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WELSH STATUTORY INSTRUMENTS

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**2018 No. 126 (W. 31)**

**LAND TRANSACTION TAX, WALES**

The Land Transaction Tax (Transitional Provisions) (Wales) Regulations 2018

Made - - - - 31 January 2018

Coming into force - - 1 April 2018

The Welsh Ministers make the following Regulations in exercise of the power conferred on them by section 78(1) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017<sup>(1)</sup>.

In accordance with section 78(3) of that Act, the Welsh Ministers considered that these Regulations may have the effect mentioned in section 78(4) of that Act, and a draft of these Regulations was laid before and approved by a resolution of the National Assembly for Wales.

**Title and commencement**

1.—(1) The title of these Regulations is the Land Transaction Tax (Transitional Provisions) (Wales) Regulations 2018.

(2) These Regulations come into force on 1 April 2018.

**Interpretation**

2. In these Regulations—

“the FA 2003” (“*DC 2003*”) means the Finance Act 2003<sup>(2)</sup>;

“the FA 2009” (“*DC 2009*”) means the Finance Act 2009<sup>(3)</sup>;

“the LTT Act” (“*y Ddeddf TTT*”) means the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017;

“the commencement date” (“*y dyddiad cychwyn*”) means such date as is appointed by order by the Treasury under section 16(4) of the Wales Act 2014<sup>(4)</sup>;

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(1) 2017 anaw 1.  
(2) 2003 c. 14.  
(3) 2009 c. 10.  
(4) 2014 c. 29.

“HMRC” (“*CThEM*”) means Her Majesty’s Revenue and Customs (within the meaning of section 4 of the Commissioners for Revenue and Customs Act 2005<sup>(5)</sup>); and

“a section 16(6) event” (“*digwyddiad adran 16(6)*”) means one of the events listed in paragraphs (a) to (c) of section 16(6) of the Wales Act 2014.

#### **Contracts entered into on or before 17 December 2014**

3.—(1) This regulation applies to contracts entered into on or before 17 December 2014 for a land transaction under which the transaction is to be completed by a transfer and there is an effective date in relation to the transaction on or after the commencement date.

(2) Where this regulation applies and the transaction is excluded by a section 16(6) event, section 10 of the LTT Act applies subject to paragraph (3).

(3) This paragraph applies where there has been substantial performance of the contract as described in section 44(4) of the FA 2003, and tax in respect of the substantial performance has been paid to HMRC under that Act.

(4) Where paragraph (3) applies, section 10(5)(b) of the LTT Act applies except that the tax is chargeable on the latter transaction only to the extent (if any) that the amount of tax chargeable on it is greater than the amount of tax chargeable on the contract under the FA 2003 and paid to HMRC.

#### **Contracts entered into after 17 December 2014 but before the commencement date**

4.—(1) This regulation applies to contracts entered into after 17 December 2014 but before the commencement date for a land transaction under which the transaction is to be completed by a transfer and there is an effective date in relation to the transaction on or after the commencement date.

(2) Where this regulation applies and there is substantial performance of the contract as described in section 44(4) of the FA 2003 prior to the commencement date, section 10 of the LTT Act applies subject to paragraph (3).

(3) Where paragraph (2) applies and tax in respect of the substantial performance has been paid to HMRC under the FA 2003, paragraph (4) applies.

(4) Where this paragraph applies, section 10(5)(b) of the LTT Act applies except the tax is chargeable on the latter transaction only to the extent (if any) that the amount of tax chargeable on it is greater than the amount of tax chargeable on the contract under the FA 2003 and paid to HMRC.

#### **Alternative property finance relief**

5.—(1) This regulation applies where arrangements described in section 71A of the FA 2003 are entered into prior to the commencement date.

(2) Where this regulation applies and the first and second transactions described in section 71A of the FA 2003 are completed prior to the commencement date, any further transaction described by subsection (4) of that section is relieved from tax under paragraph 2 of Schedule 10 to the LTT Act, provided that—

- (a) the effective date of that further transaction is on or after the commencement date; and
- (b) the conditions mentioned in section 71A(4) of the FA 2003 have been met.

#### **Alternative finance investment bonds**

6.—(1) This regulation applies where arrangements described in paragraph 5(2) of Schedule 61 to the FA 2009 are entered into prior to the commencement date.

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(5) 2005 c. 11.

(2) Where this regulation applies and the first transaction described in paragraph 5(2) of Schedule 61 to the FA 2009 is completed prior to the commencement date, the second transaction described in paragraph 5(11)(a) of Schedule 61 to the FA 2009 is relieved from tax under paragraph 15 of Schedule 11 to the LTT Act, provided that—

- (a) the effective date of that second transaction is on or after the commencement date; and
- (b) the conditions mentioned in paragraph 8(1) of Schedule 61 to the FA 2009 have been met.

