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CONSULTATION ON THE PROPOSAL TO EXTEND THE LAND TRANSACTION TAX HIGHER RESIDENTIAL RATES 3-YEAR EXCEPTION AND REFUND PERIOD

Response by Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the Welsh Government's cabinet statement *Public consultation on the proposal to extend the land transaction tax higher residential rates 3-year exception and refund periods, in specified circumstances* ('the Consultation') issued on 19 December 2023¹.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 In this response, we have made some general observations in section 2, followed by responses to a number of the questions posed by the Consultation in section 3, and observations regarding the draft statutory instrument in Section 4.

2 General observations

- 2.1 In England, HM Revenue & Customs have discretion to extend the equivalent three year period for Stamp Duty Land Tax in "exceptional circumstances", as detailed in HMRC Manual SDLTM09807² and legislated at FA2003 Schedule 4ZE paragraph 7A(b)³. No such discretionary power exists in Scotland, but the ATT has previously called on the Scottish Government⁴ to introduce similar discretionary provision for Land and Buildings Transaction Tax.
- 2.2 We recognise that discretionary powers are inherently difficult to standardise and can lead to uncertainty for taxpayers. For instance, HMRC's manual SDLTM09807 provides an example of delays to property transactions due to government imposed restrictions or public authority actions qualifying as "exceptional circumstances" for

¹ <https://www.gov.wales/sites/default/files/consultations/2023-12/ltr-higher-residential-rate-36-month-exception-and-refund-periods-consultation-document.pdf>

² <https://www.gov.uk/hmrc-internal-manuals/stamp-duty-land-tax-manual/sdltm09807>

³ <https://www.legislation.gov.uk/ukpga/2003/14/schedule/4ZA/paragraph/3>

⁴ <https://www.att.org.uk/sites/default/files/2023-04/LBTT%20ADS%20Consultation%20response.pdf> (Section 8)

the purposes of the three year SDLT refund/exception period. However, it is not clear whether their discretionary powers would accommodate delays due to a property's fire safety defects.

- 2.3 In that sense, we support the Welsh Government's proposal for specific extensions to the three year refund/exception period for higher rate LTT in the two situations proposed – ie where transactions are impacted by emergency restrictions or fire safety defects. Legislating for these situations provides clarity in addressing what we expect may have been the two most significant causes of delays to housing transactions since the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 ('the LTT Act') Act was introduced.
- 2.4 We would, however, welcome the introduction of broader discretionary powers for the Welsh Revenue Authority similar to those available to HMRC, subject to appropriate review and appeals processes, to accommodate unforeseen circumstances leading to conveyancing delays which are not covered by the proposed statutory instrument (SI).

3 Responses to questions posed by the Consultation

- 3.1 The ATT does not comment on Welsh language matters. We have therefore not responded to Questions 4.2, 4.3, 5.1, 5.2, 6.1 and 6.2.

3.2 Question 1.1

Do you agree that, in general terms, the law should be changed to offer additional assistance to eligible taxpayers?

We strongly agree.

We support the proposed extension of the current period for exception from and refunds of LTT in certain circumstances. Whilst the existing three year period should prevent the majority of individuals moving home from being subject to the higher residential rates of LTT, we are in favour of greater flexibility to extend this period to allow for the specified circumstances, which are beyond those individuals' control.

The impact on the speed of housing market transactions caused by emergency restrictions and fire safety defects has become apparent since the LTT Act was introduced. It is therefore encouraging to see the Welsh Government seek to address these factors and mitigate their potential impact on those moving house.

3.3 Question 1.2

Do you think this measure will in general terms have, or potentially will have, positive, negative or no impact on you, or on those you advise?

Whilst our members generally have limited involvement in LTT, we expect any impact on members from the proposed changes to be positive.

Our members seek to explain relevant tax matters to their clients and add value to the adviser/client relationship by offering relevant advice and helping their clients comply with tax obligations. If the changes are introduced as proposed, our members are likely to play an important role in building awareness of the additional flexibility offered by the changes, and helping those eligible to reclaim higher rate LTT where appropriate.

3.4 Question 2.1**Do you agree that transactions impeded by fire safety defects should be treated in this way?**

We agree – the relevant circumstances, as defined by the draft SI, are outside the vendor’s control. We therefore consider it reasonable to provide a dispensation from higher rate LTT for a longer period of time to allow an affected sale to complete.

We agree additional dispensation for fire safety defects in ‘Sale Before Purchase’ cases are not required.

3.5 Question 2.2**Do you agree that transactions prevented by emergency restrictions should be treated in this way?**

We agree – the relevant circumstances, as defined by the draft SI, are outside the vendor’s control. We therefore consider it reasonable to provide a dispensation from higher rate LTT for a longer period of time to allow an affected sale to complete.

