

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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 8 – Interpretation and Final Provisions**

##### *Schedule 6 - Leases*

#### **Part 3 - Rent and other consideration**

##### **Rent**

246. [Paragraph 9](#) defines rent for the purposes of the Act so that a sum payable in respect of rent is treated as such even if it is said to include other matters (such as service charges) unless these are separately identified. “Rent” does not include any amount that is paid for the grant of the lease.

##### **Variable or uncertain rent**

247. Where rent is variable or uncertain, [paragraph 10](#) applies. The rules provide that the buyer must make their return with the amount of rents based on an estimate as to what the amount of rent will be during the first 5 years of the lease. For the subsequent years of the lease (if it has been granted for a period of longer than five years) the rent payable is assumed to equal the highest amount paid in any period of 12 consecutive months in the first 5 years. No account is taken for changes in rent which are purely in line with inflation.

##### **First rent review in final quarter of fifth year**

248. [Paragraph 11](#) provides that where the lease provides for a review of the rents to be carried out but that review commences in the final three months of the first 5 years of the lease, the review is ignored for LTT purposes.

##### **Adjustment of tax where rent determined on reconsideration date**

249. [Paragraph 12](#) provides that a buyer must reassess their LTT liability on the “reconsideration date” if their original return was made on the basis of contingent, uncertain or unascertained rents for the first 5 years of the lease.
250. The reconsideration date is defined as a date falling at the end of the fifth year of the lease or any earlier date at which the rents become certain. The rents become certain when either the contingency occurs (or it is clear that it will not occur) or the amount of rent becomes ascertained.

### **Underpayment of tax where rent determined on reconsideration date**

251. [Paragraph 13](#) provides the rules for when reconsideration under paragraph 12 results in an underpayment, or makes the transaction notifiable. The buyer must make any return before the end of 30 days beginning with the reconsideration date.
252. However, where the rent remains uncertain at the end of the fifth year, then the buyer must make a return to their best judgement, and if within 12 months of that date the rents cease to be uncertain then the buyer must amend that return accordingly.

### **Overpayment of tax where rent determined on reconsideration date**

253. [Paragraph 14](#) provides for where the reconsideration under paragraph 12 establishes that there has been an overpayment of tax. Where this occurs the buyer can amend their return, if they are within the normal 12 month period. Otherwise, the buyer can make a repayment claim from WRA.

### **Reverse premiums**

254. [Paragraph 15](#) provides that a reverse premium is not treated as chargeable consideration. A reverse premium is defined as one where the premium is paid by the landlord or the assignor, or on the surrender of a lease by the tenant.

### **Tenant's obligations etc. that do not count as chargeable consideration**

255. [Paragraph 16](#) provides that a number of obligations, for example an undertaking by the tenant to repair and maintain the property subject to the lease, are not to be treated as consideration given for the granting of the lease. Additionally, where the tenant pays an amount to discharge such an obligation then that payment is similarly not treated as chargeable consideration.

### **Surrender of existing lease in return for new lease**

256. [Paragraph 17](#) applies where a tenant surrenders an old lease as consideration for a new lease, and the parties remain the same. The surrender is not treated as chargeable consideration for the grant, and vice versa.

### **Assignment of lease: assumption of obligation by assignee**

257. [Paragraph 18](#) provides that where a lease is assigned the assumption of the obligation to make rent payments or comply with any other obligations of the lease do not count as consideration for the assignment.

### **Loan or deposit in connection with grant or assignment of lease**

258. [Paragraph 19](#) applies where a tenant (or a person connected to them) pays a deposit or loan to any person, and the tenant has some control over whether repayment will occur (or repayment is contingent on the tenant's death). In such a case, the deposit or loan is treated as consideration other than rent given for the lease. The same rule also applies where the deposit or loan is paid for the assignment of a lease.
259. However, a deposit that equals no more than twice the maximum amount of rent payable in any 12 month period in the first 5 years on the grant of the lease, or the highest amount in any 12 month period in the first 5 years of the remaining years of the lease in the case of an assignment does not count as consideration.