



Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

# Cofnod y Trafodion The Record of Proceedings

[Y Pwyllgor Cyllid](#)

[The Finance Committee](#)

13/10/2016

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle y mae cyfranwyr wedi darparu cywiriadau i'w tystiolaeth, nodir y rheini yn y trawsgrifiad.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

**Aelodau'r pwyllgor yn bresennol**  
**Committee members in attendance**

Mike Hedges <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Llafur Labour
Steffan Lewis <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Plaid Cymru The Party of Wales
Eluned Morgan <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Llafur Labour
Nick Ramsay <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Ceidwadwyr Cymreig Welsh Conservatives
Mark Reckless <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	UKIP Cymru UKIP Wales
David Rees <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Llafur Labour
Simon Thomas <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

**Eraill yn bresennol**  
**Others in attendance**

Sarah Delaney	Cyfarwyddwr Cysylltiol, Deloitte LLP Associate Director, Deloitte LLP
Andrew Evans	Sefydliad Siartredig Trethiant Chartered Institute of Taxation
Geraint Evans	Sefydliad Brenhinol y Syrfewyr Siartredig Royal Institution of Chartered Surveyors
Jonathan Evans	Cyfarwyddwr—Trethi, Deloitte LLP Director—Tax, Deloitte LLP
Douglas Haig	Is-gadeirydd a Chyfarwyddwr Cymru, Cymdeithas y Landlordiaid Preswyl

	Vice Chair and Director for Wales, Residential Landlords Association
Frank Haskew	Pennaeth Trethi, Cyfadran Drethi, Sefydliad Cyfrifwyr Siartredig Cymru a Lloegr Head of Tax, Tax Faculty, Institute of Chartered Accountants in England and Wales
Mark Hayward	Rheolwr Gyfarwyddwr, Cymdeithas Genedlaethol yr Asiantau Tai Managing Director, National Association of Estate Agents
David Jervis	Partner, Eversheds Partner, Eversheds
David Morgan	Sefydliad Brenhinol y Syrfewyr Siartredig Royal Institution of Chartered Surveyors
Nigel Popplewell	Cymrawd gyda'r Sefydliad Siartredig Trethiant, Partner, Burges Salmon LLP CTA (Fellow), Partner, Burges Salmon LLP
Kay Powell	Cynghorydd Polisi, Cymdeithas y Cyfreithwyr Policy Advisor, Law Society
Adam Thomas	Partner—Eiddo Masnachol, Geldards Partner—Commercial Property, Geldards
Martin Warren	Cyfarwyddwr Cymru, Sefydliad Cyfrifwyr Siartredig Cymru a Lloegr Director for Wales, Institute of Chartered Accountants in England and Wales
Kate Willis	Swyddog Technegol, Sefydliad Siartredig Trethiant Technical Officer, Chartered Institute of Taxation
Angharad Woodland	Partner Rheoli, The Woodland Davies Partnership LLP Managing Partner, The Woodland Davies Partnership LLP

**Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol  
National Assembly for Wales officials in attendance**

Cath Hunt	Ail Glerc Second Clerk
Lakshmi Narain	Ymgynghorydd Arbenigol Special Adviser
Georgina Owen	Dirprwy Glerc Deputy Clerk
Joanest Varney- Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Christian Tipples	Y Gwasanaeth Ymchwil The Research Service

*Dechreuodd rhan gyhoeddus y cyfarfod am 09:23.  
The public part of the meeting began at 09:23.*

**Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau  
Introductions, Apologies, Substitutions and Declarations of Interest**

- [1] **Simon Thomas:** A gaf fi felly groesawu pawb i'r cyfarfod heddiw, yn cymryd tystiolaeth ar y Bil trafodion tir, a byddwn yn croesawu nifer o dystion, felly gobeithio bydd yr Aelodau yn barod am hyn? A oes unrhyw fuddiannau i'w datgan?
- Simon Thomas:** May I welcome everyone to the meeting today we are taking evidence on the land transaction tax Bill, and we will be welcoming a number of witnesses so hopefully the Members will be ready for that? Are there any interests to declare?

09:23

**Papurau i'w Nodi  
Papers to Note**

- [2] **Simon Thomas:** A gaf i ofyn yn gyntaf i'r Aelodau nodi cofnodion y
- Simon Thomas:** Can I first ask the Members to note the minutes of the

cyfarfod a gynhaliwyd ar 29 Medi a meeting held on the 29 September  
 hefyd y cyfarfod a gynhaliwyd ar 5 and the meeting held on 5 October?  
 Hydref? A ydych chi'n hapus gyda Is everyone happy with that? Also,  
 hynny? Hefyd, mae'r llythyr rydym there is the letter that we have  
 wedi'i dderbyn gan Gyllid a Thollau Ei received from Her Majesty's Revenue  
 Mawrhydi, dyddiedig 7 Hydref, and Customs, dated 7 October,  
 ynglŷn â Bil Treth Trafodiadau Tir a regarding the Land Transaction Tax  
 Gwrthweithio Osgoi Trethi and Anti-avoidance of Devolved Tax  
 Datganoledig (Cymru). Rŷm ni'n nodi (Wales) Bill. That is noted. Thank you.  
 hynny. Diolch yn fawr iawn.

09:23

**Y Bil Treth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig  
 (Cymru): Sesiwn Dystiolaeth gyda Sefydliad Siartredig Trethiant  
 Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales)  
 Bill: Evidence Session with Chartered Institute of Taxation**

[3] **Simon Thomas:** In which case, can I turn to our witnesses and welcome you to the committee, and thank you for your written evidence as well? We have the names in front of us, but it would be good for the record if you could just say who you are and the roles that you have, please.

[4] **Mr A. Evans:** I'm Andrew Evans, and I'm tax partner at Geldards, but today I'm appearing on behalf of the Chartered Institute of Taxation, of which I'm a member. One of my colleagues is appearing later on today on behalf of Geldards.

[5] **Simon Thomas:** Indeed, this afternoon, yes.

[6] **Ms Willis:** And I'm Kate Willis. I'm a technical officer at the Chartered Institute of Taxation.

[7] **Simon Thomas:** Thank you again for coming in, and, as we have several sessions to get through today, if you're happy for us to begin with questions on your written evidence and the Bill straight away, I will start by asking: one of the things that came out of your evidence very clearly was the advantages of maintaining the consistency between the current regime and the new regime as set out in the Bill, but you also said that could, in turn, transfer flaws from the old regime into the new system. Do you have anything in particular in mind as things that the committee should be aware

of in that context?

[8] **Mr A. Evans:** I think it's making sure that, perhaps—. One of the flaws in the stamp duty land tax regime was section 75A, the anti-avoidance. That's been dealt with by the general anti-avoidance rule and the targeted anti-avoidance rules. There may be other wrinkles that come out of an in-depth review of the legislation. Time hasn't allowed me to do a line-by-line review, but we'll see what happens when you have more chance to look at the actual Bill itself.

[9] **Ms Willis:** I think we did have some concern that there are areas of the existing SDLT legislation that are not ideal. Partnerships is one particular area, and leases as well. To the extent that there is post-implementation review, that can be monitored after implementation.

[10] **Simon Thomas:** Is there anything specific that you'd want Welsh Government, or potentially the new Welsh Revenue Authority, to do in advance of the implementation of the Bill around those areas?

[11] **Mr A. Evans:** I think it's more a case of, when it's implemented, making sure any guidance is there from day 1. Where you've got the new areas of law, like the GAAR, the TAAR, it's making sure everyone knows how those will be applied in particular, rather than leaving it in abeyance and thinking, 'We'll sort it out six months later'. That won't work for practitioners.

[12] **Simon Thomas:** And you mention particularly in the evidence the need for quite a detailed technical assessment of this. Is that something, again, in advance of implementation, or while we're looking at the Bill? I'm not quite sure where you saw that coming in. Is that for the practitioners, or to inform the committee, for example? Which should it be?

[13] **Ms Willis:** Practitioners, I think. It clearly reduces the effect or the impact for practitioners on learning the differences if those differences are very apparent and clear in the guidance, ideally with practical examples of how they might affect a transaction that they were familiar with under SDLT. But there's a tiny technical difference in the Bill that will affect how they implement that.

[14] **Simon Thomas:** Okay. Any questions? We'll move on. I think, Mike, you're next.



[15] **Mike Hedges:** On cross-border stuff. Certainly, when we started these discussions some time ago, the number of cross-border properties was very few. It has increased now almost to four figures and seems to be increasing daily. So, what people kept telling me was not much of a problem has become slightly more of a problem. What's your view on provisions in the Bill for cross-border property transactions?

[16] **Mr A. Evans:** I think it's a question of what would be expected by the phrase 'just and reasonable apportionment'. Now, the Valuation Office Agency have produced a lot of guidance on this, and it's a matter of applying that guidance in practice. And again, it's for the practitioners—making sure they understand what is understood by just and reasonable apportionment. How should they apportion the values between, say, the English land and the Welsh land, so that they can get it right, rather than being criticised later, 'Sorry you've put in an incorrect return, we're going to give you a penalty'.

[17] **Mike Hedges:** Especially if there's a difference in charges between the two. Somebody may do something in good faith and appear to be underpaying.

[18] **Mr A. Evans:** Yes.

[19] **Mike Hedges:** Which I don't think any of you want to see happen. There are also link transactions, aren't there, which are also more likely to include cross border, where people buy a number of properties where some are one side of the border and some are on the other? Any views on that?

[20] **Mr A. Evans:** I think, with link transactions, it's making sure that if you've got a transaction that is cross border—just one transaction—that they have to be linked, because you have what I call the 'nil-rate bands', so the £125,000 exemption, and then the other bands kick in from that level onwards. The taxpayer should only be able to claim one nil-rate band, whether it's England or Wales. So, it's apportioning whatever bands you have between the two regimes, so they can't have the benefit of both nil-rate bands for that particular transaction. So, where one transaction is linked together then, yes, you're correct that if there's more than one acquisition, it would be linked as well.

[21] **Mike Hedges:** And on the crossover, at some time we'll move to the Welsh stamp duty land tax, and transaction tax will be stopped. But I'm sure

that people working on it will not have a two-month stop from doing any work because no transactions are going to take place. Do you have any concerns, or would you like to elaborate on your concerns, regarding what happens over the—because they start under one jurisdiction and it finishes under the other? Most of us who have bought a property are aware that transactions can sometimes take slightly longer than you expected.

09:30

[22] **Mr A. Evans:** We've had transitional rules for SDLT on what happens with a rate change. So, when rates increase, that's well established as to what happens. If you've signed your contract or you've had substantial performance of your contract, that fixes the date for SDLT. I'd imagine the same rule would apply here—that if you've exchanged contracts or you've substantially performed your contract, then you can take the benefit of the previous regime. If you then complete, or if you complete without having a contract being signed before the implementation date, you'll be under land transaction tax.

[23] **Mike Hedges:** That means it'll be in the guidance, does it?

[24] **Mr A. Evans:** It will be in the transitional rules in the Bill and then be governed by what happens when, under legislation, you have actually completed or have a land transaction tax. This is based on when the transaction takes place, not necessarily the contract.

[25] **Mike Hedges:** Thank you very much.

[26] **Simon Thomas:** Mark Reckless. Oh, sorry, did you—?

[27] **Ms Willis:** I was just going to say that the transitional provisions—it's not quite clear to me which provision in the Bill will allow those transitional provisions to be put in place, presumably by secondary legislation. Section 76 appears to provide for that, but there's no mention of transitional provisions, and I think you're absolutely right that that will be very important—that those are clear from day one.

[28] **Simon Thomas:** Thank you. Mark Reckless.

[29] **Mark Reckless:** I understand we're constrained by the Wales Bill to a just and equitable apportionment of tax between England and Wales, but if

we're seeking to provide certainty to practitioners as to what that might be, should this committee seek to provide a definition as to how that would apply within the Bill?

[30] **Mr A. Evans:** It wouldn't do any harm, having more of a definition. I think, in practice, it'll come to how the Welsh Revenue Authority and HMRC will apply those rules, because that is where practitioners will be concerned when they put their return in—they want to make sure they and their clients will not get comeback from the relevant tax authority as to what they've done is incorrect.

[31] **Mark Reckless:** Given the 'just and equitable' definition in UK legislation, were we, for example, to say 'just and equitable' being the percentage split of the land area or the percentage split of the built-up land area, you know, or even where the land on one side or the other was de minimis, then it would be wholly on the other side, do you consider that would be within the aegis of the Assembly for making legislation—given that 'just and equitable' definition in UK legislation?

[32] **Mr A. Evans:** Yes, I think it would be.

[33] **Ms Willis:** I think, also, the 'just and reasonable' has a long-standing application—

[34] **Mark Reckless:** Is it 'just and reasonable' or 'just and equitable'?

[35] **Ms Willis:** Sorry, it's 'just and reasonable', yes. It is long-standing in not only valuation office authority practice, but also in case law as well, which has examined questions of whether you look at area or value, or looking at questions where there is marriage value between two elements of property, or ransom strips, or access—one part of the property having access and one not, and those kinds of valuation issues. The valuation office guidance is very detailed on that, because it's quite well known in the rest of the tax code, as you say.

[36] **Mark Reckless:** But is it applicable to the particular circumstances of part of a property being on one side or the other of the border? Presumably, the marriage value concept wouldn't—

[37] **Ms Willis:** Not so much, no, but the wider principles of looking at the value of different parts of land are there. I think one question is to what

extent the valuation office guidance will apply to LTT as well. I mean, that is a—

[38] **Mark Reckless:** And whether there's a definitive map showing how much is on which side of the border.

[39] **Ms Willis:** Indeed, yes.

[40] **Mark Reckless:** Who should we look to for that mapping information that could be accepted objectively? Where should we look for that, do you think?

[41] **Mr A. Evans:** I would suggest the Land Registry. They have the records of where land is in the UK and, hopefully, they'd provide a definitive list of where the actual border is.

[42] **Mark Reckless:** And, potentially, it will show what portion of the built-up land is on either side of the border.

[43] **Mr A. Evans:** Yes. When conveyancers produce the transfer, they rely on the Land Registry plans, and that's what they use when they define the area of the land and get their red pen out, or metaphorical red pen, and outline the land in red. If you've got the border going through the middle, then that would be clear as to which land is in England and which land is in Wales.

[44] **Mark Reckless:** And would the border generally be marked on those conveyancing—?

[45] **Mr A. Evans:** I don't know.

[46] **Simon Thomas:** I understand the Land Registry does not, in fact, mark the border between England and Wales.

[47] **Mr A. Evans:** I think that it may well have to.

[48] **Simon Thomas:** I think your evidence points to that. Can I just ask, following Mr Reckless's questions, on this 'just and reasonable', is there any use of de minimis within that in other circumstances that might be applicable to cross-border properties?

[49] **Mr A. Evans:** I'm not aware of de minimis. It's a question of whether the Bill wanted to apply de minimis: would the Welsh Government wish to give up their small proportion of land transaction tax, or would the Westminster Government wish to give up their small proportion of SDLT?

[50] **Simon Thomas:** But some of these could be quite tiny sums—a stream going through a garden or whatever.

[51] **Mr A. Evans:** Yes, they could be very small sums.

[52] **Ms Willis:** I think it may be important also, going back to consistency, that 'just and reasonable' is obviously used for things like capital gains tax, which will continue, for now, to apply in Wales. So, having a consistent approach to the just and reasonable apportionment may be important.

[53] **Mr A. Evans:** One other point to remember is that, under SDLT, you don't have to put a return in if the consideration for the transaction is less than £40,000. So if you have a small slither of land that is worth less than £40,000 on the English side of the border, you don't put a return in.

[54] **Simon Thomas:** But that could mean that we're lacking knowledge about the mapping as well, in the fullness of time. Is there any evidence from Scotland that might help us here? Obviously, the cross-border area is smaller in terms of population and density.

[55] **Ms Willis:** I'm not sure.

[56] **Mr A. Evans:** I'm afraid I don't know. I don't have anything to do with Scottish transactions.

[57] **Simon Thomas:** Well, it's worth asking.

[58] **Mark Reckless:** I understand, Chair, that it's separate.

[59] **Simon Thomas:** It's separate, yes. But the other thing that might emerge, then, is: how might the link be made between the valuation office, the new Welsh Revenue Authority and HMRC? Do you see that there's a need for closer collaboration or certain types of protocols to be set in place? What would you expect to happen at that institutional level in order to allow this tax to work effectively?

[60] **Mr A. Evans:** I'd expect that, where there is a cross-border transaction, both HMRC and the Welsh Revenue Authority would be talking to each other, and I imagine that they may then contact the valuation office to make sure that there has been just and reasonable apportionment, particularly if there's a different rate of tax between the two jurisdictions, so that someone hasn't been slightly naughty or tried to put more into one side of the transaction. I'm still saying it's just and reasonable, but perhaps not as reasonable as it could be. So, there'll be checks and balances, and if we're dealing with, say, 500 properties across the border, they're not all going to be sold every single year, so it'll be a relatively easy task for the Welsh Revenue Authority to pick those transactions out and have a look at them.

[61] **Simon Thomas:** In your experience, to what level is this now done electronically and could be quite easily shared between the different institutions in that way?

[62] **Ms Willis:** I'm not sure. One would hope it is done fairly quickly. The manuals certainly lay out the process by which HMRC and VOA might operate in relation to disputes on 'just and reasonable'. So, one would expect that the same process could apply.

[63] **Mr A. Evans:** And particularly with the push to file everything electronically: SDLT is going down that route. Agents will have to file electronically and I think the same will apply for LTT.

[64] **Simon Thomas:** I'm aware from some of the evidence we've had that there is some paper filing still going on. This is top of the head—I think I saw a figure of about 10 per cent. That may not be the true figure, but I think I saw that. But does that suggest that, in some way, the Government should be working, itself, towards a complete electronic system if this is going to work really effectively?

[65] **Mr A. Evans:** I think it's important that an electronic system does work from day one. I think that electronic filing is the way that everything is going. You've still got to allow for paper filing in certain special circumstances. For example, there are some religious organisations that don't allow the use of computers, and there may be areas where broadband doesn't allow electronic filing.

[66] **Simon Thomas:** I think it's safe to say that there are areas in Wales where that doesn't apply, I guess.

[67] **Mr A. Evans:** So, there may be issues for those solicitors who are in a low broadband area that will find it totally difficult to file electronically.

[68] **Ms Willis:** I suppose that, also, unlike perhaps other tax returns being filed electronically, for LTT and SDLT, the link to the registration process means that if you did have a system failure, for example, you wouldn't really want that to stop the whole process. So, there may be a need for paper—always a need for default to paper returns. But obviously, the best position, for this particular tax, is electronic filing. I think the numbers in the UK system at the moment are about 33,000 returns filed by paper each year, surprisingly, which is only about 3 per cent, but it's still a lot of process, isn't it?

[69] **Simon Thomas:** Eluned Morgan.

[70] **Eluned Morgan:** Can I turn to the issue of reliefs? The reliefs suggested in this Bill are broadly consistent between LTT and SDLT. Are you comfortable that that should be the case, or are there any areas where you think, actually, now is an opportunity for us to look at other areas where we could be introducing reliefs?

[71] **Mr A. Evans:** I think I've had the advantage of being on the tax advisory group, looking at reliefs from day one. I think they learned a lot from the Scottish experience of saying, 'Right; we're not having any reliefs', and then, one by one, the reliefs are brought back in because there's a good economic argument for them. I think where we've got to with the Bill is a very sensible approach, where they've looked at reliefs—'Is there a good economic case for reliefs? Yes. We'll leave it in there.' They've taken out some of the reliefs that aren't relevant, so, Scottish crofters—obviously you don't have Scottish crofters in Wales—and some demutualisation of building societies. So, if a building society wanted to demutualise and there was an SDLT or LTT charge, they'd probably have to make a case for a specialist exemption somehow. But on the whole, I'm happy with the reliefs we've got. I know, from some of the other evidence, that there are concerns about some financial instruments and oiks and that sort of thing needing special reliefs, but that's outside of what I deal with. But on the whole, yes, I'm happy.

[72] **Eluned Morgan:** So, what about where we have a kind of low uptake of people taking that opportunity to get reliefs? So, for example, social landlords. We're anxious to promote social housing in Wales and yet it looks

like that that's an area where, actually, people are not taking advantage of that. Is there something we could do, in addition, to promote people to take up those opportunities that actually exist already?

[73] **Mr A. Evans:** I'm not sure that it would be a case of registered social landlords not taking advantage of reliefs. I think if the relief is there they'll take advantage of it because they're entitled to it. I think it's more a case of making sure that the relief is included in the legislation. Just because there aren't many people who take advantage of it, that's no reason for them not having that relief in the first place.

[74] **Ms Willis:** It's very important to have the claims in there so that that can be monitored and evaluated post implementation, I would say, because you need to know why it's not being taken up, don't you, really. Is it because the relief is not framed correctly, or is it because it's not necessary?

[75] **Eluned Morgan:** So, we would need to speak to, for example, social housing organisations to find out why they weren't taking advantage of that relief to find out whether it's a structural problem or if it's the way it's framed. Okay.

[76] What about charities, planning obligations and that kind of thing? Are those areas where we should be focusing our attention as well?

09:45

[77] **Mr A. Evans:** My experience of advising charities is that, if the relief is there, they claim it. It's not an issue for them. It's very clear that, if a charity is buying a property for its charitable use, then they claim the relief, and I think advisers of charities will be aware of those reliefs. So, I don't think it is an issue that charities need education about that or encouragement to claim that relief. They're usually very, very aware of their financial position, their, possibly, lack of financial resource and the need to be able to claim that relief on the acquisition of property.

[78] **Eluned Morgan:** Okay. Obviously, we're having a divergence in terms of policy in Wales now compared to what's going on in England. Presumably, you wouldn't have any principled objection to us tailoring a new system to coincide with those new policy areas if they were in line with the policy objectives, so, as a principle—. I mean, there may be technical reasons why we would do things differently. Is that—? Would that be fair?



[79] **Mr A. Evans:** I think it's a question for Members of the Assembly as to what policies they want to endorse. It's important they consider the economic effects of those policies and whether what you're trying to do will have a positive impact.

[80] **Ms Willis:** It would be helpful, when there are new reliefs and, indeed, with the existing relief, that, on the face of the legislation, you know why the relief is there. That's very important in relation to the GAAR as well, I think, in that one of the requirements is to pay attention to the intent of the Assembly when it was enacted.

[81] **Eluned Morgan:** Okay. Thank you.

[82] **Simon Thomas:** Mark Reckless.

