

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

### Submission by the Council of Mortgage Lenders to the Welsh Assembly Finance Committee stage 1 scrutiny inquiry

#### Introduction

1. The CML is the representative body for the residential mortgage lending industry that includes banks, building societies and specialist lenders. Our 139 members currently hold around 97% of the assets of the UK mortgage market. In addition to home ownership, CML members also lend to support the social housing and private rental markets across the UK.
2. We welcome the opportunity to provide this submission to the [stage 1 scrutiny inquiry](#) of the Assembly's Finance Committee, looking at the general principles of the Bill. Although the CML's expertise lies in other areas than property taxation law and the technicalities of its structure and operation, we offer the following general comments on the Land Transaction Tax proposals.
3. Our comments here should be read alongside our earlier response to the Welsh Government's 2015 consultation on tax devolution and the proposed LTT, which is **appended**.

#### General principles of the Bill and the proposed LTT

4. It is encouraging that the proposed approach is broadly consistent with that set out in previous consultation papers and with SDLT. We are keen to see more detail of the proposed rates and bands emerge through the subsequent development of secondary legislation. In this respect, we welcome the recent [Written Statement](#) of the Cabinet Secretary for Finance and Local Government and the related [research paper](#) on setting LTT rates and bands.
5. The recently introduced supplemental 3% stamp duty on BTL and second homes could risk adversely affecting availability and pricing of rental homes, and potentially disrupting owner-occupied activity such as house purchase chains and parental help for first-time buyers. Welsh Ministers will wish to consider the possible impacts of replicating the supplement in LTT.

#### Recent changes in Scotland

6. There are key learning points from the Scottish experience of the introduction of the LBTT, particularly around the impacts of rates and bands that were set when LBTT was introduced. The Scottish Parliament's Finance Committee is undertaking an inquiry on this matter. Evidence to the inquiry suggests high LBTT rates for higher value properties has had a dampening effect on housing market activity at this level, and that this has percolated down to other levels of the market too.

#### Rates and Bands: considerations for Wales

7. The setting of LTT rates and bands should consider and weigh the potential impacts on all parts of the market, and balance the priorities of revenue generation via LTT against assistance for market participants; and LTT revenue generation against housing delivery and supply. Higher LTT rates can have negative effects for market activity and government revenue. We suggest that Wales consider implementing rates that are no higher than those in England.
8. We suggest that, to avoid distorting the operation of the housing market and maintain a fair and equitable approach, government might consider rates and bands that do not place a disproportionate burden on middle to higher-value purchases. We suggest that this could help avoid negative fiscal impacts on growing families and aspirational home movers. If the tax were to be set such that it becomes a disincentive to such moves, then an effect might be to limit the potential for others to progress as first time buyers onto the property ladder or existing owners from moving-up. We suggest it would be important to keep in mind that buyers at this level are likely to be constrained by the total funds available to them to meet the cost of purchase, including LTT. A reasonably-set tax

could be better able to strike a balance between generating revenue for government and enabling housing market activity.

9. While it might appear an attractive proposition to structure the tax rates and bands so that the burden falls more on the perceived broader shoulders of those with the means to purchase middle and higher value properties, the potential for a disproportionate burden in this area to reduce activity in this part of the market could, in time, have implications for other parts of the market.

10. We suggest that, to ensure a healthy and well functioning housing market in Wales, the LTT framework and structures should support residential sales at higher and lower price points, without placing disproportionate burdens or disincentives on taxpayers to move. If aspirational movers are unable to move, more upward pressure could be put on the price of the fewer homes that do come on the market. This could, in turn, distort the market with higher house prices caused by low supply and high demand.

11. In the forthcoming consideration of rates and bands, we suggest that it would assist certainty and consistency if major changes to the SDLT arrangements could be minimised. This would allow taxpayers to plan ahead. We further suggest that Ministers might consider ensuring that there is not a significant leap in the rate of tax from band to band, and in particular from any nil rate band to the lowest rate of LTT. This would help to smooth the impact for taxpayers and avoid market distortions.

12. As Ministers and the Assembly move forward on important decisions on LTT, it will also be important to take into account the broader context. The government programme [Taking Wales Forward](#) includes measures to make Wales an attractive place for investment and business. LTT should, we suggest, be aligned to this intent. It will be necessary to consider how LTT rates and bands compare to those in the rest of the UK, to ensure that Wales continues to be able to attract investment and business not just in the south-east, but across the country and the north.

