also believes that accountability and scrutiny of the legislation would be enhanced by such expert working.

⁴⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 428

⁴⁵ Written evidence, Finance Committee, LTTA05, Chartered Institute of Taxation

⁴⁶ Written evidence, Finance Committee, LTTA10, The Law Society

⁴⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 505

Recommendation 3. The Committee recommends that formal Memoranda of Understanding are established with HMRC and the Land Registry on both sharing information and access to expert knowledge.

Recommendation 4. The Committee recommends that the Welsh Government establishes a working group of practitioners as soon as possible to discuss technical and practical operational issues. The responsibility for such a group should be passed on to the Welsh Revenue Authority as soon as practicable. The Committee believes the workings of the group should be as transparent and open as possible.

Guidance on the implementation of Land Transaction Tax

63. The availability of accessible guidance on the implementation of LTT was emphasised by numerous stakeholders as crucial to ensuring a smooth transition to the new tax. Some proposed that the early provision of draft guidance would be beneficial for practitioners in their preparation for the implementation of LTT.

64. The Committee wrote to the Cabinet Secretary⁴⁸ to draw his attention to the suggestion of making draft guidance available at an early stage. In his reply, the Cabinet Secretary said:

“High-quality, user-friendly and effective guidance will be critically important, both for taxpayers but also for the WRA to ensure an efficient collection and management process...The TCM Act provides that it will be for the WRA to prepare and issue guidance to support the implementation of the legislation, and update that guidance over time.”⁴⁹

65. The Director for Financial Strategy for the Scottish Government pinpointed the preparation of effective online guidance as a successful aspect of planning for the implementation of LBTT in Scotland, which had minimised the number of telephone enquiries received by Revenue Scotland.⁵⁰

66. The Law Society also suggested that relevant guidance on SDLT could be transferred across to LTT if the rules were consistent, saying:

“if you’ve already got guidance out there that deals with SDLT and it deals adequately with LTT as well and everybody’s happy with the SDLT guidance, then, again, that’s consistent with the observation that you want to keep things as like for like as possible.”⁵¹

67. The Cabinet Secretary concurred, saying that the similarities between the SDLT and LTT systems would enable existing guidance to be used as a guide. He said:

“our general ambition to craft a Bill where there was continuity between the old system and the new system means that there will be some areas where extant

⁴⁸ [Letter from the Finance Committee to the Cabinet Secretary for Finance and Local Government, 5 October 2016](#)

⁴⁹ [Letter from the Cabinet Secretary for Finance and Local Government to the Finance Committee, 11 October 2016](#)

⁵⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraph 36

⁵¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 356

guidance will still be a very good guide to the way that the system will operate.”⁵²

Guidance input

68. Various stakeholders indicated to the Committee that they would be prepared to work with the WRA on the preparation of guidance on the implementation of the Bill’s provisions. Whilst the Scottish Government claimed that involving conveyancers in the preparation and quality assurance of guidance produced by Revenue Scotland had minimised the number of telephone enquiries:

“That guidance was drawn up by civil servants, working in Revenue Scotland, but we involved taxpayers’ agents, these conveyancing solicitors, as they’re called here. We involved a representative sample of these users in quality assuring the guidance, and we think that the effect of that has been to reduce the number of telephone contacts and that’s helped to keep costs down.”⁵³

69. The Law Society said that it was hoping to work with the WRA on the production of guidance for LTT, saying:

“in terms of guidance, we’re hoping that we will start to work very closely with the WRA staff to start to bring together the guidance, so that we would come to a situation where we would see the guidance at the same time as the legislation goes live.”⁵⁴

70. Deloitte LLP also emphasised the importance of providing comprehensive guidance to accompany LTT and its willingness to assist with its production:

“In our experience, without proper guidance there will be more direct queries raised with the WRA and so drafting proper and comprehensive guidance up front is essential. We would be happy to discuss or review such guidance as it is being developed.”⁵⁵

71. The Institute of Chartered Accountants in England and Wales (ICAEW) spoke of its previous experience of working with HMRC on preparing guidance and the benefits it can bring, saying:

“We have consistently, over the years, worked very closely with HMRC and coming up with agreed guidance, but we bring skills to it that, say, HMRC may not have in terms of the practicalities and how things actually work. I think we have, potentially, quite a role to play here and I don’t think we should be afraid of that, we should welcome it.”⁵⁶

72. The Cabinet Secretary referred to the existing network of advisory mechanisms which the Welsh Government had drawn upon in the development of the Bill, including a tax advisory group, a

⁵² National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 498

⁵³ National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraph 37

⁵⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 367

⁵⁵ Written evidence, Finance Committee, LTTA 06 Deloitte LLP

⁵⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 537

tax forum and a technical experts group, and told the Committee that it would use the networks to shape views on the guidance required and the work of the WRA.⁵⁷

Guidance on Land Transaction Tax and Stamp Duty Land Tax differences

73. The requirement for guidance detailing the specific differences between LTT and SDLT was raised frequently in evidence to the Committee. The CIOT stated:

“It clearly reduces the effect or the impact for practitioners on learning the differences if those differences are very apparent and clear in the guidance, ideally with practical examples of how they might affect a transaction that they were familiar with under SDLT.”⁵⁸

74. The CLA suggested that the inclusion of a table detailing the differences would be an effective approach to guidance:

“...having some sort of table that sets out very clearly a nice handy guide for practitioners to see what the differences are, so they don’t have to trawl through the detail. That’s going to be very helpful for them and will actually aid compliance and keep the costs down for taxpayers.”⁵⁹

75. The Law Society agreed that guidance would be particularly useful on areas where the law relating to LTT differed from SDLT.⁶⁰

76. The Policy Manager for the Bill told the Committee that differences between SDLT and LTT should be easily identified in guidance:

“I would anticipate that it would be beneficial for the WRA to list the areas where there are differences and to maintain that list of differences in a single set of instructions or in guidance so that conveyancers can easily identify where the WRA has itself identified the differences between the LTT legislation and the SDLT legislation.”⁶¹

Guidance format

77. Some concern was raised among witnesses about the format of guidance on the implementation of LTT, stressing that publication should be in an accessible format and easily updated. This was illustrated by comments made by Deloitte LLP who referred to the “GOV.UK” website not allowing the publication of guidance documents in PDF format. Deloitte LLP also referred to delays in the updating of SDLT guidance on the website, its representative told the Committee:

“I was in a Working Together meeting earlier this week, and it seems that for gov.uk material has to be in html format. It won’t accept PDF documents, whereas a lot of the best revenue guidance is actually in PDF documents.

...at the moment, it’s clear that the Revenue are having a little trouble updating guidance due to the GOV.UK system. So, I think it’s important that the system

⁵⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 503

⁵⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 13

⁵⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraph 93

⁶⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 356

⁶¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 80

is flexible and can be updated quickly. I'd certainly hope that the Welsh Revenue Authority could produce their own guidance and update it quickly.”⁶²

78. Deloitte LLP said it hoped that the WRA would be “able to issue guidance independently (like Revenue Scotland) so that it can be kept up to date and respond to particular areas of concern”.⁶³

Committee view

79. The availability of effective guidance on the implementation of LTT is an issue which has been emphasised to the Committee as being crucial to ensuring a smooth transition between SDLT and LTT regimes. The Committee agrees that producing accessible guidance should be an immediate priority for the WRA to ensure that practitioners are able to process LTT submissions immediately following the introduction of the tax. It believes that such guidance should be published in an accessible format which allows for updates to be made as soon as possible following any subsequent policy changes.

80. The Committee appreciates that the introduction of a new tax could be unsettling to those working in relevant industries. The fact that the new system and that within which they currently work will be similar may ease transition. However, it also increases the risk that mistakes may be made if some of those engaging with the system fail to appreciate that it has changed for Wales. The Committee therefore concurs with stakeholders that clear guidance setting out the differences between LTT and SDLT should be incorporated into the guidance produced to accompany the new tax. This would be particularly beneficial to those practitioners working on transactions on both sides of the Wales – England border who would need to advise clients on two separate systems.

81. The Committee welcomes the willingness shown by stakeholders from various professions to work with the WRA on the production of guidance on the implementation of LTT. It acknowledges the breadth of experience that can be brought about through such co-operation and welcomes this approach. The Committee would therefore encourage the WRA to work with professionals from the outset, so that their expertise can be effectively used to produce guidance of the highest standard.

Recommendation 5. The Committee recommends that the Welsh Revenue Authority engage with the relevant professions from the outset on the production of Land Transaction Tax guidance.

Recommendation 6. The Committee recommends that a table outlining the differences between Land Transaction Tax and Stamp Duty Land Tax should be included in guidance.

Land partly in Wales and partly in England

82. Section 9 includes provisions for a chargeable interest which involves land partly in Wales and partly in England. It specifies that such a transaction would be treated as two separate transactions, one relating to Wales and one to England and that the payment or other consideration for the transaction would be apportioned. LTT would be charged on the Welsh land transaction and SDLT on the English land. The Cabinet Secretary explained to the Committee that the provisions in the Bill were in line with the procedure set out in Schedule 2 of the Wales Act 2014 which specifies:

⁶² National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraphs 561 and 554

⁶³ Written evidence, Finance Committee, LTTA06 Deloitte LLP

“The transaction is to be treated as if it were two transactions, one relating to the land in England (“the English transaction”) and the other relating to the land in Wales.”⁶⁴

The Cabinet Secretary said:

“The 2014 Act sets out how transactions across border properties are to be taxed and this Bill operates within that framework. That’s the Act that says that if a property is partly in England and partly in Wales, then you apportion taxes according to how much of the property is in either place. It’s why a taxpayer would have to make two returns in those circumstances: one to the WRA and one to HMRC.”⁶⁵

83. These provisions have been scrutinised in great detail by the Committee in order to get a clear understanding of the practicalities of processing a transaction involving land or property crossing the border. The Land Registry said there is “no clear indication of how that whole arrangement is going to work”⁶⁶ and expressed concern regarding the apportioning of properties straddling the border and transactions involving the purchase of multiple properties located either side of the border.