[83] **Mark Reckless:** One area I'm unclear on is why, in the draft Bill, the Welsh Government is proposing to remove the sale and leaseback relief available under SDLT from LTT. Would you have any concerns around that?

[84] **Mr A. Evans:** I think I would, on the basis that certain leasebacks, sometimes, are a very genuine commercial transaction, and, if someone is selling their property and the purchaser pays SDLT and the original owner gets the property back and, until now, gets the relief on the lease element of it—I don't think there's anything that's particularly, kind of, tax avoidance by doing that sort of transaction.

[85] **Mark Reckless:** Thank you.

[86] **Simon Thomas:** Apparently it is in Schedule 8, so we can examine that. Steffan Lewis.

[87] **Steffan Lewis:** Thanks, Chair. In your written evidence, you raise concerns about the one-size-fits-all approach to an overarching TAAR. Can you elaborate further on your concerns and perhaps suggest your preferred alternative?

[88] **Ms Willis:** Yes, I can quite understand the rationale for a one-size-fits-all—it is simpler, rather than having TAARs dotted throughout the reliefs. It's just that the nature of some of the reliefs means that framing a one-sized-fits-all is quite difficult, and I think that's recognised in the explanatory

notes for charities relief, for example, because there might not be an economic motive, and I think the explanatory note says that it would be an economic motive because somebody is exchanging cash for a building and therefore it is economic. But it's slightly worrying that, already, you have a provision in the Bill that sets down a test for avoidance that then has to be ameliorated in guidance straight away. The CIOT has always had this concern about being taxed by law and then untaxed by, essentially, concessionary guidance, which doesn't have the same status as primary legislation. So, that, really, was our concern.

[89] **Steffan Lewis:** So, do you think, on balance, that having a specific TAAR for each is still better, even though you lose the possible element of simplicity and—?

[90] **Ms Willis:** It's a balance, isn't it? It's a balance between a simpler approach and the need to—. Perhaps it's the wording of the TAAR that needs to be considered in that light. Again, you can see the benefit of the approach, but that's the downside. And concessionary guidance, how much you can rely on guidance? Guidance sometimes changes, which creates uncertainty.

[91] **Steffan Lewis:** And you have concerns about the multiple reliefs under TAAR, as the Bill stands now, so what problems do you foresee emerging, as the Bill stands?

[92] **Ms Willis:** Well, I think the other way, perhaps—sorry, just going back to what can be done, perhaps the way that that can helpfully be addressed is this statement of purpose, so that you know why the relief is there and the intention when it's enacted. That, I think, would help a great deal and go a long way to taking away the uncertainty of the overarching TAAR, because you can then look and say, 'Well, okay, charities relief: the purpose of charities relief is this, so I'm clearly within that intent and therefore the TAAR shouldn't catch me.'

[93] **Steffan Lewis:** And those statements of intent, would you envisage them being in the Bill?

[94] **Ms Willis:** Yes.

[95] **Steffan Lewis:** Rather than in, as you say, supplementary regulations.

[96] **Ms Willis:** Yes.

[97] **Steffan Lewis:** You suggest as well in your written evidence that consideration might be given to reversing the definitions of tax in the GAAR and the TAAR. Can you talk us through why you've come to that conclusion and how that would work?

[98] **Ms Willis:** I suppose it just struck us as slightly odd that with the reliefs, which are about reliefs being claimed in Wales for Welsh land transactions, the TAAR then takes into account non-devolved taxes, whereas the GAAR only looks at Wales. In a sense, you'd expect, almost, the GAAR, when you've got a scheme of avoidance that might be taking place in Wales and England—that's when you're looking at a wider arrangement, aren't you, and are concerned about the wider transactions that occur across borders. Whereas, for the reliefs, they are about transactions in Wales—land transactions in Wales. So, to some extent, it seems slightly the wrong way around.

[99] **Simon Thomas:** Would the proposal to just define tax as devolved taxes, would that overcome your concerns?

[100] **Ms Willis:** For LTT, for the reliefs themselves?

[101] **Simon Thomas:** Yes. On the reliefs, yes; to define it as only regarding devolved taxes.

[102] **Ms Willis:** Yes, or land transaction tax, indeed.

[103] **Simon Thomas:** Yes, because it's the TAAR you're talking about here, not the GAAR.

[104] **Ms Willis:** Yes.

[105] **Mr A. Evans:** Yes, the TAARs are for land transaction tax; the TAARs aren't for any other taxes. They're not for the landfill tax, which will have a separate Bill.

[106] **Simon Thomas:** Indeed.

[107] **Mr A. Evans:** Whereas, obviously, the GAAR is for all taxes, because it's being put into the taxes management Act.

[108] **Simon Thomas:** Okay. Mark Reckless.

[109] **Mark Reckless:** How would we know if a land transaction in Wales was designed to avoid non-devolved taxes?

[110] **Mr A. Evans:** At the moment, you wouldn't, because you're not having a disclosure of tax avoidance schemes. It would be, perhaps, talking to HMRC, or the Welsh Revenue Authority talking to HMRC, as to, 'Is this part of a scheme?', or that sort of arrangement.

[111] **Mark Reckless:** But your advice would be, if we were to have the arrangement just discussed, that it would be better to have that in the GAAR than in any of the TAARs in respect of LTT.

[112] **Mr A. Evans:** If you're looking at the GAAR applying to all taxes, yes.

[113] **Mark Reckless:** And the GAAR—I'm looking at your very helpful note, really, from 5.3 to 5.5—when it talks about tax avoidance arrangements and has this 'artificial' rather than 'abusive' definition, considering that we should have regard to any genuine economic or commercial substance. Is the meaning of 'genuine' sufficiently clear there, and do you understand why we're having regard to any genuine economic or commercial substance, but then particular regard to the amount of tax that might otherwise be chargeable? Does that make sense?

[114] **Mr A. Evans:** I think that's a difficult one, because it obviously comes to policy, but, to give an example, my concern is that you have the artificial transaction point, and then you have the let-out if it's a genuine commercial transaction and the Welsh Revenue Authority have said that's okay. You can have situations where you have the choice between buying a property and buying the company that owns the property. If you had a £60 million property, if you bought the shares in the company, the stamp duty would be £250,000, at 0.5 per cent. If you bought the property, that's £2.5 million of stamp duty land tax. They're both equally good choices. If the Welsh Revenue Authority were to say, 'Yes, you can buy the shares in the company', and what you're doing is artificial, then you're caught by the GAAR, which I'm not sure would be—. Well, it's a question for Welsh Government as to do they want to go down that route or not.

[115] **Mark Reckless:** Could I ask your view on another example, given by the Law Society, one of our later witnesses? Where you have a transaction

where you are a private tenant at a care home owned by a local authority, and for sale and leaseback sort of relief, if the local authority, rather than saying, 'We'll have leaseback' were instead to cancel the old lease and give a new lease so that it takes advantage of its sort of relief, structuring it in that way, would you expect that to fall foul of the GAAR as currently drafted?

[116] **Mr A. Evans:** I wouldn't, no, because there could be very good commercial reasons for going down that route. Again, to get outside the GAAR, you still have to have the Welsh Revenue Authority almost blessing that transaction, saying, 'That transaction's okay. It's not caught by the GAAR'.

[117] **Mark Reckless:** Do we have provision for various rulings to be given an advance so that there is commercial certainty? Are you comfortable with that? Is that acceptable?

[118] **Mr A. Evans:** The Welsh Revenue Authority would have to issue that guidance in advance or be in the process of being able to give that guidance very quickly in the course of the transaction. Otherwise, you're caught.

[119] **Mark Reckless:** Because I'm concerned that a GAAR is being promulgated as, apparently, sort of tougher and more favourable to the definitions, with a view to catching more tax avoidance. But looking at the very limited application of UK GAAR in terms of cases to date, I'm nervous that the impact of the way that we're phrasing this currently is simply going to be to induce commercial uncertainty, and particularly advisers, who may not want to get involved in Welsh stuff they don't fully understand when there are so few cases—. Is this legislation the right place to have the GAAR, given the paucity of devolved taxes to date? And you're stating that we need to have the guidance in place immediately rather than doing that later. Would it be wiser to wait for further tax devolution down the road before implementing a GAAR, particularly given the comprehensive nature of the TAARs in this legislation?

[120] **Mr A. Evans:** I think it comes back to the policy decision of the Welsh Government, that they want to have a general anti-avoidance rule. The difference in England is that they have a general anti-abuse rule. So, something has to be abusive before it's caught by the English GAAR. Whereas in Wales it would be avoidance of tax, which is a subtle distinction but a very important distinction.

[121] **Mark Reckless:** You emphasise the difference between ‘avoidance’ and ‘abuse’, but what about the distinction between ‘abuse’ and ‘artificial’, and the interplay of those three words?

[122] **Mr A. Evans:** I think ‘artificial’ and ‘abuse’ are probably very, very similar, in my view, in outlook as to they would be applied. If something is done artificially, you’re probably trying to abuse the tax system.

[123] **Mark Reckless:** So, in which case, why change the wording from ‘abusive’ to ‘artificial’?

[124] **Mr A. Evans:** I think possibly because the Welsh Government have decided that they want to be tighter and have more scope to crack down on tax avoidance or any sort of tax avoidance.

[125] **Mark Reckless:** Do you believe that that would be effective?

[126] **Mr A. Evans:** I think ‘yes’ is the short answer. It would scare a lot of tax practitioners about, ‘Right; I’m not going anywhere near that because I don’t want to be caught by something that’s anti-avoidance’.

[127] **Mark Reckless:** Yes, but are we avoiding the tax avoidance, or are we avoiding the commercial transaction in that context?

[128] **Mr A. Evans:** There is a distinct possibility that you will do, yes—avoid the commercial transaction.

[129] **Ms Willis:** In terms of prevailing practice and the guidance being active and agile and adopting, really being true to what is prevailing practice, maybe safeguards such as an advisory panel who can advise the Welsh Revenue Authority on prevailing practice would provide some certainty.

[130] **Mark Reckless:** Are you volunteering? [*Laughter.*]

[131] **Ms Willis:** No.

[132] **Simon Thomas:** Nick Ramsay.

[133] **Nick Ramsay:** Yes. Thanks, Chair. I think what Mark was getting to there was: do you think that it would be better to stick with the ‘abuse’ term rather than ‘artificial’?

[134] **Ms Willis:** It depends on the message, I guess, that you want to give. It's a stronger message, potentially, isn't it? Well, it is a stronger message.

10:00

[135] **Nick Ramsay:** It is a stronger message. Do you think it's necessarily a good message, or do you think that, actually, it's going to cause more problems than it solves? It's obviously the Welsh Government's decision to do this. I'm just interested in your view on it. I'm starting to think that, actually, we'd be better off sticking to the 'abuse' term in terms of what we want to achieve, but there are different views on it.

[136] **Mr A. Evans:** I think if we were having this conversation five years ago we'd be saying, 'Well, go with the avoidance', but I think the market has changed. There are a lot fewer schemes and scheme promoters out there. There are some aggressive promoters still trying to do things, but most reputable advisers and then businesses will say, 'No, I don't want to appear on the front page of the *Western Mail*, thank you very much'. The whole area has changed in tax avoidance.

[137] **Nick Ramsay:** A sledgehammer to crack a nut springs to mind.

[138] **Mr A. Evans:** Potentially, yes.

[139] **Ms Willis:** But you have to know what the nut is, don't you? You have to know what the nut is.

[140] **Mr A. Evans:** Yes.

[141] **Nick Ramsay:** This is going into a whole different area. [*Laughter.*]

[142] **Simon Thomas:** Okay. David Rees.

[143] **David Rees:** Subsection 7 of your correspondence actually highlights the concerns about subordinate legislation. In 7.1, the first paragraph, you express the view that you note that careful consideration has been given to the use of the affirmative procedure, yet in the next paragraph you actually express concerns and reservations about the use of the affirmative procedure. Can you just clarify the distinction between those two statements?

[144] **Ms Willis:** That's a fair enough point. I suppose there is a great deal, or there are a number of powers to make subordinate legislation, and that always just strikes a note of concern about scrutiny and the level of scrutiny, with new powers—sometimes quite extensive powers—and the extent to which they will be examined. One example is that, on the face of this Bill, the 3 per cent—the additional dwelling surcharge—is not in the Bill at the moment. If that is introduced, if a decision is made to introduce that, would that be made through subordinate legislation or primary legislation? That would be quite a—. It's obviously in effect now in Wales, so it may not be such a big change, but if you have the scale of that kind of change, which is being brought in through subordinate legislation, the question, really, is: would there be adequate scrutiny of that kind of change?

[145] **David Rees:** So, your concern is that perhaps the—. Whereas scrutiny in the affirmative is where it goes before the Assembly as a whole, you think that perhaps it should actually be further investigated before it goes to the Assembly as a whole.

[146] **Ms Willis:** Well, consultation would—. You know, there is a commitment to consultation, and perhaps the—. I think that the commitment is slightly vague about when consultation would take place, and perhaps that could be a little firmer, or a protocol on when a consultation takes place.

[147] **David Rees:** In that sense, we've also had this provisional affirmative procedure as well, which I understand is normal practice. Are you happy with that provisional affirmative procedure in the elements that it refers to?

[148] **Mr Willis:** I think so, yes. I think that's the rates—the first setting of the rates. Yes.

[149] **David Rees:** The first setting would be affirmative—that part of the Bill would be affirmative—but the subsequent subsections would be provisional.

[150] **Ms Willis:** Yes. Clearly, the Welsh Government needs to be able to respond quickly to changes in the rates set by Westminster, and also to immediate economic concerns.

[151] **David Rees:** In relation to rates, are you also satisfied that the measures taken to return or repay, if they do not go through, are appropriate?



[152] **Ms Willis:** Yes, I think that's very useful to have that on the face of the Bill.

[153] **Simon Thomas:** Just to conclude, if I could just ask, I think you've said in your evidence that there's some concern you have around the definition of a residential dwelling. Could you just expand a little about why that might be a problem within legislation?

[154] **Ms Willis:** The definitions in SDLT are—. Well, in the tax system, generally, the definitions of 'residential' are dotted all over the tax system, and they all have—

[155] **Simon Thomas:** And they're different for different taxes.

[156] **Ms Willis:** Slightly, yes—different for different taxes. And there are subtle variations, which are sometimes quite large variations, but sometimes quite subtle definitions that are, inevitably, traps for the unwary.

[157] In SDLT itself, there are different definitions, so having a single definition where there may be departures from it for particular policy reasons, but a single definition in the legislation, with then departures if necessary, would help to remove those traps. I think, additionally, the guidance in SDLT, for example, is dotted all over the place and it would be very helpful to have the guidance of all residential and dwelling in one place.

[158] **Simon Thomas:** Okay. Finally, the explanatory memorandum for the Bill sets out some of the costs and the impact of the Bill, potentially. Do you think that's a fair assessment, in your experience, of how this might work?

[159] **Mr A. Evans:** I think it could be on the low side. If you look at the length of the Bill and the amount of time it would take for one person to read that Bill, then—. For example, if I gave a talk to my property colleagues within Geldards and talked to them for an hour, the cost to the firm for my time is, kind of, de minimis, but the loss of fees of, say, 20 fee owners is substantial. It could be, say, £3,000, and if you multiply that by 1,000 law firms, you get a long way towards the proportion—to the £800,000 top estimate of the costs of implementation.

[160] **Simon Thomas:** So, implementation costs could be higher.

[161] **Mr A. Evans:** I think they could be, for the training and getting up to

speed.

[162] **Simon Thomas:** Training, information sharing, best practice, workshops, whatever it might be—that kind of process could be a little more than has been estimated.

[163] **Mr A. Evans:** Yes, but it's part of doing business. If you're holding yourself out as dealing with Welsh land transactions, then it's part of the process you've got to go through.

[164] **Ms Willis:** Or indeed, tax, generally.

[165] **Mr A. Evans:** Or tax generally, yes.

[166] **Simon Thomas:** Yes. This is only one of very many changes I'm sure you're dealing with. Quite.

[167] Okay, well, thank you for your evidence and assistance to the committee today. We'll share a transcript, which you can just check for veracity and make sure that you're happy—. I'm sorry, there was one other question. Sorry.

[168] **Mark Reckless:** Can I ask, do you think, in light of those compliance costs and the need for training for fee owners, many English firms of solicitors that might only occasionally do a Welsh transaction will decide it's too much trouble and not hold themselves out as being able to undertake that business?

[169] **Mr A. Evans:** Possibly, and therefore there are opportunities for those law firms, perhaps, in Wales that want to do that for them. [*Laughter.*]

[170] **Simon Thomas:** It does cut both ways, doesn't it?

[171] **Mr A. Evans:** Yes.

[172] **Mike Hedges:** More for those law firms that work in both England and Wales.

[173] **Mr A. Evans:** Yes.

[174] **Simon Thomas:** I think that does conclude, and, as I said, you will get

a transcript to check for accuracy. Thank you again for your assistance. Diolch yn fawr iawn. We'll move on straight to the next witnesses and then there'll be a break after that, okay?

10:08

**Bil Treth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig  
(Cymru): Sesiwn Dystiolaeth gyda Chymdeithas Genedlaethol yr  
Asiantau Tai a Chymdeithas y Landlordiaid Preswyl  
Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales)  
Bill: Evidence Session with the National Association of Estate Agents  
and Residential Landlords Association**

[175] **Simon Thomas:** Good morning. Bore da. Welcome to the committee. We're now taking evidence from the National Association of Estate Agents and the Residential Landlords Association in Wales. Could I just ask you both to introduce yourselves and state your positions as well for the record? Thank you.

[176] **Mr Hayward:** I'm Mark Hayward. I'm the managing director of the National Association of Estate Agents and we cover the whole of the UK.

[177] **Mr Haig:** My name is Douglas Haig. I'm the vice-chairman and the director for Wales for the Residential Landlords Association and we cover England and Wales.

[178] **Simon Thomas:** Thank you for your written evidence. If you're content, I'd like to invite the committee to start directly to ask questions. I'll open just by asking you, from your perspective, if this Bill were to be passed into law, what the main challenges would be in implementing and ensuring the Bill is done effectively.

[179] **Mr Haig:** I suppose that our main perspective around that—we welcome the opportunity for Wales to be able to set its own rates, and I think that it's a positive thing to be able to look at the market and for Wales to be able to tackle Welsh issues. So, in terms of enforcement, obviously it's about putting the structures in place, which I'm not an expert to really discuss. So, I suppose our biggest area is around the recent changes that have been brought in by the UK Government on the 3 per cent surcharge, so that, as you can see from our evidence, is really our main focus through this.

[180] **Simon Thomas:** I did pick that up, yes. And we don't know, of course, what the Welsh Government is going to do yet on that.

[181] **Mr Hayward:** I think from our side—and we're both talking about homes, whether they're to rent or whether they're to buy, so we're very much in accord on that—the challenges are, firstly, in communication, avoiding a rush or stampede, if you do alter it and it does benefit one sector or one price bracket rather than another. Looking at land and business transaction tax in Scotland, which we monitor very carefully, that's had an effect at the upper end. I think the challenges are, looking at this in the context of England, Scotland and Wales, looking at the average house price in Wales and trying to see what you can do to accommodate and encourage first-time buyer home ownership and also landlord acquisition to increase the number of homes out there.

[182] **Simon Thomas:** You mentioned in your evidence the effect in Scotland, and, of course, the Welsh Government produced a discussion paper around setting the rates and how that might be done in Wales. Of course, the rates themselves are not on the face of this Bill, so we don't know yet where the different rates may be and how—. We know that we're moving from the slab system, but we don't know how it will be applied. Are you content that the Bill doesn't describe that and that it's dealt with separately as a piece of regulation, the secondary legislation, therefore? Do you think that's a reasonable approach, bearing in mind what happened in Scotland?

[183] **Mr Haig:** I suppose, for me—. I'm actually normally a fan of having as much on the face of the Bill as possible, but I would say that, in this particular case, because taxation affects the way that the market operates so strongly, the ability for Welsh Government, under the correct scrutiny process, to alter rates or to add exemptions or to, maybe, tweak around certain parts of the market is a very positive way of going forwards. It allows the right people to make suggestions and changes over time, because we just don't know what's going to happen in five years' time. We've got a possible major change in terms of our status in the European Union coming up. Nobody can tell us, as much as they'd like to try and tell us, what's going to happen then, and actually what is really going to happen, and the ability for the Welsh Government to adapt to those changes is important. So, I agree that it shouldn't be on the face of the Bill.

[184] I do support the change in the way that stamp duty was charged in

terms of the gradations as opposed to full slabbing, so that you've got this artificial effect of capping house prices at, say, £250,000. That was a very positive move, and I would encourage Welsh Government to consider that as part of the changes as well.

[185] **Mr Hayward:** I think there is a danger if you telegraph it too early that the market reacts too early, in either the right way or the wrong way. House purchase transactions are an emotional thing—not statistical. I don't think right now is the correct time to do it, so I think to bring it in slowly, so you can have a full discussion or a full awareness, is probably the best way, rather than say, 'That's what it's going to be.'

[186] **Mr Haig:** To add to that as well, certainly, if there is going to be any considerable change from what's currently in place, there should be a gradual process over time, because if you look at the effects of, for instance, a 3 per cent surcharge for second homes—it has increased transaction volumes ridiculously and has really skewed the market and that's not healthy. So, it increased massively up to March—there was a huge rush up to March. A lot of people aren't taking account of the fact that there was a considerable shift in taxation and that's the reason why. Then, obviously, there was a huge drop-off after that time as well.

[187] **Simon Thomas:** Just in terms of investment in housing in Wales, do you think it's sufficient, in terms of the Bill at the moment, to have relief for incorporation as a kind of investment vehicle?

10:15

[188] **Mr Hayward:** You're probably best to answer that.

[189] **Simon Thomas:** Is that something that you're content with?

[190] **Mr Haig:** Okay. Can you clarify that, in terms of allowing incorporation?

[191] **Simon Thomas:** Allowing incorporation, allowing a relief for that, so that we see more investment. Does the Bill allow for more investment in housing in Wales or should there be more prepared in the Bill to allow that to happen?

[192] **Mr Haig:** Well, as far as I'm aware, it doesn't allow any specific

changes in terms of incorporation. It just focuses purely on the stamp duty side, as far as I can see. Obviously, there are taxation changes going on at UK Government level, and Welsh Government is not going to have those devolved powers. It's something that the Residential Landlords Association, as well as the sector in general, in terms of if we're talking about mortgage interest relief, are fighting against very strongly. The judicial review—permission for a judicial review—failed last week, so it is a political battle now. We believe that that's going to hugely impact the market and reduce the supply of private rented property going forwards, and we believe that the supply of private rented property is vital for employment mobility and to house some of the most vulnerable in society. But, in Wales, if there was some ability to—because it can't directly affect the mortgage interest relief changes—if there was the additional ability for people to incorporate from owning properties as private ownership into company ownership, that would be very positive indeed. So, yes, I would strongly support that.

