



Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

# Cofnod y Trafodion The Record of Proceedings

[Y Pwyllgor Cyllid](#)

[The Finance Committee](#)

29/09/2016

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle y mae cyfranwyr wedi darparu cywiriadau i'w tystiolaeth, nodir y rheini yn y trawsgrifiad.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

**Aelodau'r pwyllgor yn bresennol**  
**Committee members in attendance**

Mike Hedges <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Llafur Labour
Neil McEvoy <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Plaid Cymru (yn dirprwyo ar ran Steffan Lewis) The Party of Wales (substitute for Steffan Lewis)
Eluned Morgan <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Llafur Labour
Nick Ramsay <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Ceidwadwyr Cymreig Welsh Conservatives
Mark Reckless <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	UKIP Cymru UKIP Wales
David Rees <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Llafur Labour
Simon Thomas <a href="#">Bywgraffiad</a>   <a href="#">Biography</a>	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

**Eraill yn bresennol**  
**Others in attendance**

Joy Bailey	Cofrestrydd Tir Cynorthwyol, y Gofrestrfa Tir Assistant Land Registrar, Land Registry
Alistair Brown	Cyfarwyddwr Strategaeth Ariannol, Llywodraeth yr Alban Director of Financial Strategy, Scottish Government
Pascal Lalande	Rheolwr Gweithrediadau Canolog, y Gofrestrfa Tir Central Operations Manager, Land Registry
Louise Speke	Prif Gyngorydd Treth, y Gymdeithas Tir a Busnesau Cefn Gwlad Chief Tax Adviser, Country Land and Business Association

**Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol  
National Assembly for Wales officials in attendance**

Cath Hunt	Ail Glerc Second Clerk
Georgina Owen	Dirprwy Glerc Deputy Clerk
Lakshmi Narain	Cynghorydd Adviser
Christian Tipples	Y Gwasanaeth Ymchwil The Research Service
Joanest Varney- Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser

*Dechreuodd y cyfarfod am 09:16.  
The meeting began at 09:16.*

**Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau  
Introductions, Apologies, Substitutions and Declarations of Interest**

[1] **Simon Thomas:** Croeso, felly, i gyfarfod y Pwyllgor Cyllid. Croeso yn enwedig i Neil McEvoy, sydd yn eilyddio yn lle Steffan Lewis. Ar ddechrau'r cyfarfod, hoffwn eich atgoffa bod cyfieithu ar gael ar sianel 1 a chwyddo'r sain ar sianel 0, ac i dawelu unrhyw ffonau symudol sydd gennych chi, yn enwedig gan fod fideogynhadledd y bore yma ac y gallent amharu ar bethau. Rwy'n gofyn yn gyntaf a oes unrhyw fuddiant gan unrhyw Aelod i'w ddatgan ar ddechrau'r cyfarfod hwn.

**Simon Thomas:** Welcome, therefore, to this meeting of the Finance Committee. May I particularly welcome Neil McEvoy, who is here in the place of Steffan Lewis? At the beginning of this meeting, I would like to remind you that we do have translation available on channel 1, and amplification is available on channel 0. Can I ask you to turn any mobile phones onto silent, particularly as we have a video conference this morning and they could cause interference? May I first of all ask whether there are any

declarations of interest from any Member at the beginning of this meeting?

[2] **Neil McEvoy:** I'd like to declare an interest. I'm told that I can speak on the ombudsman's item, but I don't want to give any kind of impression that I may be speaking out of turn. So, I'll withdraw from the meeting at that point, because I've got a formal complaint in about the possible conduct of the ombudsman and, certainly, a lack of transparency with an apparent refusal to deal with a freedom of information request in what I would call a reasonable way. So, I'd rather withdraw at that point.

[3] **Simon Thomas:** Diolch, Neil. **Simon Thomas:** Thank you, Neil. It's Mae'n briodol iawn eich bod chi wedi very appropriate that you've made datgan hynny, rwy'n meddwl, so awn that declaration, so we'll move on on ymlaen ar y sail honno. that basis.

09:17

### **Papurau i'w Nodi Papers to Note**

[4] **Simon Thomas:** Mae papurau **Simon Thomas:** We do have papers to i'w nodi, sef cofnodion y cyfarfod note, which are the minutes of the diwethaf—y cyfarfod ar 21 Medi. A previous meeting—the meeting on 21 yw pawb yn hapus gyda'r cofnodion? September. Is everyone content with Diolch yn fawr. those minutes? Thank you.

09:18

### **Y Bil Treth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig (Cymru): Sesiwn Dystiolaeth gyda Llywodraeth yr Alban (Fideogynhadledd)**

**Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales)  
Bill: Evidence Session with the Scottish Government (Video Conference)**

[5] **Simon Thomas:** With that, then, can I turn to Scotland and welcome Mr Alistair Brown, director of financial strategy from the Scottish Government? *Croeso mawr i chi.* Thank you very much for agreeing to attend the committee as best as we could arrange these things. We're looking, of

course, at our land transaction tax, and we're particularly interested in the Scottish experience and how the Scottish Government prepared for its own tax. If you're happy to go straight into questions, I'll start with just an opening question to you. Is that okay?

[6] **Mr Brown:** Yes, thank you, Mr Thomas.

[7] **Simon Thomas:** Thank you. I just wondered, then, if you could outline for the committee what sort of discussions and what issues there were in Scotland at the time of transferring from stamp duty to your own land and buildings tax. What were the issues that were salient amongst the stakeholders there?

[8] **Mr Brown:** I'm very happy to do that. One thing to remember about the introduction of our land and buildings transaction tax is that, when we started the process of designing the tax and consulting on it in 2012, the stamp duty land tax that it was replacing was still a slab tax—our comparator was the form of stamp duty land tax that existed in England up until March 2015. So, the big proposition that was associated with our new tax in Scotland was a progressive structure.

[9] As you know, in the autumn statement of November 2014, the then Chancellor outlined his proposals to reform stamp duty land tax in England, essentially to replicate the main features of our progressive arrangement in Scotland. So, when the land and buildings transaction tax was actually introduced in Scotland, it was compared to the reform to stamp duty land tax in England and the two were progressive, certainly for residential property. The stamp duty land tax on non-residential property remained a slab tax for another year until it too was reformed, but in Scotland we introduced a progressive structure right from the beginning of the tax in April 2015.

[10] In terms of what the main issues were when we introduced our tax—big issues with stakeholders—I think you could probably divide these into two. One was the concern that some stakeholders had about the impact of the new tax on the property markets, both residential and non-residential, and I think these concerns divided into two. One set of concerns was about the change in the structure of the taxes—of the tax rather—and I think I would characterise that as being a positive concern in the sense that it was welcome for the Scottish proposals. I don't think there was a single voice raised in objection to the idea of progressivity.

[11] There was also concern about the level of the tax rates that were going to be applied to the progressive bands. That was a generally expressed concern that, whilst the Scottish Government had the clearest intentions about tax banding—which would have the effect of probably shifting the burden from lower-value residential property onto higher-value—there was concern about the effect on the property market. So, I think I would characterise two sets of issues there—one positive, welcoming progressivity, and the other a bit concerned about the impact of relative tax rates on the property market, and we can come back to discuss what’s actually happened, rather than the concerns being expressed at the time the tax was introduced.

[12] The other set of issues that came up in the lead-up to the introduction of the tax were operational issues, for example how easy would it be for a taxation lawyer in Scotland—we would call them conveyancing solicitors, so the lawyers taking part in the transfer of property—how easy would the system be to operate and would the IT system, for example, be easy to operate? There was a bit of concern about that. Again, we can talk about how that worked out in practice if the committee would find that helpful.

[13] **Simon Thomas:** Yes, thank you for that.

[14] **Mr Brown:** Is that enough for an introduction?

[15] **Simon Thomas:** Indeed, that is, and those are the issues—several of the issues—that we are also looking at here, of course. As you say, I think we’ll have committee questions now that will explore those issues in more detail. So, I’d like to ask Mark Reckless if he’d like to lead off. Thank you.

[16] **Mark Reckless:** First of all, you explained that the LBTT proposals, at least in Scotland, predated the big reform in SDLT for the rest of the UK. Do you think that the Scottish example led the way to those UK changes? Is it likely we’d have seen those if you hadn’t done what you did in Scotland?

[17] **Mr Brown:** That’s asking me to comment on the state of mind, as it were, of the Chancellor and his colleagues in the Treasury and HM Revenue and Customs. What our Minister has said is that he thought that imitation was the sincerest form of flattery and his take on the Chancellor’s announcement in November 2014 was that HM Treasury and HMRC had borrowed fairly extensively from our thinking. But, to be fair to UK colleagues, the concept of moving from a slab tax to a progressive tax—the discussion of that concept hadn’t just started when we began consulting on

the land and buildings transaction tax in, I think it was June or July 2012. There had been discussion of that in the UK before and there had been some public commentary from quite well-informed commentators about how SDLT really was a distortive tax and it led to things in the housing market, for example, that builders didn't support. So, we certainly think that we led the way on the move to progressivity. Does that help?

[18] **Mark Reckless:** It does. Aside from removing the kinks and the dead zone where there were very few transactions above, I think, £500,000 and £1 million, your system—the 10 per cent marginal rate—comes quite a long way down the house price scale to £325,000. I just wondered how significant had impacts in the property market, both on prices and transactions, been or otherwise in response to that.

[19] **Mr Brown:** We now have over a year and a third of data to look at, to attempt to answer the question that has been asked. It's also a matter of interest to our own Finance Committee in Scotland. So, there is some discussion in the Finance Committee about whether the tax rates and bands set by the Scottish Government have had an impact on the residential property market. Our observation from looking at the data is that the data don't yet tell us whether there has been or has not been an impact. So, the salient piece of information that sticks with me is that the proportion of house sales represented by the different bands of higher-value housing—so, £325,000 to £750,000, which is a key band for us, and then above £750,000—the proportion of total house sales in Scotland represented by properties in these bands has not changed between pre-2015 and the year 2015-16. So, we think that that gives some indication that the introduction of the tax doesn't appear to have distorted the housing market, but it probably is too soon to say.

[20] **Mark Reckless:** On the commercial LBTT rates, are policy makers comfortable with the way those rates are set given the UK changes and, actually, your highest rate, the 3 per cent, coming in earlier as a higher rate, and the 4.5 per cent being lower than the top rate elsewhere in the UK? Is that where policy makers wanted to position that?

[21] **Mr Brown:** Two points that I would make about that: when we introduced LBTT in April 2015, we were obviously introducing a progressive tax that covered both residential and non-residential. So, the burden on lower-value non-residential transactions was materially lower in Scotland than under the slab arrangement in England and Wales. The rest of the UK's

arrangements have now changed to be progressive for non-residential transactions as well. That's changed the comparison between the burden on non-residential transactions in Scotland compared to the rest of the UK. Our Ministers have taken the view that they aren't going to keep adjusting the burden in Scotland by reference to what takes place south of the border, although, clearly, they have regard to it. But they haven't suggested that they have any plans to modify the burden in Scotland. And it is the case, as you say, that high-value transactions are now taxed slightly less heavily in Scotland than in the rest of the UK.