84. Representatives from the Land Registry queried how the apportionment would be calculated – whether it would be fixed or whether the taxpayer would be required to work it out every time, and in relation to the purchase of multiple properties, whether such a transaction would require the taxpayer to complete two transfer deeds or whether a single transfer deed would be sufficient. They also commented that the Land Registry would be unable to complete a registration until it had received information from both the WRA and HMRC and that any delay could hold up registration.⁶⁷

85. A representative of the Law Society told the Committee that her understanding of the provisions in the Bill was that a transaction which involved a cross-title property would be “a one-transaction apportionment of liability on each side of the border”.⁶⁸

86. The Cabinet Secretary clarified that the consideration given to splitting a transaction involving a property that crossed the border would need to be based on a “just and reasonable apportionment”.⁶⁹ The Cabinet Secretary further explained how a transaction involving a property valued at £200,000 would be apportioned should that property be positioned half in Wales and half in England:

“for that house, it would be £100,000 liable in Wales and £100,000 in England, and then both of those would be below the threshold, so you would end up paying no tax, whereas if the whole of the house was on one side of the border, you would pay on a marginal tax basis the tax above the threshold.”⁷⁰

⁶⁴ [Wales Act 2014](#), Schedule 2, paragraph 4

⁶⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 143

⁶⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraph 232

⁶⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraphs 238 and 239

⁶⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 384

⁶⁹ [Letter from the Cabinet Secretary for Finance and Local Government to the Finance Committee, 28 September 2016](#)

⁷⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 145

87. The Cabinet Secretary was not convinced that the potential benefit of paying no or reduced tax would act as an incentive for developers to build new properties along the border:

“I suppose it’s for any individual to wonder as to whether or not the relatively small number of thousands of pounds that that might give you would be enough for you to decide that you would go to the trouble of constructing a house that lies on the border in those proportions. Now, maybe it does; maybe it introduces that distortion, but I don’t know that I’m completely convinced that it would.”⁷¹

88. The CIOT suggested that transactions involving property straddling the border could be linked to ensure that:

“developments are not structured to straddle the border and take advantage of rate differentials between SDLT and LTT.”⁷²

It’s representative explained:

“with link transactions, it’s making sure that if you’ve got a transaction that is cross border—just one transaction—that they have to be linked, because you have what I call the ‘nil-rate bands’, so the £125,000 exemption, and then the other bands kick in from that level onwards. The taxpayer should only be able to claim one nil-rate band, whether it’s England or Wales. So, it’s apportioning whatever bands you have between the two regimes, so they can’t have the benefit of both nil-rate bands for that particular transaction. So, where one transaction is linked together then, yes, you’re correct that if there’s more than one acquisition, it would be linked as well.”⁷³

89. In response to the suggestion of linking transactions involving the purchase of a cross-border property, the Policy Manager for the Bill explained that there could be competency issues as the Bill only provides for tax on Welsh land, but that the Welsh Government would explore the possibility.⁷⁴

90. The Cabinet Secretary also explained how the cross-border provisions would affect the purchase of multiple properties, some in Wales and others in England (with none on the border), which were being processed as one transaction for a single agreed price. He explained that in such a circumstance, the taxpayer would need to apply a just and reasonable apportionment to evaluate the amounts of LTT and SDLT payable.⁷⁵

“The apportionment required by the legislation is very difficult in practice. It would be inappropriate for solicitors to calculate the apportionment. It may therefore fall to the selling agent who has a duty to the seller but has a potential immediate conflict if asked by the buyer to provide the LTT/SDLT apportionment report.

⁷¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 145

⁷² Written evidence, Finance Committee, LTTA05, Chartered Institute of Taxation

⁷³ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 20

⁷⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 552

⁷⁵ [Letter from the Cabinet Secretary for Finance and Local Government to the Finance Committee, 28 September 2016](#)

Clear guidance will need to be given about how a just and reasonable apportionment will be arrived at and confirmed by the tax authorities so that it can be relied on by the buyer.”⁷⁶

91. The CIOT questioned what would be expected by the phrase “just and reasonable”, adding that the VOA had produced guidance on this and that guidance would need to be applied by practitioners who would need to understand what was expected by just and reasonable apportionment and how the WRA and HMRC would apply the rules. CIOT representatives commented that as the principle of “just and reasonable” would also apply to other taxes in Wales such as capital gains tax, a consistent approach to its application would be important. They went on to say that transactions involving a cross-title property should be linked, so that the purchaser would only be able to claim one “nil-rate band” exemption, whether that was on the Welsh transaction or the English one.⁷⁷

92. The CIOT also told the Committee that it would expect both the WRA and HMRC to be talking to each other in relation to a cross-title transaction and that they would contact the VOA to make sure that there had been just and reasonable apportionment, particularly should there be a different tax between the jurisdictions.⁷⁸

93. The Welsh Government lawyer supporting the Cabinet Secretary told the Committee that “just and reasonable” was a concept and a test that is used in various pieces of tax legislation, and would be familiar to practitioners. He said that the apportioning of land would “turn on the facts of every particular transaction”.⁷⁹ In relation to very small areas of land either side of the border, the Cabinet Secretary said he would expect that:

“the WRA and HMRC would come to some sort of working rule about that that would prevent people from having to carry out really nugatory work.”⁸⁰

Mapping the border

94. The Committee heard that witnesses were not sure how many properties span the Wales-England border. The Land Registry said “there are getting on for 500 properties that are definitely cross-border, and there’s a question mark over another 400”.⁸¹ The Land Registry subsequently submitted to the Committee its *Cross Border Title Report*, which identified that 1093 titles straddle the border to various extents and that 27.45% of the border was unregistered.⁸²

95. The Law Society raised a particular concern about conveyancers currently not having access to any maps displaying a definitive border. Its representatives told the Committee:

“Title plans from the Land Registry don’t define the border. So, I could obtain the title for that field and it won’t tell me if three quarters of the field is in England and a quarter is in Wales because there is no border shown on the Land Registry definitive map.”⁸³

⁷⁶ Written evidence, Finance Committee, LTTA10, The Law Society

⁷⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 20

⁷⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 60

⁷⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 543

⁸⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 544

⁸¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraphs 232 and 234

⁸² National Assembly for Wales, Finance Committee, [FIN\(5\)-07-16 PTN3, 3 November 2016](#)

⁸³ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 387

96. The Law Society emphasised the difficulty conveyancers would be facing in apportioning the tax payable on a property straddling the border without a definitive positioning of the border:

“it’s difficult to see, without a border defined on the Land Registry map, how we will ever know whether these properties actually straddle the border. And from a Welsh point of view, and an English point of view, someone’s going to lose out on the tax, because conveyancers in my position simply won’t know to apportion the tax or to file two land transaction returns, because that information as to whether you straddle the border is not on the title documents.”⁸⁴

97. The CIOT suggested that the Land Registry would be the best placed agency to provide a definitive map of where the border actually lies. The CIOT representative explained that conveyancers rely on Land Registry plans when producing transfers, so if the border could be clearly marked on those plans it would be “clear as to which land is in England and which land is in Wales.”⁸⁵

Committee view

98. The Committee believes it is clear from the evidence presented that there is considerable confusion among practitioners as to how the consideration payable on the purchase of a single property straddling the border between Wales and England would be apportioned in practice. The Committee concludes that this issue should be clarified as a matter of urgency to ensure that practitioners can be confident that they are processing LTT returns correctly from the point of commencement.

99. The Committee notes the Cabinet Secretary’s explanation that the tax payable on the purchase of a property which crosses the border between Wales and England was in line with provisions set out in the Wales Act 2014. However it recommends that as a matter of urgency he should consider how such transactions would be processed in practice. It acknowledges that there is a broad understanding of the term “just and reasonable” among legal / taxation professionals. Nevertheless it is clear that there is a high degree of uncertainty around the practical apportionment of property. The Committee therefore believes that the availability of clear guidance on the practical apportionment of the consideration, and consequently the LTT and SDLT payable on cross-title property transactions, will be crucial to practitioners from the commencement of the new system. Input from professionals involved in the implementation of LTT in the production of such guidance will be vital to ensure that it is fit for purpose.

100. The Committee is aware of the potential for the purchase of a property which is partly in Wales and partly in England to incur no LTT or SDLT charge or a lower charge should its apportioned values fall below the threshold for both taxes. It notes the suggestion that such a transaction could potentially be linked and, whilst acknowledging that there could be an issue of competence, believes that the possibility should be considered by the Welsh Government. The Committee requests that the Cabinet Secretary clarifies the position during the Stage 1 debate on the general principles of the Bill.

101. The Committee acknowledges that the absence of a definitive border on maps will be a particular concern to conveyancers when processing the purchase of cross-title property. It notes

⁸⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 388

⁸⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 43

stakeholders' view that the Land Registry would be the most appropriate agency to undertake the task of defining where the border lies.

Recommendation 7. The Committee recommends that, should the National Assembly agree the provisions in this Bill, the Welsh Government should commission the Land Registry to carry out the work of providing a map of the border between Wales and England in readiness for the commencement of Land Transaction Tax.

Recommendation 8. The Committee recommends that further information is produced by the Welsh Government explaining how it intends the legislation to determine the apportioning of the consideration payable on cross-border property transactions. This information should cover issues such as “just and reasonable apportionment”, and clarity on requirement for two transfers for cross-border transactions. This information should be available before any Stage 2 considerations.

Communicating Land Transaction Tax

102. The Committee discussed with the Cabinet Secretary and stakeholders whether the public and professionals were aware of the changes happening to the property tax system in Wales from April 2018. The written evidence from the National Association of Estate Agents stated:

“The Welsh Government need to communicate widely to estate agents, purchasers, solicitors and mortgage advisors to ensure that everyone understands the changes and what tax they will be paying on a planned purchase. People in England and Wales need to be aware that LTT is a replacement tax and not an additional one.”⁸⁶

103. In terms of raising awareness of LTT, the Cabinet Secretary said that while the role of government was to ensure practitioners were informed about changes to the tax system, there was an obligation on professional bodies and individuals to ensure they were aware of changes. He said:

“We’ve had lots of engagement with professional organisations. They’ve been very keen to be involved in preparing the Bill.”⁸⁷

104. The evidence received from the Scottish Government also focused on engagement with the legal profession as part of raising awareness of LBTT. This emphasised the work done alongside the Law Society of Scotland and its conveyancing committee and taking roadshows to the solicitor stakeholder group in the year leading up to the transition from SDLT to LBTT.⁸⁸

105. The Law Society told the Committee how it was already engaging in work with the Welsh Government, including through the tax advisory group and the implementation programme for the WRA and organising events such as seminars to raise awareness among its members about changes to the tax system in Wales.⁸⁹

Committee view

106. The Committee notes the Cabinet Secretary’s comments about the obligation on professional bodies and individuals in ensuring practitioners are fully aware of changes to the tax system, and

⁸⁶ Written evidence, Finance Committee, LTTA 11, National Association of Estate Agents

⁸⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 76

⁸⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraph 45

⁸⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraphs 364 and 365

agrees that they have a professional responsibility to keep themselves informed. However, it believes that, in implementing such a significant change to the existing arrangements, the Welsh Government has a duty to work with professional bodies to raise awareness of the changes. The Committee welcomes the work already underway and believes this should continue and progress further during the period leading up to the commencement of LTT. This will ensure a smooth transition between the existing and new systems and minimise disruption for those purchasing property in Wales.