[193] **Simon Thomas:** Okay, thank you. David Rees.

[194] **David Rees:** Thank you, Chair. The RLA's evidence identifies the fact that it's important to have a solution for Welsh needs.

[195] **Mr Haig:** Yes.

[196] **David Rees:** You've talked very much about the 3 per cent already as part of that solution. The explanatory memorandum identified that it wanted to be as consistent as possible with the stamp duty land tax. Do you think the Bill meets the right balance of consistency while still meeting the needs, specifically, of Wales? The same question effectively.

[197] **Mr Haig:** I would say that we should not be in a position where we're tempted to keep things the same just for simplicity's sake. The needs and desires of Wales, and some of the economic challenges of Wales, are different enough that we should be looking at this as a real opportunity to tailor this for the Welsh situation. In the RLA's view, the whole stamp duty change, certainly on the 3 per cent surcharge, was to solve a London problem. You know, 43 per cent of the income is from London stamp duty, with only 12.3 per cent of transactions occurring in that area. Eleven per cent of it is from Kensington and Chelsea alone. So, once you start to take that out, then you can start to understand the motivations behind it.

[198] So, as far as I can tell, the Bill certainly allows us to it keep the same,

but allows us to be flexible enough to move away from it. I would encourage that we do look at the real reasons behind how transactions work, and not just keep things the same just because we want to keep things the same. That would be pointless for devolution then, wouldn't it?

[199] **David Rees:** Shall I take that to be, 'Yes, it is hitting the right balance for consistency'?

[200] **Mr Haig:** But it depends on what decisions are made after that.

[201] **Mr Hayward:** I think I would agree as well. If there is an opportunity to make home ownership or investment in property more attractive in Wales to UK-wide investors, that must be a good thing, if it increases the flow of money into Wales and encourages new build. We're building in Wales at virtually half the level that we should be building and in the UK we're at two thirds of what we should be building. I know, from talking to plc developers, that if there were some incentives to build more in Wales than in other parts of the UK, they might well look at that in a more favourable way.

[202] **David Rees:** And therefore I would assume that you would agree that any guidance that's issued should not only reflect what the Bill is achieving, but also identify the variations between the Bill and the SDLT.

[203] **Mr Hayward:** Yes, be very clear.

[204] **Mr Haig:** Yes.

[205] **David Rees:** Okay.

[206] **Simon Thomas:** Okay. Nick Ramsay.

[207] **Nick Ramsay:** Diolch. Could I just come in on the last point that you just made there, in terms of the rates in Wales being different? The Welsh Government have said that their general rule is that they want to stick to the status quo, at least in the short term, unless there's an absolutely overriding reason to change. But from what you're saying, you think that there's a very good reason from the very start of the new taxation in Wales to look at areas where it could be significantly different, to hit the ground running in many ways.

[208] **Mr Hayward:** Firstly, you could look at the rate at which stamp duty

becomes payable. At the moment, it's £40,000; if you increase that to £60,000 or even more, that will certainly encourage the first-time buyer to get on the ladder, because it's a cost that they can't borrow. You can't borrow stamp duty; you have to save for it. On the calculations that we've done, UK-wide, a first-time buyer will have paid £52,000 in rent before he or she is actually able to buy a property. So, anything that can help them to get on that ladder would be good.

[209] **Nick Ramsay:** That would then require, at the other end of the scale, greater stamp duty, wouldn't it, so that the Government wasn't out of pocket?

[210] **Mr Hayward:** Correct. The problem is looking at the proportion of housing you have and transaction levels at the top, as opposed to the bottom, and that's the difficulty: getting that balance. What we see in Scotland is that they penalise the top and, initially, there was a reduction in transactions. That seems to be coming back, but the Scottish housing market is centred, predominantly, in Glasgow and Edinburgh; Aberdeen is now a ghost town, and that's not about stamp duty, that's about oil. But it's difficult to make generalisations where you've got disparate values in terms of regions. North and south Wales are completely different. So, that's the challenge: trying to get something where one size fits all.

[211] **Nick Ramsay:** And I'm just thinking, on that point, that's probably why the Welsh Government have got the view that, at least in the initial phase, we want more of a gradual transition. You don't want a situation where, in a couple of years' time, they'll come back saying, 'Well, actually, we didn't get the balance right, so we should have taken a bit more time.'

[212] **Mr Hayward:** I think there's an element of caution.

[213] **Mr Haig:** I would agree with an element of caution, but ultimately, we need to solve the housing crisis as it stands. Whilst stamp duty alone is not going to change that, we've got to start using everything that we have in our arsenal to do that, and this is an opportunity for Welsh Government to do that. Obviously, you're looking at at least two years, really, before this starts to impact in Wales directly and we have that capacity. So, we can start planning what changes we would like to make. And certainly Mark's suggestion about raising the minimum cap is positive, because that does help with regional differences. For instance, if you think about the centre of Cardiff, and go 25 miles away into the Rhondda, you're talking about



completely disparate house prices. Whereas you may not be able to buy a property for £60,000 in Cardiff, you will be able to buy a property up in the Valleys for that sort of price. So, it allows that opportunity of home ownership, or accessibility of home ownership in those areas, by a simple change.

[214] **Nick Ramsay:** You're not arguing there for different rates across Wales, are you?

[215] **Mr Haig:** No. I'm saying that the minimum level at which you pay stamp duty is currently £40,000, and if you raised that to £60,000, you bring that into a realm where, in the Rhondda, you can buy housing for that, but in Cardiff, you can't really buy housing for that. So, whilst it's not setting different rates across Wales, it does allow people to buy in an area that's not as economically advantaged as Cardiff is.

[216] **Eluned Morgan:** Can I follow up something?

[217] **Simon Thomas:** Yes.

[218] **Eluned Morgan:** Just on this issue of disparities in the value of housing, theoretically, we could bring in a relief where, actually, we could incentivise people in those areas. You wouldn't agree with that, then.

[219] **Mr Haig:** I wasn't arguing for it.

[220] **Eluned Morgan:** No, I'm just interested,

[221] **Mr Hayward:** But you wouldn't knock it.

[222] **Mr Haig:** No. It's been in existence before and, I think, in the areas where it's been in existence, it's generally had quite a positive impact. I certainly know that our sector looks for those areas as well, and I think for a while, for instance, in Cardiff, in Splott, there was an exemption for a long period of time. It was a very undesirable place to live and I would argue now that, over that period of time, it's actually started to become quite a desirable place to live, especially its proximity to town for young people, and there's been an increase in rental there for people to be able to live in the city centre, close to work and not have to commute, which is a positive thing as well. So, I think, given the right conditions, yes, I wouldn't argue against it.

[223] **Nick Ramsay:** But your point was that a higher initial starting point actually benefits people where house prices are lower anyway, because it takes them out. That was your point.

[224] **Mr Haig:** That was my initial point, yes. Thank you.

[225] **Nick Ramsay:** Okay. David Rees has already mentioned guidance. Should draft guidance be published to support the transition to LTT?

[226] **Mr Hayward:** Yes.

[227] **Nick Ramsay:** Okay, that's fine.

[228] **Mr Hayward:** I don't mean that in a derogatory way, but as simple as possible and as early as possible.

[229] **Nick Ramsay:** That's clear. Who should be targeted to ensure the effective dissemination of guidance?

[230] **Mr Hayward:** I should think it would be my sector, because people will be talking about what is the cost of moving. They need to know what the bands are to encourage it. We're not talking, are we, about slabs anymore anyway? So, it will still be a graduation, but it does form part of people's financial planning, so the estate agency sector will be very keen to communicate that as early as possible. And I know from the investor side as well, where it's probably more of a long-term planning position and a less emotive planning position, so they'd need to see that as well.

[231] **Mr Haig:** Yes, I would add conveyancers and accountants. For conveyancers, I know that they'll hit the cycle slightly later, so it would be most important to disseminate it through Mark's sector initially. But, obviously, they'd need to make sure that they are advising people correctly. In terms of financial advisers or accountants, they're the people that would generally advise my sector in terms of what would be the right thing to do and how to do it.

[232] **Nick Ramsay:** Have you had any initial inquiries yet? Are people aware that this is approaching down the line?

[233] **Mr Hayward:** We've engaged with Welsh Government for the last two

years; you've been to speak at some of our conferences in terms of what might happen and getting some feedback, and speaking, I think, in Swansea next week as well. So, we have been signposting it for some time, so that our members and the sector as a whole are aware that this is happening, and when it will happen. So, it's not going to come as a shock—I hope.

[234] **Nick Ramsay:** Can you give the committee any examples of the key areas where guidance should be provided and the type of information you'd like to see?

[235] **Mr Hayward:** I think, obviously, the bandings or the thresholds need to be explained, any exemptions, and look at avoidance or potential avoidance and signposting, so that that will not be tolerated, because the property sector can be creative—I think that is probably the polite way of putting it. So, I think it needs to be set down very clearly as to when those charges will come in and what they'll be.

[236] **Mr Haig:** I think simplicity. I mean, I know you'll probably talk about avoidance anyway, but simplicity is going to be the key to reducing avoidance.

[237] **Nick Ramsay:** And do you think that the definitions for residential, non-residential and mixed property in the Bill are clear enough?

[238] **Mr Hayward:** Yes.

[239] **Mr Haig:** Yes.

[240] **Mr Hayward:** They're clear to us.

[241] **Simon Thomas:** You will need to explain them to other people, so—

[242] **Mr Hayward:** We do it on a day-to-day basis, but for the average consumer out there one might have to take a step back and be a bit more simplistic.

[243] **Simon Thomas:** Just in terms of everyone knowing about this Bill and knowing about the tax when it does come in, because obviously the devolution is happening—whether it be this Bill or another, it is happening, and the Welsh Government must do it. What lessons can we draw from the Renting Homes (Wales) Act 2016, and for example, the fact that many

landlords haven't registered, in terms of understanding how we need to get information out there, so that people are really aware of what is likely to happen?

[244] **Mr Hayward:** We would both probably sigh. [*Laughter.*]

[245] **Simon Thomas:** What lessons can we learn?

[246] **Mr Haig:** There are two Acts: the Housing (Wales) Act 2014 was the one that introduced the registration and licensing schemes, and the renting homes Act is a fundamentally different Act. I think there are two good examples from each one. The first one—the Housing (Wales) Act—obviously, there is an issue now with the number of landlords that have registered, and particularly the number of landlords that are licensed being possibly less than 3 per cent of the landlords that are predicted to be self-managing and having actually less than six weeks to go before that time. That's unfortunately very poor. It doesn't reflect well on the sector or the way that the Bill has been introduced.

[247] We didn't agree with that approach. We warned against that approach, and I think that's one of the main key points that I would have to say: I understand there are political motivations behind some Bills that then become Acts, but sometimes we do have to listen to the sector in terms of implementation and how we're going to do it.

10:30

[248] And I think that, certainly from our perspective, whilst we disagreed with it fundamentally, when we realised that certain areas were going to come in, we were talking about things on the basis of how we know our sector operates. Because we know how our sector operates quite well, and we know what they were going to listen to and how it should have been implemented, and the problem was that, during that process, we were not listened to. There were many, many points that we made that were not adopted that I'm not saying would have eliminated this issue at all, but I'm saying would have reduced that considerably, and I suppose it's a slightly more mature approach to say, 'Well, do you trust some of the things I'm saying? I'm not going to say it because I just fundamentally oppose it; I'm here to protect my members, so, if you're telling me this is law and it's going to happen, then I'm going to tell you how or what the best way is to introduce this in the right way'. So, now, we're in a position where all of our members are registering and licensing, and they're going to be the ones that

are paying for this, and all those that aren't our members are not going to be and, therefore, our members are the ones that are going to suffer by paying for a scheme.

[249] In terms of the renting homes Act, it was an incredibly complex Bill, and, ultimately, that was rushed through, probably to get it through before the end of the last Government, and I think that, given the complexities—. We had real opportunities to push that further, and I know we've still got a lot of regulations to pass on that, but I think we had opportunities to make even better, fundamental differences there, and, given the complexities of that, we should have taken longer doing it all.

[250] **Simon Thomas:** So, with those experiences, is this Bill being handled in a more proactive, intelligent way, if you like, with your sector?

[251] **Mr Hague:** So far, it's been very positive. We've had meetings with Welsh treasury. We started having meetings with interested parties. So, I think we are getting there. I suppose it depends on, generally—. I haven't had a lot of opportunity to talk about it directly with the politicians yet, and it will be interesting to see what some of the viewpoints were. From our perspective, it is about simplicity, but not necessarily following England for the sake of following England, and also abolishing the 3 per cent stamp duty and having the ability to put exemptions in. That would be our key ask on this one, so it's a lot simpler for us than on previous Bills.

[252] **Simon Thomas:** Okay. Thank you for that. David Rees.

[253] **David Rees:** My questions have been answered.

[254] **Simon Thomas:** Well, okay. Could I just ask you about the 3 per cent, then, since you've mentioned it?

[255] **David Rees:** Do you have to ask another question about it?

[256] **Simon Thomas:** Yes, well, just to put it on the record, in a sense.

[257] Why do you think that that should be abolished in Wales? It's already, here—England and Wales. Why would it assist either Welsh Government to achieve its objectives or the property market to be more successful? In what way would it help to abolish it?

[258] **Mr Haig:** Initially, I think both of us can agree that, certainly, the thing that we want to achieve is increased transaction volumes. Stamp duty is something that is a barrier to people moving, and we want people to be able to move when they want to move—so, when they need to increase the size of their home because they're starting a family, move to a location with the right school, or downsize when they've decided their home is too big. So, really, the goal is to increase transaction volumes, and every time somebody moves, approximately 5 per cent of the property price is put into the local economy. I know you don't get the direct receipts of that taxation, and that's unfortunate, but a more healthy local economy is of benefit to Welsh Government and Welsh society. So, that's the primary thing—to increase transaction volumes. Obviously, part of that is about increasing transaction volumes in terms of investors and buy-to-let landlords, so that's one of the reasons behind that.

[259] The other side is that there are two types of individuals who are buying second homes that we're dealing with. The first is the pure investor, and they may look at investing in property and flipping it. So, they are individuals who have done a lot of work around the empty homes side of things. I would say that that sector has been partly responsible for bringing so many empty homes back into use, and I would acknowledge the success of the empty homes loan the Welsh Government introduced last time around. There are tweaks that I think could be made to improve that, because I think every empty home is a travesty. That's really where we need to do a lot more work, still. But these individuals are buying houses that first-time buyers cannot—they cannot get onto that ladder, cannot afford to bring these back into use—and are bringing them back into use and putting them back on the market, yes, with an uplift, and yes, they're making a profit on these properties, but they're bringing properties back into use and, very often, those types of properties are going to first-time buyers. The 3 per cent surcharge does make a difference on that. A number of our members that were in that space are no longer doing this because that does make a difference. Or, if they are still doing it, that money that has gone in taxation is no longer being spent on improving the quality of the property. So, maybe the £3,000 or £4,000 extra that's being spent on taxation could have been a better bathroom or an A-grade boiler, as opposed to a C-grade boiler and things like that.

[260] Then, on the buy-to-let side, landlords provide houses for such a diverse range of individuals these days. Ten per cent of our market is actually over 65, and 43 per cent of individuals in the private-rented sector in Wales

are on some sort of benefits. Also, we provide housing for individuals that are moving to certain areas for employment. So, we allow a flexibility of moving for employment. So, reducing landlords' ability to provide that is going to have a negative impact on the economy.

[261] Also, if you look at the most vulnerable people in society—. I don't have the exact figures, but, in the recent homelessness report on part 2 of the Housing (Wales) Act 2014—it's just over a year since that's been in place—it's been identified that 50 per cent of those presenting an early stage homeless need are actually being housed now in the private rented sector. I think that's a huge impact, and that's just in its first year. It was at the cross-party housing group that it was announced, wasn't it, Mike?

[262] So, it really does show you that the private rented sector is not just about high-rise apartments in Cardiff Bay. It is about providing housing across the board. And, if we're going to resolve the homelessness requirements in Wales, then the private rented sector is going to play a big part in that. I think maintaining this is going to dent that ability.

[263] **Simon Thomas:** Okay, thank you for that. Mark Reckless.

[264] **Mark Reckless:** In the scenario you paint, if the first-time buyer can't anyhow compete for those empty properties that need a lot of work doing to bring them up to standard, just for the sake of argument, if you apply the 3 per cent additional to the landlords coming in, surely that will feed through to a reduced price for the seller?

[265] **Mr Haig:** Can you explain to me why it would?

[266] **Mark Reckless:** Just as an economist, if first-time buyers aren't competing for this—which I'm not accepting but is your proposition—and there's an empty home that's owned by someone and the only realistic prospect for selling it on is to the landlord who's going to do it up, if you say on that transaction that there's going to be an extra 3 per cent, why do you leap to the conclusion that that will fall on the landlord or the landlord won't do it, as opposed to it just making the property worth less for the person who's selling on that empty home to start with?

[267] **Mr Haig:** We've got 22,000 empty homes in Wales. If it was just purely reducing the prices, we wouldn't have that many empty homes in Wales, would we? So, it's not just impacting on the price of that property. There are

multiple reasons why there are empty properties. It does go beyond empty homes, but I would say that our sector is a big utiliser of empty properties and bringing them back into use. So, if you go beyond the empty homes, the London School of Economics and the Institute for Fiscal Studies have both done studies on this and have said that there's actually very, very little evidence of direct competition between private landlords and first-time buyers because of the type of housing stock that they tend to go for. I have to defer to their economic expertise as opposed to mine. Landlords tend to come in and take the property next to the railway track or buy a few at the beginning of a development and it encourages smaller developers.

[268] This is the other thing: during the economic crash, small developers were wiped out, and they are the people that are going to help us solve this housing crisis. It is not the big PLCs. Yes, of course, they are going to be a major contributor to this, but we need to get small developers being able to come back in and build 20 houses on the side of a village or town that are sympathetic to the amenities of that location. With those developers, very often, small landlords would buy one or two properties just to kick that off, and they would very often come in at the end to sell off the last few, and that gives the confidence to that small developer to actually build that development. I am not saying that 3 per cent is going to remove buy-to-let landlords entirely—that would be a ridiculous statement—but it is reducing that capacity, and we are in a position where the main thing we need to do is build more homes. So, we need to create an economic environment to build more homes.

[269] **Mark Reckless:** If Members or the Welsh Government were unconvinced by your argument in general for not having the 3 per cent levy, listening to what you said around empty homes, you do make the case also for an empty homes-type relief, essentially, in that scenario. Is there a sufficiently clear definition of 'empty homes'? You say 'for more than a year', but is that something that could be done without widespread scope for avoidance?

[270] **Mr Haig:** I think so. The current categorisation in the Houses into Homes loan is six months empty under council tax registration, I believe. I could be wrong on that, but I think it's along those lines. So, it's actually not that long to classify as an empty home. But I'm happy with that because we need to stop having empty homes. There is bound to be some level of avoidance around that, but I would say that, in my experience, council tax collectors and registration are probably one of the most effective local



government bodies in understanding what status properties are in and collecting the receipts for them. So, I quite trust what they are doing overall.

[271] **Simon Thomas:** We need to make progress, but it was useful to have that on the record because the Government has said it will make an announcement around 3 per cent or not at some stage when we are considering this Bill. So, we need to—

[272] **David Rees:** [*Inaudible.*]

[273] **Simon Thomas:** Okay. I will allow a question from David Rees.

[274] **David Rees:** I think this has opened up some questions. I agree with Mark Reckless in the sense that tax relief for empty homes could be an option as a way of doing this. In your answer, you said that developers are more likely to buy these properties than first-time buyers. I understand that. But then you said, 'No, actually, first-time buyers will buy the homes they redevelop', which is slightly contradictory. Isn't it more likely, actually, that a first-time buyer will take a property that is lower and have an opportunity to buy that property, rather than a developer, if there is taxation on it for a second-home-type approach? I did it. You do a project. You take on a project. You buy a home to set it up the way you want it. So, actually, you could be converse to that and say, 'Actually, it will encourage first-time buyers to buy properties and to take them on as projects and develop them, if there is a taxation.'

[275] **Mr Haig:** I disagree on that—if you were taxing it. I agree with you that there is a sector of first-time buyers that would look at a very, very run-down property, often because it has been empty for a long period of time, and do that up. However, I think that there is a change, first, from 20 or 30 years ago, in the motivation for a lot of first-time buyers to spend so much time and money on turning a house. There's a huge appetite now for ready-made, ready-to-go houses to move into, because I think we are all in a slightly different position. We have got incredibly busy lives. We are all very time-poor, and people just want to be able to move into a home, especially if they have got a family. I did the same thing as you for my first property. I targeted that. But also, my skill base was very low in doing that the first time around as well. So, I think it is a question of skill base for first-time buyers. Things like energy-efficiency, now, are huge factors in a home—damp, that sort of thing. First-time buyer are not—. Unless they are already in the building trade, which is a different matter, or they have family in the building

trade, it's not as easy for them to take on these projects, and often not as cost-effective, because they don't have the skills, they don't have the connections and they don't have the buying power with the local builders merchants to go in and do this cost-effectively in a reasonable period of time. So, if you what you wanted to do was incentivise first-time buyers to buy these houses, then there's got to be a way—that's what your target is. How do you target those first-time buyers and give them the ability to buy these houses and do them up and not tax everybody else out of this market? Because we want to bring these empty homes into use. Therefore, disincentivising bringing empty homes into use is the wrong thing: incentivising and bringing them into use is the right thing.

10:45

[276] **Simon Thomas:** Thank you. We will move on now to cross-border issues with Mike Hedges.

[277] **Mike Hedges:** You talked about making things simple; I think cross-border is an area that brings a level of complexity. When we first started discussing it the numbers were barely out of single figures. As we've had further and further discussion on it we've approached four figures fairly rapidly, with people saying 'and there may be more'. So, do you see any impact on members who may own cross-border properties and what sort of guidance will you be looking for on cross-border properties? Because houses or properties are not necessarily 50 per cent in one and 50 per cent in the other. No-one's paid much attention to it up until now, because with the land transaction tax—England and Wales—it didn't matter if it was in England, Wales or partly in both: it was totally unaffected by it. But, now, with the line going through the border, especially the border in north-east Wales, which has lots of properties very, very close to it, do you see any potential impacts and what guidance to you want?

