



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

Local variation to land transaction tax rates for second homes, short-term holiday lets and potentially other additional residential properties

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

1 Executive Summary

- 1.1 The Welsh government wishes to address the impact of second homes and short-term holiday lets on affordability and availability of permanent housing in areas where second homes and short term lets predominate. It is proposed to use Land Transaction Tax (in tandem with other policy levers including increasing Council Tax and imposing planning conditions) to influence how residential property is used and the nature of occupation. It is likely to be harder and less satisfactory to use a transaction tax for this purpose than using a recurrent tax, such as Council Tax, on the type of occupation that it is wished to discourage. A transaction tax is levied by reference to acquisition and is therefore dependent on an inherently unsatisfactory intention test as regards the nature of the future occupation. Furthermore there are widely recognised economic arguments that such transaction taxes disincentivise transactions (with a loop back effect on public revenues, among wider economic costs) and, while levied on the purchase, impose much of the real economic burden on the seller who wishes to move.
- 1.2 We support evidenced-based policy making and so would certainly endorse the need for a solid evidence base to ensure additional Land Transaction Tax (LTT) rates are likely to achieve the policy objectives. The research undertaken by Dr Simon Brooks points out that a solid evidence base does not yet exist for the impact of second homes on the sustainability of communities and the Welsh language.
- 1.3 There are challenges in designing an additional rates charge. These include the identification and definition of a 'second home' and a 'short term holiday let' and the consequential complexity. Defining and identifying the properties in scope is central to both the evidence base to underpin the policy and the ongoing management of records to ensure additional rates are consistently applied. In addition, a system of charging local rates of LTT in addition to the existing national LTT rates would add further stages to the conveyancing process and the administration of LTT in terms of how and when they apply and how the imposition of the rates is managed and enforced by the Welsh Revenue Authority.
- 1.4 Basing the LTT additional rate on particular local authority wards could create boundary issues and local anomalies in a similar way to that which arose under the Disadvantaged Area Relief¹ for stamp duty land tax.

¹ Disadvantaged Area Relief was abolished for SDLT transactions with an effective date on or after 6 April 2013.

On the other hand, rates set on the basis of local authority areas would not allow for specific targeting of areas (smaller than local authority areas, or perhaps in some cases cutting across them) where the concerns giving rise to the policy are particularly acute. Including the whole of a local authority area would then potentially create unintended consequences for properties outside the intended scope of the policy. A further alternative - though with advantages and disadvantages of its own - is to impose additional rates of LTT nationally (instead of only in the specified areas) and to introduce reliefs from those additional rates for purchases of second properties that are outside the policy intent, such as properties purchased on a buy to let basis but intended to provide a main residence for long term occupation. The national additional rates would automatically apply, with those exemptions, to the areas where demand for second homes is highest (a category that would be adjusted over time as areas became more or less popular).

- 1.5 If additional LTT rates are to be introduced in specific areas, an early awareness campaign will be required for taxpayers, conveyancers and estate agents in the targeted areas.
- 1.6 Given the aim is to help people purchase permanent homes, the proposals, if successful in these terms, may reduce the availability of short term holiday lets thereby impacting the local tourism economy. The interaction with any tourism levy will need to be considered.

2 About us

- 2.1 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.
- 2.2 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.
- 2.3 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.
- 2.4 Our members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.
- 2.5 The Stamp Taxes Practitioners Group (STPG) is the leading professional forum for stamp taxes practitioners consisting of 200 members. Members are drawn from the legal, accountancy and surveying professions and include practitioners in the fields of tax, real estate and conveyancing.

3 Introduction

- 3.1 The Welsh government wishes to address the impact of second homes and short-term holiday lets on affordability and availability of housing for people (particularly for young people) who live permanently in the area, and therefore on communities and the Welsh language. This consultation is the third in a series on planning and taxation measures, following consultations on local taxes for second homes and self-catering

accommodation and planning policy for second homes and short-term holiday lets. The consultation focuses on local variations to LTT that may operate to reduce the number of future purchases of short term holiday lets and second homes in a community as part of a wider suite of responses. The government's primary aim is to contribute to this desired policy outcome, that is, to give more opportunity to people who are looking to buy homes for permanent occupation, rather than to increase revenues. The consultation recognises that LTT, as an transactional tax, is likely to have only a limited impact in the short to medium term on the proportion of short term holiday lets or second homes in a community. However, it may help to reduce the number of future purchases as part of a wider suite of responses.

