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Public consultation on the proposal to extend the land transaction tax higher residential rates 3-year exception and refund periods, in specified circumstances

Joint response by the Chartered Institute of Taxation the Stamp Taxes Practitioners Group

1 Introduction

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 The Stamp Taxes Practitioners Group (STPG) is the leading professional forum for stamp taxes practitioners consisting of 211 members. Members are drawn from the legal and accountancy and surveying professions and include practitioners in the fields of tax, real estate and conveyancing.
- 1.3 The CIOT's stated objectives for the tax system that are relevant to this consultation 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 responsive and competent tax administration, with a minimum of bureaucracy.
- 1.4 The higher rates of land transaction tax (LTT) apply broadly to the purchase of additional residential property by individuals. For transactions with an effective date on or after 22 December 2020 the higher rates are 4% more than the standard or main LTT residential rates. Refunds and exceptions to the higher rates can apply where the new dwelling is intended to be the only or main residence and the buyer has been unable to sell the old home or has been unable to purchase a new one within a 3 year period. The aim is to provide flexibility for buyers moving house. The Welsh government's view is that in most cases 3 years remains a sufficient period to allow for selling the former home or for buying a new home. However, since LTT was introduced certain adverse circumstances have arisen where transactions can be impeded or prevented such that the 3 year period is too short. The consultation proposes to extend the 3 year period indefinitely in certain limited

circumstances for relevant transactions that are impeded due to fire safety defects or are prevented by government emergency restrictions.

1.5 We have not answered questions 5 and 6 as they concern the effect on the Welsh language that is outside our expertise.

2 Question 1.1 Do you agree that, in general terms, the law should be changed to offer additional assistance to eligible taxpayers?

2.1 We understand that the overarching intention is to address circumstances that could not reasonably be anticipated such that, exceptionally, 3 years is an insufficient amount of time to sell an old home or to buy a new home. In addition the circumstances are such that they affect a category of individuals rather than an individual misfortune. We suggest it would be helpful to articulate the policy rationale in the Explanatory Memorandum and the Welsh Revenue Authority (WRA) guidance to ensure taxpayers understand the basis. It should also mean that stakeholders who wish to make representations about new circumstances that they consider should be the subject of an extended period will understand the policy approach. It may be worth drawing out current aspects of the LTT regime that mean the higher rates will not apply in any case, such as where the value of an existing home is reduced to below the £40,000 threshold in circumstances beyond the taxpayer's control or no longer constitutes a dwelling for LTT purposes.

2.2 We strongly support evidence based policy making. We note that in terms of a fire safety defect the Regulatory Impact Assessment indicates there is no register of potentially affected properties. The cost is therefore estimated on the basis of known and potential cases (estimated as 50 cases over 3 years at an average refund of £15,000) is £750,000 (excluding administration costs). The Welsh government's evaluation concludes that the benefit to those individuals justifies the likely costs and a small amount of added complexity. We welcome the reference to post-implementation review (to be updated post consultation).

2.3 The Welsh government's approach of defining specific limited statutory circumstances instead of a revenue authority discretion (as for Stamp Duty Land Tax (SDLT)¹) has the advantage of certainty by reference to defined statutory conditions but, on the other hand, it is less flexible. If a new circumstance were to occur that met the Welsh government's policy criteria then new regulations will be required with the delay that inevitably involves.

2.4 There is no right of appeal for the purchaser against HMRC's exercise of the discretion in relation to SDLT. We are pleased to see that taxpayers will have the safeguards of a right to request a WRA review and the right to appeal to the First-tier Tribunal in the event of disagreement with the WRA in respect of the application of the extended period in the defined circumstances.

2.5 We suggest that the difference of approach between SDLT and LTT is brought out in the WRA guidance in the same way that other differences between the 2 regimes are highlighted to assist stakeholders.

3 Question 1.2 Do you think this measure will in general terms have, or potentially will have, positive, negative or no impact on you, or on those you advise?

¹ Finance Act 2003 Schedule 4ZA para 3(7A)(b)

3.1 We think the measures should have a beneficial effect given that the law currently does not allow for any relaxation.

4 Question 2.1 Do you agree that transactions impeded by fire safety defects should be treated in this way?

4.1 Where a purchase of a new only or main residence has been made before the former only or main residence has been sold ('Purchase Before Sale') because the sale of the former residence is impeded by a fire safety defect, it will be possible to claim a refund in respect of all qualifying sale transactions taking place since 1 April 2018. (We note that a statutory instrument cannot generally make retrospective change but we understand that is not a bar to providing for a new right to claim a refund.)