[22] **Mark Reckless:** Finally from me, with now significantly lower marginal rates on commercial rather than residential transactions above £325,000, have you seen any evidence of avoidance through people managing to classify more transactions as commercial, for instance? I understand that mixed use is classified as commercial and I'm not sure if I'm correct on this, but, potentially, if there are more than six residential properties sold at once, that may also be a commercial transaction. Are you seeing more of those in response to the incentive?

09:30

[23] **Mr Brown:** I recognise the circumstances that you describe and in certain circumstances, it might be possible for a taxpayer to describe the transaction in a way that attracted a lower tax burden. We anticipated that that might happen, especially in the multiple dwellings relief. However, that takes us into the area of housing policy, where we are keen to attract commercial investment into the provision and selling and letting of proper residential property in Scotland. So, we don't regard the possibility of sellers and buyers moving into multiple dwellings relief as a particular threat and we don't have any evidence, thus far, that there's any artificiality and, therefore, avoidance activity going on in that sector of the market.

[24] **Simon Thomas:** Thank you. Now I'd like to invite Neil McEvoy.

[25] **Neil McEvoy:** Thanks, Chair. Firstly, I just wondered what you think the reasons are for the set-up costs of Revenue Scotland being over budget at the beginning. Was there a lower end that was estimated as well as the higher end of the projected set-up costs?

[26] **Mr Brown:** Just to make sure I've got the question right, that's to do with the set-up costs of the tax authority—of Revenue Scotland?

[27] **Simon Thomas:** Yes. Why were the set-up costs higher than originally expected?

[28] **Neil McEvoy:** I just wondered whether there was a lower end estimate, because it came in over budget, so I just wondered whether or not there was a lower end and what the margin was between the original estimate at the lower end and the higher end of the original estimate.

[29] **Mr Brown:** I don't have the figures at my fingertips, so I could give the committee a note on the outturn start-up costs and how far above the original range of estimates the outturn cost was. What I would say in a more qualitative way is that—. I think this is what the programme management people would say—'insufficient allowance for optimism bias'. In other words, when you're setting something up, even if you haven't done it before, you're scratching around for a good, rigorous basis for estimating and it's sensible to assume that estimates will be—the amount of money will be overestimated to correct for that optimism bias. I think we probably underestimated the optimism bias.

[30] In terms of specifics, one factor that caused the costs to run a bit above our original estimate was that we decided to recruit staff for the body earlier than we had originally anticipated and we did that to give more time for training and for the organisation and to give more time for the preparation of guidance for staff and for taxpayers. So, those were all good, sensible things that we were aiming to do, but in order to achieve that, we had to recruit the staff earlier, in the previous financial year, and therefore ran up a larger bill in terms of the start-up costs that we expected.

[31] Another factor, just to mention to the committee, which may well be relevant in the case of Wales, is that our original estimates of start-up costs did not include provision for a dedicated computer system within Revenue Scotland. We realised that that depended upon a major assumption, which was that Revenue Scotland would rely on the computer system used to register land transactions, house and residential and non-residential buildings transactions. That's a system maintained by Registers of Scotland, and right the way back in 2012, when we first made estimates of the cost, we had assumed, and it was an explicit assumption, that Revenue Scotland would be able to rely on the computer system operated by Registers of Scotland. And, in fact, what emerged as we got into designing systems, or collecting information from taxpayers, was that we needed a link to the

Registers of Scotland system, but we couldn't rely on it to calculate and collect an account for taxes. You might think that was a pretty obvious conclusion to reach, but from the very beginning, we had made an explicit assumption, and when we brought that assumption up to date and changed it to reflect the operational needs of Revenue Scotland, we had to add, I think, about £1.5 million to our cost estimates to allow for the provision of a dedicated computer system, which has worked very well actually. And 97 or 98 per cent of tax returns to Revenue Scotland are submitted online through the new system, so it's turned out to be a positive.

[32] **Neil McEvoy:** Yes, okay—

[33] **Mr Brown:** If it's all right, I would offer a note to you on the money numbers and what the outturn was compared to the original range.

[34] **Simon Thomas:** Thank you. We'll follow that up if necessary. Thank you for that.

[35] **Neil McEvoy:** A slightly nicer question next about your operating costs being under budget. So, I just wondered why that was.

[36] **Mr Brown:** Yes, it's gratifying that we've managed to bring these costs under budget. I would suggest that that's been prudent estimating, with a bit of lessons learned from the early days. Some specifics on that: the very high rate of submission of forms through the online system has reduced the need for manual processing, or the processing of paper forms. I think we had estimated that 90 per cent would come in, so we thought we would need staff to deal with one in 10 tax returns on paper, and we've needed a lot less than that. Another area where Revenue Scotland has found that it's needed to devote a bit less effort than it thought is in fielding general enquiries from taxpayers through their telephone contact centre. And I think we would give Revenue Scotland some credit for that, and what we've currently done, in order to minimise the number of telephone enquiries, is to provide really effective online guidance to taxpayers and their agents, and I think that's been quite a successful aspect of the preparation and planning.

[37] That guidance was drawn up by civil servants, working in Revenue Scotland, but we involved taxpayers' agents, these conveyancing solicitors, as they're called here. We involved a representative sample of these users in quality-assuring the guidance, and we think that the effect of that has been to reduce the number of telephone contacts and that's helped to keep costs

down.

[38] **Neil McEvoy:** Okay, thanks. The final question from on this: I just wondered how realistic you felt the estimated costs for setting up the Welsh Revenue Authority would be. We're estimating between £4.8 million and £6.3 million, and the estimate for operating it is between £2.8 million and £4.3 million. So, I just wondered, in your experience, how realistic you felt those estimates were from us.

[39] **Mr Brown:** Well, it's difficult to say, obviously, on the basis of broad figures. A couple of points to make is that I think it's sensible and wise to offer a range of figures. It might—. The committee might be provided with information about what factors would drive the costs towards one end of the spectrum or the other; it might be quite interesting to ask about that if that's information not yet provided. A second point I would make is that colleagues in the Welsh Government have had—. We and they have been in close touch for a number of years now. We've shared all of the information that we have about setting up and running Revenue Scotland, so the Welsh Government colleagues' estimates of both set-up and running costs will be informed by the Scottish experience. And knowing the thoroughness with which your colleagues in Cardiff have been going into this, I think these figures will be pretty well founded. They certainly seem very much in the right ballpark to me.

[40] **Simon Thomas:** Thank you. Mike Hedges now.

[41] **Mike Hedges:** Can I raise identifying transition costs associated with switching from stamp duty land tax—things like letting people know that things were different in Scotland than they were in the rest of the United Kingdom, and just getting the, sort of, cost-of-change management?

[42] **Mr Brown:** Sorry, the transmission at that point wasn't completely clear, and I missed the point of the question. I apologise.

[43] **Mike Hedges:** Transition costs associated with switching from stamp duty land tax: things like letting people know that it was different in Scotland to the rest of the United Kingdom.

[44] **Mr Brown:** Yes, sorry, that's very clear. Yes, the transition costs probably fell into two categories. We had agreed to pay the costs that fell on HMRC of essentially switching off stamp duty land tax in Scotland and

modifying their systems so that any attempt by a Scottish taxpayer to pay stamp duty land tax after 1 April 2015 would be rejected, and sensible things could happen. So, that involved computer system changes and changes within HMRC. These cost us, by my recollection, about £750,000, which may seem a lot to put a stop on a computer system, but that's what HMRC needed for it; they're dependent upon their own suppliers for IT changes. So, that was the most significant element of cost.

[45] In terms of communicating with Scottish taxpayers and their agents, in practice we're talking about firms of lawyers in Scotland, and we put a lot of effort into cultivating our contacts with the Law Society of Scotland and their conveyancing committee, which is the representative body that really matters here. So, we had been taking roadshows out to the solicitor stakeholder group for about a year before the transition took place. We put a lot of effort into communications. As I said earlier, we did our best to involve solicitors in quality-assuring guidance, and also in testing Revenue Scotland's IT system. We actually got staff in solicitors' offices for about three months before the live date to work with us to test the system to make sure it worked. And all of that was helping to get the message out that LBTT was replacing stamp duty.

[46] And then at a political and parliamentary level, the introduction of land and buildings transaction tax was getting quite a lot of coverage and quite a lot of profile in the Parliament and in the media. So, the costs of that process were embedded, as it were, in the preparations in the year before the tax went live

[47] **Mike Hedges:** Do you have any conveyancing done by non-Scottish solicitors or non-Scottish lawyers, perhaps people in Berwick-upon-Tweed dealing with some border issues?

[48] **Mr Brown:** Before we introduced the tax we were concerned about that, because there was certainly a theoretical possibility that solicitors based outside Scotland would be involved in land transactions, but it has never been a problem in practice. And the thing to remember about that is that solicitors outside Scotland transacting property business in Scotland have always had to work to Scottish land law, which is a little bit different from land law in England. So, we use different terms and there are some significant differences in terms of how a title to the property is registered. So, I suppose if you're doing property business in Scotland, you'd already have to be reasonably alert to Scottish differences, and this was just another

one, as it were. So, it's not a problem in practice.

09:45

[49] **Simon Thomas:** Thank you for that. Just a follow-up question from Nick Ramsay.

[50] **Nick Ramsay:** Thank you, Chair. I believe that, in the Welsh context, because of the long, porous border of Wales and England, and the fact that I think half the population live within 25 miles of the border, it is quite different to the Scottish context. Do you think there may be some more complex issues in terms of the administration of the new Welsh land tax in Wales compared with the Scottish experience?

[51] **Mr Brown:** Well, yes, it is quite a different geographical and demographic situation from Scotland, where our border with England is obviously very sparsely populated. The Welsh position is entirely different. Clearly, lawyers based on the English side of the border will be acting for clients in Wales and lawyers in Wales will be acting for clients in England. The profession is pretty good, in our experience, at getting its head round statutory changes. I would emphasise the point I made earlier: that really good, clear guidance is really important. Making it available on the web, we've found, has been effective, and engaging with solicitors and with representative bodies is most important. So, there are ways to manage the risk of complexity and confusion, I think, around the border.

[52] There's the bigger and more political issue about how much difference in tax rates can be tolerated on either side of a porous border, but I guess that all feeds through into the dynamics of the property market on either side, and factors affecting property prices, for example.

[53] **Simon Thomas:** Thank you for that. Yes. Eluned Morgan.

[54] **Eluned Morgan:** I wonder if you could set out, firstly, the process through which the tax bands are agreed. Could you talk us through the system itself?

[55] **Mr Brown:** Yes. It's an interesting question. A great deal of the debate in Scotland about land and buildings transaction tax—. Well, there was a lot of debate about the move from slab to progressive structure, which was all very positive and supportive, but apart from that, the bulk of the debate has

been about tax rates and bands, and that's not surprising, because that's obviously what governs how much a property purchaser actually has to pay.

