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FAO Catherine Hunt
Finance Committee
National Assembly for Wales
Cardiff Bay
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Dear Catherine

Land Transaction Tax and Anti-avoidance of Devolved Taxes (wales) Bill ("The Bill").

We welcome the opportunity to respond to the Finance Committee of the National Assembly call for evidence on the Bill.

We have had sight of, and have contributed to, the response by the Chartered Institute of Taxation on the Bill and would support and endorse the points made the Institute in their response. We have included our specific comments on the Bill in an Appendix but the general points we would like to make are:

1. We note that the Bill follows closely the Stamp Duty Land Tax ("SDLT") that it replaces, although there are a number of differences which we have noticed. As with SDLT the tax will largely be handled by conveyancers and other agents who will have got used to SDLT and so it will be important to highlight and explain any differences in the Land Transaction Tax ("LTT") so that disruption to the conveyancing process for transactions in Wales is kept to a minimum. It will also be important to establish whether or to what extent if any, existing case law and SDLT practice is to be carried across to LTT but it seems to us that to promote continuity such case law and practice should be applied unless there is good reason not to or the relevant provisions are not carried across into LTT.

2. Although we support the CIOT view that rather than rely on guidance it is better that the legislation is clear and comprehensive, it is inevitable that guidance will play an important role, as it does for SDLT and the Scottish LBTT. For example, it will be necessary for the Welsh Revenue Authority ("WRA") to indicate what practices are acceptable under section 81C(3) TCMA when applying the General Anti-avoidance Rule. Our recent experience is that guidance on SDLT is being held up through the gov.uk processes and we hope that the WRA or the helpline will be able to issue guidance independently (like Revenue Scotland) so that it can be kept up to date and respond to particular areas of concern. In our experience, without proper guidance there will be more direct queries raised with the WRA and so drafting proper and comprehensive guidance up front is essential. We would be happy to discuss or review such guidance as it is being developed.

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3. The process by which the tax is administered needs to keep disruption and costs to a minimum. As mentioned by CIOT one of the long running issues with completing SDLT returns is the need to include information required by the Valuation Office Agency which is not strictly necessary for the payment and administration of the tax. The LBTT return does not require this additional information, which can be onerous to compile and provide particularly in some commercial transactions, and we would urge you to follow the LBTT example.

If you have any queries or comments then please do not hesitate to get in touch.
Yours sincerely

Jonathan Evans
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Appendix

1. Clause 10 (10) – should "transfer" also include any "conveyance" as for SDLT. A conveyance may cover more instruments than a transfer.

2. Clause 12 – this clause should be expressly subsidiary to section 13 and the provisions of Schedule 2 as there can be an overlap. The equivalent provisions of Clauses 11 and 13 were introduced into SDLT to plug a possible gap in the rules where typically a builder has the right to call for a conveyance of a completed building to a third party that they have "sold" the building to. The SDLT provisions which are reflected in Schedule 2, are a later and more comprehensive rewrite of the "sub-sale" rules and as such where a transaction falls within both provisions, Schedule 2 should be applied and it would help if the legislation, unlike SDLT, clarified this so that clause 12 only applies as a back up.

2. Clause 24 – As with SDLT the residential rates only apply if the transaction(s) are entirely residential. In Scotland where the higher 3% charge applies you have to apportion a mixed transaction between the residential element and the non-residential and apply the respective rates accordingly. We think the regulation making power in this section should enable the legislation to be changed so that the both rates can be applied to mixed transactions based on an apportionment. This might also be required to protect the tax base.

3. Clause 31 – This clause contains the TAAR for the LTT reliefs. It is not clear what the word "genuine" adds anything to "economic or commercial" in clause 31(2)(b). Given that you have excluded a tax advantage it seems to us either the arrangement has other economic or commercial substance or it does not. The Courts would assume the word will add an additional condition to the arrangement which will widen the impact of the TAAR. It would be useful to have examples of what a non-genuine arrangement would be so that we can understand the purpose behind the drafting here. Given that, for example, charities relief could apply to gifts or below market transfers it is not clear if such transactions would pass this test and yet relief should be available for these transactions. It would also be useful to understand what transactions would pass the TAAR but not the GAAR. For example, it seems to us possible that the transactions involved in the Project Blue SDLT case, where the acquisition of a development site was financed through an Islamic finance structure would pass the TAAR for alternative property finance relief because the transactions clearly have a commercial purpose of funding the acquisition by the purchaser. However, we could see that because the combined effect of the sub-sale rules and the relief arguably meant no tax was payable on an acquisition that such a provisions would be counter-acted by the GAAR. Guidance on these provisions and how they apply when reliefs are combined would be useful. The legislation is much improved from SDLT by the omission of equivalent rules to sections 75A-C FA 2003 which are too widely drafted and cause problems in practice because their application is mandatary and can arise without any tax avoidance motive.

4. Clause 47 – the 12 month period to amend a return can cause difficulties in certain cases. Three or four years would be a better period and reflect other provisions of the stamp tax code.

5. Clauses 57-63 – the provisions on deferral of the tax are more elaborate than the equivalent SDLT provisions. In particular, the requirement to specify an expected end date of the deferral period could cause additional burdens on the tax payers where there is genuine uncertainty as to when any additional consideration is payable. For example, often a landowner may sell land to a developer for a base price and additional consideration if the developer succeeds in gaining planning permission and/or develops and sells houses on the land. Often the period over which such a development can be completed is many years and unpredictable. If the landowner has to keep on requesting variations to the deferral request under section 62 in order to postpone the tax when the

development or permission is unexpectedly delayed this will add an additional burden onto the sale of land for development.

6. Clause 65 – see our comments above in relation to the TAAR and the use of the word "genuine" which is repeated in the GAAR clause 81C TCMA. Why has sub-clause 81H(2) in the draft legislation been deleted?

7. Clauses 68-73 – the headings do not have quotations marks around the relevant words defined.

8. Clauses 76 & 79 – there are no transitional rules in the Act and we would expect that, as with LBTT, a statutory instrument will be passed setting out the detailed rules to ensure that transactions that interact with SDLT do not result in double taxation. We wonder if there should be an express power to pass such regulations in clause 79 as contained in the equivalent clause in the LBTT legislation (section 70(3) LBTT (S) Act 2013).

9. Paragraph 19 Schedule 6 – we support the inclusion of the tax avoidance test in this provision as compared to the equivalent SDLT rule which applies automatically and is now unnecessary in the light of intervening anti-avoidance provisions.

10. Paragraphs 47 & 48 "a" and "an" missing in the headings.

11. Schedule 18 – this does not include the new SDLT relief for PAIFs introduced in the Finance Act 2016. We would also encourage the Welsh Government to consider extending this relief to the seeding of REITs as opposed to just the open ended structures and would be happy to discuss this with you.