



LOCAL VARIATION TO LAND TRANSACTION TAX RATES FOR SECOND HOMES, SHORT-TERM HOLIDAY LETS AND POTENTIALLY OTHER ADDITIONAL RESIDENTIAL PROPERTIES

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ICAEW welcomes the opportunity to comment on the **above consultation** published by the Welsh Government on 20 December 2021.

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The feedback from members in Wales was while there is support for the provision of affordable homes for people who live and work locally, they did not favour a further increase in the rate of land transaction tax for second homes and holiday lets as the means to address it. Such properties are already subject to the 4% LTT surcharge and there is concern that the measure would increase prices for holidays in the areas affected, thereby damaging the Welsh tourist industry and the local community which relies on them. Members thought the policy objective would be better achieved through the planning process.

This response of 21 March 2022 has been prepared by the ICAEW Tax Faculty in consultation with ICAEW's Director for Wales and members in Wales. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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GENERAL COMMENTS

Role of ICAEW members in land transaction taxes and concerns about possible abuse

1. Historically, ICAEW members have not generally advised directly on taxes for land transactions, namely the UK stamp duty land tax (SDLT) and the equivalent Welsh Land Transaction Tax (LTT): these taxes have usually been the preserve of the legal profession, licensed conveyancers and specialist tax advisers. However, with the growing complexity of these taxes, member feedback suggests that they are seeing more activity in them.
2. In particular, many members are concerned that the multiplicity of rates and reliefs in the systems appear to have opened up a number of potentially abusive practices in areas such as SDLT reclaims. Although we have no evidence that this has also been happening in LTT, in principle we expect that there will be similar activity in Wales and that these proposals could exacerbate those concerns.

Support for the CIOT and stamp taxes practitioners group response

3. As our members are usually less involved in this area than some other professional bodies, we do not have detailed substantive comments to make on the proposed measures. However, we have seen a draft of a joint response from the Chartered Institute of Taxation and the Stamp Taxes Practitioners' Group. Their response makes several excellent detailed comments about the proposed measure which we are happy to support. We have, however, set out below some more general comments based on feedback from ICAEW members in Wales and provided summary answers to the questions posed in the consultation document.

Comments from ICAEW members in Wales on the principle

4. ICAEW has about 3,500 members who live and work in Wales and many of our members' firms are based or have offices in Wales where they advise businesses of all sizes, thereby helping to support the Welsh economy. We have liaised with ICAEW's Director for Wales who manages relationships with members in Wales and the consultation has been circulated to our Wales Strategy Group, South Wales District Society of Chartered Accountants and some local groups and network of contacts.
5. The feedback from members was not in favour of any increase in LTT or adjustment to rates for second homes and holiday lets. Such properties are, of course, already subject to the 4% LTT surcharge. The concern is that, if it is introduced, owners of holiday flats would then seek a higher return to recover the further LTT charge, thereby damaging the Welsh tourist industry and the local community which relies on them. There is a perceived danger that people will simply switch to other areas for their holidays where there is no such levy, for example Devon & Cornwall – and we also note that the SDLT surcharge is currently only 3% for such property rather than 4% under LTT.
6. As such, we would want to see as a minimum a robust evidence base that such a measure would not, in effect, create more problems than it solves. If the policy is to encourage more affordable housing to be made available to locals on new developments, a very reasonable policy aim and one which we support, we think the planning system should be used to ensure that these properties are reserved for local inhabitants.

Increased complexity and admin costs

7. A system of charging what would effectively be local rates of LTT in addition to the existing national rates would add considerable administrative complexity to the tax system. Two of our principles of good tax policy are that the tax system should be simple and certain (please see our *Ten Tenets for a Better Tax System*, by which we benchmark the tax system and changes to it, summarised in the Appendix), but this proposal will increase both complexity and uncertainty. The property will need to be identified and where applicable extra stages will need to be included in the calculation processes. How will this local information be fed into the Welsh Revenue Authority (WRA) which must administer LTT? The more granular the

designation, the more complicated it will be to implement and administer and which could result in local anomalies and inconsistencies. Unless a clear system is adopted, the scope for errors and mistakes is likely to be considerable. As a general principle, we would counsel against having a national tax system such as LTT which is dependent upon specific local information prepared by local authorities in order to arrive at the correct rate of LTT.

