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## Public consultation on land transaction tax reliefs

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

#### 1 Introduction

- 1.1 The Stamp Taxes Practitioners Group (STPG) is the leading professional forum for stamp taxes practitioners consisting of 216 members. Members are drawn from the legal and accountancy and surveying professions and include practitioners in the fields of tax, real estate and conveyancing.
- 1.2 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 20,000 members, and extensive volunteer network, in providing our response.
- 1.3 The Welsh government are consulting on proposals to :
  - abolish Land Transaction Tax (LTT) multiple dwellings relief<sup>1</sup> (MDR) following the UK government's decision to abolish SDLT (Stamp Duty Land Tax) MDR. SDLT MDR will be abolished for transactions with an effective date on or after 1 June 2024 (subject to transitional provisions and the consideration of particular impacts for the agricultural sector<sup>2</sup>). Abolition of SDLT MDR without further action by the Welsh government is estimated to reduce the Welsh block grant by £8 million a year.
  - extend the existing relief for acquisition of social housing to Welsh local authorities

They also seek views on i) the option of removing the rule that provides for the purchase of 6 or more dwellings to be treated as non-residential property (LTTADT(W)A 2017 section 72(9)) alongside the abolition of MDR, and ii) LTT reliefs more generally.

- 1.4 We note that the Welsh government has no intention to amend or abolish the rules governing mixed-use transactions (a transaction that includes residential and non-residential property).
- 1.5 We do not comment on the possible impact on the Welsh language of the proposals and options as this aspect is outside our expertise.

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<sup>1</sup> Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act 2017 section 30 Schedule 13

<sup>2</sup> See [HM Treasury: Spring Budget 2024](#) , paragraphs 3.30 and 5.68. The government indicates it will consult with the agricultural industry to determine whether there were any particular impacts on that sector that needed further consideration.

1.6 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.

1.7 The Welsh government's core tax principles are:

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 2015 goal of creating a more equal Wales.

## 2 The proposal to abolish MDR

### Question 1.1 Do you agree the proposal to abolish LTT MDR set out in the consultation aligns with the Welsh government's principles?

- 2.1 Without further action by the Welsh government, we note the estimated revenue reduction in the Welsh block grant of £8m per year in consequence of the abolition of SDLT MDR. The consultation also indicates that the proposed abolition of LTT MDR would broadly offset that adverse impact in LTT revenue terms. In terms of simplicity, reliefs inevitably add an element of complexity to the tax system so removal of MDR should mean the LTT regime is simpler to apply and administer. In addition, the design of LTT was guided by the desire to align with the SDLT framework as far as possible, subject to specific Welsh circumstances and priorities. Retention of LTT MDR in Wales would add complexity for transactions involving properties in both jurisdictions particularly as familiarity with SDLT MDR reduces.
- 2.2 In terms of acquisitions by private individuals, anecdotally our members point to experience of approaches by individual buyers who suggest an MDR claim or reclaim in circumstances where a claim is sometimes without merit. Similarly we are aware that reclaim firms advocate refunds based on contested interpretations of the law with little or no warning as to the risks involved in relation to SDLT and LTT. Often the suggestion that MDR can be claimed is where the property particulars mention the word 'annexe' or give an indication that the property contains a granny flat or outbuilding(s) with living accommodation, with no consideration of the Welsh Revenue Authority's (WRA) guidance on MDR or the decided tax tribunal cases on SDLT MDR. The tribunal cases although not binding for LTT could give an indication of the likely outcome of an LTT case with similar fact patterns. This activity adds costs and complexity to the LTT regime for all stakeholders contrary to the principles of clarity, stability and simplicity.

- 2.3 For commercial residential portfolio transactions where the higher rates (effectively 4% higher than the standard rates for residential transactions) apply, abolition of LTT MDR should have minimal impact assuming the 6 or more dwellings rule remains in place. However for those portfolio transactions where the higher rates do not apply, most commonly purpose built student accommodation, abolition of LTT MDR will increase the LTT liability potentially quite significantly. For example, buying a student accommodation block comprising cluster flats valued at £250,000 will generally attract LTT at 1% with MDR but 6% without (or heading towards 16% if the 6 dwelling rule discussed below were also to be abolished).
- 2.4 We therefore suggest the nature and value of LTT MDR claims are evaluated to ensure that abolition does not lead to unintended consequences for wider Welsh government policies in relation to commercial communal residential property development that may not align with wider Welsh government policies and the Well-Being of Future Generations Act principles.