Recommendation 9. The Committee recommends that the Welsh Government publishes a communications plan, including the likely resource implications, for the period leading up to the coming into force of any Land Transaction Tax provisions.

05. Part 3 – Calculation of tax and reliefs

Calculation of tax

107. Part 3 of the Bill sets out how LTT would be calculated. The EM explains that the method of calculating the tax due is specified on the face of the Bill and would mirror SDLT. The method of calculating LTT would be on the basis of a marginal rate calculation, whereby tax will be charged at the relevant rate for each band of the purchase price, for both residential and non-residential property transactions, rather than a slab system (which charges tax at a single percentage of the purchase price).

Setting rates and bands

108. In this Part provision is made for the introduction of a framework for setting LTT rates and bands. Section 24 specifies that the Welsh Ministers would be required to set through regulations at least three tax bands which would be progressively higher in nature, of which one would be a zero rate band and would apply from a date specified in the regulations.

109. The Cabinet Secretary published a research paper on 15 September 2016 in relation to setting rates and bands for LTT.⁹⁰ In an accompanying statement, the Cabinet Secretary explained that the rates and bands would be set closer to the date of the tax's commencement in order to ensure that they were relevant to the property market and economic environment at that time.

110. The research paper comments that following the introduction of LBTT in 2015, "Scotland provides a useful and important comparator for Wales". It states:

"Looking at the experience of Scotland provides some useful insight on some of the potential affects that arise from differential tax rates and the impact of forestalling as a result of pre-announcing tax rates."⁹¹

111. The Director of Financial Strategy for the Scottish Government explained that the key points from the system implemented in Scotland were that:

- property up to the value of £145,000 was exempted from the tax, and
- property over the value of £325,000 incurred a heavier tax burden than under SDLT.

112. He commented that the rationale for these policies was to encourage first-time buyers into the property ownership market by not charging them any tax on lower value transactions, and then to rebalance the tax burden away from lower value transactions towards higher value transactions. In response to questioning on the impact of the bands on the property market in Scotland, he said that the proportion of the total house sales represented by properties in the higher tax bands had not changed between pre-2015 and 2015-16 which gave the indication that:

"the introduction of the tax doesn't appear to have distorted the housing market, but it probably is too soon to say."⁹²

⁹⁰ Welsh Government, Land Transaction Tax: Setting rates and bands

⁹¹ Welsh Government, Land Transaction Tax: Setting rates and bands

⁹² National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraph 19

113. The ICAEW was supportive of the approach setoff setting LTT rates closer to the time of its commencement stating that “the rates will need to be set by reference to the prevailing conditions of the time”. Whilst the ICAEW did not offer an opinion on the level of LTT rates, it voiced concern that setting too high rates could undermine inward investment and growth:

“if the Welsh Government is seeking to attract inward investment and growth, it should set rates that work for Wales and resist the temptation to set too high marginal rates of LTT.”⁹³

114. The Council of Mortgage Lenders also urged caution against setting higher rates of LTT in order to avoid disincentivising families and individuals from purchasing higher value properties, it stated:

“We suggest that Wales consider implementing rates that are no higher than those in England.

We suggest that, to avoid distorting the operation of the housing market and maintain a fair and equitable approach, government might consider rates and bands that do not place a disproportionate burden on middle to higher-value purchases.”

115. The Council of Mortgage Lenders also suggested the Welsh Ministers should avoid significant leaps in the rate of tax between bands, particularly between a nil rate band and the lowest rate, asserting that this would “help to smooth the impact for taxpayers and avoid market distortions”.⁹⁴

116. Caution around introducing rates was echoed by Geldards LLP who felt significant changes to non-residential rates could deter commercial investment in Wales:

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

The relatively high amount of SDLT that is collected from a small number of non-residential property transactions (compared to residential transactions) shows the importance of the non-residential property sector to LTT. It is important that the commercial property sector is not seen as a “cash cow” to fund the spending promises of Welsh Government. Property investors are highly mobile and may choose to invest their money in developments in England if LTT is seen as imposing a greater cost on equivalent developments.”⁹⁵

117. The Bill specifies that the first regulations to set rates and bands for LTT would be subject to the affirmative procedure and any subsequent regulations to amend those would be subject to a

⁹³ Written evidence, Finance Committee, LTTA08, The Institute of Chartered Accountants in England and Wales

⁹⁴ Written evidence, Finance Committee, LTTA04, Council of Mortgage Lenders

⁹⁵ Written evidence, Finance Committee, LTTA02, Geldards LLP

procedure referred to as “provisional affirmative”. This would enable the Welsh Ministers to make regulations taking immediate effect. The EM states this ability is desirable “as it ensures that changes do not create distortionary activity in the market.” The Policy Manager for the Bill explained the rationale:

“If the rates were to change 28 days after they were announced, a lot of people would try to push through transactions that might have been planned for the month later or the month after that. So, the aim is not to allow taxpayers to forestall by bringing their transactions forward.”⁹⁶

118. Regulations made under such a procedure would need to be approved by the National Assembly within 28 days. The Cabinet Secretary explained the procedure that would then follow:

“The Assembly then gets 28 days to decide whether or not the Government has acted in a way that the Assembly would wish to endorse or not. If the Assembly does not endorse the course of action taken by the Government, then the Bill is constructed in such a way that there is no detriment to the taxpayer. If the Government has done something where the taxpayer has benefited and the Assembly decides not to endorse that, the taxpayer keeps the benefit that they have had for those 28 days. If the Government has acted in a way that takes money away from the taxpayer and the Assembly decides not to endorse that, then the Government pays that money back to the taxpayer. So, the taxpayer is protected from the position where the Government has done something that the legislature then decides not to pursue.”⁹⁷

119. The Director of Financial Strategy for the Scottish Government explained that arrangements for setting and amending rates and bands for LBTT in Scotland followed a similar procedure to those provisions in the LTT Bill. The initial rates and bands were set through an affirmative Order in February 2015, and any change to those would require the Scottish Parliament to approve an Order through a provisional affirmative procedure.

120. A representative of the CIOT told the Committee that it was appropriate for the Bill to contain provisions to implement immediate rate changes:

“the Welsh Government needs to be able to respond quickly to changes in the rates set by Westminster, and also to immediate economic concerns.”

121. She added that it was useful to have on the face of the Bill the provision to repay any taxes paid should the rate changes not be approved by the Assembly.⁹⁸

122. Geldards LLP also supported the provision in the Bill to allow the Welsh Ministers to change the LTT rates and bands through subordinate legislation:

“It is important that the LTT legislation can be amended quickly to enable Welsh Government to react to changes in market practice and changes to SDLT which could have a negative impact on the wider Welsh economy.”⁹⁹

⁹⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 139

⁹⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 137

⁹⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraphs 150-152

123. The Land Registry said that it was used to dealing with sudden changes to SDLT made in the budget, and would be able to do so for LTT. However, it added that:

“immediate changes to the rates and bands without prior notice could cause problems if there was a sudden change to the minimum threshold for tax. This might mean that we would need evidence, for instance, of the date of exchange of contracts if transitional provisions were made.”¹⁰⁰

Higher rate for purchases of additional residential properties

124. The UK Government announced changes to SDLT in the Autumn Statement 2015, which included the introduction of higher rates of SDLT on purchases of additional residential properties (above £40,000), such as buy to let properties and second homes. From 1 April 2016, an extra 3% on SDLT rates was imposed on the purchase of such residential properties.

125. The Cabinet Secretary published a Treasury Paper¹⁰¹ in July 2016 seeking views on the implications of the SDLT higher rates for additional residential dwellings for LTT in Wales, and in response to the findings, he commented in a Cabinet Statement published on 14 October 2016:

“As the Treasury Paper highlighted, there will be a significant reduction in the resources available for public services if we do not include a higher rate for additional properties in land transaction tax. Therefore, to protect the delivery of public services, I intend to make provision for a higher rate surcharge on purchases of additional residential properties in the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill during stage 2.

We will continue to explore the suggestions put forward by stakeholders about how the higher rate can be adapted to meet Wales’ circumstances. Any future changes will be made through subordinate legislation.”¹⁰²

126. In both its written and oral evidence, the Residential Landlords Association (RLA) asserted its belief that a higher rate of tax on the purchase of additional properties should not be introduced in Wales. It stated that in a recent survey of its membership, 84% of landlords indicated that they were likely to increase rents to cover the increased tax burden and 78% said that the changes had deterred them from investing further.¹⁰³ The Association said it believed that the policy behind SDLT “was designed in London, for London, and to tackle issues that are London specific” and that the additional 3% was not best designed for Wales.

127. The RLA went on to say that should an additional levy be added to the LTT provisions, it would urge the Welsh Government to “consider a number of exemptions, which would help tailor the policy to meet Welsh needs”. It suggested that higher rates should not apply to properties with intent to let where:

- the property has genuinely been on the market for one year or more;

⁹⁹ Written evidence, Finance Committee, LTTA02, Geldards LLP

¹⁰⁰ Written evidence, Finance Committee, LTTA01, Land Registry

¹⁰¹ Welsh Government **Treasury Paper “Land transaction tax: higher rates for purchases of additional residential properties”**

¹⁰² Cabinet Secretary for Finance and Local Government, **Cabinet Statement 14 October 2016**

¹⁰³ Written evidence, Finance Committee, LTTA07, Residential Landlords Association

- the property has not been occupied for over 1 year (empty home);
- the property is being purchased off-plan; or
- the property is derelict or in severe disrepair.

