



Low Incomes
Tax Reform
Group.
A voice for the unrepresented

Chartered
Institute of
Taxation.

30 Monck Street
London SW1P 2AP
T: +44 (0)20 7340 0550
E: technical@ciot.org.uk

Consultation on legislative proposals relating to the Welsh Tax Acts

Response by the Chartered Institute of Taxation, its Low Incomes Tax Reform Group and the Stamp Taxes Practitioners Group (STPG)

1. Executive Summary

- 1.1. This consultation covers both proposed technical changes to the devolved taxes (Land Transaction Tax (LTT)) and Landfill Disposals Tax (LDT)) and changes to the Welsh Revenue Authority's (WRA) governance and powers.
- 1.2. We welcome the proposed approach to grouping these measures in a tax bill because effecting change through primary legislation allows for wider consultation and scrutiny than via secondary regulation.
- 1.3. We agree with the proposal to provide a statutory power to withhold a repayment of land transaction tax, once an enquiry has been opened, to protect revenue provided there is the safeguard of an appealable decision by the taxpayer.
- 1.4. In principle we support a power to update fixed penalties for inflation. We are less convinced of a wider regulatory power to vary fixed penalties beyond inflationary increases. We recognise that the ability to vary fixed penalties via a regulatory power may be helpful to the WRA and taxpayers, for example when there is a wish to implement a 'soft landing' for a new tax/regime. Our primary concern is the need to ensure adequate scrutiny.
- 1.5. We observe that the rationale for uprating fixed penalty amounts for inflation applies equally in principle to other thresholds and reliefs/allowances for the devolved taxes. However, we recognise that the level of allowances and reliefs may be subject to wider policy considerations than the narrower question of uprating fixed penalties.
- 1.6. Where A owns a property and sells a share of that property to B, such that the property is subsequently owned by A+B, we agree that it would be very helpful to provide certainty that A is not considered a buyer for LTT. It is relatively common for property to be put into joint names particularly when re-mortgaging. A clarificatory amendment would remove any uncertainty that B might be regarded as subject to the LTT residential higher rates based on A's position (because A is a buyer) even where B does not own any other residential property.

1.7. The general rule for LTT (and for SDLT) is that nominees and the trustees of bare trusts are 'looked through' for the purpose of establishing the transacting parties. However, in the case of the grant of a lease, nominees and bare trustees are treated as the lessor or lessee for LTT purposes, while the beneficial lessee and lessor are ignored. This counter-intuitive rule is to prevent avoidance but distorts commercial transactions where there is no avoidance of LTT. We therefore support evaluating amendments to remove these distortions.

2. Introduction

2.1. The Welsh government and the Welsh Revenue Authority (WRA) have published a consultation¹ on proposed changes to the devolved taxes to be included in a 'tax maintenance bill' if the next Welsh government² decides to take forward the proposals. The consultation covers both technical changes to the devolved taxes (Land Transaction Tax (LTT) and Landfill Disposals Tax (LDT)) and changes to the WRA's governance and powers. The consultation indicates that the proposed legislative changes '*seek to remedy areas where, in practice, the WRA has found difficulty in operating the legislation effectively, in response to feedback from taxpayers or to bring Wales in line with changes that have happened elsewhere within the UK*'.

2.2. The CIOT and the STPG met the WRA and the Welsh Treasury to discuss the consultation proposals on 7 January 2026.

2.3. We note that the technical measures proposed in the consultation are a mixture of measures requiring primary legislation and those that could be introduced through existing regulatory powers. We welcome the approach to grouping these measures in a tax bill because effecting change through primary legislation allows for wider consultation and scrutiny than via secondary regulation. As we said in our response³ to the consultation on Appropriate Mechanisms for Making Changes to the Welsh Tax Acts a tax bill could be used as an appropriate change process, ideally on a regular basis, although we accept it is unlikely to be needed on an annual basis at present.

2.4. Our stated objective for the tax systems include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

2.5. Our response does not answer questions 17 and 18 about the potential impact of changes on the Welsh language as the impact on the Welsh language is outside our area of expertise.

3. Question 1 a) Do you agree or disagree with the proposed amendment to TCMA to clarify the constitution of committees and sub committees of the WRA board? • Agree • Disagree b) Do you agree that non-members of the WRA (ie WRA staff who are not Board members) can vote in committees and sub-committees of which they are members (according to the Terms of Reference) other than Audit, Risk and

¹ <https://www.gov.wales/legislative-proposals-relating-welsh-tax-acts>

² After the upcoming Senedd Cymru election in May 2026

³ <https://www.tax.org.uk/ref1570>

Assurance Committee (ARAC) and Remuneration Committee (RC). • Agree • Disagree c) What are the reasons for your answers?

