

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

229. [Schedule 6](#) contains the rules for how the rents paid on the grant of a lease are to be taxed.
230. There are a number of changes from the SDLT rules to improve the operation of the rules and to provide consistency of treatment for the different situations that can arise for tenants. These provisions, unlike SDLT, do not tax the rent paid on the grant of a residential lease. However, the Welsh Ministers do have a power to introduce a tax on rent paid on these types of leases in the future if they consider it necessary (see paragraph 27 of Schedule 6).

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.

Part 3 - Rent and other consideration

Rent

246. [Paragraph 9](#) defines rent for the purposes of the Act so that a sum payable in respect of rent is treated as such even if it is said to include other matters (such as service charges) unless these are separately identified. “Rent” does not include any amount that is paid for the grant of the lease.

Variable or uncertain rent

247. Where rent is variable or uncertain, paragraph 10 applies. The rules provide that the buyer must make their return with the amount of rents based on an estimate as to what the amount of rent will be during the first 5 years of the lease. For the subsequent years of the lease (if it has been granted for a period of longer than five years) the rent payable is assumed to equal the highest amount paid in any period of 12 consecutive months in the first 5 years. No account is taken for changes in rent which are purely in line with inflation.

First rent review in final quarter of fifth year

248. [Paragraph 11](#) provides that where the lease provides for a review of the rents to be carried out but that review commences in the final three months of the first 5 years of the lease, the review is ignored for LTT purposes.

Adjustment of tax where rent determined on reconsideration date

249. [Paragraph 12](#) provides that a buyer must reassess their LTT liability on the “reconsideration date” if their original return was made on the basis of contingent, uncertain or unascertained rents for the first 5 years of the lease.
250. The reconsideration date is defined as a date falling at the end of the fifth year of the lease or any earlier date at which the rents become certain. The rents become certain when either the contingency occurs (or it is clear that it will not occur) or the amount of rent becomes ascertained.

Underpayment of tax where rent determined on reconsideration date

251. [Paragraph 13](#) provides the rules for when reconsideration under paragraph 12 results in an underpayment, or makes the transaction notifiable. The buyer must make any return before the end of 30 days beginning with the reconsideration date.
252. However, where the rent remains uncertain at the end of the fifth year, then the buyer must make a return to their best judgement, and if within 12 months of that date the rents cease to be uncertain then the buyer must amend that return accordingly.

Overpayment of tax where rent determined on reconsideration date

253. [Paragraph 14](#) provides for where the reconsideration under paragraph 12 establishes that there has been an overpayment of tax. Where this occurs the buyer can amend their

return, if they are within the normal 12 month period. Otherwise, the buyer can make a repayment claim from WRA.

Reverse premiums

254. [Paragraph 15](#) provides that a reverse premium is not treated as chargeable consideration. A reverse premium is defined as one where the premium is paid by the landlord or the assignor, or on the surrender of a lease by the tenant.

Tenant's obligations etc. that do not count as chargeable consideration

255. [Paragraph 16](#) provides that a number of obligations, for example an undertaking by the tenant to repair and maintain the property subject to the lease, are not to be treated as consideration given for the granting of the lease. Additionally, where the tenant pays an amount to discharge such an obligation then that payment is similarly not treated as chargeable consideration.

Surrender of existing lease in return for new lease

256. [Paragraph 17](#) applies where a tenant surrenders an old lease as consideration for a new lease, and the parties remain the same. The surrender is not treated as chargeable consideration for the grant, and vice versa.

Assignment of lease: assumption of obligation by assignee

257. [Paragraph 18](#) provides that where a lease is assigned the assumption of the obligation to make rent payments or comply with any other obligations of the lease do not count as consideration for the assignment.

Loan or deposit in connection with grant or assignment of lease

258. [Paragraph 19](#) applies where a tenant (or a person connected to them) pays a deposit or loan to any person, and the tenant has some control over whether repayment will occur (or repayment is contingent on the tenant's death). In such a case, the deposit or loan is treated as consideration other than rent given for the lease. The same rule also applies where the deposit or loan is paid for the assignment of a lease.
259. However, a deposit that equals no more than twice the maximum amount of rent payable in any 12 month period in the first 5 years on the grant of the lease, or the highest amount in any 12 month period in the first 5 years of the remaining years of the lease in the case of an assignment does not count as consideration.