13. In establishing the LTT and considering appropriate rates and bands for Wales, we suggest there is an opportunity for government to underline its commitment to other issues, such as affordable homes provision; the potential for new initiatives including a pan-Wales shared ownership scheme; and housing for older people. These are issues that have equality and inclusion at their core. We believe there is an opportunity for Wales to use its new tax freedoms in building the LTT in a way that encourages and incentivises inclusion and opportunity. This might be achieved not only through the setting of rates and bands, but also through the structuring and operation of reliefs and exemptions.

## **Forecasts**

14. In forecasting potential LTT revenues, it would be useful to understand more about how the anti-avoidance policies and processes might operate and how the new WRA would be set up and resourced to manage this. In terms of the current SDLT tax take in Wales, available data from HMRC suggests that cash purchase represents a larger share of property transactions in Wales than for England, perhaps 40%, and this means that any analysis based on mortgage-financed transactions only shows part of the picture. In addition, residential stamp duty provides less than half the yield than for Scotland, so the overall revenue “pot” that can be considered in terms of bands, rates, exemptions and reliefs could be relatively small. Relative to England, the tax also generates much less revenue. Welsh Government will wish to consider carefully the overall extent and shape of the existing SDLT take in Wales when looking at how best to structure LTT, to deliver at least the same revenue for government in the context of balancing priorities in a fair and equitable way.

## **Buy-to-let and the PRS: additional homes supplement**

15. A vibrant and well functioning PRS is a priority in the mix of delivery of housing supply for Welsh Ministers. The CML, with its tenure-neutral position, welcomes this. There has been a raft of recent legislative and regulatory changes directly affecting not only buy-to-let mortgage lending, but also the landlord-tenant relationship. Layering of the SDLT additional homes supplement has the potential to alter investor sentiment and behaviour in the market. The combined effect of these changes will take time to emerge. We expect Welsh Ministers will want to carefully consider the

available evidence and opinion on the impact of the supplement, following its introduction in England and Scotland.

### **Definitions**

16. We believe further consideration should be given to definitions, such as “residential property”, which should perhaps make an explicit reference to “personal habitation” whether as a primary or secondary residence. In addition, there could be potential confusion with properties which have mixed elements of residential and commercial use such as hotels, residential care homes, hostels, mobile homes and park homes, as it is not clear under which taxation system such properties fall.

### **Implementation timeframe**

17. We suggest the go live date of 1<sup>st</sup> April 2018 looks challenging to operationalise the required processing and IT procurement/ systems. It will be important that implementation and transition is achieved in a seamless way. Given the close interaction of the LTT with the conveyancing process and legal profession, we suggest that the relevant professional bodies be fully engaged in further development of LTT and its associated process and systems.

### **Resources**

18. It will be important for the WRA to have, from the outset, the resource and expertise it needs to provide a dynamic service across a range of engagement and communication channels with taxpayers. For instance, it might prove useful if the WRA were to be able to offer an “opinion service” and, we suggest, it will be important to ensure it is resourced and able to provide guidance and assistance that is dynamic and responsive to taxpayer queries.

19. Looking towards April 2018, there is limited time remaining for training, system and process needs to be identified and delivered. Clarity in these areas will be important as soon as practicable before Royal Assent.

### **Other comments**

20. While we welcome and agree with the proposed approach and the reformed SDLT structure now proposed for Wales, we suggest that Ministers and the Assembly might keep in mind for the future that tax devolution could still provide opportunities for Wales to strike-out in a different direction on property taxation. We suggest that there are other ways and approaches that might be considered in future to design and implement distinctly Welsh property taxes. In this respect, the Institute for Fiscal Studies has, as part of its work with the [Mirrlees Review](#), mooted a “housing services tax” that might take the form of a reformed council tax and offer a potentially viable opportunity to replace SDLT approaches, for example.

