

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 – Interpretation and Final Provisions

Schedule 5 - Higher rates residential property transactions

192. This Schedule applies to higher rates residential property transactions and provides the rules identifying when the acquisition of a major interest (or an interest that is deemed to be a major interest) is subject to the higher rates. The charge is charged differently to individuals and buyers who are not individuals, for example companies or other bodies corporate. Fundamentally, when an individual maintains a major interest in a residential property and purchases a major interest in an additional residential property then they must consider if the rules on higher rates residential property transactions apply to the acquisition. Where the buyer, or one of the buyers, is not an individual then the higher rates rules apply to all residential property transactions they enter, regardless of whether they already own residential property or not.
193. [Part 1](#) of the Schedule provides an overview of its contents and Part 6 provides for interpretation of key terms referred to throughout the Schedule. The Welsh Ministers may amend this Schedule by regulations which will be subject to the affirmative procedure

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 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.

Part 3: Buyer is an individual: multiple dwelling transactions

204. Paragraphs 10 to 18 provide the rules that apply where the buyer acquires a number of residential dwellings in a single transaction. In the main, the buyer will be required to pay the tax rates which apply to higher rates residential property transactions on all of the dwellings acquired even where one is a replacement of a main residence. Where the transaction is structured so that the replacement of the main residence is effected separately from the other acquisition then each transaction, for the purposes of establishing whether the transaction is a higher rates residential property transaction is considered separately although they may still be regarded as linked transactions. Where the transaction is structured as an acquisition of two dwellings, one of which is the replacement of a main residence then the higher rates will apply to both transactions.
205. There is an exception to this basic rule and that is where the second (or further additional) dwelling acquired through the single transactions meet the conditions in paragraph 14; the subsidiary dwelling exception. The rules in paragraph 14 operate so that where two or more dwellings are acquired in a single transaction, for example a house with a cottage within the grounds or a house converted into two flats, then if the second (or all of the additional dwellings) are subsidiary to the main dwelling then the higher rates will not apply to the transaction, unless the buyer already owns a dwelling and is not replacing their only or main residence. The acquisition will not be a higher rates residential property transaction where the consideration given for the main dwelling is equal to, or greater than two thirds of the total consideration given for the transaction. If there is more than one subsidiary dwelling then the total consideration allocated to all subsidiary dwellings must be less than one third of the total consideration for the transaction in order for it to not be a higher rates residential property transaction.
206. Paragraphs 15(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. 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).

Part 4 - Buyer is not an individual

207. [Part 4](#) sets out the rules for transactions undertaken by a buyer who is not an individual. These rules will cover purchases made by entities such as companies or other bodies corporate (sometimes called “non-natural persons”). Paragraph 22 stipulates that where there are two or more buyers in a transaction and that transaction is either a transaction involving a dwelling (see paragraph 20 below) or a transaction involving multiple dwellings (paragraph 21 below), the transaction will be a higher rates residential property transaction if any one of the buyers is not an individual.
208. [Paragraph 20](#) applies when a chargeable transaction entered into by a buyer who is not an individual purchases a single dwelling is a higher rates residential property transaction. The effect of these provisions is that the first purchase of a residential property by a non-natural person will be a higher rates residential property transaction. But there are other rules relating to the purchase of a lease.
209. [Paragraph 21](#) identifies when a chargeable transaction involving more than one dwelling where the buyer is not an individual is a higher rates residential property transaction and sets out the rules which apply to such a transaction.

Part 5 - Supplementary provisions

210. [Part 5](#) provides supplementary rules in relation to the higher rates residential property transactions.

Further provision in connection with replacement of main residence exception

211. [Paragraph 23](#) makes further provision in respect of the rules on “replacement of main residence exception”. The higher rates will not normally apply to the purchase of a residential property where it is intended to replace the buyer’s or buyers’ only or main residence provided the purchase of the new residence and disposal of the previous main residence occurs within a 36 month period. Where a return has been submitted for the replacement of the main residence and the buyer has paid the LTT applicable to higher rates residential property transactions but has subsequently disposed of the previous main residence within the timescales allowed, the buyer may claim a repayment of the amount of tax overpaid from WRA. They can do this by either making an amendment to their return (subject to meeting the timescales allowed for making an amendment to the return in accordance with the conditions set out in section 41 of TCMA); or where they are unable to amend the return, the buyer can make a claim for repayment of the overpaid tax (see chapter 7, part 3 of TCMA).
212. A special rule at paragraph 23(4) allows a buyer who is replacing their main residence to submit the return in respect of the purchase of the new main residence as though it had never fallen into the category of a higher rates residential property transaction. The buyer is able to do this provided that the sale of the previous main residence has occurred within the 30 day period for submitting a return to WRA in relation to the purchase of the new dwelling and a return has not already been submitted in respect of that new main residence.

Spouses and civil partners purchasing alone

213. [Paragraph 25](#) sets out how the higher rates residential property transaction rules apply to spouses and civil partners purchasing alone. These provisions provide that such transactions are to be treated as being higher rates residential property transactions if this would be the case had the buyer’s spouse or civil partner been a buyer also. Paragraph 25(3) sets out the exceptions to this rule (broadly where the couple are separated).

Property adjustment on divorce, dissolution of civil partnership etc.