Part 4 - Agreements for lease, assignments and variations

Agreement to lease

260. [Paragraph 20](#) provides the rules for where there has been an agreement to lease and that agreement has been substantially performed without the lease having been executed.
261. Where the agreement to lease has been substantially performed the agreement is treated as a notional lease with the effective date of the transaction being the date of substantial performance. If an actual lease is subsequently granted then the notional lease and the actual lease are treated as forming a single lease, with the consideration given for both charged to tax accordingly.
262. The actual grant of the lease is disregarded except for its effect under the linked transaction rules.

Assignment of agreement for lease

263. [Paragraph 21](#) makes special provision to ensure paragraph 20 still gives the right effect where an interest as tenant under an agreement for lease is assigned.

Cases where assignment of lease treated as grant of lease

264. [Paragraph 22](#) provides for cases where the assignment of a lease is to be treated as a grant, to address possible tax avoidance activity. Where a lease has been granted and specified reliefs applied, then (unless those reliefs had already been withdrawn) the first assignment to which the specified reliefs do not apply is treated as a grant of a lease. The lease is treated as granted for a period that represents the remaining unexpired term of the lease at the date of assignment.

Assignment of lease

265. [Paragraph 23](#) applies where a lease is assigned. Where specified obligations would require the person initially granted the lease to make a return or further return, those obligations pass to the assignee.

Reduction of rent or term or other variation of lease

266. [Paragraph 24](#) provides for cases where a lease is varied so that the amount of rent reduces, or the lease is otherwise varied (other than an extension of the term or an increase in the rent payable). In such cases the variation is treated as a land transaction on which LTT is potentially payable by the tenant. Where the variation is that the term of the lease is reduced this is treated as an acquisition of a chargeable interest by the landlord and LTT may be payable.

Increase of rent treated as grant of new lease: variation of lease in first 5 years

267. [Paragraph 25](#) provides for situations where the lease is varied so as to increase the rents payable, and that variation occurs before the end of the fifth year of the lease. The variation is treated as the grant of a lease in consideration for the additional rents. However, this does not apply if the variation is under the original terms of the lease, or by virtue of specified statutory rules.

Part 5 - Calculation of tax chargeable

Residential leases, non-residential leases and mixed leases

268. [Paragraph 26](#) defines an acquisition of residential, non-residential and mixed leases.

No tax chargeable in respect of rent: residential leases

269. [Paragraph 27](#) provides that the rents paid under a residential lease are not chargeable to LTT. Any other consideration that is not rent remains chargeable under the normal rules. A regulation making power is provided so that the Welsh Ministers can make such rents chargeable to the tax. Further powers are provided so that the Welsh Ministers can set the initial and subsequent rates and bands which would apply should they bring such rents within the tax.

Tax rates and bands: rent element of non-residential and mixed leases

270. [Paragraph 28](#) provides the Welsh Ministers with regulation making powers so that they can set the initial and subsequent rates of tax and the bands that are to apply to rents paid under non-residential and mixed leases. The rates and bands must include a zero rate band, the other bands and rates above the zero rate band, and also the date on which those rates and bands are to apply.

Calculation of tax chargeable in respect of rent: non-residential and mixed leases

271. [Paragraph 29](#) provides the steps to be taken to calculate the charge to tax by applying the rate of tax to the amount of consideration that falls within a particular tax band, and then adding those different amounts together.

Calculation of tax chargeable in respect of rent: linked transactions

272. [Paragraph 30](#) provides calculation rules where the transaction is linked to one or more other transactions.

Net present value

273. [Paragraph 31](#) provides the formula for establishing the net present value of future years rent payments. This ensures that rent payments for future years are taxed at an amount that represents the value of that payment at the effective date of the transaction.

Temporal discount rate

274. [Paragraph 32](#) sets the temporal discount rate to be used in the net present value formula. It is set at 3.5% and can be varied by the Welsh Ministers through regulations.

Tax chargeable in respect of consideration other than rent: general

275. [Paragraph 33](#) confirms that consideration other than rent is taxed under the provisions of the Act, and that tax charged under this Schedule is in addition to the tax calculated under the other provisions.

Tax chargeable in respect of consideration other than rent: mixed leases

276. [Paragraph 35](#) provides for consideration other than rent for a mixed lease to be split on a just and reasonable basis between residential and non-residential property and that those two notional transactions are to be treated as linked transactions.

Relevant rent

277. [Paragraph 36](#) provides definitions for “the relevant rent”, “the specified amount” and “annual rent”. The Welsh Ministers are able to make regulations to amend or repeal paragraphs 34 to 36 of this Schedule. Any regulations made under this paragraph will be subject to the affirmative procedure.