



HM Treasury

Stamp Duty Land Tax:

consultation on the potential
impacts of devolving to the
National Assembly for Wales and
Welsh Government



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July 2013

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ISBN 978-1-909790-25-4

PU1550

Preface

Subject of this consultation:	Potential impacts of devolving Stamp Duty Land Tax (SDLT) to the National Assembly for Wales (the 'Assembly') and Welsh Government.
Scope of this consultation:	Following the publication of the first report of independent Commission on Devolution in Wales (the 'Silk' Commission) reviewing the case for the devolution of fiscal powers the Government wishes to consult with business on the potential impacts of devolving SDLT to the Assembly.
Who should read this:	Those working in the construction sector, businesses that are undertaking property investment or location decisions, and others involved in relevant sectors such as solicitors, conveyancers and estate agents on both the English and Welsh side of the border. Views from other interested parties are welcome.
Duration:	The consultation will run from 30 July to 10 September. This is shorter than the normal twelve week consultation period. The Silk Commission has already engaged with business on this subject, but the Government would like to hear direct from businesses and other stakeholders before making a decision.
Lead official:	Ashley Britten
How to respond or enquire about this consultation:	Stamp Duty Land Tax devolution consultation Enterprise and property tax team, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ sdltdevolutionconsultation@hmtreasury.gsi.gov.uk Please email ashley.britten@hmtreasury.gsi.gov.uk for enquiries about the content or scope of the consultation, information about consultation events etc.
Additional ways to be involved:	The Government will consider the need for additional events if there is sufficient demand.
After the consultation:	The Government will take responses to this consultation into account before making a final decision on whether SDLT should be devolved to the Assembly. This will be considered as part of the Government's response to the Silk report and not as an isolated decision.
Getting to this stage:	The Government established the 'Silk' Commission in October 2011 to review the present financial and constitutional arrangements. The Commission reported on the case for devolution of fiscal powers in November 2012, and recommended devolving SDLT.
Previous engagement:	The Silk Commission engaged with businesses on the case for devolving SDLT to Wales before making its recommendation. The Government would now like to hear directly from business on the potential impacts of devolution.

Contents

		Page
Chapter 1	Introduction	3
Chapter 2	Stamp Duty Land Tax	5
Chapter 3	The consultation process	11

1

Introduction

1.1 The Government established the independent Commission on Devolution in Wales (the ‘Silk’ Commission) in October 2011 to review the present financial and constitutional arrangements in Wales. The Commission is chaired by Paul Silk and includes representatives from all four political parties in the Assembly as well as independent members.

1.2 In November 2012, the Commission published its Part 1 report (Empowerment and Responsibility: Financial Powers to Strengthen Wales) considering how to improve the financial accountability of the Assembly and the Welsh Government, including the case for the devolution of fiscal powers.¹

1.3 The report contained 33 recommendations, including the recommendation that SDLT ‘should be devolved to the Welsh Government with Welsh Ministers given control over all aspects of the tax in Wales’.

1.4 After careful consideration of the Commission’s recommendations, the Government recognises that the financial accountability and autonomy of the Assembly would be enhanced if it were funded through a combination of block grant and tax revenues from Wales.

1.5 However, the Government wishes to consult with business on the potential impacts of devolving SDLT to the Assembly in advance of making a full response to all of the recommendations in the Commission’s first report.

1.6 While these issues have been looked at in some detail by both the Holtham² and Silk commissions, the Government would like to receive views directly from business on the potential impacts of devolving SDLT. In particular to understand:

- the potential impacts on the construction industry and the property market (including the housing market) given the populous border between Wales and England;
- the likely impact on investment and business location decisions that might result from different property transaction tax regimes in England and Wales; and
- the administrative burdens on companies and the conveyancing profession from having to comply with potentially different property transaction tax regimes and deal with different collection authorities in England and Wales.

1.7 Therefore the Government would particularly like to hear from businesses undertaking property investment and location decisions, those working in the construction sector and others involved in this sector such as solicitors, conveyancers and estate agents on both the English and Welsh side of the border.