[56] The history of our policy thinking on rates and bands goes all the way back to our consultation document on land and buildings transaction tax, which we issued, as far as I recall, in June, or it could have been July, 2012. In that document, the Minister in charge at the time, John Swinney, set out scenarios of options for a structure of tax rates and bands. I think he described three sets of tax rates and bands combinations, and these were differentiated from each other in terms of the degree of progressivity and the extent to which they shifted the burden from lower cost property to higher cost, and also the extent to which they completely exempted lower cost property. So, these were the issues that were being debated, and that clearly is a ministerial set of decisions based on political assessments. Mr Swinney made his mind up about all of that at the time of the Scottish draft budget in the autumn of 2014. So, in September 2014 he published his proposals, and the two key points were that property up to £145,000 was exempted from the tax, so we'd have a zero-rate band up to £145,000, and the narrative around that was very much making conditions as favourable as possible for first-time buyers. The other key point was the extent to which the burden was then shifted onto property transactions where the consideration was £325,000 and above. Once you got above £330,000, the tax burden was heavier in Scotland. That is effectively a set of political considerations, as too were the additional further 12 per cent rate at £1 million and above.

[57] So, these decisions were made by the Minister. Obviously, the detail of the advice we gave to him is entirely private, but what I can say is that he relied heavily on computer simulations of the revenue effects of different band and rate combinations. One of our colleagues, essentially, had a very large Excel spreadsheet on his laptop computer, and he was able to show the Deputy First Minister exactly what the revenue effect would be of tweaks to thresholds and rates. So, that was a bit of technical stuff that underpinned the eventual set of ministerial decisions.

[58] I should also say that our Ministers' position is that they keep rates and bands under review. They don't need to reset them every year. If we don't change our rates and bands, they continue as they were and they don't need to be reset each year. So far, there hasn't been any indication from Ministers that they intend to change them, but they would have the opportunity to do that, if they wished, in this autumn's draft budget in respect of 2017-18.

[59] **Eluned Morgan:** That's useful in terms of knowing the Government's proposals, but at some point, presumably, the Parliament has an affirmative role here. Can you talk us through how that works, and what would happen in the theoretical situation that the Government proposed something and the Parliament would then oppose it?

[60] **Mr Brown:** Yes, well, that's a very interesting question. In terms of the technicalities, our Land and Buildings Transaction Tax (Scotland) Act 2013 requires the Government to set the rates and bands, for the first time, through an affirmative Order. So, Parliament has to consider it, and has 40 sitting days to do that and to vote it through. So, the Scottish Parliament did that in February 2015. It set the first set of LBTT rates and bands then. I don't recall now what the voting was, but I have a feeling that it wasn't contested. So, opposition parties either abstained or voted with the Government. It was not a matter of major political disagreement at that point.

[61] Thereafter, as I said, any change to the rates and bands would require Parliament to consider and approve what we call a provisional affirmative Order. We can go into that in more detail if it's helpful to the committee. Such an Order can only be laid by—. It's a statutory instrument, so only a Minister of the Government in Scotland can lay such an Order. What the opposition parties could do, if they wished, in committee, is to vote against it—pray against it, in Westminster parlance—and that would stop the change going through. If they had a majority, they could stop the change going through. What they couldn't do is to change the Order and force it through, if that makes sense.

[62] **Eluned Morgan:** It does make sense. I'm interested, if there were a situation, do you have systems set up to reimburse people, potentially, for that period from which the Government would make a proposal to when the provisional affirmative will be supported by the Parliament?

[63] **Mr Brown:** Yes. The point of provisional affirmative is that we can set the coming-into-force date of the Order on the very day that the Order is laid, but then the Parliament has to approve it within, I think, 25 sitting days. Around about that time, anyway. As you're indicating, if the Parliament declined to approve the Order, then it collapses, and in our system, it has no effect at all. So, what happens provisionally is that it has effect from the coming-into-effect date specified in the Order. We haven't done this, but we

could make that the day of introduction. If we did collect any tax, or if Revenue Scotland collected tax on the basis of that provisional date, and Parliament then declined to approve it, Revenue Scotland would have to repay the tax collected from the provisional date.

[64] There's a section in the Revenue Scotland and Tax Powers Act 2014 that describes how this is to be done. I'm not sure if I can find it, sitting here, so I could give a note just very briefly on where those provisions can be found in the Scottish legislation. But, effectively, a taxpayer can reclaim tax if it's claimed from them by the tax authority under a provision that then is not substantiated by the Parliament. I can say that that situation would only arise if we set a coming-into-effect date for the provisional affirmative Order that was anticipated, that was before the date of the Parliament approving the Order, and we've not needed to do that.

[65] **Eluned Morgan:** So, if you were to set that date for over 25 days later, might you avoid that situation altogether?

[66] **Mr Brown:** Yes, that's correct.

[67] **Eluned Morgan:** Okay, thank you.

[68] **Simon Thomas:** Again, a short follow-up from Nick Ramsay.

[69] **Nick Ramsay:** Thank you. Just looking at the figures, what was the evidence base for setting the kick-in rate of stamp duty land tax at £145,000, where you get the 2 per cent rate, and that's £20,000 higher than south of the border? And, looking at the house prices in Scotland, that would obviously remove a fair number of them from that. So, I'm just wondering why that figure was settled on and whether you think that's something that we in Wales should look at.

[70] **Mr Brown:** Sorry, the transmission wasn't completely clear there, but I think you were asking about the ministerial decision to set the zero-rate band rather higher than in England.

[71] **Simon Thomas:** Yes.

[72] **Mr Brown:** Yes. Well, clearly, it was a decision by Ministers and the considerations they entered into were, I think, twofold—I'm repeating what Ministers were saying in public here: there were two elements to it. The first

was to encourage first-time buyers into the property ownership market by not charging them any tax on lower value transactions, and there's an assumption there, which is a valid assumption, that first-time buyers are much more likely to be buying in at the bottom end of the market. So, that's a fairly specific consideration. I have to say, in brackets as it were, I don't think we can point to hard evidence that would demonstrate that the tax charge makes a big difference to the prevalence of first-time buyers entering the market. So, it's a ministerial judgment and assessment, which makes sense to most of us, I think.

[73] The second factor is the general disposition that our Ministers have to rebalance the tax burden within the residential property market away from lower value transactions and towards higher value transactions. That underlies all of their thinking about the structure of the LBTT, including the progressive structure, which of course was much more marked—. The effect of a progressive structure was much more marked before SDLT was reformed in the same way.

[74] **Simon Thomas:** Thank you, Mr Brown, for that. I know that you have time constraints on your time with the committee today. There are one or two areas that we still wanted to cover, around reliefs and the impact of UK-wide tax policy as well. I wonder whether we could write, as a committee, to you, together with one or two other things that you mentioned you might be able to provide to us in notes, just to follow up on the evidence, if we can do that. I'd like to thank you for your time with the committee this morning—we're very grateful—and for your forbearance with one or two communication problems, as well. Thank you again. We're very grateful that you've been with us.

10:00

[75] **Mr Brown:** Thank you. I'd be very happy to answer your letter when you write. Thank you to everyone.

[76] **Simon Thomas:** Thank you. That's wonderful. Diolch yn fawr iawn. We'll take a short break, just to rearrange things for the next witness, but don't go too far, because we will start promptly with the CLA. Okay? Diolch yn fawr.

*Gohiriwyd y cyfarfod rhwng 10:00 a 10:09.  
The meeting adjourned between 10:00 and 10:09.*

**Y Bil Treth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig  
(Cymru): Sesiwn Dystiolaeth gyda'r Gymdeithas Tir a Busnesau Cefn  
Gwlad**

**Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales)  
Bill: Evidence Session with the Country Land and Business Association**

[77] **Simon Thomas:** Morning, bore da, welcome. Could I welcome the committee back to order, and Louise Speke, the chief tax adviser from the Country Land and Business Association? Thank you for coming to give evidence to us this morning. Diolch yn fawr ichi. We are looking, of course, at the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill. Thank you for the evidence that we received recently as well from yourself. I note from the evidence that you said that you welcome the decision of the Welsh Government to maintain consistency with the previous stamp duty. I wondered, from your association's point of view, and your members', why you welcomed that and why, for example, you weren't looking for a change, perhaps, and different policies to be enacted?

[78] **Ms Speke:** I think that comes down to the fact that the people who have to ensure compliance are property lawyers, they're not specialists in tax, and they've had time to become acquainted with stamp duty land tax since it came in. For the vast majority of transactions, particularly those involving commercial leases, it helps to maintain consistency so there's a smooth transition for advisors in Wales from one tax to the other when it comes in.

[79] **Simon Thomas:** And from the point of view of your members, if the Government were to pursue a different avenue, particularly when we don't know yet what the rates are, what would be your concerns around where there might be policy implications for that? Would it be in the residential sector or more in the business sector? What's your horizon scoping of where these things might happen?

[80] **Ms Speke:** I think it's both. Obviously, there's a real need for housing in Wales, as elsewhere. But it's not just the tax that can impact on the provision of housing; it is other policies, as I alluded to in the paper. Certainly, we have a member whose property straddles [correction: straddles the border], and he's looking at opportunities to perhaps put housing in or perhaps to do other ventures. Actually, if the policies are easier in England,

he'll choose to do things on the land in England rather than Wales. So, I think that always has to be borne in mind.

[81] **Simon Thomas:** It could work the other way, of course, if policies are better in Wales.

[82] **Ms Speke:** It could. I've mentioned that. There are certain things that the Welsh Government have an opportunity to do that would make Wales more attractive—that is around VAT and charging the tax on a tax. So, I think that consideration has to be given. Certainly, with regard to the non-residential side, we're looking at the leases and one of things that would certainly help our members who want to let land, to let farms—if you want to encourage people to invest in those farms, to make them more profitable, they need longer tenancies. Anything over seven years, you've got to start bringing into consideration what the implications of the new tax is going to be. If they can be excluded—. I don't think that's going to be expensive, in comparison to some other commercial leases that might lead, certainly, to having much higher levels of rent. But it's going to help enormously if that could be excluded. But that's just a very small sector to consider.

[83] **Simon Thomas:** And apart from what you've just mentioned around leases, is there any other potential for things in the Bill, as is currently constructed, do you think, that could lead to different policy decisions in Wales that could be beneficial to particularly rural businesses, in your case?

[84] **Ms Speke:** Certainly, from a tax perspective, I think making sure there's really helpful guidance. I've mentioned in the paper that there are difficulties surrounding the definition of 'residential' and, of course, when you're looking at what is non-residential, you have to first look at what is residential. When I get questions from members, because we run an advisory service, it is, 'What regime do I fall in?' There are different rates between the two, and there's obviously policy drivers behind that. I'm not going to comment on where they should be. But understanding exactly where you fall within that definition is very helpful. One of the things that's very striking, from the current guidance on stamp duty land tax, is there's a lot of focus on residential and commercial properties, and they've sort of forgotten about agricultural. The question I get from members is, where they're buying a property, a residence, that also has some additional land, 'What is that? Does that qualify as non-residential?' Because then you're looking at different rates and bands. It can make a big difference in the amount of tax payable on the purchase.

[85] **Simon Thomas:** Just a specific question, if I may, because you did just mention the seven years and the lease period. Have you got a particular period in mind? Or, as CLA, have you modelled different periods like that?

10:15

[86] **Ms Speke:** I think that when it comes to tenancies, obviously, the market has to determine what's appropriate for that particular property. Some of our members give very long leases. Some will be looking at 10 years, some will be looking at longer. So, they're all factors that are—. It's what's right for those people—for the landlord and/or for that farming tenant—to determine what's best for them and their business.

[87] **Simon Thomas:** Okay, diolch. Eluned Morgan.