- 3.2 The higher residential rates of LTT (an additional 4% on top of the main rates including the nil rate band) currently apply where an individual purchases a dwelling and already owns one or more dwellings, or a company purchases a dwelling.
- 3.3 The consultation proposes local variations of LTT seeking views on:
- The size of the areas in which local variation could take place, for example across local authority areas or within smaller communities.
 - The procedure for identifying those areas
 - The types of transactions that could be subject to different rates in those areas.
- 3.4 A second home is defined for the purposes of the consultation (definitions are subject to further consideration) as 'a dwelling which is not the owner's main residence and is used on an occasional basis by the owner, their family and friends'. Short-term holiday let refers to 'a dwelling which is not the owner's main residence and is regularly let on a commercial basis'. The Welsh Government's consultation on [changes to planning legislation and policy](#), which proposes a that property would be classed as a second home if it is occupied for 183 days or less and classed as a short-term holiday let if it is let for not longer than 31 days for each period of occupation, has recently closed.
- 3.5 The Welsh government has commissioned research undertaken by Dr Simon Brooks ([Second homes: developing new policies in Wales](#)) the conclusions of which inform the consultation. The research points to the most recent council tax data as showing there are 24,873 chargeable second homes in Wales in 2021-22. However, these figures do not account for commercial holiday lets.
- 3.6 The Welsh Government has five core tax principles for tax policy development and delivery in Wales. Welsh taxes should:
- Raise revenue to fund public services as fairly as possible.
 - Deliver Welsh Government policy objectives.
 - Be clear, stable and simple.
 - Be developed through collaboration and involvement.
 - Contribute directly to the Well Being of Future Generations Act goal of creating a more equal Wales.
- 3.7 The CIOT's stated objectives for the tax system 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.

4 Q1. Do you agree that the Welsh Government should increase rates of LTT for second homes and short-term holiday lets in areas where there is an evidenced case to do so?

- 4.1 The policy aim is to address the impact of second homes and short-term holiday lets on affordability and availability of permanent housing in areas where second homes and short term lets predominate. It is proposed to use LTT (in tandem with other policy levers such as increasing the Council Tax premium for second homes and introducing planning conditions) to influence how residential property is used and the nature of occupation. However, we see more difficulties in using a transaction tax for this purpose as compared to a recurrent tax on the type of occupation it is wished to discourage. A transaction tax is levied by reference to acquisition and is therefore dependent on an inherently unsatisfactory intention test to assess the nature of future occupation. Furthermore there are widely recognised economic arguments that such transaction taxes disincentivise transactions (with a loop back effect on public revenues, among wider economic costs) and, while levied on the purchase, impose much of the real economic burden on the seller who wishes to move.
- 4.2 We would not normally comment on rates of tax but we do comment on implementation and any potential unintended consequences. We support evidenced-based policy making and so would endorse the need for a solid evidence base to ensure increased LTT rates are likely to achieve the policy objectives. We recognise there are challenges in formulating a robust evidence case including identification of properties in scope in a given area, the economic effect of increased rates including on rent and forecasting behavioural change. The research undertaken by Dr Simon Brooks points out that a solid evidence base does not yet exist for the impact of second homes on the sustainability of communities and the Welsh language. The report also underlines the need for accurate information about second homes and short term holiday lets together with a method of monitoring this information.
- 4.3 A system of charging local rates of LTT in addition to the existing national rates would add significant complexity to the administration of LTT and to the conveyancing process in terms of how and when it will apply (different rates in specific areas and on different types of usage) and how it will be managed and enforced. It will be necessary to identify the current rate referable to the property based on its location and to add a stage to the LTT calculation that is already potentially complex for conveyancers who are mostly not tax professionals.
- 4.4 Additional rates for second homes and short-term holiday lets only will require those properties to be defined and the intended use to be identified at the point of acquisition. The term 'second home' can cover a range of uses (for example, a property might be purchased for use by a student, noting that two of the areas with large numbers of second homes, Cardiff and Swansea, have large student populations) and a range of ownership arrangements (for example, in the student example just cited, the property might be acquired by the student as nominee for a parent(s), or a couple might own two homes, each one owned by a different spouse or partner); and in any event, the buyer's intentions may not be fully formed at the date of purchase. For example would the working definition set out at in the consultation (*'a dwelling which is not the owner's*

main residence and is used on an occasional basis by the owner, their family and friends') encompass a property purchased with the intention to either use it as a holiday home or to rent? What if, in the extreme case, in the event such a property is in fact left empty? An intention test is usually unsatisfactory in a transaction tax: in practice it may be difficult to evidence the declared intention, or at least burdensome to do so. There is also the question of what happens if the intention changes? People can genuinely change their minds, but if they do, and nothing happens, what becomes of the policy intention?

