

These notes refer to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (c.1) which received Royal Assent on 24 May 2017

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 – Interpretation and Final Provisions

Schedule 23 – Amendments to the Tax Collection and Management (Wales) Act 2016

428. This Schedule makes a number of amendments to TCMA.
429. [Paragraph 6](#) inserts section 38A into TCMA which sets out the responsibilities of buyers, where no return is required, to keep and preserve any records (for the time periods specified in the section) that demonstrate that no return was required for the time periods specified.
430. [Paragraph 8](#) inserts section 39A into TCMA which provides the Welsh Ministers with the power by regulations to specify whether particular descriptions of records must, or need not, be kept and preserved.
431. [Paragraph 12](#) amends section 43 of TCMA so that it provides that where an enquiry notice has been issued in relation to a further return that notice of enquiry can, if thought necessary, also be issued for an earlier return made in respect of the same transaction (even where that return would normally be outside the 12 month enquiry window).
432. [Paragraph 14](#) inserts section into 45A which provides that an amendment made to a tax return by a taxpayer under section 41 TCMA during an enquiry into that return does not automatically have effect. The amendment made by the taxpayer will have effect on the completion of the enquiry, unless WRA states otherwise (in the closure notice issued under section 50 TCMA).
433. [Paragraph 24](#) inserts section 63A into TCMA which enables taxpayers to claim relief where regulations setting tax rates and bands cease to have effect under the provisional affirmative procedure for setting tax rates and bands. Other consequential changes are also made to TCMA to reflect the insertion of new section 63A.
434. [Paragraph 42](#) inserts a section which substitutes section 122 of TCMA and provides that a late payment penalty will apply where a sum of devolved tax has not been paid by the “penalty date” set out in Table A1.
435. [Paragraph 42](#) inserts section 122A into TCMA which sets out when persons become liable to further late payment penalties in cases of continued non-payment, and the amount of such penalties.

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436. Taking sections 122 and 122A TCMA together, there are three late payment penalty dates and amounts provided by this Act:
- an initial penalty of 5% of the unpaid tax at the “penalty date”;
 - a further penalty of 5% on the tax that remains unpaid after 6 months from the date falling 30 days before the penalty date; and
 - a second further penalty of 5% on the tax that remains unpaid after 12 months from the date falling 30 days before the penalty date.
437. [Paragraph 56](#) inserts section 154A into TCMA which provides that any penalty that could have been assessed on a person who has died may be assessed on that person’s personal representatives and any penalty which may then become due is payable out of the deceased person’s estate.
438. [Paragraph 58](#) substitutes section 157 of TCMA which provides the start date of late payment interest when tax has not been paid on time.
439. [Paragraph 58](#) also inserts section 157A into TCMA and substitutes section 158 of TCMA. This section provides rules for interest (known as “late payment interest”) to run on an unpaid amount of penalty from the date after the date on which that penalty should have been paid.
440. [Paragraph 63](#) inserts Chapter 3A into Part 8 of TCMA that provides rules relating to the payment and recovery of devolved tax in cases where a taxpayer has made a request for a WRA review under section 173 TCMA or an appeal to the Tribunal under section 178 TCMA. These provisions, broadly, give the taxpayer the ability to request that WRA agree to postpone the recovery of a disputed amount of tax, pending resolution of the dispute.
441. Section 181A provides that if a taxpayer requests a review or makes an appeal they are still liable to pay any devolved tax and interest due that is the subject of review or appeal.
442. Section 181B provides that, where there is a request for a review or an appeal, the taxpayer may make a request for the payment of what the taxpayer considers to be an amount of excessive devolved tax to be postponed. The postponement request must state the amount that the taxpayer wishes to be postponed and the reason why they consider the amount to be excessive. WRA will grant a request where they consider that the taxpayer has reasonable grounds for considering that they have been overcharged to tax. WRA may grant the request in whole or part and WRA must issue a notice of its decision. WRA may make the grant conditional on the provision of adequate security.
443. Section 181C provides that the time limit for making a postponement request is the same as that for making a request for a review or appeal. Whilst a request for review is made to WRA and an appeal is made to the Tribunal all postponement requests must be made to WRA. In the case of a late request for review or appeal the postponement request must be made at the same time as the request for review or appeal. If a late request for review or late appeal is refused then the postponement request will not need to be considered as there is no valid request for review or appeal.
444. Section 181D provides additional rules in relation to late postponement requests when there has been a request for review or appeal. WRA may only consider the request if there was a reasonable excuse for not making the postponement request within the statutory time limit and the taxpayer subsequently made that request without unreasonable delay.
445. Section 181E provides the taxpayer with the right, within the period of 30 days beginning with the date WRA issues notice of its decision in relation to the postponement request, to request the Tribunal to consider the postponement request. The Tribunal may confirm, cancel or replace WRA’s decision.

446. Section 181F provides rules where either WRA or the taxpayer wishes to vary the postponement request that has been granted in the event that there has been a change in circumstances. That variation can be agreed by consent between WRA and the taxpayer. If no agreement is reached within the period of 21 days beginning with the date that one party requested to the other that the postponement request granted is varied, either party may apply to the Tribunal for determination on the matter.
447. Section 181G makes provision for the effect of the postponement. The postponed amount is defined as the amount of the devolved tax that is specified in a postponement request or the amount for which a postponement request has been granted. The period under which a postponement is in force is described as the “postponement period” and different periods are set depending upon whether the postponement request has just been made or whether it has been granted. In the case where a postponement request has not yet been granted the postponement agreement starts from the date the request is made and ends: on the day it is granted; or, if the request is not granted, either the day after the period for appealing if there is no appeal, or if there is an appeal on the day on which the Tribunal makes its determination. Where a postponement request has been granted then the postponement period begins on the date it was granted and ends either on the day on which WRA issues its notice of conclusion of its review, or when the Tribunal determines the appeal. There is therefore a deemed postponement in force from the date the taxpayer makes their request, for the amount that they request, until WRA decides the request.
448. Section 181H contains rules for postponement requests following a further appeal against a first-instance decision of the Tribunal. A taxpayer will be able to make a request for a postponement of devolved tax where there has been an onward appeal from one court to a higher court. However, WRA will only grant the postponement where they consider that the taxpayer has reasonable grounds for considering that the amount they have been charged is excessive, and that the recovery of the tax would cause the taxpayer serious financial hardship. Serious financial hardship will include matters such as an inability to access finance meaning that the only way to make payment would be by selling the family home or the need to dispose of assets used in the taxpayers business that would stop them being able to operate that business effectively. The section also makes some other consequential variations to the operation of other related provisions.
449. Section 181I provides there is to be no appeal against a decision by the Tribunal in relation to a postponement request.
450. [Paragraph 65](#) inserts section 183A into TCMA which has the effect that where WRA makes a further appeal to a higher tribunal or court it is entitled, in certain circumstances, to request that it should not be required to repay the disputed devolved tax pending the resolution of that appeal. Only if the relevant tribunal or court gives permission for WRA to appeal and, additionally, considers that refusing WRA’s request not to repay is necessary to protect the revenue will the request be granted.
451. [Paragraph 66](#) inserts section 187A into TCMA which sets out how TCMA will apply to the Crown in relation to LTT.
452. [Paragraph 68](#) amends section 190 to TCMA so that a notice, for example an assessment, issued by WRA is invalid if the person to whom it is sent cannot reasonably ascertain its effect. The notice is treated as though it had not been issued. The converse will be equally true; that if a taxpayer in receipt of a notice, despite its errors, can ascertain the effect, then it is a valid notice.