

Research Briefing

Land Transaction Tax and Anti-avoidance of Devolved Taxes Act 2017

- Act Summary



National Assembly for Wales
Research Service

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

Author: **Christian Tipples**

Date: **September 2017**

Paper Number: **17-020**

Contact Us

Research Service
National Assembly for Wales
Tŷ Hywel
Cardiff Bay
Cardiff
CF99 1NA

 : 0300 200 7393

 : Christian.Tipples@Assembly.Wales

 : Assembly.Wales/InBrief

 : [@SeneddResearch](https://twitter.com/SeneddResearch)

 : Assembly.Wales/Research

© National Assembly for Wales Commission Copyright 2017

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the National Assembly for Wales Commission and the title of the document specified.

Research Briefing

Land Transaction Tax and Anti-avoidance of Devolved Taxes Act 2017



Contents

1. Introduction	1
2. Background to the Act	1
Tax Devolution	1
Tax Collection and Management Act 2016	1
3. What the Act does.....	1
Part 1: Overview.....	1
Part 2: The tax and key concepts	2
Part 3: Calculation of tax and reliefs.....	2
Part 4: Leases.....	2
Part 5: Application of Act and TCMA to certain persons and bodies.....	2
Part 6: Returns and payments	2
Part 7: General anti-avoidance rule	2
Part 8: Interpretation and final provisions.....	2
4. Estimated costs of implementing the Act	2
Option 1 – Do nothing.....	2
Option 2 – Implementing a replacement tax for SDLT in Wales.....	3
Welsh Revenue Authority.....	3
Welsh Government.....	3
Public bodies.....	3
Compliance costs	3
Cross title properties	3
Cross border properties	3
Benefits	3
5. Stakeholder views	4
Welsh Government Consultation	4
Finance Committee Inquiries	4
6. Finance Committee Consultation.....	4
7. Finance Committee Stage 1 Report.....	5
8. Passage through the Assembly.....	5
Bill Introduction	5
Stage 1	6
Stage 2	6
Stage 3	6
Stage 4	6
Royal Assent.....	6
9. Impacts of Legislation	6

10. Implementation Review7

1. Introduction

The **Land Transaction and Anti-avoidance of Devolved Taxes Act** ('the Act') is the first tax-specific legislation to be enacted in Wales. The Act received Royal Assent on 24 May 2017 and makes provisions for the introduction of Land Transaction Tax (LTT), which will replace UK Stamp Duty Land Tax (SDLT) in Wales. The Act also establishes legislation to tackle devolved tax avoidance by setting out provisions for an overarching general anti-avoidance rule (GAAR).

More specifically, the Act focuses on:

- Establishing Land Transaction Tax and setting out the concepts of how the tax will operate.
- Calculation of LTT and reliefs.
- Application of LTT to leases.
- Application of the Act and the **Tax Collection and Management Act (TCMA) 2016** to certain persons and bodies.
- A framework for making returns and tax payments.
- Establishes a general anti-avoidance rule (GAAR) for devolved taxes in Wales.
- Provisions on subordinate legislation powers and commencement of these powers.

2. Background to the Act

Tax Devolution

The **Wales Act 2014** conferred new tax powers to Wales. It provided the structure for the Welsh Government to legislate on Stamp Duty Land Tax (SDLT) and Landfill Tax (LFT), which the UK Government intends to devolve to Wales on 1 April 2018.

The Welsh Government argued that not developing successor taxes would mean a material reduction in the block grant available and without tax raising legislation, there would be no ability to borrow (as provided for in the Wales Act 2014).

The Welsh Government announced its intention to replace UK stamp duty by introducing the 'Land Transaction Tax and Anti-avoidance of Devolved Taxes Bill' to legislate for the replacement LTT.

Tax Collection and Management Act 2016

On 30 June 2015, Jane Hutt AM, the former Minister for Finance and Government Business **issued a written statement** announcing the Welsh Government's preferred providers to collect and manage devolved taxes. It was confirmed the preferred approach was for the Welsh Revenue Authority (WRA), established by the TCMA, to work with HM Revenue and Customs (HMRC) to collect and manage LTT.

