

**Changes to legislation:** Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, PART 2 is up to date with all changes known to be in force on or before 31 August 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULE 5

### HIGHER RATES RESIDENTIAL PROPERTY TRANSACTIONS

#### Modifications etc. (not altering text)

- C1** Sch. 5 applied (with modifications) (1.4.2018) by [The Land Transaction Tax \(Transitional Provisions\) \(Wales\) Regulations 2018 \(S.I. 2018/126\)](#), regs. 1(2), **12**

#### PART 2

#### BUYER IS AN INDIVIDUAL: SINGLE DWELLING TRANSACTIONS

##### *Introductory*

- 2 This Part sets out when a chargeable transaction is a “higher rates residential property transaction” for the purpose of regulations under section 24(1)(b) in the case of a transaction involving a dwelling where the buyer is an individual.

#### Commencement Information

- II** [Sch. 5 para. 2](#) in force at 1.4.2018 by [S.I. 2018/34](#), **art. 3**

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

- 3 (1) A chargeable transaction is a higher rates residential property transaction if—
- it falls within sub-paragraph (2), and
  - paragraph 5 applies.
- (2) A transaction falls within this sub-paragraph if—
- the buyer is an individual,
  - the main subject-matter of the transaction consists of a major interest in a dwelling (“the purchased dwelling”), and
  - the chargeable consideration for the transaction is £40,000 or more.
- (3) But a transaction does not fall within sub-paragraph (2) if at the end of the day that is the effective date of the transaction—
- the purchased dwelling is subject to a lease,
  - the main subject-matter of the transaction is reversionary on that lease, and
  - the lease meets the conditions set out in sub-paragraph (4).
- (4) The conditions are that—
- the lease is not held by a person connected with the buyer, and
  - the lease has an unexpired term of more than 21 years.
- (5) This paragraph applies subject to the exceptions provided for in—
- paragraph 7 (interest in same main residence exception), and
  - paragraph 8 (replacement of main residence exception).

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- (6) In this Part of this Schedule, “purchased dwelling” has the meaning given by sub-paragraph (2)(b).

**Commencement Information**

**I2** Sch. 5 para. 3 in force at 1.4.2018 by S.I. 2018/34, art. 3

- 4 Where paragraph 9 applies, an intermediate transaction (within the meaning given by that paragraph) is to be treated as a higher rates residential property transaction.

**Commencement Information**

**I3** Sch. 5 para. 4 in force at 1.4.2018 by S.I. 2018/34, art. 3

*Buyer has a major interest in other dwelling*

- 5 (1) This paragraph applies in relation to a transaction if, at the end of the day that is the effective date of the transaction—
- (a) the buyer has a major interest in a dwelling other than the purchased dwelling, and
  - (b) that interest has a market value of £40,000 or more.
- (2) But this paragraph does not apply if the interest described in sub-paragraph (1) is reversionary on a lease which—
- (a) is not held by a person connected with the buyer, and
  - (b) has an unexpired term of more than 21 years.
- (3) Where the buyer is jointly entitled with one or more persons to the major interest referred to in sub-paragraph (1)(a), the reference in sub-paragraph (1)(b) to the market value of the interest is to the market value of the buyer's beneficial share in the interest as determined in accordance with sub-paragraph (4) or (5).
- (4) Where the buyer is beneficially entitled as a tenant in common, the market value of the buyer's beneficial share is equal to—

$$MV \times PI$$

Figure 4 where—

MV is the market value of the major interest, and

PI is—

- (a) the percentage of the interest to which the buyer is entitled, or
- (b) where—
  - (i) the buyer and the buyer's spouse or civil partner are living together on the effective date of the transaction (for the meaning of “living together”, see paragraph 25(3)), and
  - (ii) taken together the buyer and the buyer's spouse or civil partner are entitled as tenants in common,

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the percentage of the interest to which the buyer and the buyer's spouse or civil partner are so entitled.

- (5) Where the buyer is beneficially entitled as a joint tenant, the market value of the buyer's beneficial share is equal to—

$$\frac{MV}{JT}$$

Figure 5 where—

MV is the market value of the major interest, and

JT is the number of joint tenants entitled to the interest.

- (6) For the purpose of sub-paragraph (5), the buyer and the buyer's spouse or civil partner are to be treated as one joint tenant if—
- (a) they are living together on the effective date of the transaction (for the meaning of “living together”, see paragraph 25(3)), and
  - (b) they are beneficially entitled as joint tenants to the interest.

**Commencement Information**

**I4** Sch. 5 para. 5 in force at 1.4.2018 by S.I. 2018/34, art. 3

*Two or more buyers*

- 6 Where there are two or more buyers who are individuals in a transaction—
- (a) the transaction is a higher rates residential property transaction if paragraph 3 applies in relation to any one of the buyers;
  - (b) an intermediate transaction (within the meaning of paragraph 9(2)) is to be treated as a higher rates residential property transaction if paragraph 9 applies in relation to any one of the buyers.

**Commencement Information**

**I5** Sch. 5 para. 6 in force at 1.4.2018 by S.I. 2018/34, art. 3

*Interest in same main residence exception*

- 7 A transaction is not a higher rates residential property transaction under paragraph 3 if the main subject-matter of the transaction is a major interest in a dwelling—
- (a) in which, immediately before the effective date of the transaction, the buyer [F<sup>1</sup>or the buyer's spouse or civil partner] had another major interest, and
  - (b) which, immediately before and after the effective date of the transaction, is the buyer's only or main residence.