8. The measure is therefore likely to increase the collection costs of the WRA as well as make the conveyancing system more expensive than it needs to be. We do not know how much costs would increase for the WRA and property purchasers, but it could make Wales a less attractive place in which to invest.

Defining the target population

9. The proposal will require exhaustive definitions of second homes and short-term holiday lets. In the narrative that accompanies question seven in the consultation document, ten categories are identified which it is proposed would be excluded from the additional rates. We can understand the policy purpose behind the proposed exclusions, but they do serve to highlight that framing a suitable definition which can be operationalised will be difficult to achieve. It is likely to be complicated to administer in practice, potentially uncertain in its application and runs the risk of being abused.

The need for certainty at the time of the transaction

10. As noted, we believe that the tax system should be simple and straightforward, so that taxpayers know where they stand at the time that a liability to tax arises. As such, for transaction taxes, we believe that an essential pre-requisite is that the tax position of the transaction should be capable of being ascertained at the time it was undertaken and not potentially altered by events or circumstances which took place afterwards.
11. As a matter of principle, therefore, we do not think that the higher rates should be applied at some later time due to a change in intention and/or circumstances which were not envisaged or foreseen at the time of the transaction. However, we recognise that this could be subject to disagreement and, potentially, abuse so some form of clawback might be needed, although it is difficult to see how it might be checked afterwards. Equally, if the intention changed such that the higher rates of LTT would not have applied, fairness would also suggest the taxpayer should be refunded the extra LTT that was paid.

RESPONSES TO SPECIFIC QUESTIONS IN THE DOCUMENT

Q1. Do you agree that the Welsh Government should be able to increase rates of LTT for second homes and short-term holiday lets in areas where there is an evidenced case to do so?

12. We understand the policy and the need to make affordable homes available to those who live and work in the area. We would have thought that more could be done to address this through the planning system rather than the LTT system. We would want to see a compelling evidence base for such a proposal which included an analysis of its impact on the wider Welsh economy.

Q2. What are your views on whether the size of areas covered by local variations of rates should be local authority- wide or only in smaller communities?

13. See our general comments above. The smaller the area, the more complicated it will be to apply and administer and the more prone to errors, both in terms of compilation and administration.

Q3. What are your views on how an area should be determined to be subject to changes in rates?

14. It is important that the areas should be straightforward to identify: clearly this would be more straightforward if the area identified is the local authority area rather than a smaller area such as a ward of a local authority area. Whatever approach is adopted, the local authority within which the area(s) is situated must have the resources to analyse the mix of properties, as well as the capacity to implement and review any changes. At the area level it will be necessary to allocate resources to examine the data, something which the local authority may be unwilling to do if it does not result in any benefit to offset the increased admin costs. The resourcing question will be exacerbated if there is a multiplicity of areas within a local authority area.

Q4. If criteria are used to determine which areas are subject to changes in rates, what do you think the criteria should be?

15. Given the focus of the consultation we would expect the criteria to be focussed on the number of dwellings that are holiday homes or short-term holiday lets (both in actual numbers and as a percentage of the total housing stock), local house prices and any impact on the Welsh language. Some of these criteria could be very subjective and likely to generate anomalies, which may bring the system into disrepute.

Q5. What are your views on how regularly areas where increased rates apply should be reviewed?

16. One of our tax principles is that any tax changes should be regularly reviewed. However, it would be difficult to assess the effectiveness of the measure over the short-term. In addition, taxpayers need certainty and changes to the tax system should be kept to a minimum so, unless there are compelling reasons, we would not be in favour of regular changes. A reasonable review period might be at the end of every Senedd.

Q6. What are your views on:

- **varying the existing higher rates for all higher rate transactions within a specified area? or**
- **introducing new rates applied only to purchases of properties intended to be used as second homes or short-term holiday lets within a specified area?**

17. The former would of course be easier to apply and administer but its impact on the wider market in the area would need to be considered.
18. The latter is closer to the proposed policy intention but, as noted earlier, will introduce considerable extra complexity and costs into the LTT system for both the WRA and purchasers.

Q7. Does the size of the area (the whole of the local authority or smaller areas within it) in which increased rates would apply influence your views on whether separate rates for second homes and short-term holiday lets are necessary?

19. In terms of simplicity and potentially resources to administer it, the larger the size of area the better, but that might result in the measure being poorly targeted and increasing costs in parts of the area where there are few second homes or short-term holiday lets.