The Cabinet Secretary for Finance and Local Government, Mark Drakeford AM, has since **delivered a statement** confirming the WRA will have sole responsibility for the collection and management of LTT with HMRC acting only in an advisory capacity.

3. What the Act does

The Act has 8 Parts which consist of 82 sections and 23 schedules.

Part 1: Overview

Section 1 (S1) provides a summary of the main provisions of the Act.

Part 2: The tax and key concepts

S2 establishes LTT, which is to be charged on land transactions.

S3-8 defines specific terminology used for land transactions whilst S9 sets out how the Act applies to land transactions spanning the Wales-England border.

S10-16 focuses on particular transactions including contracts, transfers and exchanges.

S17-23 clarifies chargeable transactions and chargeable consideration.

Part 3: Calculation of tax and reliefs

S24-29 defines how tax will be calculated and S30 introduces the Schedules (1-23) which make provisions about reliefs. S31 provides a targeted anti-avoidance rule (TAAR) concerning all claims of relief.

Part 4: Leases

S32 defines a lease.

Part 5: Application of Act and TCMA to certain persons and bodies

S33-43 deals with how the Act applies to certain persons and bodies such as companies, unit-trust schemes and joint-buyers.

Part 6: Returns and payments

S44 places a duty on the buyer in a land transaction to make a return to the WRA.

S45-46 defines a notifiable transaction and transactions which are exempt from LTT.

S47-51 focuses on adjustments and additional returns for certain cases such as a contingency or relief being withdrawn.

S52 gives Welsh Ministers the power to amend the period in which returns must be made.

S53-55 provides that returns sent to the WRA must include a declaration by the buyer or agent that the return is correct and complete.

S56-57 deals with the liability and payment of tax with S58-64 legislating for deferral of tax.

S65 makes provisions for registering land transactions.

Part 7: General anti-avoidance rule

S66 amends the TCMA to include a general anti-avoidance rule (GAAR).

Part 8: Interpretation and final provisions

S67-82 sets out the meaning of key terms referred to throughout the Bill. It includes final provisions and provides for subordinate legislation powers and commencement.

4. Estimated costs of implementing the Act

The **revised Explanatory Memorandum** (as amended after Stage 2) included a Regulatory Impact Assessment (RIA) outlining the costs and benefits of replacing SDLT with LTT. Two options were considered:

Option 1 – Do nothing

This would result in reduced transaction costs to those acquiring interests in land in Wales. There would also be no additional costs to Welsh Government from the implementation of tax collection and administrative systems.

However, if the Welsh Government did not replace SDLT then Wales would lose the tax revenue currently collected through SDLT, which has been up to £235 million per annum. This would have a significant impact on the resources available to fund public services in Wales.

Option 2 – Implementing a replacement tax for SDLT in Wales

The costs of implementing a replacement tax will be small given that LTT will be broadly consistent with SDLT. Minor changes will be made to simplify and adapt the tax to reflect priorities in Wales.

Replacing SDLT with LTT could impact on the following:

Welsh Revenue Authority

There are operational and administrative costs for the WRA to collect and manage the tax. Estimated costs are set out in the [RIA for the TCMA](#). The Cabinet Secretary provided an update on WRA implementation costs in a [letter to the Finance Committee](#) in March 2017:

To date, the establishment of the WRA has cost £1.3 million. We are forecast to spend around £3.5 million on implementation in 2017/18. There will also be a further £1 million or so of implementation costs in 2018/19. Overall, the implementation costs remain under the £6.3 million previously published.

In a [written statement](#) in July 2016, the Cabinet Secretary stated that the WRA operating costs would be between £2.8 million to £4.3 million annually from 2018-19.

Welsh Government

The TCMA sets out that HMRC is expected to reimburse the Welsh Government with the costs of not collecting SDLT in Wales. Scottish Government has received £275,000 per annum as a comparison but HMRC has also charged the Scottish Government with 'switch off' costs for the collection of both SDLT and LfT totalling £1 million. A similar cost is expected to be incurred in 2018-19.

Public bodies

The implementation of LTT will have an impact on the Valuation Office Agency (VOA) and Land Registry (LR). The WRA will require information sharing processes to be developed with both organisations. It is anticipated that any potential costs to Welsh Government will be identified by autumn 2017, which will be funded through existing Welsh Treasury budgets.