[88] **Eluned Morgan:** I think I'm right in saying that your Members manage half the land in rural Wales.

[89] **Ms Speke:** They do.

[90] **Eluned Morgan:** I think that's quite significant. We're in a bit of a state of flux at the moment, in terms of where we're heading in relation to where we've been in the past, particularly with the CAP—no idea where that's going to end. We've heard this morning that there's a Saudi prince who's getting £400,000—worth of subsidy from the EU for his land, which, I think, probably, people will be very shocked to hear. The point is that I think, in relative terms—I just wonder where you would put this in relation to that as a risk factor, because, clearly, a lot of your members are in receipt of CAP. The kind of marginal difference that we may see here—how would that compare to the kind of insecurities that they may be feeling in terms of possible future CAP reform?

[91] **Ms Speke:** I have to say first off: I'm not our expert on CAP. Certainly, I have colleagues who are and will be looking at that. I think it's not so much for members who have land already. This is, obviously, going to have an impact on those who are looking to acquire land or to acquire properties, and it can have a bit of an impact then on the prices paid for that land. But I think that if we want to encourage business into Wales, and if we want them to establish themselves there, it might be that our members are providing premises to encourage more businesses into the area to maintain

communities. I think they are going to be, then, looking at the land transaction tax implications for their ability to let. There are other factors for that, of course, but I can't really tell you which ones are more of a risk. Certainly, there are concerns about the CAP and what's happening, but there are also a lot of other concerns that our members have—things like the planning rules, the housing rules and, certainly, broadband connectivity, which will also impact on any ability to deal with this tax digitally.

[92] **Eluned Morgan:** Of course. I was just wondering whether you could outline broadly your specific issues with the Bill as it is suggested at the moment.

[93] **Ms Speke:** I've already mentioned some of the points. I've mentioned the issues about definitions. I think this is a real opportunity for the Government and the Welsh Revenue Authority, as it develops, to really make sure there is clear guidance. One of the things that would be very helpful would be, as I have suggested, having some sort of table that sets out very clearly a nice handy guide for practitioners to see what the differences are, so they don't have to trawl through the detail. That's going to be very helpful for them and will actually aid compliance and keep the costs down for taxpayers.

[94] I've mentioned the point about VAT—not charging the tax on the cost of that—because although that is paid in addition to the purchase price, we could follow the example of Ireland and not include VAT in the calculations. It's a way for Wales to lead the way. Again, guidance with regard to definitions on residential and non-residential—I think that could be greatly improved, again to make it easier, to reduce compliance costs and so that people know where they are, know what their liability is, and ensure that they pay the tax correctly and on time.

[95] Certainly, with regard to compliance—those issues in the Bill about anti-avoidance and those questions about the process—that can be improved. Again, you have land that could straddle [correction: straddle the border]—you could have taxpayers who have to consider two different regimes, and having two different regimes is going to increase the compliance costs. You could have additional compliance costs with regard to having to apportion prices if land is being purchased that straddles the border. It's not really very clear from the Bill exactly how that is to be determined. We've got one district valuation office, so, hopefully, there'll be one adviser advising both the Welsh Revenue Authority and HM Revenue and

Customs. But there needs to be some certainty and, actually, consistency between the two revenue authorities as to their approach on apportionment so there are no disputes. I know it's an issue that's been raised in the written evidence of the Land Registry, and given that there is an awful lot more property straddling the border than was first indicated to us when we first started having discussions with officials from the Welsh Government—it is a lot higher—I think there does need to be clear consistency on that. But, yes, there are issues about the process with regard to the general anti-avoidance rule, and I can turn to that if that will help.

[96] **Simon Thomas:** We will come to the GAAR in a moment. So, just—

[97] **Eluned Morgan:** Can I just follow up on your suggestion that there is a need for more guidance for what's residential and not residential? Is that something you would foresee that should be on the face of the Bill, or would that go alongside the Bill?

[98] **Ms Speke:** Well, currently for stamp duty land tax, the definition is of 'residential', and, obviously, if our members are purchasing property, it's likely to be mixed use. This is where I have the questions: is it mixed use or is it purely residential? It could be something as simple as somebody having a paddock or a field in addition to the main residential property in the garden and grounds, and then you're looking at, 'What is the use of that land?' Sometimes, it's really apparent that it is non-residential because the field has been let for 10 years to the local farmer, and so then you are automatically in a mixed-use. If it's a whole farm with quite a few acres, that's a lot easier to determine, but there can be scope. So, I think there is the definition of what is residential, but I think that will probably suffice unless we can tweak it, so we'll look at that a bit more closely to see how that can be improved for when there's more detailed scrutiny. The guidance will certainly be of great assistance—and to have more practical examples in guidance, because that's not really there at the moment.

[99] **Eluned Morgan:** Okay. Thank you.

[100] **Simon Thomas:** Can I just ask? You've mentioned guidance several times this morning. Obviously, there's been a consultation from the Welsh Government, which I think you've responded to. Now the Bill's been introduced—consultation again, which you have just responded to. Thank you for that. But, in terms of the Welsh Government's actual ongoing engagement with people like yourselves—we just heard from the Scottish

Government, and, in the evidence that they'd given, they talked, for example, about going out with roadshows to explain what the meaning of this was and talking to experts like yourself about how this would impact—is Welsh Government doing that with you at the moment?

[101] **Ms Speke:** Yes. I'm on their tax forum, so I attend those meetings. We did actually host a couple of events for our members with a Government official so that they could explain this whole process of devolution. There's obviously some concern that they want to get the message out and so we're more than happy to assist to do that, and we've obviously been writing articles for our members in our magazine. So, we're happy to work very closely with officials. Certainly, when it comes to consultation, we are seeking to get involved and we're happy to, certainly, work with them on guidance to make sure it's fit for purpose for rural land and our members.

[102] **Simon Thomas:** Okay. Thank you. Mike Hedges.

[103] **Mike Hedges:** First of all, can I say I'm pleased to hear somebody else talk about cross-border—I seem to have been talking about it virtually on my own for some time. I've got a couple of questions on cross-border. The first one is: what's going to be the impact on members who own cross-border properties? I know you talked a little bit about it earlier, and especially those who are in the good/bad position where they may own a property itself that is partially in one or the other.

[104] **Ms Speke:** I think that's really only going to impact if they're going to sell, and I think one of the distinguishing factors with rural landowners is they tend to have long-term plans, especially when it comes to the management of the land when they're doing their environmental planning—you know, it's not something they're going to do over two or three years; they're going to look generationally. So, I think this tax is less likely to impact on them unless they have to sell this as a unit, and then it's going to come down to valuation. If the actual property itself straddles the border and you've got the house—how do you value, and how are you going to apportion that value? So, it comes back to a point I made earlier about some consistency in approach from both the revenue authorities on that.

[105] **Mike Hedges:** A point I've made, which you haven't heard but everybody else has several times: the position of a property that is 50 per cent in England and 50 per cent in Wales, and whether the value of it is treated as the total value or it's split up as if it were two properties—I'm sure

your members would much prefer for it to be split up as two properties and the land transaction tax charged on it as if it were two properties. Don't you think that gives the perverse incentive to keep on building properties along the border to avoid paying tax on them and get the benefit of the additional value?

[106] **Ms Speke:** I think it's going to have to be a question of you apportion what's in each jurisdiction to determine the tax payable, because I think—. The thing is, there is still going to be tax payable, depending on—. If you build a house in Wales, and that's sold, there'll be a tax payable; if you build it in England, there'll be some tax payable. It's going to be a question of how much, and that's still to be determined. So, I think there can be other factors that can influence decisions as to where to build, and I don't think it's necessarily going to be the tax. It's going to be, you know: what are the planning rules, is it going to be easier to build in one jurisdiction than the other? I understand that you you've got to put sprinkler systems into new housing now, and I've heard anecdotally from meetings I've been to with members that that can actually be a real deterrent to building because it actually pushes up the cost. So, as I said, there are other factors that will strongly influence those sorts of decisions more than the tax.

[107] **Mike Hedges:** I think, if it pushed up the cost of building, it probably pushes down land values.

[108] **Ms Speke:** I'm not a valuation expert. I really can't comment on that.

[109] **Mike Hedges:** Okay. That's me finished.

[110] **Simon Thomas:** One thing you did say, however, earlier, was that there were more properties in this situation than were originally expected. I just wonder if you could explain that a little bit more. Is it just that we've got more information now? How's that come to light?

[111] **Ms Speke:** I think, in initial meetings, it was suggested that only 80 properties were—

[112] **Simon Thomas:** Eighty?

[113] **Ms Speke:** Eighty were straddling the border. Actually, I've had the benefit of seeing the written evidence from the Land Registry, and they've obviously had the time now to do a bit more research. It's quite shocking the

difference in figures. We're talking about hundreds.

[114] **Simon Thomas:** Yes. I think about 400, I've seen.

[115] **Ms Speke:** It is something like that, yes.

[116] **Simon Thomas:** Yes. We can look at the figures anyway. Thank you. Okay. Neil McEvoy.

[117] **Neil McEvoy:** Thanks, Chair. I just wonder what your views are on land transaction tax reliefs being broadly consistent with stamp duty land tax.

[118] **Ms Speke:** I think it comes back to what I said previously about consistency being a good thing. It means that people know whether they are in the regime or not. Some of those reliefs are extremely valuable, you know, particularly in situations of divorce or when someone has inherited. I think maintaining that, and that sort of consistency, aids certainty. The only other relief I've suggested is with regard to agricultural properties. That will make life a lot easier for our members and their tenants.

[119] **Neil McEvoy:** Are there any other new reliefs, do you think, that could be adopted to support members?

[120] **Ms Speke:** No. I can give that some further thought and come back to you if I think of any others.

[121] **Simon Thomas:** Can I just ask one on this? The specific one you mention on agricultural: is that a relief that applies because of mixed use, or a relief that would apply simply because it is in—? To go back to Eluned's earlier point, when CAP is given to a racehorse owner, you wonder what is agriculture and what is not. Have you modelled that at all?

[122] **Ms Speke:** No, we haven't. We can do, and I can certainly liaise with the National Farmers Union on that as well so that there's some consistency in approach. I think it's usually quite obvious what is agricultural. We have a definition in the tax regime. It wouldn't necessarily be land that is just there for amenity value. You're talking about farms, really, that are more likely to be on the longer term. They're going to have the farmhouse, they're going to have the farm buildings, they're going to have the land that is either being used for livestock or for arable. So, it should be really fairly apparent, but—. We can look at that and come back to you.

[123] **Simon Thomas:** If you've got any further information, yes, I'm sure we'd be interested.

[124] **Neil McEvoy:** I just wondered if you felt that there are any potential problems with the targeted anti-avoidance rules in section 31.

[125] **Ms Speke:** Yes. I have set out some thoughts in the paper. I think, primarily, the fact that there is a different rule and you follow Scotland. I know, from speaking to our association's Scottish equivalent, there are a lot of difficulties and uncertainty in Scotland because there is a difference. I think, primarily, that's because the Scottish Government have provided no guidance. Practitioners need certainty. I think taxpayers should have certainty as to where they fall within the tax regime and the rules. That should be a consistent theme, regardless of the tax that's coming in. It's something I've argued over the years, both in my role at the CLA and previously when I was at the Law Society. I think it's one of the principles that the Welsh Government has put in the public domain about the Welsh tax regime. I think, having a different regime, you're going to have—. Particularly for those who straddle the border, those advisers have got to really consider the rules and that is going to push up compliance costs.