Q8. Do you agree short-term holiday lets should be subject to any increased rates, as well as second homes? Please explain your answer.

20. This question is difficult to answer and would depend very much on the area. The tourist industry is an important part of the Welsh economy and penalising short-term holiday lets could have wider economic consequences for the area which are disproportionate to the policy problem being addressed.

Q9. Do you agree properties which cannot be occupied for all of the year should not be subject to any increased rates? Please explain your answer.

21. Again, this is a difficult question to answer. On the one hand we can see why they might be excluded but, on the other hand, such properties may be highly suitable for short-term holiday lets (subject to any restrictions etc imposed in any purchase agreement). It is also possible that such a restriction might be abused – for example could even a one week non occupancy agreement result in the charge not applying?

Q10. Are there any current higher rates transactions, other than second homes and short-term holiday lets, for which you think increased rates may also be appropriate? Please explain your answer.

22. The extensive list of potential exclusions highlights the difficulty in framing a suitable test to ensure that the measure is properly targeted. Some of the proposed exclusions could be seen as in possible conflict with the policy purpose of making more affordable homes available to local people. Further, the wide list of exclusions might encourage possible abuse, eg claiming that the property was bought with the intention of renovating it and then reselling it, when there was no such intention.

Q11 Do you agree that there should be a clawback rule so that if within a specified period after the date of the transaction, the use of the property changes to one on which increased rates would have been payable, the taxpayer should have to submit a new return and pay the additional tax?

23. See comments above. While we can see that in some circumstances a clawback could be needed, in principle we believe that the LTT treatment should reflect the circumstances and intentions at the time of the transaction.

Q12. Are there any circumstances where such clawback rules would apply, but you do not consider that it would be appropriate or fair?

24. As mentioned above, under general principles for a good tax system we are not in favour of a clawback provision. We have not identified any specific circumstances where such a clawback would be unfair, but we think it would be wrong in principle to impose a clawback due to a change in circumstances which was outside the purchasers' control, or which could not have been reasonably foreseeable at the time of the transaction.

Q13 If a property was bought where the buyer's intention was to use it as a second home or short-term holiday let but it is not then used in this way, do you think the taxpayer should be able to claim a refund of the additional tax?

25. We have stated above that a transaction tax should be established with certainty at the time the transaction is undertaken. As such, we do not think that the LTT should be changed by reference to any bona fide change of intention which occurred later. However, if an intention test is adopted which can be applied later than the date of the transaction, then the principle of fairness would suggest that it should apply in the circumstances set out in the above question and the taxpayer should be entitled to apply for a refund.

Q14. What length of time do you think would be appropriate for a clawback and/or refund period?

26. In the interests of certainty, we think any clawback time should be the minimum possible required to meet the policy objective. We would suggest a year after the filing date of the relevant LTT return.

Q15. If rates are introduced which require consideration of intended use, do you have any comments on how the design could make it simpler for taxpayers to comply with by minimising the scope for error?

27. It is important to remember that few purchasers will have a good understanding of the LTT system and conveyancers will not necessarily be providing tax advice as part of the conveyance – indeed in order to minimise their risk to a claim being made against them we expect many conveyancers exclude specifically the provision of any advice in relation to tax.
28. Accordingly, it will be essential that guidance is readily available and it should include many examples to help illustrate the principles. Even if those involved in property sales and purchases, including conveyancers and estate agents, exclude the giving of tax advice from their services, they should be encouraged to ensure that taxpayers are provided with relevant and timely information to help them decide if the higher rates of LTT are in point. This should be at the start of the process rather than towards the end of it, so that purchasers know where they stand and that there are no unwelcome surprises for them as the transaction nears completion, thus undermining trust in the LTT system.

Q16. What effects do you think these proposals may have on the Welsh language and communities who predominately use Welsh? How could positive effects be increased, or negative effects mitigated?

29. We have no specific comments on this question.

Q17. We have asked a number of specific questions. If you have any additional points related to LTT for second homes and short-term holiday lets which have not specifically addressed, please make them here.

30. It is essential that for this measure to work, there should be a sound evidence base and compelling economic case for its introduction: it needs to be properly targeted, carefully designed to ensure it works on the ground given LTT is a national tax, and subject to review as to its effectiveness. If these pre-requisites are not met, then there is a danger that the measure may merely price Wales out of the wider UK property market, damage the Welsh economy and tourist industry and undermine trust in the tax system.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).