

Mark Drakeford AM/AC  
Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol  
Cabinet Secretary for Finance and Local Government



Llywodraeth Cymru  
Welsh Government

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

10 January 2017

Dear Simon,

## **LAND TRANSACTION TAX AND ANTI-AVOIDANCE OF DEVOLVED TAXES (WALES) BILL**

I would like to thank you and the Finance Committee for your report on the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill. I am considering the various recommendations of the Committee and will refer to these during today's Plenary debate on the general principles of the Bill, with a fuller response to the Committee's recommendations to follow in due course. However, in advance of the debate I wanted to provide an indication of my response in particular to four of your recommendations; two of which I will accept, but where I thought it would be helpful to provide some further information and points of clarification.

**Recommendation 8:** The Committee recommends that further information is produced by 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.

I welcome this recommendation and I am committed to ensuring that a collaborative approach is taken by the WRA with HMRC, Land Registry and the Valuation Office Agency in relation to cross-border property transactions. This work is already underway and I intend

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

[Gohebiaeth.Mark.Drakeford@llyw.cymru](mailto:Gohebiaeth.Mark.Drakeford@llyw.cymru)  
[Correspondence.Mark.Drakeford@gov.wales](mailto:Correspondence.Mark.Drakeford@gov.wales)

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

to share with the Committee before Stage 2 proceedings a joint letter from WRA and HMRC providing more information on this integrated approach.

Clear guidance will be developed by the WRA implementation programme with stakeholders over the next year. This will include guidance on how the consideration given for land on each side of the border should be apportioned for cross-title property transactions for tax purposes. This process has already begun: a workshop was held on 7 December at the Welsh Government Tax Forum, where stakeholders were engaged on matters associated with cross border properties. HMRC, Valuation Office Agency and Land Registry attended to hear views, and to ensure that there is a coordinated approach from the outset.

It should also be noted that 'just and reasonable' is a well-established concept in tax law. Existing guidance, such as guidance produced by the VOA<sup>1</sup>, as well as case-law will apply to its use in devolved tax legislation.

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

I intend to bring forward an amendment to Part 5 of the Bill which will provide a rule that sets out how CoACS are to be treated for tax purposes. This will be similar to the rule applying to SDLT, which was introduced earlier this year by the Finance Act 2016. This rule will not relieve CoACS from tax, but will remove barriers for the use of such Schemes in Wales by ensuring LTT is not charged on the transfer of an interest within a Scheme, but only on the acquisition of property by the scheme itself. In this way, I am making provision so that we may introduce a seeding relief for CoACS and PAIFs in the future. I recognise that this is potentially an important step, as it may attract more investment into the Welsh property market.

It should be noted that it is not necessary to introduce a similar rule for PAIFs. This is because PAIFs tend to be operated through structures (such as companies or unit trusts) for which Part 5 of the Bill already provides specific rules.

I am mindful of the calls from some stakeholders to include an associated seeding relief for CoACS in the Bill, and the fact that an equivalent relief from Stamp Duty Land Tax was introduced earlier this year. However, I do not consider there is a strong enough case to include the relief in the Bill at this point. This is a new relief and I have asked my officials to start analysing the effect of the relief in Wales (for example, if there is any abuse of the SDLT relief), and indeed to consider whether it is appropriate to continue it in Wales (taking into account, for example whether any property transactions eligible for relief have occurred, or are planned to occur), before introducing a relief. If, following the emergence of evidence, I decide that would be appropriate to introduce a relief in Wales, then I will introduce the necessary provisions through regulations made under section 30(6) of the Bill.

**Recommendation 19:** The Committee recommends that the Cabinet Secretary provides updated estimated costs before any Stage 2 proceedings with particular reference to IT and establishment costs.

<sup>1</sup> [http://app.voa.gov.uk/corporate/publications/Manuals/CapitalGainsTaxManual/sect8/b-cgt-man-s8.html#P75\\_1171](http://app.voa.gov.uk/corporate/publications/Manuals/CapitalGainsTaxManual/sect8/b-cgt-man-s8.html#P75_1171) (see paragraph 8.61)

I accept this recommendation in principle, and I am committed to providing the Finance Committee with an update on the costs to establish the WRA during the passage of this Bill. The main costs associated with the WRA establishment are the people it will need to operate from April 2018, and the provision of digital ICT services for it to collect and manage its taxes.

The latest annual report by the Welsh Ministers on the Wales Act 2014 was laid before the Assembly on 14 December 2016 and confirms our current estimate of costs, which have not changed since they were published last year. I will be in a position to provide a further update of costs shortly when we know more about the organisational design of the WRA and a confirmed cost for digital services.

I intend to write to the Committee, before Stage 2 proceedings, where I will set out what is happening and by when – this will provide an update on the work to develop cost estimates and when a revised estimate should be available. I would also like to offer a briefing to Committee Members on the progress of establishing the WRA.

Finally, **Recommendation 10** sets out that there should be a full and extensive consultation on rates and bands in advance of the Welsh Government's determination. I consider that the decision to set tax rates and bands is a key function of government. This view has been supported by those who responded to the Land Transaction Tax consultation who largely commented (where a comment was made) that setting rates and bands is a policy matter for the Welsh Government.

Importantly, there is no precedent set by UK or Scottish Governments to consult before setting their rates. Instead, it is recognised that it is for Government to make these decisions. I will, however, of course continue to engage with, and listen to, stakeholders and organisations about this important issue. I have already published on 15 September a research paper providing the wider context on rates and bands and the economic context in which they are set. The paper highlighted to stakeholders the many issues which will be considered thoroughly before setting LTT rates and bands.

Furthermore, as this Committee is aware, the first set of regulations specifying the rates and bands must be laid and approved by resolution of the Assembly before they can come into force — using the affirmative resolution procedure. Subsequent regulations to vary existing rates and bands would be subject to the provisional affirmative procedure – of which the key aim will be to prevent forestalling. This also enables any variation to the rates and bands to have effect from the date the regulations are made (signed) and laid.

I am confident that this will ensure ample opportunity is taken to scrutinise the rates and bands framework at the appropriate time and ensure it is appropriate for Wales.

I also think it is important to emphasise that the Welsh Ministers are also under a duty to carry out a Regulatory Impact Assessment (RIA) in relation to most regulations in accordance with the RIA Code published under section 76 GOWA 2006. I intend to undertake such an assessment when making the regulations setting the rates and bands. All this means that I am not convinced of the case for a formal, full and extensive consultation on rates and bands and on that basis will be unable to support this recommendation.

I hope the information provided in this letter provides the clarity sought by Committee members.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee.

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

**Mark Drakeford AM/AC**

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Cabinet Secretary for Finance and Local Government