The VOA is an executive agency of HMRC with the data used by VOA expected to be part of a monthly data feed and will be covered by the transition costs.

Compliance costs

It is expected that compliance costs will be borne by conveyancers and property lawyers who deal with the vast majority of property transactions. Such practitioners will need to become familiar with LTT. This is anticipated to be a one-off estimated cost between £400,000 and £800,000 in 2018-19.

Cross title properties

For properties spanning the Wales-England border, the taxpayer will need to submit two separate returns to HMRC and WRA. This will incur an additional administrative cost of less than £250,000.

Cross border properties

A single transaction which includes purchasing multiple properties from Wales and England will also require two returns although the number of transactions this will affect is expected to be very small. Data on such transactions is not available and therefore the cost cannot be estimated.

Benefits

The Explanatory Memorandum lists the benefits as:

- Improving the efficiency and effectiveness with which public resources are used.
- Boosting the resources available for public bodies in Wales to invest in improving well-being.
- Delivering enhanced fiscal levers.

5. Stakeholder views

Welsh Government Consultation

The Welsh Government delivered a consultation on the '[Tax devolution in Wales - Consultation on a Land Transaction Tax](#)' between 10 February and 6 May 2015, which set out proposals for a LTT to replace SDLT in Wales.

The consultation [received 38 responses](#) from respondents in Wales, the Wales branch of UK-wide organisations or UK wide organisations with experience of operating existing tax arrangements in Wales. A [summary of responses](#) was published, which identified key areas that Welsh Government should consider.

Finance Committee Inquiries

In preparation for the introduction of the Bill, the Committee undertook an inquiry into the general principles of the Bill. The inquiry focused on:

- Any potential barriers to the implementation of the provisions in the Bill and whether they are taken into account.
- Whether there are any unintended consequences arising from the Bill
- The financial implications of the Bill
- The appropriateness of subordinate legislation in the Bill.

The Committee conducted a public consultation between 14 September and 21 October 2016 and took oral evidence from 11 witnesses to inform its work.

6. Finance Committee Consultation

13 responses were received for the Committee's public consultation, which were published on the [Assembly's website](#).

The evidence from the consultation showed that the primary focus should be on ensuring LTT is broadly consistent with SDLT, which would help ensure a smooth transition period for conveyancers. Some respondents felt providing a summary outlining the differences between LTT and SDLT would further support this.

The need for clear and comprehensive guidance was a theme throughout the majority of responses. This was in response to the current SDLT guidance provided by HMRC which respondents claimed has lacked clarity leading to issues when submitting returns.

A couple of respondents commented that changes or introduction of new LTT rates and bands should have an adequate lead in time otherwise this could potentially distort property prices and cause uncertainty in the market.

The approach to tax avoidance through a general anti-avoidance rule (GAAR) was commented on with a few respondents questioning the ambiguity of terminology used such as 'artificial' and 'genuine economic or commercial substance'. It was recommended by some respondents that clear guidance should be published on the GAAR with input from practitioners.

Properties spanning the Wales-England border were mentioned in several responses. A couple of respondents sought clarification on how LTT and SDLT will be apportioned to such properties.

In terms of subordinate legislation, a couple of respondents had reservations about the lack of opportunity for the Assembly to scrutinise ministerial powers to make substantive changes to regulations through statutory instrument. Another respondent suggested that any changes to legislation which impose a financial burden on taxpayers should be scrutinised and debated by the National Assembly.

A couple of respondents also recommended establishing a stakeholder group in Wales similar to the Stamp Duty Working Together Stakeholder Group, which was formed to bring together industry, professional bodies, UK Government and public bodies such as the Land Registry to discuss develop and promote co-operative strategies for dealing with tax affairs.

A few respondents also focused on SDLT returns, which were described as time-consuming. The consensus was that much of the information provided for the SDLT return is not required for payment and administration of the tax. It was hoped that returns would be simpler and limited to the information required for LTT payment and administration.

Individual comments were also made which included:

- The Bill should include provisions for accepting digital tax submission receipts when returns are submitted electronically.
- The Bill does not include provisions for transitional arrangements. Guidance will therefore be required.
- Consideration should be given to a clearance service to ensure certainty for the taxpayer.
- The inclusion of non-devolved taxes in the definition of the TAAR presents significant practical difficulties.

