



CONSULTATION ON THE PROPOSED LAND TRANSACTION TAX (LTT) SPECIAL TAX SITES RELIEF

Issued 9 February 2024

ICAEW welcomes the opportunity to comment on the Consultation on the proposed land transaction tax (LTT) special tax sites relief published by Welsh Government on 19 December 2023, a copy of which is available from this [link](#).

For questions on this response, please contact the ICAEW Tax Faculty at taxfac@icaew.com quoting REP 17/24.

ICAEW's primary concern is whether the legislation, as drafted, delivers the Welsh Government's intended outcome for full and partial relief.

This response of 9 February 2024 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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KEY POINTS

1. ICAEW notes that the Welsh Government's freeport model is designed to deliver three main objectives:
 - Promote regeneration and high quality job creation
 - Establish the freeports as national hubs for global trade and investment across the economy
 - Foster an innovative environment
2. In designing the LTT relief, the Welsh Government intends that the relief will differ from the equivalent stamp duty land tax (SDLT) relief in six areas. These differences are the focus of much of the consultation.
3. ICAEW's primary concern is whether the legislation, as drafted, delivers the Welsh Government's intended outcome for full and partial relief.
4. The decision to take a different approach is a policy matter for the Welsh Government. For alternative finance arrangements, the difference is because the responsibility for making a further return already differs from the SDLT rules.
5. Adopting a different policy to that in England creates scope for taxpayers to be confused about the extent to which relief will be available on the transaction land and responsibility for compliance. The extra complication of the proposed relief may discourage investment.

Welsh language considerations

6. ICAEW's Tax Faculty has not answered questions 24 and 25 as this is not within its area of expertise.

ANSWERS TO SPECIFIC QUESTIONS

Meaning of special tax site

Question 1 Do you agree that the provisions as drafted work as intended in defining the meaning of "special tax site", and that the definition will cover the freeport sites?

7. Agree.

Qualifying special tax site land

Question 2 Do you agree that the provisions as drafted clearly define the meaning of "qualifying special tax site land"?

8. Agree.

Question 3 Do you agree that LTT relief should only be claimed in relation to that land which is within the designated special tax site area?

9. Undecided.

If you disagree, please explain why?

10. This is a policy matter for the Welsh Government. However, ICAEW notes that by adopting a different policy to that in England, there is scope for taxpayers to be confused about the extent to which relief will be available on the transaction land. The extra complication of the proposed relief may discourage investment.

Question 4 Do you agree that paragraphs 6, 7 and 8 of the proposed Schedule 21A achieves the tax outcome as explained in paragraph 3.10 above? (3.10 says that The Welsh

Government is proposing that, in contrast to the SDLT relief available in England, that the LTT relief can only be claimed in relation to that land which is within the designated special tax site area.)

11. Agree.

Qualifying manner

Question 5 Do you agree that the provisions as drafted work in defining the meaning of “qualifying manner”?

12. Disagree.

If you disagree, please explain why the drafting does not provide an adequate definition and what amendments are required.

13. ICAEW is aware of a concern that forward funding arrangements may not qualify for relief because of the provision that land is not used in a qualifying manner if it is held (as stock of the business) for resale without development or redevelopment. Denying relief for forward funding arrangements may have the unintended consequence of deterring investment. This could undermine the overall policy aim of promoting long-term investment in underdeveloped tax sites.

14. The mixture of references to dwelling and residential property may also give rise to unintended consequences.

Relief for caretaker and security staff accommodation

Question 6 Do you agree to the provision of relief for caretaker and security staff accommodation in both the full and partial special tax site relief?

15. Undecided.

If you disagree, please explain why?

16. This is a policy matter for the Welsh Government. However, ICAEW notes that relief will only be withdrawn if the dwelling ceases to be used as caretaker or security staff accommodation within the three-year control period.

Question 7 Do you agree that the provisions as drafted provide for relief for caretaker and security staff accommodation as intended?

17. Disagree.

If you disagree, please explain why the drafting does not achieve the intended outcome and what amendments are required.

18. The Welsh Government intends that residential development of caretaker or security staff accommodation is considered incidental to the use for qualifying purposes and therefore qualifies for relief in both the full and partial relief.

