



# Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017

2017 anaw 1

## PART 6

### RETURNS AND PAYMENTS

#### CHAPTER 3

##### DEFERRAL OF TAX

#### **58 Deferral requests in cases of contingent or uncertain consideration**

- (1) A buyer in a land transaction where the whole or part of the chargeable consideration is contingent or uncertain (see sections 19 and 20) may give notice to WRA (“a deferral request”) requesting that payment of an amount of tax payable stated in the first return relating to the transaction (“the requested amount”) be deferred.
- (2) But the requested amount may not exceed the deferrable amount (see section 59).
- (3) WRA must agree to a deferral request if—
  - (a) the return and the deferral request are made on or before the filing date for that return,
  - (b) the request—
    - (i) specifies the requested amount to be deferred,
    - (ii) sets out the calculation of the requested amount carried out in accordance with section 59 (including the amount of consideration falling within step 2 of that calculation (“the deferred consideration”)),
    - (iii) sets out the reasons why the deferred consideration is contingent or uncertain and the reasons why it falls to be paid or provided on one or more future dates of which at least one will or may fall more than 6 months after the effective date of the transaction,

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- (iv) proposes an expected end date of the deferral period (see subsection (8)), and
  - (v) contains any other information as may be required by virtue of section 191 of TCMA (giving notices to WRA),
  - (c) WRA is satisfied that the requested amount does not exceed the deferrable amount calculated in accordance with section 59, and
  - (d) the land transaction is not a tax avoidance arrangement nor forms part of arrangements which are tax avoidance arrangements.
- (4) Otherwise WRA must refuse a deferral request (but see subsections (5) and (6)).
- (5) But if WRA thinks that the requested amount exceeds the deferrable amount it may nevertheless grant the deferral request in relation to so much of the requested amount as does not exceed the deferrable amount.
- (6) When agreeing to a deferral request WRA—
- (a) must determine the amount of tax it agrees to defer (the “deferred amount”);
  - (b) must determine the expected end date of the deferral period (that may be different to the expected end date proposed by the buyer) (see subsection (8));
  - (c) may impose such conditions (including conditions requiring the buyer to make payments of part of the deferred amount at specified times during the deferral period) as WRA thinks appropriate.
- (7) In this section, “tax avoidance arrangement” has the same meaning as in section 31.
- (8) In this Chapter—
- (a) “deferral period” means the period beginning with the filing date for the return referred to in subsection (1) and ending on the earlier of—
    - (i) the expected end date, or
    - (ii) the date on which an event mentioned in subsection (9) occurs in relation to the deferred consideration;
  - (b) “expected end date” means—
    - (i) the date on which an event mentioned in subsection (9) is expected to occur in relation to the deferred consideration, or
    - (ii) if that date cannot be predicted, the fifth anniversary of the effective date of the transaction (or, where the expected end date is changed under section 62, the fifth anniversary of the previous expected end date).
- (9) The events are—
- (a) where the deferred consideration is contingent, the date on which contingency occurs or it becomes clear that it will not occur;
  - (b) where the deferred consideration is uncertain, the date on which the consideration becomes ascertained.

## **59 Calculation of deferrable amount**

The deferrable amount in respect of a land transaction to which section 58(1) applies is to be calculated as follows.

### *Step 1*

Calculate the amount of tax chargeable in respect of the land transaction in accordance with section 27 or 28.

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*Step 2*

Determine the amount or value of chargeable consideration for the land transaction that—

- (a) has not already been paid or provided,
- (b) is contingent or uncertain (see sections 19 and 20),
- (c) does not consist of—
  - (i) rent (within the meaning given in Schedule 6), or
  - (ii) an annuity to which section 21 applies, and
- (d) falls to be paid or provided on one or more future dates of which at least one will or may fall more than 6 months after the effective date of the transaction.

That amount or value of consideration is the deferred consideration.

*Step 3*

Calculate (in accordance with section 27 or 28) the amount of tax that would have been chargeable in respect of the land transaction had the chargeable consideration for the transaction been reduced by the amount or value of the deferred consideration.

