

LAND TRANSACTION TAX AND ANTI-AVOIDANCE OF DEVOLVED TAXES (WALES) ACT 2017

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Calculation of Tax and Reliefs

Sections 24–29 - Calculation of tax

35. This Act does not set out the tax rates and tax bands for LTT but makes provision for the Welsh Ministers to specify tax bands and the percentage tax rate for each band through regulations. Regulations must specify the tax bands and tax rates for residential and non-residential property transactions, and higher rates residential property transactions. The regulations must specify a zero rate band and at least two tax bands above the zero rate band, together with the tax rate for each such band for residential and non-residential property transactions. The regulations must also specify, in relation to higher rates residential property transactions, three or more tax bands which must be progressive in nature and higher than would be applicable were the transaction a residential property transaction.
36. The first set of regulations made under section 24 are subject to the affirmative procedure. Subsequent changes to the rates and bands are given effect through further regulations, which are subject to the provisional affirmative procedure. Changes which are made to tax rates and tax bands by those regulations will only have effect for 28 days (as defined by section 25(2)) unless the regulations are approved by a resolution of the National Assembly for Wales within that period. If the National Assembly for Wales resolves to disapprove those regulations within that period, the regulations will cease to have effect on the day on which the National Assembly for Wales resolves to disapprove them.
37. The regulations setting the rates and bands for residential, higher rates residential and non-residential property transactions may be used to set different rates and bands in relation to different categories of transaction, and different rates and bands for different types of buyer (for example, companies). These rules provide the Welsh Ministers with the power to use rates and bands in a flexible manner to respond to changes in the property market and behaviours of buyers, subject to compliance with other legal obligations.
38. [Section 24](#) also introduces Schedule 5 which contains the rules for higher rates residential property transactions.
39. [Section 26](#) deals with the consequences of regulations ceasing to have effect as a result of section 25(2) or (3). In these cases, subsection (2) provides the general rule that the rates and bands applicable to transactions where the effective date falls within the period between the regulations taking effect and subsequently falling are those specified in

the regulations that fall (the “interim regulations”). If this results in the buyer paying more LTT than under the original tax bands and rates then a claim for repayment may be submitted under section 63A of TCMA (inserted by Schedule 23 of this Act - see paragraph 426 of these explanatory notes). However, the general rule provided by subsection (2) does not apply where the transaction falls within subsection (4), (5) or (6). These include cases where the effective date falls within the interim period, but the buyer fails to submit a return, or submits a late return after the interim regulations have fallen, or where a further or later return is required after the interim regulations have fallen. In these cases, the rates and bands applicable are those specified in the regulations that would have been in force had the interim regulations not been laid.

40. [Section 27](#) sets out how to calculate the amount of tax chargeable for a land transaction which is not one of a number of “linked transactions” so that each rate of tax is payable on the portion of the chargeable consideration falling within the relevant tax band.
41. If the transaction is one of a number of linked transactions, section 28 applies. In these cases, the amount of tax due for a transaction is calculated by applying each rate of tax to the aggregate chargeable consideration for all the linked transactions, and then dividing the resulting amount to the transaction in proportion to its share of the relevant consideration.
42. In any case where the amount of tax chargeable relates to rent, the provisions of Schedule 6 apply.
43. [Section 29](#) identifies certain relief provisions to which the general calculation of LTT provisions are subject.

Sections 30–31 - Reliefs

44. [Section 30](#) introduces Schedules 9 – 22 which make provision about reliefs that can be claimed in respect of certain transactions normally liable to LTT. The section is divided into those reliefs that provide 100% relief from charge to LTT and those where partial relief is provided or where relief is provided by LTT being calculated in a different manner or at a different rate to that which normally applies. Reliefs are not applied automatically but must be claimed through a tax return or amendment to such a return. The Welsh Ministers may by regulations add, modify or remove reliefs and also may amend section 31.
45. [Section 31](#) provides a targeted anti-avoidance rule that applies to all claims for relief made by a buyer. The rule operates so that a buyer cannot claim relief where the transaction is, or is part of, a “tax avoidance arrangement”. A tax avoidance arrangement is defined as an arrangement where the obtaining of a “tax advantage” by any person was the main or one of the main purposes of the arrangement, and the arrangement lacks a genuine economic or commercial main purpose (other than the obtaining of a tax advantage).
46. “Arrangements” has been defined by subsection (3) to include any transaction, scheme, agreement, understanding, promise or any series of such arrangements. Subsection (3) also defines “tax advantage” to capture (among other things) situations where a person gains a financial advantage through the claim to relief. This is intended to apply to cases where relief is claimed in circumstances where it is not the intention of the National Assembly for Wales that relief should be given. Therefore, in situations where a transaction is structured in a manner that complies with generally prevailing practice and the buyer claims relief as intended then that claim will not fall within the scope of this anti-avoidance rule. However, where additional arrangements or steps are entered into solely to create a situation in which the conditions for claiming a relief are met then the claim will fall within these provisions and should not be made. Whether an arrangement has a genuine economic or commercial main purpose will, ultimately, depend on the facts of the transaction. However, the rule should not prohibit a claim for relief by a charity where it acquires a property for charitable purposes (for example

These notes refer to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (c.1) which received Royal Assent on 24 May 2017

housing people in accordance with the charity's charitable purposes) as, whilst there may not be a commercial reason to the acquisition, there is an economic purpose as the charity has exchanged cash for a physical asset – the property – with which to further its charitable purposes.

47. “Tax” for the purposes this section is wider than just LTT, and includes some taxes imposed at a UK level as well (e.g. corporation tax). This ensures that where a Welsh land transaction is entered into (and for which relief would otherwise be allowable) relief from LTT cannot be claimed if the land transaction forms part of arrangements to avoid that other tax, or taxes. Prohibiting the claim for relief from LTT in these circumstances is without prejudice to any action HMRC might take to recover the non-devolved tax that has been avoided.
48. The Welsh Ministers are provided with the power to amend this section (as part of the powers provided by section 30(6)) so as to change the operation and scope of the anti-avoidance rule.