[278] **Mr Hayward:** I think it could be very complex if we're not very careful, because if you look at valuation, which this is going to be, and it's a cross-border property, which part of the property is in Wales, which part is in England? The property is valued as a whole, but if you take away the garden—for instance, if the garden is 20 per cent of the property, does that mean the property value will drop 20 per cent? It might drop 50 per cent on the other side because it is a detached property with no garden. If we're not careful, it's going to get extraordinarily complex, unless we can come up with some—simple is probably not the right word—clear calculation or clear

ways of calculating where it's a percentage of the property that isn't in, rather than the specific value of each part, which won't necessarily add up, because the sum of the whole is not the same.

[279] **Mr Haig:** I would agree. Clarity is the most important thing. I suppose it's for the accountants to argue exactly how it should be split up, but as long as it's easy for a layman to go 'Right, okay, this is our flow chart that's issued by Welsh Government.' If it's done, for instance, on an easy access to the line of the border, I suppose that would be a good start, and to be able to easily identify where the border goes through and then just following a flow chart with all the examples.

[280] **Mike Hedges:** I have a simplistic view on this. Would you agree with it? Would it be easier if they allocated either to England or Wales on where the majority of it was, so that you'd only ever pay it in one area or the other?

[281] **Mr Hayward:** I think that would be the easiest. Whether that's ever going to be possible would be another—

[282] **Mr Haig:** I suppose there are probably large estates that might disagree with that but I would say that in the vast majority of situations that would be a very sensible approach.

[283] **Simon Thomas:** Possibly not allowed under the Wales Act. [*Laughter.*]

[284] **Mike Hedges:** It is amendable, of course. The Wales Act is amendable.

[285] **Simon Thomas:** It is amendable, you are right. Is that okay, Mike?

[286] **Mike Hedges:** Yes.

[287] **Simon Thomas:** Eluned Morgan.

[288] **Eluned Morgan:** We've discussed reliefs a little bit already. I'm quite interested in this suggestion that we're building 50 per cent fewer houses than they are in England—I think you suggested that. Is that something you said? What did you say?

[289] **Mr Hayward:** No. I think the target for Wales is 12,000 and we're building 7,000. If you look at England, the target—currently it's England and Wales—should be 250,000. They thought they were building 185,000 but

actually they're building 150,000, and that's apart from the 100,000-a-year backlog for the last eight years. We've got to encourage building. As Douglas says, the problem is that, pre-recession, 40 per cent of new build was small and medium-sized builders, and it's now down to less than 10 per cent because they have been wiped out. We have a housing crisis in terms of new build. The Government is saying, 'Yes, we're going to do this, we're going to do that to improve new-build starts', but we have other issues in terms of lack of infrastructure, lack of labour and delays in planning. All that combines to make it difficult, and when you've got the predominant developers being plcs, they have a view to the bottom line at any point, so they have to be encouraged. We're not building any local authority homes in any great number, if any local authorities are building any at all—

[290] **Mike Hedges:** They are.

[291] **Mr Hayward:** They are. I was in Norfolk recently and the council there were very pleased to say sorry that they were late for the meeting but they'd just been to the opening of their first council house being built for 10 years. We said 'How many are you building?' and they said two. So, it's a much, much bigger problem than taxation on the new build; it's encouraging development.

[292] **Eluned Morgan:** So, in relative terms, the issue of whether we give reliefs or not is not going to be the game changer in town, in terms of whether we see—

[293] **Mr Hayward:** If there are specific or limited reliefs, it might encourage people for a period of time, or developers for a period of time, to build more in Wales than elsewhere. If there is a favourable stamp duty element to it, then I think they would look more to developing.

[294] **Eluned Morgan:** Are there any other reliefs you think that would be useful to introduce in this Bill that don't exist in—

[295] **Mr Hayward:** A relief in terms of an exemption?

[296] **Eluned Morgan:** Yes, effectively.

[297] **Mr Hayward:** Well, you could have an exemption for first-time buyers. That would have to be not time limited. I don't think the time-limited exception is going to help—in other words, 'if you buy a brand new home in

the next year you're going to get an exemption'—because new home development is not a one, two, three, four, five year thing. It's a 10-year period and developers, if they're going to build, will look over that timescale. So, they need to have certainty that there's going to be relief there for a period of time.

[298] **Eluned Morgan:** Okay. I know there are a lot of issues around that, and one of the issues is whether the house prices just go up as a result, and it's actually only the builders who—

[299] **Mr Hayward:** House prices—it's very simple—is about supply and demand, and when we've got demand 10 times the supply it will always continue to increase until we've got some balance.

[300] **Eluned Morgan:** Okay. The Chartered Institute of Taxation suggested they would like to see a statement of intent in respect of each of the reliefs to be included in the Bill. Is that something that you would agree with?

[301] **Mr Hayward:** Generally, but without detail it would be difficult to say.

[302] **Mr Haig:** Going back to what Mr Thomas asked me, I think those reliefs should very much be done in conjunction with stakeholders, to make sure that the right reliefs in the right way are applied. Because there could be excellent intentions but unintended consequences and things. And, actually, not unintended consequences, but things may not be able to achieve what you want to achieve because of technicalities in the system.

[303] **Eluned Morgan:** Okay. And that wouldn't be on the face of the Bill, obviously.

[304] **Mr Haig:** No, and I would encourage it not to be because, as long as you're given the capacity that under the correct scrutiny process you're allowed to introduce it, that's what we need. We need that flexibility because economies change.

[305] **Simon Thomas:** Lovely. Steffan Lewis.

[306] **Steffan Lewis:** What are your views on the suitability of overarching TAAR for LTT reliefs, and the ability to apply the TAAR to the reliefs listed in the Bill?

[307] **Mr Hayward:** I think we're fairly neutral on that. I wouldn't say we're ambivalent, but it's probably something that's not going to affect the average consumer server so much as an investor or a large investor. So, I think as far as they go, yes, we'd be supportive.

[308] **Mr Haig:** Yes, it goes back to a comment made earlier: simplicity reduces the chances of avoidance. And if you've got statements of intent and guidance around things that are not necessarily covered on the face of the Bill, or in regulation underneath it, then you've got clear guidance and people can make judgements on that afterwards.

[309] **Steffan Lewis:** On the point of simplicity, do linked transactions rules cause issues for you, or are you content with the ability of multiple dwellings relief to counteract any possible issues?

[310] **Mr Haig:** I suppose they do affect our sector, especially when you're doing things like buying blocks of flats or possibly buying a portfolio from an individual, which I feel, given current taxation changes—probably a number of individuals will be selling portfolios. So, yes, as long as it's multiple dwellings relief, I think people would like to see that reduced. But certainly that, compared to linked transactions, is preferable, yes.

[311] **Steffan Lewis:** Thank you.

[312] **Simon Thomas:** Mark Reckless.

[313] **Mark Reckless:** Any concern about the absence of sale and leaseback relief in LTT that we enjoy under SDLT?

[314] **Mr Haig:** There is a market in there for it. That industry needs to be cleaned up, I would say. I think it is a wider issue that needs to be looked at overall to make sure that—. I don't think it should be removed—that section of the market. I don't think it should be removed entirely because it does provide a solution for individuals, but I think that it does need to be looked at more closely overall.

[315] **Mark Reckless:** And the general anti-avoidance rule that we have in this Bill: is this the right place for it? Do you think it's phrased appropriately in terms of the switch from 'abusive' to 'artificial', for instance?

[316] **Mr Haig:** You've got to have the right guidance along with it because,

obviously, you're changing it from England. So, there's going to be new interpretation. I think that needs to be fleshed out considerably in the guidance.

[317] **Mark Reckless:** And can I ask you, Mark, on the very helpful paper that you gave to us—? On the first page, you talk about the general principles of the Bill and you say:

[318] 'The introduction of the new initiative will create a fairer system and in turn increase the desirability of Welsh property.... In the longer term...will lead to an increase in house prices as demand rises. As a consequence the Welsh Government is likely to see an increase in revenue which can be used to regenerate communities across the country.'

[319] Do you think that you may be overstating the case perhaps?

[320] **Mr Hayward:** I don't think I'm overstating it, but I think that if there is going to be an advantage to buy a property in Wales in terms of the costs, whether that's for someone buying to let it out, or whether they're there to live, I think it could be a positive move. If you want to attract people to Wales and want people to live and work in Wales, you need to incentivise them. This might be an opportunity to do so.

[321] **Mark Reckless:** Were it to be done on a revenue-neutral basis, are there changes in terms of that incentivisation that you would recommend to bring about the—

[322] **Mr Hayward:** The overall pot remains the same. So, I don't want to say, 'Well, target the squeezed middle', but we all want to encourage home ownership in one way or another, whether it's to live in or whether it's to let out. You can't differentiate between a first-time buyer—cloud above my head says it's a warm feeling, lovely people—and the landlord—nasty, rogue—because they're not. We're all in it to create homes—not houses; homes. Anything that you can do to get the sofa surfers out of their parents' houses and into a property, and into a suitable property, and encourage the landlords to purchase here, would be a good thing. In terms of house prices, we don't necessarily want to see a rise in house prices. We want to see a rise in transaction levels. If you're not building enough, you're not providing enough, but if you're encouraging people to come here, you will increase house prices.

[323] **Mark Reckless:** Given the structure of pricing within Wales, do you think that lifting the starting point on which you begin paying stamp duty—so, the £60,000 or £70,000 that we discussed—

[324] **Mr Hayward:** I think would be very positive.

[325] **Mark Reckless:** Would that be positive even if the money's recouped via—

[326] **Mr Hayward:** Yes. I think very much so, because at the moment the number of transactions for second steppers is reduced. It's about getting them in there.

[327] **Mark Reckless:** Thank you.

[328] **Simon Thomas:** The explanatory memorandum with the Bill says that this will cost practitioners somewhere between £400,000 and £800,000 to introduce. So, the training, the information gathering, the dissemination of information—the things we touched on a little earlier. Do you think that's a reasonable estimate of the costs from your perspective?

[329] **Mr Hayward:** From our perspective, yes it would be, because we can educate our members in a very quick way. We've already telegraphed that, and I'm sure from Douglas it would be the same. So, I don't think that's an excessive cost. The excessive cost may be with accountants and lawyers in terms of calculations.

[330] **Simon Thomas:** We had a slightly different answer from the previous witnesses, so that might reflect that, yes.

[331] **Mr Hayward:** Yes. But they'll be getting that money, won't they?

[332] **Simon Thomas:** I couldn't possibly comment. *[Laughter.]* In which case, I'd like to thank you for your evidence and for your time with the committee this morning. We will send you a transcript just to check for accuracy. And, with that, diolch yn fawr iawn.

[333] **Mr Hayward:** Thank you very much.

[334] **Simon Thomas:** The committee will take a short break until 11:15.



*Gohiriwyd y cyfarfod rhwng 11:01 ac 11:17.  
The meeting adjourned between 11:01 and 11:17.*

**Y Bil Treth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig  
(Cymru): Sesiwn Dystiolaeth gyda Chymdeithas y Cyfreithwyr  
Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales)  
Bill: Evidence Session with the Law Society**

[335] **Simon Thomas:** A gaf i alw'r **Simon Thomas:** Could I call the meeting back to order, therefore, and welcome our next set of witnesses from the Law Society? A warm welcome to you.

[336] Welcome to the committee.

[337] A gaf i ofyn i chi jest ddatgan **Simon Thomas:** Could I ask you first to state who you are just for the record, please?  
gwelwch yn dda?

[338] **Ms Powell:** Kay Powell from the Wales Law Society office, policy adviser for Wales.

[339] **Mr Popplewell:** Nigel Popplewell. I am a lawyer with Burges Salmon solicitors and I'm here on behalf of the Law Society.

[340] **Ms Woodland:** I'm Angharad Woodland. I'm the managing partner of a small firm in mid Wales, and I'm a solicitor on behalf of the Law Society, as well.

[341] **Simon Thomas:** Diolch yn fawr **Simon Thomas:** Thank you very much i chi a diolch am y dystiolaeth and thank you for your written ysgrifenedig yr ydym ni wedi ei evidence, which we've received as derbyn hefyd. Os caf i ddechrau jest well. If I could just start by asking, in trwy ofyn yn gyffredinol iawn: wrth a very general sense: in transferring drosglwyddo o'r SDLT i'r drefn from SDLT to the new system and the newydd, y Bil newydd, beth ydych new Bill, what do you see as the chi'n gweld fel y materion sydd yn problematic issues and what do you broblematig neu beth ydych chi'n think are the opportunities to meddwl yw'r cyfleoedd i wella'r improve the law?

gyfraith?

[342] **Ms Woodland:** Fi'n gyntaf?      **Ms Woodland:** Me first?

[343] **Simon Thomas:** Pwy bynnag sydd eisiau mynd yn gyntaf.      **Simon Thomas:** Whoever wants to go first.

[344] **Ms Woodland:** I think it's been a common ground in the evidence that you've heard from other stakeholders to date that consistency is vital. There is no group that I can see from the evidence you will take or have already taken that use this legislation in a more practical way than the group that we're here today to represent: 170,000 solicitors, 3,000-odd of those in Wales and 2,200 of those in private practice. Some figures that we have brought with us show that around 900 of those do property work and around 700 on top with commercial property specialisms.

[345] So, in terms of the importance of consistency in this legislation, it's probably not as important to everyone else as it is to our members. The ability to file SDLT—at the moment—returns in a timely fashion, and orderly fashion, and the ability to get it right first time, no messing about, is as important on a conveyancer's desk as their hole punch and stapler. So, in terms of consistency, the impact of change for the sake of change, shall we call it, would be undesirable. In fairness, Nigel will talk to you about the relief side of it and that side of it, but, in truth, the legislation in terms of the Bill as it's currently drafted is pretty consistent from an on-the-ground point of view. It will be the practicalities and the implementation where my expertise, if I can call it that, will really come into play. So, with the practicalities—the IT, the getting on board with the WRA and the ongoing interface—what we would ask is, 'Please don't do your research and development after implementation'. Let's get it right first time, and then Wales will have its tax, and we'll have a nice steady ship and a nice steady property market as well.

[346] **Simon Thomas:** I think, on the whole, reading your evidence, you're—'impressed' may be too strong a word, but you are struck by the clarity of the Bill, that it's well set out and has avoided some of the problems in previous legislation from the Welsh Government, which you're aware of as the Law Society, obviously, which has needed significant textual amendments in the past. Just to put it on record, therefore, are you content that the Bill as it's currently structured is, in effect, fit for purpose? I mean, policy decisions are different, obviously, but does the Bill itself deliver what it needs to do?

[347] **Ms Woodland:** I think Nigel had better address that.

[348] **Mr Popplewell:** It's a slightly loaded question. We've got some concerns, or certainly I have, about the differences there are between SDLT and the LTT, but in terms of the overall structure of the Bill and the consistency that it does show with SDLT, broadly speaking, it's fine, yes. I think we as practitioners, both conveyancing practitioners and tax practitioners, have welcomed the fact that you are building on SDLT, and what you say about that being true of the research that you've done—that people did want SDLT or LTT to be consistent with SDLT—you've done a good job doing that, yes.

[349] **Simon Thomas:** Just before we go into the detail, on the overview of the differences, therefore, you've just touched on the fact that there are some differences between what will be the previous regime and the new regime in Wales. Is there anything that needs to be done in terms of guidance at the time of considering the Bill, or in advance of implementation, certainly, that needs to be produced now—either technical for you, or more general guidance for taxpayers?

[350] **Mr Popplewell:** I think the answer is very definitely 'yes'. I got involved in this process some time ago, through somebody called Neil Butt, after I'd given a talk to some of your colleagues about residential property and SDLT. One of the points that I made to him very early on was that one of the failings, one of the difficulties we face in England, is the lack of resources at HMRC level, and in particular in the stamp office, because there isn't the, as it were—they are very resource constrained.

[351] SDLT has been with us for 13 years. There are still practitioners like myself who profess to be experts who are genuinely concerned that we cannot actually tell which way the legislation is meant to go. So, when people like me write in to HMRC saying that we would like a ruling, we're not doing so simply for the good of our health; it's because, after 13 years, we still can't understand it. Now, your LTT is coming in, and there are areas, and I'll deal with them later, of the targeted anti-avoidance rule and the general anti-avoidance rule that are going to generate uncertainty. From the Law Society's perspective, where most of the work on this, the heavy lifting, would be dealt with by conveyancers, who are not tax specialists, then it's very, very important that they have clear guidance to start with. Guidance is better than rulings. Guidance can cover more ground and it can cover things more quickly. It's all very well to say, 'We'll have a ruling system'. Even if you

were to, it takes time, and you've also got to have people who really know what they're doing and can give those rulings.

[352] So, in answer to your question, yes, I think there does need to be contemporaneous guidance when this comes out. That obviously has to be thought about now. The Law Society is more than happy to assist in that, and when it comes to guidance—and again, I can talk about this a bit more later, if I've got time—I think the guidance needs to deal with examples. Certainly, when you're looking at the GAAR, in England you have GAAR guidance that deals with hard examples. If you looked at HMRC guidance on many of these points, for example 75A, the guidance itself is not very useful, because the examples it gives are so self-evidently one side of a line or the other that it's just useless.

[353] In areas like avoidance, you would be concerned to draw a bright line; you won't really want to, you'd like it to be slightly blurry, but what taxpayers want is certainty. They need to know on which side of that blurry line they fall. And what a ruling or guidance does is clarify where that line lies. So, if you're going to give guidance that it's going to be worthwhile looking at, it has to deal with the hard cases. It can't deal with the obvious ones over here and the obvious ones over there, it's got to look at things in a hard way. What the GAAR guidance in England does is just that, and the reason it does it is because the people who came up with that guidance, even though it's HMRC guidance, were practitioners. They were colleagues of mine who joined the shadow GAAR panel, and it was they who said, 'Look, these are the sorts of examples we should be giving and we need to give, as well as which side of the line they fall, why they fall that side of the line, so that people can take away those principles and apply them elsewhere.' So, when you're looking to see what good guidance is, look at the GAAR guidance, and don't look at something like the section 75A guidance.

[354] **Simon Thomas:** Okay; thank you for that. We will, indeed, turn to GAAR in more detail shortly in this session, but for now, Nick Ramsay.

[355] **Nick Ramsay:** Good morning. I think you've just answered all our questions in one go, there. You've mentioned guidance; should draft guidance be published to help smooth the transition from SDLT to LTT?

[356] **Mr Popplewell:** I think yes; I think I've answered that. I think the areas where you're going to need it are in the areas where, in a way, the law is different for LTT to what it is for SDLT. I think it would also be helpful to

consider what practitioners dealing with LTT can take across from SDLT guidance. So, if you've already got guidance out there that deals with SDLT and it deals adequately with LTT as well and everybody's happy with the SDLT guidance, then, again, that's consistent with the observation that you want to keep things as like for like as possible. But there are bound to be areas, because the law has changed, for example in the TAAR, where you simply can't read things across, even if you'd like to, because the law is different.

[357] **Nick Ramsay:** I think you mentioned the difficulty in the transition from the previous regime pre 2003, was it, or 2004, to SDLT?

[358] **Mr Popplewell:** Yes.

[359] **Nick Ramsay:** So, do you envisage that there's a fair bit of experience out there about the transition from one regime to another, and could that be used in this case?

[360] **Mr Popplewell:** I think we're miles ahead of that. In 2003, when this came in, HMRC had consulted for a year, and basically we moved from a paper tax to a transaction tax. So, it became not a documentary tax. So that was a very, very significant jump. Some say it was introduced too early. It came in in December 2003, and perhaps that was too early, but you're never going to get things right to start with and there are bound to be teething troubles, which there were and, frankly, to get over those teething troubles, what there was within HMRC was a terrific willingness to engage with the professions to try to get things that weren't quite clear smoothed out. I don't think you're going to face the same sort of level of problem with this, because you're building on SDLT and 90 per cent of things practitioners will actually understand because they're used to dealing with SDLT.

[361] **Nick Ramsay:** Okay. Can you expand on the lack of clarity with how residential and non-residential properties are defined in the Bill? Or do you think there is a lack of clarity, I should say, to start with?

[362] **Mr Popplewell:** I think there is, but I don't think that's down to the definitions, it's down to the application of the definitions. What's become increasingly apparent in SDLT, or the reason that there are issues around what is 'residential' and what comprises a 'dwelling' for SDLT is really driven by the increase in SDLT rates for residential property. So, 10 years ago, people were less worried about it. The guidance on what is 'residential' or

what is a 'dwelling' goes back to 2004; it's a statement of practice in 2004, which dealt with disadvantaged areas relief, where residential property was very much the poor relation of SDLT. And now, of course, with the additional 3 per cent rate for individuals and the 15 per cent rate for non-natural people, you're up to 15 per cent in certain circumstances. So, it is terribly important, if you're looking, for example, to buy a farm with agricultural land, to be able to decide what proportion of the considerations apply to that bit which comprises the dwelling and which you apply apportion to the others. So, the definition of 'dwelling' is fine; it is its application in practical circumstances that is difficult.

11:30

[363] **Nick Ramsay:** Okay, thanks. And this is probably for Kay, this question. What sort of assistance is currently being offered by the Law Society to the embryonic Welsh Revenue Authority?

[364] **Ms Powell:** To the revenue authority itself? We became engaged very early on in terms of what would be the Treasury function of the Welsh Government as is now, and what was becoming the Welsh Revenue Authority. We are involved across the piece. We sit on the tax advisory group to the Cabinet Secretary. We also engage through forum meetings. And on a closer level as well, we are represented on the implementation programme for the Welsh Revenue Authority. So, we're engaging at a policy level, and, moving forward, we'll see that engagement on a more practical level as well.

[365] This evening, we're holding a seminar in our office, which is being attended by members in Wales and in England, and that's being led initially by the Cabinet Secretary. Dyfed Alsop, the implementation director for the Welsh Revenue Authority, is speaking as well, and my colleagues here today, Nigel and Angharad, are speaking. What we're trying to do is to, obviously, raise awareness within the profession, as well as working with Welsh Government and the new WRA. So, we're operating at a number of levels currently.

[366] **Nick Ramsay:** Happy with the way it's going?

[367] **Ms Powell:** We have seen the separation, in a way, of the finance division within Welsh Government into a true Treasury function, and now we're seeing the separation of staff as well into the Welsh Revenue Authority. We hope now to see that this will gather pace and also, as you mentioned, in

terms of guidance, we're hoping that we will start to work very closely with the WRA staff to start to bring together the guidance, so that we would come to a situation where we would see the guidance at the same time as the legislation goes live.

