

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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 6 – Returns and Payments**

##### *Section 44 - Duty to make a return*

60. This section places the buyer under an obligation to make a return to WRA of every notifiable transaction before the end of 30 days beginning with the day after the effective date of the transaction. If the transaction is a chargeable transaction then the buyer must include in the return a self-assessment.

##### *Sections 45-46 - Notifiable transactions*

61. [Section 45](#) defines a notifiable land transaction as the acquisition of a major interest in land that is not covered by one of the exceptions in section 46, the acquisition of certain chargeable interests in land that are not major interests, an acquisition treated as an acquisition of a chargeable interest because the contract has been substantially performed, and certain notional land transactions.
62. [Section 46](#) sets out the exceptions to the rules in section 45. The section provides a list of those transactions which, whilst being the acquisition of a major interest in land, are not notifiable land transactions. The list includes:
- exempt transactions, where the consideration given (other than for the grant, assignment or surrender of a lease) is less than £40,000;
  - the grant of a lease for less than 7 years where the chargeable consideration is not more than the zero rate threshold.
63. The Welsh Ministers have the power to amend by regulations any of the amounts (such as £40,000 consideration) in this section.

##### *Sections 47 - 52 - Adjustments*

64. [Section 47](#) provides for cases where a contingency ceases or the consideration is ascertained and the buyer must make a return. Where the consideration for a transaction is unascertained or contingent upon a future event happening or not happening, then the buyer must make a return before the end of 30 days beginning with the day after the day:
- an unascertained or uncertain amount becomes ascertained, or
  - the contingency happens or it becomes clear that it will not happen.

65. If the event means that the transaction becomes notifiable, additional tax is chargeable, or tax is now chargeable when none was previously chargeable, interest begins to run from the day after the end of 30 days beginning with the day after the effective date of the transaction.
66. [Section 48](#) provides the rules for cases where a contingency ceases or the consideration is ascertained and the buyer has overpaid tax. The buyer can make a claim to obtain a repayment of tax by amending their return (if within the time limits) or, if those time limits have expired, the buyer may make a claim to WRA for repayment either before the end of 4 years beginning with the day after the filing date for the tax return which relates to the overpayment of LTT or, if later, 12 months beginning with the event leading to the repayment arising. However, where the transaction is the grant or assignment of a lease, no claim is allowed if the repayment arises from the repayment of a deposit or loan that was treated as consideration, or any consideration refunded under arrangements made in connection with such assignment or grant of lease that are contingent on the ending or assignment of the lease or the grant of a chargeable interest out of the lease.
67. [Section 49](#) provides rules where a buyer must make a return where relief has been withdrawn. A number of reliefs may be withdrawn (for example group relief) if a future action or event occurs (known as a 'disqualifying event'). Where there is a disqualifying event the buyer must make a further return before the end of 30 days beginning on the day after the day the disqualifying event and pay any additional tax within the same period. Interest generally runs on any tax payable under the further return from the day after the day that tax is payable. However, where relief under Schedule 11 (alternative finance investment bonds) is withdrawn, interest exceptionally runs from the day after the end of 30 days beginning with the day after the effective date of the first land transaction.
68. [Sections 50](#) and [51](#) provide rules in relation to making returns where there are linked transactions. For linked transactions that have the same effective date, a single return may be made for all the transactions. Where a return needs to be made as a result of a later linked transaction so that an earlier transaction becomes notifiable, or tax or additional tax is payable on the earlier transaction, then a return in relation to that earlier transaction must be made before the end of 30 days beginning with the day after the effective date of the later transaction.
69. [Section 52](#) provides the Welsh Ministers with the power to amend the time limits in which a return must be made.

### **[Sections 53–55 - Declarations](#)**

70. [Section 53](#) provides that any return sent to WRA must include a declaration that the return is to the best of the buyer's knowledge correct and complete. However, where an agent has been appointed to act for the buyer special rules apply in relation to the declaration.
71. [Sections 54](#) and [55](#) provide further rules in relation to declarations where the Official Solicitor or another person has been appointed to act for the buyer.

### **[Sections 56–57 - Liability for tax and payment of tax](#)**

72. [Section 56](#) states that the buyer must pay any LTT due and therefore the provisions of TCMA apply to the chargeable amounts. The section also signposts special rules that apply to joint buyers, partnerships and trusts.
73. [Section 57](#) provides that where a return is made the buyer must make payment of the amount of tax self-assessed in that return no later than the filing date for the return. In the event that the buyer amends their return, if the amendment is made before the filing date, they must pay any additional tax arising from that amendment no later than

that filing date. If they make the amendment later, they must pay at the same time they make the amendment. However, these rules do not apply to any LTT which WRA has agreed can be deferred.