The proposal is to amend the TCMA to provide that the Board will determine which committees or sub-committees require non-executive membership. Currently TCM(W)A 2016 section 13(2) states that at least one member of a committee or sub-committee must be a non-executive member of the WRA to carry out its functions. We note the rationale for the change is to put it 'beyond doubt' that WRA staff members can make decisions on operational matters in a committee without non-executive membership as a matter of good governance. We note however that this proposal appears to be a change in legislation rather than a clarificatory amendment to an existing uncertain provision that is open to interpretation⁴. It would seem therefore appropriate to document the criteria the Board will use to determine which committees or sub-committees require non-executive membership, to the extent it is not already done.

- 4. Question 2 a) Do you agree or disagree with an amendment to TCMA to allow the WRA to share protected taxpayer information with principal councils and Welsh Government for the purposes of their functions? • Agree • Disagree b) What safeguards do you think are necessary to protect taxpayer information? c) What are the reasons for your answers?**

Question 3 a) Do you agree or disagree with amending TCMA to allow the WRA to share protected taxpayer information with principal councils for the purposes of WRAs visitor levy functions? • Agree • Disagree b) Do you believe any additional taxpayer safeguards need to be put in place? c) What are the reasons for your answers?

Data protection is not our area of expertise however our primary concern from a taxpayer perspective is that taxpayers are made fully aware of the ways in which their data may be used (and the protections on use) at the point they make a transfer of data to the WRA. We note also the challenges for data protection where there are relatively few larger transactions such that those transactions are potentially identifiable.

- 5. Question 4 a) Do you agree or disagree with amending TCMA to give WRA the power to withhold repayments while undertaking an enquiry? • Agree • Disagree**

We agree that amending TCMA to provide a power to withhold, once an enquiry has been opened, is appropriate for revenue protection provided there is the safeguard of an appealable decision by the taxpayer. We also suggest that it will be important to make clear to taxpayers the circumstances in which withholding will be made and their right to appeal at the point at which the repayment is made.

We note the existing power for devolved taxes in TCM(W)A 2016 section 45 (the equivalent to FA 2003 Schedule 10 para 17 for SDLT) to make a 'jeopardy' assessment is limited. Therefore, a wider power seems reasonable.

We note there is statutory precedent of withholding in the case of income tax and capital gains tax in TMA 1970 section 59B(4A) and a similar flexible power in FA 2003 Sch 11A para 6 in relation to SDLT claims not included in a return.

We observe that there appears to be no such equivalent to the wider power to withhold in TMA 1970 section 59B(4A) for SDLT where HMRC appears to rely on its collection and management powers⁵ to withhold

⁴ See the [explanatory notes to section 13](#) Section 13(2) requires that at least one non-executive member is a member of any committee or sub-committee that is authorised to carry out WRA functions.

⁵ Comrs for Revenue & Customs Act 2005 section 5.

irrespective of whether an enquiry has been opened⁶. A statutory provision for LTT to withhold with the safeguard of an appeal under TCM(W)A 2016 section 172 for the taxpayer is preferable both for certainty and to ensure a fair balance of powers and safeguards between the WRA and taxpayers.

b) Do you agree that a decision to withhold repayment should be an appealable decision? • Agree • Disagree

We agree the decision to withhold should be an appealable decision and therefore an addition to defined appealable decisions under TCM(W)A 2016 section 172 appears to be required.

c) Would any additional taxpayer safeguards be beneficial to accompany this power?

d) Do you think there should be a time limit on how long the WRA has to decide whether to repay or open an enquiry, following a taxpayer amendment being received?

Yes, a time limit of 9 months would align with the current time limit in TCM(W)A 2016 section 42 for the correction of a tax return.

6. Question 5 a) Do you agree or disagree with clarifying TCMA to ensure that WRA need not open an enquiry to reject a claim where s67 applies? • Agree • Disagree

b) What are the reasons for your answer?

We agree with this clarification provided that a refusal to accept a taxpayer's overpayment relief claim is an appealable decision.

7. Question 6 a) Do you agree or disagree with amending TCMA to provide a power for WRA to be able to issue an information notice to gather information to check whether the conditions for the withdrawal of a relief have been met? • Agree • Disagree

b) What are the reasons for your answer?

⁶ See SDLT guidance <https://www.gov.uk/guidance/stamp-duty-land-tax-online-and-paper-returns#refund> (our underlining)

How to apply for a refund

If you think you've overpaid SDLT, you can apply for a refund online. If you cannot apply online, you can write to HMRC.