10:30

[126] There are difficulties about what we mean by 'artificial'. I don't think that's defined adequately and that is different from the UK regime. So, there does need to be very, very clear guidance. There are numerous ways people can do things and they're going to do things that are right for them and that doesn't necessarily mean it is abusive or it's avoidance; they're structuring things that are best for them and their circumstances. I'm not saying we shouldn't target avoidance, but, actually, we've got to be very, very clear what we mean by that and what we mean by 'artificial' and I don't think we've quite got there yet.

[127] **Simon Thomas:** Nick Ramsay, did you want to come in on this point?

[128] **Nick Ramsay:** Yes. I think in terms of the 'artificial', we've taken evidence that is—. I think they did the same thing in Scotland, they replaced the English requirement with 'artificial'. We took evidence before you came in from the Scottish—not Executive—Government, as it is now. Have you spoken with your counterparts in Scotland about how they manage this

process and have they been concerned since?

[129] **Ms Speke:** Well, there are huge concerns. We do actually have a Scottish accountant on our tax committee and she's expressed concerns about this all the way through. I spoke to her the other day, and there's still a huge amount of uncertainty about this. That is not helpful in any tax regime, to have uncertainty. So, I think the more that Wales can do to ensure certainty, it's got to be better—better for the taxpayers and better for the costs that they're likely to incur.

[130] **Nick Ramsay:** So, you would say, 'Don't necessarily follow the Scottish model'.

[131] **Ms Speke:** Well, certainly not having guidance to support it. But, actually, it's about consistency, it's about, 'Is this going to be more difficult?' And, people might think, 'Oh, well, we know the rules in the UK; they've been around for a while now, we understand them. Do we want to start having to deal with the rules in Wales?' Is that, in itself, the fact that it's different, going to be a deterrent to doing business?

[132] **Simon Thomas:** Mark Reckless.

[133] **Mark Reckless:** I raised this concern with the Minister at our previous evidence session and the risk of moving, in the context of the general anti-avoidance rule, from tried and tested case law about what might be abusive to—and they've had it in Scotland for a bit, but a relatively new regime as to what was artificial. And, from what you said just now, am I correct to understand that you're saying that that may increase uncertainty in the tax system? And could you—? I think you were nodding, just for the record. Could you explain what the likely impact of that perceived increase in risk around tax law will mean?

[134] **Ms Speke:** It's really going to be on compliance costs. Advisers are going to have to advise on two different regimes and that's going to take more time. It might be that somebody doesn't want to have to engage and get that advice; they might think, 'Oh, I'll stay with the tried and tested, and I'll stay and I'll deal with property in England rather than in Wales'.

[135] **Mark Reckless:** When you say 'deal', do you mean purchase or—

[136] **Ms Speke:** Purchase—

[137] **Mark Reckless:** —act as agent or conveyancer?

[138] **Ms Speke:** Yes.

[139] **Mark Reckless:** Yes. So, that could reduce demand for property in Wales.

[140] **Ms Speke:** It could impact, I think, particularly business decisions. Residential—people have a need to live in certain places. There can be, obviously, a factor, if they have a choice and they're in commutable distance. I think they're going to choose where they're going to be, and I think it's going to have less of an impact on residential, but it's really more about businesses and where businesses locate. I think that's more likely to have an impact.

[141] **Mark Reckless:** The Minister said in his evidence session that the rationale for changing the test from 'abusive' to 'artificial', was to prevent abuse. Does that make sense to you?

[142] **Ms Speke:** It's difficult to make sense when you're not really clear about how the term 'artificial' will be approached and really the full scope of that. So, I think people tend to have a sense of what is abusive, but they probably don't have a sense of what is artificial, because it's a question of perception. Until we have clear guidance—and we haven't had that; I think one of the things we haven't had any consultation on is the breadth of this. There was an awful lot of discussion with representative bodies before the UK GAAR was on the statute book and in a Bill before Parliament, so there was a lot of discussion, and there hasn't been anything on this, and I think that's disappointing. We could have had a better understanding of the scope if we'd had those discussions and seen some, certainly, draft guidance in advance, before it was in the Assembly Bill.

[143] **Mark Reckless:** One point the Minister's, I think, lawyer made at the previous evidence session was that an advantage of moving to the new artificial test from the UK abusive test was that the Welsh test, like the Scottish one, would just have a single reasonableness test, rather than, 'Would it be reasonable to be thought reasonable?', which appears to have become part of the case law on abusive. Would you see that as a gain?

[144] **Ms Speke:** There has got to be a reasonable test and, thankfully, it's

for the WRA to prove something is artificial rather than for the taxpayer to prove that it is not. I think we just have to wait and see on that one. I can't really comment further.

[145] **Mark Reckless:** Would you expect to see provision in the budget for implementing this tax and with the Welsh Revenue Authority for more consultation and more legal support in this area as this new test settles in?

[146] **Ms Speke:** I think guidance on this is crucial, particularly as it's for the Welsh Revenue Authority to determine what is artificial. Also, there's a provision in the Bill about a prevailing practice. What does that mean? Because they're saying that isn't going to be regarded as artificial and within the GAAR. So, I think there needs to be some discussion about that, because I certainly remember when the disclosure of tax rules came in, I had solicitors ringing me up saying, 'I'm recommending a trust' only because it might be children benefiting under a will if the parents died while they were young and, obviously, they couldn't hold assets, so a trust, in those circumstances, is essential, and they thought, 'Well, is that going to be regarded as avoidance? Have I got to disclose?' So, again, we're talking about people who are not expert tax lawyers and we have to make sure that they understand, so having clear guidance and a clear understanding of what is meant by 'prevailing practice' is going to be absolutely crucial.

[147] **Mark Reckless:** Just finally, Chair, so, in your view, in introducing this first Welsh devolved tax, leaving aside business rates, do you think we would be wiser to stick with the existing abusive test rather than setting up the new artificial test with all that involves?

[148] **Ms Speke:** I certainly think you could delay that introduction and rely on the UK rule in the first instance, because the taxes it will apply to are much more limited than the application of the current UK rule. Certainly, the latest figures about what HMRC regard as avoidance and the schemes out there are quite limited. So, do you want to impose another level of bureaucracy and another level of complication for advisers to consider for one tax and then take more time to develop this properly and develop supporting guidance, because, as more taxes are devolved to Wales, then it can have a wider impact? Get it right, rather than rush it in, I think, is always our preferred action.

[149] **Simon Thomas:** David Rees.

[150] **David Rees:** Diolch, Chair. You've mentioned this morning quite a few times compliance costs and your concerns about those. I understand the issues you highlighted where a practitioner will have to understand two different systems, but that will probably only apply to those 400-or-so cross-border situations, whereas most of the transactions will be under one system. Therefore, is the clarity you're asking for going to be sufficient to allow that to happen, because we are talking about the vast majority of these transactions being in Wales, operated by people operating a single system? Therefore, are the issues going to be something that will outweigh the benefits that might come as a consequence of this Bill?

[151] **Ms Speke:** I think it's also going to apply to those not just, say, cross border, but to somebody who might be looking at a property in Wales and looking at a property in England and deciding between the two. So, of course they're going to have to have advice on both to make that decision. Certainly, as this beds in, there are going to be additional compliance costs while advisers are making sure that they understand the scope of the new regime, but there shouldn't be additional compliance costs for any taxpayer, whatever side of the border they're on, or whether they're purchasing something that straddles the border.

[152] **David Rees:** Would the clarity you seek—? You've also mentioned quite a lot this morning the clarity of definitions. Would that actually be a way in which we can see those compliance costs reduced?

[153] **Ms Speke:** Yes, it would. Clarity in legislation or clarity in guidance is always going to reduce compliance costs because they need to do less research. They don't have to look at guidance, say for capital gains tax on residence/non-residence, and then they don't have to, maybe, look at case law. So, if there's that clear understanding, even if they're purchasing property that's just in Wales, yes, that is going to reduce compliance costs and the consideration that they have to give, because they'll understand, and they'll say, 'Right, okay, this is your tax position', without having to put a lot of time in.

[154] **David Rees:** I understand the Scottish model is different because there's always been a slightly different system in Scotland and England. Have we seen any similar issues following the changes in Scotland?

[155] **Ms Speke:** With regard to their land business transaction tax, I can't really comment. Obviously, their border is not as densely populated, so

you're not going to have the same cross-border issues, and you're not going to have the same pressures on people perhaps considering whether they buy in one jurisdiction and not the other. I'm sure there have been difficulties, but I'm really not in a position to comment on the actual tax and the problems.

[156] **David Rees:** Again, back to the tribunals issue, which you've highlighted. Are we looking at concern over the clarity of guidance? Will that allow the situation to be far fewer tribunals as a consequence of that, and the cost associated with those?

[157] **Ms Speke:** Yes, I think where there's a lack of clarity there can be a different interpretation, and if the authority and the taxpayer do not agree, that is where you can find yourself before the tribunal to get a determination. So, anything that is clear and certain is less likely to lead you down that path, particularly with regard to the proposed GAAR and the process that's set out in the Bill. I've mentioned in the paper the ability of the revenue authority to serve a counter-action notice. Yes, they can take and have regard to representations from the taxpayer, but it's really not clear whether it's going to be internally reviewed. There's a review process that's part of the appeal process with HMRC generally. So, what do we mean by 'having regard to'? If they still can't reach agreement then, yes, you are going to find yourself before the tribunal.

[158] **David Rees:** So, I'm just trying to clarify. It seems to me very much that the principles are acceptable, but it's the clarity and the guidance that needs to be pretty straight, so that there is less chance of confusion arising as a consequence.

[159] **Ms Speke:** Yes, I think that's essential in any tax regime—to have clarity and certainty.

[160] **Simon Thomas:** Thank you. Can I just bring some of these concerns to a conclusion, in this session at least? There is, of course, ongoing discussion. Just to understand your concerns around the general avoidance rule, the GAAR that's there, am I right in interpreting that where we've got these other rules, the targeted anti-avoidance rules or TAARs, as they're called, around reliefs and so forth, that you're quite content with the way that they're structured in the Bill, and it's really this catch-all rule that you have concerns about?

[161] **Ms Speke:** I have to admit that there's been quite a short period of time since the call came out, so I've focused on the big principles. I haven't looked in great depth at the real differences between the TAARs—between what's proposed in the Bill and what's in the stamp duty land tax. I can take that away and come back to you on that if I've got any issues.

[162] **Simon Thomas:** If you are able to do that, that would be useful. Although, of course, the Bill does have a second scrutiny stage when we go into more detail. But, even now, we're trying to look at that, because you've argued that there's consistency between the two jurisdictions, and that's part of that, I would imagine.

[163] The GAAR itself, then, to turn to that: is there really an issue here? Other witnesses have suggested that although there's a change of language between 'abusive' and 'artificial', that in effect it's the same effect. It's perhaps simpler and clearer in the Welsh legislation, the proposed Welsh legislation, because there is only that one test of reasonableness, but in effect they are saying the same thing. Do you accept that, or do you think there's still room for disagreement there?