128. It further stated that a list of exemptions on the face of the Bill, with a power for the Welsh Ministers to amend the list would “give Wales a flexible tax system which it could alter to accommodate its changing needs.”¹⁰⁴

129. Witnesses expressed some concern at the way in which the additional rate for SDLT had been implemented since its introduction. The Law Society commented:

“The additional 3% is causing a very great deal of trouble in England. HMRC have vastly underestimated the difficulties it has caused and thus has been very slow to provide the advisory resources that taxpayers could rightly expect.”¹⁰⁵

130. Such concerns were shared by Deloitte LLP:

“there are some areas of uncertainty in the way SDLT works and is operated, which I think you do have the opportunity, not just through the tax law, but also through guidance, to perhaps help smooth the way and make things clearer for the practitioners... Certainly, the evidence is that a lot of people at the moment are not getting the SDLT returns right, particularly with the new 3 per cent and various other issues, particularly with residential.”¹⁰⁶

131. The Cabinet Secretary explained his rationale for intending to amend the provisions in the Bill to introduce a higher rate of LTT for additional properties. He explained that the higher rate was currently in place in Wales under the SDLT regime, and should such a higher rate not be included in LTT provisions, Wales would lose out on a significant amount of revenue. He asserted that:

“if we were not to proceed with this in Wales, the Treasury would proceed on the basis that, had their way of doing things continued, they would’ve had a flow of revenue from Wales and they will take that off the block grant. So, the first imperative for me is to make sure that I don’t act inadvertently in a way that would lead to a significant loss of revenue for Welsh public services.”¹⁰⁷

132. The Cabinet Secretary went on to explain that the amount of revenue collected as a consequence of the higher rates for SDLT and LBTT was far greater than originally estimated. The Cabinet Secretary and his officials said that while the Office of Budget Responsibility originally estimated that a higher rate would result in additional revenue for Wales of between 10 and 14 million pounds, based on the figures for SDLT they anticipated that the amounts for Wales would also be larger.¹⁰⁸

¹⁰⁴ Written evidence, Finance Committee, LTTA07, Residential Landlords Association

¹⁰⁵ Written evidence, Finance Committee, LTTA10, The Law Society

¹⁰⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 552

¹⁰⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 508

¹⁰⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraphs 510-515

133. The Cabinet Secretary stated it was his intention that, upon its introduction, the new tax system in Wales would closely reflect the system which is already in place. He went on to say that the Welsh Government would learn from the experiences of introducing higher rates for SDLT and LBTT, including replicating the additional reliefs introduced in Scotland since the commencement of LBTT. He said that the amendments which he hoped to table should the Bill proceed to amending stages would include a regulation-making power so any further changes made in relation to SDLT or LBTT could be reflected in the LTT system at a later date should it be necessary. The Cabinet Secretary also informed the Committee that the Welsh Government would be having discussions with stakeholder organisations about the way they would wish to see the system calibrated for Wales.¹⁰⁹

Committee view

134. The Committee understands the rationale for not including the rates and bands for LTT on the face of this Bill and for setting these closer to the implementation date. It notes that the timetable for setting the rates and bands is autumn 2017, which should allow sufficient time to raise awareness before the new regime commences in April 2018. The Committee believes that, as proper consultation on the proposed rates and bands will be crucial, the Welsh Government should ensure that there be sufficient time to undertake extensive engagement with stakeholders ahead of the final decision being taken.

135. The Committee notes the views expressed about the potential to deter commercial activity and investment in Wales by setting rates and bands for both residential and non-residential property at too high a level. It believes that the Welsh Government should give proper consideration to these concerns in order to avoid Wales being seen as uncompetitive for business. It will be crucial to strike an appropriate balance between collecting sufficient resources through LTT and making sure that there are no unintended consequences of setting rates at a level that could unduly deter either commercial activity or necessary property sales and exchanges.

136. The Committee has heard strong arguments both in favour and against including proposals in the Bill to introduce a higher rate of LTT for additional property purchases. Given that there would be a significant reduction in the money available to the Welsh Government should a higher rate for additional properties not be implemented, the Committee is persuaded by the Cabinet Secretary's rationale for amending the Bill to include such provisions. It does not offer a view on the level of additional rate that should be set for Wales, however it believes that it will be important that all views are taken into consideration and that sufficient consultation will be key to formulating a policy which balances the need to collect tax revenue with ensuring that the property market remains buoyant. It also believes that the defects identified in the SDLT surcharge regime should be learnt from and addressed for LTT.

137. The Committee notes the Cabinet Secretary's offer to provide Members with a technical briefing in relation to amendments which he intends to bring forward in relation to a higher rate of LTT for additional properties. Should the Bill proceed to Stage 2, the Committee would be grateful to accept the Cabinet Secretary's offer once such amendments have been tabled.

Recommendation 10. In order to address witnesses' concerns, the Committee recommends that the Cabinet Secretary commits to a full and extensive consultation on rates and bands in advance of the Welsh Government's determination.

¹⁰⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 509

Reliefs

138. Part 3 of the Bill also provides for the introduction of a suite of LTT reliefs, which are set out on the face of the Bill in Schedules 8 to 21. The Schedules specify the transactions that would be relieved from the payment of LTT and when such reliefs would apply. The EM states:

“Tax reliefs are an important part of the tax regime and targeted at a variety of different objectives. Some reliefs are designed to encourage a particular behaviour, aimed at achieving social or economic policy objectives, whereas others are created to ensure fairness within the tax regime.”¹¹⁰

139. Section 30 of the Bill identifies the relevant Schedules which make provision about reliefs and other provisions connected to those reliefs. The Bill provides for Welsh Ministers to add, modify or remove a relief through regulations.

Consistency with Stamp Duty Land Tax

140. The EM states the intention is to provide a suite of reliefs consistent with the LBTT and SDLT regimes.¹¹¹ However, a range of existing reliefs have been omitted or modified in the Bill. Those omitted are:

- crofting community right to buy relief;
- demutualisation of insurance company relief; and
- demutualisation of building society relief.

141. Those modified are multiple dwellings relief and acquisition relief.

142. In omitting reliefs relating to demutualisation, the Cabinet Secretary explained that his rationale for doing so was twofold:

“One is that these reliefs have not been used for many, many years and, secondly, it is not my policy to encourage demutualisation, so why would I want to incentivise it by offering a tax relief to make it easier to happen? You know, we are in favour of a mixed set of possibilities in the market there, and we don’t want to favour non-mutual models over others.”¹¹²

143. The Welsh Government’s Policy Manager for the Bill explained that in relation to multiple dwellings relief, LTT broadly followed the SDLT regime but without the three-year withdrawal period which exists in SDLT due to:

“the differences in house prices between, particularly, London and Wales generally. The economic motivation to split properties to sell them as multiple dwellings and then to recombine them afterwards just doesn’t exist in the property market that exists in Wales, even in Cardiff, in comparison to the centre of London.”¹¹³

¹¹⁰ Explanatory Memorandum, paragraph 3.21

¹¹¹ Explanatory Memorandum, paragraph 3.21

¹¹² National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 106

¹¹³ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 110

144. The Cabinet Secretary also explained that under the LTT provisions, acquisition relief was fundamentally the same as under SDLT arrangements, with the exception of a “minor change” in relation to the ability for the WRA to pursue tax from an associated company or a controlling director.¹¹⁴

145. Witnesses were generally supportive of the relief provisions in the Bill broadly being consistent with SDLT reliefs, Geldards LLP stated:

“We welcome the retention of a substantial number of reliefs that are contained within the SDLT legislation. This approach should avoid the steady “roll back” that occurred with the Scottish Land and Buildings Transaction Tax where reliefs had to be added to the LBTT legislation once Scottish Government had been persuaded of the commercial merits of the reliefs rather than being tax avoidance by the backdoor.”¹¹⁵

146. The Law Society concurred that maintaining a consistent approach with SDLT would be advantageous:

“it’s one of the reasons that you want to be consistent with SDLT because you don’t want to be disadvantaged if somebody could build something or buy something in Bristol compared with Cardiff and people are doing it all the time.”¹¹⁶

Proposed additional reliefs

147. In addition to providing for specific reliefs on the face of the Bill, provisions are also included to give the Welsh Ministers powers to introduce new reliefs, modify existing reliefs or remove a relief entirely.

148. The Cabinet Secretary explained to the Committee that the Bill did not include any additional reliefs to those provided for in SDLT as, although the question had been posed during the consultation exercise, “no compelling case” had been made for the inclusion of any further reliefs. During his oral evidence session with the Committee, the Cabinet Secretary said he would listen to what the Committee concludes following its evidence gathering.¹¹⁷

149. Both Eversheds LLP and Deloitte LLP noted the Bill does not include provisions for Property Authorised Investment Funds (PAIFs), which were introduced in relation to SDLT through the Finance Act 2016. These are open-ended investment companies (OEICs) of sub-funds of umbrella OEICs that are elected in to the PAIF regime and are applicable for two reliefs under SDLT. Both respondents expressed their desire to see provisions for PAIFs included in the Bill.¹¹⁸ In response to questioning from the Committee on this issue, the representative from Eversheds LLP stated:

“Yes, I think that (PAIFs) would be something you should consider. Obviously, the timing is such that those reliefs have just been introduced in SDLT in the

¹¹⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 111

¹¹⁵ Written evidence, Finance Committee, LTTA02, Geldards LLP

¹¹⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 411

¹¹⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 116

¹¹⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraphs 614-625

summer. So, yes, it is something that should be considered, otherwise Welsh property will be something that these funds will not find attractive.”¹¹⁹

150. Deloitte LLP said that it would encourage the extension of this relief to the seeding of Real Estate Investment Trusts (REITs) as opposed to just the open-ended structures.