4.2 There is a challenge in ensuring that eligible taxpayers are aware of the right to make a refund claim as a result of the extended claim period. We understand that the WRA have maintained a list of taxpayers who have contacted them about a refund where the sale of the former residence occurred after the expiry of the 3 year refund claim period. The WRA has contacted these taxpayers to make them aware of the consultation proposals and will do so again when change is made.

5 Question 2.2 Do you agree that transactions prevented by emergency restrictions should be treated in this way?

5.1 Transactions prevented by emergency restrictions will only allow an extension to the 3 year period for transactions taking place, and in relation to restrictions imposed, from the date the regulations take effect. There is no extended refund claim period in respect of the closure of the housing market in 2020 as a result of the pandemic on the basis that there was sufficient time to sell property at the point the housing market re-opened within the 3 year period. This seems reasonable.

6 Question 2.3 Do you think this aspect of the new legislation will have, or potentially will have, positive impact, negative impact or no impact on you, or on those you advise?

6.1 It is difficult to predict but, as we note at 3.1, given that the law currently does not allow for any relaxation currently we think the measure should be beneficial.

7 Question 3.1 Do you agree that the new legislation should make this distinction between Sale Before Purchase (SBP) and Purchase Before Sale (PBS) scenarios?

7.1 The distinction is that a refund claim is possible in a purchase before sale where the sale of the former only or main residence is prevented by emergency restrictions and/or a fire safety defect. In a sale before purchase scenario the extension to the refund claim period only applies in the case of emergency restrictions, not for a fire safety defect. This seems reasonable given there would be a choice not to purchase a dwelling affected by fire safety defects.

8 Question 3.2 Do you think this aspect of the new legislation will have, or potentially will have, positive impact, negative impact or no impact on you, or on those you advise?

8.1 Our view is as at 3.1 and 6.1.

9 Question 4.1 Do you agree that the new regulations will provide benefit to taxpayers?

Question 4.2 Do you agree the new regulations will increase cost to you ?

Question 4.3 Do you agree the benefit of the new regulations will justify the cost to you?

9.1 Our view is as at 3.1 and 6.1.

10 Question 7 Other comments

10.1 Some taxpayers affected will not be represented at the point a claim needs to be made so easily accessible guidance with worked examples that is written for non-professionals will be essential. In terms of the guidance more generally the WRA's interpretation of some of the concepts in the draft regulations will need explaining in guidance, for example

- What is meant by 'substantially' in the context of 'substantially reduce the number of people interested in purchasing the sold dwelling' and 'substantially reduce the market value of the sold dwelling' in respect of fire defects.
- What is meant by 'substantial adverse effect' in relation to a relevant restriction and 'as soon as reasonably practicable' for both a relevant restriction and a fire safety defect.
- What is meant by 'reasonably' in 'the sold dwelling had a fire safety defect that a buyer ...could not reasonably have known about.'

10.2 In addition it will be important to explain what material and evidence needs to be included in the claim to satisfy the relevant conditions.

10.3 A 'relevant restriction' is defined by reference to an 'emergency' that in turn has the meaning given by section 19 of the Civil Contingencies Act 2004. We are very much in favour of drawing on existing definitions from a simplification perspective and ensuring consistency between England and Wales particularly for commercial transactions. However there are some potential negative aspects. Incorporating them into LTT legislation by reference to the UK statutory provision instead of including the adopted text in full means that LTT legislation may need potential amendment if the UK statutory provision changes in a way that is outside the Welsh government's policy intent. There is also be a tension with accessibility because a lay reader (particularly relevant in this consultation – see 10.4) is required to cross-reference to another piece of (non-Welsh) legislation².

10.4 We note that the Welsh government is particularly interested in the public's answers to the questions posed in the questionnaire. The questionnaire has a 'simplified' explanation of the changes with more technical detail in the Explanatory Memorandum and annexes to the draft regulation. We think this approach has merit in this

²See [The future of Welsh law: classification, consolidation and codification](https://www.tax.org.uk/ref613) and the CIOT's response <https://www.tax.org.uk/ref613>

context. It would have been helpful to provide some examples as part of the simplified explanation. The Purchase Before Sale and Sale Before Purchase concepts are quite difficult to follow without worked examples of how it works now and what will change.

11 Acknowledgement of submission

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

12 The Chartered Institute of Taxation

12.1 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.

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.

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.

Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation

15 March 2024