[164] **Ms Speke:** I think there's room for improvement, as I've said. Until you start applying this to practical situations it's really difficult to see how the two different rules are going to operate, and we don't advise on structures or avoidance; we really just advise our members on the structure of the tax.

10:45

[165] So, we're looking at this as broad principles. And I think we need to be absolutely clear as to why artificial—. Do we yet know whether that is the same as abusive? And I think we perhaps need to look at some real-life examples to see how the two would apply and what result you get to.

[166] **Simon Thomas:** Would you be more content with the architecture of the Bill and the wording on 'artificial' in the Welsh GAAR, if the Government had proposed that we should have a DOTAS—a disclosure of tax avoidance scheme? Would that be part of what you would see as the interaction between the taxpayer and the Welsh Government and getting a better appreciation of what these things really mean?

[167] **Ms Speke:** As I said in the paper, I don't think we need a separate system for Wales. As I said, the number of schemes that have been reported

up to 2014, which are the most up-to-date figures, I have to say, having checked, we're talking about five stamp duty land tax schemes, so I really don't think—

[168] **Simon Thomas:** Those are England and Wales figures as well.

[169] **Ms Speke:** Yes, England and Wales figures. And I really don't think, at the moment, it merits Wales having a separate regime. I think you can still share information about what's happening between the Welsh Revenue Authority and HM Revenue and Customs, and that's probably going to be the most cost-effective way forward, given that the Welsh Revenue Authority is going to be fairly new, and is going to be initially a much smaller body, and have less resources, and, actually, you've got to think about the costs and the taxes that are going to come in to pay the cost of that authority, as well as other public services. So, I think the status quo on DOTAS is the best way forward at the moment, and I don't think that is going to have an influence on how the Welsh GAAR operates. I think people come up with schemes and they have to register them, but I think they're going to be, on the whole, different people to those who are just advising on transactions, and therefore need to consider the GAAR.

[170] **Simon Thomas:** So, if the Welsh Government is wedded to the wording that it currently has in the GAAR, the minimum you would ask for is that we have an advice scheme, which, as you say, Scotland doesn't have at the moment, but you would be comfortable with that, if you like.

[171] **Ms Speke:** I think, no, clear guidance and more clarity is essential, particularly the reference to prevailing practice.

[172] **Simon Thomas:** Okay. Diolch yn fawr iawn. Thank you very much. Thank you for the evidence. We will send a copy so you can check over it for accuracy, and thank you again. Diolch yn fawr. We'll take a formal break until 11 o'clock.

*Gohiriwyd y cyfarfod rhwng 10:47 a 11:02.  
The meeting adjourned between 10:47 and 11:02.*

**Y Bil Treth Trafodiadau Tir a Gwrthweithio Osgoi Trethi Datganoledig  
(Cymru): Sesiwn Dystiolaeth gyda'r Gofrestrfa Tir  
Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales)  
Bill: Evidence Session with the Land Registry**

[173] **Simon Thomas:** Welcome back to committee. We're taking evidence on the Bill for land transaction tax. We have officials from the Land Registry here. I'd like to welcome you, and just say at the outset that the initial part of the meeting will be in Welsh, so you'll need your translation headsets. They should be working fine, so I'll just give you time to establish yourselves.

[174] **lawn, dylech chi fod yn fy nghlywed i yn awr. Felly, a gaf fi groesawu'r tystion o'r Gofrestra Tir, Joy Bailey a Pascal Lalande? Tybed a allech chi jest gyflwyno eich hunain a'ch swyddogaethau y tu mewn i'r Gofrestr Tir ar gyfer y cofnod?** You should be able to hear me now. So, could I welcome the witnesses from the Land Registry, Joy Bailey and Pascal Lalande? I wonder whether you could just introduce yourselves and your roles for the record.

[175] **Mr Lalande:** Sorry, but should it be translating now?

[176] **Simon Thomas:** Yes.

[177] **Mr Lalande:** I'm not getting any—.

[178] **Simon Thomas:** It should be on channel 1. We will assist now.

[179] **Profwn y system. Dylai fod yn gweithio'n iawn yn awr. Roeddwn jest yn gofyn a wnewch chi, ar gyfer y cofnod, ddweud eich swyddogaethau gyda'r Gofrestra Tir, os gwelwch yn dda.** We will just test the system. You should be able to hear me properly now. I was just asking you to introduce yourselves for the record and tell us what your functions are with the Land Registry, please.

[180] **Ms Bailey:** I'm Joy Bailey. I'm a lawyer at Land Registry head office and one of my areas that I advise on is stamp duty land tax.

[181] **Simon Thomas:** Diolch yn fawr. **Simon Thomas:** Thank you very much.

[182] **Mr Lalande:** My name is Pascal Lalande. I work at Land Registry head office in central operations. I have particular responsibility for land registration practice and policy. My team helps produce both external and internal guidance for customers, including guidance on applying, currently, stamp duty land tax. I was also involved in the transition from the old stamp duty to stamp duty land tax 13 or 14 years ago.

[183] **Simon Thomas:** Diolch yn fawr i'r ddau ohonoch chi. Os caf i ofyn, i ddechrau: a fydddech chi'n gallu egluro wrth y pwyllgor beth yw rôl y Gofrestrfa Tir mewn perthynas â threth dir y dreth stamp ar hyn o bryd? Beth yw eich swyddogaeth yn y cyd-destun hwnnw?

**Simon Thomas:** Thank you very much to both of you. If I could ask, just to start: would you be able to explain to the committee what is the role of the Land Registry in relation to the stamp duty land tax at present? What is your function in that context?

[184] **Mr Lalande:** Shall I take that, Joy?

[185] **Ms Bailey:** Okay.

[186] **Mr Lalande:** We've always had a responsibility for ensuring that stamp duty—now stamp duty land tax—is paid before we make any entry in the land register, which is a notifiable transaction. Before, under the old stamp duty, where documents were impressed with stamps, as well as the stamping, there were various additional forms we had to check. Where we believed the stamping to be insufficient, we had to send the documents back to the customer for additional duty. That carried forward under the Finance Act 2003. Under section 79 of that Act, there is a requirement or a duty on the registrar not to make any entry in the register where stamp duty land tax is payable. So, where an application is received for registration, we have to assess whether or not it attracts stamp duty land tax or is a notifiable transaction. If it does, we need the appropriate evidence to allow us to proceed with the registration.

[187] The evidence is either a certificate issued by HM Revenue and Customs, or a copy of a receipt issued by HMRC when a customer submits their stamp duty land tax return online. Our caseworkers, who are not experts on stamp duty land tax, associate the certificate with the transaction, so we make sure it corresponds. Sometimes, we do get evidence that relates to a totally different transaction, so we pick up errors like that. Provided that the evidence matches the transaction, then we'll proceed with the

registration.

[188] **Simon Thomas:** Ac felly, yng nghyd-destun y Bil sydd gerbron sydd wedi'i gyflwyno gan Lywodraeth Cymru, byddwch yn dal i barhau â'r drefn yna, ond nawr bydd y berthynas gyda chi gyda Awdurdod Cyllid Cymru er mwyn awdurdodi'r gofrestr. A ydy hynny'n gywir?

**Simon Thomas:** Therefore, in the context of the Bill that we have before us, which has been introduced by the Welsh Government, you will continue with that system, but now there will be a relationship with you and the WRA in order to authorise the register. Is that correct?

[189] **Mr Lalande:** Yes, I think there's a clause in your Bill—clause 58, I think.

[190] **Ms Bailey:** I've spent quite a bit of time comparing the Finance Act 2003 with your Bill, and I found it to be pretty similar. It changes the order a bit, but most of the provisions that concern us in the Finance Act 2003 are almost identical in your Bill.

[191] **Simon Thomas:** Diolch yn fawr am hynny. Nick Ramsay.

**Simon Thomas:** Thank you very much for that. Nick Ramsay.

[192] **Nick Ramsay:** Diolch. In your evidence, you talk about the way that LTT and SDLT should work together to alleviate additional burdens and complexity for both conveyancers and land registry caseworkers. Can you explain a bit more about this and how you feel that similarity between the two will aid compliance?

[193] **Mr Lalande:** Yes. As I said in my opening remarks, caseworkers are not experts on stamp duty land tax or land transaction tax, when that's introduced. But they have roughly 13 years of experience of stamp duty land tax and know, generally, what types of transactions are notifiable and when evidence is required. There are sometimes complex transactions where, to be frank, we're not really sure whether tax is payable or not or if it's notifiable or not. We have to go back to customers and ask them to provide confirmation from HMRC that it's not a notifiable transaction, or that tax is not payable.

[194] In relation to land transaction tax, the risk is we have to learn a completely dual or different system. So, the closer it is to the requirements for stamp duty land tax, it'll be easier for our caseworkers to know when it is required and process registrations completely [correction: correctly], and

also, for customers, knowing when they have to notify the Welsh Revenue Authority.

[195] **Nick Ramsay:** How effective do you think the Bill is in clarifying when relief can be claimed?

[196] **Ms Bailey:** I think it's actually slightly clearer than the Finance Act, when I did find all the relevant clauses. As I said, it doesn't follow exactly the same order, but once I'd read it through and compared it several times I did find it fairly clear and comparable.

[197] **Nick Ramsay:** Good. I think that was the aim of the drafters—to try and bring together lots of different parts of UK law. And in terms of sub-sale relief within the Bill?

[198] **Ms Bailey:** Yes, that was one of our main concerns, because we had an awful lot of problems with that and we did a lot of work with HMRC. We had to devise a system whereby, when we received these odd claims where people were trying to claim double relief, we served notice on them, which caused a lot of delay and headaches for everybody concerned. The result was, as you're probably aware, that they introduced new anti-avoidance provisions and we were very much involved in all the negotiations. They did a lot of consulting particularly with practitioners, but we were invited along to various committee meetings, so we had quite a lot of input. At the moment, things are going fairly smoothly but, as we all know, wherever tax is due, people are going to be looking for ways around it. So, we hope that we'll be able to develop equally good relationships with the Welsh Revenue Authority, the relevant people there, so that, if problems do come up, we can contact you and work with you.

[199] **Simon Thomas:** Okay, thank you. Mark Reckless.

[200] **Mark Reckless:** With the links between the Welsh Revenue Authority and the Land Registry, are you comfortable with how those are going to work?

[201] **Ms Bailey:** Well, we need to talk with them and talk with you about how they will work. Our relationships with HMRC have just developed over the years in a bit of an ad hoc way, it has to be said. We do now have a memorandum of understanding with HMRC but it does cover more than just stamp duty land tax, so it will be really up to the officers in the Welsh

Revenue Authority to decide what it is that they really want from us and, obviously, we can negotiate arrangements with them accordingly. HMRC has powers of data collection—as I said it covers more than just stamp duty land tax, so we've worked with them to agree arrangements as they see they need them, and I'm sure that the same will happen with the Welsh Revenue Authority once you are clear with your requirements. And it will be an ongoing process, because, as the Welsh Revenue Authority develops, it will find more areas where it probably needs help.

[202] **Mark Reckless:** Clearly, that body is in its early days currently, but have you had any engagement with it yet to date?

[203] **Ms Bailey:** Not to my knowledge.