To process refunds quickly, HMRC will ordinarily make the payment without checking eligibility. We reserve the right not to do so for revenue protection reasons.

This means that even after a repayment has been made, we have not agreed that the refund is due. We have up to 9 months to make a compliance check on your amended return or claim.

If you pay an agent to claim for you, you are still responsible for checking that your claim is correct. If you receive a repayment where the amount you claimed was not due, you must pay it back along with any interest due. If penalties apply, you must also pay them

We agree. It is in accordance with the established position for SDLT enabling the WRA to gather the information required (limited in time to a 4-year period from the effective date) with the safeguards of a review/appeal for the taxpayer.

8. Question 7 a) Do you agree or disagree with amending TCMA to allow WRA to carry out unannounced visits for the purposes of Landfill Disposals Tax without the approval of the tribunal or taxpayer? • Agree • Disagree

We agree.

b) Are there additional taxpayer safeguards you think that should be included? c) What are the reasons for your answers?

We think this approach is consistent with England and NI for landfill tax and is reasonable to counter the nature of fraud risk at landfill sites (large sites with limited management line of sight).

9. Question 8 a) Do you agree or disagree with inserting a regulation making power to allow Welsh Ministers to vary the fixed penalty amount? • Agree • Disagree b) What are the reasons for your answer?

As the white paper notes, the sole purpose of the penalty regime is to promote compliance and deter non-compliance. However, the fixed penalty amounts do not account for inflation or economic changes in contrast to tax-g geared penalties. Currently fixed penalties can only be varied via primary legislation.

Our starting point is that tax law should be set out in primary legislation to ensure proper scrutiny of legislation that results in the imposition of some kind of burden (compliance or financial) on taxpayers. However, in principle we would support a power to regularly update fixed penalties for inflation. We note though that uprating could result in penalty amounts ceasing to be a round sum that would be more difficult for taxpayers to remember. We observe that the need to uprate penalty amounts for inflation applies equally in principle to other thresholds and reliefs/allowances, for example, one of the conditions for the exemptions for an acquisition by a property trader under LTTADT(W)A 2017 Schedule 14 paragraph 9 (Relief for acquisition by a property trader) is that the property trader does not intend to spend more than the permitted amount on refurbishment of the dwelling. The permitted amount is defined in Schedule 14 paragraph 9 as the greater of £10,000 or 5% of the consideration, capped at £20,000⁷. The amounts for LTT have been carried over from equivalent SDLT legislation and have not changed from when the exemptions were first introduced for SDLT in 2004, nearly 22 years ago.

However, we recognise that the level of allowances and reliefs may be subject to wider policy considerations than the narrower question of uprating fixed penalties.

In terms of a wider power to increase fixed penalties beyond inflationary increases, we recognise that the ability to vary fixed penalties via a regulatory power may be helpful to the WRA and taxpayers, for example when there is a wish to implement a 'soft landing' for a new tax/ regime. Our primary concern is the need to ensure adequate scrutiny.

Adequate scrutiny is important to ensure that any decision to increase the quantum of fixed penalties is based on evidence of the deterrent effect of the penalties at their current levels and evaluated accordingly. In

⁷ We suggest that the permitted amount requires evaluation to determine whether it meets the Welsh government's policy intent given the increase in costs of construction materials and labour since 2004 and net zero targets that require upgrading to EPC ratings particularly for older housing.

addition, increasing penalties for failing to make a return where there is no or minimal tax liability can produce what may be perceived as very disproportionate outcomes. Where a penalty is not acting as an effective deterrent, consideration should be given to increasing awareness. Such an approach would reflect the ‘Welsh way of doing tax’ and the Charter. All these factors underline the importance of scrutiny of decisions and call into question whether a regulatory power is appropriate.

10. Question 9 a) Do you agree or disagree with increasing the interest amount on late payment interest to BoE base rate +4%? • Agree • Disagree b) What are the reasons for your answer?

We agree that increasing the interest rate on late payment interest to match the interest charge by HMRC should address the risk that taxpayers with debts owed to both HMRC and the WRA would choose to pay the HMRC debt first. However, we have wider concerns about the equity of late payment interest overall⁸.

11. Question 10 a) Do you agree or disagree with amending TCMA to ensure that where a taxpayer amends their tax liability downwards that any interest amount should reflect the amendment to the tax return? 49 • Agree • Disagree b) What are the reasons for your answers?

We agree. This reflects a fair balance between the WRA’s powers and the rights of taxpayers.