¹ <http://commissionondevolutioninwales.independent.gov.uk/files/2013/01/English-WEB-main-report1.pdf>

² <http://wales.gov.uk/funding/financereform/report/fundingsettlement/?jsessionid=BC43ACA21DC5E02584E54F0647EDE13B?lang=en>

2

Stamp Duty Land Tax

2.1 SDLT is a tax payable on the purchase or transfer of property or land where the amount paid for that purchase or transfer is above a certain threshold. Box 2A below summarises how SDLT currently operates in the United Kingdom.

Box 2.A: Stamp Duty Land Tax

Table 1: Residential property SDLT rates and thresholds

Purchase price/lease premium	Rate of stamp duty land tax (per cent)
Under £125,000	Zero
Over £125,000 to £250,000	1
Over £250,000 to £500,000	3
Over £500,000 to £1 million	4
Over £1 million to £2 million	5
Over £2 million	7
Over £2 million if purchased by certain non-natural persons including companies	15

Table 2: Non-residential property SDLT rates and thresholds (including transactions involving a mixture of residential and non-residential property)

Purchase price/lease premium	Rate of stamp duty land tax (per cent)
Up to £150,000	Zero*
Over £150,000 to £250,000	1
Over £250,000 to £500,000	3
Over £500,000	4

* tax is charged on a non-residential lease premium at 1% if the annual rent under the lease is £1,000 or more.

On the grant of a new lease, tax is charged on the net present value of the rent due under the lease at 1 per cent of the excess over the 0 per cent threshold.

There are a number of reliefs and exemptions from SDLT, including for charities, registered social landlords, right to buy properties, and upon the purchase of multiple dwellings.

Devolution

2.2 The Silk Commission observed that as most housing policy is devolved to Wales, there could be a potential policy rationale for SDLT to be devolved. It goes on to say, 'The Welsh Government could design SDLT to fit Welsh housing and economic circumstances. It could also take account of other specific Welsh concerns in designing SDLT by changing the existing reliefs and exemptions that currently apply across the United Kingdom as a whole, subject to any state aid restrictions'.¹

2.3 Devolving any tax power must satisfy the criteria set out in the European Court of Justice (ECJ) decision on the 'Azores Case' (see Box 2.B), in order to be compliant with EU law.

Box 2.B: The Azores criteria

The following criteria would need to be met for regional differences in direct taxation not to involve State aid:

- the decision to introduce the regional difference in direct taxation must have been taken by the region which has a political and administrative status separate from that of the central government (institutional autonomy);
- the decision must have been adopted without the central government being able directly to intervene as regards its content (procedural autonomy); and
- the full fiscal consequences of a reduction of the national tax rate for undertakings in the region must not be offset by aid or subsidies from other regions or central government (fiscal autonomy).

2.4 Notably, in order to meet the fiscal autonomy condition, the Welsh block grant would need to be adjusted to reflect the potential revenues forfeited by the UK Government following devolution. The Welsh Government would need to bear the full fiscal consequences of changes in tax revenues resulting from any policy decisions that they made about rates or tax base.

2.5 The passing of the Scotland Act 2012 means that Scottish Ministers have the powers to administer certain taxes on property and land transactions. The Scottish Government has decided to replace the UK SDLT regime with the Land and Building Transactions Tax which will operate solely in Scotland. It is intended that this will come into effect by 1 April 2015. The Scottish block grant will be adjusted from 2015-16 onwards to reflect the devolved tax regime.

The England/Wales border

2.6 The border area between England and Wales is relatively densely populated, and there are strong economic links (particularly in the Cardiff-Bristol corridor and between Wrexham, Deeside and Chester). This could lead to potential economic distortions with consequences for businesses and individuals through change to the construction market and on property prices.

2.7 Table 2.A below reflects information from the Holtham Report and shows that 48.8 per cent of the Welsh population and 9.5 per cent of the English population live within 25 miles of the border.