151. Eversheds LLP also mentioned the omission of Co-ownership Authorised Contractual Schemes (CoACS) from the Bill, which are contract-based collective investment schemes. They are tax-transparent pools of co-owned assets for tax purposes except where the tax legislation provides otherwise for them. There was no special SDLT regime for them until one was enacted in the Finance Act 2016. Eversheds LLP stated:

“It is important for the Welsh property market that there is a matching LTT system. Because the ACS is now effectively opaque for SDLT purposes, a seeding relief is now necessary, and so there is a matching seeding relief for ACSs in the Finance Act 2016 introduced alongside the PAIF seeding relief.”¹²⁰

152. The Cabinet Secretary and his officials explained that reliefs for PAIFs and CoACS had not been included in the Bill as the legislation which introduced them into the SDLT system, the Finance Act 2016, had not received Royal Assent in time. They indicated that as their presence had now been in law since September 2016, the Welsh Government could look at and learn from the experience of SDLT in assessing whether the reliefs should be included in the LTT system.¹²¹ The Cabinet Secretary went on to say that his rationale for adding a relief to the system would be the presence of an evidence base for the relief, if there was a policy purpose aligned with the relief and if granted, that the relief would reach its intended audience.¹²²

153. The Cabinet Secretary said that he was “genuinely open-minded” in terms of providing reliefs for PAIFs and CoACS and would listen to what the Committee concluded as to whether the Bill should be amended to include such provision or whether they should be added at a later date using the power to do so through secondary legislation.¹²³

Committee view

154. The Committee notes the merits of maintaining a high degree of consistency between the reliefs proposed for LTT and those currently provided by the SDLT regime and is encouraged by the support expressed by stakeholders for this approach. It believes that the ability to introduce new reliefs will be important to ensure that the system can adapt to reflect changes in the Welsh property market and elsewhere in order to maintain commercial competitiveness and prevent disadvantaging Welsh taxpayers.

155. In terms of the specific additional reliefs proposed to the Committee, Property Authorised Investment Funds and Co-ownership Authorised Contractual Schemes, the Committee notes the request made by some stakeholders that these be provided for in LTT legislation and the increased consistency with SDLT that would bring.

¹¹⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 618

¹²⁰ Written evidence, Finance Committee, LTTA09, Eversheds LLP

¹²¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraphs 567-569

¹²² National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 577

¹²³ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 583

Recommendation 11. The Committee recommends that the Welsh Government should make provision for appropriate reliefs for Property Authorised Investment Funds and Co-ownership Authorised Contractual Schemes through amendments at Stage 2 in order to ensure that commercial investment in property in Wales is not disincentivised inadvertently.

Recommendation 12. The Committee recommends that the Welsh Government should monitor carefully the impact of all reliefs, in particular the multiple dwelling relief, with a view to using the regulation making powers to amend the provision of reliefs should it be necessary to address any perverse incentives.

Targeted Anti-avoidance Rule

156. The Bill includes a Targeted Anti-avoidance Rule (TAAR), the purpose of which is set out in the EM as preventing the claiming of a relief where:

“the obtaining of a tax advantage for any person is the main purpose, or one of the main purposes, of any person entering into the arrangement, and the arrangement lacks genuine economic or commercial substance.”¹²⁴

157. In the Cabinet Secretary’s letter to the Committee dated 2 November, he explained that the TAAR provided by section 31 “is designed to stop avoidance schemes involving the claiming of one or more reliefs”.¹²⁵ The inclusion of a single, overarching TAAR differs from the approach taken in SDLT legislation which includes a number of TAARs attached to specific reliefs. The EM states:

“This will be a robust and useful tool to ensure that reliefs are not exploited to avoid paying LTT, but it will still allow taxpayers to operate the familiar SDLT rules, thus ensuring consistency in line with consultation responses.”¹²⁶

158. In his letter of 2 November, the Cabinet Secretary also stated that the Welsh Government does not rule out the possibility of introducing further TAARs in the future “where there are known avoidance schemes operating which need to be ‘closed down’”.¹²⁷

159. Witnesses raised a range of concerns relating to the term “genuine” included in both the TAAR and the General Anti-avoidance Rule (GAAR), which is provided for in Part 7 of the Bill. The ICAEW was not convinced the wording was particularly helpful, it stated:

“the use of the word ‘genuine’ is unusual although we appreciate it has also been used in the drafting of the anti-avoidance rule. We would have thought the test would be better framed as arrangements that lacked economic substance or where the economic substance was insignificant when compared to the tax advantage received.”¹²⁸

¹²⁴ Explanatory Memorandum, paragraph 3.39

¹²⁵ [Letter from the Cabinet Secretary for Finance and Local Government to the Finance Committee, 2 November 2016](#)

¹²⁶ Explanatory Memorandum, paragraph 3.39

¹²⁷ [Letter from the Cabinet Secretary for Finance and Local Government to the Finance Committee, 2 November 2016](#)

¹²⁸ Written evidence, Finance Committee, LTTA08, The Chartered Institute of Accountants in England and Wales

160. Deloitte LLP stated that it was not clear that the word “genuine” adds anything to “economic or commercial” in section 31. A representative of Deloitte LLP elaborated on this:

“I think it should come out. I don’t see what it adds. Either something is an economic benefit or it isn’t and the problem is when it goes before a court they’re going to say that word must mean something in addition and, therefore, put in an additional condition on getting the relief.”¹²⁹

161. Deloitte LLP also suggested that it would be useful to have examples of what a non-genuine arrangement would be in order to “understand the purpose behind the drafting.”¹³⁰

162. The Law Society raised concern about the meaning of the provision “lacks genuine economic or commercial substance” in the definition of a tax avoidance arrangement set out in section 31 of the Bill, it queried:

“When do arrangements lack genuine economic substance? What does the word ‘lack’ actually mean? Does it mean it has no genuine economic substance?... if you do a deal where your motives are 25 per cent, let’s say, pure and 75 per cent impure, do you say, well, that 25 per cent genuine economic substance is enough to get you out of the lacking criteria? Is it a 50 per cent test? Is it a 2 per cent test? Does it have to completely lack economic substance in order for it to fall foul of the TAAR?”¹³¹

163. Witnesses called for guidance on the implementation of the TAAR to be provided to accompany the new system, Eversheds LLP stated:

“If enacted in this form, clear guidance will be required on its interpretation and the arrangements which fall within its ambit and which arrangements do not, if uncertainty is to be avoided.”¹³²

164. Whilst saying that detailed guidance would be helpful, the Law Society said that its experience of anti-avoidance guidance for SDLT was that it was unhelpful as the examples it contained were “one side of the divide or the other, on the facts, and so are no good as a steer as to how the legislation should be interpreted in marginal cases.” It offered its assistance to help the WRA in producing detailed guidance and in the training of WRA officers in this area.¹³³

165. The Cabinet Secretary told the Committee that the use of “genuine” in the definition was intentional, as without it he believed that it would still be possible to devise arrangements which were designed to avoid paying tax if they included a small element of commercial or economic purpose, which would be sufficient to clear that test:

“the term ‘genuine’ is in there to try to make it clear that the economic or commercial purpose must be more than just a marginal device to try to put

¹²⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 632

¹³⁰ Written evidence, Finance Committee, LTTA06, Deloitte LLP

¹³¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 377

¹³² Written evidence, Finance Committee, LTTA09, Eversheds LLP

¹³³ Written evidence, Finance Committee, LTTA10, The Law Society

yourself in a position where tax that the National Assembly would otherwise have expected you to pay could be avoided.”¹³⁴

Statement of purpose for reliefs

166. Some witnesses believed that it would be useful if provision could be made to include a statement of purpose for each of the reliefs covered by the Bill. The CIOT said that such a statement would be useful “so that you know why the relief is there and the intention when it’s enacted”, commenting that it would:

“help a great deal and go a long way to taking away the uncertainty of the overarching TAAR, because you can then look and say, ‘Well, okay, charities relief: the purpose of charities relief is this, so I’m clearly within that intent and therefore the TAAR shouldn’t catch me.’”¹³⁵

167. There was support for this suggestion from other organisations, the ICAEW stated:

“I think having clear statements about the purpose, particularly on reliefs, is a good step forward.”¹³⁶

168. While the Royal Institution of Chartered Surveyors said:

“Being clear about why the reliefs are there and who they’re for will go a long way to resolving disputes before they even get started.”¹³⁷

169. The ICAEW also felt the “WRA will need to publish guidance on how this TAAR is expected to apply in respect of each relief that has been granted”.¹³⁸

170. In response to Members’ questioning on whether a statement of purpose for the reliefs should be provided, the Cabinet Secretary said that it was not a course of action that he was attracted to. He said that there was a lot of information available already in the EM, the statement of policy intent, explanatory notes and within the relevant Schedule of the Bill which anyone wishing to understand the policy intention behind the relief would be able to refer.¹³⁹

171. The Cabinet Secretary went on to say that there was a distinction to be drawn between setting out greater details of policy intent and putting that information on the face of the Bill. He said that he definitely would not be in favour of putting the detail on the face of the Bill, so if there was a case for a separate statement of policy intent it was his preference to include it in the explanatory notes.¹⁴⁰

Targeted Anti-avoidance Rule covering non-devolved taxes

172. The definition of tax included in Section 31(3) to which TAAR would be applied includes the following non-devolved taxes: income tax, corporation tax, capital gains tax, SDLT, stamp duty reserve tax and stamp duty, in addition to LTT. This was queried by some witnesses with ICAEW saying:

¹³⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 595

¹³⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 92

¹³⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 480

¹³⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 481

¹³⁸ Written evidence, Finance Committee, LTTA08, The Institute of Chartered Accountants in England and Wales

¹³⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 563

¹⁴⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 564

“We are concerned that the list of taxes included within a tax avoidance arrangement includes those which are not devolved, including for example income tax, corporation tax and capital gains tax. Given this measure is aimed at the avoidance of LTT, we do not see that these taxes should be included in a list of taxes that could trigger this provision... We think the non - devolved taxes should be removed from the list but as a minimum we would welcome greater clarity on how such a provision would operate both legally and in practice.”¹⁴¹

173. The CIOT wondered why the TAAR applied to UK taxes whilst the GAAR covered Welsh devolved taxes:

“In a sense, you’d expect, almost, the GAAR, when you’ve got a scheme of avoidance that might be taking place in Wales and England—that’s when you’re looking at a wider arrangement, aren’t you, and are concerned about the wider transactions that occur across borders. Whereas, for the reliefs, they are about transactions in Wales—land transactions in Wales. So, to some extent, it seems slightly the wrong way around.”¹⁴²

174. In his letter of 2 November, the Cabinet Secretary explained the rationale for including non-devolved taxes in the definition, he said:

“The rule provided by section 31 ensures that relief from LTT is not available where the arrangement giving rise to the relief forms part of a wider arrangement which has a main purpose of avoiding a non-devolved tax, albeit that the claim to the LTT relief, when viewed in isolation, is legitimate.

