

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 – Interpretation and Final Provisions

Schedule 6 - Leases

Part 2 - Duration of lease and treatment of overlapping leases

Leases for a fixed term

231. [Paragraph 2](#) provides that the Act applies to a lease for a fixed term so that any clause in that lease which might mean it is terminated early is ignored.

Leases that continue after a fixed period

232. [Paragraph 3](#) provides that when a lease for a fixed term reaches its contractual termination date (“CTD”) and the tenant remains in occupation that the lease is treated as though it was for a year longer than the original fixed term. The buyer must make a return for this additional year, in the event that there is more tax payable or that tax becomes payable, before the end of 30 days beginning with the day after the end of that additional 12 month period.
233. In the event that there is a further extension then the original lease is to be treated as extended by another year (so, 2 years) and so on. The filing date for the return is, again, before the end of 30 days beginning with the day after the end of that two year extension period. However, if the lease terminates early during any deemed extension, it’s treated accordingly for LTT (again, with a further return obligation arising if more tax is due).
234. These rules are subject to paragraphs 4 and 8 of this Schedule which provide for specific rules in specific circumstances.

Leases that continue after a fixed term: grant of a new lease

235. [Paragraph 4](#) applies where a lease (the “original lease”) is deemed to have continued after the CTD for another year (or subsequent additional year) and that during that period a new lease is granted to the tenant of the same (or substantially the same) premises, and the new lease begins during that period (and is not backdated).
236. In these circumstances the rules in paragraph 3 do not apply to the final additional term. Instead, the term of the new lease is treated as commencing on the day after the CTD of the original lease (or its anniversary, if the extension was for more than one year).

237. Any rent that was payable under the original lease for this period is to be treated as rent payable under the new lease.

Leases for an indefinite term

238. [Paragraph 5](#) contains the rules for the treatment of leases that are granted for an indefinite term. When initially granted the lease is to be treated as though it had been granted for a fixed term of a year, and a return is due accordingly 30 days later. If the tenant is still in occupation after the end of that year then they are to be treated as though the lease is for a fixed period of 2 years and so on.
239. If (more) tax becomes payable, a return must be made before the end of 30 days beginning with the day after the end of each deemed longer fixed period. However, if the lease for an indefinite period terminates in the first year then the buyer can, exceptionally, amend their return to reflect rent which was actually paid or payable for the period (sub-paragraph 5(6)). The return can only be amended within the normal time limit for making an amendment, i.e. within 12 months of the filing date of the original return.
240. Where the lease terminates in the second, or subsequent, year then the rules similar to those for leases that continue after a fixed term apply. A return will be required to be made before the end of 30 days beginning with the day after the date that the lease terminates (sub-paragraphs 5(2) and 5(5)).

Successive linked leases

241. [Paragraph 6](#) provides that a series of linked leases are treated as a single lease for LTT purposes. This will ensure that LTT cannot be avoided by a buyer entering into a series of short leases, where the commercial reality is that a single, longer lease has been agreed from the outset. However, where a lease is renewed on terms that would be available to a third party then that lease will not, normally, be treated as linked for these purposes.

Rent for overlap period in case of grant of further lease

242. [Paragraph 7](#) applies where a tenant surrenders a lease (the “old lease”) and the landlord grants the tenant a new lease for the same or substantially the same property, or in other specified, similar circumstances the tenant obtains a new lease of the same or substantially the same property.
243. In these cases the rent payable under the new lease is treated as reduced by the rent that would have been payable under the old lease. This rule is provided so as to ensure that a buyer does not pay tax on the same amounts of rent under both the old and the new leases.

Tenant holding over: new lease backdated to previous year

244. [Paragraph 8](#) provides rules for a specific case where a renewed lease is backdated, and gives “overlap relief”. When a fixed term lease continues after its CTD (this period is known as “holdover”), is renewed, and the new lease backdated to a date within the final year of holdover, paragraph 4 will apply. However, where holdover lasts more than one year, and the new lease is backdated to a day during holdover other than in its final year (i.e. during the “whole years of holdover”) paragraph 8 will apply.
245. Where the conditions in sub-paragraph 8(1) are met then the new lease is treated as though it commenced on the date that it is expressed to have commenced (i.e. the date stated in the lease). However, the rent payable under the new lease in respect of the “whole years of holdover” is reduced by the amount of rent payable for that same period under the old lease (as extended during holdover, and described as the “holdover tenancy” in this provision). This reduction cannot, though, create a negative amount.