¹ <http://commissionondevolutioninwales.independent.gov.uk/files/2013/01/English-WEB-main-report1.pdf> para 4.2.22

Table 2.A: Population distribution near the England/Wales border

	Population in Wales	Population in England
Total	2,993,000	51,446,000
Within 25 miles of the border	1,439,000	4,865,000
<i>as percentage of total</i>	48.1	9.5

Source: Holtham Report

2.8 In comparison, 3.7 per cent of Scotland's population and 0.5 per cent of England's population live within 25 miles of the England-Scotland border, which equates to almost half a million people in aggregate. While that is a significant number, the greater population density along the England-Wales border suggests that any economic distortion resulting from devolution of SDLT could be greater in Wales than in Scotland.

SDLT receipts in Wales

2.9 UK SDLT receipts have tended to be volatile, falling from £9,960 million in 2007-08 to £4,795 million in 2008-09 and rising again to £6,130 million in 2011-12. Receipts are largely correlated with the performance of the housing market.

Table 2.B: SDLT receipts in Wales and the UK

SDLT Receipts £m	2007-08	2008-09	2009-10	2010-11	2011-12
Wales	210	115	100	115	125
UK	9,960	4,795	4,885	5,980	6,130

Source: HMRC

2.10 In recent years, SDLT has raised between £100 million and £210 million annually in Wales. This equates to around 2 per cent of total UK receipts and shows similar volatility. This volatility means the Welsh Government would be giving up a relatively stable income in exchange for a less predictable revenue stream. The Silk Commission has made a number of recommendations as to how the volatility arising from tax devolution could be managed effectively. The Government will address those recommendations as part of its full response to the Silk report.

2.11 The table below shows that 2.2 per cent of UK SDLT transactions in 2011-12 (generating £90 million or 1.5 per cent of UK SDLT receipts) took place in the parliamentary constituencies along the border. Border transactions in Welsh constituencies are estimated to account for around £20 million or around 15 per cent of total SDLT receipts from Wales.

Table 2.C: 2011-12 SDLT receipts and transactions in the border region

	SDLT receipts 2011-12 (£m)			Number of transactions 2011-12		
	Total	Residential	Non-residential	Total	Residential	Non-residential
Total E&W	5,825	4,050	1,770	912,135	823,675	88,455
Border Constituencies	90	59	31	20,213	17,846	2,367
As percentage of total	1.5	1.5	1.8	2.2	2.2	2.7

Source: HMRC

2.12 Changes in the SDLT yield in Wales and the UK have been broadly aligned, for example yields in Wales and UK were both 40 per cent lower in 2011-12 than 2007-08. Receipts from

residential SDLT, which accounts for the majority of the transactions, have shown growth of 60 per cent both in Wales and the UK over the decade from 2001-02 to 2011-12.

2.13 ONS regional house price statistics show that between 1992 and Q1 2013, house prices in Wales have risen by 5.9 per cent per year compared with 6.8 per cent across the UK as a whole. This difference is part driven by the performance of the property market in London and the South East.

Potential effects of devolution

2.14 In the event that SDLT were devolved to Wales, the effects would ultimately depend on decisions taken by the Welsh Government about any replacement. These changes could result in both positive and negative effects for individuals or businesses. The Welsh Government could choose to introduce a similar regime and amend the rates or they could also change the existing tax base, for example by amending tax reliefs.

2.15 Differential SDLT rates across the border would have an impact on property values, and could create distortions in the housing market. People and businesses could choose economically sub-optimal locations simply to reduce their tax bill. However, it is difficult to determine what that impact might be and to a large extent it would depend on how much rates differed.

Residential

2.16 Changes in property taxation are often capitalised into the value of that property. If tax rates are increased, the market price of the property generally falls (and vice versa). Devolving SDLT might therefore be likely to lead to higher relative house prices where rates of transaction tax are lower (and vice versa).

2.17 There are also other considerations that purchasers take into account when buying a property. Council Tax rates already vary widely between neighbouring authorities in both England and Wales. Other factors could include the quality of local services and the future market potential.

2.18 Different property transaction taxes in England and Wales influence property purchase decisions and this could influence the construction industry. Other factors could also be considered when deciding on development, including planning conditions, build costs as well as the local tax regime when deciding on development.

2.19 If SDLT is devolved, the Assembly could decide to replace the UK SDLT regime with a new tax relating to land and property in Wales, and potentially apply differential tax rates to different kinds of residential property transactions. For example there could be different rates for purchases of second homes compared to homes for permanent habitation, or new build homes and existing dwellings could be subject to different tax treatment.