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#### Textual Amendments

- F1** Words in Sch. 5 para. 7(a) inserted (1.4.2018) by [The Land Transaction Tax and Anti-avoidance of Devolved Taxes \(Wales\) Act 2017 \(Amendment to Schedule 5\) Regulations 2018 \(S.I. 2018/125\)](#), regs. 1(2), 2(a)

#### Commencement Information

- I6** Sch. 5 para. 7 in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)

#### *Replacement of main residence exception*

- 8 (1) A transaction is not a higher rates residential property transaction under paragraph 3 if the purchased dwelling is a replacement for the buyer's only or main residence.
- (2) For the purposes of this paragraph, the purchased dwelling is a replacement for the buyer's only or main residence if—
- (a) on the effective date of the transaction (“the transaction concerned”) the buyer intends the purchased dwelling to be the buyer's only or main residence,
  - (b) in another land transaction (“the previous transaction”), the effective date of which was during the period of 3 years ending with the effective date of the transaction concerned, the buyer or the buyer's spouse or civil partner at the time disposed of a major interest in another dwelling (“the sold dwelling”),
  - (c) immediately after the effective date of the previous transaction, neither the buyer nor the buyer's spouse or civil partner had a major interest in the sold dwelling,
  - (d) at any time during the period of 3 years referred to in paragraph (b) the sold dwelling was the buyer's only or main residence, and
  - (e) at no time during the period beginning with the effective date of the previous transaction and ending with the effective date of the transaction concerned has the buyer or the buyer's spouse or civil partner acquired a major interest in any other dwelling with the intention of it being the buyer's only or main residence.
- (3) Sub-paragraph (2)(c) does not apply in relation to a spouse or civil partner of the buyer if the two of them were not living together on the effective date of the transaction concerned (for the meaning of “living together”, see paragraph 25(3)).
- (4) For the purposes of this paragraph, the purchased dwelling may become a replacement for the buyer's only or main residence if—
- (a) on the effective date of the transaction (“the transaction concerned”) the buyer intended the purchased dwelling to be the buyer's only or main residence,
  - (b) in another land transaction the effective date of which is during the period of 3 years beginning with the day after the effective date of the transaction concerned, the buyer or the buyer's spouse, former spouse, civil partner or former civil partner disposes of a major interest in another dwelling (“the sold dwelling”),
  - (c) immediately after the effective date of that other land transaction, neither the buyer nor the buyer's spouse or civil partner has a major interest in the sold dwelling, and

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- (d) at any time during the period of 3 years ending with the effective date of the transaction concerned the sold dwelling was the buyer's only or main residence.
- (5) Sub-paragraph (4)(c) does not apply in relation to a spouse or civil partner of the buyer if the two of them are not living together on the effective date of that other land transaction (for the meaning of “living together”, see paragraph 25(3)).
- (6) For further provision in connection with a dwelling becoming a replacement for the buyer's only or main residence, see paragraph 23.

#### Commencement Information

**I7** Sch. 5 para. 8 in force at 1.4.2018 by S.I. 2018/34, art. 3

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

- 9
- (1) This paragraph applies where—
    - (a) the buyer in an intermediate transaction replaces a main residence in another transaction, and
    - (b) the effective date of the intermediate transaction is during the interim period.
  - (2) An intermediate transaction is a transaction—
    - (a) that falls within paragraph 3(2), and
    - (b) to which paragraph 5 does not apply.
  - (3) In determining whether a transaction falls within paragraph 3(2) for the purposes of this paragraph, the reference in paragraph 3(3) to the end of the day that is the effective date of the transaction has effect as though it were a reference to the end of either or both of the following—
    - (a) the day that is the effective date of the transaction;
    - (b) the day on which the interim period ends.
  - (4) For the purposes of this paragraph, a buyer replaces a main residence in another transaction if—
    - (a) in relation to a dwelling in Wales, the conditions set out in paragraph 8(2) are met in respect of the transaction,
    - (b) in relation to a dwelling in England or Northern Ireland, the conditions set out in paragraph 3(6) of Schedule 4ZA to the Finance Act 2003 (c. 14) are met in respect of the transaction, or
    - (c) in relation to a dwelling in Scotland, the conditions set out in paragraph 2(2) of Schedule 2A to the Land and Buildings Transaction Tax (Scotland) Act 2013 (asp 11) are met in respect of the transaction.
  - (5) In this paragraph, the interim period means—
    - (a) where sub-paragraph (4)(a) applies, the period—
      - (i) beginning with the effective date of the previous transaction within the meaning given by paragraph 8(2)(b), and
      - (ii) ending with the effective date of the transaction concerned within the meaning given by paragraph 8(2)(a);
    - (b) where sub-paragraph (4)(b) applies, the period—

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- (i) beginning with the effective date of the previous transaction within the meaning given by paragraph 3(6)(b) of Schedule 4ZA to the Finance Act 2003 (c. 14), and
    - (ii) ending with the effective date of the transaction concerned within the meaning given by paragraph 3(6)(a) of that Schedule;
  - (c) where sub-paragraph (4)(c) applies, the period—
    - (i) beginning with the date on which the buyer disposed of the ownership of a dwelling as provided for in paragraph 2(2)(a) of Schedule 2A to the Land and Buildings Transaction Tax (Scotland) Act 2013 (asp 11), and
    - (ii) ending with the effective date of the transaction referred to in that paragraph.
- (6) For further provision in connection with an intermediate transaction being treated as a higher rates residential property transaction, see paragraph 24.

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**Commencement Information**

**18** Sch. 5 para. 9 in force at 1.4.2018 by S.I. 2018/34, art. 3

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 18 para. 1(aa) inserted by [S.I. 2019/833 reg. 3\(2\)](#)
- Sch. 18 para. 2A-2D inserted by [S.I. 2019/833 reg. 3\(4\)](#)