[204] **Mr Lalande:** I'm not sure about the Welsh Revenue Authority, but I know people in our policy and strategy team have been speaking to people in Welsh Government, and also in our digital services team, because we're not just thinking about 2018, we're thinking about five years, 10 years' time—how the process might work so it's digitised. In terms of working with the Welsh Revenue Authority, I'm not sure if you're aware that HMRC established what's called a working together steering group for stamp duty land tax. They meet about, I think, every other month, and Land Registry is a participant on that steering group along with various conveyancers—the Law Society, for example. So, they meet about every two months or so to discuss issues that arise from stamp duty land tax. The Welsh Revenue Authority might want to consider establishing something very similar.

11:15

[205] **Mark Reckless:** And are these operational links about the mechanism for paying the stamp duty and reporting that back—is there anything that you think will be needed more specifically relating to tax avoidance and tackling that?

[206] **Ms Bailey:** The tax avoidance work we did together, as I said, just arose out of a series of tax-avoidance schemes that were developed by various accountants.

[207] **Simon Thomas:** You missed the word 'creative' there. [*Laughter.*]

[208] **Ms Bailey:** Yes. So, we had to make contact with the anti-avoidance

section, and there was a flurry of activity with them. Then, subsequently, a separate committee—it wasn't the same one that Pascal mentioned—was called together to consult on potential changes to the legislation to bring in the specific anti-avoidance rules.

[209] **Mr Lalande:** HMRC have also been proactive as well—they haven't waited for us to contact them about suspected avoidance schemes where they got wind of a possible scheme. They did, at least on a couple of occasions, contact us and asked to discuss these with us.

[210] **Mark Reckless:** Could you give any estimate as to the likely cost of the data-sharing arrangements that the WRA will need with the Land Registry and how these would be paid for?

[211] **Mr Lalande:** I don't think we can give an actual figure. We will certainly want to engage in discussions into setting up data-sharing arrangements and establish exactly what it is that the Welsh Revenue Authority needs. We generally charge on a cost-recoverable basis, but it really depends on what it is you want. If it's ongoing supply of data, then there may be additional costs in terms of setting up that system—secure networks et cetera.

[212] **Ms Bailey:** The point is, we are a trading fund, so we have to cover our costs. So, it was on that basis that HMRC agreed to make certain payments. Other information they are entitled to without cost, but some services they do pay for, by agreement, at a cost. But, as I said, it does cover not just stamp duty land tax—they are responsible for administering things like child benefit and tax credits, so they do use us occasionally for tracing people. So, I believe—. Of course, we're not party to all this kind of work that goes on—some of it is very confidential and just done by certain offices, so we wouldn't be party to that.

[213] **Mark Reckless:** Finally from me, could I just raise the role of the Land Registry office in Swansea? Mike Hedges has explained to me that this also does work for the south-west of England, rather than being Wales-only. I just wonder, as engagement continues between the WRA and other Welsh bodies with the Land Registry, and systems are put in place, would that all be done through the London office or will there be a role for the Swansea office and, potentially, employment or new activity opportunities there going forward?

[214] **Mr Lalande:** That's a difficult one. We have 14 local offices—one in Swansea and 13 in England. Historically, we worked on a geographic basis,

so all Welsh work—if I call it that—went to Wales, and English work was distributed to the various English offices. That's not how we work anymore, really for business needs and operational needs; for example, a large number of applications are submitted electronically, and our systems then distribute that work according to business needs and rules. Paper applications are all sent to a single address, where they're scanned and, again, routed to the appropriate office. So, there may be, for example, a need to route work to an office that needs the work, or we route the work because they've recruited staff so we need to train people up on that work.

[215] In terms of Wales, Wales deals with all our—. We call it our Wales office rather than the Swansea office. They deal with all citizen applications. They are one of three offices that deal with all first registrations, which are applications relating to land that is becoming registered for the first time. In terms of having a specific relationship with the Wales office, I don't think we can today say that there would be one, or whether that would be with our head office, but there certainly would be a role to play with Wales. I don't think there's any proposal that all Welsh work will return to be processed just in Wales.

[216] **Simon Thomas:** Nick Ramsay.

[217] **Nick Ramsay:** Thanks, Chair. I can be a bit dense sometimes—*[Laughter.]*—but my antennae are picking up a degree of nervousness from you about this transition. Clearly, LTT has been chosen as the first tax to be devolved, which will be a learning curve. To what extent are you nervous about it? Are you concerned that this will not be an easy transition? Within these four walls, you can tell us how you really feel. Don't be polite—

[218] **Simon Thomas:** I would remind you that you are being broadcast. *[Laughter.]*

[219] **Nick Ramsay:** Oh, yes. I know—*[Inaudible.] [Laughter.]* So, it's for the committee to present our view to the Government to say how they could do things differently. So, feel free to tell us: are you concerned about this? Do you think there are any particular aspects that really could improve this Bill?

[220] **Ms Bailey:** Well, if I can start, then I'm sure Pascal will have a view as well, as operations manager—I'm not too concerned because, as I said, I've read through it in some detail. It seems to me that, in the vast majority of cases, all we need is a stamp duty land tax certificate to say that the

transaction has been reported to the Welsh Revenue Authority, and then we can proceed with the registration, and that's what we want. As I said, there may be times when new problems come up to do with tax avoidance. In that case, if we've got good contacts, hopefully we'll be able to liaise with you.

[221] I suppose my main concern is if there's any divergence—I noticed in a couple of places in the explanatory memorandum that you mention that you've preferred the Scottish way of doing things, and for perfectly good reasons, but if there becomes more of a divergence in the future, that could be a learning curve, obviously, for our staff, and mean that it might cause confusion both for them and for the practitioners. Of course, it's not just a problem for us and the practitioners because we are, if you like, the police, in a way, making sure that the SDLT is being paid. If we register something without a certificate because a conveyancer has told us it's not needed, it means that you're the ones losing out because you haven't had the tax paid. So, it's bad for everybody.

[222] **Mr Lalande:** On that point, I think you can still pursue the tax even though we've completed registration. So, a person is still liable to pay the tax even if we've completed the registration. It's just that we are in breach of our duty not to complete registration.

[223] **Ms Bailey:** Yes. And you may not know about it.

[224] **Simon Thomas:** Could I just ask on that: with the relationship that you'll have with the Welsh Revenue Authority, would you expect to have a formal memorandum—? Well, I would assume that there would be a formal memorandum of understanding, if you like—an agreement between you. You mentioned that the HMRC—it's been over years, so it's grown up in a fairly ad hoc way—are you already negotiating around how that might be constructed?

[225] **Ms Bailey:** Well, as I said, we have one already with HMRC, which is fairly settled, but we haven't had any contacts yet with the authority, but we expect to in the future.

[226] **Simon Thomas:** It's early days. I understand.

[227] **Ms Bailey:** Yes. Well, we hope we will in the future.

[228] **Mr Lalande:** But the memorandum of understanding will be in relation

to data-sharing rather than the daily contacts. We have contacts with HMRC, so if we have a query about a specific type of transaction, we can e-mail them.

[229] **Simon Thomas:** That's a good relationship.

[230] **Mr Lalande:** It's a good relationship, yes. To pick up Mr Ramsay's point about nervousness—*[Laughter.]* It is a big change, so I think we ought to be nervous about any kind of big change. As Joy said, provided the land transaction tax and the evidence is very similar to the current system, then that would be very helpful. We are going to manage this as a project with various work streams. So, that includes: do we need to make system changes? What kind of guidance do we need? What kind of communication do we need for our own people and our customers? Do we need additional training? We think that's unlikely because the systems will be very similar. Where I'm nervous, well, not necessarily 'nervous'—there are issues that we need to be thinking about and you probably want me to raise them this morning. There's the transitional—what's going to happen in terms of transitional provisions. And also there are what we call cross-border properties, or transactions where, for example, someone owns one property in London and another in Cardiff and wants to sell both to the same person, so do they need—? And marrying-up evidence.

[231] **Simon Thomas:** Yes, okay. Just one specific thing: if this Bill were to become an Act and legislation, would you still have a relationship with HMRC around property in Wales at all? Does everything then switch to the new Welsh Revenue Authority, or is this still a relationship that you need to have with HMRC? I'm just trying to work out how complex the information-sharing needs to be and so forth.

[232] **Ms Bailey:** Can I start? My concern, as Pascal's mentioned, are these cross-border properties, because there's no clear indication of how that whole arrangement is going to work. Although it won't come up that often, as we've identified, there are getting on for 500 properties that are definitely cross-border, and there's a question—

[233] **Simon Thomas:** It seems to go up every month. *[Laughter.]*

[234] **Ms Bailey:** There's actually a question mark over about another 400, where there's at least a metre beyond that we didn't—

[235] **Nick Ramsay:** It would be easier just to move the border, wouldn't it? [Laughter.]

[236] **Mark Reckless:** Which way?

[237] **Nick Ramsay:** Well, either way would solve it, wouldn't it? [Laughter.]

[238] **Ms Bailey:** And then there's quite a lot of unregistered land, still, the ownership of which may well cross the border. I mentioned in the written evidence some of our concerns: How is that going to be worked out? Is it going to be a fixed proportion or are people going to have to work it out every time? Clearly, they're going to have to do two separate transfers, or do they just put on the one transfer what the proportions are? That's something that needs quite a lot of work to work out and I imagine we'll all be involved in that—both HMRC and Welsh Revenue Authority, and us and the local authorities, possibly, I don't know.

[239] **Mr Lalande:** There's also the example I gave of someone who owns one house in London and another in Cardiff. Will they do two transfer deeds or could they transfer them as they do now, under a single transfer deed? We would not be able to register that until we've got evidence from both the Welsh Revenue Authority and HMRC. If there's a delay on either party's side, then that will hold up registration. How do we resolve that?

[240] In terms of ongoing relationship with HMRC as to Welsh properties, they may still have to come to us about historic registration, so I imagine if they're chasing tax on a transfer that took place three years ago, that would be HMRC chasing that money, or asking for evidence, rather than the Welsh Revenue Authority.

[241] **Simon Thomas:** Okay. David Rees.

[242] **David Rees:** Thank you. It follows on—[Inaudible.]—submission receipts, which is in the wording of the registration. Is that wording replicated in this Bill, or is that going to be a cause of a problem?

[243] **Ms Bailey:** Yes. I think I mentioned in the written evidence that there is a specific provision that says that we can accept a certificate that SDLT has been paid, or some other evidence. And that is what we rely on in accepting the submission receipt, which is the electronic receipt that the person gets when they lodge their return online. That's really useful to us, because that

receipt is received instantly—as soon as the SDLT certificate is lodged. It means that the conveyancer can immediately attach that receipt to their application, which they then send to us electronically. So, it means the process can be very quick and very efficient.

11:30

[244] I was a bit concerned that your legislation, at the moment, just says there has to be a certificate. That sounds as though it could be a little bit inflexible. I accept that secondary legislation might say the certificate could take this form or that form, but maybe, in the future it won't even be a certificate, it might just be some, I don't know, string of letters or something, coming to us electronically. So, I just thought it was worth the drafters of the legislation thinking about whether they should add a few words to make that more flexible.

[245] **David Rees:** So the situation is: it'll work, but secondary legislation will be required to clarify the actual evidence you can use—at this point in time, as it's worded.

