



Bethan Davies  
Clerk to the National Assembly's  
Finance Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
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Your Ref:  
Our Ref:  
E-mail: [REDACTED]  
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Date: 19<sup>th</sup> October 2016

Dear Bethan

**Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill  
Consultation**

NFU Cymru is pleased that the National Assembly's Finance Committee is to undertake an inquiry into the general principles of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill, and the Union welcomes the opportunity to comment on the Bill's provisions.

The last few years have been challenging for Welsh agriculture, and the Welsh Government's own Farm Income forecast published earlier this year points to a decline across all the key farming sectors in Wales. The forecast figures based on the latest Farm Business Survey results show that average net farm business income across 'All Farm Types' is set to decrease by around £4500 (or 25%) to £13,000 for 2015-16. For dairy farms income is forecast to drop by 47%, whilst for LFA cattle and sheep farms a drop in income of 4% is predicted, whilst for lowland sheep and cattle farms the forecast decline is 11%.

The problems around the profitability of agriculture are particularly acute when it comes to the tenant farmer, who of course as well as being needing to derive an income on which to live from their farming activities, also needs to generate income in order to be able to cover rent. It is with the tenanted sector in particular in mind that NFU Cymru makes this submission to the Finance Committee.

Whilst we do not intend to rehearse in detail our commentary from 2015 when the Welsh Government previously consulted on the Land Transaction tax (a copy of our original response is attached for reference) we would like to reiterate one of the key points from our 2015 consultation response, whereby we called upon the Welsh Government to give further consideration to a relief or exemption from LTT for agricultural tenancies.

Whilst the Welsh Government is understandably modelling LTT on SDLT, the SDLT treatment of agricultural tenancies is overly and unnecessarily complex, with many instances where there is uncertainty over the rental value, the point when a charge to tax will first arise, and the final length and value for LTT proposes of an agricultural tenancy. In our view, under SDLT this has placed an undue cost and administrative

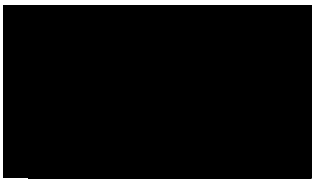
burden on tenant farmers despite the very low value of SDLT that is likely to have arisen from SDLT.

Many agricultural tenancies granted in Wales are unlikely to give rise to a LTT liability and many others will produce only a very small liability. Indeed we would suggest total LTT revenue raised from agricultural leases in Wales is likely to be very small. However without a change in approach the disproportionate cost and burden for farmers will continue. In addition LTT could deter tenant farmers or prospective tenant farmers from taking on longer term leases.

We would therefore like to see the Welsh Government take a lead in supporting tenant and prospective tenant farmers in Wales. This is of course a very difficult and uncertain time for Welsh farming and we therefore propose an exemption from Land Transaction Tax on all grants, assignments or surrenders of agricultural tenancies in Wales.

I trust you will find my comments useful as part of your consultation

Yours sincerely



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Your Ref:

Our Ref:

E-mail:

Phone:

Date: 5<sup>th</sup> May 2015

Dear [REDACTED]

### Consultation – Tax Devolution in Wales – Land Transaction Tax

On behalf of its members, NFU Cymru welcomes the opportunity to be able to respond to the Welsh Government's Consultation on a Land Transaction Tax for Wales. The consultation poses quite a number of questions, not all of which are directly relevant or applicable to our membership. We have therefore confined our answers to those questions which are of greatest relevance and interest to our members.

#### **Consultation Questions**

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

The high rate for a purchase of residential property by a non-natural person, such as a limited company or a mixed partnership, pre-supposes that the motive for doing so in the avoidance of SDLT. NFU Cymru would make the comment that a limited company or mixed partnership might wish to buy a property worth more than £500,000 as an investment. In addition we are concerned about the risk that as more residential property in escapes a charge, more of the burden in terms of making up the shortfall, will fall to business.

*Question 4: Do you think the Welsh Government should have the ability to change or introduce new rates and bands in LTT with immediate effect? Furthermore, do you think there are other areas of LTT where it would be appropriate for the Welsh Government to make changes with immediate effect? Please specify.*

NFU Cymru believes it appropriate and important that the Welsh Government has the ability to change rates quickly, particularly in response to developments elsewhere. It may be that Welsh Government considers alternative bands to be more appropriate given any significant differences in values in Wales. We would add that as suggested at paragraph 1.2 of the consultation, the starting rate for non-residential transactions has remained static, meaning that more of the burden of the tax already falls on businesses, particularly smaller businesses and any further shifting of the tax burden in this direction would be counter-productive.

*Question 6: How important is it to have consistency between the tax regimes in Wales and England for non-residential property transactions? Please provide practical examples to support your answers. If consistency is important, what key elements need to be consistent e.g. tax structure (marginal or slab, rates and bands, how transactions are taxed)?*

NFU Cymru takes the view that it is important to have consistency between tax regimes in England and Wales for non-residential property transactions. Such consistency would ensure that businesses and their professional advisers operating in both England and Wales would not have to consider these additional complexities when making investment decisions. Consistency in terms of the rates, for example in terms of moving away from the slab rate system for non-residential property might not be as crucial, and could incentivise business investment in Wales.