#### **Transfer of partnership interest pursuant to earlier arrangements**

7.—(1) This regulation applies where paragraph 17(1) of Schedule 15 to the FA 2003 applies and—

- (a) the effective date of the land transfer referred to in paragraph 17(1)(a) of that Schedule is prior to the commencement date; and
- (b) the partnership transfer referred to in paragraph 17(1)(c) of that Schedule is on or after the commencement date.

(2) Where this regulation applies, the land transfer is treated for the purposes of paragraph 18 of Schedule 7 to the LTT Act as if it were a land transfer mentioned in that paragraph.

#### **Withdrawal of money etc. from partnership after transfer of a chargeable interest**

8.—(1) This regulation applies where paragraph 17A(1) of Schedule 15 to the FA 2003 applies and—

- (a) the effective date of the land transfer referred to in paragraph 17A(1)(a) of that Schedule is prior to the commencement date; and
- (b) the qualifying event referred to in paragraph 17A(1)(c) of that Schedule occurs on or after the commencement date.

(2) Where this regulation applies—

- (a) the land transfer is treated for the purposes of paragraph 19 of Schedule 7 to the LTT Act as if it were a land transfer mentioned in paragraph 19(1) of that Schedule; and
- (b) a qualifying event referred to in paragraph 17A(2) of Schedule 15 to the FA 2003 is treated as if it were a qualifying event for the purposes of paragraph 19(2) of Schedule 7 to the LTT Act.

#### **Overlapping leases**

9.—(1) This regulation applies where the old lease referred to in paragraph 7(1) of Schedule 6 to the LTT Act has been granted prior to the commencement date.

(2) Where this regulation applies—

- (a) paragraph 7(1) of Schedule 6 to the LTT Act applies to the old lease; and
- (b) the amount of taxable rent under the old lease for the purposes of paragraph 7(2) and (3) of that Schedule is to mean the amount that was taken into account in determining the tax chargeable under the provisions of Schedule 5 to the FA 2003 in respect of the acquisition of the old lease.

#### **Cases where assignment of lease treated as grant of lease**

10.—(1) This regulation applies where paragraph 11(1) of Schedule 17A to the FA 2003 applies and—

- (a) the effective date of the grant of a lease referred to in paragraph 11(1) of that Schedule is prior to the commencement date; and
  - (b) the first assignment of the lease referred to in paragraph 11(2) of that Schedule occurs on or after the commencement date.
- (2) Where this regulation applies—
- (a) the grant of the lease referred to in paragraph (1)(a) is treated as the grant of a lease for the purposes of paragraph 22(1) of Schedule 6 to the LTT Act;
  - (b) the first assignment of the lease referred to in paragraph (1)(b) is treated as the first assignment of a lease for the purposes of paragraph 22(2) of Schedule 6 to the LTT Act; and
  - (c) the provisions in paragraph 11(3) and (5) of Schedule 17A to the FA 2003 are treated for the purposes of paragraph 22 of Schedule 6 to the LTT Act as if they were, where applicable, the corresponding provisions in paragraph 22(4) and (6) of Schedule 6 to the LTT Act.

#### **Variation of lease treated as grant of new lease**

**11.**—(1) This regulation applies to a lease granted prior to the commencement date (to which the provisions of Schedule 17A to the FA 2003 apply) where there is a variation of the lease on or after the commencement date to increase the amount of rent, which, if it had been before that date, would have been a variation to which paragraph 13(1) of that Schedule would have applied.

(2) Where this regulation applies, for the purposes of paragraph 25 of Schedule 6 to the LTT Act—

- (a) the variation of the lease is treated as the grant of a lease; and
- (b) the chargeable consideration (other than in respect of any consideration other than rent) is the additional rent.

#### **Higher rates residential property transactions – replacement of main residence exception**

**12.**—(1) This regulation applies to a transaction the effective date of which is, or is earlier than, 26 November 2018.

(2) For the purpose of determining whether such a transaction is a higher rates residential property transaction, Schedule 5 to the LTT Act applies with the following modifications—

- (a) paragraph 8(2)(b) has effect as if for “during the period of 3 years ending with” there were substituted “the same as or earlier than”;
- (b) paragraph 8(2)(d) has effect as if for “during the period of 3 years referred to in paragraph (b)” there were substituted “before the effective date of the transaction concerned”;
- (c) paragraph 17(2)(b) has effect as if for “during the period of 3 years ending with” there were substituted “the same as or earlier than”; and
- (d) paragraph 17(2)(d) has effect as if for “during the period of 3 years referred to in paragraph (b)” there were substituted “before the effective date of the transaction concerned”.