12. Question 11 a) Do you agree or disagree with amending LDFA to clarify that any use of material within a landfill cell is taxable unless explicitly excluded? • Agree • Disagree b) Do you agree or disagree with using the same definition for landfill cell as used in the Scottish Landfill Tax (Prescribed Landfill Site Activities) Amendment Order 2022? • Agree • Disagree c) What are the reasons for your answers?

We think this seems reasonable as it brings landfill disposal tax more in line with England and NI and should not unduly affect most activities. We note that it is only areas around the margins where there may be interpretations taken about activities that are ‘use’ of material but not on the prescribed activities list that will become taxable.

13. Question 12 a) Do you agree or disagree with amending LTTA to achieve the stated aim? • Agree • Disagree b) What are the other circumstances where you think it would be appropriate to not withdraw the relief? c) Do you think this amendment will increase the risk of tax avoidance? d) What are the reasons for your answers?

This question concerns the proposal to amend specific provisions in LTTADT(W)A 2017 Schedule 16 Part 3 (anti-avoidance restrictions on the availability of group relief) to ensure that legitimate intra-group transactions are not denied relief. The provisions under consideration replicate those for SDLT. However, we understand that the WRA and HMRC do not necessarily take the same approach in interpreting these provisions. The WRA has encountered examples of transactions where in their view relief would be denied (or withdrawn) despite there being no avoidance.

We are concerned that attempting to amend LTTADT(W)A 2017 to ensure relief is not restricted in relation to identified specific transactions could lead to more complex legislation that may not protect benign scenarios identified in the future and therefore require further amendment.

⁸ See our Budget representation <https://www.tax.org.uk/ref1577>

We suggest that one of the advantages of a single TAAR⁹ test that applies to all LTT reliefs should be to reduce the need for specific uncertain anti-avoidance conditions for the reliefs themselves. However, we recognise that the WRA has reasonable concerns that removal of the condition in Schedule 16 paragraph 4(3)(a) altogether may risk extending the availability of relief beyond that which is intended, for example where a lease is granted inter-group where there are arrangements to sell the landlord's interest and for future rent to be paid to a third party.

An option to evaluate is whether an extension to the exception for consideration provided by a group company in Schedule 16 paragraph 4 (3)(a) to provision by a connected person (not just a group member) is within the policy intent. This extension would ensure that shareholder debt does not compromise the relief in the benign example provided in the consultation at paragraph 12.7¹⁰. Any such extension would require extending the withdrawal of relief to circumstances where that connection is lost within the three-year period.

14. Question 13 a) Do you agree with amending LTTA to clarify that in an A to A+B transaction A is not to be treated as a buyer? • Agree • Disagree b) Can you identify any avoidance risks in this approach and how they could be countered? c) What are the reasons for your answers?

Where A owns a property and sells a share of that property to B, such that the property is subsequently owned by A+B, we agree that it would be very helpful to provide certainty that A is not considered a buyer for LTT. A to A+B transactions are relatively common often in relation to re-mortgaging. A clarificatory amendment would remove any uncertainty that B might be regarded as subject to the LTT residential higher rates based on A's position (because A is a buyer) even where B does not own any other residential property.

We note that if the LTT legislation is amended to put the matter beyond doubt, it will be essential that there is clear guidance on how to complete the LTT return and that LTT guidance is aligned with Land Registry practice guides.

We think in principle there is no basis for limiting the clarification to residential property and therefore the question should be put beyond doubt for both residential and non-residential property. The TAAR in LTTADT(W)A 2017 section 31 should help to address any concerns in relation to avoidance for example facilitating a claim for relief that would not otherwise be available if both A and B are both buyers. However, consideration could be given to extending the market value rule to such transactions where B is a company.

15. Question 14 a) Do you agree that the changes to ensure collective enfranchisement transactions are not charged at the higher residential rates is appropriate? • Agree • Disagree b) Can you identify any avoidance risks in this approach and how they could be countered? c) What are the reasons for your answer?

We agree.

⁹ The single targeted anti-avoidance rule in LTTADT(W)A 2017 section 31 was intended 'to apply to cases where relief is claimed in circumstances where it is not the intention of the National Assembly for Wales that relief should be given'. See Explanatory Notes for the LTTADT(W)A 2017 at para 46.

¹⁰ Paragraph 12.7 For example, Arthur is the sole director and shareholder of two companies Alpha and Omega. Alpha is the parent company of Omega. They are group companies. Omega owns a residential property which has been valued (book value) at £550,000. Arthur has a director's loan to Omega of £550,000. Arthur's loan was used to acquire the residential property and renovate it. The residential property will be transferred from Omega to Alpha at the book value of £550,000. Upon completion this would result in an intercompany balance due from Alpha to Omega of £550,000. Arthur would then agree to assign his Director's Loan account balance in Omega in full at completion date against the intercompany balance due from Alpha in agreement for a credit to his Director's Loan account in Alpha, which would offset the intercompany balance due to Beta.