**3 Question 1.2 Do you think the abolition of LTT MDR will negatively impact the private rented sector in Wales?**

**Question 1.3 Do you think the abolition of LTT MDR will negatively impact any others in Wales?**

- 3.1 As the consultation notes the policy aim of SDLT MDR, and similarly LTT MDR, is to remove barriers to investment in the private rented sector. LTT is generally payable on the total value of a transaction. However, where 2 or more dwellings are purchased in a single or in linked transactions, a claim for LTT MDR works by reducing the LTT payable per dwelling so it is closer to the amount payable by a buyer of a single residential property.
- 3.2 We strongly support evidence-based policy-making and the systematic evaluation of reliefs to ensure they are achieving their objectives at a reasonable cost. We understand that the Welsh government are undertaking a review of their LTT returns data for MDR claims. In the absence of an evidence base to support abolition, it is possible there may be unintended consequences for some commercial investment in sectors in Wales such as purpose built student accommodation. Anecdotally we understand from our members that the risk of unintended consequences for commercial investment will be significantly greater if the 6 or more dwellings rule were to be abolished as well as LTT MDR in Wales (see our response to the questions 2.1-2.4 below)
- 3.3 If following review, there is concern that abolishing LTT MDR may conflict with wider Welsh government policies, consideration might be given to reforming LTT MDR to address the issue of individual claims without merit. This might include restricting MDR to 'commercial' acquisitions and include consideration of how that should be defined. An alternative option might be to abolish LTT MDR but retain and extend the current 6 or more dwellings rule to linked transactions which would also have the benefit of removing uncertainty as to what constitutes a 'transaction'.

**4 The option of abolishing the 6 or more dwellings rule**

**Question 2.1 Do you agree the proposal to abolish the 6 dwellings rule, alongside the abolition of LTT MDR, would align with the Welsh Government's tax principles?**

- 4.1 The consultation notes the abolition of LTT MDR creates a potential 'unfairness' for smaller-scale investors in the residential sector buying 2-5 dwellings as such buyers will pay higher residential rates than transactions involving 6 or more dwellings benefiting from non-residential rates. A similar anomaly arises for England and Northern Ireland in relation to the abolition of SDLT MDR. There is however no proposal by the UK government to abolish the 6 or more rule for SDLT.
- 4.2 The consultation asks for views on removing that anomaly by abolishing the 6 or more rule altogether, alongside the abolition of LTT MDR, so buyers of residential property are subject to residential rates regardless of the number of residential units acquired in a single transaction. However we suggest there are further considerations that may affect delivery of wider Welsh government policies in relation to provision of housing and communal residential property (see paragraph 5 below in relation to negative impacts).
- 4.3 The design of LTT was guided by Welsh tax principles including stability for taxpayers and therefore aligning with the SDLT framework as far as possible subject to specific Welsh circumstances and priorities. Removal of the 6 or more dwellings rule for LTT would give rise to a substantive difference between the LTT and the SDLT regime and therefore may not align with the Welsh government's principles of stability and simplicity.
- 4.4 We observe that the rationale for the equivalent SDLT rule was re-stated at paragraph 40 of the now withdrawn Statement of Practice 1/04 SDLT Disadvantaged Area Relief (repealed):

*'Section 116(7) FA 2003 provides that 'where six or more separate dwellings are the subject of a single transaction involving the transfer of a major interest in, or the grant of a lease over, them, then ... those dwellings are treated as not being residential property'. This recognises that commercial developers and institutional landlords, for example, frequently deal in numerous properties at one time. The fact that those properties may individually be 'residential property' does not detract from the inherently commercial nature of the transaction itself.'*

We suggest that abolition of LTT MDR does not change this rationale (that is, the acquisition of multiple residential properties is inherently commercial in nature and therefore appropriately taxed at non-residential rates) although it does highlight the threshold for determining whether a transaction is inherently commercial. Thresholds inevitably create some distortions and the need to balance of the tax and non-tax effects of the point at which the line is drawn.

- 4.5 An unintended consequence of abolition of LTT MDR and the 6 or more dwellings rule may be to distort economic behaviour by encouraging the incorporation of a small non-residential element into residential communal developments that would not otherwise be included to gain access to non-residential rates for mixed use. For example, a small office or retail space on the ground floor of a development might be included that may never be let on a commercial basis. Removing the 6 or more dwellings rule would significantly increase LTT liabilities because of the differential between non-residential and residential rates for commercial acquisitions (a top marginal rate of 12% or closer to 16%<sup>3</sup> for residential compared to 6% for non-residential). The wider the differential the more likely it may distort economic behaviour.