*Question 9: Do you think the SDLT provisions for partnerships, trusts and companies should be replicated within LTT? If appropriate, please state specific areas in which it should be altered and what the potential implications of this might be for Wales and LTT.*

NFU Cymru is of the view that these provisions should be replicated. Whilst these provisions may be complex in order to prevent avoidance, they are currently largely understood by professional advisers, and any changes, however subtle could have significant implications. We would for example take the view that reliefs available for introducing land owned by individual partners into a partnership are important to many farming businesses where land tenure has become spread across a family over many years.

*Question 11: Do you think that a system of taxing leases in Wales would be improved by requiring a regular return? If so, how frequent do you think these should be?*

NFU Cymru is of the view that rather than increasing the frequency of returns, it would be desirable to reconsider how the charge is calculated for low value transactions, for example on agricultural tenancies. Whilst more complex leases which include both a premium and rent element can present a significant exchequer risk and the frequency of returns should be considered, those solely involving a rental element should be determined at the start of the lease only as they are likely to produce a relatively small amount of tax revenue compared to the administrative cost and burden of reporting. We would be happy to discuss our views on amending the taxation of agricultural tenancies in more detail.

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

NFU Cymru does not believe that licences and tenancies should be taxed in this way as they will typically be of short duration and low value, and are likely to produce little if any tax revenue. The burden of such reporting is significant and difficult and a re-examination of these arrangements is needed.

*Question 13: Do you think any other element of the current SDLT regime on leases for either residential or non-residential arrangements should be changed? If so, why?*

No

*Question 14: Do you think that any of the current reliefs or exemptions in SDLT should be retained, removed or modified? Please state which you think should be retained, altered or removed and why.*

NFU Cymru considers it important that the existing reliefs and exemptions in SDLT are made available under the Welsh Land Transaction tax. We are also of the view that the way in which agricultural tenancies are taxed warrants further consideration given the cost and burden of reporting compared to the small amount of tax revenues that are likely to be raised.

*Question 17: How do you think the rate of online filing could be increased compared to SDLT? Do you think online submission of returns should be mandatory?*

We have no objection to considering ways in which online filing could be increased but it is essential that it is not made mandatory. There are many rural areas of Wales lacking access to reliable and sufficiently fast broadband, and we are firmly of the view that there should be no compulsion to online filing. Even with improved broadband provision, there will still be some taxpayers who will be unable to file in this way, and in our view there should always be an alternative means of filing where it is needed.

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

For the reasons given above it is essential that online filing is not made mandatory, and a paper option should continue to be available. Whilst the majority of returns may be filed by professional advisers there may still be instances for example with licences or tenancies at will where the cost of doing so is prohibitive but the taxpayer lives in a remote rural area without adequate internet access or are elderly or disabled and unable to use computers.

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

NFU Cymru is of the view that further discussion is needed with the professionals that submit the returns in order to more fully understand the circumstances where they would not hold client monies when filing a return. We envisage that requiring payment of the tax at the same time as submitting the return would have practical problems in a number of instances where the professional does not hold funds, for example where a lease is taken without any premium being paid

*Question 21: Do you think that LTT should have a pre-clearance facility? If so, what do you think the benefits and key features of a pre-clearance system in Wales would and should be?*

Whilst this would be a welcome facility for some taxpayers, the costs of providing such a service and the circumstances under which pre-clearance requests would be considered would need to be very carefully considered.

*Question 22: Do you think that penalties should be levied on the late filing of returns similar to those imposed by HMRC? Do you think that penalties similar to those imposed by HMRC should be used in LTT for errors in returns? Please explain your answers.*

Penalties are used by HMRC as a means of ensuring compliance. Providing penalties are set at an appropriate level and take into account the complexity of the tax and taxpayers actions we believe they should be retained.

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

Yes

*Question 24: With regards to appeals, are there any improvements or simplifications that could be made to the existing approach to postponement of payment pending an appeal?*

We have no comment to make in respect of question 24

*Question 25: Should the Welsh Government replicate the existing Section 75A FA 2003 legislation, or if it is to be replicated are there improvements that could be made? Are there any further anti-avoidance provisions that you would support? Please describe and explain.*

We believe that the Welsh Government must protect tax revenue, however we agree that applying the UK GAAR would result in a more effectively targeted anti-avoidance provision than replicating Section 75A FA 2003 without a motive test.

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

We have no comment to make in respect of question 26

*Question 27: Do you think the move to LTT could or should have implications for other areas of taxation in Wales? Please provide an explanation specifying the areas of taxation and what the implications could or should be.*

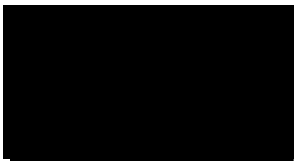
Given that the policy rationale for the introduction of the ATED was to prevent SDLT avoidance on residential property we would suggest that any revenues raised by the ATED in relation to property located in Wales should pass to the Welsh Government

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

We have no further comments to make

I trust you will find NFU Cymru's response useful, if there is anything that you would like to discuss further then please do not hesitate before getting touch with me

Yours sincerely

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