16. Question 15 a) Do you agree with amending LTTA to achieve this? • Agree • Disagree

The general rule for LTT (and SDLT) is that nominees and the trustees of bare trusts are 'looked through' for the purpose of establishing the transacting parties. However, in the case of the grant of a lease, LTTADT(W)A 2017 Schedule 8 paragraph 3(3) and (4) provides that:

- where a lease is granted to a bare trustee, the bare trustee is taken for the purposes of the grant to be the legal and beneficial lessee; and
- where a lease is granted by a bare trustee, the bare trustee is taken to be the lessor for LTT purposes, disposing of the legal and beneficial interest in the lease.

The rule is counter-intuitive in that nominees and bare trustees are treated as the lessor or lessee, while the beneficial lessee and lessor are ignored and therefore represents a bear trap albeit one now fairly well recognised. Workarounds and/or the need to make a clearance application to establish the WRA's view of the scope of the deeming provision, therefore add unnecessary costs, complexities¹¹ and delays to wholly commercial transactions.

The application of the deeming rule has the potential to produce undesired results where the identity of the seller or buyer determines availability of a relief or the application of computational charging rules for partnerships. We therefore agree with amending the LTTA to remove these distortions.

b) How do you propose we best achieve this? c) Do you foresee any tax avoidance activity that such a change could give rise to? d) If so, how should we legislate to prevent the avoidance activity? e) What are the reasons for your answers?

One option to evaluate is to consider removing the deeming provision in LTTADT(W)A 2017 Schedule 8 paragraph 3(3) and (4) and instead address the presumed target of the original avoidance by extending LTTADT(W)A 2017 Schedule 6 paragraph 22 (cases where an assignment of lease treated as grant of lease) to catch situations where a lease is granted from or to a nominee followed by an assignment. A reporting requirement on the actual grant of the lease could be added to make it easier for the WRA to track use of this arrangement. This option would remove the wider collateral damage to the LTT code.

A more restricted option is to apply a limited exception to the current rule in two circumstances; on the grant of a lease to a partnership and on a sale and leaseback such that in those cases (only) the beneficial owner is treated as lessor or lessee. In addition, it would be helpful to provide certainty on the application of the deeming rule beyond the transaction itself (that is, the grant, surrender or termination of a lease). Limiting its application to the transactions themselves should ensure the mischief at which the provision is aimed is countered while other LTT provisions operate, as intended, by reference to beneficial ownership. This would mean, for example, that group relief would need to be claimed on the grant of a lease if the nominee is a connected person but otherwise the higher rates and reliefs should work as intended by reference to the beneficial owner.

17. Question 16 a) Do you agree to the proposed amendments for this section and particularly amending section 187A(1) to ensure the rights to request a review or appeal are provided to the Crown? • Agree • Disagree

¹¹ The LTT provision mirrors the SDLT provision in FA 2003 Schedule 16 para (3) and (4). The complexities of the interaction of this deeming provision and a notional transaction under FA 2003 section 75A have been explored in the recent judgment of the Court of Appeal in *The Tower One St George Wharf Ltd v HMRC* [2025] EWCA Civ 1588

b) Do you have any other comments on the operation of the Crown application? c) What are the reasons for your answers?

We agree with the correction of the typographical error and have no further comments.

18. Acknowledgement of submission

- 18.1. We would be grateful if you could acknowledge safe receipt of this submission and ensure that the Chartered Institute of Taxation and our Low Incomes Tax Reform Group and the Stamp Taxes Practitioners Group are included in the List of Respondents when any outcome of the consultation is published.

19. About CIOT

- 19.1. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 19.2. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 19.3. The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 19.4. Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

20. About LITRG

- 20.1. LITRG is an initiative of the CIOT to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those who are least able to pay for professional advice. We also produce free information, primarily via our website www.litrg.org.uk, to help make a difference to people's understanding of the tax system.
- 20.2. LITRG works extensively with key stakeholders such as HM Revenue and Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the tax system. LITRG also considers the welfare benefits system, and other related systems, to the extent that they interact with tax.

21. About STPG

- 21.1. The Stamp Taxes Practitioners Group (STPG) is the leading professional forum for stamp taxes practitioners consisting of over 200 members. Members are drawn from the legal, accountancy and surveying professions and include practitioners in the fields of tax, real estate and conveyancing.

The Chartered Institute of Taxation and Low Incomes Tax Reform Group

Stamp Taxes Practitioners Group

27 January 2026