[368] There are concerns, obviously, in terms of engagement between our members who will be at the front line of filing and payments with what will be the Welsh Revenue Authority, especially now that the Welsh Revenue Authority has decided to undertake the collection function as well, and not leave that to HMRC as was the approach at the beginning of the year. We're working closely—

[369] **Nick Ramsay:** So, those practitioners will be dealing with, first of all, a new tax or a Welsh tax, a new revenue authority, there will be a new Welsh—they will all have directors—a new Welsh Treasury function. So, come 2018, this is a lot of changes. Nigel Popplewell, you mentioned that—. I think 90 per cent was the figure you mentioned earlier in terms of practitioners and—.

[370] **Mr Popplewell:** I think I said that the Bill is 90 per cent okay, so my—

[371] **Nick Ramsay:** Sorry, I got that around the wrong way: 90 per cent okay.

[372] **Mr Popplewell:** I'm trying to hedge myself a bit here.

[373] **Nick Ramsay:** Okay. Are there any particular examples of specific areas where you're being asked for guidance in particular examples of areas where they think that the guidance isn't firm enough and that you think would be helpful? Areas of confusion, in other words. Sorry, I haven't phrased that very well.

[374] **Mr Popplewell:** No, I understand. From my perspective, the reliefs you've got are fine, okay? They're based on the SDLT reliefs, and that's okay. What you've done, though, is you've brought in this targeted anti-avoidance rule—this TAAR. I think the TAAR does two things, notwithstanding what you say about the fact that it goes a bit further, but it's designed to be consistent. It isn't consistent because it's a tax advantage TAAR. I know that might sound as though it's a very legal point, but for SDLT the concept that you're worried about is tax avoidance, so you won't get your relief if you effectively have a tax avoidance motive; in other words, the main purpose or the only purpose for why you're doing a transaction is to avoid tax.

[375] Tax avoidance really means—and it hasn't really been anywhere defined—doing something to defeat the evident intention of Parliament, but it isn't really defined. What you've got is a tax advantage test. Tax advantage means, as other cases have shown, that you have to compare, effectively, one situation with another. And a tax advantage has been said to arise where a taxpayer simply betters their position vis-à-vis tax. So, if you take advantage, let's say, of a relief that Parliament is saying, 'Look, you can have it in certain circumstances', that is a tax advantage. You claim pensions relief—tax relief on your pensions. You invest in an enterprise investment scheme. Anything like that, which is statutorily permitted, is a tax advantage.

[376] That is a huge difference between tax avoidance for the rest of England and tax advantage for Wales, and what that means—and I was discussing this just earlier—is that, let's say you had a golf course or a farm that is half in England and half in Wales, and it's owned by a company, and you want to move that property up to a parent company in circumstances where you'd get group relief, so you should pay no tax. For the English land, you test it: have I got a tax avoidance motive? And you can say, 'No, I haven't.' Okay? And HMRC have published a white list of circumstances in which they will say, 'No, you haven't got a tax avoidance motive.' Whereas, in Wales, it's a tax advantage test. So, a practitioner will have to apply two tests. He can't rely on what HMRC have said for the English land, because it's a different test. So, he has to then make a judgment call, and this is a conveyancer. So, you have a distinction between the two pieces of land in a very common situation. I mean, evidentially, I have no idea how many, as it were, properties there are that span the border, but the point is that, coming back to your 'Where do you need guidance' question, that is an area where you need it. Okay? What does tax advantage mean?

[377] What, for example, does something here, which is looking at the TAAR—? When do arrangements lack genuine economic substance? What does the word 'lack' actually mean? Does it mean it has no genuine economic substance, or does it mean it has, so that, if you do a deal where your motives are 25 per cent, let's say, pure and 75 per cent impure, do you say, well, that 25 per cent genuine economic substance is enough to get you out of the lacking criteria? Is it a 50 per cent test? Is it a 2 per cent test? Does it have to completely lack economic substance in order for it to fall foul of the TAAR? Or, if there is some economic substance—. Because, most people will be able to say, 'Yes, I've done this for, effectively, more than one motive.' There might be a tax planning motive, but, equally, there is a commercial



motive. To what extent does the commercial motive, if you've got one, mean that you can't fall within the TAAR? And I know that sounds very obvious, but it's—

[378] **Nick Ramsay:** You're giving very specific examples of guidance.

[379] **Mr Popplewell:** I know, but the reason is that it's our people who will be wrestling with that all the time. I mean, this isn't something that is sort of academic. This is the sort of thing that comes across our desks all the time. I'm a tax practitioner and I'm asked, by and large, to make lots and lots of judgment calls about whether, in these circumstances, that is a good reason for doing something or a bad reason for doing something.

[380] The people who will be really doing this are the conveyancers. And, as well as a TAAR, so when you test your group relief, let's say, against a TAAR, you also then, if you get around that, have to go nipping off over here and saying, 'Well, actually, what about the GAAR?' So, people who are actually doing deals at the front line who are not, you know—. Residential conveyancing can be quite complicated, and I've no idea what your plans are for an additional 3 per cent, but let's just leave that on one side. It's actually rather complicated enough, and prices that conveyancers can charge are rock bottom.

[381] So, if you see your role as the National Assembly and the Welsh Revenue Authority as not just, say, collecting tax in accordance with the law, but also helping taxpayers to get their affairs right, then helping their advisers, by giving really clear guidance as to where you see certain circumstances falling a side of the line or another, will be absolutely invaluable. You might say, 'We're not too fussed about this; sometimes, it's up to the taxpayers to get their affairs right; they can appoint professionals, they interpret the law.' But as soon as you open the door, that you're going to help them, then open the door and go fully through it. Don't do half the job.

[382] **Simon Thomas:** This is a good point, I think, to bring in Mike Hedges and his cross-border issues.

[383] **Mike Hedges:** Cross-border issues. This was something that is quite interesting, because, in our first discussion, it was barely in double figures; it then moved up to 400 to 500, with a possible 400 to 500 more. And I was interested in—I think it was you who said—the uncertainty of the precise

location of the Wales–England border. Now, that never mattered up until now, because it didn't matter whether you were in England or in Wales if you were doing a transaction, did it, because you were under exactly the same rules? Now the rules are going to be different. What would you like the provisions for cross–border property transactions—. What would you like to see happen to make it simpler?

[384] **Ms Woodland:** Well, 'simpler' suggests there's something already in place that you could be simpler than. There is nothing like this anywhere, because Scotland has its own land registry, so, they've never had this border issue, from what I can see, and it wasn't raised with the Scottish evidence that I read. The Land Registry evidence I read with slight alarm and great interest last night, and also the CLA evidence as well. If I can just deal with one point that came out of that evidence—I came this morning determined to tell you this point. There was a suggestion in both those pieces of evidence that filing or apportioning the SDLT and LTT liability would give rise to two transactions—two transfers, effectively. I think they actually said that. That's not my reading of the legislation. I'm reasonably sure it's not the intention of the legislation, and it is surely not the way that practitioners will apply the legislation. So, this will be a one–transaction apportionment of liability on each side of the border.

[385] Kay has done an enormous amount of work on this and there was a telephone conversation with HMRC yesterday where they assured us that, in terms of the IT—. I know we raised a concern in our evidence that we may be using postcodes, and there are lots of cross–border postcodes. As a woman whose office is in Hay and who can see the Dulas Brook border from my window, I was terrified by that. That would just be an administrative nightmare. We are told, and hopefully this will come true, that they will be using local authority codes. So, wherever you pay your council tax or your business rates will determine whether you file an LTT or an SDLT return.

[386] Now, that doesn't deal with the properties that straddle the border. Indeed, you'll never know, as a practitioner, at the moment, whether your property straddles the border. I know that a developer has just bought three sites in Hay. Two, as far as I can tell, are on the Welsh side of the border and one is on the English side of the border, which I can see from my office. From that point of view, I can see that the field they've bought at the bottom of the hill may well straddle the border.

[387] If you mapped it, as the conveyancer—. So, if you need your plan to

send off your searches—I don't know how much you know about the practicalities of conveyancing; you're more than welcome to come and spend an afternoon with my property bods and we'll make you welcome and explain it all to you—the first thing you need is an accurate plan. Title plans from the Land Registry don't define the border. So, I could obtain the title for that field and it won't tell me if three quarters of the field is in England and a quarter is in Wales because there is no border shown on the Land Registry definitive map.

[388] This issue wasn't raised with them in evidence. I would urge you to raise it with them. I'm sure there's a cost to putting the border on the definitive map, but I can't see how—. I come from a particular firm that happens to be in Hay and Brecon, so we're close to the border, and this will be a big issue for us. It may not be an issue if you're on Ynys Môn, although they're fairly close to Ireland. But it's difficult to see, without a border defined on the Land Registry map, how we will ever know whether these properties actually straddle the border. And from a Welsh point of view, and an English point of view, someone's going to lose out on the tax, because conveyancers in my position simply won't know to apportion the tax or to file two land transaction returns, because that information as to whether you straddle the border is not on the title documents.

[389] **Mike Hedges:** Can I thank you? I think that's been very helpful. It's something I've been talking about for, as the Chair would say, a very long time. How simple would it be to produce a map of the border based upon the uncertainty of the precise location, which somebody said in something I've read recently? Is it really that uncertain where the border is? I would say, if you think you've got a problem in Hay, go and talk to somebody in Wrexham.

[390] **Ms Woodland:** Or Pant on the A483 as you drive up, because half of the street is in England, as far as I can work out, and half is in Wales.

[391] **Mike Hedges:** 'Welcome to Wales' and 'Welcome to England' as you go on every 200 yd, isn't it?

[392] **Ms Woodland:** Yes. The golf course that Nigel mentioned is Llanymynech golf course. If you go on their website, it very proudly says, 'Tee off in Wales—Putt out in England'. I have absolutely no idea how to answer that question. I'd have to get my flag out if I wanted to. I really don't know. Obviously, there has to be cross-border provision as to where the border is. I know that there has been discussion about this on the basic

payment scheme because there are agricultural properties that genuinely do have fields in England and fields in Wales and the provisions for subsidies are different. So, it is not that it has never been addressed, but I haven't had time to ring landlords and ask them how on earth they dealt with it, to be honest. So, I'm not sure that however they dealt with it would be the answer.

11:45

[393] **Mike Hedges:** I don't think anybody's thought about this when the whole of this went through legislation. People thought there was a simple border and everything was on one side or the other. I hold my hand up, before I started getting involved in it, I thought it was a simple border and everything was on one side or the other. So, I can understand why people would have thought that.

[394] The other question is: you are doing conveyancing under the stamp duty land tax, and it takes slightly longer than you expected, and all of a sudden, the alteration has taken place. Should there be something in there to deal with that level of uncertainty of things going across the time change?

[395] **Ms Woodland:** No, I don't think so. I think that that's a question that will have to be asked when you set your levels, in truth. If the level at which LTT is set is consistent with the level at which SDLT is currently set, it won't really matter. You will have a few people saying, 'I'd rather pay Wales than England'—and all that kind of thing—'so, hang on and don't complete until—'. But the Bill is quite clear that the date of completion is the date on which liability arises. As long as there is consistency on the rates—. I have talked to lots of local stakeholders about this, and they've urged me to urge you to be consistent for at least a year: 'Do what you want after a year, but give us a year to get it right in the first place.' So, I don't see that there will be—. I don't think that there's a need for a holding provision on either side of the implementation date.

[396] **Mike Hedges:** Can I thank you very much for what you have told us? I wish we had had this discussion earlier in proceedings.

[397] **Simon Thomas:** There are certainly a few things we need to follow up with the Land Registry, and we have already identified those. Thank you. Eluned Morgan.

[398] **Eluned Morgan:** Thank you for your previous statements on the

guidance. I think you've made it very clear that the guidance needs to be as clear as it can be. The Chartered Institute of Taxation also suggested that we need some kind of statement of intent. Would that be different from guidance? What is that?

[399] **Mr Popplewell:** Yes. It's a difficult area. HMRC at one stage was sort of going down the route of producing what was called principle-based legislation, because it was becoming increasingly difficult to—. Generally speaking—sorry, let's go back a stage—legislation in the past has always been, say until 15 or 20 years ago, really very precise. But since people have started tax planning like crazy, legislation has become deliberately imprecise because HMRC and the Government have not really wanted to draw a bright line as to what works and what doesn't, because as soon as people see what really works—. So, increasingly, we've had these targeted anti-avoidance rules. So, HMRC or somebody can say, 'Okay, well, that's in the good bracket. We'll give you that one. And that's in the bad bracket. We won't give you that one.' So, it has given flexibility.

[400] It became increasingly difficult—. Coming back to my point about what tax avoidance is—something that conflicts with the evident intention of Parliament—what is the evident intention of Parliament? Lord Hoffmann said in a very powerful lecture, 'Well, actually, you can only divine the evident intention of Parliament from the statute.' Now, we adopt a purposive interpretation, and have done for quite a long time, on tax. So, you have to look at the purpose for which legislation has been introduced, hence the reason why there was a suggestion that we should employ principle-based legislation, because it would identify the principles on which the legislation was based. So, somebody who is purposively interpreting the statute can then use that as the basis for interpreting and saying, 'Well, actually, in my circumstances, we are in accordance with the principles, and we are on the right side of the line.' So, you can self-assess.

[401] So, a statement of intent would be useful just in terms of the general purposive interpretation, but it also helps enormously when it comes to interpreting the GAAR, because when you're looking at the GAAR, you're looking at whether something is a reasonable response to the legislation, and the reasons why the legislation was brought in in the first place. So, being able to test why the legislation came in, and what its intention is, again, will help people decide whether, in borderline cases, they're on the right side—the good side—or the bad side.

[402] **Eluned Morgan:** Okay, that's useful. Thank you. Can I ask you about reliefs now? My understanding is that, regarding the frequency and value of SDLT, in terms of residential and non-residential reliefs in Wales, there was actually a nominal effect: only seven reliefs out of 16 were claimed more than 30 times on residential transactions. So, we're not talking about huge numbers here. So, how useful is it?

[403] **Mr Popplewell:** What, having reliefs?

[404] **Eluned Morgan:** Well, if those are the kinds of figures and that the effect is pretty nominal—.

[405] **Mr Popplewell:** Well, in a way that's more a question for you than for us. If you decide that, actually, reliefs are worth having and we want to have consistency with SDLT then we keep them in. For example, group relief—if we're looking at something like group relief, let's say, group relief is really a relief that's given where you have a group of companies who are within 75 per cent ownership and it enables them to move properties around that group on a tax-neutral basis, and you have to fulfil various conditions, one of which is a targeted anti-avoidance rule in your case, and an anti-avoidance test in our case. There are also other circumstances in which, should companies leave the group, there are certain things called degrouping charges. So, they're fairly well circumscribed, but the idea is, really, that if you have an economic unity, i.e. a group of companies that are 75 per cent communally owned, then you can treat them, effectively, as a single entity and disregard transfers that take place between them. So, it just enables people to set up businesses in a flexible way without there being, in a way, a tax downside.

[406] Really, SDLT is built on the principle that's there for lots of different other taxes, so you can move capital assets around without paying capital gains tax or chargeable gains. You can move them around without paying an intangibles charge. You can surrender losses between communally owned companies. So, there's a general principle that in England, because we have always treated the taxation of companies separately compared with the continent where you effectively look at the overall position—you consolidate the overall position of the group of companies—there should be a way of allowing the tax attributes in one company to flow through to another or transactions to take place on a fiscally neutral basis. So, you can see there's an underlying point of principle for that sort of relief.

[407] For the other sorts of relief, well, I think there are justifiable policy reasons why they're there. If you asked me what those were, I wouldn't be able to tell you. What I would say, though, is that, coming back to the TAAR—I did a quick sweep and in England there are TAARs for these particular reliefs, but if you compare the number of TAARs there are in your tax compared with the number there are in England, when we did a quick comparative survey on 26 reliefs that there is an anti-avoidance rule for the Welsh tax, there are only five in England. So, what you've done, apart from change the definition of what a TAAR is—so going from an avoidance to an advantage test—you've also gone from having, say, five anti-avoidance TAARs to 26, so a considerable extension. Again, what that means for practitioners is not just that they would have to learn a different test but they would have to apply a different test to reliefs that they had never had to apply that test to in the past.

[408] **Eluned Morgan:** I think that's the first time we've heard those kinds of figures. It would be quite useful to get a bit more detail on those figures.

[409] **Mr Popplewell:** Well, I've got a synopsis here and I can send it to you.

[410] **Eluned Morgan:** I think that would be really useful. This is really frustrating: it gets to the point where I think I'm starting to understand this and then someone like you comes in and I think, 'Oh, my God, I've got so much more to learn'. I was just wondering about the situation of Wales and whether new reliefs could be introduced that would suit the needs of Wales better. Do you have any thoughts on that?

[411] **Mr Popplewell:** I don't know enough about the Welsh housing market to do so. What I would say is that it's one of the reasons that you want to be consistent with SDLT because you don't want to be disadvantaged if somebody could build something or buy something in Bristol compared with Cardiff and people are doing it all the time. As the electrification of the west coast line comes across, this whole part of the country is opening up and people are going to move down here. Probably prices at the moment are becoming very buoyant here and certainly in the south-west. The same sort of tensions that we face in England will be faced here. So, I think that, in terms of keeping consistency with SDLT, that's what you really need to do. You don't want to find people benefitting or Bristol is benefitting at Cardiff's expense.

[412] One way in which you can do that—again, it's coming back to clear

guidance and clear rulings. As I say, people want certainty and so if you in Wales are able to say for land transaction tax and I know it's a very small thing—there are lots of other commercial objectives—but if you can give taxpayers certainty about their LTT affairs, which England can't—. So, for example, England will not give a ruling as to the application of an anti-avoidance provision. It won't do it. But if you are prepared to give rulings as to the application of either the GAAR or the TAAR, which is really where the uncertainty is going to arise, then big commercial organisations who might be thinking of investing here or investing in Bristol may well come here because they know what the downside is. People, in a way, don't care where the line is. I know that sounds, you know—you'll make the policy, you will say, 'There's the line', but they want to know which side of the line they fall. And, if you can give them certainty that they can't get in Bristol, it might be something that tips the balance to come and invest here. So, apart from our parochial concern on behalf of our constituents, i.e. conveyancers, that they want certainty, then, as far as you economically are concerned, you might do well to provide that certainty to taxpayers because it might inspire them to invest here rather than in Bristol.

[413] **Simon Thomas:** I suggested we would return to the GAAR, and this might be a good opportunity to invite Mark Reckless to ask on this.

[414] **Mark Reckless:** Given the paucity of devolved taxes to date, do we need a GAAR at this point in time?

[415] **Mr Popplewell:** My question, I think, in our response, was: well, if you've got a GAAR, why do you need TAARs? If a GAAR is intended to be a general, all-encompassing, anti-avoidance provision, then why not have that, and not the TAARs? Certainly, when Graham Aaronson was tasked with looking at the general anti-abuse provisions, which really became the English GAAR, and this is—I know there's no double reasonableness test, but there is a—. He said—well, he hoped, and it was a slightly pious hope, that not only would there be no new TAARs, because they'd all be covered by the GAAR, but also existing TAARs could be phased out. And that simply hasn't happened. More and more TAARs are coming in. Now, as I say, it may be just be a question of nomenclature, that, actually, you can't really call this a GAAR, because you've got these TAARs, and a GAAR should cover all the TAARs. So, 'Why have both?' is what I'm asking. So, if you're a practitioner and you're doing a relief—. I know that TAARs only cover reliefs and whatever, but if you're doing a multiple dwellings relief—you know, you're buying more than two properties in one transaction—you've got to worry



about the TAAR and then you've got to worry about the GAAR. And because a TAAR applies to something that you think is a completely anodyne relief, HMRC say, 'Look, if you buy two properties you can effectively look at the total consideration and divide it by the number of two', and so you actually get, as it were—you benefit from the SDLT. You can divide the consideration by two, and you look at the average consideration for the properties rather than actually paying at the top whack. So, as a matter of policy, that's what they say. You've included a TAAR, so actually getting that relief suddenly becomes an issue, because getting that relief itself is a tax advantage. So, you say, 'Well, actually, I've bought two properties, have I got something—? Does this lack genuine economic substance'? You say, 'Well, no, I'm going to buy two properties; I'm probably okay'. But then you've got to test against the GAAR. And so, because you've failed the TAAR, because the situation is similar—because when you're looking at the GAAR you've got a genuine economic substance test too—you're going through the same hoops several times. At the end of the day, you might come out very easily and say, 'Okay, we're fine', but somebody's had to go through that thought process, and that costs money. What actually happens is that either that might be absorbed by the conveyancing profession—because they simply do it and shut up about it—or they say, 'No, look, if you want us to give you tax advice on this, we're going to charge you for doing so'. And so accountants and tax advisers like myself will say, slightly wickedly, 'Well, actually, the more complicated the better, because it drives people into—.' And that shouldn't be the case. What you're trying to do—it's like VAT was meant to be a tax that simply could be understood by everybody and it clearly isn't. If you're asking for or you're producing a tax that should enable people to self-assess what their position is, then providing them with a GAAR just creates a huge level of uncertainty.

[416] **Mark Reckless:** I asked the Minister, when he came before us a few weeks ago, why he was proposing to change the abusive test in what you describe as the 'English GAAR', to an artificial one in the Welsh GAAR, and he told me it was in order to prevent abuse. Can you see any purpose, beyond sending a message that Welsh Government's terribly against tax avoidance, in changing the language in the GAAR (a) from 'abusive' to 'artificial', and (b) getting rid of the admittedly convoluted double reasonableness test?

12:00

[417] **Mr Poplewell:** The thing about the GAAR, I think, is that it's—. I mean, I don't think a single case has yet been referred to the GAAR panel. I

think it's done what it set out to do, which is worry people and put people off. Secondly, what I'm not sure about with this GAAR is whether you self-assess it. So, in other words, if I'm advising a client, do I say to them, 'Well, I think you're okay technically, but you fall foul of the GAAR, and therefore you've got to file your return—if you believe what I say—on the basis that you don't get your relief or you can't get the position that you want to because it's under the GAAR', or do I say, 'You're fine'? Now, if HMRC find out about this and so there's full disclosure, then, in order for the GAAR to apply, they have got to take the initiative. So, the Welsh Revenue Authority have actually got to issue a counteraction notice. So, again, from the perspective of a tax practitioner, one is very different from the other. To me, it is the level of complexity that will have to be solved by conveyancing solicitors who will look at transactions that might fall one side of the line or another to decide whether or not they are artificial. To do that they will have to see why the Welsh Assembly enacted the legislation and what their intention was, and, again, that can be quite difficult.

[418] **Mark Reckless:** And, in the commodity market that is conveyancing, is it realistic to expect that to happen?