Commercial

2.20 In 2011-12 non-residential SDLT accounted for only 11 per cent of total transactions in England and Wales but accounted for 30 per cent of receipts.

2.21 Differences in tax rates might affect where businesses choose to locate. There may be a slightly stronger impact on large businesses, as high value transactions will see proportionately larger gains or losses from different tax rates.

2.22 SDLT would be only one factor to consider alongside others, such as proximity to customers, the local skills base or infrastructure. Control of non-domestic rates in Wales (which

is a significant business tax) is already largely a devolved matter. Differences in SDLT tax regimes are therefore more likely to be an issue for businesses choosing to locate near the border rather than more widely unless tax differentials are substantial.

Administration

2.23 Most of the administrative burden of SDLT is borne by the conveyancing profession, although any additional costs are likely to be passed through to businesses and individuals using their services.

2.24 There could potentially be administrative costs for businesses that operate on both sides of the border, in order to familiarise themselves with new processes and a second tax regime. There may also be costs and additional administrative burdens involved in companies having to deal with two different tax institutions. However, the scale would depend to some extent on how and by whom the tax is administered, which would be a decision for the Welsh Government, should devolution proceed.

2.25 An individual purchase of a single residential or non-residential property is very likely to fall within one regime or the other. However, as there is no separate land registration in England and Wales, it is possible for land which straddles the England/Wales border to be registered at the Land Registry under a single title. Although unlikely this could lead to circumstances where a transaction has to be apportioned between the two different SDLT regimes.

Other impacts

2.26 The Government does not believe devolution of SDLT in itself would have specific equalities impacts or impacts on civil society organisations beyond those highlighted already in this consultation. However, if respondents know of any particular impacts that we have not covered in this document please include these in your responses.

Questions

Question 1: How significant would the potential positive or negative impacts be on the construction industry and housing market?

Question 2: What would be the likely impact on investment and business location decisions that might result from different property transaction tax regimes in England and Wales?

Question 3: How significant would the potential administrative burdens be if there were different property transaction regimes and collection authorities in England and Wales?

Question 4: What impacts would devolving SDLT have on the Welsh and English economies, particularly in border areas, and what would be the extent of those impacts?

3

The consultation process

3.1 This consultation is being conducted in line with the Tax Consultation Framework. There are five stages to tax policy development:

- Stage 1 – Setting out objectives and identifying options
- Stage 2 – Determining the best option and developing a framework for implementation including detailed policy design
- Stage 3 – Drafting legislation to effect the proposed change
- Stage 4 – Implementing and monitoring the change
- Stage 5 – Reviewing and evaluating the change

3.2 This consultation is taking place broadly between stages 1 and 2 of the process. The purpose of the consultation is to seek views from business on the potential impacts of devolving SDLT to the Assembly. Government will then make a final decision when it responds to the recommendations of Part 1 of the Silk Commission.

How to respond

3.3 Responses should be sent by 10 September, by email to sdltdedevolutionconsultation@hmtreasury.gsi.gov.uk.

Or by post to Stamp duty land tax devolution consultation, Enterprise and property tax team, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ.

Telephone enquiries 0207 270 5000 (from a text phone prefix this number with 18001).

3.4 Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from the HM Treasury website. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

3.5 When responding please say if you are a business, individual or representative body. In the case of representative bodies, please provide information on the number and nature of people you represent.

Confidentiality

3.6 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1988 (DPA) and the Environmental Information Regulations 2004.

3.7 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it

would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

3.8 HM Treasury will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

3.9 This consultation is being run in accordance with the Government's Consultation Principles. The Silk Commission engaged with businesses on the case for devolving Stamp Duty Land Tax to the Assembly before making its recommendation. The Government would now like to hear directly from business on the potential impacts of devolution.

3.10 The Consultation Principles are available on the Cabinet Office website:
<https://www.gov.uk/government/publications/consultation-principles-guidance>.

3.11 If you have any comments or complaints about the consultation process please contact: Amy Burgess, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk Please do not send responses to the consultation to this address.

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ISBN 978-1-909790-25-4



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