19. However, as drafted, relief would be given even if the site where the individual is caretaker or security staff is outwith the special tax site. This is because the provision refers to any part of the transaction land rather than transaction land situated within the special tax site.

20. Further, does the Welsh Government intend that the caretaker/security staff accommodation and the site that they are caretaker/security staff of must be acquired in the same land transaction?

Ancillary land & commercial trade or profession

Question 8 Do you agree that the provisions as drafted work as intended in defining the meaning of “ancillary” and doing something “in the course of a commercial trade or profession”?

21. Agree.

Question 9 Do you agree that the provisions as drafted provide for relief for other land that is ancillary to the land used in a qualifying manner?

22. Agree.

Definition of ‘excluded rents’

Question 10 Do you agree that the provisions as drafted work as intended in defining the meaning of “excluded rents”?

23. Agree.

Question 11 Do you agree that the definition of “excluded rents” should be widened to include rents from a caravan site and the receipt of dividends from a REIT? Will the widening of the definition have any negative impact on the delivery of the special tax sites?

24. Undecided.

If you disagree, please explain?

25. The list of exclusions is derived from the real estate investment trust (REIT) legislation. The fundamental purpose of the REIT legislation is to allow collective investment in property rental, but for tax purposes treat the investors as if they hold the property directly. For the purposes of the REIT regime, it is therefore understandable that where income from the operation of a caravan site is treated as trading income, it should not then be treated as property income of the investor. The exclusion of dividends from a REIT was to prevent the need for complex legislation to ensure that the 90% distribution test and balance of business tests worked effectively.
26. ICAEW is concerned that adopting the Class 1 definition of a caravan site appears to only exclude caravan sites if the level of activities other than the letting of caravans and pitches amounts to a trade. Is that the intention of the Welsh Government?
27. As the exclusion of dividends from a REIT is about the funding of REITs, it is not clear why that would be relevant to this relief.

Question 12 Do you consider that the definition of “excluded rents” should also be widened to include income arising out of an interest in a limited liability partnership where section 1273(4) of CTA 2009 (winding up) (class 8 of section 605(2) CTA 2010) applies?

28. Undecided.

If you agree or disagree, please explain why?

29. As mentioned in response to question 11, the fundamental purpose of the REIT legislation is to allow collective investment in property rental, but for tax purposes treat the investors as if they hold the property directly.
30. Generally, interests held by a REIT in a partnership will be treated as tax transparent and potentially an asset of the property rental business. However, when a limited liability partnership (LLP) ceases to trade, it loses its ‘look-through’ treatment. This means that the treatment of an LLP as a property business will also cease.
31. By treating such an occasion as an excluded rent, that could trigger withdrawal of relief if the LLP ceases to trade within the control period. It is a policy matter for the Welsh Government to decide whether this should trigger such a charge.

Full relief

Question 13 Do you agree that the provisions as drafted achieve the policy intent of providing full relief for qualifying transactions only where all of the land is within the designated tax site and all of the chargeable consideration for that land is for land to be used in a qualifying manner?

32. Disagree.

If you disagree, please explain why the drafting does not achieve the intended outcome and what amendments are required.

33. No amendments are necessarily required, but ICAEW considers that the combination of para 6, para 8(2) and para 8(3) mean that full relief is available where all of the land is in a designated tax site and at least 90% of the consideration is attributable to land that the buyer intends to be used in a qualifying manner. This is in line with the Company C example in the consultation.

Partial relief

Question 14 Do you agree that the provisions as drafted achieve the policy intent for partial relief where less than 100% but more than 10% of the chargeable consideration for land within the designated special tax site is attributable to qualifying land?

34. Disagree.

If you disagree, please explain why the drafting does not achieve the intended outcome and what amendments are required.

35. ICAEW considers that paras, 6, 7 and para 8 do not quite meet the policy intent as described in the question above. ICAEW sets out examples below to demonstrate how it considers the draft legislation applies.

