# The Welsh Government consults on higher rates of stamp duty

Indirect Tax

01 October 2016

Land transaction tax (LTT) will replace the UK stamp duty land tax (SDLT) in Wales from April 2018. The Welsh Government consulted widely on the policy design of LTT. Since consulting on proposals for LTT, changes have been introduced to SDLT and Scottish Land and Buildings Transaction Tax (LBTT): in particular, the higher rates charged on purchases of additional residential properties introduced by the UK and Scottish Governments from 1st April this year.

The Welsh Government's Treasury Paper 5 sought views on the Welsh policy approach to the higher rates for LTT purposes.

The CIOT responded to this consultation jointly with the Stamp Taxes Practitioners Group, stressing the need for a clear understanding of the policy objective in introducing the higher rates for LTT. It was pointed out that it is not entirely clear from the policy statements quoted in the document whether the intent is to deter the purchase of additional residential properties (so that in fact lower revenue attributable to higher rates in Wales would represent a fulfilment of the policy) or to raise revenue that may be used to build good quality, affordable housing.

The need for a clear understanding of the policy objective underpins not only the practical application of the higher rates (in terms of interpretation by taxpayers and their advisers and guidance issued by the WRA) but also the approach taken in framing the proposed overarching general anti-avoidance rule (GAAR) in the Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Bill, published in July as a work in progress draft.

The Bill provides that the GAAR will apply when a person enters into an 'artificial tax avoidance arrangement'. In determining whether an arrangement is artificial, regard may be had to whether the arrangements result in a tax charge. It is reasonable to assume this was not the anticipated result when the relevant provision of Welsh tax legislation was enacted. To decide objectively what is not the anticipated result, it is necessary to be clear on the intent behind the legislation when enacted.

The response underlined the fundamental importance of clear guidance if the higher rates are adopted in Wales because their adoption will impose greater complexity on the LTT regime for all users, albeit the higher rates of SDLT will have been in operation in Wales for two years by April 2018. An indication of the complexity is the very high number of queries HMRC is understood to be receiving from the public.

The burden of administering the complexities of the higher rates will fall largely on conveyancers who may not have tax expertise.

Similarly, the Welsh Revenue Authority will need to carry out compliance checks to ensure a high degree of compliance in respect of a relatively high volume of transactions often in circumstances where the mechanism to check information is not linked to a transaction or to an obvious information source. For example, the exact ownership (and nature of that ownership) of overseas property, establishing an intent to occupy the replacement property as a main residence as at the effective date, checking the eligibility for a refund upon the sale of a previous main residence and establishing that a residence is a main residence.

The CIOT has been invited to give evidence to the Finance Committee of the Welsh Assembly in October.