This means that relief from LTT cannot be claimed where the transaction forms part of arrangements which have a main purpose of avoiding a non-devolved tax.”¹⁴³

Committee view

175. The Committee notes that the approach of introducing a single Targeted Anti-avoidance Rule applicable to the reliefs in the Bill is a deviation from the existing arrangement under the SDLT system. As it is necessary to self-assess whether the TAAR applies, the Committee understands that taxpayers and practitioners will be apprehensive of a new system. It believes that clear guidance on the implementation of the TAAR will be crucial for practitioners to be sure that the advice they give to their clients complies with the new system.

176. The Committee notes that concerns have been raised by its Expert Adviser regarding the ability of the WRA to deploy sufficient resources to provide adequate guidance and investigate complex arrangements. The LTT reliefs fall, broadly, into two groups: those where they are intended to complement reliefs provided in respect of non-devolved taxes (e.g. LTT group relief complements the reliefs available for corporation tax), and those which are intended to facilitate particular transactions (e.g. sale and leaseback relief, which facilitates what may, in effect, be a financing

¹⁴¹ Written evidence, Finance Committee, LTTA08, The Institute of Chartered Accountants in England and Wales

¹⁴² National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 98

¹⁴³ [Letter from the Cabinet Secretary for Finance and Local Government to the Finance Committee, 2 November 2016](#)

transaction) but which will almost certainly also give rise to non-devolved tax advantages. The Committee believes a non-devolved tax advantage, as defined, will almost always arise and taxpayers and advisers will then need to be clear as to where the dividing line (between that which is acceptable and that which is not) lies. In particular, the Committee believes the term “arrangement” and the phrase “lacks genuine economic or commercial substance” should be clear in guidance.

177. The Committee is conscious of the call made by several organisations that the provision of detail on the intent of each of the reliefs in the Bill would aid assessment of whether the claiming of one or multiple reliefs was in breach of the TAAR. It believes that the provision of such information would be a useful tool for practitioners, and that this could be achieved satisfactorily by revisions to the explanatory notes accompanying the Bill.

178. The Committee accepts the case made by the Cabinet Secretary as to why the TAAR relates to non-devolved taxes but believes that timely detailed guidance and the provision of necessary expertise within the WRA is needed.

Recommendation 13. The Committee recommends that guidance be provided on the implementation of the Targeted Anti-avoidance Rule.

Recommendation 14. The Committee recommends that a statement of policy intent for each of the reliefs, including the new reliefs recommended by the Committee, be included in detail in the explanatory notes to the Bill.

Recommendation 15. The Committee recommends that detailed guidance be provided to deal with the application of the Targeted Anti-avoidance Rule, particularly as it is intended to apply to non-devolved taxes and to ensure that its purpose remains narrow and focused as set out by the Cabinet Secretary's letter to the Committee of 2 November 2016.

06. Part 6 – Returns and Payments

Returns

179. Part 6 sets out that for every notifiable transaction the buyer would need to make a return to the WRA and make any necessary payment. The EM states:

“It will be for the WRA to specify the form and content of the return. This will ensure the WRA has the operational flexibility to respond to developments, for example in the IT infrastructure and create a system which is fit for purpose and reflects the changing requirements of users. The WRA will allow taxpayers to submit a return electronically, while retaining the option for taxpayers to submit a paper return, balancing the need to maintain flexibility for users, whilst ensuring returns are filed promptly and efficiently. The WRA will need to enable taxpayers to file and pay as efficiently as possible. If the transaction is a chargeable transaction then the buyer must include a self-assessment of the tax chargeable.”¹⁴⁴

180. Section 43 of the Bill specifies that a return would need to be made within a period of 30 days beginning with the day after the date of the transaction. Members questioned the Cabinet Secretary as to whether he intended to reduce the amount of time allowed to make a return to 14 days in line with the proposal by the UK Government to do so for SDLT. In response, the Cabinet Secretary said:

“If it does take effect, at the moment, my intention would be to revert to a 30-day filing period for Wales. I’m not convinced of the immediate urgency of moving to 14 days, and I’m particularly not persuaded of the case for putting extra time pressure into the system at the point when it’s changing.”¹⁴⁵

Notifiable transactions

181. The Bill sets out that a land transaction would be notifiable unless there were circumstances that permit it not to be notifiable. These circumstances as set out in the Bill¹⁴⁶ include:

- an exempt transaction;
- an acquisition of ownership of land where the chargeable consideration is less than £40,000;
- where the purchase is of an interest other than a major interest in land and the chargeable consideration is chargeable at a rate of more than 0%; or
- where there is a non-notifiable transaction in relation to leases.¹⁴⁷

Committee view

182. The Committee welcomes the Cabinet Secretary’s intention to maintain a filing period of 30 days for returns relating to LTT. It acknowledges that this would deviate from SDLT arrangements should the implementation of a reduced timescale for returns relating to that tax take place prior to the commencement of LTT, however, given the changes taking place through the introduction of

¹⁴⁴ Explanatory Memorandum, paragraph 3.54

¹⁴⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 67

¹⁴⁶ Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill, Section 45 (As Introduced)

¹⁴⁷ Explanatory Memorandum, paragraph 3.56

LTT, the Committee believe that the additional time would be useful as the new arrangements bed in. The Committee also notes that the Bill contains provision for the Welsh Ministers to reduce the timescale through secondary legislation should it be considered appropriate in the future; whilst welcoming this provision, the Committee would urge the Welsh Government to seek the views of stakeholder groups prior to implementing any changes.

Registration of land transactions

183. Section 64 of the Bill specifies that the Chief Land Registrar may not register or record a notifiable land transaction unless a WRA certificate is produced with an application to register or record the transaction. It specifies that a WRA certificate would be a certificate issued by the WRA stating that a return had been made in respect of that transaction.

184. The Land Registry raised concern that the use of “certificate” was too rigid compared to the existing arrangements under the SDLT system, which specifies that the registrar can accept a certificate of compliance “or such information about compliance as the Commissioners for HMRC may specify in regulations.”¹⁴⁸ A representative of the Land Registry elaborated:

“I was a bit concerned that your legislation, at the moment, just says there has to be a certificate. That sounds as though it could be a little bit inflexible. I accept that secondary legislation might say the certificate could take this form or that form, but maybe, in the future it won’t even be a certificate, it might just be some, I don't know, string of letters or something, coming to us electronically. So, I just thought it was worth the drafters of the legislation thinking about whether they should add a few words to make that more flexible.”¹⁴⁹

185. In response to this concern, the Cabinet Secretary told the Committee that the form of the certificate would be prescribed by the Welsh Ministers under section 64(5) of the Bill. He said he believed that it would be:

“entirely conceivable that those regulations could prescribe that a receipt, for example, issued by the WRA confirming receipt of a return could be treated as a certificate. So, while we are clear that a certification system is required, we are not going to be rigid about needing it printed on vellum or any of the old-fashioned ways.”¹⁵⁰

Committee view

186. The Committee notes the concern raised by the Land Registry in relation to the form of the certificate to be provided as proof of a transaction and the Cabinet Secretary’s response. It is encouraged by the Cabinet Secretary’s response, but would urge the Welsh Government to consult with stakeholder groups prior to making regulations to ensure that their views and needs are taken on board.

¹⁴⁸ Written evidence, Finance Committee, LTTA01, Land Registry

¹⁴⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraph 244

¹⁵⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 585

Recommendation 16. The Committee recommends that the Welsh Government consults with stakeholder groups prior to making regulations on the form of the certificate required under section 64 of the Bill, to ensure that their views are taken on board.

07. Part 7 – General anti-avoidance rule

187. Part 7 of the Bill includes provisions to address tax avoidance in devolved taxes through introducing a general anti-avoidance rule (GAAR) for devolved taxes. The EM states the GAAR would:

“enable the WRA to robustly tackle tax avoidance across devolved tax legislation, and help to deter and prevent tax avoidance.”¹⁵¹

188. The EM explains that the GAAR would apply where a person enters into an “artificial tax avoidance arrangement,” and specifies an arrangement would be an “artificial tax avoidance arrangement” if the entering into or carrying out of the arrangement was not a “reasonable course of action”, having regard to the relevant legislation applying to the arrangement, and in particular, whether there was any genuine economic or commercial substance to the arrangement, or whether the arrangement resulted in an amount of tax chargeable that was not the anticipated result of the relevant legislation.¹⁵²

189. The EM explains that as the GAAR would apply to any future potential devolved taxes in addition to LTT and Landfill Disposals Tax, the Bill introduces it as an amendment to the TCM (Wales) Act 2016.¹⁵³

190. The EM also explains that the UK Government adopted a **General Anti-Abuse Rule** (GAAR) for SDLT which came into effect in July 2013, that the Scottish general anti-avoidance rule became law in 2015, and the differences between them. It states:

“There are a number of differences between the scope of the rules, with the Scottish GAAR being considered to have a wider application as it applies to arrangements that lead to the tax advantage that are considered to be “artificial”, whereas the UK GAAR applies to situations where arrangements are considered to be “abusive”. Another key difference is that the UK GAAR does not apply to UK Landfill tax whereas the Scottish GAAR does apply to Scottish Landfill Tax.”¹⁵⁴

191. The EM further explains that the UK approach requires the establishment of an advisory panel that must approve HMRC guidance on tax avoidance and provide an opinion on cases before HMRC can invoke the legislation so as to recover any tax avoided. It states that as relatively few taxes are currently to be devolved to Wales and the anticipated complexity and cost that would arise in establishing a panel, “this is not considered necessary or appropriate.” The EM states:

“The impact of not replicating the establishment of an Advisory Panel is likely to be positive, reducing complexity and administrative burden. The WRA will still seek expert advice in a transparent and proactive way on the application of a GAAR, but legislation is not necessary for this.”¹⁵⁵

¹⁵¹ Explanatory Memorandum, paragraph 3.65

¹⁵² Explanatory Memorandum, paragraph 3.65

¹⁵³ Explanatory Memorandum, paragraph 3.66

¹⁵⁴ Explanatory Memorandum, paragraph 3.64

¹⁵⁵ Explanatory Memorandum, paragraph 8.55

192. The Residential Landlords Association emphasised the importance of having guidance on the interpretation of the GAAR:

“You’ve got to have the right guidance along with it because, obviously, you’re changing it from England. So, there’s going to be new interpretation. I think that needs to be fleshed out considerably in the guidance.”¹⁵⁶

193. This point of view was also expressed by Deloitte LLP, who said:

“the WRA will have to issue guidance as to what is, effectively, acceptable tax planning, and it’s really the detail that will support that to make sure that people don’t worry about this overly when they’re doing Welsh land transactions.”¹⁵⁷

194. The Law Society was keen to see practical examples included in any guidance, it stressed that hard examples would be required to ensure clarity for conveyancers and taxpayers, its representative said:

“I think the guidance needs to deal with examples. Certainly, when you’re looking at the GAAR, in England you have GAAR guidance that deals with hard examples... In areas like avoidance you would be concerned to draw a bright line; you won’t really want to, you’d like it to be slightly blurry, but what taxpayers want is certainty. They need to know on which side of that blurry line they fall. And what a ruling or guidance does is clarify where that line lies.”¹⁵⁸

195. The Committee received evidence surrounding the lack of clarity of the term “artificial” used in the Bill. A number of witnesses felt that clear guidance would be required to define what artificial meant in the context of devolved taxes. The Country Land and Business Association commented:

“There are difficulties about what we mean by ‘artificial’. I don’t think that’s defined adequately and that is different from the UK regime. I’m not saying we shouldn’t target avoidance, but, actually, we’ve got to be very, very clear what we mean by that and what we mean by ‘artificial’ and I don’t think we’ve quite got there yet.”¹⁵⁹

196. The Law Society’s representative concurred:

“To me, it is the level of complexity that will have to be solved by conveyancing solicitors who will look at transactions that might fall one side of the line or another to decide whether or not they are artificial. To do that they will have to see why the Welsh Assembly enacted the legislation and what their intention was, and, again, that can be quite difficult.”¹⁶⁰

197. The representative from Eversheds LLP told the Committee that the interpretation of a tax advantage and an artificial transaction would be easy if:

¹⁵⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 316

¹⁵⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 650

¹⁵⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraphs 352 and 353

¹⁵⁹ National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraph 126

¹⁶⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 417

“there’s clear guidance as to what that means and what you see as being artificial and what you see as not.”¹⁶¹

198. The CIOT offered the view that “artificial” and “abuse” could be interpreted in a similar way. It commented that the use of “artificial” would be effective in tightening tax avoidance, but could lead to some transactions not being undertaken should the potential buyer be unsure as to whether it would comply with the GAAR. The CIOT told the Committee:

“I think ‘artificial’ and ‘abuse’ are probably very, very similar, in my view, in outlook as to they would be applied. If something is done artificially, you’re probably trying to abuse the tax system.”¹⁶²

“It [the GAAR] would scare a lot of tax practitioners about, ‘Right; I’m not going anywhere near that because I don’t want to be caught by something that’s anti-avoidance’.

There is a distinct possibility that you will do, yes—avoid the commercial transaction.”¹⁶³

199. In the Cabinet Secretary’s letter to the Committee of 2 November 2016 he explained that the Welsh Government had opted to define its test as “artificial” as it considers that it:

“more accurately describes the core of the test and the Welsh Government’s intention that the GAAR will capture those arrangements that have been contrived in an artificial or abnormal manner to obtain a tax advantage. Despite the similarities in the core of the tests, the use of ‘abusive’ in the UK GAAR suggests it is intended to capture a narrower range of arrangements that are extremely or highly contrived.”¹⁶⁴

200. An area of concern raised by the ICAEW was in relation to the inclusion of “genuine” in the GAAR, who felt it lowered the threshold for taxpayers being caught by the GAAR and increased uncertainty. It stated:

“The Welsh version of this test appears to set quite a low threshold, namely was it genuine, rather than look to the actual substance of the arrangement. The test is likely to create further uncertainty and argument in what is already a difficult area for advisers and taxpayers.”¹⁶⁵

201. Deloitte LLP referred to the advisory panel established as part of the UK GAAR arrangements and the value of its role in producing guidance, its representative said:

“in the UK GAAR, the guidance, the GAAR panel, that’s actually part of the statutory framework for the GAAR. I think that’s quite important.”¹⁶⁶

¹⁶¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 660

¹⁶² National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 122

¹⁶³ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraphs 124-126

¹⁶⁴ [Letter from the Cabinet Secretary for Finance and Local Government to the Finance Committee, 2 November 2016](#)

¹⁶⁵ Written evidence, Finance Committee, LTTA 08, The Institute of Chartered Accountants in England and Wales

¹⁶⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 652

202. The CIOT suggested that the establishment of an advisory panel would be beneficial by advising on prevailing practice, it said:

“In terms of prevailing practice and the guidance being active and agile and adopting, really being true to what is prevailing practice, maybe safeguards such as an advisory panel who can advise the Welsh Revenue Authority on prevailing practice would provide some certainty.”¹⁶⁷

203. Some witnesses suggested that, alongside guidance, including a provision in the Bill for a clearance mechanism would be beneficial in providing clarity to an individual or their advisers in assessing whether a potential transaction complies with the GAAR. The CIOT raised concern with the inclusion of the “one of the main purposes” criteria to define a tax avoidance arrangement, which it believes to be a very low threshold for deciding whether a transaction has an avoidance element. It’s written evidence stated:

“Although the GAAR has been designed as a ‘broad spectrum’ deterrent, the breadth of the provision means some form of clearance system or opinion service would be necessary to provide certainty.”¹⁶⁸

204. The ICAEW also questioned whether the GAAR provisions provided sufficient certainty to taxpayers:

“We can appreciate why the Welsh Government would not want to adopt a clearance mechanism, but, nevertheless the broad sweep on the anti-avoidance provision makes it difficult for taxpayers to obtain certainty and we question whether some way might be found to provide greater certainty.”¹⁶⁹

205. The ICAEW also referred to a clearance system during oral evidence and suggested that the service could be paid for by its users:

“Our approach was always, in relation to the GAAR, that we would prefer a clearance mechanism. Obviously, that has not been taken forward at the UK level. I think it is a moot point as to whether that would be, in principle, something that Wales could adopt. One could, for instance, charge for it in some way. So, there are ways that, perhaps, one could actually cover, if you like, the cost of running it. But I think that taxpayers, particularly on larger commercial transactions, might be willing to pay something to get a reasonable level of certainty.”¹⁷⁰

206. Deloitte LLP concurred that a clearance system would be useful:

“But it would also be helpful to have an opinion process or clearance for those issues, wherever they are grey, to get some certainty in advance of a transaction.”¹⁷¹

¹⁶⁷ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 129

¹⁶⁸ Written evidence, Finance Committee, LTTA05, The Chartered Institute of Taxation

¹⁶⁹ Written evidence, Finance Committee, LTTA 08, The Institute of Chartered Accountants in England and Wales

¹⁷⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 510

¹⁷¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 564

207. The Cabinet Secretary told the Committee that a decision had not yet been taken as to whether there would be a clearance system or opinion panel, and that it “will be for the WRA to decide whether or not to provide such a service.”¹⁷²

Committee view

208. The Committee welcomes the inclusion of measures in the Bill to tighten rules around preventing the avoidance of devolved taxes, and believes that the approach taken to use this Bill to insert the provision in the TCM (Wales) Act 2016 is appropriate.

209. The Committee notes the concerns highlighted by some stakeholders about the uncertainty that could arise as a result of adopting a slightly different approach to the existing GAAR through describing an arrangement as “artificial” rather than “abusive”. The Committee acknowledges the Cabinet Secretary’s rationale for adopting this approach, nevertheless it believes that the Welsh Government should work with stakeholders to prepare guidance to ensure that the public and their advisers can be confident as to whether potential transactions would comply with the GAAR.

210. The Committee notes that the Cabinet Secretary has opted not to include provision to establish an advisory panel in relation to the GAAR. Whilst it accepts that the establishment of such a group need not be included on the face of the Bill, the Committee recommends that the Cabinet Secretary should emphasise to the WRA the benefits of creating a panel to advise on the implementation of the GAAR. The WRA should work with stakeholder groups as soon as possible to establish a group to advise on the preparation of GAAR guidance. Such a group could consider the need for a clearance system as called for by some witnesses.

Recommendation 17. The Committee recommends that the preparation of guidance on the implementation of the general anti-avoidance rule should be an immediate priority for the Welsh Revenue Authority. It recommends that the WRA should work with stakeholders on the production of guidance, possibly through establishing a GAAR advisory panel.

Disclosure of Tax Avoidance Schemes

211. Disclosure of Tax Avoidance Schemes (DOTAS) is a method for tackling tax avoidance whereby those involved in the design, implementation or marketing of tax planning schemes must submit details of the arrangements to the revenue authority at a very early stage and users have to notify the revenue authority of the scheme reference number of any scheme they have used. DOTAS allows a tax authority to identify tax avoidance schemes and any potential loopholes in the tax system. The UK Government currently applies DOTAS to SDLT but the Bill makes no provision for DOTAS or a similar measure to apply to LTT.

212. The Cabinet Secretary told the Committee the Welsh Government consulted on whether provisions for DOTAS should be included in the Bill, but that the evidence presented was not conclusive one way or the other, he said:

“I think it is fair to say that there were very mixed views—almost 50/50—those respondents who said that we ought to take a DOTAS power in Wales and those who argued that it was disproportionate to the nature of the taxes that we will inherit at this point.