*Step 4*

Deduct the amount of tax calculated under step 3 from the amount calculated under step 1.

The remaining amount of tax is the deferrable amount.

**60 Deferral requests: notices of WRA decisions**

- (1) Where WRA agrees to a deferral request, it must issue a notice to the buyer specifying—
  - (a) the deferred amount and, if any, the refused amount,
  - (b) the expected end date of the deferral period,
  - (c) any condition WRA has imposed under section 58(6)(c), and
  - (d) if the deferred amount is lower than the proposed deferred amount, the reasons for that decision.
- (2) Where WRA refuses a deferral request, it must issue a notice to the buyer specifying the reasons for the refusal.

**61 Deferral requests: effect of WRA's decision**

- (1) Where WRA agrees to a deferral request—
  - (a) the buyer must pay the deferred amount before the end of the day following the date on which the deferral period ends (despite section 57), and
  - (b) despite section 157(3) of TCMA, the late payment interest start date in relation to the deferred amount is the date following the date on which the deferred amount is required to be paid (and Chapter 1 of Part 6 of TCMA is to be read accordingly).
- (2) Where WRA refuses a deferral request (or agrees to a request but agrees a deferred amount which is lower than the requested amount)—
  - (a) the amount of tax which WRA has refused to defer (“the refused amount”) is required to be paid by the end of the later of—

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- (i) the date on which the buyer receives notice of WRA’s decision, or
- (ii) the date on which the amount would otherwise be required to be paid in accordance with section 57, and
- (b) the late payment interest start date for the refused amount is the later of—
  - (i) the day after the date on which the refused amount is required to be paid, or
  - (ii) the date which would otherwise be specified under section 157(3) of TCMA as the late payment interest start date in relation to that amount.
- (3) See sections 47 and 48 for provision about cases where the amount of tax payable changes as a result of—
  - (a) a contingency occurring or not occurring, or
  - (b) uncertain consideration becoming ascertained.

## **62 Variation of deferral requests**

- (1) Where WRA has agreed to a deferral request, the buyer may give notice to WRA requesting—
  - (a) a change to the expected end date;
  - (b) variation or removal of a condition imposed under section 58(6)(c).
- (2) A request under subsection (1) must specify the change in circumstances which the buyer thinks justifies the change, variation or removal.
- (3) If WRA thinks it appropriate to do so, it may—
  - (a) agree to the request made under subsection (1), or
  - (b) agree to—
    - (i) a different expected end date than that requested under subsection (1)(a);
    - (ii) a different variation of a condition than that requested under subsection (1)(b).
- (4) Where WRA makes a decision under this section it must issue a notice to the buyer setting out the decision and the reasons for it.

## **63 Failure to comply with WRA’s agreement to defer**

- (1) If WRA thinks that the buyer—
  - (a) has failed to comply with a condition imposed under section 58(6)(c) or varied under section 62, or
  - (b) has, in relation to the deferral request or a request made under section 62(1)—
    - (i) provided false or misleading information, or
    - (ii) withheld information,

the deferral request is to be treated as if it had never been made (and section 57 of this Act and section 157 of TCMA apply accordingly).
- (2) In such a case WRA must issue a notice to the buyer stating that deferral request is to be treated as if it had never been made and setting out the consequences of that.

## **64 Regulations about deferral of tax**

- (1) The Welsh Ministers may by regulations—
  - (a) make provision for the deferral of tax in cases where the deferred consideration consists of rent (within the meaning given in Schedule 6);
  - (b) make provision applying this Chapter (with such modifications as may be specified in the regulations) to cases where the consideration to which a deferral request relates, or any element of that consideration, consists of—
    - (i) the carrying out of works of construction, improvement or repair of a building or other works to enhance the value of land, or
    - (ii) the provision of services (other than the carrying out of such works);
  - (c) make provision for WRA to make variations under section 62 without the buyer giving notice of a request under subsection (1) of that section (whether by agreement with the buyer or by imposition).
- (2) Regulations under subsection (1) may make such modifications of this Act as the Welsh Ministers consider necessary or expedient.