### **Contact**

21. To discuss this submission further, please contact 

28 September 2016

## **Tax devolution in Wales - Land Transaction Tax**

### **Response by the Council of Mortgage Lenders to the Welsh Government consultation paper**

#### **Introduction**

1. The CML is the representative trade body for the first charge residential mortgage lending industry, which includes banks, building societies and specialist lenders. Our 128 members currently hold around 95% of the assets of the UK mortgage market. In addition, in terms of commercial funding, CML members have invested around £75 billion in the housing association sector UK-wide for new build, repair and improvement of social and affordable housing.
2. We welcome the opportunity to respond to the Welsh Government [consultation](#) on proposals for a Land Transaction Tax (LTT) to replace Stamp Duty Land Tax (SDLT) from 2018 in Wales.
3. Our interest is primarily in the residential property market, and our response focuses on aspects of the proposed LTT most likely to impact on that market.

#### **General comments**

4. The CML has long campaigned for a comprehensive re-think of stamp duty, to address issues around its impact on mobility and the creation of perverse incentives. We welcome the recent move from the former slab structure of SDLT as such a system would be fairer and have less distorting effects on the property market. We support the introduction of a new system in Wales which would resolve the slab structure issues.
5. We believe that tax devolution provides a unique opportunity for Wales to do something different in how housing and housing services are taxed.
6. Given that Wales is the only part of the UK to have revalued Council Tax values, and to introduce a new higher rate band, there is a natural opportunity for Wales to consider future alternative sources of revenue from housing. We recognise, however, that development and consideration of such alternatives now would be practically and politically challenging.
7. Accordingly, within the parameters of the current proposals, we support the broad intention to introduce a marginal rate system in Wales, similar to the reformed SDLT. Given the fluid nature of cross-border transactions, we favour equivalence as far as possible with prevailing SDLT arrangements. This should, however, be seen as a short term expedient.
8. Replication of the SDLT system could leave Wales exposed to the potential of changes being made in Westminster. Any new system must take into account the specific circumstances of the Welsh housing market and Wales' fiscal position.

#### **Specific comments**

9. We have responded to those of the consultation questions which relate to the broad operation of the proposals in the residential property market. We have not commented on the setting of rates or bands or their suitability or otherwise, as these issues are beyond our remit.

**Question 3:** *What would be the key impacts on the residential market in Wales of having a different transaction tax regime from England?*

10. If the two regimes are aligned differently, there could be a strong "push" or "pull" effect on border transactions. This could be detrimental or advantageous for the Welsh tax take, depending on direction. As there is much two-way household movement between Wales and England as well as residential developments spanning both jurisdictions, this further reinforces the need for broad regime equivalence.

**Question 4:** *Do you think the Welsh Government should have the ability to change or introduce new rates and bands in LTT with immediate effect?*

11. Yes, we believe it would be important for Welsh Government to have the ability to do so, as this will ensure the tax is sufficiently flexible to be able to adapt and respond to the market and economic circumstances at the time of implementation, and beyond. Equally, however, we would not want to see rates or bands changing frequently as this could cause uncertainty for customers, and potentially disrupt the operation of the market, resulting in surges in activity if buyers and sellers perceive that the tax cost to them might rise or fall quickly.

**Question 5:** *Do you think the definition used in SDLT defines residential property adequately for the operation of the taxes?*

12. We favour broad parity with the prevailing definition in SDLT, in order to provide consistency between the operation of the markets in both Wales and England.

**Question 26:** *Do you have any comments on the initial impact assessment?*

13. In our view, the initial impact assessment should more fully consider and explore the potential indirect consequences of the default or reformed stamp duty arrangements on the wider housing market.

14. The profile of property values in Wales is sufficiently different from England (see chart, Annex 1) to suggest that there could be little to be gained from modifying tax rates and thresholds on the relatively small proportion of higher value properties. Again, this suggests broad equivalence with SDLT could be the most pragmatic approach, currently. Similarly, the table (Annex 2) illustrates that adjustments to the SDLT regime in Wales might achieve only small changes in the overall tax take.

**Question 28:** *Do you have any other comments on the Welsh Government's plans to implement a land transaction tax in Wales?*

15. In our general comments, above, we suggested that Wales might consider in future a new and different approach to taxation of housing and housing services, than SDLT – although we recognise and support the current proposals as the most practical at this time.