- 4.5 To some extent the correct LTT rate to apply to a transaction for buyers and conveyancers can be dealt with through an effective online calculator on the WRA website where information about the location of the property is entered (together with other details relevant to the rate) and the appropriate rate generated. However the underlying administration involved in identifying the defined areas would, presumably, need to be undertaken by the local authority and provided to the WRA. As it appears the additional LTT revenue would continue to be collected centrally there may be less incentive for local authorities to prioritise record maintenance and keep under review the appropriateness of localised rates above other competing demands. There is no indication that revenue raised will be hypothecated.
- 4.6 If a cost-effective system cannot be designed to administer a localised system of different rates, then that strongly calls into question whether localised rates are sensible in the first place.

5 Q2. What are your views on whether the size of areas covered by local variations of rates should be local authority- wide or only in smaller communities?

- 5.1 The consultation indicates increasing LTT rates could be done for larger areas such as local authority areas or for smaller areas such as wards.
- 5.2 Basing the LTT additional rate on particular wards would create boundary issues and local anomalies in a similar way to that which arose under the Disadvantaged Area Relief² for stamp duty land tax. Some specified 'disadvantaged' areas (based on the Index of Multiple Deprivation 2000) included areas that had become desirable and valuable. Ward boundaries could mean one side of a road could be subject to the additional LTT while the other side would not be – a postcode search may not be definitive. This would create further administrative complexity and cost when carrying out residential conveyancing. It would be essential to create and maintain a proper online search facility as was eventually the case for Disadvantaged Areas Relief. The cost of doing so will need to be factored in to the projections.
- 5.3 Rates set on the basis of local authority areas would have the advantage of administrative simplicity (that is, existing defined borders and alignment with council tax, as the consultation notes) compared to checking the location of the property in a particular ward. However, it would not allow for specific targeting of local areas within the local authority area, so creating the potential for unintended consequences for properties outside the intended policy objective.
- 5.4 The consultation document suggests that local authorities may have the power to review and change the areas which are subject to the localised higher rates. It is hoped there would be some accountability in relation to this power to maintain the integrity of the underlying objectives. There would need to be a method of communicating these changes to taxpayers and to the WRA if the WRA has responsibility for collecting the additional rates of LTT and monitoring the accuracy of the returns. Taxpayers, conveyancers and advisers will

² Disadvantaged Area Relief was abolished for SDLT transactions with an effective date on or after 6 April 2013.
Technical/documents/subsfinal/WTC/2022

require access to a definitive information source of information about what properties are chargeable and the applicable rates. Will IT systems be integrated to manage this process?

6 Q3. In your view, what procedure should be used to determine whether an area should be subject to increased rates?

Q4. If criteria are used to determine which areas are subject to increases in rates, what do you think the criteria should be?

Q5. What are your views on how regularly areas where increased rates apply should be reviewed?

6.1 The criteria to be used are outside our remit and area of expertise. However, the type of factors mooted in the consultation (percentage of dwellings that are holiday homes or short term holiday lets/ average local house prices/impact on the Welsh language) would need to be weighted and would require monitoring over a reasonably long period of time to evaluate the effect of increased rates and other measures adopted. Very frequent reviews leading to changes could serve to undermine the principles of stability and simplicity.

6.2 Local authorities will play a central role in the procedure to determine areas subject to increased rates. Existing financial constraints, a lack of a financial incentive and resourcing may constrain local authorities' ability to implement and manage new procedures, irrespective of the methodology of centrally defined factors or an evidenced case by the local authority itself.

7 Q6. What are your views on:

- **Varying the existing higher rates for all higher rate transactions within a specified area? Or**
- **Introducing new rates applied only to purchases of properties intended to be used as second homes or short-term holiday lets within a specified area?**

Q7. Does the size of the area (the whole of the local authority or small areas within it) in which the increased rates would apply influence your views on whether separate rates for second homes and short-term holiday lets are necessary?