[246] **Ms Bailey:** Yes, and, as a lawyer, I would say that you can't use secondary legislation to twist primary legislation, so I think the primary legislation—

[247] **Simon Thomas:** As a parliamentarian, I'd say the same thing. *[Laughter.]*

[248] **Ms Bailey:** So, there should just be some words to allow more flexibility in the evidence that we can receive.

[249] **David Rees:** I noticed the wording in the SDLT legislation. It actually says 'any other form of'—

[250] **Ms Bailey:** That's right.

[251] **David Rees:** So, it allows more than the submission of the receipt, in one sense. As we're moving towards the digital age—well, we should be there now—this becomes more influential, I assume, as a consequence of that.

[252] **Ms Bailey:** Yes, that's exactly right.

[253] **David Rees:** Can I ask, as well, because we're talking about the systems and linking, have you had discussions with anybody in the Welsh Government in relation to the computer systems and the interaction between the systems and compatibility so that there will be a smooth transition across?

[254] **Mr Lalande:** Yes. I know our digital directorate—colleagues from that directorate—have spoken to people in the Welsh Government, but I think it's still early days as to what might be doable in future.

[255] **Simon Thomas:** Mike Hedges.

[256] **Mike Hedges:** The number of cross-border properties, as you said, Chair, has increased dramatically since we first started this discussion. It started off as 80, and it didn't matter. We've been up into the 400s and then you've said 400-question-mark-plus. We're rapidly approaching four figures, which I think, perhaps, is something that means it may be of interest to somebody else apart from me in the future. What initial work are you going to do to ensure that we have accuracy on which properties are which side of the border?

[257] **Ms Bailey:** Well, first of all, can I apologise for the misleading figure that we originally gave you back last year in our initial response to the consultation? We had asked somebody to give us—I admit we asked for a rough estimate, because we didn't think it would be that many—but, since then, we commissioned very detailed research and we can, if necessary, send you a copy of the report. It's not always possible to be absolutely certain, because the border, obviously, moves a lot and the edge of properties can move [correction: meander] a lot, and sometimes it'll appear that there's a slight overlap, but it might just be because we've mapped it not quite correctly. So, the person who did the most recent research made various adjustments and allowed an extra metre, or even an extra 10m in some cases. So, the number that is mentioned is the ones that clearly cross the border, whereas there are others where there might be just a metre strip in a small place that crosses the border.

[258] **Mike Hedges:** I don't think you need to apologise. I think that, up until now, no-one needed to bother much with which side of the border it was, except for two things: council tax and for electoral purposes. In both of those it mattered. Have the councils and/or the electoral registration part of

the council taken an interest in exactly where these things were registered?

[259] **Mr Lalande:** Not that I'm aware of. Can I come back to your earlier question, if it's okay? We have been thinking about what assistance we can give customers and our own case workers as to identifying whether a property is wholly in England, or wholly in Wales, or across the border. We've got roughly 24.5 million individual registers and some don't really change much over time. Some may even still refer to obsolete counties. It may not be obvious to a reader in terms of geography whether a county is in England or Wales, but we may be able to flag up on our internal casework system and our customer-facing systems whether a property is completely in Wales or completely in England, or even one that is cross border.

[260] **Mike Hedges:** You mentioned obsolete counties—were they preserved counties under the Acts that have been passed regarding local government reorganisation?

[261] **Mr Lalande:** When there's local government reorganisation, we usually try to update our registers, but it is possible that we haven't picked up every single registration.

[262] **Mike Hedges:** But some counties are preserved: West Glamorgan is preserved, for example. That's why, even though it no longer exists as an entity, it's what is called a preserved county. I wouldn't have thought there would be any problem if you were dealing with preserved counties, but if you're dealing with pre-preserved counties, there might be a problem.

[263] **Mr Lalande:** I'm afraid I can't answer that.

[264] **Mike Hedges:** Okay, just my last question: the Bill doesn't have a provision for calculating and recording cross-border property valuations. I'll tell you about my concern, which probably doesn't affect you very much: if you've got a property straddling a border, 50 per cent of each, if they're only going to be charged the value of the half either side of the border, it's going to reduce the total tax that they'll have to pay—whether you value it as its total value and then apportion afterwards, then it wouldn't have an effect.

[265] **Mr Lalande:** Yes, but we can give an example of a cross-border title where—. What if the building, the house, is in Wales and the only part in England is a strip of garden, then would you want to apportion that 50 per cent:50 per cent or would it be 90 per cent:10 per cent?

[266] **Mike Hedges:** I'm just thinking about somebody who'd had that. Some would be 90:10, some would be 95:5 and some would be 60:40 and 70:30. It's inevitable that there'd be the full range. Some would be that the house was built in either England or Wales and then they'd decide to put a garage or an annex on it, but the garage and the annexe on it are taking it over a border.

[267] **Mr Lalande:** In terms of land registration—

[268] **Mike Hedges:** Yes, the land is registered with you.

[269] **Mr Lalande:** —it's not really important to us what the respective values are, because all we require is the evidence of compliance. As long as we get that, we can proceed with registration, but if there are delays in assessing the respective valuations, that could hold up a registration or a sale.

[270] **Simon Thomas:** Could I just understand how that would be dealt with by you? I know that you're not responsible for tax, obviously, but would you—. If a property were sold, and it's a hypothetical 50:50, is that registered as one transaction with you or, under this Bill, would you need to register it as two separate transactions because you're dealing with HMRC and the Welsh Revenue Authority?

[271] **Mr Lalande:** I don't think we know yet. It goes back to—under your Bill, it would be deemed to be two separate transactions, so that suggests—. We don't know if that means two transfer deeds or one transfer deed, but for the two parts. You could still transfer two or more properties by one transfer deed, but some conveyancers may choose to have separate transfer deeds: one for each part.

[272] **Ms Bailey:** It's actually quite an interesting point that you both raise. We haven't really thought it through in any great detail, but it strikes me that a registered owner could apply to us to split the property so as to reduce the value of each part, so reduce their tax bill. So, I can—. Tax avoidance? I don't know.

[273] **Simon Thomas:** Although Mr Hedges has got great experience of asking questions, I think the whole committee is concerned that we should be pursuing this. Neil McEvoy.

[274] **Neil McEvoy:** Diolch, Gadeirydd. I just wonder what you think the impact of immediate changes to the land transaction tax and bands could be on the Registry.

[275] **Mr Lalande:** Sorry for the pause; I'm trying to think about the right answer for that one. If you were suddenly to increase your tax bands in Wales, then you might have a cause-effect [correction: an effect] on volume of sales in Wales, so that Welsh work might dry up. I think that's a worst case, or an extreme scenario. So, if there was a great variance between England and Wales in terms of your tax thresholds, it could affect the volume of work in Wales and that would affect us in an operational sense. I think one point—I think it was in Joy's paper—was about having sufficient notice of any changes that you do make. Currently, SDLT changes are normally announced in the budget. Some take effect midnight the same day, so we keep alert to the budget, what changes are in the budget, and try and revise our guidance straight away. But, then, some of the changes depend—. Even though the change takes effect as of a certain date, some allowance is made sometimes depending on when contracts were exchanged, rather than when it's lodged for registration or completed.

[276] I believe that your Bill allows for rates and thresholds to be changed by regulation. So, I don't know if that means a slower process for changing the rates. I think as long as we have sufficient notice of what those changes are—

[277] **Ms Bailey:** Even if we don't, I suppose the main problem for us is if the level at which you start paying tax changes. If that level doesn't change, then, really, we'll just be expecting a certificate; it won't affect us very much. It's a problem for the conveyancer to work out how much extra or less tax they have to pay. Or, again, unless there's a transitional period, we may need to know either the date of completion, or the date contracts are exchanged, to know whether tax is payable or not, if the level at which you start paying a tax has changed. So, those are the practical problems that sudden changes cause us. But we've dealt with them in the past; we just have to work our way through them.

[278] **Mr Lalande:** Sorry, one operational—. For example, when the Chancellor announced a 3 per cent surcharge on second homes this year, we were hit quite badly. There was a—

[279] **Simon Thomas:** Did that come in immediately?

[280] **Mr Lalande:** No. I think there was a gap, but a lot of people rushed to complete before the tax came in, and that created a huge spike of work for us. So, if you were going to—

[281] **Nick Ramsay:** You might not want advance notice. [*Laughter.*]

[282] **Mr Lalande:** We probably wouldn't get notice of that, but that's an example of how a sudden change can impact on us operationally.

[283] **Neil McEvoy:** Just to pick up on the transitional arrangements, what do you think should be included in the Bill?

[284] **Ms Bailey:** It just needs to be clear as to what happens if contracts are exchanged before the Bill comes into force, but the transaction is completed afterwards. What applies? Will it be an English-only transaction, or will the new tax take effect from the date of exchange of contracts? We need clarity on that particular—.

[285] **Simon Thomas:** Okay. Nick Ramsay.

[286] **Nick Ramsay:** Just a point of clarification, Chair, in terms of sudden changes in tax rate. I believe that in terms of tax changes that are proposed by the Welsh Government, the Assembly itself would have to ratify that, even if it's a month later. There would have to be some—. It's not the case that the Welsh Government can simply think, 'Tomorrow we're going to increase SDLT by 10 per cent', and that just happens without jurisdiction.

[287] **Mr Lalande:** Yes. Most of the transactions we see require some form of evidence anyway. So, even if you just adjust the rates, we will still require evidence. There's no great impact. It's that bottom threshold, if that suddenly changes, that's when we might have a problem.

<p>[288] <b>Simon Thomas:</b> Hoffwn i ddiolch i chi am ddod i roi tystiolaeth i ni. Byddwn ni'n gyrru copi o'r Cofnod atoch chi i'w wirio ar gyfer cywirdeb, jest i wneud yn siŵr eich bod chi'n hapus â hynny. Diolch eto am y dystiolaeth. Diolch yn fawr iawn.</p>	<p><b>Simon Thomas:</b> I'd like to thank you for coming to give us evidence. We will be sending you a copy of the transcript for checking purposes, just to make sure that you're content with that. I'd like to thank you again for the evidence that you've given. Thank you very much.</p>
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11:45

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o  
Weddill y Cyfarfod**

**Motion under Standing Order 17.42 to Resolve to Exclude the Public  
from the Remainder of the Meeting**

*Cynnig:*

*Motion:*

*bod y pwyllgor yn penderfynu that the committee resolves to  
gwahardd y cyhoedd o weddill y exclude the public from the  
cyfarfod yn unol â Rheol Sefydlog remainder of the meeting in  
17.42(vi).*

*accordance with Standing Order  
17.42(vi).*

*Cynigiwyd y cynnig.*

*Motion moved.*

[289] **Simon Thomas:** A gaf i ofyn i'r **Simon Thomas:** May I ask the  
pwyllgor, o dan Reol Sefydlog 17.42, committee, under Standing Order  
i ystyried nawr i fynd i mewn i 17.42, to resolve now to exclude the  
gyfarfod preifat? A ydy pawb yn public? Is everyone content? I see that  
hapus? Rwy'n gweld bod pawb yn you are.  
hapus.

[290] Thank you very much.

*Derbyniwyd y cynnig.*

*Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11:46.*

*The public part of the meeting ended at 11:46.*