36. ICAEW considers the problem may arise because para 7 is not drafted by reference to the chargeable consideration for land within the designated special tax site. Paragraph 7 applies where the proportion of the chargeable consideration for a land transaction attributable to qualifying land is less than 100% but at least 10%.

37. If all of the transaction land is within a special tax site and more than 90% of that land is intended to be used in a qualifying manner, full relief is available.

38. However, even where more than 10% of the chargeable consideration for land within a designated special tax site is attributable to qualifying land, partial relief may not be available if the land transaction comprises land within and outwith a special tax site. See the company F example below.

Example – Company E

- a) Company E enters into a qualifying transaction with an effective date of 1 May 2025. Consideration given, on a just and reasonable basis, for land outwith the special tax site represents 30% of the total consideration given. 70% of the consideration given is for land within the special tax site. Of the consideration given for land within the special tax site, 90% is for land that company E intends to be used in a qualifying manner.
- b) Having established the consideration given for the land inside and outside the special tax site the consideration given for the land inside the special tax site is then considered to establish if any of the special rules at paragraph 8(3) or (4) of the proposed Schedule 21A apply. In this case paragraph 8(3) applies as at least 90% of the tax site consideration given is for land that company E intends to be used in a qualifying manner. This means that all the tax site consideration is treated as being attributable to qualifying land.
- c) The proportion of the chargeable consideration for the land transaction treated as attributable to qualifying land is therefore 70% of the consideration given for the land. If

the tax on the transaction is assumed to be £1,000,000, the amount of tax relief will be £1,000,000 x 0.7 = £700,000, leaving the taxpayer to pay £300,000.

- d) Company E must submit an LTT return including their claim to relief within 30 days beginning with the day after the effective date of the transaction, in this case, by 31 May 2025. Company E must also pay the LTT of £300,000 by the same date.

Example – Company F

- a) Company F enters into a qualifying transaction with an effective date of 1 May 2025. Consideration given, on a just and reasonable basis, for land outwith the special tax site represents 70% of the total consideration given. 30% of the consideration given is for land within the special tax site. Of the consideration given for land within the special tax site, 30% is for land that company F intends to be used in a qualifying manner.
- b) Having established the consideration given for the land inside and outside the special tax site the consideration given for the land inside the special tax site is then considered to establish if any of the special rules at paragraph 8(3) or (4) of the proposed Schedule 21A apply. In this case neither apply. Therefore only 9% of the chargeable consideration is attributable to qualifying land. Partial relief does not apply.
- c) Company F must submit an LTT return within 30 days beginning with the day after the effective date of the transaction, in this case, by 31 May 2025. Company F must also pay the LTT in full by the same date.

Question 15 Are there any other specific scenarios that you consider the Welsh Government should give partial relief?

39. No.

Land transactions including land within and outwith the designated tax site

Question 16 Do you agree that the provisions as drafted achieve the policy intent that land outside the special tax site will not receive any LTT relief?

40. Agree.

Question 17 Do you agree that the provisions as drafted achieve the policy intent that a claim to special tax site relief, where there is land within and outwith the special tax site, will provide a fair amount of partial relief?

41. Agree.

Alternative property finance arrangements

Question 18 Do you agree that the existing rules in relation to alternative finance arrangements and the withdrawal of the relief are suitable for the LTT special tax site relief?

42. Agree.

Claiming the relief

Question 19 Do you agree that the provisions as drafted achieve the policy intent and will enable taxpayers to claim special tax site relief?

43. Agree.

Disposal of substantially all of the economic interest of qualifying special tax site land during control period

Question 20 Do you consider that such a rule will be helpful in simplifying the obligations placed on taxpayers? Additionally, is the market value of £40,000 reasonable to achieve this simplification?

44. Agree.

Question 21 Do you consider that any avoidance opportunities will be created by the provision of this rule?

45. Undecided.

Cases where assignment of lease treated as grant of lease

Question 22 Do you agree that the assignment of a lease treated as a grant of lease rules should apply to the LTT special tax site relief as they do to other reliefs?

46. Agree.

Question 23 Do the draft regulations achieve the intended outcome that the special tax site relief is brought within the assignment of lease treated as grant of lease rules in a manner consistent with the other reliefs?

47. Yes.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).