[419] **Mr Popplewell:** No, but I think most of the cases will never get within GAAR territory, because people will say, 'Well, it's an absolutely straightforward residential conveyancing transaction, you are fine', but it's when the bigger value deals are coming into Wales, and people are doing them—you know, they may be doing them through partnerships or through companies or whatever, and there's something slightly unusual about it; that's where the anxieties will arise. It can arise in other—. At the moment, we've got a situation in England—I don't know whether the situation is true here, but it may well be—where, because of the changes to the inheritance tax rules, people who have bought high-value residential property through UK or other companies are busy trying to de-envelope. Now, de-envelope simply means taking the property out of the company and giving it back to the individual who is behind that company, who owns it. Very often the individual, the trust who sits behind this, has lent money to the company—say, £5 million, and the company has used it to go and buy the house. So, there is a debt at the moment between the company and the shareholders, and there's a property worth £5 million in the company. Now, it's a good policy objective—or it's to achieve a good policy objective—that you might want to de-envelope. Because when HMRC brought in the 15 per cent rate of tax and annual tax on enveloped dwellings in 2012–13, they said, 'One of the reasons we're doing so is to encourage individual ownership, and, if

you've got properties locked up in envelopes, to de-envelope'. So, a good policy objective. So, if you were to transfer the property out of the company whilst the debt was still there, then that's an SDLT-able transaction on first principles. Because, if you transfer a property on satisfaction or assumption of a debt, you pay SDLT on the value of the debt assumed or discharged. So, the very simple way to get around that is that you capitalise the debt. In other words, you turn the debt into shares. So, instead of having a £5 million debt, you have £5 million-worth of shares in the company. Given that a lot of these companies are non-UK companies, what you can then do is either distribute the property out, as it were, as a dividend, because you don't have to have distributable reserves as a non-UK company, or you can liquidate the company and distribute it out. Now, how would your GAAR apply in those circumstances? I think you've done something, which is—you've clearly succeeded in obtaining a tax advantage; you haven't paid the SDLT that you would have done had you kept the debt outstanding. Now, have you done something that's, in a way, against the policy on which the background of the Welsh legislation has come in? It's very difficult to say. Now, in England, I can say it. I can say, 'That's fine', because one of the policy objectives stated in 2012 was to encourage de-enveloping, and, if you're doing something like that, I think you're probably the right side of the line. Where do you stand in Wales, if someone was going to do that? Now that's not an uncommon—it may be reasonably uncommon, because people haven't got that sort of setup in Cardiff or in Wales or elsewhere. I suspect it's probably more common than we think. But it may well come up, and the people who are asked to say 'yes' or 'no' are going to be, in a way, residential conveyancers. And at the moment in England there is no ability to get a ruling on that.

[420] **Mark Reckless:** You've said earlier in a very helpful written note to us—it's paragraph 34—about the care home, on which you ask us a question, which turns the tables on someone else—the partner from Geldards—who doesn't think that the GAAR would apply. But the difficulty that we had is that you're setting out all of these requirements for what Welsh Government and the Welsh Revenue Authority need to do to make this work and there has to be very detailed guidance and there have to be marginal cases where it's really helpful to say which side it falls on and which it doesn't, and, given that we only have this tax coming and then an even a smaller tax to follow, is there any real basis for having this GAAR and this great expansion then of TAARs for this single tax, when, to provide certainty, we're going to have to have detailed and very demanding guidance? Is it not going to be tempting for Welsh Government perhaps to sit back and say, 'Actually, do we really need a GAAR at this point? Do we really need this

many TAARs?’

[421] **Mr Popplewell:** That is interesting, because, when I was asked by people like Andrew Hewitt to talk about this, I probably thought, ‘Well, there’s an anti-avoidance type—’. What I said, I think, was that I didn’t want section—. There’s a section in English legislation called section 75A, which you’ve probably come across, and I think one of the quid pro quos of not having a section 75A equivalent is to have a—I know the GAAR comes in a different place, but is to have a GAAR anti-avoidance provision. Section 75A—in fact, we were anticipating a big case to depend or to give some idea about some of the application of 75A and it went in favour of—. Well, it sort of went pro and against the taxpayer, but on a completely different point. So, 75A wasn’t really needed, even in circumstances where there was £1 billion of SDLT at stake; it was decided on something else. So, if, from an evidence-based approach, there are lots and lots of transactions, they would be subject in the UK to 75A. You’re not going to have 75A, instead, you’ve got your GAAR, and I don’t know how many transactions in England actually are struck down by section 75A. So, again, coming back to your point, do you really need a GAAR equivalent to replace something that isn’t actually having a material difference or impact on SDLT in England?

[422] **Simon Thomas:** Sorry, we have other witnesses this afternoon, as well, so, if it’s okay for you, just a couple more minutes to—

[423] **Mr Popplewell:** Yes, fine.

[424] **Simon Thomas:** I’d like to ask David Rees to ask about the legislative procedures around the Bill.

[425] **David Rees:** Just two issues: it’s interesting you talked about the situation there. In your evidence, you talked about a stakeholder group with the stamp duty land tax aspect.

[426] **Mr Popplewell:** Yes.

[427] **David Rees:** Is that the type of approach you would hope will actually help some of the problems you’ve identified?

[428] **Mr Popplewell:** Yes. When SDLT came in in 2003, as I say, the HMRC were very, very good at helping. We formed a group called the Stamp Taxes Practitioners Group, based on the VAT Practitioners Group, and Lakshmi was

the first chairman of that and a founder member. There was a very good rapport, and there still is, between the stamp tax practitioners and HMRC, contrasted, frankly, with, let's say, the VAT people at HMRC and the practitioners. There's much more openness. I would see, certainly, the STPG Welsh branch playing an important role in the transitional period, as being a liaison between the Welsh Revenue Authority, HMRC and practitioners. It's a role that could be done by the STPG, by the Law Society, by whoever. Certainly, I think as far as the Law Society is concerned, we are very anxious to help, because, to be honest with you, the better trained your Welsh Revenue Authority members are, the better for us. We want good people, technically, properly resourced, with you, because we want to be able to have proper conversations with them. They need to be able to understand that, when we ask for something, it's not because we're trying to be stupid, it's because we really don't understand things and—

[429] **David Rees:** Have you been approached by the Welsh Government to form that type of group?

[430] **Mr Popplewell:** I don't know, but we're happy to.

[431] **Ms Powell:** As I outlined earlier, we're engaged at a number of levels, currently. What we're not sure about is what that formal grouping will be with the Welsh Revenue Authority, but, as the implementation of the Welsh Revenue Authority is progressing, then we'd be keen that that group is put in place and formalised very early on.

[432] **David Rees:** Just one final point: the additional legislation and technical assertion—again, there's very little mention in your paper on it—but you do identify that in fact any should be truly—. If there is going to be an issue around tax liability to an individual or group, it should go through what we call an affirmative procedure or go to scrutiny. Do you think the affirmative process here, which is simply scrutiny by the Assembly in the Chamber, compared to perhaps more detailed scrutiny or superaffirmative—? Which do you think is needed in any future subordinate legislation? What type of level, what type of depth, of scrutiny would you expect?

[433] **Mr Popplewell:** I would like any form of scrutiny. I come from a rather cynical background where I started off with lots and lots of good ideas about trying to influence the way in which legislation is drafted, and discovered over the last 15 years that, when HMRC consults, it's often lip service to a regime. Do you really get parliamentary scrutiny of the Finance Bill every

year, even though it's intended to be? No, you don't necessarily get that. So, do I think that it really matters whether something is scrutinised by the full house, or in committee, or whether you just pass an affirmative procedure? I frankly don't think it matters too much, if I'm going to be a cynic.

[434] **Simon Thomas:** That's not what the Law Society usually tells us in evidence.

[435] **Mr Popplewell:** No, I know that isn't, but I'm sorry—the Law Society would say that, if you're going to try to amend, if you're effectively going to take taxpayers' rights away, it should be dealt with by the whole house. As a matter of principle, I think that's absolutely right. As a matter of practice, I'm not sure it's going to make too much difference.

[436] **Nick Ramsay:** Are you saying they won't listen to us?

[437] **Simon Thomas:** I think he's suggesting they may not pay attention. That's a different matter.

[438] **Ms Powell:** Just in terms of the Welsh Revenue Authority and moving forward, obviously there'll be some sort of standing order procedure so that the Welsh Revenue Authority does actually respond to the National Assembly, but we would be heartened to see some sort of additional approach, really, to the tax function that's been worked up. In terms of the subordinate powers and all of those other pieces of legislation that will follow on, all of the regulations—that there's a holistic approach taken by this committee to actually be seen as being in care of that area that's developing within Wales.

[439] **Simon Thomas:** Thank you for that. We'll have to bring the session to a close now. I'd like to thank you for your evidence. It's been of great assistance to the committee. There are a couple of things we haven't been able to cover, but you have at least put them in written evidence to us, so we'll have full consideration of that.

[440] Diolch yn fawr iawn i chi. Thank you very much.

[441] Committee members, could you be back at 12:50, please, so that we don't run too late this afternoon?

*Gohiriwyd y cyfarfod rhwng 12:11 a 12:53.  
The meeting adjourned between 12:11 and 12:53.*

**Y Bil Treth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig  
(Cymru): Sesiwn Dystiolaeth gyda Sefydliad Brenhinol y Syrfewyr  
Siartredig a Sefydliad Cyfrifwyr Siartredig Cymru a Lloegr  
Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales)  
Bill: Evidence Session with the Royal Institution of Chartered Surveyors  
and Institute of Chartered Accountants in England and Wales**

[442] **Simon Thomas:** Croeso nôl i'r **Simon Thomas:** Welcome back to the Pwyllgor Cyllid. Finance Committee.

[443] Welcome back to the evidence session of the Finance Committee on the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill. I'd like to welcome representatives of the Royal Institution of Chartered Surveyors and the Institute of Chartered Accountants of England and Wales. Could I just ask you, for the record, to say who you are and who you represent, starting with Mr Evans, there?

[444] **Mr G. Evans:** Thank you. My name is Geraint Evans, and I'm representing the RICS today.

[445] **Mr Morgan:** I'm David Morgan, I'm the policy manager for the Royal Institution of Chartered Surveyors in Wales.

[446] **Mr Haskew:** I'm Frank Haskew, I'm the head of the tax faculty at the Institute of Chartered Accountants in England and Wales.

[447] **Mr Warren:** Prynawn da. I'm the director for Wales for the institute of chartered accountants.

[448] **Simon Thomas:** You're all very welcome, and thank you for your evidence to the committee, or previous evidence, if you've submitted in the past to the Government as well. If I can, I'll just start by asking each of the organisations in turn, really, whether in transferring from stamp duty land tax to this new arrangement in Wales under the Bill, you see any previous problems under the previous regime being transferred into the new regime and if you think there are opportunities to rectify things that we should be taking advantage of.

[449] **Mr Warren:** If I could just start, Chair, I think the real benefit for the

Welsh Assembly and the Welsh Government is the opportunity of a greenfield site. That has started now through the tax advisory group and through these Bills, through two finance Ministers now, and they have taken a stance that has achieved a simplification and a target of making life easier for the taxpayer, and therefore I think they're taking those opportunities. There are a number of opportunities in terms of simplification, and I think they are being incorporated in the Bills that are going through the Welsh Assembly. So, in principle, I think the approach has been very good and, as ICAEW, we've been very pleased with the consultation and the broad approach that's been taken.

[450] **Simon Thomas:** And yourselves?

[451] **Mr Morgan:** I think, largely, we would concur with that. The direction of travel at the moment is broadly to be welcomed, but just to keep the eye on the ball, so to speak, and keep it simple.

[452] **Simon Thomas:** If I can turn to Nick Ramsay, please.

[453] **Nick Ramsay:** Thanks, Chair. Turning to the LTT guidance, do you believe that draft guidance should be published to support the transition to LTT, and who should be targeted?

[454] **Mr Morgan:** I think, in principle, transparency is always to be welcomed as the best approach and, therefore, if guidance wishes to be published, then I think we would welcome that. In terms of who it should be targeted at, all stakeholders should be engaged on that front, if possible, unless there's a good reason why not.

[455] **Mr Haskew:** We would certainly agree. I think guidance will be important. We certainly support guidance available for all taxpayers, and I think we should work on that with all stakeholders. We do have some new aspects to this as well, and, in particular, we've got the application of a targeted anti-avoidance provision, which is slightly different to some of the ones we've seen already, so I think we will need some guidance about how these things might operate.

[456] **Nick Ramsay:** My next question was: are there any particular areas that you think people or practitioners are a little fuzzy over? So, that's one area, you think, with regard to avoidance.



[457] **Mr Haskew:** Avoidance is, obviously, always a question that we need to address. The Bill we've got in front of us has both a TAAR in relation to the land transaction tax and also the general anti-avoidance provision as well. So, I think that would be—we've seen in the UK context, for instance, significant amounts of guidance in relation to the general anti-abuse rule. On that basis, I think the general view is that that is very helpful for taxpayers. So, I think the more we can have to help give some certainty—. Certainty, I think, is key for all taxpayers, and, in particular, business.

[458] **Nick Ramsay:** I think some of my colleagues are going to ask you about the GAAR and the TAAR later, so if I can just turn to the Bill and the definition for residential and non-residential properties, do you think that's clear enough? Do you have any issues over the definitions provided?

[459] **Mr Warren:** I think the definitions are fine, but, as you will see from our submission, we think that there is an opportunity for the Welsh Assembly to look at combining the scales, which are not significantly dissimilar, and look at removing the necessary definition between residential and commercial. There is an opportunity to maintain the tax take and bring the tables together, thus simplifying the approach in Wales. So, we would urge that the Assembly look seriously at that as an opportunity—a one-off opportunity to do that at this time. It would make life much more simple for the—

[460] **Nick Ramsay:** So, you'd get rid of the distinction altogether in the—

[461] **Mr Warren:** Well, I'm suggesting that it's something that you should look at. Why is there a differential? If there is no purpose for the differential, then there is logic to say that one table will suffice for charging for land transaction tax. If you look at the two tables that we have currently, they're not significantly different. There is a threshold step at a different point—I don't understand why that is. But the purpose for the Welsh Assembly will be to maintain the tax take; that is really very important. If there is no purpose for having a different rate between business and residential, then this is the opportunity to do something about it.

[462] **Mr Morgan:** I think, certainly, again, simplicity is something broadly to be welcomed in principle, but I think we would want it to be examined very carefully about sweeping away this distinction straight away now, particularly when we're transitioning to a new taxation system when the taxes have been devolved to Wales. So, is this the time to do it? We're not 100 per cent sure.

We think it should be looked at very, very carefully. We can see very much the philosophical arguments for it, but, as I say, we have a little bit of caution about necessarily proceeding right at this juncture, but I'd put it less strongly than that.

13:00

[463] **Mr Evans:** I feel, if I may, that the investment industry in property would seek clarity and certainty from day 1. Certainly, picking up on the greenfield site analogy, I think it's a very, very good one, and I think that clarity and certainty are very important.

[464] **Simon Thomas:** Just to press that, if I may, the two are not quite consistent, because clarity and certainty would suggest that we, at least in the medium term or short term, continue with much the same as the land stamp duty tax, whereas with a greenfield site kind of proposal you could say, 'Let's be quite radical; let's have a very fresh view on what we are using transaction tax for and the purpose, and aligning it more closely perhaps with Welsh Government objectives'. So, they're not necessarily the same thing here, are they? I'm not quite sure which you think—. Are you saying, 'Go steady for a year and then have the big bang'? Which way do you want to take it?

[465] **Mr Warren:** I think, from our point of view, that the logic is that there's one point at which it changes, and that's the point at which the change should take place. As I say, if you look at the two scales, the two tables, they are very close, and if you look at what Scotland has done, they've made it more complicated and increased the different thresholds and rates. And I just question whether Wales would need to do that. The number of residential properties in those higher bands are very few, so the take is limited. It's a real opportunity for simplification, and I think it would be foolish not to consider that. We're not saying that you must do it, but it is an opportunity.

[466] **Mr Morgan:** I'll say, on the other side, we would not say, 'Must not do it', but examine it very carefully, because as my colleague, Geraint, was saying, certainty is so important for commercial and residential investors.

[467] **Simon Thomas:** If this were to be done, though, it can be done in the subordinate legislation with the introduction of the rates, and so forth, so it's not necessarily on the face of this Bill as we see it now. You'd agree that the Bill is flexible enough to allow this, yes?

[468] **Mr Warren:** Indeed, but of course it means that that distinction or definition between the two types of properties becomes irrelevant.

[469] **Simon Thomas:** That's a fair point. Mike Hedges.

[470] **Mike Hedges:** Something which is very much not clear is the border, and the border properties. I've read what you've said about it, in that you would

[471] 'welcome clarification on the position of estates situated on the Welsh-English border'.

[472] I think one of your organisations said that. I have two questions on it. The first one is: how unclear is the border? We heard from the Law Society earlier, where they gave the impression that the border was very unclear. Would you agree with that?

[473] **Mr Haskew:** I think the Law Society presumably have got a better idea of the precise border. To be honest, we don't have particular evidence of a major problem with land straddling or across the border, but the fact is, presumably, it could certainly be the case that they do. And if they do, it's more likely that the higher value part might be in one or another, I think. So, you can see that as soon as you get into that position you've potentially got a problem in terms of how you actually apportion it.

[474] **Mike Hedges:** We started off by being told it was barely in single figures, then it made its way up to about 80, then it made its way up to 400 to 500, with a potential 400 to 500 more. I don't think anybody has been quite happy enough to give a final figure. The problem that has been identified by some—again, I can't remember who—is that sometimes you might have the house in one place and the garden in another, and, as such, you then have to apportion how much the garden was worth as part of the house, which people may well want to deal with differently depending on the different tax regimes. I think that that is one of the concerns that some of us have. When you're talking about 80, it would probably mean four transactions a year. When you're talking about 1,000, you're talking about one a week. So, it's a much bigger issue than that.

[475] The other question I was going to raise is: the need for a formal agreement between the WRA and HMRC for cross-border transactions to get

some level of clarity over how they think it ought to be dealt with.

[476] **Mr Morgan:** I think it would be a very good idea if they could reach an understanding before it's devolved to Wales, so that everyone is clear how those two authorities are going to approach things. I think the border issue also leads on to another area as well—the Welsh taxation system. Obviously, devolution is strongly supported by us, but it's that balance to ensure Wales doesn't become comparatively unattractive to investors that must be factored into consideration when weighing the balance on certain decisions.

[477] **Mike Hedges:** Thank you.

[478] **Simon Thomas:** I have a couple of questions in Welsh.

[479] Rwyf i jest eisiau gofyn ynglŷn â'r rhyddhadau sydd yn y Bil fel y mae. Yn gyntaf oll, a fyddech chi'n teimlo ei bod o werth cael bwriad ar wyneb y Bil yn esbonio pwrpas pob un o'r rhyddhadau sydd yn y Bil fel y mae ar hyd o bryd? I just want to ask about the reliefs in the Bill as it stands. First of all, do you think it's worth having an intention on the face of the Bill explaining the purpose of each of the reliefs that are in the Bill as it currently stands?

[480] **Mr Haskew:** If I could just make an initial response to that, we've seen in tax legislation for some years now, probably for at least 10 to 20 years, a move towards what they call purposive legislation, and the courts have been quite keen to get to the underlying purpose of legislation. So, I think it's moving that way anyway, I think having clear statements about the purpose, particularly when we've got things like general anti-avoidance rules coming in as well—I think having clear statements about the purpose, particularly on reliefs, is a good step forward.

[481] **Mr Morgan:** I think we strongly support that. Being clear about why the reliefs are there and who they're for will go a long way to resolving disputes before they even get started. So, heading it off at the pass is strongly to be welcomed.

[482] **Simon Thomas:** Océ. Diolch am hynny, ac os caf i jest mynd ymlaen yn fwy manwl, felly, a gofyn yn gyntaf: a ydych chi'n teimlo bod y rhyddhadau sydd yn y Bil yn gymesur **Simon Thomas:** Okay. Thank you for that, and if I could just proceed in more detail, then, and ask you first: do you feel that the reliefs that are in the Bill are commensurate with what

â beth sydd ei angen ar Gymru, ac a Wales needs, and is there anything oes yna rywbeth ar goll, neu rywbeth that is missing, or anything in the Bill sydd yn y Bil rŷch chi'n meddwl sydd that is excessive in your opinion? yn ormodol?

[483] **Mr Warren:** If I can make a general statement about reliefs, a bit along the lines of what I said before, again, I think the opportunity here is for Wales to think what Wales wants in terms of relief. What do they wish to encourage through the relief process? I think that thinking is happening, but I think there's still quite a lot of work that could be done there. It's back to what Frank said earlier about why it is there and the purpose. You know, there is a danger that we just replicate what exists for harmony and simplicity, but this is an opportunity for Wales to think on its feet and achieve something different from this process.

[484] **Mr Morgan:** I think, again, we support being clear about what Wales wants to achieve, but, at the same time, not to be different simply for the sake of being different. There has to be a rational behind each decision.

[485] **Simon Thomas:** Is there a particular example, to give a flavour to the committee of where you think we might be looking either to get rid of a relief or to introduce a new one, more purposeful for Wales?

[486] **Mr Warren:** I don't think I have a specific. As I say, I think that there is a real need to understand—not just write it in the Bill, but to understand—why the relief exists, and, frankly, that's a political decision. It's not really one for the professionals to advise upon, but it would be wrong to have a relief there that people don't understand why it's there and why we are reducing the tax accordingly. So, it is back to that opportunity to do something that's appropriate and not just inherit what was invented perhaps 20 or 30 years ago and which no longer applies.

[487] **Mr Morgan:** Absolutely, again, this is very much for the Senedd and Welsh Government to determine in terms of why they wish to have certain reliefs and why not certain others. But, again, being clear about why they're doing it is, again, something that's absolutely very important to the success moving forward.

[488] **Simon Thomas:** But, from your professional view and the way you advise people and deal with these reliefs, we've been informed that some of these reliefs are used a handful of times in the Welsh context, or potentially

could be used a handful of times in the Welsh context, depending on the economy, of course. Is the fact that a relief is used very little reason enough, just for the sake of clarity, to get rid of it?

[489] **Mr Morgan:** I would say probably not, on balance. I mean, if it's never used, ever, then maybe that's one case for saying, 'Get rid of it', but I don't think rarity on its own is a sufficient enough case to sweep something away.

[490] **Simon Thomas:** Ocê. Diolch yn fawr. Steffan Lewis. **Simon Thomas:** Okay. Thank you very much. Steffan Lewis.