¹⁷² National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 621

Scotland rehearsed the same arguments and decided not to proceed with a DOTAS regime. But, it's an issue on which if, the committee heard evidence and felt that there was a different outcome, then I would be very happy to look very closely at the arguments, because it is very closely balanced and I'm sure it's an argument worth revisiting and seeing whether the committee believes that we've come down on the right side of that argument."¹⁷³

213. Some witnesses commented as to whether the Welsh Government should implement a DOTAS for devolved taxes. The CLA felt that a separate system was not needed as information could be shared between the WRA and HMRC, its representative commented:

"I really don't think, at the moment, it merits Wales having a separate regime. I think you can still share information about what's happening between the Welsh Revenue Authority and HM Revenue and Customs, and that's probably going to be the most cost-effective way forward."¹⁷⁴

214. The ICAEW also commented:

"I think, at the moment we've gone for the GAAR approach, and I think we would probably prefer, 'Let's see how we get on', and see whether it can work and whether any incidence of tax avoidance is manageable and is at a low level, without the need for a DOTAS regime."¹⁷⁵

215. The Cabinet Secretary confirmed that HMRC would establish formal information sharing arrangements with the WRA relating to DOTAS:

"HMRC are currently establishing the necessary legal gateways and processes for information sharing to enable HMRC to share with the WRA all relevant compliance information, including DOTAS disclosures relevant to LTT... So, I think we feel that, with that in place, a considerable slice of the relevant information will be available to the WRA, which, on the whole, I think, tends to sort of push the argument back over the line of not needing a separate system of that sort for Wales."¹⁷⁶

Committee view

216. The Committee notes the Cabinet Secretary's comments that consideration was given to including provisions for DOTAS in the Bill, but that the views expressed in the consultation were mixed. It acknowledges that stakeholders did not express a need for DOTAS provisions in the Bill, so on balance, believes that the approach adopted in the Bill is appropriate. There does, however, need to be a well resourced information exchange with HMRC.

¹⁷³ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraphs 164 and 165

¹⁷⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraph 169

¹⁷⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 515

¹⁷⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 615

08. Financial Implications

217. The financial implications of introducing and implementing LTT as a replacement tax for SDLT are set out in chapter 8 of the Explanatory Memorandum. The EM states that as the full impact of LTT would not be known until the rates and bands are announced closer to implementation, the cost estimates provided focus on the procedural and administrative burden on the WRA and practitioners.¹⁷⁷

Welsh Revenue Authority costs

218. The EM states there would be direct operational and administrative costs attached for the WRA to effectively collect and manage LTT. It states these would include consideration of online service provision, compliance and enforcement effort, the level of customer services and the need for Welsh language capacity-building. It further states that as these costs would be associated with the implementation of devolved taxes more broadly in Wales, it was not yet possible to separate out the costs for LTT.¹⁷⁸

219. The EM outlines the estimated costs for the WRA as being:

“Set up costs are estimated to be between £4.8 million to £6.3 million over the period 2016/17 to 2018/19. These set up costs includes the production and issuing of voluntary guidance for practitioners in 2017/2018. Operating costs are estimated to be between £2.8 million to £4 million annually, beginning in 2018/19.”¹⁷⁹

220. The Cabinet Secretary told the Committee he anticipated “that the cost will remain within the ambit that we set out in the explanatory memorandum.”¹⁸⁰

221. The Committee heard from the Director of Financial Strategy at the Scottish Government that the set-up costs for Revenue Scotland were higher than the original estimates as staff were recruited earlier than anticipated in order to allow more time for training, and that the cost of a dedicated computer system had not been included.¹⁸¹

222. The Cabinet Secretary told the Committee that he was aware of the position in Scotland and that the Welsh Government had learnt from that experience:

“We are able to learn a bit from their experience to try and avoid some of the reasons why their transitional costs were higher than they had anticipated and take some comfort from the fact that, in their actual day-to-day operation, their ability to design for digital from the very beginning has meant that some of the costs they anticipated have been lower than were originally thought.”¹⁸²

223. The EM also states that the implementation of LTT would impact on public bodies, notably the Land Registry and the Valuation Office Agency as both agencies share data on SDLT with HMRC. It

¹⁷⁷ Explanatory Memorandum, paragraph 8.23

¹⁷⁸ Explanatory Memorandum, paragraph 8.25

¹⁷⁹ Explanatory Memorandum, paragraph 8.26

¹⁸⁰ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 50

¹⁸¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraph 30

¹⁸² National Assembly for Wales, Finance Committee, Record of Proceedings, 3 November 2016, paragraph 637

says that new memorandums of understanding would be agreed with the agencies to set out roles, responsibilities and working arrangements, but that the work involved for either would not change.¹⁸³

224. In response to questioning on the likely cost of the data-sharing arrangements between the WRA and the Land Registry, a representative of the Land Registry said:

“I don’t think we can give an actual figure. We will certainly want to engage in discussions into setting up data-sharing arrangements and establish exactly what it is that the Welsh Revenue Authority needs. We generally charge on a cost-recoverable basis, but it really depends on what it is you want. If it’s ongoing supply of data, then there may be additional costs in terms of setting up that system—secure networks et cetera.”¹⁸⁴

225. In its report on Preparations for the implementation of fiscal devolution in Wales, the Wales Audit Office concluded:

“While the Welsh Government estimates that the costs of the resources to set up the Welsh Revenue Authority remain in line with their initial published estimates, a key challenge will be ensuring the right resources are in place at the right time.”¹⁸⁵

Welsh Government costs

226. The EM includes an estimated charge of £1 million to the Welsh Government by HMRC for “switching off” the systems used for the collection of SDLT in Wales. The Cabinet Secretary explained this to the Committee:

“The £1 million switch-off cost—we put that into the explanatory memorandum just to be clear for the committee and others that, when stamp duty land tax stopped in Scotland, HMRC charged them £1 million for shutting down the systems that they would otherwise have used. They then pay you an annual amount of money back for the work that they’re now not doing. So, we are in negotiations and discussions with HMRC over what that sum of money might be for Wales.”¹⁸⁶

Transition costs associated with the legislation

227. The EM also includes estimated costs for those practitioners who would be supporting and advising their clients as they would need to become familiar with LTT and how it differs from SDLT. The EM estimates that there may be between 2,000 and 4,000 people in Wales whose work may be affected by the change from SDLT to LTT and that the mean cost per hour of these occupations is £24.82. It states that, assuming that it would take a maximum of one day’s work (8 hours) to learn about LTT, a one-off cost estimate of between £400,000 and £800,000 would be incurred in 2018/19.¹⁸⁷

¹⁸³ Explanatory Memorandum, paragraph 8.30

¹⁸⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, 29 September 2016, paragraph 211

¹⁸⁵ **Wales Audit Office, Preparations for the implementation of fiscal devolution in Wales, December 2016**

¹⁸⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 September 2016, paragraph 50

¹⁸⁷ Explanatory Memorandum, paragraphs 8.35-8.39

228. Witnesses felt the costs included in the EM for learning about LTT among professions were under-estimated. A representative from the CIOT told the Committee that the estimates “could be on the low side”, he said:

“For example, if I gave a talk to my property colleagues within Geldards and talked to them for an hour, the cost to the firm for my time is, kind of, de minimis, but the loss of fees of, say, 20 fee owners is substantial. It could be, say, £3,000, and if you multiply that by 1,000 law firms, you get a long way towards the proportion—to the £800,000 top estimate of the costs of implementation.”¹⁸⁸

Committee view

229. The Committee notes the estimated set-up costs provided for the establishment of the WRA and welcomes the Cabinet Secretary’s commitment to providing an update on the anticipated costs during the passage of the Bill. The Committee believes that there are important lessons to be learnt from the experience of implementing LBTT in Scotland, and that the Welsh Government should continue to liaise with counterparts in the Scottish Government and Revenue Scotland to ensure that their experience can be used to Wales’ advantage.

230. The Committee notes the estimated costs for the implementation of LTT set out in the EM and the comments made by stakeholders that these may be underestimated. It acknowledges the difficulty in providing an accurate assessment at this stage, nevertheless it notes that the range between the lower and higher estimate of costs for practitioners is very broad. The Committee would encourage the Welsh Government to work with the relevant professional bodies to gather the necessary information to produce a more accurate estimate of the costs which will be incurred. This should provide more certainty to those industries of the likely financial burden they will face.

Recommendation 18. The Committee recommends that the Cabinet Secretary provides updated estimated costs before any Stage 2 proceedings, with particular reference to IT and establishment costs.

¹⁸⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 13 October 2016, paragraph 159

Annex A – List of oral evidence sessions

The following witnesses provided oral evidence to the Committee on the dates noted below.
Transcripts of all oral evidence sessions can be viewed on the Committee’s website.

Date	Name and Organisation
21 September 2016	Mark Drakeford AM, Cabinet Secretary for Finance and Local Government Andrew Hewitt, Welsh Government Gareth McMahon, Welsh Government
29 September 2016	Alistair Brown, Scottish Government Louise Speke, Country Land and Business Association Joy Bailey, Land Registry Pascal Lalande, Land Registry
13 October 2016	Mark Hayward, National Association of Estate Agents Douglas Haig, Residential Landlords Association David Morgan, Royal Institution of Chartered Surveyors Geraint Evans, Royal Institution of Chartered Surveyors Frank Haskew, Institute of Chartered Accountants in England and Wales Martin Warren, Institute of Chartered Accountants in England and Wales Adam Thomas, Geldards LLP David Jarvis, Eversheds LLP Jonathan Evans, Deloitte LLP Sarah Delaney, Deloitte LLP Kay Powell, The Law Society Nigel Popplewell, The Law Society Angharad Woodland, The Law Society Kate Willis, Chartered Institute of Taxation Andrew Evans, Chartered Institute of Taxation
3 November 2016	Mark Drakeford AM, Cabinet Secretary for Finance and Local Government Andrew Hewitt, Welsh Government Gareth McMahon, Welsh Government

Annex B – List of written evidence

The following people and organisations provided written evidence to the Committee. All [consultation responses and additional written information](#) can be viewed on the Committee’s website.

Organisation	Reference
Land Registry	<u>LTTA 01</u>
Geldards LLP	<u>LTTA 02</u>
Country Land and Business Association Cymru	<u>LTTA 03</u>
Council of Mortgage Lenders	<u>LTTA 04</u>
The Chartered Institute of Taxation	<u>LTTA 05</u>
Deloitte LLP	<u>LTTA 06</u>
Residential Landlords Association	<u>LTTA 07</u>
The Institute of Chartered Accountants in England and Wales	<u>LTTA 08</u>
Eversheds LLP	<u>LTTA 09</u>
The Law Society	<u>LTTA 10</u>
National Association of Estate Agents	<u>LTTA 11</u>
Royal Institution of Chartered Surveyors	<u>LTTA 12</u>
National Farmers’ Union Cymru	<u>LTTA 13</u>