#### **Other issues: conveyancing process**

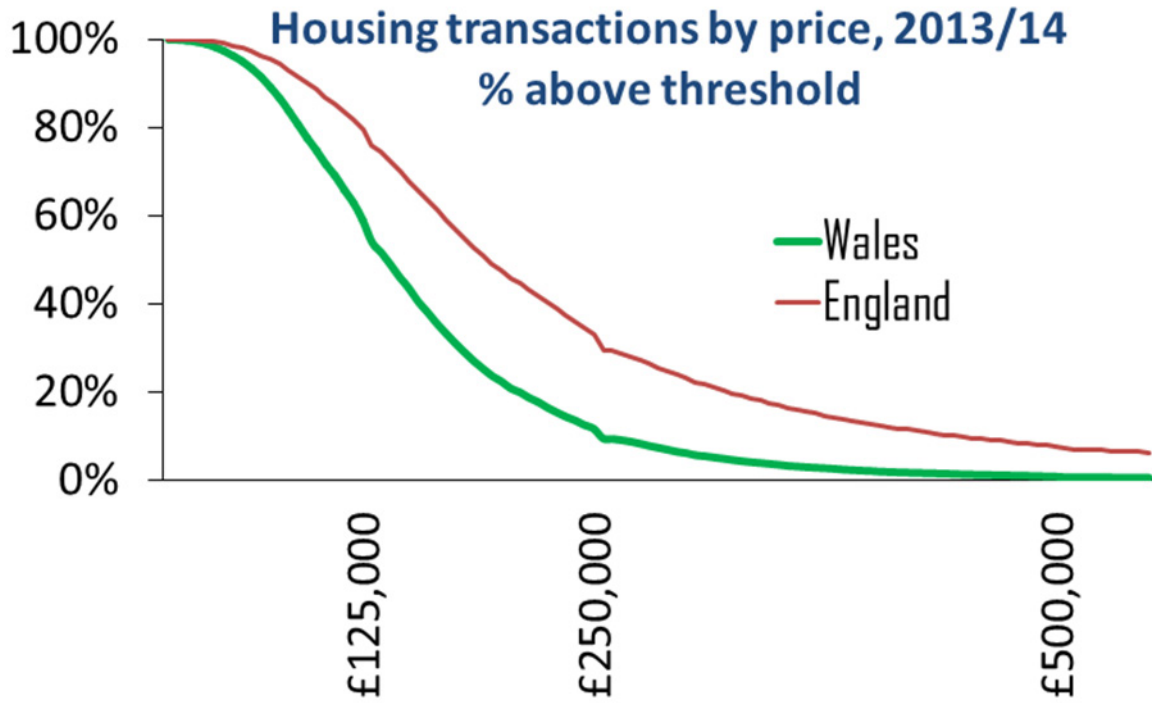
16. Prior to the implementation of new arrangements, Welsh Government will need to engage with the legal profession and conveyancers to ensure a smooth transition and avoid complications. The CML looks forward to engaging with the Welsh Government and the new revenue collection authority with regard to updating our Lenders' Handbook for conveyancers, to reflect the new arrangements.

#### **Contact**

17. Please contact [REDACTED] if you would like to discuss further.

30 April, 2015

Annex 1



Source: HM Land Registry

## Annex 2

### Property transactions completions priced at £40k or above Analysis by type of property and range of price - Wales

Estimates for Wales

#### 2012R

Range of price (lower limit, £s)	Residential property		Non-residential property		All property	
	000s	£m	000s	£m	000s	£m
40,000	7	410	1	33	7	443
75,001	6	566	0	30	7	597
100,001	6	741	0	31	7	773
125,001	5	700	0	35	5	735
150,001	4	636	0	26	4	662
175,001	3	548	0	29	3	576
200,001	4	888	0	54	4	942
250,001	1	361	0	30	1	391
300,001	2	741	0	107	2	848
500001+	0	277	0	1111	1	1388
<b>Total</b>	<b>39</b>	<b>5869</b>	<b>3</b>	<b>1487</b>	<b>42</b>	<b>7356</b>

#### 2013P

40,000	7	433	1	38	8	471
75,001	7	618	0	34	7	652
100,001	8	877	0	32	8	909
125,001	6	786	0	36	6	822
150,001	5	768	0	24	5	792
175,001	3	622	0	29	3	651
200,001	5	1085	0	66	5	1150
250,001	2	441	0	35	2	475
300,001	2	884	0	115	3	999
500001+	0	353	0	1506	1	1859
<b>Total</b>	<b>45</b>	<b>6867</b>	<b>3</b>	<b>1915</b>	<b>48</b>	<b>8782</b>

Source: HM Revenue & Customs

Showing estimates for Welsh SDLT transactions, in price brackets