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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

Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Cabinet Secretary for Finance and Local Government

CC: Simon Thomas AM, Chair of the Finance Committee

Annex 1 - Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

Table 1: Subordinate legislation powers in SDLT, LBTT and LTTA legislation

Description of power	Subordinate legislation power in LTTA Bill	Equivalent provision in SDLT legislation	Equivalent provision in LBTT legislation
Power to add, remove or modify the list of exempt interests	Section 5(4) <i>Procedure: AFFIRMATIVE</i>	Section 48(5) FA 2003 <i>Procedure: NEGATIVE</i>	Section 5(4) LBTT(S)A 2013 <i>Procedure: AFFIRMATIVE</i>
Power to modify chargeable consideration provisions	Section 18(2) <i>Procedure: AFFIRMATIVE</i>	Section 50(2) FA 2003 <i>Procedure: NEGATIVE</i>	Section 17(2) LBTT(S)A 2013 <i>Procedure: NEGATIVE (but AFFIRMATIVE when amending primary legislation)</i>
Power to set tax bands and tax rates	Section 24(1) <i>Procedure: First regulations = AFFIRMATIVE, second and subsequent regulations = PROVISIONAL AFFIRMATIVE</i>	Not applicable (<i>tax bands and tax rates set through resolutions made under Provisional Collection of Taxes Act and annual Finance Act</i>)	Section 24(1) LBTT(S)A 2013 <i>Procedure: First regulations = AFFIRMATIVE, second and subsequent regulations = PROVISIONAL AFFIRMATIVE</i>
Power to add, modify or remove reliefs or modify section 31 (relief TAAR)	Section 30(6) <i>Procedure: AFFIRMATIVE</i>	Not applicable (<i>reliefs introduced, removed and modified through resolutions made under Provisional Collection of Taxes Act and annual Finance Act</i>)	Section 27(3) LBTT(S)A 2013 <i>Procedure: AFFIRMATIVE</i>
Power to make further provision about the application of LTT to companies	Section 33(7) <i>Procedure: AFFIRMATIVE</i>	No equivalent power	No equivalent power
Power to provide that certain schemes are not to be treated as unit trust schemes for purposes of LTT	Section 34(6) <i>Procedure: NEGATIVE</i>	Section 101(5) FA 2003 <i>Procedure: NEGATIVE</i>	Section 45(6) LBTT(S)A 2013 <i>Procedure: NEGATIVE</i>

Annex 1 - Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

Power to make provision to ensure LTT has effect in relation to open-ended investment companies and transactions involving those companies	Section 35(1) Procedure: AFFIRMATIVE	Section 102(1) FA 2003 Procedure: NEGATIVE	Section 46(1) LBTT(S)A 2013 Procedure: NEGATIVE
Power to amend partnership provisions	Section 40(2) Procedure: AFFIRMATIVE	No equivalent power	Section 49(2) LBTT(S)A 2013 Procedure: AFFIRMATIVE
Power to amend trust provisions	Section 41(2) Procedure: AFFIRMATIVE	No equivalent power	Section 50(2) LBTT(S)A 2013 Procedure: AFFIRMATIVE
Power to substitute thresholds at which a transaction becomes notifiable	Section 45(10) Procedure: AFFIRMATIVE	No equivalent power	Section 30(7) LBTT(S)A 2013 Procedure: AFFIRMATIVE
Power to amend late payment interest start date in cases where the consideration is contingent or unascertained	Section 46(5) Procedure: AFFIRMATIVE	Section 87 FA 2003 Procedure: NEGATIVE	Section 217(2) RSTPA 2014 Procedure: NEGATIVE
Power to amend late payment interest start date in cases where relief is withdrawn	Section 48(5) Procedure: AFFIRMATIVE	Section 87 FA 2003 Procedure: NEGATIVE	Section 217(2) RSTPA 2014 Procedure: NEGATIVE
Power to amend period within which returns must be made	Section 51(1) Procedure: AFFIRMATIVE	Section 76(2) FA 2003 (<i>note power exercisable by Commissioners for Revenue and Customs not Treasury</i>) Procedure: NEGATIVE	Section 39(1) LBTT(S)A 2013 Procedure: NEGATIVE
Power to make regulations about the deferral of tax	Section 63(1) Procedure: AFFIRMATIVE	Section 90(2) FA 2003 (<i>note power exercisable by Commissioners for Revenue and</i>	Section 42 LBTT(S)A 2013 Procedure: NEGATIVE