7.1 The primary policy rationale for the existing higher rates³ (the 4% surcharge) is to raise revenues to help pay for Welsh Government spending as set out in the tax policy work plan 2021 to 2026. However, the work plan notes it can also potentially support other Welsh Government policy aims through, for example, reliefs, or adjusting the rates charged such as proposed in this consultation to achieve a behavioural change in relation to second homes and short term holiday lets . Varying the existing higher rates for all higher rates transactions within a specified area has the advantage of relative simplicity and is probably easier to communicate to the public and potential buyers. However, as the consultation notes there may be adverse consequences for transactions that fall outside the intended behavioural policy objective potentially adversely affecting investment in the wider private rental sector in Wales, noting the existing differential between the SDLT surcharge (3%) and the 4% LTT surcharge.

³ See <https://gov.wales/tax-policy-work-plan-2021-to-2026-html> Paragraph 6.

- 7.2 We observe that in order to meaningfully impact behaviour, a variation of higher rates or additional rates, might have to be set at a level that some may regard as 'penal', otherwise a second home buyer may view the additional cost as a relatively small amount when spread across longer term ownership.
- 7.3 Confining the additional rates to second homes and short term lets would remove the problem of potential collateral damage. However, the challenge is in defining and identifying what is meant by 'a second home' and short term holiday let. It would be necessary to ensure that the additional rates on second homes and short term lets would apply to purchases by individuals, companies and other non-natural entities to limit the potential for avoidance using different ownership structures.
- 7.4 We assume the intention is that the current provision in LTTADT(W)A 2017 section 72(9) under which 6 or more dwellings purchased as a single transaction are treated as non-residential property will ensure such transactions will not be subject to the additional rates.
- 7.5 Different definitions for different purposes are generally unhelpful in terms of adding complexity, therefore consistency with planning legislation that has the same policy rationale could be beneficial and assist local authorities in their record keeping and monitoring of properties in scope.
- 7.6 We note the research conclusion that evaluating and addressing the impact of second homes on housing markets and communities is currently largely a matter of judgement, likely to be best made at a local (community) level. Applying additional rates to second homes/short term lets in a small area within the local authority where second homes /short term lets are predominant should mean the risk of unintended consequences is reduced simply because the physical area is reduced and therefore so is the number of transactions. However the fundamental issues (defining, identifying and a system of recording and monitoring transactions) would not change. There is the further issue of defining the limited area and the behavioural responses of people buying just outside the area.
- 7.7 A further alternative is to impose additional rates of LTT nationally instead of by reference to specified areas and to introduce reliefs from those additional rates only for purchases of second properties that are outside the policy intent, such as buy to let properties intended to provide a main residence for long term occupation in the community. The need to introduce and monitor further reliefs (with clawback provisions) would clearly add complexity, particularly as they are likely to involve an intention test, and therefore weighs against this alternative. A nationally applied charge may also dilute the message and therefore perhaps operate less effectively in changing market behaviour. However the advantages of this approach would be:
- simpler administration in that it would eliminate the boundary issues inherent in a specified area approach.
 - to remove the complexity of arriving at factors to determine which local areas should be subject to additional rates.
 - to avoid the need to regularly review areas where increased rates apply to ensure it remains appropriate. The increased rates would automatically apply to the areas where demand for second homes is highest and adjust for areas that become more popular.
 - mitigate the difficulty of defining what is meant by a 'second home' although purchases outside the scope would still need to be identified for the purpose of the reliefs.

8 Q8. Do you agree that short-term holiday lets should be subject to any increased rates, as well as second home? Please explain your answer.

Q9. Do you agree properties which cannot be occupied for all of the year should not be subject to any increased rates? Please explain your answer.

8.1 The economic impact of including short-term holiday lets and whether including them in scope will achieve the objective without excessive economic cost are largely economic questions and therefore outside our remit.

8.2 We observe that properties that cannot be occupied throughout the year due to planning restrictions should be relatively easily identified through the planning system. However, in practice it is not always clear to what extent those restrictions are enforced.

8.3 The current statutory test for LTT of what constitutes a dwelling is based on use or suitability of use as a dwelling. A holiday chalet or similar with say an 11-month occupancy restriction that is used for short stays would not be 'used as' a dwelling by the short-term visitors. However, the chalet may still be 'suitable for use' as a dwelling as a question of fact.

8.4 The proposal will require short term lets to be identified and recorded. We note that the Welsh Government has appointed a contractor to engage with stakeholders in consideration of a potential statutory registration or licensing scheme for all holiday accommodation businesses, including short-term lets.⁴

9 Q10. Are there any current higher rate transactions, other than second homes and short-term holiday lets, for which you think increased rates may also be appropriate? Please explain your answer.

