

Mark Drakeford AM/AC  
Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol  
Cabinet Secretary for Finance and Local Government



Llywodraeth Cymru  
Welsh Government

Huw Irranca-Davies AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

1 November 2016

Dear Huw

Thank you for your letter dated 21 October asking for clarification on a number of points in relation to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill ("the Bill"). I have addressed the points raised below:

- **Powers to make subordinate legislation in SDLT and LBTT legislation**

Annex 1 to this letter contains a table identifying subordinate legislation powers in SDLT and LBTT legislation. These powers have been identified on the basis that the scope of the powers is the same, or similar to, the scope to the powers in the Bill.

The table should be read alongside the UK and Scottish provisions to ensure a complete understanding of the similarities and differences. I should also note that the table does not refer to those powers in SDLT or LBTT legislation which are not replicated in this Bill.

I have determined the appropriate subordinate legislation procedure by considering whether the regulations could have an effect on an individual's tax liability. Where the regulations make a substantive difference to the amount of tax for which buyers are liable (i.e. by imposing or increasing a charge to tax), they are subject to the affirmative or provisional affirmative procedure. Powers to make regulations as to matters which, by contrast, do not substantively affect the charge to tax and are technical or mechanical are subject to the negative procedure.

We consider that the smaller number of powers in SDLT legislation is because the UK Government tends to rely on the annual Finance Bill to make changes to SDLT legislation, and the broad power conferred by section 109 of the Finance Act 2003, which enables UK Treasury Ministers to vary any part of SDLT legislation, except the tax rates and bands.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

- **Approach to deciding whether regulations made under section 76(1) and 76(2) should be subject to the affirmative or negative procedure**

As the substance of this Bill is being scrutinised closely, it is not normally necessary for these regulations to be subject to the affirmative procedure, as they will be limited to making incidental, consequential, supplementary, transitional, transitory or saving provisions which are necessary to make sure the provisions in this Bill work properly.

However, it is possible that regulations made under this section might have the effect of changing a person's tax liability. To maintain consistency with the broader approach taken across the Bill, the affirmative procedure is prescribed in these cases.

The question of whether particular regulations will have this effect, and therefore be subject to the affirmative procedure, will need to be considered carefully on a case-by-case basis, taking into account the purpose of the regulations and their overall effect. For this reason, it is not possible to give an exhaustive list of cases where regulations would always be subject to the affirmative procedure, but I am committed to explaining how the Welsh Ministers have reached this decision in the explanatory memorandum accompanying any regulations made under this section.

I hope that these explanations are helpful. I am happy to provide any further information on the Bill and how I see it functioning if this would be helpful.

I am copying this letter to the Chair of the Finance Committee.

**Yours sincerely**



**Mark Drakeford AM/AC**

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Cabinet Secretary for Finance and Local Government

CC: Simon Thomas AM, Chair of the Finance Committee