

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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 8 – Interpretation and Final Provisions**

#### *Schedule 5 - Higher rates residential property transactions*

#### **Part 2: Buyer is an individual: single dwelling transactions**

#### **Higher rates residential property transactions**

194. [Part 2](#) sets out when a chargeable transaction undertaken by an individual and involving a single dwelling is a "higher rates residential property transaction". For a transaction to be a "higher rates residential property transaction" it must be within paragraph 3(2) and within paragraph 5.
195. [Paragraph 3](#) specifies that a transaction is a higher rates residential property transaction when the buyer is an individual; the main subject-matter of the transaction consists of a major interest in a dwelling; and the chargeable consideration for the transaction is £40,000 or more. However, a transaction which meets the criteria in this paragraph is not a higher rates residential property transaction, if at the end of the day of the effective date of the transaction, the dwelling acquired is subject to a lease (which is held by someone unconnected to the buyer and which has an unexpired term of more than 21 years) and the main subject matter of the transaction is reversionary on that lease, namely that the interest acquired by the buyer will be held subject to that lease. Further exceptions to what comprises a higher rates residential property transaction are listed at paragraph 3(5), namely the "interest in same dwelling exception" and the "replacement of main residence exception" which are set out in paragraphs 7 and 8 of the schedule respectively.
196. [Paragraph 4](#) specifies that "intermediate transactions" (set out in paragraph 9) are also higher rates residential property transactions.

#### **Buyer has a major interest in other dwelling**

197. [Paragraph 5](#) states that where a buyer already owns a dwelling and this dwelling has a market value of £40,000 or more, it is to be taken into account for determining whether the new transaction is a higher rates residential property transaction. However, paragraph 5 is to be disregarded where the interest is reversionary on a lease which is held by an unconnected person to the buyer and has an unexpired term of more than 21 years.

198. Paragraphs 5(3)-(6) set out how the values of the respective beneficial shares of a dwelling already owned by a buyer are to be determined where the property is held jointly and consequently there is more than one person with a beneficial interest. It clarifies that the value of the buyer's interest is based on their individual beneficial interest rather than the value of the whole of the major interest in any residential properties already owned. If the buyer is married or in a civil partnership their beneficial interest will be aggregated with that of their spouse or civil partner unless they are not living together as defined by paragraph 25(3).

### **Two or more buyers**

199. Paragraph 6 sets out that where the transaction involves more than one buyer, all of whom are individuals, the transaction is a higher rates residential property transaction if the transaction meets the conditions set out in paragraph 3 in respect of any one of the buyers. Intermediate transactions (see paragraph 9) are also higher rates residential property transactions where the conditions set out in paragraph 9 apply in respect of any one of the buyers.

### **Interest in same main residence exception**

200. Paragraph 7 provides for an exception where the buyer is acquiring an additional interest in their only or main residence. This will include situations relating to a main residence such as collective enfranchisement transactions, lease extensions granted as a successor lease rather than a surrender and re-grant, and a transfer of equity where a buyer acquires the interest of their co-owner in the dwelling.

### **Replacement of main residence exception**

201. Paragraph 8 sets out that where the dwelling purchased is intended to be a replacement for the buyer's only or main residence then that transaction is not a higher rates residential property transaction if it meets the conditions listed in paragraph 8. These include that the buyer intends the new dwelling to be their only residence, the buyer or the buyer's spouse or civil partner sell another dwelling during the period of 3 years before the effective date of the transaction of the new dwelling, that the buyer or their spouse or civil partner must not retain a major interest in that sold dwelling, that sold dwelling was also the buyer's only or main residence during that 3 year period and at no time during the time between selling their old property and acquiring the new property has the buyer or spouse or civil partner acquired another dwelling with the intention of it being their only or main residence.
202. A similar set of rules apply where the new main residence is acquired before the old main residence is sold. In these cases the buyer may reclaim the element of the higher rates charge once their former main residence is sold (so long as that sale takes place within 3 years from the effective date of the transaction involving the new main residence). However, the condition which requires the buyer or their spouse or civil partner not to retain a major interest in their previous only or main residence does not apply to the spouse or civil partner if they are not living together as defined in paragraph 25(3) on the effective date of the transaction concerned.

### **Replacement of main residence: transactions during interim period**

203. Paragraph 9 sets out the rules for "intermediate transactions". These are transactions involving the acquisition of a dwelling which takes place during the "interim period". The interim period is, broadly, the period between a buyer selling their only or main residence and replacing their previous only or main residence. The rules provide that any intermediate transactions that occur between the buyer selling their former main residence and acquiring their new main residence are higher rates residential property transactions. Where the intermediate transaction was not liable to be taxed as a higher rates residential property transaction because the buyer did not own any other residential

*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*

property, but subsequently acquires a second residential property to which conditions relating to replacement of main residence apply as set out in the respective legislation governing these transactions in other parts of the UK, then the intermediate transaction undertaken in Wales will need to be re-assessed to determine if that intermediate transaction is now liable to be taxed as a higher rates residential property transaction. Where the intermediate transaction is a higher rates property transaction as a result of these rules, then the buyer must submit a return (see paragraph 24) to WRA for that transaction. This return must include a self-assessment and be submitted before the end of 30 days beginning with the day after the interim period ending.