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

74. **Section 58** makes provision for buyers to ask WRA to agree to defer payment of LTT where the consideration is contingent or uncertain. WRA must agree to the deferral request if the buyer meets a number of conditions in their request, including; the request is made within the same time limit as the period for filing the return (and that return must also have been made before the filing date), the request specifies the amount of tax to be deferred and provides a calculation of the deferral amount etc. If the request does not conform to the conditions set out in this section WRA must refuse the request, although if it believes that a smaller amount should be deferred WRA can grant a deferral of that smaller amount. Importantly, a deferral request cannot be made if there are any tax avoidance arrangements in relation to the transaction. Tax avoidance arrangements are defined by section 31. When making a request to defer tax under this section, the buyer must state the proposed expected end date of the deferral period. If the buyer is not able to predict a date, the fifth anniversary of the effective date of the transaction will be used as the end date for the deferral period. This will enable WRA to monitor and check whether additional tax is payable in such cases as it will for cases where a date can be predicted. This rule allows for the imposition of a number of different payment dates for different amounts of deferred tax so that, for example, contracts providing for deferred payments related to the provision of works and services can also be agreed.

### ***Section 59 - Calculation of deferrable amount***

75. **Section 59** provides the method for calculating the amount of deferrable tax. The amount is calculated by following the four steps set out in the section; firstly, calculate the amount of tax chargeable in respect of the land transaction in question by using the normal rules, secondly, establish the amount of deferred consideration (as defined in the section), thirdly, calculate the tax chargeable for that land transaction had the chargeable consideration for the transaction been reduced by the amount of the deferred consideration (established under step 2), and finally, take the amount calculated under step 3 away from the amount calculated under step 1 and the result is the amount that may be deferred. Importantly, step 2 only allows amounts of deferred consideration that are expected, at least in part, to be paid more than 6 months after the effective date of the transaction to be included in the calculation.

### ***Section 60 - Deferral requests: notices of WRA decisions***

76. **Section 60** provides the rules for the notices that WRA must issue on deciding a deferral request. WRA must issue a notice of its decision to the buyer specifying the deferred amount, the expected end date of the deferral period, any conditions, and, if the deferred amount is lower than the request, the reason for WRA deciding to agree to that different deferred amount. If the request is refused WRA must issue a notice informing the buyer of the refusal and the reasons for that refusal.

### ***Section 61 - Deferral requests: effect of WRA's decision***

77. **Section 61** sets out the effect of WRA's decision of a deferral request. Where a request is agreed the deferred amount must be paid before the end of the day following the date which the deferral period ends, and late payment interest and late payment penalties do not accrue during the deferral period. Where WRA refuses, or only partly agrees to, the deferral request, then the amount not agreed by WRA to be deferred must be paid by the later of the day on which the buyer receives notice of the refusal, or the filing date for the return. Late payment interest will accrue on an unpaid amount from the later of either the day after the date of WRA's notice of decision, or the day after the filing date for the return (as specified by section 157(3) TCMA).

***Section 62 - Variation of deferral requests***

78. **Section 62** provides for situations where the buyer may need, following a WRA agreement to a deferral request, to vary the expected end date (see section 58(8)(b)), or to adjust or remove one of the conditions for the deferral. WRA may agree the variation request in full or agree to a different expected end date or a different variation of a condition. Where WRA makes a decision on a variation request it must issue a notice of the decision with reasons to the buyer. WRA may not vary the terms of a deferral decision unilaterally, nor request that the buyer agree a variation. However, section 64 provides Welsh Ministers with the power to make regulations to enable WRA to make variations to the deferral agreement.

***Section 63 - Failure to comply with WRA's agreement to defer***

79. **Section 63** provides that where WRA considers that a buyer has failed to comply with the terms of the deferral or variation, or has provided false or misleading information or has withheld information, then the deferral request is to be treated as though it had never been made. If WRA takes this action it must issue a notice to the buyer informing them of this decision and setting out the consequences of that decision.

***Section 64 - Regulations about deferral of LTT***

80. **Section 64** provides the Welsh Ministers with the power to make, by regulation, further provisions about deferral of payment of LTT; including provisions relating to rent (which is not subject to the deferral rules), rules relating to contracts for works or services, and amendments to section 62 to enable WRA to agree or impose variations to deferral agreements previously made.

***Section 65 - Registration of land transactions***

81. **Section 65** provides for the rules relating to amending the register of title maintained by the Chief Land Registrar ("Registrar"). Unless the buyer of a notifiable transaction provides a WRA certificate to the Registrar then the Registrar must not reflect the land transaction in their register. A WRA certificate is provided to the buyer when a return for a notifiable transaction is made, subject to a number of exceptions. The Welsh Ministers may make regulations about the issuing of WRA certificates. This section also enables the Registrar to enter into arrangements with WRA to provide information and facilities which may enable WRA to verify that the requirements of this Act have been complied with.