The extension to the existing three year refund period for LTT higher residential rates is not proposed to apply to Purchase Before Sale transactions affected by the closure of the housing market in 2020, on the basis that there was sufficient time to sell properties between the housing market reopening in July 2020 and 1 April 2021 (the earliest point at which the normal three year LTT refund period might have expired). Whilst conveyancers may have experienced a backlog of work following the reopening of the housing market, we agree nine months should have been sufficient time to allow affected transactions to complete. We therefore support the proposal for the ‘emergency restrictions’ provisions to apply in the case of Purchase Before Sale transactions where emergency restrictions come into force after the Sale transaction has occurred.

We also agree it is reasonable for the provisions extending the exception from higher rate LTT charges in Sale Before Purchase situations to only apply where emergency restrictions are announced *after* the *Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act 2017 (Amendments to Schedule 5) Regulations 2024* (‘the Regulations’) come into effect.

3.6 Question 2.3**Do you think this aspect of the new legislation will have, or potentially will have, positive impact, negative impact or no impact on you, or on those you advise?**

We believe it will have a positive impact on our members, for similar reasons to those in our response to Question 1.2.

3.7 Question 3.1**Do you agree that the new legislation should make this distinction between sale before purchase and purchase before sale scenarios?**

We agree. The circumstances applying to these two transaction types have different requirements, so we agree they should be dealt with separately within the Regulations. Our responses to Questions 2.1 and 2.2 support this.

3.8 Question 3.2

Do you think this aspect of the new legislation will have, or potentially will have, positive, negative or no impact on you, or on those you advise?

We believe it will have a positive impact on members, for similar reasons to those in our response to Question 1.2.

3.9 Question 4.1

Do you agree that the new regulations will provide benefit to taxpayers?

We agree, for the reasons given in our response to Question 1.1, and because setting out in legislation the additional flexibility and when it is available will provide certainty to taxpayers in respect of the circumstances which qualify for LTT exception/refunds beyond the normal three year period.

3.10 Question 7

Related issues not specifically addressed in the above questions, and specific comment on the draft statutory instrument

We have included general observations in section 2, and our observations regarding the draft statutory instrument are in section 4.

4 Observations on the draft statutory instrument

4.1 Regulation 3, paragraph (2B)(b) and Regulation 4, paragraph (2B)(b):

The requirement for a 'relevant restriction' to have (emphasis added) '*had a **substantial adverse effect on the buyer's ability to acquire a dwelling***' may be ambiguous. We would welcome guidance to accompany the Regulations on what WRA might consider a *substantial adverse effect*. This may be relatively obvious for restrictions relating to Wales, but potentially more difficult to interpret if those restrictions relate to other countries.

4.2 Regulation 3, paragraph (4C)(a) and Regulation 4, paragraph (4C)(a):

We question how the statement (emphasis added) '*a fire safety defect that a buyer of the interest **could not reasonably have known about***' will be interpreted. We would welcome guidance on what WRA might expect here – for instance would carrying out normal enquiries before contract constitute sufficient research for a buyer to *reasonably know about* a fire safety defect? Guidance to accompany the Regulations would be welcome to interpret how a buyer might evidence carrying out sufficient research about an intended purchase to meet this requirement.

4.3 Regulation 3, paragraph (2C) and Regulation 4, paragraph (2C):

Guidance will be needed regarding the contents of the '*statement ... that explains how the conditions in sub-paragraph (2B) are met*'. This is linked with the point in 4.1 above regarding how the nature of restrictions in countries outside Wales may differ to domestic ones.

4.4 Regulation 3, paragraph (4C)(b) and Regulation 4, paragraph (4C)(b):

Guidance would be helpful regarding what constitutes (emphasis added) '*a duty (to any extent) to remedy the fire safety defect*'. Would this be a legal duty only? Would it need to be documented and, if so, what evidence might be required by WRA?

4.5 In the absence of guidance regarding the terms in 4.1 to 4.4 above, there is a risk that uncertainty for taxpayers could arise, which may otherwise only be clarified if disagreements between WRA and taxpayers resulting proceed to the Tribunals. Appropriate guidance could be included in the LTT Technical Guidance pages⁵.

4.6 Regulation 6, paragraph (1):

We believe 'and' should be omitted from paragraph (3)(d), not from paragraph (3)(e) as stated.

4.7 Regulation 6, paragraph (3)(a):

We believe '*paragraph 8(4A)(a) and (b)*' is duplicated.

4.8 Regulation 6, paragraph (3)(b):

We believe '*paragraph 17(4A)(a) and (b)*' is duplicated.

5 Contact details

5.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact atttechnical@att.org.uk.

The Association of Taxation Technicians

6 Note

6.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has more than 9,800 members and Fellows together with over 7,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.

⁵ <https://www.gov.wales/higher-rates-purchases-residential-property-technical-guidance>