[491] **Steffan Lewis:** Thanks, Chair. I wanted to ask your views on the suitability or otherwise of an overarching TAAR for LTT reliefs.

[492] **Mr Haskew:** The Welsh Government approach to this, I think—. Obviously, we've opened up a difference between what the UK has done in relation to SDLT. The view seemed to be that, effectively, the anti-avoidance rules in SDLT section 75A–C weren't actually a good way forward. So, the Welsh approach has certainly been to listen to that. Obviously, we've now got this approach, which is very much based on a targeted anti-avoidance rule, providing the ability to tax transactions where avoidance has taken place. So, I think it's a different approach. We'll obviously need to see how it's going to work out in practice. I have, personally, some concerns about where the bar has been set in relation to the TAAR, whether it's actually high enough maybe, but we can certainly discuss those points. I think, in principle, given the way legislation's been going, it's a good move.

[493] **Mr Morgan:** I think we would support that, again, in principle being the qualifying statement.

[494] **Steffan Lewis:** Thank you. What is your assessment of the ability to apply the TAAR to each relief in the Bill and the use of reliefs in combination as well?

[495] **Mr Haskew:** Well, clause 31, isn't it, has the anti-avoidance or the TAAR here, and it does have a two-legged test, effectively. Part of it is effectively what we always used to call 'sole or main purpose'—one of the main purposes being tax avoidance. But it also has this second element to it, which is—sorry, I'm just trying to remember the words here at the moment—based on a not genuine sort of substance, which is quite an interesting second angle to this. But you do need to satisfy both of those to be within it.

So, it'll be interesting to see—. You need to apply that test in relation to each of the reliefs and, obviously, each relief, depending on its purpose, could have a slightly different outcome—that's a possibility here. So, potentially, you are opening up some uncertainty, I think, as to how the reliefs would apply in relation to the TAAR.

[496] **Simon Thomas:** Just for clarity, is the leg you're referring to the one like 'lack of economic benefit'?

[497] **Mr Haskew:** I think it's 'lacks genuine economic substance'—is that right? Sorry, it's on my machine here. From our point of view, it's an unusual approach. You'd have expected that just to say 'lacks economic substance' really. I'm not quite sure the word 'genuine' actually is helpful from a Welsh context, given that it is a two-legged test and you need to meet both of them.

[498] **Mr Morgan:** I think, again, this comes back to the point about being clear about each relief, about what its purpose is and who the targets are, as it were, to avoid getting to the situation where, post passage of the legislation, there's uncertainty and people are able perhaps to move between one set of rules and another according to, obviously, how they perceive their benefit.

[499] **Mr Warren:** I think it's worth saying at this point that this is the first of the devolved taxes that is having this applied to it, and you'll be setting a standard for any future devolved taxes. So, it's quite important that the structure and the wording that are used is something that's transferrable to all taxes going forward. I think, in principle, it is, but it needs to bear that in mind as we go forward.

[500] **Mr Morgan:** Absolutely, we can't delay with that at all.

[501] **Simon Thomas:** Mark Reckless.

[502] **Mark Reckless:** Is there sufficient clarity in the Bill between what the individual TAARs—the overall LTT TAAR and the GAAR—are trying to achieve? Have all three of them got an appropriate role, do you think?

[503] **Mr Haskew:** The main GAAR is obviously somewhat different to the TAAR in relation to the land transaction tax, and some of the wording is different. Again, the 'lacks genuine economic substance' is used in a slightly

different way in the TAAR, as distinct from the land transaction tax, which again just sort of seems to be a slightly strange approach, I think, and potentially opens up a difference between them. We've seen, obviously, in the UK context, a significant amount of guidance in relation to how the GAAR is meant to work. We haven't, of course, seen any cases coming forward in relation to it. So, we are still at an early stage in a lot of this. So, the fact is that we won't know how a lot of this will play out, ultimately, for quite some years. But I think the approach is just slightly different to what Scotland has done and slightly different to the wider UK GAAR. So, the key thing will be to certainly have some guidance about how we're expecting it to be applied in Wales, but I think I would say that it would be worth having another look at the GAAR provisions and the TAAR provisions.

13:15

[504] As I say, my personal view is that you could consider strengthening the TAAR slightly. I'm not sure again that the genuine economic substance test works that well, even in the GAAR, so I think you might want to just consider whether that approach could still be refined. I think it's the right approach, and I think it's the right way forward, but I think, like all these things, it probably needs a little bit more work.

[505] **Mark Reckless:** So, when you say it's the right approach and it's the right way forward, are you saying that you support these slight differences in the wording between the Welsh and Scottish and UK provisions, or would you prefer them to stick to the more tried and tested formula?

[506] **Mr Haskew:** The trouble is, you are sort of in a dichotomy, aren't you? If you are devolving the taxes, then, by definition, you might want a different approach. Going back to the earlier point that David said, you probably need a good reason to depart from some of the existing practices. I think that, from our point of view, certainty and consistency in the application of general anti-avoidance rules would be helpful to citizens and businesses generally. So, to that extent, I think the closer the various GAARs are, the better.

[507] **Mark Reckless:** So that, if I have understood you correctly, would suggest a legislative amendment to what we have as the draft before us now, which differs at least from the initial contribution of at least two of the previous panels—that these differences could be solved through guidance that would somehow make it right or clarify precisely what the differences



meant.

[508] **Mr Haskew:** Yes. I think our preferred approach would always be to—. You know, this is important legislation, and it is important that we get it right. So, I think that we would prefer it if it's clear in the legislation how this is going to apply, because, ultimately, guidance can be changed, so it doesn't give taxpayers so much certainty.

[509] **Mark Reckless:** As well as guidance, would you want to see a system where taxpayers could seek rulings in a defined period of time as to whether a certain proposed transaction fell one side or the other of the line?

[510] **Mr Haskew:** Our approach was always, in relation to the GAAR, that we would prefer a clearance mechanism. Obviously, that has not been taken forward at the UK level. I think it is a moot point as to whether that would be, in principle, something that Wales could adopt. One could, for instance, charge for it in some way. So, there are ways that, perhaps, one could actually cover, if you like, the cost of running it. But I think that taxpayers, particularly on larger commercial transactions, might be willing to pay something to get a reasonable level of certainty.

[511] **Mr Morgan:** I think there's a lot to be said for that. If people are uncertain about a particular issue, then that is going to affect their investment decision. If they have a degree of comfort through consultation, or perhaps a ruling beforehand, that is going to give them greater certainty and, perhaps, confidence to go ahead, particularly with large-scale commercial decisions.

[512] **Mark Reckless:** Does that require us to set that out in legislation, or the Government to have a scheme that anyone could come and use? Or is it not the case that, if someone was considering a substantial complex commercial investment in Wales, then the Government would be willing to provide their own bespoke basis to—[*Inaudible.*]—scheme?

[513] **Mr Morgan:** Well, again, I think that's very much a political decision for the Senedd and the Welsh Government to determine as to which of those approaches they think is the best. But, certainly, I think if there was a mechanism whereby people could get a degree of comfort about their decision before they proceed or not, then that principle should surely be welcomed.

[514] **Mark Reckless:** Finally, do you think we should introduce a separate disclosure of tax avoidance scheme in Wales?

[515] **Mr Haskew:** Yes, I saw a reference to that. I think we obviously haven't gone down the DOTAS route. The DOTAS provisions preceded the introduction of the GAAR in the UK context. We've now got a GAAR in Wales. Obviously, land transaction tax is going to be more, if you like, fast moving in terms of the information coming in than, say, income tax or corporation tax would be. My guess is, at the moment, you're sort of not quite so far behind maybe what's happening in the market, although I don't know whether my colleagues here have got some views on that. But I think, at the moment we've gone for the GAAR approach, and I think we would probably prefer, 'Let's see how we get on', and see whether it can work and whether any incidence of tax avoidance is manageable and is at a low level, without the need for a DOTAS regime.

[516] **Mr Morgan:** I think, again, we'd concur with that and say, 'Let's see how things are going to operate.' So, that's the reason we advocated that, for instance, when the tax is devolved to Wales perhaps the collecting agency should not be changed immediately upon its devolution. Get the system up and running, see how it's operating and then maybe think about changing the collecting agent.

[517] **Simon Thomas:** A bit late for that now.

[518] **Mr Morgan:** Well, quite, quite. I'm very much aware of that particular boat and where it's going, but that's our logic behind it.

[519] **Simon Thomas:** I understand. David Rees.

[520] **David Rees:** Can I ask one question on the GAAR first of all? The problem we've got is we've got a Bill in front of us that is the land transaction tax, attached to that is the TAAR, which is specific to try and—*[Inaudible.]*—the targeted, or we have the GAAR, which is a general one and based upon the possible futures coming down. Do you think the GAAR is actually stable enough to look at the future taxations because you talked about taxation coming down? We know they are coming: landfill tax is one, and others. Is the GAAR in a situation where it actually is going to be applicable across all of the taxes? And the accountants perhaps would be the best people to ask this one.

[521] **Mr Haskew:** Okay, well, I think in terms of—. The fact is you can always change the provisions. We've already seen that the UK Government is changing the GAAR provisions, for instance, by the inclusion of some penalty provisions. You might want to think in a Welsh context whether that actually might help to stiffen the GAAR. So, things can always be changed. I think in terms of, if you like, kicking it off, we've got a reasonableness test in there that is similar to what the UK and the Scottish Government have been doing. I think there's no reason in principle why it shouldn't set the standard for going forward, but I think, like all these things, we will need to keep it under review and see just how effective it actually is, and if we need to change it, it will have to be changed.

[522] **David Rees:** Okay, thanks for that. Based upon keeping things under review, and obviously there's secondary legislation that comes as a consequence, it's identified within the Bill that the second and third round of tax rates, for example, will come under secondary legislation and the affirmative process in this instance. Do you think there's an important role here for the affirmative process to ensure that scrutiny is undertaken at those levels? And perhaps is it sufficient within the Bill to ensure that the elements that need to have an impact upon an individual tax burden are covered under statutory instruments effectively?

[523] **Mr Haskew:** Okay, well, if I just maybe make a few comments. In principle, we would always prefer legislation to be primary. So, we would prefer the wording to be on the face of the Bill. With secondary legislation, whatever process you adopt tends to not get the same sort of level of scrutiny. So, I think in principle we would prefer things to be in primary legislation. We're obviously not adopting that in terms of the rate, but I think there are perfectly valid reasons. I think, ultimately, that's probably a reasonable approach at this juncture. In relation to the GAAR, for instance, I think that should be set out, I would say, in primary legislation and I think if need be we will need to make amendments. I think we would prefer it was made in primary legislation if possible because, you know, you reach a point where, effectively, almost anything can be changed through statutory instrument, which I don't think is generally the right way forward.

[524] **David Rees:** So, on GAARs, you're expecting any legislation that involves other taxations to actually include within it any amendments to the GAAR.

[525] **Mr Haskew:** Yes.

[526] **Mr Warren:** I think the reality is that any anti-avoidance is informed by future events and by precedent, and so you can only ever set out what you predict and what you perceive as potential for avoidance. But practice will inform you that you have to amend and adjust. As Frank has said, we would like it right at the beginning, but in reality amendments are likely to have to be made as it progresses.

[527] **Mr Morgan:** I don't think that we can demur from that again, really. Yes, in principle, primary should be the aim, but the reality is you're going to have to adapt to changing circumstances as people adapt to the law and, obviously, try to seek their own particular gain, as it were.

[528] **Simon Thomas:** Can I just ask, as practitioners in the area that's going to be affected by the proposed tax in one shape or form, what's your current involvement with either the Welsh Government or the still putative, I suppose, Welsh Revenue Authority, although it's started to get up and running? In what way have you been involved in discussions about how practicalities might be addressed? And what's your vision of how you might want to remain involved and feed into that process?

[529] **Mr Morgan:** Well we, as an organisation, responded to the consultations that have been issued over a period of time. We've also engaged in discussions with Welsh Government and provided policy forums, or round tables, so they can test ideas from our members at the coalface. I think that dialogue ongoing is very beneficial, both for our profession and also for Welsh Government, you know, being able to test ideas from people who are genuinely at the coalface. So, that sort of approach, moving forward, I think will be very welcome.

[530] **Mr Evans:** And the round-table approach was popular with my fellow members as well. It was a meeting people enjoyed and they enjoyed being part of the process.

[531] **Mr Warren:** Frank and I are both on the tax advisory group for the Minister, which has given us an opportunity to involve members and to compare what's happening in Scotland and in England. So, I think we've been in a good place from that point of view, and have consulted and gained information from members and put input at the table with the Minister. So it's been a very positive approach to date, and appears to be going forward on that basis too.

[532] **Simon Thomas:** Are the structures robust enough to deal with this particular Bill as well, or should there be some particular focus on a stakeholder liaison group or whatever, just on the Bill? Or is this wider focus enough?

[533] **Mr Warren:** There are the tax forums that flow from that, and I think that's the basis on which that is taken forward. But, no, I think it's been a robust approach to date and it's working, and therefore should be continued.

[534] **Simon Thomas:** One of the common themes coming out from your evidence and other evidence we've received is that early sight of guidance would be extremely beneficial, as well as the current guidance that might be available in HMRC. Would you be looking to be involved in some way and, if not co-drafting that guidance, at least having some way of testing it, like you say, through your round tables or whatever? Is that something you'd welcome?

[535] **Mr Morgan:** I think very much so. I think the exact wording is very much a decision for Welsh Government, and by extension the Senedd, but the opportunity for them to test the ideas with our membership, with their expertise, is something we'd strongly welcome.

[536] **Mr Evans:** And I think commercial investors—picking up on a point that was asked earlier—could be suspicious about it, and not see the opportunity that is there for Wales and Welsh Assembly Government. So, I think actually getting something that puts it really clearly and explains that in clear forms is important.

[537] **Mr Haskew:** And if I could just conclude that I don't think there should be a concern about co-drafting. We have consistently, over the years, worked very closely with HMRC and coming up with agreed guidance, but we bring skills to it that, say, HMRC may not have in terms of the practicalities and how things actually work. I think we have, potentially, quite a role to play here and I don't think we should be afraid of that, we should welcome it.

13:30

[538] **Mr Warren:** I think, if I could add to that as well, the guidance is not one documents, it's a number of documents. There are a number of different targets for that guidance. So, it's really important that a number of people

are involved from each of the stakeholder groups to inform that. I think we have the ability within the institute to widen that net and to feed into the process.

[539] **Simon Thomas:** On this, Nick Ramsay?

[540] **Nick Ramsay:** Yes. Thanks. You're clearly all very positive about this, to a certain degree, anyway. Have you had many concerns expressed to you by stakeholders about this whole process? You've got the Welsh Revenue Authority coming online, you've got the land transaction tax as the first tax, and landfill tax further down the line, so there are all sorts of changes happening. So, you can't blame people for being a little uneasy about it. Are they feeling that they are kept in the loop? Are they genuinely worried when they discuss it with you?

[541] **Mr Morgan:** I think people are always going to be naturally apprehensive of any change, aren't they, because the concern is: could it make Wales less attractive as a place to do business? But I think they are broadly happy with the engagement that's being brought up to date, so I think long may it continue.

[542] **Mr Haskew:** I think, in terms of change, we're seeing potentially huge changes going on anyway at the UK level, and HMRC and the whole digital agenda. This is the world we're in at the moment, but I think this is an opportunity for the Welsh Government to set its own course. Given everything else that's going on, I think, generally, people seem fairly comfortable with it.

[543] **Mr Warren:** I concur with that. Not many members have got this high on their agenda, to be honest. The digitalisation of HMRC is much higher on their agenda and their concerns. But they are gaining reassurance, perhaps from me, and from others as well, that the approach is the appropriate approach: that the target is simplicity and ease, and not to multiply taxes by a percentage, which would be an initial concern of devolved taxes. Therefore, they're comfortable that it's being dealt with in an appropriate way.

[544] **Simon Thomas:** Okay. Thank you. With that, then, I'd like to thank you for your evidence this afternoon, and just to say that we'll provide a transcript for you to check for accuracy. Thank you again for your help with the committee. Diolch yn fawr iawn i chi.

13:34

**Y Bil Treth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig  
(Cymru): Sesiwn Dystiolaeth gyda Geldards LLP, Eversheds a Deloitte  
Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales)  
Bill: Evidence Session with Geldards LLP, Eversheds and Deloitte**

[545] **Simon Thomas:** Welcome, then, to the final session today on the scrutiny of Stage 1 of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill. We're delighted to have representatives of three companies with us involved in this business: Eversheds, Geldards and Deloitte. If I could ask you all to identify yourselves and your organisations for the purpose of the record. If I could start with Mr Jervis.

[546] **Mr Jervis:** Yes. I'm David Jervis. I head up the tax group at Eversheds, and I'm happy to be here this afternoon.

[547] **Mr Thomas:** I'm Adam Thomas. I'm a property partner in Geldards in Cardiff and I've been involved, to some degree, with the experts' panel.

[548] **Mr J. Evans:** Jonathan Evans, director in the stamp taxes group in Deloitte. I also sit on the SDLT Working Together group, with HM Revenue and Customs and Treasury.

[549] **Ms Delaney:** Sarah Delaney, Deloitte, based here in Cardiff. I also work in stamp taxes—very much so.

[550] **Simon Thomas:** Thank you again and thank you for your written evidence. We'd like to start examining you on that straight away, if we may. So, if I can just begin by asking: what opportunities can you see in the new proposed Bill for either ameliorating problems in the current stamp duty transaction tax regime, or are we just importing the problems over and not taking the opportunity to make it even clearer and better for practitioners and taxpayers in Wales? I don't know who wants to—you choose who wants to go first. Mr Thomas.

[551] **Mr Thomas:** I think there are certain complexities in the existing legislation that, from a practitioner's point of view, are carried across into the new legislation. But they're often points of principle where you would expect tax to be identified and collected, but where, in practice, there's either insufficient resource or it's very complicated to monitor, and it doesn't

happen for one reason or another. So, although I think that the new legislation does incorporate some of those issues, I don't think getting rid of them is the answer either. Leases being an example—a holdover on leases is a complicated issue that I think many people don't actually probably account for in their returns. It doesn't mean, of course, that they shouldn't, but it is, for example, a complexity that is not often dealt with in practice.

[552] **Mr J. Evans:** I'd agree with that. I think it's right that the tax is the same, to the extent that's possible, and unless required to be different. So, I think that's the correct approach, but there are some areas of uncertainty in the way SDLT works and is operated, which I think you do have the opportunity, not just through the tax law, but also through guidance, to perhaps help smooth the way and make things clearer for the practitioners, because it is the conveyancers and the lawyers who deal with the tax and they're not generally tax experts like us. So, it can be quite difficult. Certainly, the evidence is that a lot of people at the moment are not getting the SDLT returns right, particularly with the new 3 per cent and various other issues, particularly with residential.

[553] **Simon Thomas:** At the moment, there must be quite a corpus of, almost, case law, if you like, or experiences and cases resting with HMRC—previous decisions and so forth. How can we take that and import it into the new system to make sure that that information is carried over, accepting for the time being that there's going to be a very similar system, and is there value in doing that? How can that be kept up to date, so that people like yourselves know and understand what, for example, an ongoing decision by the Welsh Revenue Authority may be?

[554] **Mr J. Evans:** I think there are two things. One is the guidance that the Revenue have issued in various forms. That can be, to the extent it's still relevant, copied across and issued by the Welsh Revenue Authority to back up the tax. Obviously, there would be some differences like the relief TAAR. Then, I think it's also important that, at the moment, it's clear that the Revenue are having a little trouble updating guidance due to the GOV.UK system. So, I think it's important that the system is flexible and can be updated quickly.

[555] As for the case law, I don't know whether it would be possible to include something in the Bill that would carry across any relevant case law, but you would expect the courts, where the law is the same, would apply the same case law principles that have already been decided. Ultimately, I



suppose these cases will go up to the Supreme Court, if necessary.

[556] **Simon Thomas:** And the tax tribunal system and so forth.

[557] **Mr J. Evans:** There's not a huge body of case law, and the most complicated one [correction: case] at the moment is probably not necessarily relevant to the Welsh tax, because you don't have that particular provision.

[558] **Simon Thomas:** If you're happy, you can just nod if you agree.

[559] **Mr Thomas:** I think in general terms, if the overarching principle is to try and retain a degree of consistency, then you would want to, obviously, incorporate one way or another, however that might be, past decisions that have evolved the rules slightly over time into the new system, because otherwise you're excluding a lot of aspects, possibly, of the tax that aren't in the Act, but still form part of the overall evaluation of how you're going to treat it.

[560] **Simon Thomas:** You just mentioned GOV.UK, and there have been some issues with the Welsh Assembly's own laws not being updated on GOV.UK because of time constraints and, to be honest, I think, because sometimes we're at the back of the queue when it comes to people deciding what to update there. Is that analogous to the situation that you fear might happen if we don't, if you like, take control of some of this and put it, perhaps, with the Welsh Revenue Authority itself?

[561] **Mr J. Evans:** Possibly. I wasn't aware about the delay in putting the legislation on. That seems even more fundamental. I know—I was in a Working Together meeting earlier this week, and it seems that GOV.UK material has to be in html format. It won't accept PDF documents, whereas a lot of the best revenue guidance is actually in PDF documents. I think the important thing is that most of the users of the SDLT guidance are practitioners, not necessarily the general public, so one size fits all isn't necessarily the correct approach. I'd certainly hope that the Welsh Revenue Authority could produce their own guidance and update it quickly. So, for example, the 3 per cent rule that they introduced in April—the guidance is already out of date. They haven't been able to update that yet.

[562] **Simon Thomas:** Right, okay. That's a good example, as the Welsh Government has to make a decision on that very soon as well, of course.

[563] **Mr J. Evans:** Of course.

[564] **Ms Delaney:** It's certainly that opportunity to refresh the guidance on areas such as the 3 per cent that does cause a lot of issues for our clients and the lawyers et cetera who contact us, because it's unclear. But it would also be helpful to have an opinion process or clearance for those issues, wherever they are grey, to get some certainty in advance of a transaction.

[565] **Simon Thomas:** Nick Ramsay on this.

[566] **Nick Ramsay:** When was the guidance on the 3 per cent last issued or updated?

[567] **Mr J. Evans:** It was issued—I think it was in the spring. I'm going to say April. Then, for example, they changed the law as it went through the Finance Act 2016 process.

[568] **Nick Ramsay:** So, it became out of date.

[569] **Mr J. Evans:** And they haven't been able to update it. Also, they've had lots of enquiries through the helpline and they want to update the guidance to deal with those, but haven't been able to.

