LTT and Anti-avoidance of Devolved Taxes (Wales) Bill

Indirect Tax **Management of taxes**

01 November 2016

The CIOT has responded to a call for evidence from the Finance Committee of the Welsh National Assembly on the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill ('the Bill')

(LTT) to replace the UK stamp duty land tax in Wales from April 2018 and includes measures to tackle the avoidance of devolved taxes.

Overall the CIOT thought the Bill was comprehensive and well laid out.

The CIOT made the following key points:

- In terms of the setting of rates and bands, the Bill requires Welsh Ministers to set at least three bands (of which one is a zero rate band) and requires the rates to be progressive in nature in the sense that the tax rate increases as the taxable amount increases. Assuming the aim is to secure revenues, the corollary to the move away from a 'slab' approach is the need for higher nominal rates for the upper bands. This in turn may mean higher effective average rates of tax for higher value transactions. High marginal and effective average rates of tax lead to the possibility of greater deterrence of transactions, which to the extent it occurs, would adversely affect tax revenues.
- It would be helpful to have a detailed technical summary of all the differences between LTT and SDLT, ideally with practical examples of how the differences might affect common transactions. This will assist conveyancers in particular who may not be tax specialists.
- The Bill includes a general anti-avoidance rule (GAAR) for inclusion in the Tax Collection and Management (Wales) Act 2016. The GAAR counteracts tax advantages in relation to devolved taxes that arise from artificial tax avoidance arrangements. In defining both 'tax avoidance arrangements' and the meaning

of ‘artificial’ particular regard is to be had to the amount of tax that would have been chargeable without the arrangement and the amount of tax anticipated when the relevant provision was enacted. The CIOT raised the concern that the implication that might be drawn from those provisions is that a shortfall in revenue from a particular measure must be due to avoidance activity.

- We reiterated our earlier suggestion that a statement of the intent in respect of each LTT relief is included in the Bill. The advantage of a purpose clause for each relief is that it makes the intention clear at the point of enactment and is therefore visible to i) taxpayers when considering whether the relief applies and ii) the court or tribunal in considering the application of the GAAR.
- The availability of the reliefs from LTT is subject both to the overarching TAAR and the general anti-avoidance rule. We felt that the overarching TAAR may not sit comfortably alongside all the reliefs given their different objectives. Again a purpose clause for each relief would assist here.
- Land straddling the border of Wales and England will be treating as two transactions, one relating to land in the UK (chargeable to SDLT) and one relating to land in Wales (chargeable to LTT). The Bill provides for the consideration to be apportioned on a just and reasonable basis. We suggested that land straddling the border be regarded as ‘linked’ to ensure that developments are not structured to straddle the border and take advantage of rate differentials between SDLT and LTT.
- We welcome the anticipation that the legislation will be reviewed on a regular basis and at a minimum in 3-5 years’ time once the Welsh Revenue Authority is firmly established.

The written evidence can be read about on the CIOT website.