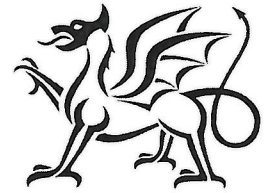


Mark Drakeford AM/AC
Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
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Llywodraeth Cymru
Welsh Government

Nick Ramsay AM
Finance Committee
National Assembly for Wales
Cardiff Bay
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4 March 2017

Dear Nick,

LAND TRANSACTION TAX AND ANTI-AVOIDANCE OF DEVOLVED TAXES (WALES) BILL

I hope you found the meeting helpful on 28 February on your Stage 2 amendments. Clearly, I welcome your interest in the function of the Bill, and I am very keen to help and support the Committee and stakeholders in any way possible.

I am writing to follow up on some of the specific points discussed by way of clarity and for future reference.

Amendment 79: Right to buy

During Stage 2 proceedings, you sought clarification on the Welsh Government's approach to repealing the right to buy relief (Schedule 14) if the National Assembly decides to abolish the right to buy in Wales.

I would like to make clear that I support the principle behind this amendment and agree that this relief will become unnecessary if the Assembly approves legislation abolishing the right to buy.

However, it would not be appropriate for the LTTA Bill to pre-suppose the outcome of the Assembly procedures in relation to a Bill that has not yet been introduced. Rather, it will be for the legislation abolishing the right to buy to provide for the repeal of this relief, in a way and at a time that is consistent with the other provisions of that legislation.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Amendment 47: Definition of “company”

Section 33 of the Bill defines *company* as meaning any body corporate or unincorporated association, but not including a partnership. This is consistent with Stamp Duty Land Tax (section 100 Finance Act 2003) and Land and Buildings Transaction Tax (see sections 44 and 65 of the Land and Buildings Transaction Tax (Scotland) Act 2013).

I can see that your amendment offered an alternative by referring to the definition of *company* in the Companies Act 2006. However, the definition of *company* in the LTTA Bill is wider than just those formed and registered under the Companies Act 2006. As discussed at Stage 2, the definition currently in the Bill captures unincorporated associations, such as sports clubs, and other body corporates (such as community councils) etc., that are not caught by the Companies Act definition.

A number of significant administrative difficulties would arise for taxpayers and the WRA if this amendment were taken forward. For example, any unincorporated association would need to include in its return for any land purchased a list of each and every member of the club as buyer. Alternatively, a trust deed would need to be established for a number of members to hold the land on trust for all of the other members of the club. It may also be necessary for those clubs to send in a return each time a member joins or leaves the club if there is any financial payment made to acquire, or for loss of, rights.

Taxpayers and stakeholders have consistently told us that we should ensure consistency with SDLT wherever possible. This is one area where I consider consistency is particularly important. Shifting the obligations from one identifiable individual within bodies not registered under the Companies Act to a number of individuals has real potential to cause confusion for taxpayers, create administrative difficulties for all, and ultimately increases the risk that the tax due will not be paid.

You also questioned during Stage 2 whether defining *company* in a way that was different from the Companies Act definition raised any concerns in relation to the Assembly's competence. I am satisfied that the current section 33 definition is within the Assembly's legislative competence. The relevant exception under the Government of Wales Act (GOWA) relates to the creation, operation, regulation and dissolution of types of business association (the Scotland Act 1998 contains a reservation in the same terms, see Schedule 4, Part II, Section C1). Section 33, however, simply defines *company* for the purposes of LTT, (as does section 100 of the Finance Act 2003 and sections 44 and 65 of the Land and Buildings Transaction Tax (Scotland) Act 2013)). It does not provide for the creation, operation, regulation or dissolution of types of business association, or impact in any way on the provisions of the Companies Act 2006.

Furthermore, section 108(4A) GOWA makes special provision in relation to devolved tax legislation, which allows the Assembly to legislate in relation to what would otherwise be excepted matters.

Amendment 41A: Married Couples and those in Civil Partnerships

I understand that the purpose of this amendment was to make clear that for the purposes of the higher rates, unmarried cohabiting couples should not be treated as married or in a civil partnership. This is currently the case under SDLT and the new Schedule 5 to the Bill (Higher Rates Residential Property Transactions) is consistent with Schedule 4ZA to the Finance Act 2003. In both cases, the references to spouses and civil partners exclude unmarried cohabitants. The practical consequence of this is that, unlike spouses and civil partners, unmarried cohabiting couples are not treated as a single person for the purposes of the application of the higher rates surcharge (i.e. an interest in a property held or acquired by one cohabitant is not treated as also being held or acquired by the other cohabitant).

We discussed the different approach taken in Scotland in this regard, where cohabitants are treated in the same way as spouses and civil partners for the purposes of transactions relating to second homes (see para. 6 of Schedule 2A to the Land and Buildings Transaction Tax (Scotland) Act 2013). Family law in Scotland differs from family law in Wales and England. Sections 25 to 29 of the Family Law (Scotland) Act 2006) recognise cohabitants and provide certain rights for cohabitants. There is currently no equivalent statutory provision in relation to Wales or England.

For the time being, however, the approach taken in the Bill is consistent with the UK approach under SDLT, and achieves the objective of your amendment.

I hope that you find this information useful, please contact me if there is anything further that you may find helpful to support this work.

Yours sincerely



Mark Drakeford AM/AC

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