[570] **Nick Ramsay:** So, that's one area where you obviously feel guidance could be really strengthened. Are there any other areas where the Welsh Government could issue stronger guidelines?

[571] **Mr J. Evans:** I think on things like—I think it's already mentioned in one of the submissions—linked transactions, and what is a dwelling, because that's something that we're getting a lot of questions on at the moment: when you buy particularly a large property, is there more than one dwelling within it? That's something that's coming up a lot at the moment, because of the 3 per cent and various other issues. The guidance currently for SDLT actually dates back to 2003–04.

[572] **Nick Ramsay:** We've had conflicting evidence this morning regarding the definition for residential and non-residential properties. Do you think that there's great enough clarity in the draft Bill regarding the difference? We took evidence from witnesses earlier who suggested you didn't even need to have that difference, potentially. What would your views be on that?

[573] **Mr J. Evans:** When SDLT first came in, both residential and commercial were taxed at the same rate, so the definition wasn't really tested, except for disadvantaged areas. But as time has gone on, with SDLT, because the 'resi' rates are so much higher now, there's much more focus on what is the difference between the two. So, if you're buying a property in the country and it's got a lot of land attached, is there too much land and does that mean it's not—? So, it's issues like that. I'm not sure to what extent it can be done in the legislation, otherwise it would have to get quite long.

13:45

[574] **Ms Delaney:** Certainly guidance is needed.

[575] **Mr J. Evans:** Guidance is certainly needed.

[576] **Mr Thomas:** And guidance with examples of different situations, I think. However you try to define it, there'll be questions, undoubtedly, unfortunately.

[577] **Nick Ramsay:** We're starting to realise this as a committee. [*Laughter.*] The more problems you think you can solve, the more problems are created.

[578] **Mr J. Evans:** The other issue is: the way the tax works, if it's not completely residential, you apply the commercial rates, whereas in Scotland, for some, for the 3 per cent, they apportion between the two, which, to some extent, would reduce some of the tension, I think.

[579] **Nick Ramsay:** Moving on to the Welsh Revenue Authority itself, from your experience of the embryonic organisation, as I suppose it still is at the moment, have you had interaction with the WRA and do you believe that there are adequate resources in place before the introduction of LTT? This is clearly the first tax that they're going to be dealing with, so do you think they're going to be up to speed on handling all the different complexities?

[580] **Ms Delaney:** It'll be interesting to see, I guess. We've heard that there will be some support from HMRC of individuals to be there on the helpline and for processes, et cetera, so it'll be interesting to see how much support there is.

[581] **Mr J. Evans:** I've only come across a few people, so I can't really comment.

[582] **Mr Thomas:** I've never dealt with them.

[583] **Nick Ramsay:** There we are. That's probably a good answer. Thanks.

[584] **Simon Thomas:** Thank you. Mike Hedges.

[585] **Mike Hedges:** Cross-border—something we didn't think was much of a problem when we first started this investigation, but the numbers have increased quite considerably, without anyone actually being certain, having got up to almost 1,000, whether that's the upper limit or not. Do you see any problems with cross-border properties?

[586] **Mr Thomas:** The practical problems will arise where there are—. It comes back to this consistency point. The practical issues will arise where you have differences in how matters have to be dealt with, and probably more so from the other side, if you like, from the English side, because everyone is used to dealing with SDLT, but I suspect that it'll be primarily Welsh lawyers who are going to be familiar, as time goes on, with dealing with LTT. So, obviously, the more difference there is, the more difficult it will be. Fair and reasonable apportionments between the value of the land will be, obviously, interesting and, depending on how tax bands work, I suspect you might see some favourable valuations to the taxpayer being produced. But, where you have two systems interacting, it's bound to cause some friction.

[587] **Mike Hedges:** Yes. The other question on it is: you'll be apportioning the money, and it won't make any difference, will it, if the bands are exactly the same, and the tax rates are exactly the same? There's no advantage in overvaluing or undervaluing anything.

[588] **Mr Thomas:** In theory, although, obviously, if you—. If the tax bands are the same, then yes, there shouldn't really be a desire to value one way or the other. Whether that happens or not, I have no idea. Whether somebody would decide they would prefer to pay more SDLT than LTT for some reason, I don't know, but it's just the risk, isn't it—the transactional risk or the tax risk of what is going on in practice.

[589] **Mike Hedges:** Also, somebody said—and we've listened to lots of people, so apologies for not remembering who—that there was a lack of clarity over exactly where the border is. Have you come across that?

[590] **Mr Thomas:** It's not something I've had to worry about to date, obviously.

[591] **Mike Hedges:** Nobody's had to. The thing is, up until now, no-one has ever had to worry about it, have they, because it's been an England-and-Wales system and it didn't really matter.

[592] **Mr Thomas:** I've got a colleague who thinks the border is in completely the wrong place, when he looks at an Ordnance Survey map. I think these sorts of issue will obviously come out when people have to start dealing with cross-border properties. I think if you look at the border, if you're talking about properties that straddle the border it's likely to be rural, agricultural-type properties, probably.

[593] **Mike Hedges:** Not always. Not in the whole of north-east Wales, because of the Wrexham-Chester border in that area there. I don't know if it's actually true, but they used to say that the offices in the Deva Stadium were in Chester but the football ground was in Wales.

[594] **Mr Thomas:** It'll be interesting when they try and sell it.

[595] **Mike Hedges:** It's that sort of thing, isn't it?

[596] **Mr Thomas:** It is, but I think as much as you try and legislate for it and provide guidance in all the things that we try and do, the problems or difficulties will probably only become really apparent when somebody actually sits down with their two sets of papers and tries to figure out how they're going to apportion the money.

[597] **Simon Thomas:** David.

[598] **David Rees:** Just a quick one. It's just crossed my mind, when you mentioned that if the bands were the same there would be no difference, and the apportioning may not be a problem for somebody, although it will need to be done. I'm assuming in case law, therefore, once you apportion a property, that that will stay with that property for perpetuity, basically. So, whereas a cost may not apply now, if bands change in the future, there would be an implication.

[599] **Mr Thomas:** I think it depends on whether future development takes

place on that property. It depends on whether—. For example, if you had buildings in one part of it and land in the other, values could change in different ratios.

[600] **David Rees:** So, there's a possibility of the proportion of ratios changing in future.

[601] **Mr Thomas:** I think there is, yes, and, of course, different valuers will have a different opinion as well as to how that should work.

[602] **Mr Jervis:** I think that's right. Because it's a self-assessment tax, the buyer will assess what the respective values are, and a different buyer may take a different view on the basis of different valuation advice. So, just because there's been a valuation on a particular site in a particular way, or one event or one purchase, it could be different the second time.

[603] **David Rees:** I just wanted to clarify the position.

[604] **Simon Thomas:** Steffan Lewis.

[605] **Steffan Lewis:** To your knowledge, are property and land taxes harmonised between Northern Ireland and the Republic of Ireland?

[606] **Mr Evans:** No.

[607] **Mr Jervis:** No.

[608] **Steffan Lewis:** Thank you.

[609] **Simon Thomas:** Thank you. Can we turn to reliefs and how they might be applied? Can I just, first of all, ask for your views on whether some statement of the intent and purpose of each relief would be useful on the face of the Bill?

[610] **Mr Jervis:** My view is that it would, because in the scheme of SDLT in England, some reliefs have targeted anti-avoidance rules, but not all of them. Because the new code of LTT applies a general targeted avoidance rule, there isn't the know-how and there isn't the learning that's been built up with SDLT to be able to apply that rule to reliefs, where previously there hasn't been such an avoidance rule. So, I think it will be important so that that can be interpreted correctly.

[611] **Simon Thomas:** Are you in agreement?

[612] **Mr J. Evans:** Yes. I think it would help with the general anti-avoidance rule, which does look to what sort of tax you could expect to take if applied normally.

[613] **Simon Thomas:** Okay. And then if we look at the suite of reliefs that are currently proposed in the Bill, do you think that's the kind of range that's appropriate to the Welsh economy as we have it now? Are there things that you think should possibly be omitted or perhaps reliefs that we should consider afresh?

[614] **Mr Jervis:** In the written submission that Eversheds made, we did ask you to consider reliefs for seeding of certain types of property funds. That is potentially quite important if those funds are to hold Welsh property. If those reliefs are not available, there's obviously a disincentive for certain types of fund to invest in Welsh property.

[615] **Simon Thomas:** These are the property authorised investment funds—

[616] **Mr Jervis:** And the authorised contractual schemes.

[617] **Simon Thomas:** So, those would be something that you would hope that the committee or the Government could consider.

[618] **Mr Jervis:** Yes, I think that would be something you should consider. Obviously, the timing is such that those reliefs have just been introduced in SDLT in the summer. So, yes, it is something that should be considered, otherwise Welsh property will be something that these funds will not find attractive.

[619] **Simon Thomas:** But would find attractive just over the border, potentially.

[620] **Mr Jervis:** Potentially, yes. There would be a cost associated with putting Welsh property in the fund.

[621] **Mr J. Evans:** Yes, I agree. You've got the PAIF relief coming in in England and Northern Ireland, but it won't apply to Wales. I think in our submission we also argue that you should look at extending that relief to

real estate investment trusts, which are the closed-ended form of the property authorised investment fund, because they're probably a more popular and workable vehicle for real estate. People like housing associations are interested in REITS now and it might help some of the housing issues.

[622] **Simon Thomas:** Without such a structure on the face of the Bill, are there implications for either the TAARs or more widely the GAAR, I suppose, if some of these innovative methods were to be used in Wales, or would they simply not be able to attract any relief at all?

[623] **Mr Jervis:** If there wasn't a specific relief, I think funds would either—those that want to convert to a REIT or become a PAIF would either dispose of the Welsh property before they do that, because they don't want the added cost and complexity, or they would accept the added cost and complexity, but that would probably mean that Welsh property had to deliver a better yield compared, perhaps, to an English property.

[624] **Simon Thomas:** And maybe not so much investment.

[625] **Mr Jervis:** Correct.

[626] **Simon Thomas:** Okay. Steffan Lewis.

[627] **Steffan Lewis:** What are your views on the suitability or otherwise of overarching TAAR for reliefs?

[628] **Mr J. Evans:** We complain all the time that legislation is too complex, so having a single anti-avoidance rule for all the reliefs does make sense. Obviously, you don't have that for SDLT: you've only got specific TAARs. So, if you're doing a portfolio deal where there's English and Welsh properties, like a sale on leaseback, with the Welsh leasebacks there's going to be an additional issue. So, I do think it's again going to be important that there's more guidance on how these are going to be applied and because that TAAR also covers other taxes I think it's going to be particularly important to explain how that interacts with avoiding other taxes, not just land transaction tax.

[629] **Mark Reckless:** Is that the overarching TAAR or the GAAR that we're talking about?

[630] **Mr J. Evans:** That's the TAAR. The GAAR only applies to devolved



taxes.

[631] **Steffan Lewis:** We had a discussion earlier about this with the other witnesses in terms of the word 'genuine' in the Bill being used to describe tax avoidance arrangements in the TAAR and GAAR. What's your take on that distinction and diversion from the English system?

[632] **Mr J. Evans:** As set out in our submission, I think it should come out. I don't see what it adds. Either something is an economic benefit or it isn't and the problem is when it goes before a court they're going to say that word must mean something in addition and, therefore, put in an additional condition on getting the relief.

[633] **Mr Thomas:** I agree. They'll assume that there was intended to be some specific purpose for that word being imported, when possibly that wasn't the intention of the draughtsman in reality. That obviously leads then to inference that you might not want to take place.

[634] **Simon Thomas:** Mark Reckless.

[635] **Mark Reckless:** What's your take on the switch from the TAAR that's avoidance to one—quite a large number in the Bill that are focused not on avoidance but on advantage from what's done? Is that going to cause problems to you?

[636] **Mr Thomas:** I think you've just got to be very careful that legitimate tax decisions that are otherwise perfectly lawful are not caught by a rule inadvertently, in a way. There are plenty of examples where you have option A and option B for how you structure a deal and both, as I say, are perfectly lawful and you choose one because you pay less tax.

14:00

[637] **Mark Reckless:** But if you were choosing it because there's a tax advantage to it, wouldn't you be caught by our TAARs in a way you wouldn't by—*[Inaudible.]*

[638] **Mr Thomas:** Yes, there's potential for that, I think.

[639] **Mark Reckless:** And, the over-reaching TAAR, when you say that applies not just to LTT but to non-devolved taxes as well, will it do so in the

same way or is it importing this advantage concept into this as well?

[640] **Mr J. Evans:** So, the TAAR can deny you a relief if part of the aim is to avoid or have an advantage for income tax or corporation tax—taxes that'll be administered by the Revenue, not the Welsh Revenue Authority. So, it stops you getting the Welsh relief, but it works out [correction: applies if] are you actually trying to avoid UK taxes.

[641] **Mark Reckless:** You say 'trying to avoid UK taxes': do you mean that, or do you mean to get a tax advantage in the UK context?

[642] **Mr J. Evans:** Sorry, I was using that loosely. Obviously, with the TAAR, it's to get an advantage. So, there is—

[643] **Mark Reckless:** So, thinking about advantage rather than avoidance, one would have to apply that to non-devolved taxes as well.

[644] **Mr J. Evans:** Yes.

[645] **Mark Reckless:** And that leads us through to the GAAR, which is attached to this Bill with the intention of applying more generally to future devolved taxes. Is this the right time for us to bring that mechanism in, and are we doing it in the right way?

[646] **Mr J. Evans:** I think, if you're going to bring it in, now is the time to do it, and you start at the beginning, because, when you do change tax systems, that causes friction. So, I think, if you make the policy decision to do it, I personally think now is the time to do it. Again, it uses the word 'genuine'; you could quibble with some of the drafting. I think it's better that it's a tax that [correction: it's better that] the Welsh Revenue Authority have to give a notice to assess, rather than the self-assessment system for the UK GAAR.

[647] **Mark Reckless:** So, you might quibble with the 'genuine'. And the switch from 'abusive' to 'artificial' as the test and also the replacing of the double reasonableness with the single reasonableness test, would you support those?

[648] **Mr J. Evans:** I support changing the double reasonableness test, which I don't think anybody really understands. [*Laughter.*] Yes, so I'd support that.

[649] **Mark Reckless:** And would you support the switch from 'abusive' to

'artificial' as the test?

[650] **Mr J. Evans:** I think that's more difficult. Obviously, what is 'artificial' is then elaborated on in the legislation, and you've got also the—the WRA will have to issue guidance as to what is, effectively, acceptable tax planning, and it's really the detail that will support that to make sure that people don't worry about this overly when they're doing Welsh land transactions.

[651] **Mark Reckless:** Would it be fair to summarise your advice as to only move from 'abusive' to 'artificial' if you also produce clear and prescriptive guidance as to why you're doing that and examples of where it would apply?

[652] **Mr J. Evans:** Yes, and, in the UK GAAR, the guidance, the GAAR panel, that's actually part of the statutory framework for the GAAR. I think that's quite important.

[653] **Mark Reckless:** Is that also appropriate if it's not self-assessment but if you're requiring the WRA to proactively intervene?

[654] **Mr J. Evans:** I think that's a good point. I still think people will want guidance. They'll want to know whether there's a risk of the GAAR being applied because, obviously, they'll be taking that into account in doing the deals. But yes, possibly, if there's not that self-assessed element, you may be able to get away with a little less.

[655] **Mark Reckless:** Do you think this is going to lead to more work for your firms?

[656] **Mr Thomas:** Quite possibly. People are going to need advice.

[657] **Mr J. Evans:** It's a new tax and there will be friction. So, yes, there will be some—.

[658] **Mr Jervis:** I think the important thing is certainty. I think the guidance will be particularly important because, yes, you mentioned that it's a counteraction and it's not self-assessment, but people do want to, taxpayers do want to, financially know what the deal is and how much it will cost. So, you need certainty. I think the guidance there is absolutely key.

[659] **Mark Reckless:** If you need certainty, isn't the place to provide that in the legislation, rather than trying to correct uncertainty through later

guidance?

[660] **Mr Jervis:** Well, the double reasonableness test I'm not a fan of either. I think that creates—. It's difficult to interpret. But I think a concept of tax advantage and artificial transaction is easy to interpret if there's clear guidance as to what that means and what you see as being artificial and what you see as not.

[661] **Mark Reckless:** Thank you.

[662] **Simon Thomas:** Nick Ramsay.

[663] **Nick Ramsay:** Yes. Just to follow on from Mark Reckless's point about the move from 'abusive' to 'artificial'—and you were pretty clear on that in that that could cause confusion—do you think there's a danger that it might actually put off practitioners wanting to engage in anything that involves 'artificial' because of the confusion surrounding it?

[664] **Mr J. Evans:** I think people will already avoid things that look artificial. I think the tax avoidance industry has been shut down. At least, that's my view. So, I don't think—. People got used to the UK GAAR and it hasn't stopped transactions happening, so I don't think it would unduly—

[665] **Nick Ramsay:** Put any more people off. It wouldn't put any more off, then?

[666] **Mr J. Evans:** I don't think so, no.

[667] **Nick Ramsay:** Okay. The second point, Chair: going back to the Law Society earlier, they suggested that there were possibly too many TAARs. We were questioning, actually, with the number of TAARs that they were talking about, whether they'd over-counted. But they thought that there were too many TAARs, and you don't necessarily need the TAARs and the GAAR. What's your view on that? Do you think that there's a complexity there that doesn't need to be?

[668] **Mr J. Evans:** Possibly, yes. The TAAR is different, because it covers avoidance of other taxes, not just LTT, but it would be useful to know what sort of transaction would fail the TAAR, or, rather, would pass the TAAR but not the GAAR. Is there any difference? Do you actually need the TAARs if you've got the GAAR? One of the aims of the GAAR, at least through the

people who dreamt it up—Graham Aaronson—was that it would get rid of a lot of anti-avoidance legislation, but that's not happened at all.

[669] **Nick Ramsay:** More legislation—surprise. Thanks.

[670] **Simon Thomas:** More work for somebody, anyway. David Rees.

[671] **David Rees:** Before I go on to my question, I'll come back to the question on the TAAR, which, you said, affects non-devolved taxes. How will that play out in the courts? Which one takes precedence in a certain issue? What I don't want to see is a Bill being challenged in the Supreme Court because we're impeding upon UK taxation. So, if you are saying that a TAAR actually has an impact upon non-devolved taxes, how does that work?

[672] **Mr J. Evans:** I think the TAAR will only prevent you claiming a relief from land transaction tax. So, it will only affect LTT. But, in determining whether that relief is taken away, you have to examine whether the purpose of the transaction is to get a tax advantage for income tax or corporation tax, which is a non-devolved tax.

[673] **David Rees:** So, the non-devolved tax is used as, basically, a means of assessing whether—

[674] **Mr J. Evans:** Yes.

[675] **David Rees:** Okay. Fine. Thanks for that. Can I move on to—because, in the Deloitte paper, you highlighted that you believe that there is a statutory instrument required for the transitional time, and there are other clear requirements for statutory instruments in the Bill because there are the tax rates, for example, which you're setting and then move on. Do you think the scrutiny process of the secondary legislation is robust enough within this Bill?

[676] **Mr J. Evans:** I'm not an expert on the scrutiny process, but I do think it's important to have the ability to pass secondary legislation, because the SDLT and LTT will sort of run in parallel. I think if there are changes to SDLT—there have been very dramatic changes recently; you've seen, for example, the Scottish land and buildings transaction tax has not been able to keep up. So, I do think that you do need that power, but only use it when absolutely necessary. Maybe, if some sort of consultative group is set up, that could be used as a sounding board.

[677] **David Rees:** Well, that was my next question, in a sense, because you said that you're already on the Stamp Duty Land Tax Working Together group. Is there a need—? Should we be doing something similar here in Wales now?

[678] **Mr J. Evans:** I think you should. At first, it doesn't deal with the legislation but also with operational issues, trying to make sure that the tax runs smoothly as well as getting it technically correct.

[679] **David Rees:** Who should be establishing that group? The Welsh Government? The WRA?

[680] **Mr J. Evans:** It's the WRA. It's the Revenue who run it.

[681] **David Rees:** So, HMRC run it in—

[682] **Mr J. Evans:** Yes.

[683] **David Rees:** Okay.

[684] **Simon Thomas:** Just one final question from myself. You said earlier that you could envisage, at least in the early stages of a new tax, there'd be some friction, and possibly a little more work. Obviously, we hope that the Bill is not designed to be creating more work ongoing, but there is a transitional cost, certainly. There is an estimate in the explanatory memorandum of those transitional costs. In your view, is that a reasonable estimate of the kind of costs that might face this Bill?

[685] **Mr Evans:** I don't think I've seen those.

[686] **Simon Thomas:** It's £400 million to £800 million. Million? Thousand. I'm getting my words mixed up this afternoon—£400,000 to £800,000, and that's for practitioners generally. It's fair enough if you haven't got a view. That's fair enough.

[687] **Mr Thomas:** I think it's very difficult to say, but it sounds low, probably. I think it's an underestimate, but it's very difficult to say, as everyone will need to spend time getting to grips with this in its entirety.

[688] **Simon Thomas:** If I ask in a slightly different way, if we accept there

will be implementation costs, and information sharing and training costs, and all the other things, and I think those figures are meant to cover that kind of cost, do you foresee ongoing extra costs, or do you think, if this Bill were to work more or less as it's designed, that it should be at least cost neutral in the long term?

[689] **Mr Thomas:** For so long as there are two systems to learn about, there will invariably be more costs, I think. However you try and mitigate that, it will be a greater burden, but I suspect that, over time, it'll reduce and people will just become used to dealing with it in training and aspects of their profession.

[690] **Simon Thomas:** Okay. That concludes our questions, I think. So, I'd like to thank you again for your written evidence and also for helping us and assisting us with the scrutiny of the Bill this afternoon.

[691] Diolch yn fawr iawn i chi. Thank you very much.

14:12

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd  
o'r Cyfarfod  
Motion under Standing Order 17.42 to Resolve to Exclude the Public  
from the Meeting**

*Cynnig:*

*Motion:*

*bod y pwyllgor yn penderfynu that the committee resolves to gwahardd y cyhoedd o weddill y exclude the public from the cyfarfod yn unol â Rheol Sefydlog remainder of the meeting in 17.42(vi).*

*accordance with Standing Order 17.42(vi).*

*Cynigiwyd y cynnig.*

*Motion moved.*

[692] **Simon Thomas:** Can I invite the committee to pass under Standing Order 17.42? Thank you. And we'll go into private session. Diolch yn fawr.

*Derbyniwyd y cynnig.*

*Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 14:12.*

*The public part of the meeting ended at 14:12.*