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Finance Committee
National Assembly for Wales

Date: 5 October 2016

Your ref:

Our ref: [Redacted]

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Dear Sirs

Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

We welcome the opportunity to comment on the proposed introduction of Land Transaction Tax in Wales.

Eversheds is a leading international law firm. Through its offices in Callaghan Square in Cardiff, Eversheds offers a global legal service to its clients. This includes a real estate service which encompasses institutional, inward and property company investment mandates, multi jurisdictional portfolio management, energy related real estate projects and regeneration schemes. The real estate practice works closely with the Eversheds tax practice on SDLT and other tax aspects of such mandates, projects and schemes.

We have a number of general points on the draft Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill.

1. Stamp Duty Land Tax and Land Transaction Tax

Any arbitrary differences between stamp duty land tax ("SDLT") and Land Transaction Tax ("LTT") should be avoided, unless there are clear policy reasons why this should be the case. In practice, the same legal practitioners will be involved in land transactions in England and Wales, and so to avoid errors and inefficiencies, technical differences should be kept to a minimum where this is consistent with Welsh policy objectives.

2. Property Authorised Investment Funds

There is nothing in the draft Bill in relation to Property Authorised Investment Funds ("PAIFs"). These are open-ended investment companies of sub-funds of umbrella OEICs that are elected in to the PAIF regime in Pt 4A Authorised Investment Funds (Tax) Regulations 2006 (SI 2006/964). The SDLT rules have two reliefs.

The longstanding relief is for the conversion of existing authorised unit trusts invested in property to convert in to OEICs. Only OEICs qualify for PAIF status. Scotland failed to enact an equivalent Land and Buildings Transaction Tax ("LBTT") relief but this is included in the draft Bill for LTT.

The new relief for SDLT-free seeding by one or more initial investors which was introduced in the Finance Act 2016 does not however appear to have been included in the Bill. Basically one or more initial investors can transfer one or more

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properties in to a PAIF free of SDLT but there is a clawback of the unpaid SDLT if they sell within a three-year control period. The seeding relief should be considered for inclusion in the draft bill for LTT. The clawback provisions are not helpful and would be better not replicated.

3. Authorised Contractual Schemes in co-ownership form, sometimes abbreviated to CoACS.

There is nothing in the draft Bill in relation to Authorised Contractual Schemes ("ACS's"). These are the new contract-based collective investment schemes in s235A Financial Services and Markets Act 2000. They are tax-transparent pools of co-owned assets for tax purposes except where the tax legislation provides otherwise for them. There was no special SDLT regime for them until one was enacted in the Finance Act 2016. Until this was introduced, every time the numbers of units held by the unitholders changed, there was a proportionate change in the beneficial ownership of each of the underlying assets. Now the ACS is effectively treated as opaque for SDLT purposes so that the shifts in beneficial interests do not present SDLT problems (though they are still potentially chargeable transactions for LBTT so it is not normally possible for them to hold any Scottish property). It is important for the Welsh property market that there is a matching LTT system. Because the ACS is now effectively opaque for SDLT purposes, a seeding relief is now necessary, and so there is a matching seeding relief for ACSs in the Finance Act 2016 introduced alongside the PAIF seeding relief.

4. Filing and Payment Deadline

We understand there have been preliminary discussions around shortening the deadline for submitting returns and making payments of LTT to 14 days, although the draft Bill refers to the existing 30 day period. In our experience, 30 days is required for taxpayers to take advice, prepare returns and ensure these are approved by the correct personnel. This is particularly the case in complex transactions or where valuation advice is required. Any shortening of the period is likely to give rise to inaccuracies and increased compliance costs for taxpayers and the Welsh Revenues Agency.

5. Section 31 : targeted anti-avoidance rule

We understand why a targeted anti-avoidance rule may be considered. The rule applies to a "tax avoidance arrangement" if a tax advantage is a main purpose and the arrangement lacks genuine economic or commercial substance other than obtaining a tax advantage. We are concerned that this provision is of wide application applying not just to tax avoidance arrangements but to arrangements which have a tax advantage. If enacted in this form, clear guidance will be required on its interpretation and the arrangements which fall within its ambit and which arrangements do not, if uncertainty is to be avoided.

6. Section 65 : General anti-avoidance rule

The General Anti Avoidance Rule will apply to an "artificial tax avoidance arrangement" having regard to whether the arrangements gives rise to a tax result which it is reasonable to assume was not intended by the legislation. If enacted in this form, clear guidance will be required on the intent of any legislation, particularly where this differs from SDLT or LBTT, to enable taxpayers to apply the test objectively.

7. Higher rates for purchases of additional residential property

This is not in the draft Bill but is under consideration. As mentioned earlier arbitrary differences between SDLT and LTT should be avoided unless there are reasons for different policies in Wales. These provisions in relation to SDLT are not

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helpful to corporate investors in private rental accommodation, including funds whose investment in such accommodation may be deterred by the application of the higher rates for additional residential property. In particular for SDLT purposes where a claim for multiple dwellings relief ("MDR") is made on bulk purchases of private rental accommodation (six or more properties), the additional 3% rate applies. For LBTT in Scotland there is an exemption from the additional 3% rate in this situation. Which approach is appropriate depends on whether the policy is to deter institutional purchasers of residential property or not.

If you have any questions in relation to our comments, or would like to discuss any of the points raised, please contact David Jervis on 0113 200 4780 or at [REDACTED].

Yours faithfully

Eversheds LLP