Land transaction tax – a first Welsh tax for 800 years

Technical

01 June 2015

The CIOT and the Stamp Taxes Practitioners Group have responded jointly to the Welsh consultation on the design of land transaction tax (LTT), the replacement for SDLT. LTT (together with landfill disposals tax – the subject of a further consultation closing on 19 May) will be the first Welsh tax in over 800 years.

The question of the importance of consistency of rates and structure between the LTT and SDLT regimes is a central theme of the consultation, given that Wales (in comparison to Scotland) has a more integrated land and property market with England, because of the more densely populated border areas, as well as sharing the same land law.

Consistency of LTT rates with SDLT

The initial questions in the consultation concerned the wider economic effect of existing SDLT rates and bands in Wales and the impact of possible change. The CIOT and STPG would not normally comment on rates, as these are largely matters of policy for the Welsh government. However we made some observations:

- Following the removal of the slab system, the rate system is not considered by practitioners to distort the market in any significant way.
- There does not appear to be any sensible reason for the SDLT higher rate of 15% for certain transactions to be retained, given a marginal rate tax base (as favoured by the Welsh government) and so few high value property transactions in Wales.
- In terms of changing rates or making changes to the substantive tax law, in the absence of an annual Budget/Finance Bill in Wales, mechanisms will be needed to effect change. A change of rates (following perhaps an English SDLT rate

change) might need a standing agenda item within the assembly or for the minister to consider the impact of the UK Budget/Autumn Statement and respond within, say, 21 days. The closing of a loophole or anomaly in the legislation could require an immediate change by means of a statutory instrument. However, the CIOT and the STPG considered that actual structural changes, such as the introduction of a new relief, should be considered initially through formal consultation and change effected only through primary LTT legislation.

- If the rate structure for commercial and residential property were aligned, many of the current issues around the definitions of residential and non-residential property would be removed. The current differential in rates between residential and commercial transactions causes tensions, particularly where the subject matter of the transaction is mixed (both residential and commercial).

Consistency of structure between the two regimes

In terms of the importance of consistency of structure between the tax regimes in Wales and England for non-residential property transactions, we noted that many commercial property owner/occupiers and investors hold portfolios of property across England and Wales.

Consistency in treatment is therefore important in minimising administrative burdens for business in relation to the consolidation of asset portfolios, valuation and tax provision. Therefore, it is our view that the Welsh government needs to be sure that differences introduced in LTT are carefully evaluated and are of benefit to the Welsh economy to warrant the extra administrative burdens imposed on businesses and those operating the conveyancing process in the context of high cross-border activity.

Having made that central point, we also point to a number of specific technical changes that could be introduced into LTT, as some of the SDLT provisions are poorly structured and hamper commercial transactions, particularly in relation to group relief (FA 2003 Sch 7) and the partnership provisions (in FA 2003 Sch 15).

LTT and leases

We point out that the current threshold for SDLT on rent is such that it would be surprising if very much, if any, SDLT is collected currently in Wales. The consequence of taxing the rent element under LTT is likely to be significant administration for probably very small returns. We would note, however, that if there is no charge and no anti-avoidance rule, there may be a risk of loss of revenue through higher value properties being acquired through leases.

In relation to commercial leases, the consultation asks whether a system of taxing leases in Wales would be improved by requiring a regular return. Our view is that a requirement for a regular return would perhaps improve compliance. However, any compliance advantage will be balanced by an increase in the administrative burden for businesses, a cash flow cost and a need for additional resources within the Welsh Revenue Authority, or the body responsible for collection and management of LTT. An assessment of these factors for Wales would be needed.

Reliefs from LTT

Effective evaluation of existing and possible new reliefs requires information and data gathering specific to Wales as part of the role of the revenue authority. In relation to reliefs and exemptions, a requirement to claim the benefit on the face of the return will allow the revenue authority to monitor the use of the relief/exemption. One of the issues with the old form of SDLT sub-sale relief (pre-July 2013), for example, was that the ‘relief’ applied automatically so it was difficult to monitor compliance.

We note also that changes should be made to some reliefs to reflect the decision in the case of *Pollen Estate Trustee Company Limited and King’s College London* [2012] UKUT 277.

Online filing and payment

We are not convinced that online filing should be, or needs to be, mandatory, given the online filing rate for SDLT is very high already (97.46%) and the CIOT has a continuing concern about ‘digital exclusion’. Generally, the carrot (ie simple systems and processes that promote use) is better than the stick in terms of promoting both

online filing and payment.

FA 2003 ss 75A–C

The consultation asks whether SDLT's mini-GAAR (FA 2003 ss 75A–75C) should be replicated in LTT. Our view is that these provisions are fundamentally flawed, as highlighted in the recent decision of the Upper Tribunal in the case of *Project Blue Limited and the Commissioners for Her Majesty's Revenue and Customs* [2014] UKUT 0564 (TCC) – see page 24 for Michael Hunter's review of this case. We believe that this should not be fully replicated in LTT, particularly if a narrowly targeted General Anti-Abuse Rule along the lines of the provision introduced in the UK (with the same safeguards) is introduced.

LTT on VAT?

Finally, one aspect of SDLT that is often cited as unjust by practitioners is that SDLT is chargeable on the VAT that is paid on a transaction. Consideration might be given to not charging LTT on VAT paid on a transaction, particularly to the extent that VAT is recoverable or perhaps only where the purchaser is VAT registered.

Our submission is available to view on the CIOT website.