Annex 1 - Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

		<i>Customs not Treasury)</i> Procedure: NEGATIVE	
Power to make provision about WRA certificates	Section 64(5) Procedure: NEGATIVE	Section 79(4) FA 2003 (<i>note power exercisable by Commissioners for Revenue and Customs not Treasury)</i> Procedure: NEGATIVE	No equivalent power
Power to modify the meaning of “residential property”	Section 71(10) Procedure: AFFIRMATIVE	Section 116(8) FA 2003 Procedure: NEGATIVE	Section 59(9) LBTT(S)A 2013 Procedure: AFFIRMATIVE
Power to make consequential etc. provision	Section 76(1) Procedure: NEGATIVE, but AFFIRMATIVE if the regulations have the effect of imposing or increasing liability to tax	No specific stand-alone power, but see section 109(6) FA 2003 (PROVISIONAL AFFIRMATIVE) and section 114(6) FA 2003	Section 67(1) LBTT(S)A 2013 Procedure: NEGATIVE (but AFFIRMATIVE when amending primary legislation)
Power to commence provisions in the Bill	Section 79(2) No procedure	No equivalent power	Section 70(2) LBTT(S)A 2013 No procedure
Power to add, remove or vary exemptions	Paragraph 7, Schedule 3 Procedure: AFFIRMATIVE	Paragraph 5, Schedule 3 FA 2003 Procedure: NEGATIVE	Paragraph 8, Schedule 1 LBTT(S)A 2013 Procedure: AFFIRMATIVE
Power to charge tax on the rent element of residential lease	Paragraph 27(2), Schedule 5 Procedure: AFFIRMATIVE	No equivalent power	No equivalent power
Power to specify residential	Paragraph 27(4), Schedule 5	Not applicable (<i>tax bands and tax</i>	Paragraph 3, Schedule 19

Annex 1 - Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

lease rates and bands	<i>(power can only be exercised if regulations made under paragraph 27(2), Schedule 5)</i> Procedure: First regulations = AFFIRMATIVE, second and subsequent regulations = PROVISIONAL AFFIRMATIVE	<i>rates set through resolutions made under Provisional Collection of Taxes Act and annual Finance Act)</i>	LBTT(S)A 2013 Procedure: First regulations = AFFIRMATIVE, second and subsequent regulations = PROVISIONAL AFFIRMATIVE
Power to specify lease rates and bands	Paragraph 28(1), Schedule 5 Procedure: First regulations = AFFIRMATIVE, second and subsequent regulations = PROVISIONAL AFFIRMATIVE	<i>Not applicable (tax bands and tax rates set through resolutions made under Provisional Collection of Taxes Act and annual Finance Act)</i>	Paragraph 3, Schedule 19 LBTT(S)A 2013 Procedure: First regulations = AFFIRMATIVE, second and subsequent regulations = PROVISIONAL AFFIRMATIVE
Power to specify alternative temporal discount rate	Paragraph 32, Schedule 5 Procedure: AFFIRMATIVE	Paragraph 8, Schedule 5 FA 2003 Procedure: NEGATIVE	Paragraph 7, Schedule 19 LBTT(S)A 2013 Procedure: NEGATIVE
Power to specify amount of relevant rent	Paragraph 36(1), Schedule 5 Procedure: AFFIRMATIVE	No equivalent power	No equivalent power
Power to prescribe further information in relation to alternative finance investment bonds	Paragraphs 8(1), 9(1), 12(b), 16 and 18(4) or (5), Schedule 10 Procedure: NEGATIVE	Paragraph 1, Schedule 61 FA 2009 Procedure: NEGATIVE	Paragraph 3, Schedule 8 LBTT(S)A 2013 Procedure: NEGATIVE
Power to prescribe minimum percentage of tax attributable to dwellings in multiple dwellings relief	Paragraph 6(6), Schedule 12 Procedure: NEGATIVE	No equivalent power	Paragraph 12, Schedule 5 LBTT(S)A 2013 Procedure: NEGATIVE
Power to add to list of “relevant public sector bodies” for	Paragraph 2(3)(g), Schedule 14	Paragraph 1, Schedule 9 FA 2003	No equivalent power (<i>relief does not exist in Scotland</i>)

Annex 1 - Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

purposes of right to buy relief	Procedure: NEGATIVE	No procedure	
Power to prescribe proportion of tax in acquisition relief	Paragraph 3(1), Schedule 16 Procedure: AFFIRMATIVE	No equivalent power	Paragraph 6, Schedule 11 LBTT(S)A 2013 Procedure: NEGATIVE
Power to specify particular transaction eligible for relief for certain acquisitions involving public bodies	Paragraph 1(2), Schedule 19 Procedure: NEGATIVE	Section 66(2) FA 2003 Procedure: NEGATIVE	Paragraph 2, Schedule 16 LBTT(S)A 2013 Procedure: NEGATIVE
Power to add to list of public bodies for purposes of relief for certain acquisitions involving public bodies	Paragraph 1(4)(l), Schedule 19 Procedure: NEGATIVE	Section 66(4) FA 2003 Procedure: NEGATIVE	Paragraph 4, Schedule 16 LBTT(S)A 2013 Procedure: NEGATIVE
Power to add to list of health bodies eligible for relief	Paragraph 2(d), Schedule 19 Procedure: NEGATIVE	No equivalent power	No equivalent power (<i>relief does not exist in Scotland</i>)
Power to add to list of public bodies for purposes of relief for compliance with planning obligations	Paragraph 2(3)(e), Schedule 20 Procedure: NEGATIVE	Section 61(3) FA 2003 No procedure	Paragraph 5, Schedule 15 LBTT(S)A 2013 Procedure: NEGATIVE
Power to make provision about records to be kept or preserved for purposes of TCMA	Paragraph 7, Schedule 22 (introducing new section 39A TCMA) Procedure: NEGATIVE	Paragraph 4, Schedule 11 FA 2003 Procedure: NEGATIVE	Section 81 RSTPA 2014 Procedure: AFFIRMATIVE