7. Finance Committee Stage 1 Report

The Committee [published its report](#) on 22 December 2016 and the Minister [issued a written response](#) on 10 January 2017. In the report the Committee made 18 recommendations, including:

- Providing updates on the establishment of the WRA.
- Establishing Memoranda of Understanding with HMRC and the Land Registry for data sharing purposes.
- Establishing a working group of practitioners for technical and operational issues relating to devolved taxes.
- Engaging with the relevant professionals from the outset on LTT guidance.
- The Land Registry providing a map of the Wales-England border.
- Publishing a communications plan to ensure the public is aware of LTT coming into force.
- Providing a statement of policy intent for each relief in the Explanatory Memorandum.

8. Passage through the Assembly

The Bill's passage through the Assembly's legislative process is summarised below.

Bill Introduction

The Welsh Government published a draft version of the Bill on 5 July 2016. The Bill was [officially introduced on 12 September 2016](#) by Mark Drakeford AM, Cabinet Secretary for Finance and Local Government. The [Land Transaction Tax and Anti-avoidance of Devolved Taxes \(Wales\) Act 2017 page](#) on the Assembly website outlines the Act's passage through the legislative process.

Stage 1

The Bill was scrutinised by the Finance Committee, which considered the general principles and need for legislation. The Committee launched **its own public consultation** and a stakeholder event was also held on 29 September 2016.

10 evidence sessions were conducted with Scottish Government, Land Registry, Law Society, associations, institutes and law firms and two sessions with the Cabinet Secretary for Finance and Local Government. The Committee **published its report** in December 2016.

The Research Service produced a **Bill Summary** in January 2017 outlining the background to the Bill; its policy objectives; summary of legislation; costs and impacts of the Bill; and responses to the Bill.

Stage 2

Stage 2 commenced on 11 January 2017 and the Committee met to **consider and dispose of amendments** on 16 February 2017. The Research Service published the **Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill: Summary of changes at Stage 2** detailing proposed amendments to the Bill.

103 amendments were tabled with **three** being withdrawn prior to Stage 2 proceedings. **Seven** were withdrawn during the meeting. There was an objection to the withdrawal of a further amendment which was subsequently voted on. **45 amendments** were not moved. All **43 amendments** tabled by the Cabinet Secretary were agreed.

Stage 3

42 amendments were considered in **plenary on 28 March 2017**. All **28 amendments** tabled by the Minister were agreed. **2 amendments** proposed by a Member (Steffan Lewis) were also agreed. **4 amendments** tabled by opposition parties were not agreed. **3 amendments** were withdrawn and **5 amendments** were not moved.

Stage 4

The final Bill was approved by the Assembly following a debate in **plenary on 4 April 2017**.

Royal Assent

After a Bill has passed Stage 4, it undergoes a four week period during which the Attorney General or Counsel General can refer the question of whether the Bill, or any provision of the Bill, would be within the Assembly's legislative competence to the Supreme Court for decision or the Secretary of State for Wales can make an order prohibiting the Clerk of the Assembly from submitting the Bill for Royal Assent by Her Majesty.

The Bill was not referred and subsequently received **Royal Assent on 24 May 2017**. It was enacted into legislation as the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017.

9. Impacts of Legislation

Overall, the establishment of LTT as a replacement for SDLT is not expected to have a significant impact on most businesses or people. While there are some minor variations in the structure of the tax itself, the requirement to pay this tax exists now and will still exist when the tax is devolved to Wales.

The majority of businesses that will be directly involved with the tax are professional firms such as solicitors and conveyancers acting on behalf of their clients. It is recognised that there will be transitional costs as practitioners who currently support and advise on SDLT transactions in Wales will need to become familiar with LTT and how it differs from SDLT.

There will also be an impact on practitioners to operate a slightly different tax collection and management system in Wales. This is particularly relevant for practitioners that operate across the England and Wales border, in that they will be required to use both systems.

10.Implementation Review

It is anticipated that this legislation will be reviewed on a regular basis following LTT going live, and allowing the WRA sufficient opportunity to establish itself as a tax authority. A review of LTT could also complement an existing commitment to review the WRA's delegation decisions 3-5 years after April 2018.