9.1 It does not appear inconsistent with a broad primary objective of giving more opportunity to local people who are looking to buy homes for permanent occupation, to extend the additional rates to other categories including to buy to let properties occupied as a main residence or other business acquisitions. Arguably in that case the current 'reliefs' in the higher rates for registered social landlords and refunds following the sale of a former main residence would mitigate unintended consequences. However as we note above there may be consequences on, for example, the private rental sector and each category will need to be judged by reference to the policy objective. As regards buy to lets, these do not reduce the number of properties available to be occupied as a permanent residence, but they obviously can operate to reduce the number effectively available to purchase, so much depends on the objective here.

10 Q11. Do you agree that there should be a clawback rule so that if within a specified period after the date of the transaction, the use of the property changes to one on which increased rates would have been payable, the taxpayer should have to submit a new return and pay the additional tax?

Q12. Are there any circumstances where such clawback rules would apply, but you do not consider that it would be appropriate or fair?

Q13. If a property was bought where the buyer's intention was to use it as a second home or short-term holiday let but it is not then used in this way, do you think the taxpayer should be able to claim a refund of the additional tax?

⁴ <https://record.senedd.wales/WrittenQuestion/83701>

Q14. What length of time do you think it would be appropriate for a clawback and/or refund period?

- 10.1 This question focuses on the unsatisfactory nature of intention tests, but such a test seems unavoidable in using a transaction tax to disincentivise certain forms of occupation (or non-occupation). Given that objective, we agree a clawback rule would seem to be needed where changes in intention in the short term mean the additional rates should have been paid at purchase but were not, or vice versa such that a refund is due to the taxpayer upon making a claim. But this in turn adds complexity and potential practical problems.
- 10.2 Potential for avoiding the additional rates would negate the hoped for behavioural effects. In terms of compliance checks it is not clear how or whether the WRA has sufficient powers to check whether there has been a change of intention such that additional tax is payable in these circumstances. We note Finance Act 2021 Schedule 34 confers additional powers on HMRC to check whether relief from SDLT is withdrawn under clawback provisions.
- 10.3 A clawback may not be appropriate where the change is outside the owner's control for example, a series of failed long term lets where the tenant leaves the property within the 31 day period. But such issues may in turn be hard to assess and determine fairly.
- 10.4 A three year clawback period would be consistent with existing LTT clawback periods for group relief and charitable use. However a period of time of this length coupled with an intention test applicable in the context of personal rather than a commercial context raises the question of what happens when the intention changes more than once in the period? For example, suppose that a second home is purchased and the additional rate paid, subsequently an adult child moves in to the property as their permanent home and a refund claim made. The occupant subsequently moves out so it reverts to a being second home – all of this is quite possible in the three years.

11 Q15. If rates are introduced which require consideration of the intended use, do you have any comments on how the design could make it simpler for taxpayers to comply with by minimising the scope for error?

- 11.1 Detailed, easily understood guidance and examples would have to be produced by the WRA. An early awareness campaign would be required for taxpayers, conveyancers and, most likely, estate agents in the areas targeted by any additional LTT charge. Anecdotally we understand conveyancers in England often seek to outsource the provision of LTT advice when they purchase properties in Wales on behalf of their clients.

12 Q16. What effects do you think these proposals may have on the Welsh language and communities who predominately use Welsh? How could positive effects be increased, or negative effects mitigated?

- 12.1 We have no basis to offer comments on this.

13 Q17 We have asked a number of specific questions. If you have any additional points related to LTT for second homes and short-term holiday lets which have not [been] specially addressed, please make them here.

- 13.1 The research points to the lack of consistent or standardised definitions and the range of ways in which second homes are defined. Defining and identifying the properties in scope is central to both the evidence base to

underpin the policy and the ongoing management of records to ensure additional localised rates are consistently applied.

- 13.2 While the aim is to help people purchase permanent homes, the proposals may reduce short term holiday lets (rather than simply restricting growth in holiday lets) thereby impacting the local tourism economy. The interaction with any tourism levy will need to be considered. The proposals may also affect the availability of private long term rentals, in reducing rental supply, if additional rates were to be extended to those properties without a specific relief.

14 Acknowledgement of submission

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

The Chartered Institute of Taxation

25 March 2022