214. [Paragraph 26](#) provides for a further exception to the higher rates residential property transaction rules. A buyer does not need to take into account when acquiring a new residential dwelling a major interest held in a former matrimonial residence where that interest is retained as a result of an order made in relation to divorce or dissolution of a civil partnership. That interest must be the only or main residence of the person for the benefit of whom the order is made. Any other dwellings owned will, however, need to be taken into account.

Settlements and bare trusts

215. [Paragraphs 27 to 30](#) provide rules about the application of the rules about higher rates residential property transactions in relation to bare trusts and trusts that are settlements for the purposes of the Act (to the extent that they entitle the beneficiary to occupy the dwelling for life or to the income earned). In such situations the beneficiary of the bare trust, or the settlement, is to be treated as the buyer, or the owner of an interest held in the dwelling for the purpose of determining whether the higher rates residential property transaction rules apply to another purchase.
216. [Paragraph 29](#) clarifies that the transfer of beneficial interests (for example undivided shares) arising under a trust in a residential property will be treated in the same way as a transfer of a major interest where the seller of the beneficial interest was, immediately prior to the transaction, deemed to own the major interest in the dwelling and immediately after the transaction the buyer is deemed to own the major interest.
217. [Paragraph 30](#) provides that where a child (i.e. a child under the age of 18) is to be treated as the buyer or holder of an interest, as a result of the trust rules in this Act then the parent (and any spouse or civil partner of the parent unless they are not living together) is to be treated as the buyer or holder of the interest.
218. [Paragraph 30\(4\)](#) dis-applies the effect of paragraph 30(2) in circumstances where an incapacitated child's interest is acquired, held on trust, or disposed of, by a deputy appointed under the Mental Capacity Act 2005 (or a person acting in an equivalent capacity outside Wales and England).
219. [Paragraph 31](#) provides rules in relation to settlements where the beneficiaries of the settlement are not entitled to occupy the dwelling for life or to the income earned in respect of the dwelling or dwellings. In such circumstances the trustee or trustees are to be taxed under the same rules as relate to buyers who are not individuals.

Partnerships

220. [Paragraph 32](#) sets out the rules for deciding whether the higher rates residential property transactions apply to purchases made by a partner in a partnership. Where a partner acquires a property but not for the purpose of the partnership, any major interest in a dwelling held by or on behalf of the partnership for the purposes of a trade carried on by the partnership is not to be treated as held by or on behalf of an individual buyer purchasing a residential property in a transaction unrelated and unconnected to the operation of the partnership.

Alternative finance arrangements

221. [Paragraph 33](#) states how the rules for higher rates residential property transactions apply where alternative finance arrangements are entered into by a person and a financial institution for the purposes of the acquisition of a major interest in a dwelling. These provisions have the effect of ensuring that the financial institution does not enter into a residential property transaction by virtue of being party to a transaction. Instead the person who enters the alternative finance arrangement with the financial institution

in order to ultimately own the property is to be treated as the buyer and it is their circumstances that will be relevant in establishing if the higher rates apply.

Major interests in dwellings inherited jointly

- 222. [Paragraph 34](#) makes provision in respect of higher rates residential property transactions where major interests in dwellings are inherited jointly. These provisions set out that where a buyer inherits a share of 50% or less in a property which has been inherited within 3 years of the buyer purchasing a residential property, the inherited property is not taken into account for the purposes of establishing whether the higher rates residential property transaction rules of this Act apply. However, if at any time during that 3 year period the buyer's beneficial share of the interest in the inherited property exceeds 50%, then the major interest in the inherited property is taken into account for the purposes of the buyer's purchase of their residential property.
- 223. [Paragraph 34\(5\)](#) provides that spouses and civil partners who are no longer living together as defined by paragraph 25(3) should not have their respective interests combined for the purposes of establishing whether the £40,000 threshold is met for the higher rates residential property transaction rules.
- 224. [Paragraph 34\(7\)](#) makes further provision in respect of a major interest inherited as a result of a variation of a will. This sub-paragraph clarifies that where a major interest in a dwelling is acquired as a result of a variation of a will it is to be treated as inherited property for the purposes of establishing if a buyer holds interests in other property. Where the interest acquired does not exceed 50% the buyer is not to be treated as owning a major interest in that property for 3 years from the date of the variation of the will for the purposes of this Schedule.

Part 6 - Interpretation

- 225. [Paragraph 35](#) sets out the rules that apply in establishing whether a buyer holds a major interest in a dwelling located outside Wales. This will include any such dwelling that would be a dwelling for SDLT purposes in England. Outside England and Wales it will be any dwelling that meets equivalent ownership rules. Where it is a child that owns the major interest in a dwelling outside Wales then that child's parent (and their spouse or civil partner) are deemed to own the interest (unless they are not living together).
- 226. [Paragraph 35\(7\)](#) dis-applies the effect of paragraph 35(5) in circumstances where an incapacitated child's interest is acquired, held on trust, or disposed of, by a deputy appointed under the Mental Capacity Act 2005 (or a person acting in an equivalent capacity outside Wales and England), in relation to interests held outside Wales.
- 227. [Paragraph 36](#) sets out what is a dwelling for the purposes of the Schedule. It includes a building or part of a building that is used or suitable for use as a dwelling or is in the process of being constructed or adapted for use as a dwelling. It will also include any dwelling to be constructed or adapted under contract for use as a dwelling.
- 228. [Paragraph 37](#) makes it clear that a major interest for the purposes of this schedule does not include a lease granted for less than 7 years.