



Land Registry Report

Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

Written evidence to the Finance Committee,
National Assembly for Wales

21 September 2016



Land Registry

Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

Written evidence from HM Land Registry

Land Registry's main concern is that the Land Transaction Tax should be essentially similar in its operation as Stamp Duty Land Tax. This would make it easier for both conveyancers and the Land Registry to comply with their obligations under the legislation of both England and Wales. This in turn helps the English and Welsh tax authorities to ensure that any tax properly due is paid.

HM Land Registry maintains and develops the register of freehold and leasehold land (and other interests in land) in England and Wales. Under section 79 of the Finance Act 2003 (which we shall refer to as the Finance Act) Land Registry cannot register a notifiable transaction unless the applicant produces with the application a certificate as to compliance with the Stamp Duty Land Tax requirements of the Finance Act, (or such information about compliance as the Commissioners for HM Revenue and Customs specify in regulations).

We note that the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill (which we shall refer to as the LTT Bill) includes a similar provision at section 58. We are therefore concerned that LTT and SDLT should work in the same way, to alleviate additional burdens and complexity for both conveyancers and Land Registry caseworkers. This will help to ensure that land transactions are not registered in error, when LTT requirements have not been complied with.

Our particular areas of concern are—

1. That we can expect to receive a certificate of compliance in the same circumstances as we would expect to do so with SDLT, in particular in relation to—
 - a. Anti avoidance
 - b. Sub-sale relief
2. Certificate of compliance – digital options – in English – or other information
3. Cross border properties
4. Immediate changes to rates and bands without prior notice
5. Transitional provisions

1. Production of certificates of compliance

Most transactions are straightforward, and the need for a certificate (or not, for an exempt transaction) is clear. But reliefs have caused problems both for Land Registry and HMRC in the past, particularly in relation to sub-sales. Several tax avoidance schemes were devised, mainly based on a sub-sale where the ultimate transfer was also subject to another relief. So applicants claimed that no SDLT certificate was needed due to the combination of reliefs. Most of these claims were based on a misinterpretation of the provisions of the



Land Registry

Finance Act, but nevertheless, they resulted in many applications for registration being delayed while we served notice of the applications on HMRC, and HMRC disputed them.

Subsequently HMRC changed the Finance Act by the addition of Schedule 2A, to make it clearer when a relief must be claimed. Land Registry worked with HMRC for many months to find a solution that worked both for conveyancers, Land Registry and HMRC.

We believe that Schedule 1 of the LTT Bill largely follows Schedule 2A of the Finance Act. We have some concerns that Land Registry staff may not have the expertise to recognise what may be a tax avoidance arrangement under section 31 of the Bill, so we think it will be important to have links with staff at the Welsh Revenue Authority with whom we can liaise if necessary. We have done this successfully in the past in relation to the types of claim referred to above.

Land Registry also has a data-sharing arrangement with HMRC, to assist with anti-avoidance measures. If the Welsh Revenue Authority Land Transaction Tax return and collection system are separate, we expect that they would want a similar arrangement. There may be a small cost for setting up the separate service.

But we are as comfortable as we can be given that most reliefs will have to be claimed, so that an SDLT return will be issued. This means that in the vast majority of cases there will always be an SDLT return, so that Land Registry staff will not have to make judgements as to whether or not LTT obligations have been complied with.

2. Certificates of compliance

Under SDLT legislation, the registrar can accept a certificate of compliance “or such information about compliance as the Commissioners for HMRC may specify in regulations”.

That additional provision allows us to accept the submission receipt which is generated when customers apply electronically for an SDLT certificate, but it is not the actual certificate itself. However, the submission receipt contains all the information required to be in a certificate. The submission receipt is issued automatically by the HMRC system, but confirms that a customer has complied with the requirements to submit an SDLT return using the electronic facility offered by HMRC. This in turn allows the conveyancer to apply to register the transaction without delay. They do not have to wait for an HMRC officer to inspect the return and issue a formal certificate.

As both Land Registry and the tax authorities become more digital, we would prefer to be able to rely on digital tax submission receipts as far as possible.

It might therefore be appropriate to include the same or similar wording in the LTT Bill so that we could agree with the WTA as to different types of evidence that could be accepted if LTT returns are lodged electronically.



Land Registry

3. Cross border properties

Our recent detailed research has shown that there are many more cross border properties than we originally estimated. We found over 400 titles straddle the border or exist in both England and Wales to a sufficient extent to exclude mapping or other scale issues. Of these—

- 442 titles are freehold, 33 titles are leasehold and 10 titles are either cautions, rentcharges or unclassified (pending titles);
- 136 titles are residential, 47 titles are commercial, 32 titles are mixed use and the remaining are either general land registration, water, mines and minerals or other interests on land;
- 130 titles had a total of 141 transactions lodged against them (transfers, new leases and first registrations) in the last 5 financial years;

In addition, 27.45% of the border length is identified as unregistered (not straddled nor adjoined by titles in the Welsh side) but, due to capturing methods or to titles being close to the border, significant limitations exist in that analysis.

Section 9 of the Bill states that the consideration for the transaction is to be apportioned on a just and reasonable basis, but does not indicate how. An easy and accessible mechanism will be needed to determine and record the split in value for the purposes of LTT and SDLT. We can see that in practice this could cause delays and complexity for those properties affected. Land Registry will not be able to register a transaction until both certificates (or other evidence) are received.

It is intended that the valuations of the respective parts of the property should be permanent (unless development or other factors alter the respective values), or will customers have to apply for an apportionment to be calculated each time they sell/buy? If permanent, where should the valuation be recorded? Should the percentage split in valuation be recorded on the register of each of these titles? If so, who will calculate it, and what will be the procedure for changing those values if any changes are made to the property? Also, what if the owner disputes the apportionment? No doubt the WRA is considering all these practical problems, but the Bill does not seem to make any provision for regulations to be made in this regard (except for the general power under section 71(1)). These might not be matters for Land Registry, but we will inevitably be asked for guidance by our customers, and registration will be affected by them.

4. Immediate changes to rates and bands without prior notice

Land Registry is used to dealing with sudden changes to SDLT made in the Budget, and will be able to do so for LTT. But immediate changes to the rates and bands without prior notice



Land Registry

could cause problems if there was a sudden change to the minimum threshold for tax. This might mean that we would need evidence, for instance, of the date of exchange of contracts if transitional provisions were made.

5. Transitional provisions

Land Registry (and conveyancers) will need guidance regarding transitional arrangements for transactions for which contracts are exchanged before the date that the Bill comes into force, but not completed until after that date. We could not see any reference to transitional arrangements in the Bill.

Any queries regarding this response can be directed to—

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

or

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]