**5 Question 2.2 Do you think the abolition of the 6 dwellings rule, alongside the abolition of LTT MDR, would discourage or prevent buyers from entering into multiple-dwelling transactions?**

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<sup>3</sup> 16% where the higher rates of 4% applies.

**Question 2.3 Do you think the abolition of the 6 dwellings rule, alongside the abolition of LTT MDR, would negatively impact the private rented sector in Wales?**

**Question 2.4 Do you think the abolition of the 6 dwellings rule, alongside the abolition of LTT MDR, would negatively impact others in Wales ?**

- 5.1 Our members indicate that the removal of the 6 or more dwellings rule may have an adverse effect on the investment and development of communal residential accommodation in Wales - potentially conflicting with wider Welsh government priorities and policy for housing development. This is because of the consequence of significantly increased LTT cost of acquisitions in Wales compared to the SDLT liability for acquisitions in England and Northern Ireland (where the 6 or more dwellings rule is retained). The effect of withdrawing the 6 or more dwellings rule is far more significant in terms of increased LTT liability than the effect of the abolition of LTT MDR. The additional LTT cost will be a further factor (alongside different planning conditions) for UK wide developers to consider when deciding whether to invest in Wales or in England.

## **6 Questions 3.1 – 3.5 LTT and social housing**

- 6.1 The proposal is to extend the current LTT relief for acquisitions by registered social landlords (LTTADT(W)A 2017 Section 30 Schedule 15 part 6 para 19) to acquisitions by local authorities in Wales. The consultation indicates the impact would be to provide Welsh local authorities with an additional option in addressing housing needs.
- 6.2 The consultation questions are mainly directed at the impact of extending the LTT relief that is largely outside our remit. Our comments are therefore limited to suggestions for expanding the Welsh Revenue Authority's guidance in this area ([LTTA/7060 Relief for certain acquisitions by registered social landlords](#)). A change to the relief provides an opportunity to clarify areas of uncertainty in the application of the current relief.
- 6.3 The WRA's guidance indicates that a transaction does not have to be fully funded with a public subsidy to be afforded relief. We think it would be helpful to also cover the WRA's approach to a de minimis, timing and recycled and transferred subsidies. We would be pleased to discuss our suggestions in more detail with the WRA if that might be helpful.

## **7 Question 4.1 Other LTT reliefs**

- 7.1 As part of the Welsh government's ongoing review of LTT and the legislation, the consultation asks for views on LTT reliefs and the wider LTT regime.

### *7.2 LTT charities relief*

The WRA's guidance on LTT charities relief (LTTADT(W)A 2017 section 30 Schedule 18) appears to indicate that where a charity sub-lets part of an interest in land in return for rent, charities relief is available provided the rental income is used for the furtherance of the charity. However, the relief is not available (or is clawed back) if the charity sells a freehold or long leasehold interest the premium is not treated as being used for the furtherance of the charity's objects even though it may use the capital receipt for the furtherance of the charity. Does this reflect the policy intent?

### *7.3 Alternative finance*

LTT exemption is available under section 30(1) and Sch 10 for alternative finance structures however when determining whether other reliefs such as charities relief, group relief and relief for acquisition by a housebuilder from an individual acquiring a new dwelling it is not possible to look through the alternative finance provider to the underlying buyer and therefore relief is denied. This appears to be inconsistent with a policy of providing parity of treatment between alternative finance and conventional financing.

Is this intended?

#### 7.4 *Bare trusts*

Schedule 8 para 3 (3) provides the anti-avoidance rule that in a case of a grant of a lease to/from a bare trustee, the bare trustee is treated as the lessee or lessor for LTT purposes. This rule was carried over from SDLT (see FA 2003 Sch 16 para 3). For SDLT the rule was introduced to counter a specific avoidance practice. However its reach in both the SDLT and LTT codes extends beyond the original avoidance and disrupts commercial lease transactions that involve a nominee for entirely commercial reasons for example in sale and leaseback transactions, surrender and re-grants, leases to partnerships and Islamic financing. We suggest that consideration should be given to evaluating the current need for this provision in the LTT code.

### **8 Acknowledgement of submission**

- 8.1 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.

### **9 The Chartered Institute of Taxation**

- 9.1 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

16 May 2024