



Simon Thomas AM
Chair
Finance Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

28 September 2016

Annwyl Simon

At the Finance Committee's Stage 1 scrutiny of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill (the LTTA Bill); I committed to provide further information in relation to:

- 1) Our approach to penalties, and summary of the approach taken in relation to the devolved tax penalty regime; and
- 2) Clarification of the arrangements in place for cross border transactions and information on international comparisons.

Penalties

The use of penalties as a deterrent to protect tax revenue is well established in the UK and elsewhere, and a suite of penalties to respond to non-compliance within the devolved tax system is provided by Part 5 of the Tax Collection and Management (Wales) Act 2016 (TCMA).

This Part of TCMA imposes penalties in circumstances where:

- i. a taxpayer fails to submit a tax return;
- ii. a taxpayer fails to pay devolved tax on time;
- iii. a taxpayer submits a document (including a return) to the Welsh Revenue Authority (WRA) containing inaccuracies;
- iv. a taxpayer fails to retain certain documents relating to claims and returns; and
- v. a person fails to comply with certain investigations undertaken by WRA (for example, information notices).

The levels and types of penalty imposed by WRA, and any linked interest charge, are broadly consistent with those currently imposed by HMRC and Revenue Scotland. This approach is guided by our tax principles of fairness and providing stability and certainty to taxpayers. The amounts of penalties liable are set out fully in TCMA.

What safeguards are in place?

It is important to note that the TCMA already provides significant and comprehensive safeguards which ensure that the use of penalties strikes the appropriate balance between protecting tax revenue and safeguarding the rights of individual taxpayers.

These safeguards include conferring discretionary powers on WRA to reduce or remit a penalty in certain circumstances, such as where the person has a “reasonable excuse” for failing to comply with a particular obligation, or where there are “special circumstances” which gave rise to the penalty. Alongside these discretionary powers, a person liable to a penalty will have the right to request WRA to undertake a review of its decision, or ultimately, submit an appeal to the First-tier Tribunal against WRA’s decision.

Introducing new and amending existing penalties

Section 156 of TCMA provides the Welsh Ministers with a power to make provision, through regulations subject to the affirmative procedure, about the amounts of penalties and the process relating to administering them. Regulations may be made, for example, to encourage compliance in Wales where in the light of operational experience there is a need to increase the deterrent, or alternatively to ensure comparability with the rest of the UK.

The scope of the power provided by section 156 of TCMA does not allow the Welsh Ministers to create new penalties through regulations. This is in contrast to the Scottish devolved tax regime, where regulations may, among other things, create new penalties.

Wider developments in tax legislation across the UK may mean that we may need to be able to react promptly and proportionately to future changes to ensure that devolved tax revenue is adequately protected. TCMA could have included regulations to create penalties through regulations, rather than primary legislation, but it did not and the Fourth Assembly passed that legislation in that form. Currently I still favour using primary legislation because of the potential impact on taxpayers, and there is no current strong evidence for this position to change. However, I would welcome the Committee’s views on this particular issue.

Cross border arrangements

Section 9 of the LTTA Bill is included in our legislation as a result of the Wales Act 2014. It sets out that any land transaction that consists of land in Wales and land in England is to be treated as two transactions, one related to the Welsh land and one related to the English land. The consideration given is to split between the two based on a ‘just and reasonable apportionment’. This rule clearly applies to land that sits on the border.

However, it will equally be true where a taxpayer purchases a number of properties as part of a single deal (for example purchasing 30 shops, 5 of which are in Wales and 25 are in England (with none on the border) purchased for a single agreed price of £15 million)). The taxpayer will need to split the consideration given between the transaction to which LTT will apply and that to which SDLT will apply as both tax regimes require taxpayers to self-assess their liabilities.

Whilst the SDLT (and for that matter the Scottish Land and Buildings Transaction Tax) legislation does not contain these rules in relation to land transactions that cross the border between Scotland and England, or between Northern Ireland and the Republic of Ireland, the same just and reasonable apportionment approach will have to be applied. For example, if a farm that crosses the border between Northern Ireland and the Republic is sold and the consideration agreed is a single figure then that amount will need to be split so that the two amounts can be taxed to SDLT on the land in Northern Ireland and stamp duty on the land that is in the Republic of Ireland.

Table of comparable provisions

In addition, I wanted to take this opportunity to inform you that my officials have shared a table of comparable provisions in SDLT and LBTT legislation to assist the clerking team. The purpose of this table is to provide a signpost to existing UK and Scottish legislation where comparable provision is made to provisions in the LTTA Bill. I hope that this proves a helpful guide to support the valuable work of the Assembly Commission.

Yn gywir

A handwritten signature in black ink that reads "Mark".

Mark Drakeford AM/AC

Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Cabinet Secretary for Finance and Local Government