Land Transaction Tax

Personal tax Tax voice



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Lakshmi Narain outlines the key features of the Land Transaction Tax legislation that will replace SDLT in respect of Welsh land transactions from April 2018

The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 received Royal assent on the 24 May 2017. Quite simply, this legislation provides for the devolution of SDLT in relation to Welsh land transactions and for the countering of avoidance of devolved taxes. It is an Act of the National Assembly for Wales and in addition to making detailed provision for the taxation of land transactions, it amends the Tax Collection and Management (Wales) Act 2016 to make provision for counteracting avoidance of devolved taxes with an interesting general anti-avoidance rule. A significant feature of the legislation is that there is a considerable

amount of regulation making power that will come into effect on such day as the Welsh Ministers may appoint.

The land transaction tax (LTT) will replace SDLT for land transactions in Wales from 1 April 2018.

Sensibly, many of the provisions of SDLT have been incorporated into the LTT Bill, as the key message from most representations was for the importance for consistency of LTT with SDLT. Whilst the desire for a “Welsh” solution to the specific needs of Wales is understandable, the dangers of an extensive and “porous” land border between England and Wales was acknowledged.

The differences

Three significant differences relate to anti-avoidance. The much criticised anti-avoidance provisions in sections 75A to 75C, FA 2003 are not replicated but the LTT Bill does introduce a targeted anti-avoidance rule (TAAR), in relation to the claiming of LTT reliefs and a Welsh general anti-avoidance rule (GAAR) into the Tax Collection and Management (Wales) Act 2016, in relation to Welsh devolved taxes (currently LTT and landfill disposals tax). Whilst the GAAR only takes into account the devolved taxes, the TAAR also requires advisors and taxpayers to consider whether there is an unacceptable tax advantage more generally.

Background

The Bill was introduced into the National Assembly for Wales for scrutiny in September 2016 and, as the title suggests, in addition to detailing the requirements of LTT, it introduces the general anti-avoidance measures.

There was considerable debate on what were described as cross-border transactions – transactions where the property straddled the border. Initially it was anticipated that only a few hundred properties would be potentially affected. Following a detailed study by the land registry it was noted that in fact there were over 1,000 such properties but that only about 30 or so transactions take place a year. In such cases it will be potentially necessary to submit two returns – one to HMRC in respect of the land in England and the other, to the Welsh Revenue Authority (WRA) in respect of that part in Wales. In view of the availability of nil-rate bands for each part

and the usual £40,000 reporting threshold, it is likely that very few transactions will give rise to two returns. The rate structure and thresholds will be announced by October 2017 although LTT does not come into effect until 1 April 2018 (in practice not until the 3rd as the 1st is a Sunday and the 2nd is Easter Monday). Stamp duty land tax (SDLT) will therefore cease to apply to land transactions taking place in Wales from 1 April 2018.

To its credit the Welsh government has, over an extensive period carried out a range of consultations on the form of the tax with stakeholders in Wales via the Technical Experts Group, the Tax Advisory Group and Tax Forums. The Finance Committee of the Welsh government invited written comments on the Bill by the end of September 2016 followed by evidence presented to it in the following month. It recommended that the Bill proceed to the next stage but made a number of recommendations, many of which were accepted.

Some significant features of LTT

LTT follows the established principles of taxing land transactions with, for example, the replication of the provisions dealing with pre-completion transactions and freestanding transfers.

Structurally, and logically, the LTT legislation provides that most of the reliefs be placed into schedules to the Act although it arguable that the relief for the incorporation could have been included as a part of the schedule dealing with partnerships.

As noted above, the TAAR and the GAAR are significantly different from the equivalent provisions in the rest of the UK. The potential for a transaction to be caught by the Welsh GAAR but not the UK-wide GAAR will require some explaining to taxpayers. The WRA, which has an Implementation Director (Dyfed Alsop), and a proposed Chair, Katheryn Bishop, is in the process of appointing the Board members and is to be based in Treforest (a short distance north of Cardiff) is intending providing extensive guidance on what is and what is not acceptable in relation to various transactions. Indeed the information provided in the explanatory notes to the Bill will be of value in this regard. A decision was made not to introduce an equivalent to the DOTAS regime in Wales, and it will be interesting to see how effective the TAAR can be if the WRA does not have direct access to details of the potential loss of non-devolved tax in Wales and the remainder of the UK. The

effective exchange of information with HMRC will be essential