31 January 2018

*Mark Drakeford*  
Cabinet Secretary for Finance, one of the Welsh  
Ministers

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## EXPLANATORY NOTE

*(This note is not part of these Regulations)*

These Regulations make transitional provisions in respect of the introduction of land transaction tax (“LTT”) in Wales by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“the LTT Act”).

LTT will replace stamp duty land tax (“SDLT”) in Wales on a date (“the commencement date”) to be specified in respective orders made by the Treasury and the Welsh Ministers under section 16(4) of the Wales Act 2014 (“the Wales Act”) and section 81(2) of the LTT Act.

Section 16(5) of the Wales Act makes provision for SDLT to continue to apply to land transactions for which the contract for the transaction was entered into and substantially performed on or before the Royal Assent of the Wales Act on 17 December 2014.

Section 16(6) of the Wales Act makes provision for certain land transactions to which SDLT will no longer apply, despite the transaction being effected in pursuance of a contract entered into on or before 17 December 2014. For instance, where there has been an assignment or subsale in respect of a contract entered into on or before 17 December 2014, LTT will apply if the completion of the assignment or subsale takes place on or after the commencement date.

These Regulations make provision in respect of certain transactions that began under SDLT but have an effective date on or after the commencement date.

Regulation 3 provides that LTT is charged where—

- (a) a contract for the transfer of land is entered into on or before 17 December 2014;
- (b) the effective date of the completion of that transfer is on or after the commencement date; and
- (c) section 16(6) of the Wales Act applies because there has been an intervening event.

But if the contract has been substantially performed before the commencement date, and SDLT has been paid to HMRC in connection with that substantial performance, LTT is only charged to the extent that there is a greater amount of tax chargeable on the contract giving effect to the completion of that transaction.

Regulation 4 provides that LTT is charged where—

- (a) a contract for the transfer of land is entered into after 17 December 2014 but before the commencement date; and
- (b) the effective date of the completion of that transfer is on or after the commencement date.

But if the contract has been substantially performed before the commencement date, and SDLT has been paid to HMRC in connection with that substantial performance, LTT is only charged to the extent that there is a greater amount of tax chargeable on the contract giving effect to the completion of that transaction.

Regulation 5 makes provision where alternative property finance arrangements that give rise to a series of land transactions are entered into. It ensures that any ‘further transaction’ which forms part of arrangements entered into prior to the commencement date will be eligible for relief from LTT. Relief from LTT in respect of this ‘further transaction’ must be claimed in the return made to the Welsh Revenue Authority (“WRA”) in relation to that transaction.

Regulation 6 makes provision where alternative finance investment bonds that give rise to a series of land transactions are entered into. It ensures that where the ‘second transaction’ occurs on or after

*Status: This is the original version (as it was originally made).*

the commencement date, that transaction will be eligible for relief from LTT. In these cases, relief from LTT must be claimed in the return made to WRA in relation to that second transaction.

Regulation 7 makes provision to ensure that LTT is charged in respect of a transfer of an interest in a partnership pursuant to earlier arrangements involving a land transaction under paragraph 18 of Schedule 7 to the LTT Act although the earlier land transaction (transferring a chargeable interest to the partnership) was in fact prior to the commencement date.

Regulation 8 makes provision to ensure that LTT is charged in respect of any withdrawal of money etc. from a partnership after the transfer of a chargeable interest under paragraph 19 of Schedule 7 to the LTT Act despite the transfer of the chargeable interest to the partnership taking place prior to the commencement date.

Regulation 9 ensures that the discount in respect of overlapping leases under paragraph 7 of Schedule 6 to the LTT Act can apply, notwithstanding that the old lease was entered into prior to the commencement date.

Regulation 10 makes provision for any lease with an effective date prior to the commencement date that was entitled to a relief under SDLT. This regulation ensures that paragraph 22 of Schedule 6 to the LTT Act applies so that an assignment of such a lease on or after the commencement date is treated as the grant of a new lease for the purposes of the LTT Act.

Regulation 11 provides that a variation of a lease to increase the amount of rent which takes place on or after the commencement date is to be treated as the grant of a new lease for the purposes of the LTT Act, even though the lease had an effective date of before the commencement date. The rent of the deemed new lease is taken to be the additional rent payable as a result of the variation.

Regulation 12 makes modifications to the tests prescribed in paragraphs 8 and 17 of Schedule 5 to the LTT Act to determine whether the replacement of main residence exception applies to a higher rates residential property transaction. The effect of these modifications is to disapply the 3 year window during which a previous main residence had to be sold before the purchase of a new main residence in respect of transactions with an effective date which is 26 November 2018 or earlier.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff CF10 3NQ.